File No. 140746 Committee Item No. 11
Board Item No. 32

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee **Date** July 23, 2014

Board of Supervisors Meeting **Date** July 29, 2014

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OTHER (Use back side if additional space is needed)

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Completed by: Linda Wong **Date** July 18, 2014
Completed by: Linda Wong **Date** 7/23/14

AMENDED IN COMMITTEE
7/23/14

FILE NO. 140746 RESOLUTION NO.

[Contract Amendment - MedImpact Healthcare Systems, Inc. - Not to Exceed $22,134,625]

Resolution approving an amendment to the contract between the Department of Public Health and the MedImpact Healthcare Systems, Inc. to provide third party pharmacy administration services and extend the contract term through December 31, 2015, for an amount not to exceed $22,134,625.

WHEREAS, The Department of Public Health selected the MedImpact Healthcare Systems, Inc. to provide third party pharmacy administration services through a Request for Proposals process in December 2007; and

WHEREAS, a third amendment to the contract was approved for a Not To Exceed Amount of $17,575,376 for the term of July 1, 2008, through June 30, 2014, by adoption of Resolution No. 441-12; and

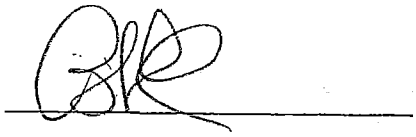
WHEREAS, The Department of Public Health wishes to amend the contract, increasing the contract's total Not To Exceed amount by $4,559,249 and extending the contract term by one and one half years; and

WHEREAS, such amendment requires the Board of Supervisors' approval under City Charter, Section 9.118, as the amount of the increase exceeds $500,000; and,

WHEREAS, A copy of this contract amendment is on file with the Clerk of the Board of Supervisors in File No. 140746, which is hereby declared to be a part of this resolution as if set forth fully herein; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby authorizes the Director of Health and the Purchaser, on behalf of the City and County of San Francisco, to execute an amendment to the contract with the MedImpact Healthcare Systems, Inc. through December 31, 2015, for an amount not to exceed $22,134,625.

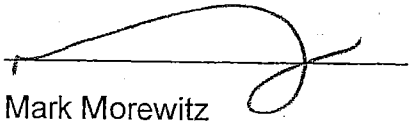
RECOMMENDED:



Barbara A. Garcia, MPA

Director of Health

APPROVED:



Mark Morewitz

Secretary to the Health Commission

City and County of San Francisco

San Francisco Department of Public Health
Barbara A. Garcia, MPA
Director of Health

June 23, 2014

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and four copies of proposed resolution/ordinance/motion for Board of Supervisors approval, which will allow the continuation of third party pharmacy administration services at San Francisco General Hospital by amending and extending the Department of Public Health's current contract with MedImpact Healthcare Systems, Inc. by $5,800,000 for an additional year and one half.

This contract amendment requires Board of Supervisors approval under San Francisco Charter Section 9.118, as it exceeds $500,000.

The following is a list of accompanying documents (five sets):

- Resolution draft, signed by the Director of Health and Health Commission Secretary;
- Resolution 441-12, approving the third amendment to this contract in 2012;
- The proposed fifth amendment to this contract;
- The original agreement and the first, second, third and fourth amendments;
- Forms SFEC-126 for the Board of Supervisors and the Mayor.

We would appreciate consideration of this contract prior to the Board's August recess to provide continued services without interruption.

The following person may be contacted regarding this matter: Jacquie Hale, Director, Office of Contracts Management and Compliance, Department of Public Health, (415) 554-2609 (Jacquie.Hale@SFDPH.org).

Thank you for your time and consideration.

Sincerely,

Jacquie Hale
Director
DPH Office of Contracts Management and Compliance

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

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

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

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

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

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

- The term "AWP" shall mean the current average wholesale price or industry benchmark price of a prescription drug as set forth in the First Data Bank Blue Book, including its supplements, or other nationally recognized pricing source as determined by Med**Impact** in its sole discretion. "AWP" does not represent a true wholesale price, but rather is a fluctuating benchmark provided to pricing sources (such as First Data Bank) by pharmaceutical manufacturers. In addition, in the event that the methodology for calculating the AWP pricing benchmark used by Med**Impact** hereunder changes or is replaced with another benchmark or methodology for any reason, Med**Impact** may switch to such new pricing benchmark or modify the pricing under this Agreement so as to maintain comparable pricing under the new benchmark or methodology as existed prior to such change.

- The term "MAC" shall mean the then current *maximum allowable cost* of certain prescription products, selected in accordance with criteria established by Med**Impact**, that are subject to Med**Impact**'s MAC pricing formulas. Multi-source drugs are eligible for the MAC list if they are: (i) A-rated generics; (ii) thirty (30) days after they are readily available through more than two (2) generic vendors; and (iii) the products are not exclusive. Such criteria and pricing formulas are subject to change from time to time at Med**Impact**'s sole discretion. Client agrees to accept any of Med**Impact**'s MAC lists as amended from time to time in Med**Impact**'s sole discretion.

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Fifth Amendment

THIS AMENDMENT (this "Amendment") is made as of **March 12, 2014**, in San Francisco, California, by and between **MedImpact Healthcare Systems, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract term, increase the contract amount and update Appendix B-1 Administrative Fee Schedule;

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

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated July 1, 2008 from the RFP33-2007 dated December 10, 2007 Contract Number BPHG09000009 and BPHG09000010 between Contractor and City, as amended the:

First Amendment	dated December 24, 2009 Contract Number BPHG09000010
Second Amendment	dated March 31, 2011 Contract Number BPHG09000010
Third Amendment	dated April 19, 2012 Contract Number BPHG090000010
Fourth Amendment	dated May 9, 2013 Contract Number BPHG090000010
Fifth Amendment	This amendment

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. of the Agreement currently reads as follows:

2. TERM OF THE AGREEMENT

Subject to Section 1, the term of this Agreement shall be from July 1, 2008 through June 30, 2014.

Such section is hereby amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from July 1, 2008 through December 31, 2015.

2b. Section 5. of the Agreement currently reads as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Seventeen Million Five Hundred Seventy Five Thousand Three Hundred Seventy Six Dollars ($17,575,376). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

Such section is hereby amended in its entirety to read as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Twenty Three Million Four Hundred Fifty Five Thousand Three Hundred Seventy Six Dollars ($23,455,376). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

63. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

64. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

Date 5-23-14

Barbara Garcia, MPA
Director of Health

Approved as to Form:

Dennis J. Herrera
City Attorney

By: Date 5/22/14
Kathy Murphy
Deputy City Attorney

Approved:

Date

Jaci Fong
Director of the Office of Contract Administration
and Purchaser

CONTRACTOR

MedImpact Healthcare Systems, Inc.

Date 5/12/14

Greg Watanabe
President
10680 Treena Street, 5th Floor
San Diego, CA 92131-2446

City vendor number: 50614

Appendix B

Calculation of Charges

1. **Method of Payment – Actual Cost**

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

2. **Program Budgets and Final Invoice**

A. Program Budgets are attached in the original contract.

B. ***COMPENSATION***

Compensation shall be made in monthly payments on or before the 30th day after the DIRECTOR, in his or her sole discretion, has approved the invoice submitted by CONTRACTOR. The breakdown of costs and sources of revenue associated with this Agreement appears in Appendix B, Cost Reporting/Data Collection (CR/DC) and Program Budget, attached hereto and incorporated by reference as though fully set forth herein. The maximum dollar obligation of the CITY under the terms of this Agreement shall not exceed **Twenty three Million Four Hundred Fifty Five Thousand Three Hundred Seventy Six Dollars ($23,455,376) for the period of July 1, 2008 through December 31, 2015.**

CONTRACTOR understands that, of this maximum dollar obligation, $2,450,900 is included as a contingency amount and is neither to be used in Appendix B, Budget, or available to CONTRACTOR without a modification to this Agreement executed in the same manner as this Agreement or a revision to Appendix B, Budget, which has been approved by the Director of Health. CONTRACTOR further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable CITY and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by the Controller. CONTRACTOR agrees to fully comply with these laws, regulations, and policies/procedures.

(1) For each fiscal year of the term of this Agreement, CONTRACTOR shall submit for approval of the CITY's Department of Public Health a revised Appendix A, Description of Services, and a revised Appendix B, Program Budget and Cost Reporting Data Collection form, based on the CITY's allocation of funding for SERVICES for the appropriate fiscal year. CONTRACTOR shall create these Appendices in compliance with the instructions of the Department of Public Health. These Appendices shall apply only to the fiscal year for which they were created. These Appendices shall become part of this Agreement only upon approval by the CITY.

(2) CONTRACTOR understands that, of the maximum dollar obligation stated above, the total amount to be used in Appendix B, Budget and available to CONTRACTOR for the entire term of the contract is as follows, not withstanding that for each fiscal year, the amount to be used in Appendix B, Budget and available to CONTRACTOR for that fiscal year shall conform with the Appendix A, Description of Services, and a Appendix B, Program Budget and Cost Reporting Data Collection form,

as approved by the CITY's Department of Public Health based on the CITY's allocation of funding for SERVICES for that fiscal year.

July 1, 2008 through June 30, 2009	$1,662,777
July 1, 2009 through June 30, 2010	$2,111,439
July 1, 2010 through June 30, 2011	$2,522,160
July 1, 2011 through June 30, 2012	$3,152,700
July 1, 2012 through June 30, 2013	$3,152,700
July 1, 2013 through June 30, 2014	$3,152,700
July 1, 2014 through June 30, 2015	$3,500,000
July 1, 2015 through December 31, 2015	$1,750,000
July 1, 2008 through December 31, 2015	**$21,004,476**

(3) CONTRACTOR understands that the CITY may need to adjust sources of revenue and agrees that these needed adjustments will become part of this Agreement by written modification to CONTRACTOR. In event that such reimbursement is terminated or reduced, this Agreement shall be terminated or proportionately reduced accordingly. In no event will CONTRACTOR be entitled to compensation in excess of these amounts for these periods without there first being a modification of the Agreement or a revision to Appendix B, Budget, as provided for in this section of this Agreement.

C. CONTRACTOR agrees to comply with its Budget as shown in Appendix B in the provision of SERVICES. Changes to the budget that do not increase or reduce the maximum dollar obligation of the CITY are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. CONTRACTOR agrees to comply fully with that policy/procedure.

D. No costs or charges shall be incurred under this Agreement nor shall any payments become due to CONTRACTOR until reports, SERVICES, or both, required under this Agreement are received from CONTRACTOR and approved by the DIRECTOR as being in accordance with this Agreement. CITY may withhold payment to CONTRACTOR in any instance in which CONTRACTOR has failed or refused to satisfy any material obligation provided for under this Agreement.

E.In no event shall the CITY be liable for interest or late charges for any late payments.

F. CONTRACTOR understands and agrees that should the CITY'S maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, CONTRACTOR shall expend such revenues in the provision of SERVICES to Medi-Cal eligible clients in accordance with CITY, State, and Federal Medi-Cal regulations. Should CONTRACTOR fail to expend budgeted Medi-Cal revenues herein, the CITY'S maximum dollar obligation to CONTRACTOR shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

ADMINISTRATIVE FEE SCHEDULE

CLAIMS PROCESSING FEE: **$0.66 Per Member Per Month**

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

The Claims Processing Fee includes the following:

- Processing and payment of all Claims
- Concurrent Drug Utilization Reviews (DUR)
- Monthly and quarterly standard reports
- Administration of a standard MAC program
- Standard benefit design and implementation services
- Eligibility management
- EOB Claims payment detail sent to Participating Pharmacies
- Biweekly Check-Run Control Totals sent to Client
- MedAccess® – fifteen (15) users with Claims and profile access
- MedOptimize® – fifteen (15) concurrent users
- Overrides
- On-line messaging
- Administration of Client Contracted Participating Pharmacies
- MedImpact Online Reports (MOR)
- Participating Pharmacy portal
- Standard Member portal website
- Toll free standard pharmacy and provider 24/7 Contact Center

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CLAIM RATES*

Prescription processing professional fee

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

Reimbursement for drug cost

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

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

Brand name drugs:
Average Wholesale Price (AWP) less 15% plus a $2.00 Dispensing Fee

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

1.	CLAIMS PROCESSING	
	A. Direct Member Reimbursement (DMR)	$3.25 per Claim
2.	IMPLEMENTATION AND CHANGE SERVICES	
	A. Standard Services	Included in Claims Processing Fee
	B. Customized Services	Custom Requirements $200.00/hour of IT time, plus time and materials to support custom or new requirements
	C. Eligibility and Plan Benefit Support Late Fee	Time and materials to include any necessary overtime charges associated with data conversion and eligibility processing
	D. Post-loading fee	Post-Loading Changes $200.00/hour of IT time, plus time and materials to support custom or new requirements
3.	REPORTING, DATA AND MANAGEMENT TOOLS	
	A. Core Reports Additional standard reports Custom reports as requested (to include updates to existing reports):	 Included $200.00 per hour
	B. MedOptimize®	Fifteen (15) concurrent users Included
	Additional concurrent users:	$500.00 per user per month
	Client is responsible for telephone line charges, installation and set-up fees, equipment, including emulation software, and meeting MedImpact's minimum system requirements.	
	Client shall be responsible for reasonable time and material charges for training.	
	C. MedAccess®	Fifteen (15) users included with Claims and profile access
	Additional concurrent users Custom Screen Development or Access First Data Bank Drug file access (read only)	$500.00 per user per month Time & materials $7,400.00* per per year **rate to be adjusted based on any change in the drug file license fee*

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

4.	CLINICAL SERVICES		
	A.	Other Client Clinical Consultations	$225.00/hour for special projects
	B.	Concurrent Drug Utilization Review	Included in Claims Processing Fee
	C.	Therapeutic Prior Authorization	$35.00 per Claim requiring TH PA
	D. Benefit Coverage/Administrative Standard & Expedited Appeal, If requested		$100.00 per Eligible Member appeal
	Medical Necessity Standard & Expedited Appeal		
	First Level Appeal		$225.00 per Eligible Member appeal
	Second Level Appeal		Fees paid by Client for each Eligible Member appeal
5.	NON-STANDARD, EXCESSIVE OR ADDITIONAL SERVICES		
	A.	Non-Standard or Excessive Services or Materials	$200.00/hour
	B.	Additional Services	$200.00/hour

THE FOLLOWING INCUR ADDITIONAL CHARGES:

Modified Paid Claims Data Files	
NCPDP Modified/MedImpact format	$75.00 per, FTP
Non-standard format	$100.00 per tape, CD, FTP
Mailings	
Out-of-pocket expenses Mailing expenses/postage MedImpact Aggregate	Per claim $.005
Information technology programming time	$200.00 per hour
Fiscal Intermediary Expenses Checks written to third parties and replenishment invoicing to CHN	$25.00 per occurrence

Faxing to pharmacies upon request by CHN	$0.50 page

COMPENSATION

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

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/06/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services 4445 Eastgate Mall San Diego, CA 92121 317513-MI-GAWUE-13-14	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Medimpact Healthcare Systems Inc. Attn: Eric Little 10181 Scripps Gateway Court San Diego, CA 92131	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Valley Forge Insurance Co — 20508 INSURER B : Continental Insurance Company — 35289 INSURER C : National Fire Insurance Co Of Hartford — 20478 INSURER D : Illinois Union Insurance Co — 27960 INSURER E : INSURER F :

COVERAGES CERTIFICATE NUMBER: LOS-001511013-11 REVISION NUMBER: 8

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		5086632554	08/01/2013	08/01/2014	EACH OCCURRENCE	$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
B	AUTOMOBILE LIABILITY	X		5086632540	08/01/2013	08/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
							COMP/COLL DED.	$ 1,000
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			5086625748 (CA)	08/01/2013	08/01/2014	X WC STATU-TORY LIMITS OTH-ER	
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N	N/A		5086625734 (AOS)	08/01/2013	08/01/2014	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Managed Care			MSP G27169855002	04/30/2013	04/30/2014	Limit:	15,000,000
	Errors & Omissions						SIR:	100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate holder is named as additional insured for General and Auto Liability as required by written contract.

CERTIFICATE HOLDER	CANCELLATION
City and County of San Francisco, its Officer, Agents, and Employees Office of Contract Management and Compliance Department of Public Health 1380 Howard Street, Room 442 San Francisco, CA 94103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh Risk & Insurance Services Kristen A. Olson Kristen A. Olson

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/02/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services 4445 Eastgate Mall San Diego, CA 92121 317513-MI.-GAWUE-13-14	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : N/A	N/A
INSURED Medimpact Healthcare Systems Inc. Attn: Vanessa Fraser 10181 Scripps Gateway Court San Diego, CA 92131	INSURER B : N/A	N/A
	INSURER C : N/A	N/A
	INSURER D : Illinois Union Insurance Co	27960
	INSURER E : N/A	N/A
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: LOS-001595886-01 REVISION NUMBER: 2

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	☐ POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						WC STATU-TORY LIMITS ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
D	Managed Care			MSPG27169855003	04/30/2014	04/30/2015	Limit:	15,000,000
	Errors & Omissions						SIR:	100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Evidence of Insurance

CERTIFICATE HOLDER	CANCELLATION
City and County of San Francisco Its Officer, Agents, and Employees Office of Contract Management and Compliance Department of Public Health 1380 Howard Street, Room 442 San Francisco, CA 94103	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh Risk & Insurance Services Kristen A. Olson Kristen A. Olson

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

8/1/2014

DATE (MM/DD/YYYY) 5/1/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 8110 E Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Valley Forge Insurance Company	20508
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED 1380450 MedImpactHoldings, Inc.
Attn: Eric Little
10181 Scripps Gateway Court
San Diego, CA 92131

COVERAGES **CERTIFICATE NUMBER:** 12920446 **REVISION NUMBER:** XXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY			NOT APPLICABLE			EACH OCCURRENCE	$ XXXXXXX
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ XXXXXXX
							MED EXP (Any one person)	$ XXXXXXX
							PERSONAL & ADV INJURY	$ XXXXXXX
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ XXXXXXX
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$ XXXXXXX
	OTHER:							$
	AUTOMOBILE LIABILITY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident)	$ XXXXXXX
	☐ ANY AUTO						BODILY INJURY (Per person)	$ XXXXXXX
	☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$ XXXXXXX
	☐ HIRED AUTOS ☐ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
	☐ UMBRELLA LIAB ☐ OCCUR			NOT APPLICABLE			EACH OCCURRENCE	$ XXXXXXX
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$ XXXXXXX
	☐ DED ☐ RETENTION $							$ XXXXXXX
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N	WC 5 86625748 (CA)	8/1/2013	8/1/2014	X PER STATUTE ☐ OTH-ER	
A	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] N/A			WC 5 86625734 (AOS)	8/1/2013	8/1/2014	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate Holder is named as Additional Insrued for General and Auto Liability as required by written contract.

CERTIFICATE HOLDER

12920446
City and County of San Francisco
Its Officer, Agents, and EMployees Office of
Contract Management & Compliance
Department of Public Health
1380 Howard St., Room 442
San Francisco, CA 94103

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Charles M. McDaniel

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address	Agent
ITEM MEDIMPACT HOLDINGS, INC. 1. 10181 SCRIPPS GATEWAY COURT SAN DIEGO, CA 92131	MARSH USA INC. 777 S. FIGUEROA STREET 10TH LOS ANGELES CA 90017

FEIN NUMBER: 330567651 NCCI CARRIER CODE NO: 15032
INTRASTATE ID NO: 044767896

OTHER WORK PLACES NOT SHOWN ABOVE: SEE ATTACHED SCHEDULE(S)
YOU ARE A - CORPORATION/S

2. POLICY PERIOD- 08/01/13 TO 08/01/14 12:01 AM STANDARD TIME AT THE INSUREDS MAILING ADDRESS.

3A. PART ONE OF THIS POLICY APPLIES TO THE WORKERS COMPENSATION LAW AND ANY OCCUPATIONAL DISEASE LAW OF EACH OF THE STATES LISTED HERE:
CA.

3B. PART TWO OF THIS POLICY APPLIES TO EMPLOYERS LIABILITY INSURANCE FOR WORK IN EACH STATE LISTED IN ITEM 3A: THE LIMITS OF LIABILITY ARE:

BODILY INJURY BY ACCIDENT	$1,000,000 EACH ACCIDENT
BODILY INJURY BY DISEASE	$1,000,000 POLICY LIMIT
BODILY INJURY BY DISEASE	$1,000,000 EACH EMPLOYEE

3C. PART THREE OF THIS POLICY APPLIES TO OTHER STATES, IF ANY, LISTED HERE:
NONE.

3D. THIS POLICY INCLUDES THESE ENDORSEMENTS AND SCHEDULES: SEE ATTACHED SCHEDULES

4. THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUAL OF RULES, CLASSIFICATIONS, RATES, AND RATING PLANS. ALL INFORMATION REQUIRED BELOW IS SUBJECT TO VERIFICATION AND CHANGE BY AUDIT.
ADJUSTMENT OF PREMIUM SHALL BE MADE: AT POLICY EXPIRATION

CLASSIFICATION OF OPERATIONS	EST ANNUAL PREMIUM
SEE ATTACHED	[redacted]

PREMIUM DISCOUNT
EXPENSE CONSTANT
TERRORISM PREMIUM
MINIMUM PREMIUM [redacted] TOTAL ESTIMATED ANNUAL PREMIUM
TOTAL STATE TAXES/ASSESSMENTS/SURCHARGES
TOTAL ESTIMATED COST
DEPOSIT PREMIUM [redacted]

ACCOUNT NUMBER: 3022465014
DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS
COUNTERSIGNED _____ BY _____
DATE AUTHORIZED AGENT

WC000001 P-144228-A (ED. 01/03)

Chairman of the Board

Secretary

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** S C H E D U L E O F O P E R A T I O N S **

SCHEDULE PAGE 1

STATE: CALIFORNIA

4.

LOC NO.	CLASS CODE	CLASSIFICATION OF OPERATIONS	EST TOTAL ANN REMUN	RATE PER $100 REMUN	EST ANNUAL PREMIUM
001	8810	CLERICAL OFFICE EMPLOYEES			
	8742	SALESPERSONS-OUTSIDE			
	5403	CARPENTRY - LESS THAN $26.00			
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00			
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT			
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES			
	7424	AIRCRAFT OPERATION - FLYING CREW			
		SUBTOTAL FOR LOCATION 001			
002	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
		SUBTOTAL FOR LOCATION 002			$0
003	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
		SUBTOTAL FOR LOCATION 003			$0

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** S C H E D U L E O F O P E R A T I O N S **

SCHEDULE PAGE 2

STATE: CALIFORNIA

4.

LOC NO.	CLASS CODE	CLASSIFICATION OF OPERATIONS	EST TOTAL ANN REMUN	RATE PER $100 REMUN	EST ANNUAL PREMIUM
004	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
		SUBTOTAL FOR LOCATION 004			$0
005	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
		SUBTOTAL FOR LOCATION 005			$0
006	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
		SUBTOTAL FOR LOCATION 006			$0

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** S C H E D U L E O F O P E R A T I O N S **

SCHEDULE PAGE 3

STATE: CALIFORNIA

4.

LOC NO.	CLASS CODE	CLASSIFICATION OF OPERATIONS	EST TOTAL ANN REMUN	RATE PER $100 REMUN	EST ANNUAL PREMIUM
007	8810	CLERICAL OFFICE EMPLOYEES	IF ANY		
	8742	SALESPERSONS-OUTSIDE	IF ANY		
	5403	CARPENTRY - LESS THAN $26.00	IF ANY		
	5432	CARPENTRY - EQUALS OR EXCEEDS $26.00	IF ANY		
	8859	COMPUTER PROGRAMMING OR SOFTWARE DEVELOPMENT	IF ANY		
	9015	BUILDING OPERATION-ALL OTHER EMPLOYEES	IF ANY		
	7424	AIRCRAFT OPERATION - FLYING CREW	IF ANY		
		SUBTOTAL FOR LOCATION 007			$0
	0930	WAIVER OF SUBROGATION			
		TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION			
	9898	FINAL EXPERIENCE MOD EFF 08/01/13 USING FACTOR			
		INTRASTATE ID. NO: 044767896			
	9887	SCHEDULE MODIFICATION ADJ. CREDIT			
	0064	PREMIUM DISCOUNT - NON STOCK			
	0900	EXPENSE CONSTANT NCCI REVISED PROGRAM			
	9740	TERRORISM PREMIUM			
	0988	CALIFORNIA SURCHARGE			
	0987	CA REVOLVING FUND ASSESSMENT			
	9711	CA FRAUD SURCHARGE			
	9712	CA UNINSURED EMPLOYER FUND ASSMNT			
	9714	CA SUBSEQUENT INJURIES FUND ASSMNT			
	0939	CA OCCUPATIONAL SAFETY & HEALTH ASSMNT			
	9749	CA LABOR ENFORCEMENT ASSMNT			
		CALIFORNIA DEPOSIT PREMIUM			

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** S C H E D U L E O F O P E R A T I O N S ** SCHEDULE PAGE 4

4.

LOC NO.	CLASS CODE	CLASSIFICATION OF OPERATIONS	EST TOTAL ANN REMUN	RATE PER $100 REMUN	EST ANNUAL PREMIUM
		***** POLICY TOTALS *****			
		ESTIMATED CLASS PREMIUM			
		ESTIMATED STANDARD PREMIUM			
		PREMIUM DISCOUNT			
		EXPENSE CONSTANT			
		TERRORISM PREMIUM			
		ESTIMATED PREMIUM			
		STATE TAXES/ASSESSMENTS/SURCHARGES			
		ESTIMATED COST			

0002000450586225714A4509

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** E N D O R S E M E N T S C H E D U L E **

SCHEDULE
PAGE 1

NUMBER	DESCRIPTION	EDITION DATE
CC72832A	CA SHORT RATE CANCELATION ENDT	01/12
G19160B	BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS	11/97
G22212E04	CA WORKERS COMPENSATION NON-RENEWAL ENDT	05/02
WC000000B	COVERAGE PART	07/11
WC000406A	PREMIUM DISCOUNT ENDORSEMENT	08/95
WC000422A	TERRORISM RISK INS PGM RE-AUTH ACT DISCLOSURE ENDT	09/08
WC040301A	POLICY AMENDATORY ENDORSEMENT - CA	03/98
WC040303	OFFICERS & DIRECTORS COVERAGE EXCLUSION ENDT.	01/85
WC040305	VOLUNTARY COMPENSATION & EMPLOYERS LIAB. COV. ENDT	01/85
WC040360A	EMPLOYERS LIABILITY COVERAGE AMENDATORY ENDT. - CA	11/99
WC040421	OPTIONAL PREMIUM INCREASE ENDT-CA	01/08
WC040601A	CALIFORNIA CANCELATION ENDORSEMENT	12/93

PLEASE READ THE ENCLOSED IMPORTANT NOTICES CONCERNING YOUR POLICY

BR031605	CNA INSURANCE PREMIUM AUDIT	99/99
CC72120B	IMP INFO CA WC POLICYHOLDERS AUDIT REQUIREMENTS	03/13
G140324I	IMP INFO-CA INS GUARANTY FUND SURCH	01/13
G140370D	PRIVACY POLICY NOTICE	04/09
G144222B	IMP INFO FOR OUR CA WC POLICYHOLDERS	01/13
G20593E	IMPORTANT INFO-CA WC INSURANCE RATING LAWS	09/07
G20594G	IMP INFO RATING AND DIVIDEND INFO	12/10
G20911E04	IMP INFO - CA LOSS CONTROL SVCS	08/06

0002609M9508625746461D

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** E N D O R S E M E N T S C H E D U L E **

SCHEDULE
PAGE 2

NUMBER	DESCRIPTION	EDITION DATE
G300550A	IMP INFO CA WC POLICYHLDRS PAYROLL RECORD REQ	01/08
G301195A	IMP. INFO. - POSTING NOTICES AND CLAIM HANDLING	12/11
G301282B	IMP INFO - CA WC ASSESSMENTS AND SURCHARGES	01/13

0022000485086925740461 1

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

CNA

333 S Wabash
Chicago, Illinois 60604

STANDARD WORKERS COMPENSATION
AND EMPLOYERS LIABILITY POLICY

INFORMATION PAGE - RENEWAL OF WC 5 86625748

Policy Number	From Policy Period To	Coverage Is Provided By	Agency
WC 5 86625748	08/01/13 08/01/14	VALLEY FORGE INSURANCE COMPANY	043067240

Named Insured And Address

MEDIMPACT HOLDINGS, INC.
10181 SCRIPPS GATEWAY COURT
SAN DIEGO, CA 92131

Agent

MARSH USA INC.
777 S. FIGUEROA STREET 10TH
LOS ANGELES CA 90017

** N A M E D I N S U R E D S C H E D U L E **

SCHEDULE
PAGE 1

MEDIMPACT HOLDINGS, INC.
FEIN=330567651

MEDIMPACT HEALTHCARE SYSTEMS, INC.
FEIN=330567651

MEDIMPACT INTERNATIONAL, LLC
FEIN=273356946

MEDGENERATIONS, LLC
FEIN=273919814

SANCTUARY RETREAT PROPERTIES
FEIN=262898574

340B HOLDINGS, LLC
FEIN=454228967

BUSINESSONE TECHNOLOGIES, INC
FEIN=201260366

OBJECT INNOVATION, INC.
FEIN=593608432

SUMMIT DATA SERVICES, LLC
FEIN=272428181

VPEX MANAGEMENT, LLC
FEIN=462095439

DATE OF ISSUE: 09/03/13
POLICY ISSUING OFFICE: WOODLAND HILLS

WC000001 P-144228-A (ED. 01/03)

INSURED

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement changes the policy to which it is attached.

It is agreed that **Part One Workers' Compensation Insurance G. Recovery From Others** and **Part Two Employers' Liability Insurance H. Recovery From Others** are amended by adding the following:

We will not enforce our right to recover against persons or organizations. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

PREMIUM CHARGE -

The charge will be an amount to which you and we agree that is a percentage of the total standard premium for California exposure. The amount is 2.%.

0002000450056925745515

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.

2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.

3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative:	Michelle Jahn
Owner/Authorized Representative (Print)	Michelle Jahn
Name of Firm (Print)	MedImpact Healthcare Systems, Inc.
Title and Position	SVP Account Management
Address, City, ZIP	10181 Scripps Gateway Court, San Diego, 92131
Federal Employer Identification Number (FEIN):	33-0567651
Date:	October 25, 2012

MedImpact

June 11, 2012

City and County of San Francisco Department of Public Health
Office of Contract Management & Compliance
ATTN: Junko Craft, Contract Analyst
1380 Howard Street, Room 419c
San Francisco, CA 94103

MedImpact Healthcare Systems, Inc. (MedImpact) does not own any automobiles and therefore does not maintain "owned automobile" insurance. MedImpact does maintain automobile insurance for "hired and non-owned automobiles".

Sincerely,

Eric Little
Director, Resource Manager

Hired auto and non-owned auto insurance is acceptable in lieu of owned autos as contractor states vendor does not own autos.

E Fitzpatrick
Risk Management
6/12/12

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Fourth Amendment

THIS AMENDMENT (this "Amendment") is made as of **May 9, 2013**, in San Francisco, California, by and between **MedImpact Healthcare Systems, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4113-11/12 on April 16, 2012;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2008 from the RFP33-2007 dated December 10, 2007 Contract Number BPHG09000009 and BPHG09000010 between Contractor and City, as amended the:

First Amendment	dated December 24, 2009 Contract Number BPHG09000010
Second Amendment	dated March 31, 2011 Contract Number BPHG09000010
Third Amendment	dated April 19, 2012 Contract Number BPHG090000010

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Section 28. of the Agreement currently reads as follows:

28. Audit and Inspection of Records

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

State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

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

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

Such section is hereby amended in its entirety to read as follows:

28. Audit and Inspection of Records – deleted by mutual agreement of the parties.

63. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

64. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

Date 6-11-13

Barbara Garcia, MPA
Director of Health

CONTRACTOR

MedImpact Healthcare Systems, Inc.

Date 6/4/13

Greg Watanabe
President
10680 Treena Street, 5th Floor
San Diego, CA 92131-2446

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number: 50614

By: Date 6/13/13

Kathy Murphy
Deputy City Attorney

Approved:

Date 6/28/13

FOR Jaci Fong
Director of the Office of Contract Administration
and Purchaser

MedImpact

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 05/02/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services 4445 Eastgate Mall San Diego, CA 92121 317513-MI-GAWUE-12-13	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED MedImpact Healthcare Systems Inc. Attn: Eric Little 10181 Scripps Gateway Court San Diego, CA 92131	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: Valley Forge Insurance Co — 20508 INSURER B: Continental Insurance Company — 35289 INSURER C: National Fire Insurance Co Of Hartford — 20478 INSURER D: Illinois Union Insurance Co — 27960 INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** LOS-001511013-08 **REVISION NUMBER:** 8

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC	X		5086632554	08/01/2012	08/01/2013	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	X		5086632540	08/01/2012	08/01/2013	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) COMP/COLL DED.	$ 1,000,000 $ $ $ $ 1,000
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
C C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			5086625748 (CA) 5086625734 (AOS)	08/01/2012 08/01/2012	08/01/2013 08/01/2013	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
D	Managed Care Errors & Omissions			MSP G27169855002	04/30/2013	04/30/2014	Limit: SIR:	15,000,000 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate holder is named as additional insured for General and Auto Liability as required by written contract.

CERTIFICATE HOLDER

City and County of San Francisco,
its Officer, Agents, and Employees
Office of Contract Management and Compliance
Department of Public Health
1380 Howard Street, Room 442
San Francisco, CA 94103

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services

Kristen A. Olson — Kristen A. Olson

AGENCY CUSTOMER ID: 7513
LOC #: San Diego

ACORD®

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Marsh Risk & Insurance Services	MedImpact Healthcare Systems Inc. Attn: Eric Little 10181 Scripps Gateway Court San Diego, CA 92131
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Cyber Liability and Network Security:

Carrier: Liberty Surplus Insurance Corporation
Policy#: E05NAANLRE002
Effective Date: 04/30/2013
Expiration Date: 04/30/2014
Limit: $10,000,000
Deductible: $100,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage afforded under this extension of coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Coverage Part.

1. ADDITIONAL INSURED – BLANKET VENDORS

WHO IS AN INSURED (Section II) is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:

   a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

   b. Any express warranty unauthorized by you;

   c. Any physical or chemical change in the product made intentionally by the vendor;

   d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

   e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

   f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

   g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

   h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omission or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

      (1) The exceptions contained in Subparagraphs d. or f.; or

      (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. This provision 1. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Coverage Part.

4. This provision 1. does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Coverage Part or by endorsement.

2. MISCELLANEOUS ADDITIONAL INSUREDS

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (called additional insured) described in paragraphs **2.a.** through **2.g.** below whom you are required to add as an additional insured on this policy under a written contract or agreement but the written contract or agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and

2. Executed prior to the "bodily injury," "property damage" or "personal injury and advertising injury," but

Only the following persons or organizations are additional insureds under this endorsement and

coverage provided to such additional insureds is limited as provided herein:

a. State or Political Subdivisions

A state or political subdivision subject to the following provisions:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(2) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality.

b. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

c. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

d. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

e. Owners/Other Interests – Land is Leased

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to lease that land; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

f. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

g. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their written contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply.

(1) To any "occurrence" which takes place after the equipment lease expires; or

(2) To "bodily injury," "property damage," or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs a. through g. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard."

As respects the coverage provided under this endorsement, Paragraph **4.b. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

4. Other Insurance

b. Excess Insurance

This insurance is excess over:

Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or agreement specifically requires that this insurance be either primary or primary and noncontributing. Where required by written contract or agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and noncontributing with this insurance.

3. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Paragraph **3.a.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization, whichever is earlier.

4. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANY COVERAGE

A. The following is added to **Section II – Who Is An Insured:**

4. You are an insured when you had an interest in a joint venture, partnership or limited liability company which terminated or ended prior to or during this policy period but only to the extent of your interest in such joint venture, partnership or limited liability company. This coverage does not apply:

a. Prior to the termination date of any joint venture, partnership or limited liability company; or

b. If there is other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

B. The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

Except as provided in 4. above, no person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

5. PARTNERSHIP OR JOINT VENTURES

Paragraph **1.b.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

b. A partnership (including a limited liability partnership) or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

6. EMPLOYEES AS INSUREDS – HEALTH CARE SERVICES

For other than a physician, paragraph **2.a(1)(d)** of **Section II – Who Is An Insured** does not apply with respect to professional health care services provided in the course of employment by you.

7. SUPPLEMENTARY PAYMENTS

A. Under **Section I – Supplementary Payments – Coverages A and B,** Paragraph **1.b.,** the limit of $250 shown for the cost of bail bonds is replaced by $2,500:

B. In Paragraph **1.d.,** the limit of $250 shown for daily loss of earnings is replaced by $1,000.

8. MEDICAL PAYMENTS

A. Paragraph **7. Medical Expense Limit,** of **Section III – Limits of Insurance** is deleted and replaced by the following:

7. Subject to **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most we will pay under **Section – I – Coverage C** for all medical expenses because of "bodily injury" sustained by any one person. The Medical Expense Limit is the greater of:

(1) $15,000; or

(2) The amount shown in the Declarations for Medical Expense Limit.

B. This provision **8. (Medical Payments)** does not apply if **Section I – Coverage C Medical Payments** is excluded either by the provisions of the Coverage Part or by endorsement.

C. Paragraph **1.a.(3)(2)** of **Section I – Coverage C – Medical Payments,** is replaced by the following:

The expenses are incurred and reported to us within three years of the date of the accident; and

9. NON-OWNED WATERCRAFT

Under **Section I – Coverage A – Bodily Injury and Property Damage,** Exclusion **2.g.,** subparagraph **(2)** is deleted and replaced by the following.

(2) A watercraft you do not own that is:

(a) Less than 55 feet long; and

(b) Not being used to carry persons or property for a charge.

10. NON-OWNED AIRCRAFT

Exclusion **2.g.** of **Section I – Coverage A – Bodily Injury and Property Damage,** does not apply to an aircraft you do not own, provided that:

1. The pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. It is rented with a trained, paid crew; and
3. It does not transport persons or cargo for a charge.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

A. Under **Section I – Coverage A – Bodily Injury and Property Damage 2. Exclusions,** Exclusion **j.** is replaced by the following.

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises:

(1) rented to you;

(2) temporarily occupied by you with the permission of the owner, or

(3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

Paragraphs **(3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

B. Under **Section I – Coverage A – Bodily Injury and Property Damage** the last paragraph of **2. Exclusions** is deleted and replaced by the following.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance.**

C. Paragraph **6. Damage To Premises Rented To You Limit** of **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most we will pay under **Section I – Coverage A** for damages because of "property damage" to any one premises while rented to you or temporarily occupied by you with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. $200,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

D. Paragraph **4.b.(1)(b)** of **Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

(b) That is property insurance for premises rented to you or temporarily occupied by you with the permission of the owner; or

E. This provision **11. (LEGAL LIABILITY – DAMAGE TO PREMISES)** does not apply if Damage To Premises Rented To You Liability under **Section I – Coverage A** is excluded either by the provisions of the Coverage Part or by endorsement.

12. BROAD KNOWLEDGE OF OCCURRENCE

The following is added to paragraph **2.** of **Section IV – Commercial General Liability Conditions – Duties In The Event of Occurrence, Offense, Claim or Suit:**

You must give us or our authorized representative notice of an "occurrence," offense, claim, or "suit" only when the "occurrence," offense, claim or "suit" is known to :

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) An executive officer or the employee designated by you to give such notice, if you are a corporation; or

(4) A manager, if you are a limited liability company.

13. NOTICE OF OCCURRENCE

The following is added to paragraph **2.** of **Section IV – Commercial General Liability Conditions – Duties In The Event of Occurrence, Offense Claim or Suit:**

Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim or "suit" to us as soon as you are aware that this insurance may apply to such "occurrence," offense claim or "suit."

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Based on our reliance on your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

15. EXPANDED PERSONAL AND ADVERTISING INJURY

A. The following is added to **Section V – Definitions,** the definition of "personal and advertising injury":

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) Not done intentionally by or at the direction of:

(a) The insured; or

(b) Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

(2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or persons by any insured.

B. Exclusions of **Section I – Coverage B –Personal and Advertising Injury Liability** is amended to include the following:

p. Discrimination Relating To Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

q. **Fines Or Penalties**

Fines or penalties levied or imposed by a governmental entity because of discrimination.

C. This provision **15. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE)** does not apply to discrimination or humiliation committed in the states of New York or Ohio. Also, **EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE** does not apply to policies issued in the states of New York or Ohio.

D. This provision **15. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE)** does not apply if **Section I – Coverage B – Personal And Advertising Injury Liability** is excluded either by the provisions of the Coverage Part or by endorsement.

16. BODILY INJURY

Section V – Definitions, the definition of "bodily injury" is changed to read:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

17. EXPECTED OR INTENDED INJURY

Exclusion **a.** of **Section I – Coverage A – Bodily Injury and Property Damage Liability** is replaced by the following:

a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

18. LIBERALIZATION CLAUSE

If we adopt a change in our forms or rules which would broaden coverage under this endorsement without an additional premium charge, your policy will automatically provide the additional coverages as of the date the revision is effective in your state.

19. PROPERTY DAMAGE – ELEVATORS

With respect to Exclusions of **Section I – Coverage A,** paragraphs **(3), (4) and (6)** of Exclusion **j.** and Exclusion **k.** do not apply to the use of elevators.

The insurance afforded by this provision **19.** is excess over any valid and collectible property insurance (including any deductible) available to the insured, and the Other Insurance Condition is changed accordingly.

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of **April 19, 2012**, in San Francisco, California, by and between **MedImpact Healthcare Systems, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4113-11/12 on April 16, 2012;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2008 from the RFP33-2007 dated December 10, 2007 Contract Number BPHG09000009 and BPHG09000010 between Contractor and City, as amended the:

First Amendment	dated December 24, 2009 Contract Number BPHG09000010
Second Amendment	dated March 31, 2011 Contract Number BPHG09000010 and this Third Amendment

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Section 5. of the Agreement currently reads as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Nine Million Nine Hundred Thousand Dollars ($9,900,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to

Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

Such section is hereby amended in its entirety to read as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Seventeen Million Five Hundred Seventy Five Thousand Three Hundred Seventy Six Dollars ($17,575,376). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

2b. Section 15 is hereby replaced in its entirety to read as follows:

15. Insurance

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

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

(2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence, $2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

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

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

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

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

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

j If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

2c. Section 16 of the Agreement is hereby replaced in its entirety to read as follows:

16. Indemnification

a. General Indemnity. To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees

(collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee. The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. **Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement.

2d. Section 42 is hereby replaced in its entirety as follows:

42. Limitations on Contributions.

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

2e. Section 45 is hereby replaced in its entirety to read as follows:

45. First Source Hiring Program

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

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

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

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

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

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements

shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

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

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

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

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

2f. Section 58 is hereby replaced in its entirety to read as follows:

58. Graffiti Removal.

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

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

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

2g. Section 59 is hereby by replaced in its entirety to read as follows:

59. Food Service Waste Reduction Requirements.

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

2h. Section 60 is hereby replaced in its entirety to read as follows:

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance." The affidavit is posted on the Office of Contract Administration's website at "www.sfgov.org/site/oca" under the "Slavery Era Disclosure" banner.

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or $1,000, whichever is greatest as determined

by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

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

2i. Section 61 is hereby replaced in its entirety to read as follows:

61. Cooperative Drafting.

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

Roland Pickens for
Barbara Garcia Date 8-8-12

Barbara Garcia, MPA
Director of Health

CONTRACTOR

MedImpact Healthcare Systems, Inc.

Date 8-2-12

Greg Watanabe
President
10680 Treena Street, 5th Floor
San Diego, CA 92131-2446

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number: 50614

By: Kathleen Murphy Date 8/14/12
Kathy Murphy
Deputy City Attorney

Approved:

for Jaci Fong Date 12/28/12
Jaci Fong
Director of the Office of Contract Administration
and Purchaser

Appendix B
Calculation of Charges

1. **Method of Payment – Actual Cost**

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

2. **Program Budgets and Final Invoice**

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

Budget Summary

Appendix B-1 Administrative Fee Schedule

Appendix B-2 Fees

B. ***COMPENSATION***

Compensation shall be made in monthly payments on or before the 30^{th} day after the DIRECTOR, in his or her sole discretion, has approved the invoice submitted by CONTRACTOR. The breakdown of costs and sources of revenue associated with this Agreement appears in Appendix B, Cost Reporting/Data Collection (CR/DC) and Program Budget, attached hereto and incorporated by reference as though fully set forth herein. The maximum dollar obligation of the CITY under the terms of this Agreement shall not exceed **Seventeen Million Five Hundred Seventy Five Thousand Three Hundred Seventy Six Dollars ($17,575,376) for the period of July 1, 2008 through June 30, 2014.**

CONTRACTOR understands that, of this maximum dollar obligation, $875,091.80 is included as a contingency amount and is neither to be used in Appendix B, Budget, or available to CONTRACTOR without a modification to this Agreement executed in the same manner as this Agreement or a revision to Appendix B, Budget, which has been approved by the Director of Health. CONTRACTOR further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable CITY and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by the Controller. CONTRACTOR agrees to fully comply with these laws, regulations, and policies/procedures.

(1) For each fiscal year of the term of this Agreement, CONTRACTOR shall submit for approval of the CITY's Department of Public Health a revised Appendix A, Description of Services, and a revised Appendix B, Program Budget and Cost Reporting Data Collection form, based on the CITY's allocation of funding for SERVICES for the appropriate fiscal year. CONTRACTOR shall create these Appendices in compliance with the instructions of the Department of Public Health. These Appendices shall apply only to the fiscal year for which they were created. These Appendices shall become part of this Agreement only upon approval by the CITY.

(2) CONTRACTOR understands that, of the maximum dollar obligation stated above, the total amount to be used in Appendix B, Budget and available to CONTRACTOR for the entire term of the contract is as follows, not withstanding that for each fiscal year, the amount to be used in Appendix B, Budget and available to CONTRACTOR for that fiscal year shall conform with the Appendix A, Description of Services, and a Appendix B, Program Budget and Cost Reporting Data Collection form, as approved by the CITY's Department of Public Health based on the CITY's allocation of funding for SERVICES for that fiscal year.

July 1, 2008 through June 30, 2009	**$1,662,777.16**
July 1, 2009 through June 30, 2010	**$2,111,438.88**
July 1, 2010 through June 30, 2011	**$2,522,159.64**
July 1, 2011 through June 30, 2012	**$3,152,699.55**
July 1, 2012 through June 30, 2013	**$3,625,604.48**
July 1, 2013 through June 30, 2014	**$3,625,604.48**
July 1, 2008 through June 30, 2014	**$16,700,284.20**

(3) CONTRACTOR understands that the CITY may need to adjust sources of revenue and agrees that these needed adjustments will become part of this Agreement by written modification to CONTRACTOR. In event that such reimbursement is terminated or reduced, this Agreement shall be terminated or proportionately reduced accordingly. In no event will CONTRACTOR be entitled to compensation in excess of these amounts for these periods without there first being a modification of the Agreement or a revision to Appendix B, Budget, as provided for in this section of this Agreement.

C. CONTRACTOR agrees to comply with its Budget as shown in Appendix **B** in the provision of SERVICES. Changes to the budget that do not increase or reduce the maximum dollar obligation of the CITY are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. CONTRACTOR agrees to comply fully with that policy/procedure.

D. No costs or charges shall be incurred under this Agreement nor shall any payments become due to CONTRACTOR until reports, SERVICES, or both, required under this Agreement are received from CONTRACTOR and approved by the DIRECTOR as being in accordance with this Agreement. CITY may withhold payment to CONTRACTOR in any instance in which CONTRACTOR has failed or refused to satisfy any material obligation provided for under this Agreement.

E. In no event shall the CITY be liable for interest or late charges for any late payments.

F. CONTRACTOR understands and agrees that should the CITY'S maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, CONTRACTOR shall expend such revenues in the provision of SERVICES to Medi-Cal eligible clients in accordance with CITY, State, and Federal Medi-Cal regulations. Should CONTRACTOR fail to expend budgeted Medi-Cal revenues herein, the CITY'S maximum dollar obligation to CONTRACTOR shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

Appendix E

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum is entered into to address the privacy and security protections for certain information as required by federal law. City and County of San Francisco is the Covered Entity and is referred to below as "CE". The CONTRACTOR is the Business Associate and is referred to below as "BA".

RECITALS

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

B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

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

1. Definitions

a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

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

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

f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

g. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.

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

i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.F. Parts 160 and 164, Subparts A and E.

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

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

l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. **Obligations of Business Associate**

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

b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a *written* agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

c. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.

d. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931]

e. **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.R.R. Section 164.308(b)].

f. **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI. If BA creates, maintains, receives or transmits electronic PHI on behalf of CE, then BA shall implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

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

i. **Accounting Rights.** Within ten (10)calendar days of notice by CE of a request for an accounting for disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) calendar days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph h shall survive the termination of this Agreement.

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

k. **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

l. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. **Business Associate's Insurance.** BA shall maintain a sufficient amount of insurance to adequately address risks associated with BA's use and disclosure of Protected Information under this Addendum.

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

o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

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

3. **Termination**

a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

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

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

4. **Limitation of Liability**

Any limitations of liability as set forth in the contract shall not apply to damages related to a breach of the BA's privacy or security obligations under the Contract or Addendum.

5. ***Disclaimer***

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

6. ***Certification***

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

7. **Amendment**

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

8. **Assistance in Litigation or Administrative Proceedings**

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

9. **No Third-Party Beneficiaries**

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Contract**

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

11. **Interpretation**

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

12. **Replaces and Supersedes Previous Business Associate Addendums or Agreements**

This Business Associate Addendum replaces and supersedes any previous business associate addendums or agreements between the parties hereto.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/02/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh Risk & Insurance Services
4445 Eastgate Mall
San Diego, CA 92121

317513-MI-GAWUE-12-13

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Valley Forge Insurance Co	20508
INSURER B :	Continental Insurance Company	35289
INSURER C :	National Fire Insurance Co Of Hartford	20478
INSURER D :	Illinois Union Insurance Co	27960
INSURER E :		
INSURER F :		

INSURED
Medimpact Healthcare Systems Inc.
Attn: Eric Little
10680 Treena Street, Stop 5
San Diego, CA 92131

COVERAGES **CERTIFICATE NUMBER:** LOS-001511913-05 **REVISION NUMBER:** 8

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY	X		5086632554	08/01/2012	08/01/2013	EACH OCCURRENCE	$	1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$	1,000,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$	5,000
							PERSONAL & ADV INJURY	$	1,000,000
							GENERAL AGGREGATE	$	2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$	2,000,000
	X POLICY PRO-JECT LOC							$	
B	AUTOMOBILE LIABILITY	X		5086632540	08/01/2012	08/01/2013	COMBINED SINGLE LIMIT (Ea accident)	$	1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$	
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$	
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$	
							COMP/COLL DED.	$	1,000
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$	
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$	
	DED RETENTION $							$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			5086625748 (CA)	08/01/2012	08/01/2013	X WC STATU-TORY LIMITS / OTH-ER		
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N (Mandatory in NH)	N / A		5086625734 (AOS)	08/01/2012	08/01/2013	E.L. EACH ACCIDENT	$	1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$	1,000,000
							E.L. DISEASE - POLICY LIMIT	$	1,000,000
D	Errors & Omissions			MSP G27169855001	05/07/2012	04/30/2013	Limit:		15,000,000
							SIR:		100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder is named as additional insured for General and Auto Liability as required by written contract.

CERTIFICATE HOLDER

City and County of San Francisco,
its Officer, Agents, and Employees
Office of Contract Management and Compliance
Department of Public Health
1380 Howard Street, Room 442
San Francisco, CA 94103

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services
Kristen A. Olson — Kristen A. Olson

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage afforded under this extension of coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Coverage Part.

1. ADDITIONAL INSURED – BLANKET VENDORS

WHO IS AN INSURED (Section II) is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:

   a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

   b. Any express warranty unauthorized by you;

   c. Any physical or chemical change in the product made intentionally by the vendor;

   d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

   e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

   f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

   g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

   h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omission or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

      (1) The exceptions contained in Subparagraphs **d.** or **f.**; or

      (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. This provision **1.** does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Coverage Part.

4. This provision **1.** does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Coverage Part or by endorsement.

2. MISCELLANEOUS ADDITIONAL INSUREDS

WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization (called additional insured) described in paragraphs **2.a.** through **2.g.** below whom you are required to add as an additional insured on this policy under a written contract or agreement but the written contract or agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and

2. Executed prior to the "bodily injury," "property damage" or "personal injury and advertising injury," but

Only the following persons or organizations are additional insureds under this endorsement and

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3602004308724003022465014152

coverage provided to such additional insureds is limited as provided herein:

a. State or Political Subdivisions

A state or political subdivision subject to the following provisions:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(2) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality.

b. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

c. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

d. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

e. Owners/Other Interests – Land is Leased

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to lease that land; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

f. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

g. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their written contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

(1) To any "occurrence" which takes place after the equipment lease expires; or

(2) To "bodily injury," "property damage," or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs **a.** through **g.** above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard."

As respects the coverage provided under this endorsement, Paragraph **4.b. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

4. Other Insurance

b. Excess Insurance

This insurance is excess over:

Any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or agreement specifically requires that this insurance be either primary or primary and noncontributing. Where required by written contract or agreement, we will consider any other insurance maintained by the additional insured for injury or damage covered by this endorsement to be excess and noncontributing with this insurance.

3. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Paragraph **3.a.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

Coverage under this provision is afforded only until the end of the policy period or the next anniversary of this policy's effective date after you acquire or form the organization, whichever is earlier.

4. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANY COVERAGE

A. The following is added to **Section II – Who Is An Insured:**

4. You are an insured when you had an interest in a joint venture, partnership or limited liability company which terminated or ended prior to or during this policy period but only to the extent of your interest in such joint venture, partnership or limited liability company. This coverage does not apply:

a. Prior to the termination date of any joint venture, partnership or limited liability company; or

b. If there is other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

B. The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

Except as provided in **4.** above, no person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

5. PARTNERSHIP OR JOINT VENTURES

Paragraph **1.b.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

b. A partnership (including a limited liability partnership) or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

6. EMPLOYEES AS INSUREDS – HEALTH CARE SERVICES

For other than a physician, paragraph **2.a(1)(d)** of **Section II – Who Is An Insured** does not apply with respect to professional health care services provided in the course of employment by you.

7. SUPPLEMENTARY PAYMENTS

A. Under **Section I – Supplementary Payments – Coverages A** and **B,** Paragraph **1.b.,** the limit of $250 shown for the cost of bail bonds is replaced by $2,500:

B. In Paragraph **1.d.,** the limit of $250 shown for daily loss of earnings is replaced by $1,000.

8. MEDICAL PAYMENTS

A. Paragraph **7. Medical Expense Limit,** of **Section III – Limits of Insurance** is deleted and replaced by the following:

7. Subject to **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most we will pay under **Section – I – Coverage C** for all medical expenses because of "bodily injury" sustained by any one person. The Medical Expense Limit is the greater of:

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(1) $15,000; or

(2) The amount shown in the Declarations for Medical Expense Limit.

B. This provision **8. (Medical Payments)** does not apply if **Section I – Coverage C Medical Payments** is excluded either by the provisions of the Coverage Part or by endorsement.

C. Paragraph **1.a.(3)(2)** of **Section I – Coverage C – Medical Payments,** is replaced by the following:

The expenses are incurred and reported to us within three years of the date of the accident; and

9. NON-OWNED WATERCRAFT

Under **Section I – Coverage A – Bodily Injury and Property Damage,** Exclusion **2.g.,** subparagraph **(2)** is deleted and replaced by the following.

(2) A watercraft you do not own that is:

(a) Less than 55 feet long; and

(b) Not being used to carry persons or property for a charge.

10. NON-OWNED AIRCRAFT

Exclusion **2.g.** of **Section I – Coverage A – Bodily Injury and Property Damage,** does not apply to an aircraft you do not own, provided that:

1. The pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. It is rented with a trained, paid crew; and
3. It does not transport persons or cargo for a charge.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

A. Under **Section I – Coverage A – Bodily Injury and Property Damage 2. Exclusions,** Exclusion **j.** is replaced by the following.

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises:

(1) rented to you;

(2) temporarily occupied by you with the permission of the owner, or

(3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

Paragraphs **(3), (4), (5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

B. Under **Section I – Coverage A – Bodily Injury and Property Damage** the last paragraph of **2. Exclusions** is deleted and replaced by the following.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance.**

C. Paragraph **6. Damage To Premises Rented To You Limit** of **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most we will pay under **Section – I – Coverage A** for damages because of "property damage" to any one premises while rented to you or temporarily occupied by you with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. $200,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

D. Paragraph **4.b.(1)(b)** of **Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

(b) That is property insurance for premises rented to you or temporarily occupied by you with the permission of the owner; or

E. This provision **11. (LEGAL LIABILITY – DAMAGE TO PREMISES)** does not apply if Damage To Premises Rented To You Liability under **Section I – Coverage A** is excluded either by the provisions of the Coverage Part or by endorsement.

12. BROAD KNOWLEDGE OF OCCURRENCE

The following is added to paragraph **2.** of **Section IV – Commercial General Liability Conditions – Duties In The Event of Occurrence, Offense, Claim or Suit:**

You must give us or our authorized representative notice of an "occurrence," offense, claim, or "suit" only when the "occurrence," offense, claim or "suit" is known to :

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) An executive officer or the employee designated by you to give such notice, if you are a corporation; or

(4) A manager, if you are a limited liability company.

13. NOTICE OF OCCURRENCE

The following is added to paragraph **2.** of **Section IV – Commercial General Liability Conditions – Duties in The Event of Occurrence, Offense Claim or Suit:**

Your rights under this Coverage Part will not be prejudiced if you fail to give us notice of an "occurrence," offense, claim or "suit" and that failure is solely due to your reasonable belief that the "bodily injury" or "property damage" is not covered under this Coverage Part. However, you shall give written notice of this "occurrence," offense, claim or "suit" to us as soon as you are aware that this insurance may apply to such "occurrence," offense claim or "suit."

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Based on our reliance on your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

15. EXPANDED PERSONAL AND ADVERTISING INJURY

A. The following is added to **Section V – Definitions,** the definition of "personal and advertising injury":

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

(1) Not done intentionally by or at the direction of:

(a) The insured; or

(b) Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

(2) Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or persons by any insured.

B. Exclusions of **Section I – Coverage B –Personal and Advertising Injury Liability** is amended to include the following:

p. Discrimination Relating To Room, Dwelling or Premises

Caused by discrimination directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured.

q. **Fines Or Penalties**

Fines or penalties levied or imposed by a governmental entity because of discrimination.

C. This provision **15. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE)** does not apply to discrimination or humiliation committed in the states of New York or Ohio. Also, **EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE** does not apply to policies issued in the states of New York or Ohio.

D. This provision **15. (EXPANDED PERSONAL AND ADVERTISING INJURY COVERAGE)** does not apply if **Section I – Coverage B – Personal And Advertising Injury Liability** is excluded either by the provisions of the Coverage Part or by endorsement.

16. BODILY INJURY

Section V – Definitions, the definition of "bodily injury" is changed to read:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

17. EXPECTED OR INTENDED INJURY

Exclusion **a.** of **Section I – Coverage A – Bodily Injury and Property Damage Liability** is replaced by the following:

a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

18. LIBERALIZATION CLAUSE

If we adopt a change in our forms or rules which would broaden coverage under this endorsement without an additional premium charge, your policy will automatically provide the additional coverages as of the date the revision is effective in your state.

19. PROPERTY DAMAGE – ELEVATORS

With respect to Exclusions of **Section I – Coverage A,** paragraphs **(3), (4) and (6)** of Exclusion **j.** and Exclusion **k.** do not apply to the use of elevators.

The insurance afforded by this provision **19.** is excess over any valid and collectible property insurance (including any deductible) available to the insured, and the Other Insurance Condition is changed accordingly.

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

Second Amendment

THIS AMENDMENT (this "Amendment") is made as of March 31, 2011, in San Francisco, California, by and between **MedImpact Healthcare Systems, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 2010-08/09 on April 20, 2009;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2008 from the RFP33-2007 dated December 10, 2007 Contract Numbers BPHG09000009 and BPHG09000010 between Contractor and City, as amended by this First Amendment.

First Amendment	Dated December 24, 2009 Contract Number BPHG09000010, and this Second Amendment.

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Section 2. of the Agreement currently reads as follows:

2. TERM OF THE AGREEMENT

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

Such section is hereby amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from July 1, 2008 through June 30, 2014.

2b. Section 5. of the Agreement currently reads as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day each month for work, as set forth in Section 4 of this Agreement, that the Director of the Public Health Department, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Seven Million Seven Hundred Twenty Eight Thousand Dollars ($7,728,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

Such section is hereby amended in its entirety to read as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Nine Million Nine Hundred Thousand Dollars ($9,900,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

2c. Section 8 of the Agreement currently reads as follows:

8. Submitting False Claims; Monetary Penalties.

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

of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Such section is hereby amended in its entirety to read as follows:

8. Submitting False Claims; Monetary Penalties.

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

2d. Section 43 of the Agreement currently reads as follows:

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

Such section is hereby amended in its entirety to read as follows:

43. Requiring Minimum Compensation for Covered Employees

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the

then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

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

2e. Section 44 of the Agreement currently reads as follows:

44. Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q,

including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

Such section is hereby amended in its entirety to read as follows:

44. Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

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

2g. Appendix B (Calculation of Charges) dated March 31, 2011 is hereby attached for fiscal year 2011-2012.

2h. Attached herein and incorporated into this Amendment is Appendix E dated February 10, 2010.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY

Recommended by:

Barbara Garcia, MPA
Director of Health

6/9/11
Date

Approved as to Form:

Dennis J. Herrera
City Attorney

By: Kathy Murphy
Deputy City Attorney

6/15/11
Date

Approved:

Naomi Kelly
Director Office of Contract
Administration and Purchaser

6/22/11
Date

CONTRACTOR

MedImpact Healthcare Systems, Inc.

Greg Watanabe
President

6/6/11
Date

10680 Treena Street, 5th Floor
San Diego, CA 92131-2446

City vendor number: 50614

RECEIVED
11 MAR 31 PM 1:00
CITY ATTORNEY DEPARTMENT

Appendix B
Calculation of Charges

1. Method of Payment – Actual Cost

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

2. Program Budgets and Final Invoice

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

Budget Summary

Appendix B-1 Administrative Fee Schedule

Appendix B-2 Fees

B. *COMPENSATION*

Compensation shall be made in monthly payments on or before the 30th day after the DIRECTOR, in his or her sole discretion, has approved the invoice submitted by CONTRACTOR. The breakdown of costs and sources of revenue associated with this Agreement appears in Appendix B, Cost Reporting/Data Collection (CR/DC) and Program Budget, attached hereto and incorporated by reference as though fully set forth herein. The maximum dollar obligation of the CITY under the terms of this Agreement shall not exceed **Nine Million Nine Hundred Thousand Dollars ($9,900,000) for the period of July 1, 2008 through June 30, 2014.**

CONTRACTOR understands that, of this maximum dollar obligation, $1,060,714 is included as a contingency amount and is neither to be used in Appendix B, Budget, or available to CONTRACTOR without a modification to this Agreement executed in the same manner as this Agreement or a revision to Appendix B, Budget, which has been approved by the Director of Health. CONTRACTOR further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable CITY and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by the Controller. CONTRACTOR agrees to fully comply with these laws, regulations, and policies/procedures.

(1) For each fiscal year of the term of this Agreement, CONTRACTOR shall submit for approval of the CITY's Department of Public Health a revised Appendix A, Description of Services, and a revised Appendix B, Program Budget and Cost Reporting Data Collection form, based on the CITY's allocation of funding for SERVICES for the appropriate fiscal year. CONTRACTOR shall create these Appendices in compliance with the instructions of the Department of Public Health. These Appendices shall apply only to the fiscal year for which they were created. These Appendices shall become part of this Agreement only upon approval by the CITY.

(2) CONTRACTOR understands that, of the maximum dollar obligation stated above, the total amount to be used in Appendix B, Budget and available to CONTRACTOR for the entire term of the contract is as follows, not withstanding that for each fiscal year, the amount to be used in Appendix B, Budget and available to CONTRACTOR for that fiscal year shall conform with the Appendix A, Description of Services, and a Appendix B, Program Budget and Cost Reporting Data Collection form, as approved by the CITY's Department of Public Health based on the CITY's allocation of funding for SERVICES for that fiscal year.

July 1, 2008 through June 30, 2014	**$9,900,000**
July 1, 2008 through June 30, 2014	**$9,900,000**

(3) CONTRACTOR understands that the CITY may need to adjust sources of revenue and agrees that these needed adjustments will become part of this Agreement by written modification to CONTRACTOR. In event that such reimbursement is terminated or reduced, this Agreement shall be terminated or proportionately reduced accordingly. In no event will CONTRACTOR be entitled to compensation in excess of these amounts for these periods without there first being a modification of the Agreement or a revision to Appendix B, Budget, as provided for in this section of this Agreement.

C. CONTRACTOR agrees to comply with its Budget as shown in Appendix B in the provision of SERVICES. Changes to the budget that do not increase or reduce the maximum dollar obligation of the CITY are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. CONTRACTOR agrees to comply fully with that policy/procedure.

D. No costs or charges shall be incurred under this Agreement nor shall any payments become due to CONTRACTOR until reports, SERVICES, or both, required under this Agreement are received from CONTRACTOR and approved by the DIRECTOR as being in accordance with this Agreement. CITY may withhold payment to CONTRACTOR in any instance in which CONTRACTOR has failed or refused to satisfy any material obligation provided for under this Agreement.

E. In no event shall the CITY be liable for interest or late charges for any late payments.

F. CONTRACTOR understands and agrees that should the CITY'S maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, CONTRACTOR shall expend such revenues in the provision of SERVICES to Medi-Cal eligible clients in accordance with CITY, State, and Federal Medi-Cal regulations. Should CONTRACTOR fail to expend budgeted Medi-Cal revenues herein, the CITY'S maximum dollar obligation to CONTRACTOR shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

Appendix E

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum is entered into to address the privacy and security protections for certain information as required by federal law. City and County of San Francisco is the Covered Entity and is referred to below as "CE". The CONTRACTOR is the Business Associate and is referred to below as "BA".

RECITALS

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

B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

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

1. Definitions

a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

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

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

f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

g. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.

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

i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.F. Parts 160 and 164, Subparts A and E.

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

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

l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. **Obligations of Business Associate**

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

b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a *written* agreement from

such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

c. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.

d. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931]

e. **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.R.R. Section 164.308(b)].

f. **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI. If BA creates, maintains, receives or transmits electronic PHI on behalf of CE, then BA shall implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

h. **Amendment of PHI.** Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected

Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligation under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

i. **Accounting Rights.** Within ten (10)calendar days of notice by CE of a request for an accounting for disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) calendar days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph h shall survive the termination of this Agreement.

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

k. **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

l. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. **Business Associate's Insurance.** BA shall maintain a sufficient amount of insurance to adequately address risks associated with BA's use and disclosure of Protected Information under this Addendum.

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

o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

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

3. **Termination**

a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

b. **Judicial or Administrative Proceedings.** CE may terminate the

Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

4. **Limitation of Liability**

Any limitations of liability as set forth in the contract shall not apply to damages related to a breach of the BA's privacy or security obligations under the Contract or Addendum.

5. ***Disclaimer***

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

6. ***Certification***

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

7. **Amendment**

a. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy

Rule, the Security Rule or other applicable laws. CE may terminate the Contract upon thirty (30) calendar days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this Section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

8. **Assistance in Litigation or Administrative Proceedings**

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

9. **No Third-Party Beneficiaries**

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. **Effect on Contract**

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

11. **Interpretation**

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

12. **Replaces and Supersedes Previous Business Associate Addendums or Agreements**

This Business Associate Addendum replaces and supersedes any previous business associate addendums or agreements between the parties hereto.

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/02/2011 16:52

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive, Suite 500 San Diego, CA 92122 858-457-3414	CONTACT NAME: Mary Jones PHONE (A/C, No, Ext): (858) 587-7516 FAX (A/C, No): E-MAIL ADDRESS: maryj@barneyandbarney.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Hartford Casualty Insurance Company	29424
INSURED	MedImpact Healthcare Systems Attn: Eric Little 10680 Treena Street Stop 5 San Diego, CA 92131 Client # 40057	INSURER B: Hartford Insurance Company of the Midwest	37478
		INSURER C: AXIS Insurance Company	37273
		INSURER D: Hudson Specialty Insurance Company	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 357278 MST NUMBER: 18735 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	X		72UUNKT9327	8/1/2010	8/1/2011	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			72UUNKT9327	8/1/2010	8/1/2011	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $ 10,000			72RHUKT9202	8/1/2010	8/1/2011	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		72WERQ6448	8/1/2010	8/1/2011	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
C D	Professional Liability Professional Liability			MCN000064331001 ELU12160611	6/1/2011 6/1/2011	6/1/2012 6/1/2012	Limits $10,000,000 Limits $5,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate holder is named as additional insured with respects to General Liability per attached.

CERTIFICATE HOLDER

City and County of San Francisco; Dept. of Public Health

CBHS Contracts Office
1380 Howard St., Room 442
San Francisco, CA 94103

Subject

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mary Jones

necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or

b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

   a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

   b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

   c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

   d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

   e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

   a. Employees and Volunteer workers

   Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

   However, none of these "employees" or "volunteer workers" are insureds for:

   (1) "Bodily injury" or "personal and advertising injury":

      (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

      (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

      (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

      (d) Arising out of his or her providing or failing to provide professional health care services.

      If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

   (2) "Property damage" to property:

      (a) Owned, occupied or used by,

      (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

      you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

   b. Real Estate Manager

   Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

   c. Temporary Custodians of Your Property

   Any person or organization having proper temporary custody of your property if you die, but only:

   (1) With respect to liability arising out of the maintenance or use of that property; and

   (2) Until your legal representative has been appointed.

   d. Legal Representative if You Die

   Your legal representative if you die, but only with respect to duties as such. That representative will

have all your rights and duties under this Coverage Part.

e. **Unnamed Subsidiary**

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. **Newly Acquired or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. **Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. **Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. **Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. **Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

With respect to the insurance afforded these additional insareds the following additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land; or

2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In connection with your premises; or

(2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(1) In the performance of your ongoing operations;

(2) In connection with your premises owned by or rented to you; or

(3) In connection with "your work" and included within the "products-completed operations hazard", but only if:

(a) The written contract or agreement requires you to provide such coverage to such additional insured; and

(b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

a. Medical expenses under Coverage C;

b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage A; and

b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

a. The limits of insurance specified in the written contract or written agreement; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. **Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**

a. **Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. **Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. **Assistance And Cooperation Of The Insured**

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. **Obligations At The Insureds Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. **Additional Insureds Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. **Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

(1) You or any additional insured that is an individual;

(2) Any partner, if you or an additional insured is a partnership;

(3) Any manager, if you or an additional insured is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;

(5) Any trustee, if you or an additional insured is a trust; or

(6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. **Legal Action Against Us**

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

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

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

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

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

(6) When You Are Added As An Additional Insured To Other Insurance

Any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

   a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

   b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

   c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

   a. When You Accept This Policy

      By accepting this policy, you agree:

      (1) The statements in the Declarations are accurate and complete;

      (2) Those statements are based upon representations you made to us; and

      (3) We have issued this policy in reliance upon your representations.

   b. Unintentional Failure To Disclose Hazards

      If unintentionally you should fail to disclose all hazards relating to the conduct of your business that exist at the inception date of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

7. Separation Of Insureds

   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

   b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

   a. Transfer of Rights Of Recovery

      If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

   b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

      If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

9. When We Do Not Renew

   If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

   If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

   a. (1) Radio;

      (2) Television;

      (3) Billboard;

      (4) Magazine;

      (5) Newspaper; or

   b. Any other publication that is given widespread public distribution.

   However, "advertisement" does not include:

   a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

   b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

   a. Injury;

   b. Sickness; or

   c. Disease

   sustained by a person and, if arising out of the above, mental anguish or death at any time.

CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION

HRC ATTACHMENT 2
Architecture, Engineering, and Professional Services

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.

2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.

3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: [signature]

Owner/Authorized Representative (Print) David Wheeler CFO

Name of Firm (Print) MedImpact Healthcare Systems Inc

Title and Position CFO

Address, City, ZIP 10680 Treena Street San Diego 92131

Federal Employer Identification Number (FEIN): 33-0567651

Date: 9-4-07

MedImpact

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

First Amendment

THIS AMENDMENT (this "Amendment") is made as of December 24, 2009, in San Francisco, California, by and between **MedImpact Healthcare Systems, Inc.** ("Contractor"), and the **City and County of San Francisco**, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to renew the contract for fiscal year 2009-2010, and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 2010-08/09 on April 20, 2009;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated July 1, 2008 from the RFP33-2007 dated December 10, 2007 Contract Numbers BPHG09000009 and BPHG09000010 between Contractor and City, as amended by this First Amendment.

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. **Section 5. of the Agreement currently reads as follows:**

5. ***COMPENSATION***

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

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

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

Such section is hereby amended in its entirety to read as follows:

5. COMPENSATION

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the **Director of the Department of Public Health**, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Seven Million Seven Hundred Twenty Eight Thousand Dollars ($7,728,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by **Department of Public Health** as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

2b. Section 15. of the Agreement currently reads as follows:

15. INSURANCE

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

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

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

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

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

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

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

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

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

Office of Contract Management and Compliance
Department of Public Health
101 Grove Street, Room 307

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

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

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

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

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

Such section is hereby amended in its entirety to read as follows:

15. *INSURANCE*

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

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

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

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

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

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

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

2c. Section 42 of the Agreement currently reads as follows:

42. LIMITATIONS ON CONTRIBUTIONS

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

sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Such section is hereby amended in its entirety to read as follows:

42. LIMITATIONS ON CONTRIBUTIONS

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

2d. Section 61 of the Agreement currently reads as follows:

61. ADDITIONAL TERMS

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

Such section is hereby amended in its entirety to read as follows:

61. COOPERATIVE DRAFTING

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

2e. Section 62 is hereby added:

62. DISPUTE RESOLUTION PROCEDURE-LEFT BLANK BY AGREEMENT OF THE PARTIES

2f. Section 63 is hereby added:

63. ADDITIONAL TERMS.

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

2g. Appendix B (Calculation of Charges) dated December 24, 2009 is hereby added for fiscal year 2009-2010.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

CITY

Recommended by:

Susan A. Cumin, 2-11-10

Mitchell H. Katz, M.D.
Director of Health

Approved as to Form:

Dennis J. Herrera
City Attorney

By: Deputy City Attorney, 2/19/10
Date

Approved:

Naomi Kelly
Director Office of Contract
Administration and Purchaser

Date

CONTRACTOR

MedImpact Healthcare Systems, Inc.

Dale R Brown, 2-5-10

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

Date

City vendor number: **50614**

MedImpact

Appendix B
Calculation of Charges

1. **Method of Payment – Actual Cost**

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

2. **Program Budgets and Final Invoice**

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

Budget Summary

Appendix B-1 Administrative Fee Schedule

Appendix B-2 Fees

B. *COMPENSATION*

Compensation shall be made in monthly payments on or before the 30th day after the DIRECTOR, in his or her sole discretion, has approved the invoice submitted by CONTRACTOR. The breakdown of costs and sources of revenue associated with this Agreement appears in Appendix B, Cost Reporting/Data Collection (CR/DC) and Program Budget, attached hereto and incorporated by reference as though fully set forth herein. The maximum dollar obligation of the CITY under the terms of this Agreement shall not exceed **Seven Million Seven Hundred Twenty Eight Thousand Dollars ($7,728,000) for the period of July 1, 2008 through June 30, 2011.**

CONTRACTOR understands that, of this maximum dollar obligation, $828,000 is included as a contingency amount and is neither to be used in Appendix B, Budget, or available to CONTRACTOR without a modification to this Agreement executed in the same manner as this Agreement or a revision to Appendix B, Budget, which has been approved by the Director of Health. CONTRACTOR further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable CITY and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by the Controller. CONTRACTOR agrees to fully comply with these laws, regulations, and policies/procedures.

(1) For each fiscal year of the term of this Agreement, CONTRACTOR shall submit for approval of the CITY's Department of Public Health a revised Appendix A, Description of Services, and a revised Appendix B, Program Budget and Cost Reporting Data Collection form, based on the CITY's allocation of funding for SERVICES for the appropriate fiscal year. CONTRACTOR shall create these Appendices in compliance with the instructions of the Department of Public Health. These Appendices shall apply only to the fiscal year for which they were created. These Appendices shall become part of this Agreement only upon approval by the CITY.

(2) CONTRACTOR understands that, of the maximum dollar obligation stated above, the total amount to be used in Appendix B, Budget and available to CONTRACTOR for the entire term of the contract is as follows, not withstanding that for each fiscal year, the amount to be used in Appendix B, Budget and available to CONTRACTOR for that fiscal year shall conform with the Appendix A, Description of Services, and a Appendix B, Program Budget and Cost Reporting Data Collection form, as approved by the CITY's Department of Public Health based on the CITY's allocation of funding for SERVICES for that fiscal year.

July 1, 2008 through June 30, 2009	**$1,700,000**
July 1, 2009 through June 30, 2010	**$2,600,000**
July 1, 2010 through June 30, 2011	**$2,600,000**
July 1, 2008 through June 30, 2011	**$6,900,000**

(3) CONTRACTOR understands that the CITY may need to adjust sources of revenue and agrees that these needed adjustments will become part of this Agreement by written modification to CONTRACTOR. In event that such reimbursement is terminated or reduced, this Agreement shall be terminated or proportionately reduced accordingly. In no event will CONTRACTOR be entitled to compensation in excess of these amounts for these periods without there first being a modification of the Agreement or a revision to Appendix B, Budget, as provided for in this section of this Agreement.

C. CONTRACTOR agrees to comply with its Budget as shown in Appendix B in the provision of SERVICES. Changes to the budget that do not increase or reduce the maximum dollar obligation of the CITY are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. CONTRACTOR agrees to comply fully with that policy/procedure.

D. No costs or charges shall be incurred under this Agreement nor shall any payments become due to CONTRACTOR until reports, SERVICES, or both, required under this Agreement are received from CONTRACTOR and approved by the DIRECTOR as being in accordance with this Agreement. CITY may withhold payment to CONTRACTOR in any instance in which CONTRACTOR has failed or refused to satisfy any material obligation provided for under this Agreement.

E.In no event shall the CITY be liable for interest or late charges for any late payments.

F. CONTRACTOR understands and agrees that should the CITY'S maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, CONTRACTOR shall expend such revenues in the provision of SERVICES to Medi-Cal eligible clients in accordance with CITY, State, and Federal Medi-Cal regulations. Should CONTRACTOR fail to expend budgeted Medi-Cal revenues herein, the CITY'S maximum dollar obligation to CONTRACTOR shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

Appendix D
Additional Terms

1. HIPAA

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

☐ A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or

☒ A Business Associate subject to the terms set forth in Appendix E;

☐ Not Applicable, CONTRACTOR will not have access to Protected Health Information.

2. THIRD PARTY BENEFICIARIES

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

3. CERTIFICATION REGARDING LOBBYING

CONTRACTOR certifies to the best of its knowledge and belief that:

A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.

C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. MATERIALS REVIEW

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of

any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

ACORD CERTIFICATE OF LIABILITY INSURANCE

04/17/2009

PRODUCER

JAYCE MCCLELLAN
MCCLELLAN INSURANCE AGENCY
P.O. BOX 99
CARLSBAD, CA 92018

Serial # 101045

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: HARTFORD INSURANCE CO. OF THE	
INSURER B: HARTFORD CASUALTY INSURANCE	
INSURER C: GREAT AMERICAN E&S INSURANCE CO	
INSURER D:	
INSURER E:	

INSURED

MEDIMPACT HEALTHCARE SYSTEMS
ATTN: GARY JAUS
10680 TREENA STREET, 5TH FLOOR
SAN DIEGO, CA 92131

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC	72UUNUS3775	4/15/09	4/15/10	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	72UUNUS3775 72UUNUS3775	4/15/09 4/15/09	4/15/10 4/15/10	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY X OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE X RETENTION $ 10,000	72RHUHY5521	4/15/09	4/15/10	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $ $ $
		WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER EL EACH ACCIDENT EL DISEASE - EA EMPLOYEE EL DISEASE - POLICY LIMIT	$ $ $
C		OTHER PROFESSIONAL LIABILITY	TER8222093	4/07/09	4/07/10		$10,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER IS NAMED ADDITIONAL INSURED AS RESPECTS GENERAL LIABILITY PER THE ATTACHED ENDORSEMENT

CERTIFICATE HOLDER

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH
CBHS CONTRACTS OFFICE
1380 HOWARD STREET, ROOM 442
SAN FRANCISCO, CA 94103-2614

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

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

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

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

CG 20 26 11 85

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/30/2009 16:33

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

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		CLAIMS MADE ☐ OCCUR ☐				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		☐ POLICY ☐ PRO-JECT ☐ LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO					
		ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		SCHEDULED AUTOS					
		HIRED AUTOS				BODILY INJURY (Per accident)	$
		NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR ☐ CLAIMS MADE ☐				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	72WERQ6448	8/1/2009	8/1/2010	X WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A		OTHER Workers' Compensation - States on File with Carrier	72WERQ6448	8/1/2009	8/1/2010	Statutory Limits (Stop Gap)	

RECEIVED
AUG - 3 2009
CMHS/CSAS OFFICE OF CONTRACT MGMT. & COMPLIANCE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*10 days notice for non-payment of premium.

CERTIFICATE HOLDER

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

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Mary Jones

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

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

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

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

Recitals

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

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

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

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

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

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

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

5. Compensation

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

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

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

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

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

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses.

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

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

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

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

15. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Indemnification

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

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

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

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, 57 and item 1 of Appendix D attached to this Agreement.

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

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

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

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

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

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

25. Notices to the Parties

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

To CITY:	Office of Contract Management and Compliance Department of Public Health 1380 Howard Street, Room 442 San Francisco, California 94103	FAX: e-mail:	(415) 554-2555 Yvonne.Eckhoff@sfdph.org
And:	Sharon Kotabe, PharmD Hospital Associate Administrator, Pharmaceutical Services 2789 25th Street, Room 2010 San Francisco, CA 94110	FAX: e-mail:	(415) 206-2377 Sharon Kotabe/DPH/SFGOV
To CONTRACTOR:	MedImpact Healthcare Systems, Inc. 10680 Treena St 5th Fl. San Diego, CA 92131 Attention: Fred Howe	FAX:	(858) 621-5147
And:	Nancy Radtke, Associate General Counsel		

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audit and Inspection of Records

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

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

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

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

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

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

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

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

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

b. Compliance and Enforcement

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

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

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

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

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

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. **Liquidated Damages**

Contractor agrees:

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

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

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

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

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

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

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

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

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

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

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

f. **Subcontracts**

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

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

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Supervision of Minors

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

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

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

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

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

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

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

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

59. Food Service Waste Reduction Requirements

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

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

60. Slavery Era Disclosure

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

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

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

61. Additional Terms

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

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

CITY

Recommended by:

MITCHELL H. KATZ, M.D.
Director of Health

6/12/08
Date

Approved as to Form:

Dennis J. Herrera
City Attorney

By: Deputy City Attorney

6.25.08
Date

Approved:

For Naomi Kelly
Director Office of Contract
Administration and Purchaser

6/30/08
Date

CONTRACTOR

MedImpact Healthcare Systems, Inc.

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

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

Dale R. Brown
Date

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

City vendor number: **50614**

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

Appendices

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

Appendix A
Services to be provided by Contractor

1. Terms

A. Contract Administrator:

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

B. Reports:

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

C. Evaluation:

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

D. Possession of Licenses/Permits:

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

E. Adequate Resources:

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

F. Admission Policy:

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

G. San Francisco Residents Only:

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

H. Grievance Procedure:

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

I. Infection Control, Health and Safety:

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

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

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

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

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

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

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

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

J. Client Fees and Third Party Revenue:

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

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

K. Patients Rights:

All applicable Patients Rights laws and procedures shall be implemented.

2. Description of Services

Detailed description of services are listed below and are attached hereto

Appendix A-1 Third Party Administrator

Appendix A-2 Clinic and Contracted Pharmacy

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

PROGRAM NARRATIVE

THIRD PARTY ADMINISTRATOR (TPA) - SERVICES

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

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

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

A. **Services**

The contractor shall:

A1. Provide online, point-of-service electronic claims adjudication for prescriptions, which includes, but is not limited to: verifying patient and provider eligibility, formulary status of prescribed medication, patient co-pay status.

A2. Operate the online claims adjudication twenty-four (24) hours per day, seven (7) days per week. Downtime shall be no more than 1% of total operating time within each month; performance significantly outside the established threshold of 1% shall be reflected in the annual monitoring report.

A3. Accept updates to the patient eligibility database that are supplied electronically at a minimum of every ten (10) minutes. The format of the electronically supplied information shall be at the discretion of the CHN.

A4. Accept twice monthly electronic full patient eligibility replacement files. Over-write patient eligibility information with new information as soon as it received from the CHN, inactivate record for patient's no longer eligible for CHN prescription services, and apply changes in prescription copay status and fees to appropriate patient records if applicable.

A5. Possess or establish a process to correctly transmit patient eligibility information to the pharmacy associated with the clinic from which the patient receives care/is assigned.

A6. Accept daily verbal (telephone) or facsimile revisions to the patient and prescriber eligibility files from the CHN, as necessary.

A7. Accept monthly updates to the approved drug formulary supplied by the CHN via electronic or facsimile submission, and apply the updated information to the formulary database within one (1) business day of receipt.

A8. Provide electronic documentation and tracking of non-formulary and restricted drug approvals.

A9. Implement a CHN-defined prior authorization request (PAR) process, and track, monitor and report approvals and denials.

A10. Establish or possess a process to identify, track, monitor and report co-payment collected from each of the selected pharmacies.

A11. Accurately adjudicate claims submitted online by the selected pharmacies.

A12. Establish or possess a process to track quantities of drug dispensed by each of the selected pharmacies, by NDC number, and provide CHN with weekly or bi-weekly reports of quantities dispensed, quantities to be ordered by CHN to the wholesaler for replenishment to the pharmacies, and quantities to be carried over until preestablished replenishment levels have been reached.

A13. Establish or posses a process to use different pricing algorithms and fees for reimbursement to selected pharmacies, based on situations and parameters defined by the CHN.

A14. Submit to the CHN contract administrator or designee for approval, bi-weekly invoices for prescription processing fees and non-replenished drug supplies paid through this contract to affiliated retail community pharmacies.

A15. Submit invoices that include, but are not limited to: patient and provider specific information, by pharmacy; total fee charges by pharmacy, collected co-pay deducted by pharmacy; total monthly amount due.

A16. Communicate changes in CHN policies relevant to this contract to the selected pharmacies in the CHN network within twenty-four hours of receipt of notification of change.

A17. Remove and/or add pharmacy(s) to the CHN network at the discretion of the CHN. Change to the CHN pharmacy network shall occur within five (5) working days of receipt of written notice by the CHN.

A18. Have fraud monitoring processes in place.

A19. Provide documentation specified by CHN that CHN claims and prescription claim data are excluded from manufacturer rebate and other drug discount programs engaged in by the contractor.

A20. Possess or establish a process to electronically transmit prescription data from participating pharmacies for individual patients to the patient's CHN electronic medical record.

B. Customer Support

The contractor shall:

B1. Maintain toll-free telephone and facsimile 'help' lines that shall be staffed to assist with questions by CHN staff and prescribers, patients, and selected pharmacies. The customer service department shall have access to linguistic capabilities for Spanish, Russian, Cantonese, Mandarin, and Vietnamese, in addition to English.

B2. Maintain, during off-hours, a toll-free voice mail recording system with all messages answered within the next business day.

B3. Provide, upon request of the contract administrator, a report detailing the number and types of calls received according to date and time, as well as response call dates and times, and call abandoned.

B4. Provide training to CHN and selected pharmacy staff for all applicable claims and reporting software and equipment provided by the contractor.

B5. Provide technical support for claims and report query tools and reports as requested by the contract administrator.

C. Reports

The contractor shall:

C1. Provide at no additional cost, monthly management reports that include but are not limited to: patient prescription benefit utilization; individual and aggregate provider prescribing patterns by drug and cost; prescription costs per therapeutic class.

C2. Provide at no additional cost, monthly drug use reports that include but are not limited to: prescription claim per therapeutic class; generic substitution summary; non-formulary drug and prior authorization drugs approved or denied during the month.

C3. Provide at no additional cost, monthly financial reports that include but are not limited to: co-pay amounts collected by participating pharmacies; Medi-Cal share of cost billed to the CHN by participating pharmacy; prescription claims by number and costs per participating pharmacy.

C4. Provide at no additional cost, weekly or bi-weekly inventory reports that include but are not limited to: NDC number, name and description of drugs dispensed during the week, listed by participating pharmacy; replenishment order quantities per participating pharmacy and participating pharmacy account name and number; quantities of drugs not replenished and carried over to next scheduled inventory report period, by NDC number and participating pharmacy.

C5. Provide at no additional cost, quarterly reports on total operating down times within each month and calls to the customer service help line, and responses to these calls.

C6. Provide at no additional cost, online and 'real-time' claims information that may be used by the contract administrator for ad hoc report writing purposes.

C7. Provide all reports in formats that can be printed and/or exported into spreadsheets (e.g. Excel) and data base management (e.g. Access) programs.

D. Other Services/Pertinent Information

The contractor shall:

D1. Assist CHN in notifying participating pharmacies of all relevant CHN formulary and plan changes, at no additional cost.

D2. Provide, at no additional cost, signs and flyers directed to CHN patients, announcing major plan changes. Announcements provided at no additional cost by the contractor shall not exceed one incidence per calendar year.

D3. Possess or establish a process to notify participating pharmacies of other prescription benefit plans (e.g. ADAP, Medi-Cal) that should be billed prior to submission of claim to CHN.

D4. Conduct and report results of an annual patient satisfaction survey for which the contract administrator has approved the survey tool(s) and methodology.

D5. Meet with the contract administrator and other CHN staff as requested, and as needed.

D6. Designate a dedicated account manager and service representative to the CHN.

D7. Adhere to the implementation timeline established by the CHN, which shall be within sixty (60) days of contract certification.

D8. Provide at no additional cost, a dedicated help line for CHN staff, patients and the contract administrator during the implementation phase and for a minimum of three (3) months following implementation.

D9. Conduct audits and other quality improvement activities of their services and services of participating pharmacies, as requested and agreed upon by mutual consent of the contractor and contract administrator.

D10. Administer MAC pricing programs designated by the contract administrator.

D11. CHN shall receive 200 hours toward the services shown below. Hours can be used for the following services:

- File conversions;
- Claims history loads;
- Prior authorization loads;
- Physician loads;
- Facility loads;
- Report customization;
- Letter customization;
- Development of prior authorization letter customization;
- Customization or development of prior authorization guidelines;
- Custom edits (including but not limited to benefit plan design edits);
- On-site training; and
- Non-standard ID Cards

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

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

PRESCRIPTION DRUG SERVICES AGREEMENT

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

RECITALS

A. The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including CHN clinics, as "Covered Entities" eligible to purchase outpatient drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("**DHHS**").

B. California Business & Professions Code 4126, effective January 1, 2002, authorizes Covered Entities, including CHN clinics, to contract with pharmacies licensed under California state law, such as AG PHARMACY, to dispense Covered 340B Drugs for the Covered Entity, provided certain requirements are met, including adequate inventory control and limitation of dispensing to eligible outpatients of the Covered Entity.

C. CHN clinics and AG PHARMACY mutually desire to enter into a "ship to/bill to" arrangement under which AG PHARMACY will receive shipment of Covered 340B Drugs, maintain inventory and controls, and dispense such drugs on behalf of CHN clinics only to eligible CHN clinic outpatients, all on the CHN clinics' behalf, and the CHN clinics will be billed and will pay for such drugs, in compliance with applicable laws and regulations.

D. CHN clinics and AG PHARMACY mutually acknowledge that their intent in entering into this Agreement is solely to facilitate CHN clinics' participation in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement and all actions taken in connection herewith shall fully comply with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d), and this Agreement shall in all respects be construed consistent herewith.

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

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

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

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

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

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

3. Restocking and Inventory Maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.1 Mutual agreement of the parties;

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

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

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

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

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

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

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

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

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

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

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

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

CITY

RECOMMENDED BY:

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By 6/20/03
Deputy City Attorney Date

CONTRACTOR

Vivian Cheung
Pharmacist

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

Federal ID: 91-1894563

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

By: 6/16/03
Authorized Signature Date

Exhibit A – SPECIFIC CLINIC TO PHARMACY

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

PRESCRIPTION DRUG SERVICES AGREEMENT

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

RECITALS

A. The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, including CHN clinics, as "Covered Entities" eligible to purchase outpatient drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("**DHHS**").

B. California Business & Professions Code 4126, effective January 1, 2002, authorizes Covered Entities, including CHN clinics, to contract with pharmacies licensed under California state law, such as RITE AID, to dispense Covered 340B Drugs for the Covered Entity, provided certain requirements are met, including adequate inventory control and limitation of dispensing to eligible outpatients of the Covered Entity.

C. CHN clinics and RITE AID mutually desire to enter into a "ship to/bill to" arrangement under which RITE AID will receive shipment of Covered 340B Drugs, maintain inventory and controls, and dispense such drugs on behalf of CHN clinics only to eligible CHN clinic outpatients; all on the CHN clinics' behalf, and the CHN clinics will be billed and will pay for such drugs, in compliance with applicable laws and regulations.

D. CHN clinics and RITE AID mutually acknowledge that their intent in entering into this Agreement is solely to facilitate CHN clinics' participation in the 340B drug purchasing program, without having to establish and operate its own pharmacy. The services provided each to the other are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement and all actions taken in connection herewith shall fully comply with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d), and this Agreement shall in all respects be construed consistent herewith.

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

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

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

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

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

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

3. Restocking and Inventory Maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.1 Mutual agreement of the parties;

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

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

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

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

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

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

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

To CITY:	Office of Contract Management and Compliance Department of Public Health 101 Grove Street, Room 307 San Francisco, CA 94102	Fax: (415) 554-2555
and:	Sharon Kotabe, PharmD Contract Administrator San Francisco Department of Public Health CHN Associate Administrator for Pharmaceutical Services 2789 25th Street, Room 2008 San Francisco, CA 94110	Fax: (415) 206-2338
To CONTRACTOR:	William F. Wolfe Vice President Managed Care RITE AID CORPORATION 30 Hunter Lane Camp Hill, PA 17011	Fax: (717) 730-8227

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

CITY

RECOMMENDED BY:

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By 6/20/03
Deputy City Attorney Date

CONTRACTOR

William F. Wolfe
Vice President Managed Care

RITE AID CORPORATION
30 Hunter Lane
Camp Hill, PA 17011

Federal ID: 95-4391249

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

By: 6/10/03
Authorized Signature Date

Exhibit A – SPECIFIC CLINIC TO PHARMACY

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

City and County of San Francisco: Office of City Attorney

George Agnost,
City Attorney

November 27, 1984

OPINION NO. 84 - 29

SUBJECT: Civil Service Commission Jurisdiction over Grant Funded Programs

REQUESTED BY: Dianne Feinstein
Mayor

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

QUESTION PRESENTED

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

CONCLUSION

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

INTRODUCTION

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

Key

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

25% Points

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

Key

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

You are so advised.

Respectfully submitted,

GEORGE AGNOST
CITY ATTORNEY

Burk E. Delventhal
Deputy City Attorney

Mara E. Rosales
Deputy City Attorney

APPROVED:

GEORGE AGNOST
CITY ATTORNEY

4461D

Appendix B
Calculation of Charges

1. Method of Payment

Actual Cost

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

2. Program Budgets and Final Invoice

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

Appendix B-1 Administrative Fee Schedule

Appendix B-2 Fees

B. Contractor understands that, of the maximum dollar obligation listed in Section 5 of this Agreement, $90,000 is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. An additional pass through amount of two million three hundred thousand dollars ($2,300,000 per fiscal year) in annual pharmacy dispensing.. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.
Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

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

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

ADMINISTRATIVE FEE SCHEDULE

CLAIMS PROCESSING FEE: **$0.22 Per Member Per Month**

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

The Claims Processing Fee includes the following:

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

CLAIM RATES*

Prescription processing professional fee

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

Reimbursement for drug cost

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

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

Brand name drugs:
Average Wholesale Price (AWP) less 15% plus a $2.00 Dispensing Fee

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

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

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

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

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

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

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

- The term "AWP" shall mean the current average wholesale price or industry benchmark price of a prescription drug as set forth in the First Data Bank Blue Book, including its supplements, or other nationally recognized pricing source as determined by Med**Impact** in its sole discretion. "AWP" does not represent a true wholesale price, but rather is a fluctuating benchmark provided to pricing sources (such as First Data Bank) by pharmaceutical manufacturers. In addition, in the event that the methodology for calculating the AWP pricing benchmark used by Med**Impact** hereunder changes or is replaced with another benchmark or methodology for any reason, Med**Impact** may switch to such new pricing benchmark or modify the pricing under this Agreement so as to maintain comparable pricing under the new benchmark or methodology as existed prior to such change.

- The term "MAC" shall mean the then current *maximum allowable cost* of certain prescription products, selected in accordance with criteria established by Med**Impact**, that are subject to Med**Impact**'s MAC pricing formulas. Multi-source drugs are eligible for the MAC list if they are: (i) A-rated generics; (ii) thirty (30) days after they are readily available through more than two (2) generic vendors; and (iii) the products are not exclusive. Such criteria and pricing formulas are subject to change from time to time at Med**Impact**'s sole discretion. Client agrees to accept any of Med**Impact**'s MAC lists as amended from time to time in Med**Impact**'s sole discretion.

1.	CLAIMS PROCESSING	
	A. Direct Member Reimbursement (DMR)	$1.50 per Claim
	B. Client Requested Claims Adjustment	$1.50 per Claim plus Time and Materials for Service Request
	C. Coordination of Benefit Claims (Paper processed claims)	$1.50 per Claim
2.	PHARMACY NETWORKS	
	A. CITY Requested Pharmacy Audits Level 1 Basic Services	$0.009 Per approved claim per month (PCPM)
	Level 2 – Documentation & Verification	$0.024 PCPM
	Level 3 – On-site Audits	$0.024 PCPM + time & materials (travel costs) + $150/hour per person
	Optional Reports Standard Customized	To be quoted upon request
	B. Pharmacist Call Center Support	Included in Claims Processing Fee
3.	IMPLEMENTATION AND CHANGE SERVICES	
	A. Standard Services	Included in Claims Processing Fee
	B. Customized Services	Custom Requirements $175.00/hour of IT time, plus time and materials to support custom or new requirements
	C. Eligibility and Plan Benefit Support Late Fee	Time and materials to include any necessary overtime charges associated with data conversion and eligibility processing
	Post-loading fee	Post-Loading Changes $175.00/hour of IT time, plus time and materials to support custom or new requirements

4. REPORTING, DATA AND MANAGEMENT TOOLS

A.	Core Reports	
	Additional standard reports	$100.00 per report
	Custom reports as requested (to include):	1 custom report per year included
	Programming time	$175.00 per hour
	Run time	$100.00 per hour
	Changes in selection of standard reports	$50.00 minimum charge
B.	Med**Optimize**®	Fifteen (15) concurrent users Included
	Additional concurrent users:	$500.00 per user per month

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

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

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

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

D.	Med**Results**®	$3,000 set up fee $5.00 per notice
E.	Personal Health/Physician Access	$0.02 per paid Claim
F.	Health Management System (Powered by WorldDoc)	
	Essential Services	$0.55 per eligible user per month
	Nurse Line	$0.25 per eligible user per month

5.	CLINICAL SERVICES	$0.09 per member per month
A.	Clinical Program Management Consultative Services	Included in above fee
B.	Client Pharmacy & Therapeutics Committee Participation	Included in above fee

C.	Drug Monograph Preparation	
	i. Standard Drug Monograph Preparation	Included in above fee
	ii. Custom Drug Monograph Preparation	Quoted upon request
D.	Other Client Clinical Consultations	$225.00/hour for special projects
E.	Concurrent Drug Utilization Review	Included in Claims Processing Fee
F.	Therapeutic Prior Authorization	$25.00 per Claim requiring TH PA
G.	Formulary Services	
	MedImpact Standard Formulary Includes:	$0.05 per member per month

a. Assistance in the coding of the selected medication Formulary for Claims adjudication;

b. Initial working copy of the MedImpact recommended drug Formulary for Client to photocopy, print, and distribute to providers;

c. Quarterly MedImpact updates; and

d. Custom Formulary will incur additional charges as outlined in this Exhibit B.

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

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

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

6.	NON-STANDARD, EXCESSIVE OR ADDITIONAL SERVICES	
A.	Non-Standard or Excessive Services or Materials	$175.00/hour
B.	Additional Services	$175.00/hour

THE FOLLOWING INCUR ADDITIONAL CHARGES:

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

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

Patient and Prescriber Satisfaction Surveys

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

COMPENSATION

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

FEES

1. **Prescription processing professional fee**

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

2. **Reimbursement for drug cost**

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

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

Brand name drugs:
Average Wholesale Price (AWP) less 15% plus a $2 Dispensing Fee

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

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

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

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

3. **Claims**

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

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

Appendix C
Insurance Waiver

RESERVED

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Appendix D
Additional Terms

1. HIPAA

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

☐ A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or

☒ A Business Associate subject to the terms set forth in Appendix E;

☐ Not Applicable, CONTRACTOR will not have access to Protected Health Information.

2. THIRD PARTY BENEFICIARIES

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

3. MATERIALS REVIEW

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

Appendix E
HIPAA BUSINESS ASSOCIATE ADDENDUM

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

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

RECITALS

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

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

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

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

1. **Definitions.**

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

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

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

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

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

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

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

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

2. **Obligations of Associate.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Termination.**

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

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

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

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

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

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

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

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

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

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

Appendix F
Invoice

ACORD. CERTIFICATE OF LIABILITY INSURANCE

04/18/2008

PRODUCER — Serial # 100855

JAYCE MCCLELLAN
MCCLELLAN INSURANCE AGENCY
P.O. BOX 99
CARLSBAD, CA 92018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

MEDIMPACT HEALTHCARE SYSTEMS
ATTN: GAIL DAVIS
10680 TREENA STREET, 5TH FLOOR
SAN DIEGO, CA 92131

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: HARTFORD INSURANCE CO. OF THE	
INSURER B: HARTFORD CASUALTY INSURANCE	
INSURER C: GREAT AMERICAN E&S INSURANCE CO	
INSURER D:	
INSURER E:	

COVERAGES

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PROJECT [ ] LOC	72UUNUS3775	4/15/08	4/15/09	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A		AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	72UUNUS3775 72UUNUS3775	4/15/08 4/15/08	4/15/09 4/15/09	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
B		EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [X] RETENTION $ 10,000	72RHUHY5521	4/15/08	4/15/09	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $ $ $
		WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS / OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
C		OTHER PROFESSIONAL LIABILITY	TER3895136	4/07/08	4/07/09		$5,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER IS NAMED ADDITIONAL INSURED AS RESPECTS GENERAL LIABILTY PER THE ATTACHED ENDORSEMENT

CERTIFICATE HOLDER

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH
CBHS CONTRACTS OFFICE
1380 HOWARD STREET, ROOM 442
SAN FRANCISCO, CA 94103-2614

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL XXXXXXXXX MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

© ACORD CORPORATION 1988

ACORD CERTIFICATE OF LIABILITY INSURANCE

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

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

COVERAGES

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

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

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

*10 Days Notice of Cancellation for Non-Payment of Premium.

CERTIFICATE HOLDER

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

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Mary Jones

ACORD 25 (2001/08) Client # 40057 Mst # 5117 Cert # 75991 Subject

POLICY NUMBER: 72UUNUS3775 COMMERCIAL GENERAL LIABILITY
MedImpact Healthcare Systems, Inc.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY ADDITIONAL INSURED AMENDMENT OF CONDITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

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

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

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

4. Other Insurance.

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

a. Primary Insurance

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

b. Excess Insurance

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

(1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work;"

(2) That is Fire insurance for premises rented to you; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

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

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

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

Junko,

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

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

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

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

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

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

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

Junko Craft/DPH/SFGOV

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

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

Hi, Elizabeth,

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

Please let us know the status of your review.

Thanks!

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

Amendment of the Whole
in Committee. 11/28/12

FILE NO. 121062 RESOLUTION NO. 441-12

[Agreement Amendment - MedImpact Healthcare Systems, Inc. - Third Party Pharmacy Administration Services at Community Pharmacies - $17,575,376]

Resolution approving the third amendment to the agreement between the Department of Public Health and MedImpact Healthcare Systems, Inc., for third party pharmacy administration services at community pharmacies to increase the total contract amount from $9,900,000 for the term of July 1, 2008, through June 30, 2014, by $7,675,376 for a total contract amount of $17,575,376 for six years.

WHEREAS, The Department of Public Health, in order to provide third party pharmacy administration services at more than 15 community pharmacies for the more than 50,000 patients of the Department's Community Health Network who require them; and

WHEREAS, The Department of Public Health conducted a Request for Proposals in December 2007 (RFP 33-2007) to solicit these services, which provided for an initial contract term of one year with options to renew the contract to a maximum term of nine years, and selected MedImpact Healthcare Systems, Inc. to perform them; and

WHEREAS, The Department established an agreement with MedImpact Healthcare Systems, Inc. for these services in 2008, amending the contract in 2009 and 2011 to increase the total contract amount and extend the term as needed to the present total contract amount of $9,900,000; and,

WHEREAS, The contract provides online, point-of-service electronic claims adjudication for prescriptions, including, but is not limited to, verifying patient and provider eligibility, formulary status of prescribed medication, patient co-pay status; and,

WHEREAS, The Department requests approval of a third amendment to the contract to increase the total contract amount by $7,675,376 to $17,575,376 to enable the continued provision of these services through June 30, 2014, a total term of six years; and

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 121062 **Date Passed:** December 04, 2012

Resolution approving the third amendment to the agreement between the Department of Public Health and MedImpact Healthcare Systems, Inc., for third party pharmacy administration services at community pharmacies to increase the total contract amount from $9,900,000 for the term of July 1, 2008, through June 30, 2014, by $7,675,376 for a total contract amount of $17,575,376 for six years.

November 28, 2012 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

November 28, 2012 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 04, 2012 Board of Supervisors - ADOPTED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Elsbernd, Farrell, Kim, Mar, Olague and Wiener
Absent: 1 - Cohen

File No. 121062

I hereby certify that the foregoing Resolution was ADOPTED on 12/4/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

12/7/12
Date Approved

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): **Members, Board of Supervisors**	City elective office(s) : **Members, Board of Supervisors**

Contractor Information *(Please print clearly.)*	
Name of contractor: MedImpact Healthcare Systems, Inc.	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. (1) Board of Directors: Frederick Howe, David Wheeler, George Goldstein, Matthew Simas, Anand Gowda (2) Chairman and CEO: Frederick Howe; President: Greg Watanabe; CFO: David Wheeler; CIO: John Treiman (no COO) (3) > 20% ownership: Frederick Howe (4) None (5) NA	
Contractor address: 10680 Treena St 5th Floor, San Diego, CA 92131	
Date that contract was approved:	Amount of contract: $23,455,376
Describe the nature of the contract that was approved: Third Party Pharmacy Administrator	
Comments:	

This contract was approved by (check applicable):
☐ the City elective officer(s) identified on this form
☒ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: **Angela Calvillo, Clerk of the Board of Supervisors**	Contact telephone number: **(415) 554-55184**
Address: **City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102**	E-mail: **Angela.Calvillo@sfgov.org**

Signature of City Elective Officer (if submitted by City elective officer) — Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) — Date Signed

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FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): **Members, SF Board of Supervisors**	City elective office(s) held: **Members, SF Board of Supervisors**

Contractor Information *(Please print clearly.)*	
Name of contractor: MedImpact Healthcare Systems, Inc.	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. **1. Frederick Howe, Dave Wheeler, George Goldstein, Anand Gowda, Steven Shulman** **2. Frederick Howe, CEO / Dave Wheeler, EVP and CFO / Greg Watanabe, EVP and COO** **3. Frederick Howe.** **4. None.** **5. None.**	
Contractor address: **10680 Treena Street, 5th Floor, San Diego, CA 92131-2446**	
Date that contract was approved:	Amount of contract: **$23,455,376**
Describe the nature of the contract that was approved: **Third Party Pharmacy Administrator and 340B Program Specialized Services**	
Comments:	

This contract was approved by (check applicable):
☐ the City elective officer(s) identified on this form
☒ a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk, Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102	E-mail: Angela.Calvillo@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer) — Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) — Date Signed

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Item 11 File 14-0746	Department: Department of Public Health

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would approve an amendment to the contract between the Department of Public Health (DPH) and MedImpact Healthcare Systems, Inc. (MedImpact) to provide third party administration services. The resolution approves the fifth amendment to the contract to (1) increase the not-to-exceed amount by $5,880,000 to $23,455,376 from $17,575,346, and (2) extend the contract term by 18 months through December 31, 2015.

Key Points

- In 2008, Department of Public Health (DPH) entered into a contract with MedImpact to provide third party pharmacy administration services to support the federal 340B Drug Program by providing online, point-of-service electronic claims administration for prescriptions issued by Community Health Network clinics and filled by select pharmacies, which includes instant verification of patient and provider eligibility for the 340B Dug Program as well as information on the patient's co-pay status and formulary status of prescribed medication. The original contract was for an amount not-to-exceed $840,000 for three years, beginning July 1, 2008 and ending June 30, 2011 with an option to extend the term for a maximum of nine years as defined in the RFP.
- This contract was amended in 2009 (First Amendment) to increase the contract amount by $6,888,000, from $840,000 to $7,728,000, in 2011 (Second Amendment) to increase the contract amount by $2,172,000, from $7,728,000 to $9,900,000, and in 2012 (Third Amendment) to increase the contract amount by $7,765,376 from $9,900,000 to $17,575,376 and extend the contract term by three years from July 1, 2011 through June 30, 2014, for a term of six years. A fourth amendment to the contract was exercised on May 9, 2013 which amended a section on the audit and inspection of records.
- Under the fourth amendment, the total contract term is 7 ½ years and not-to-exceed amount is $23,455,376.

Fiscal Impact

- Under the proposed resolution, the contract amount would increase by $5,880,000, or 33 percent, from $17,575,346 to $23,455,376 over the 18 months from July 1, 2014 through December 31, 2015.
- Actual and budgeted contract expenditures over the entire term of the contract, including a 12 percent contingency, are $22,134,625, which is $1,320,751 less than the contract not-to-exceed amount to $23,455,376. Therefore, the Budget and Legislative Analyst recommends reducing the contract not-to-exceed amount by $1,320,751.

Recommendations

- Amend the proposed resolution to reduce the contract not-to-exceed amount by $1,320,751 from the requested $23,455,376 to the recommended $22,134,625.
- Approve the resolution as amended.

MANDATE STATEMENT

In accordance with Charter Section 9.118, any contract (a) for $10,000,000 or more, (b) or that extends for longer than ten years, or (c) such contracts with an amendment of more than $500,000, is subject to Board of Supervisors approval.

BACKGROUND

According to Section 340B of the Federal Public Health Services Act, the Department of Public Health's Community Health Network (CHN) clinics are able to purchase outpatient drugs for eligible patients at discounted rates from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services. CHN clinics have contracted with certain pharmacies in the community, largely Walgreens, to dispense these discounted drugs exclusively to eligible CHN clinic outpatients on the CHN clinics' behalf. The program is referred to as the 340B Drug Program.

In December of 2007, MedImpact Healthcare Systems, Inc. (MedImpact) was selected by DPH through a competitive Request for Proposals (RFP) process to provide third party pharmacy administration services to support the 340B Drug Program by providing online, point-of-service electronic claims administration for prescriptions issued by CHN clinics and filled by select pharmacies, which includes instant verification of patient and provider eligibility for the 340B Dug Program as well as information on the patient's co-pay status and formulary status of prescribed medication[1].

In 2008, the City entered into a contract on behalf of the Department of Public Health with MedImpact for an amount not-to-exceed $840,000 for three years, beginning July 1, 2008 and ending June 30, 2011 with an option to extend the term for a maximum of nine years as defined in the RFP. This contract was amended in 2009 (First Amendment) to increase the contract amount by $6,888,000, from $840,000 to $7,728,000, in 2011 (Second Amendment) to increase the contract amount by $2,172,000, from $7,728,000 to $9,900,000, and in 2012 (Third Amendment) to increase the contract amount by $7,675,376 from $9,900,000 to $17,575,376 and extend the contract term by three years through June 30, 2014, for a term of six years. The third amendment was approved by the Board of Supervisors (File No. 13-0513) because it had exceeded the $10,000,000 threshold established in Charter Section 9.118. A fourth amendment to the contract was exercised on May 9, 2013 which amended a section on the audit and inspection of records. No changes to the contract amount or contract term were made through this amendment.

[1] A formulary is a list of prescription drugs, both generic and brand name, that are preferred by a given health plan and are covered or partly covered in and are less expensive than name-brand or non-formulary prescription drugs.

Expenditures under the Current Contract

According to Ms. Anne Okubo, Deputy Financial Officer at DPH, total expenditures are $16,254,625 from July 1, 2008 through June 30, 2014. These expenditures are summarized in Table 1 below.

Table 1: Contract Expenditures through June 30, 2014

Year	Expenditures
FY 2008-09	$1,479,169
FY 2009-10	2,045,047
FY 2010-11	2,522,160
FY 2011-12	3,111,481
FY 2012-13	4,092,685
FY 2013-14	3,004,083
Total	**$16,254,625**

Source: DPH

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve an amendment to the existing contract between DPH and MedImpact Healthcare Systems, Inc. to provide third party administration services. The resolution approves the fifth amendment to the contract to (1) increase the not-to-exceed amount by $5,880,000 to $23,455,376 from $17,575,376, and (2) extend the contract term by 18 months through December 31, 2015. Therefore the total contract term would be 7 ½ years from July 1, 2008 through December 31, 2015.

FISCAL IMPACT

The proposed resolution would increase the contract not-to-exceed amount to $23,455,376 from $17,575,376, an increase of $5,880,000 or 33 percent.

The Budget and Legislative Analyst recommends reducing the contract not-to-exceed amount by $1,320,751 from the requested $23,455,376 to the recommended $22,134,625, based on the proposed contract budget, as shown in Table 2 below.

Table 2: Budget and Legislative Analyst's Recommendations

	Total
FY 2014-15 budget	$3,500,000
FY 2015-16 budget (July to December)	1,750,000
12% contingency	630,000
Budgeted expenditures through FY 2015-16	5,880,000
Actual expenditures through June 30, 2014	16,254,625
Total actual and budgeted expenditures	22,134,625
Requested contract amount	-23,455,376
Recommended reduction	**($1,320,751)**

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the contract not-to-exceed amount by $1,320,751 from the requested $23,455,376 to $22,134,625.
2. Approve the proposed resolution as amended.