

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND CPS SOLUTIONS, LLC

This Agreement is entered into this _____ day of _____, 2024 (“**Effective Date**”), by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called “County,” and CPS Solutions, LLC, hereinafter called “Contractor.”

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of Pharmacy Consulting Services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit C—Performance Metrics
- Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)
- Attachment H—HIPAA Business Associate Requirements

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform the services set forth in Exhibit A (the “**Services**”) for County in accordance with the terms, conditions, and specifications set forth in this Agreement.

3. Payments

In consideration of the Services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County reasonably determines that the quantity or quality of the work performed is unacceptable (based upon the requirements in this Agreement); provided that prior to withholding such payment, the County must notify Contractor in writing of the specific deficiency and why County deems it to be “unacceptable”. In no event shall County’s total fiscal obligation under this Agreement for Services exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement. All invoices must be approved by the Pharmacy Director or their

designee. Invoices must be sent to: SMMC-Accounts-Payable@smcgov.org. Processing time may be delayed if invoices are not submitted electronically. County shall pay all amounts due hereunder within thirty (30) days of County's receipt of Contractor's invoice.

4. Term

Subject to compliance with all terms and conditions of this Agreement, the term ("**Term**") of this Agreement shall be from October 1, 2024, through September 30, 2029.

5. Termination

This Agreement may be terminated by Contractor or by the Chief of San Mateo County Health or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/Services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/Services actually completed to the work/Services required by the Agreement.

County may terminate this Agreement or a portion of the Services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten business days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of Services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

Notwithstanding the foregoing, upon termination of this Agreement for any reason, the County must pay to Contractor any amounts due Contractor, including for any Services provided up to the date of termination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "Contract Materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Contract Materials shall be

limited to deliverables required under this Agreement. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

For clarity, the parties note that the term "Contract Materials" does not include, and Contractor shall retain sole ownership of all: (a) hardware, software, electronic tools, and all other information technology systems and all business processes and know-how ("**Contractor's IP**") that Contractor owned or licensed prior to Contractor providing Services to County, including any improvements to Contractor's IP and any new Contractor IP that Contractor develops while providing Services to the County; and (b) all IP rights in the foregoing.

7. Relationship of Parties

Contractor agrees and understands that the work/Services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or Services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

Contractors' indemnification obligations in connection with this Agreement shall be limited to the extent any third-party claims, suits, or actions against the County are caused by Contractor's negligence and such obligation shall not apply to the extent of County's negligence. County shall indemnify Contractor against all third-party claims, suits, or actions to the extent caused by the County's negligence.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the Services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the Services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the Services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should Services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the Services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the Services without infringement or (ii) replace or modify the Services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the Services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way

as to cause the alleged infringement at issue; and/or (b) any aspects of the Services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

County shall indemnify Contractor as set forth in this Section for any intellectual property provided by County to the Contractor under the Agreement.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide Services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage. Contractor shall provide thirty (30) days' advance notice, in writing, to County of any material pending change in the limits of liability or of any cancellation or material modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit

bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Commercial General Liability..... \$1,000,000
- (b) Professional Liability..... \$1,000,000/\$3,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on the above Commercial General Liability policy of insurance, which policy shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All Services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such Services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations (“Title 22”), San Mateo Medical Center (“**SMMC**”) retains all professional and administrative responsibility for Services rendered under this Agreement to the extent that such Services are subject to Title 22 and are rendered by a “qualified professional person” as used in Section 70713, and the parties further agree in that instance that this Agreement is otherwise subject to any applicable requirements of Title 22.

County is ultimately responsible for the operation of each of its pharmacy locations, for securing, paying for, and maintaining all necessary licenses for its operations, the results of its operations,

and for monitoring compliance of its operations (including those supervised by Contractor). County's actions and omissions are within the sole discretion of County. This Agreement does not transfer compliance or regulatory responsibility to Contractor, and County retains sole responsibility for ensuring that County and its operations comply with all applicable laws (including securing all required business associate agreements). As such, Contractor shall not be liable for actions or omission by County as a result of County accepting or rejecting any Contractor recommendation. Further, if County elects to have a 340B Program, County retains sole responsibility for the implementation of County's 340B Program, including its 340B Program's compliance with all applicable laws. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

County acknowledges that Contractor is not engaged in the practice of law. Any statements or assistance Contractor provides are business opinions or advice concerning business issues. County agrees that it will not rely upon Contractor to provide legal interpretations (and that any such reliance would be unreasonable), nor will County consider Contractor's business opinions or advice to be legal counsel. Contractor recommends that County engage qualified legal counsel to interpret all applicable laws, including Section 340B of the Public Health Service Act, as amended and codified at 42 U.S.C. § 256b, to ensure its operations (including those reviewed by the Services) comply with all applicable laws.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any Services provided pursuant to this Agreement (except as limited by the scope of Services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any Services this Agreement. This Section applies only to contractors who are providing Services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or

- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

14. Access and Retention of Books and Records

Upon written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, Contractor shall: (a) make available this Agreement and those books, documents, and records of Contractor as are necessary to certify the nature and extent of the costs of providing Services under this Agreement, and (b) unless otherwise prohibited by law, contemporaneously with Contractor's compliance with the forgoing subsection (a); Contractor shall provide County with copies of the materials provided by Contractor under subsection (a). Such inspection shall be available for up to four (4) years after the rendering of such Services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a

related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor's representative by virtue of this Agreement.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: San Mateo Medical Center
Attn: Chief Operations Officer
222 W 39th Ave
San Mateo, CA 94403

With Copy To: County Attorney's Office
500 County Center, 4th Floor
Redwood City, CA 94063

In the case of Contractor, to:

Name/Title: Frank Segrave, Chairman & CEO CPS Solutions, LLC
Address: 655 Metro Place South, Suite 450, Dublin, OH 43017

With a copy to: Leanne Ebert Murphy, Esq., Executive Vice President and
General Counsel

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/Services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/Services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

20. Disentanglement

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of Services or the County's activities; provided, however, that County shall pay Contractor on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree to the specific electronic format.

21. Hospital and Clinics Credentialing Program

Contractor and Contractor representatives visiting or entering the San Mateo Medical Center (SMMC) main campus or any of its satellite clinics are required to register with SMMC's Vendor Credentialing Program prior to conducting business onsite. It is important that each Contractor

representative registers individually in order to maintain the confidentiality of their personal credentials and to ensure ongoing access to our facilities. More information regarding SMMC's updated credentialing and on-site visit requirements can be found on SMMC's profile page through <https://login.ghx.com>

22. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

- a. Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.
- b. Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.
- c. Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when Services were provided to the County. Contractor must substantiate in writing to the County the actual Services rendered and the specific dates. The County will reimburse for travel at 75% of the maximum reimbursement amount for the actual costs of meals and incidental expenses on the day preceding and/or the day following days when Services were provided to the County, provided that such reimbursement is reasonable, in light of travel time and other relevant factors, and is approved in writing by authorized County personnel.
- d. Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. "Local Travel" means travel entirely within a fifty-mile radius of the Contractor's office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor's use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.
- e. The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/portal/content/104877> or by searching www.gsa.gov for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current CONUS rate; for work being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.

- f. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride-shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.
- g. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.
- h. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.

23. LIMITATION OF LIABILITY.

a. LIMITATIONS.

SUBJECT TO SECTION (EXCLUSIONS) BELOW), NEITHER PARTY (NOR SUCH PARTY'S AFFILIATES AND ITS/THEIR SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS AND CONTACTORS ("RELATED PERSONS")) SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE, OMISSION OF PERFORMANCE, OR TERMINATION HEREOF, WITHOUT REGARD TO THE NATURE OF THE CLAIM (E.G., BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE MAXIMUM, CUMULATIVE, AND AGGREGATE LIABILITY OF EACH PARTY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF: (A) THE AGGREGATE AMOUNT OF ALL FEES PAID BY COUNTY TO CONTRACTOR FOR ALL SERVICES UNDER THE AGREEMENT SOW DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO ANY SUCH LIABILITY, AND (B) TWO MILLION DOLLARS (\$2,000,000); PROVIDED, FURTHER, IN ACTIONS BY CONTRACTOR FOR RECOVERY OF ITS FEES UNDER THIS AGREEMENT, CONTRACTOR'S RECOVERY SHALL BE LIMITED TO ITS FEES AND ITS COSTS OF COLLECTION (WHICH AMOUNTS SHALL NOT BE DEEMED TO BE LOST PROFITS).

b. Exclusions.

The limitations and caps on liability in this Section (Limitation of Liability) shall not apply to: (a) amounts owed by County under this Agreement, and (b) damages that cannot be disclaimed or limited as a matter of law.

c. **Time Bar.**

Neither party (nor such party's affiliates and their Related Persons) shall bring any claim, demand, suit, or cause of action against the other Party, its affiliates or their Related Persons relating to this Agreement more than two (2) years after the cause of action arises.

24. CONFIDENTIALITY.

a. **Confidential Information.**

Each party shall treat as confidential and shall not disclose (except as otherwise permitted herein): (i) any Confidential Information that is disclosed by a Party (the "Disclosing Party") to the other Party or its Personnel (the "Receiving Party"); and (ii) any Confidential Information of the Disclosing Party to which the Receiving Party or its Personnel obtain access, whether presented orally or in written, electronic or other form, and whether or not such information is marked "confidential". Except for such information that is required to be disclosed by law under Cal. Gov. Code § 7928.801, "Confidential Information" means a party and its affiliates' financial data, requests for proposals, project plans, IT strategies, forecasts, operational processes and procedures, business methods, systems (including all documentation, code and specifications), products, processes, inventions, methods, trade secrets, information (including "Personal Information" and "PHI" (as such terms are defined by applicable law)) as to vendors, personnel, patients and customers, pricing information, or other confidential data, and such other information that the Receiving Party is aware that the Disclosing Party treats as confidential or proprietary. Contractor's Confidential Information includes Contractor Content. "Contractor Content" means any content (as modified from time to time) provided by Contractor via the Services, provided systems or otherwise including clinical information, protocols, newsletters, bulletins, and associated data fields labels (as modified from time to time).

b. **General Exceptions.**

Except for PHI and Personal Information, Confidential Information shall not be subject to the restrictions herein if such information, at the relevant time: (i) is available to the general public through no fault of the Receiving Party, but excluding from the foregoing exception information disclosed pursuant to a data or security breach; (ii) was disclosed to the Receiving Party by a third party who, to the Receiving Party's knowledge, is not subject to any confidentiality obligation (directly or indirectly) to the Disclosing Party with respect to such information; (iii) is rightfully in the possession of, without obligation of confidentiality, the Receiving Party at the time of disclosure by the Disclosing Party; or (iv) is developed by the Receiving Party independent of the Disclosing Party's Confidential Information; in each such case, to the extent the foregoing exception is proven by the Receiving Party.

c. **Legal Requirements.**

In the event that the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to a valid court order or other legal requirement, or the Receiving Party desires to do so in any dispute between the Parties, the Receiving Party shall (unless in the Receiving Party's legal counsel's opinion it is prohibited from doing so by applicable law): (i) promptly notify the Disclosing Party of the proposed disclosure, and (ii) provide reasonable non-financial assistance to, and allow the Disclosing Party to, contest the release of the Confidential Information and/or seek confidential treatment and/or other protection therefor at the Disclosing Party's sole expense. In such instance, the Disclosing Party shall indemnify and hold the Receiving Party harmless against any legal expenses, attorney's fees, costs, judgments, fines, or awards resulting from the Disclosing Party's efforts to contest the release of Confidential Information and/or seek confidential treatment and/or other protection therefor; provided that: (x) Contractor has authorized such contest/and or seeking of such confidential treatment, and (y) Contractor shall not be responsible for any such expenses, fees costs judgements, fines or awards that incurred as a result of County continuing to contest or seek such confidential treatment after Contractor has informed County in writing that Contractor no longer wishes to contest or seek such confidential treatment.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: CPS Solutions, LLC

frank segrave
frank segrave (Aug 21, 2024 15:24 MDT)

Contractor Signature

Aug 21, 2024

Date

frank segrave

Contractor Name (please print)

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following Services:

Through the 340B Continuous Readiness Program (CRP), Contractor will form a close, strategic partnership with County pharmacy staff and intimately learn all aspects of the County of San Mateo's various 340B programs to provide targeted recommendations and 340B expertise where its need the most. The 340B CRP includes an annual mock HRSA audit review including HRSA review components with additional scrutiny based on recent areas of HRSA audit focus and feedback from our extensive client base, year-round corrective action planning to address all audit findings, and provides the County continuous 340B education, real-time 340B program updates, and 340B ACE pharmacy guidance. The 340B CRP provides ongoing oversight for each Covered Entity listed on Exhibit B, and Contractor will provide routine monitoring and self-auditing of key components of the 340B program throughout the year. In addition, this includes incredible ongoing 340B education to keep the County of San Mateo pharmacy staff current with the ever-changing 340B landscape with targeted training, regular webinars from industry-recognized experts, Contractor seasoned pharmacy staff, and other continuous program education support. Finally, the Contractor CRP includes comprehensive HRSA audit support from the initial HRSA kick-off call and throughout the process, including on-site support during the "live" HRSA audit. Contractor will ensure the County of San Mateo pharmacy and leadership teams are fully supported year-round, from every possible angle, providing maximum program coverage and close partnership support.

Scope of Services

- Contractor will provide a proprietary, 100+ point annual audit review that mimics the components currently used by HRSA in their 340B audit process and is significantly more rigorous to identify all potential program gaps. This review will provide Contractor a solid baseline for future improvements through corrective action planning with specific recommendations and program guidance.
- Contractor will lead quarterly web-based meetings with each County of San Mateo Covered Entity to provide strategic guidance and scorecard corrective action planning results from the audit review recommendations, answer any program-related questions, and provide timely 340B program updates and education.
- In the event of a HRSA or manufacturer audit, Contractor will provide support throughout the course of the audit including, at the request of the Covered Entity, including:
 - Attendance on the HRSA pre-site visit call
 - Answering questions related to the HRSA data request list
 - Review the Covered Entity's transaction dataset prior to submission to HRSA for ineligible providers, ineligible locations, and potential duplicate discounts**
 - Review contract pharmacy service agreements (if not done within the last six months as part of a Contractor Services)
 - Review policies and procedures (if not done within the last six months as part of a Contractor Services)
 - Attend the onsite portion of the HRSA audit (or remote HRSA audit) to provide support.
- For those County of San Mateo covered entities where it applies, Contractor will perform a sample universe of thirty (30) mixed-use auditable transactions per month*. For contract pharmacy programs, Contractor will perform a sample of ninety (90) auditable claims per month covering all

actively registered contract pharmacies. Once Contractor has a better understanding of the 340B program volumes associated with each of the County of San Mateo's Covered Entity sites, the designated 340B pharmacy consultant will determine how to best allocate the number of transaction audits. Each month, Contractor will provide a detailed report of any audit deficiencies identified as well as specific recommendations through our proprietary corrective action planning to ensure all audit deficiencies have been addressed, in tandem with the Contractor designated pharmacy team, to ensure all County of San Mateo covered entities are always audit-ready.

*CPS selects transactions for auditing based on a targeted sample which is focused on testing of transactions which are most commonly identified as non-compliant by the CPS consulting team or where non-compliance may cause the need for significant manufacturer repayment. Targeted transactions may include high-cost drugs, prescribers who write a low volume of orders or prescriptions, drugs administered in procedural areas and clinics, "bulk" or multiple dose containers, and when Medicaid is the payer. Additional random transactions are also included.

**CPS will review a random selection of fee for service Medicaid claims for inclusion of the NPI on the claim and in the Medicaid Exclusion File ("MEF"), as well as inclusion of any state required modifiers. CPS does not review the accuracy of the pricing submitted with fee for service Medicaid claims. CPS also does not review Medicaid managed care claims.

While the Covered Entity may submit multiple universes of data for evaluation, CPS selects a percentage from each of the submitted universes and combines the selected transactions into two universes; mixed use and pure use areas in one, and hospital owned outpatient pharmacies and non-network contract pharmacies in the other.

- Serve as a resource to provide 340B program guidance and answer questions at any time throughout the term of the agreement. Many of our 340B CRP clients are on the phone with their designated Contractor pharmacy team every week asking questions and requesting guidance throughout the year.
- Each calendar quarter, Contractor will compare the entity's 340B drug purchases to the Apexus price file, identifying pricing discrepancies. The Contractor team will share the findings of this report, discuss any identified discrepancies, and share any guidance on the NDCs' prospective financial or other material impacts with the County of San Mateo pharmacy staff.

In addition to price discrepancies, the designated Contractor Team will provide the following additional value:

- Identify non-program medication purchases - analysis of non-340B products purchased on the County of San Mateo Covered Entity's 340B account (e.g., vaccine, supplies, etc.).
- Evaluate bundled payment medications – Contractor will review the County of San Mateo's Covered Entity's policies and procedures for their covered outpatient drug exclusions (e.g., Anesthesia gases, IV fluids, etc.) and confirm these products are not purchased on a 340B account.
- "Bad WAC" mitigation – Contractor will identify any instances of "bad WAC" purchases which may lead to potential savings opportunities for the County of San Mateo.

Resource Allocation

Contractor will allocate a 340B consultant pharmacist and 340B analyst with corporate staff support for the Services listed above.

Deliverables

As part of the continuous readiness program, the County of San Mateo will receive the following:

- Upon completion of the on-site audits, Contractor will compile the information from the on-site visits, combined with the information and analysis from the advance data and information requests, and develop a written report for submission to the Covered Entity detailing findings and recommendations.
- Recommendations for corrective actions related to Contractor audit findings.
- Templates and education material relative to the Covered Entity's 340B program and Contractor audit findings.
- Following the onsite audit and report delivery, Contractor will develop a corrective action plan related to the Contractor audit findings.
- Contractor will host web meetings or conference calls on at least a quarterly basis following the delivery of the final report. These meetings will include reviewing Contractor audit findings and answering questions related to the audit findings and recommendations, reviewing the action plan as well as answering the Covered Entity's questions related to their 340B program compliance and operations. In addition, general 340B program education and updates may be provided through these meetings.
- Contractor will provide support in the event of a HRSA or manufacturer audit of the Covered Entity's 340B program.
- Contractor will be available throughout the course of the CRP agreement to answer questions and provide guidance related to the Covered Entity's 340B program.
- Contractor will provide quarterly pharmacy wholesale contract monitoring reports for each of the County of San Mateo's four covered entities. Subsequently, the Contractor pharmacy team will schedule calls with each of the four covered entities' respective pharmacy staff to share results and financial impact of these reports, provide any guidance and answer any questions.
- Contractor will provide a remote meeting recap of all outstanding work and knowledge at the conclusion of the contract period to the County of San Mateo leadership and pharmacy personnel. This will ensure a seamless transition and continuity of 340B program operations.

ASSESSMENT PERSONNEL – An assessment will be performed by Contractor'd 340B Apexus Certified Expert pharmacy staff, which will consist of up to two Contractor Consultants and a 340B Analyst assigned to the County of San Mateo. All Contractor Services will be performed remotely. It is critical that the Contractor and the County of San Mateo establish regular communications protocols and work together during the Client's implementation and for ongoing program updates and reviewing Contractor deliverables performed throughout the service period.

Exhibit B

In consideration of the Services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

340B Continuous Readiness Program including Corrective Action Planning with 340B Program Compliance Assessment (340B External Audit Performed Annually)

340B ID	Covered Entity* Name	Consulting Fee/Year **
DSH050113	San Mateo Medical Center	\$28,700
CH091140	39th Outpatient Clinics	\$15,700
STD944039	County of San Mateo Health Services Agency	\$15,700
TB944037	County of San Mateo Health Services Agency	\$15,700

*Covered Entity” means, a County entity that is eligible to participate as a “Covered Entity” (as defined under 42 U.S.C. § 256b), and which is participating in County’s 340B program, as amended from time to time.

**These amounts will be first billed on (or after) the Effective Date and thereafter on each annual anniversary of the Effective Date.

Transaction Auditing Support (Performed Monthly)

All Covered Entities	\$1,000 per month. This amount will be first billed on (or after) the Effective Date and thereafter it will be billed on the 1 st day of each subsequent calendar month during the Term. (Inclusive of all County of San Mateo Covered Entity sites)
DSH050113	
CH091140	
STD944039	
TB944037	

Pharmacy Wholesale Contract Monitoring (Performed Quarterly)

All Covered Entities	\$2,000 per quarter. This amount will be first billed on (or after) the Effective Date and thereafter it will be billed on the 1 st day of each subsequent calendar quarter during the Term. (Inclusive of all County of San Mateo Covered Entity sites)
DSH050113	
CH091140	
STD944039	
TB944037	

Exhibit C

Performance Metrics

County will measure Contractor performance of the Services in accordance with the procedures set forth by the performance indicators below. Contractor acknowledges that the performance indicators are a reasonable minimum standard by which to measure Contractor performance of the Services.

340B Program Compliance Assessment (External Audit)

Contractor offers the County of San Mateo the industry’s most rigorous annual 340B audit review to ensure maximum program compliance and HRSA audit-readiness. In order to provide the highest degree of transparency and accountability, Contractor offers the following checklist that can be tracked by San Mateo at the completion of the audit review each year.

Area for Evaluation	Priority Focus Area	CPS Observations	Potential Risk Following HRSA Audit
OPA Registration			
Eligibility			
Medicaid Billing			
340B Policy & Procedure			
Contract Pharmacy Agreements			
Contract Pharmacy Policy & Procedure			
Transaction Sample Testing – Mixed-Use and/or Clean-Use			
Transaction Sample Testing – Entity-Owned and Contract Pharmacy			
Internal Monitoring			
340B Purchasing			

Contractor will also deliver a final, comprehensive 340B audit report with all program observations for each of the four County of San Mateo covered entities and an interactive, robust discussion covering all of the report recommendations, high-level follow-up action plan and to answer any questions. These calls will be scheduled at the completion of the 340B audit review process with pharmacy and other leadership staff at each of the four covered entities, and the County can hold Contractor accountable for delivering this report and presenting all audit findings each year.

Monthly Transaction Auditing Support

Each month, Contractor will perform monthly transaction audits as outlined in Exhibit A. This will include stratifying mixed-use (where applicable) and contract pharmacy transactions to identify high-risk claims and the Contractor pharmacy team identifying potential root causes for non-compliant transactions. In accordance with this deliverable, Contractor offers the County of San Mateo the following performance metrics to be reported each month.

- Transaction frequency – Contractor will provide the County of San Mateo a monthly report summarizing the number of mixed-use and contract pharmacy transactions by Covered Entity site, as outlined in Exhibit A.
- Transaction status – Contractor will provide the County of San Mateo a monthly report summarizing the tally of non-compliant as well as compliant transactions for each data universe.

- Root cause identification – Contractor will include the prospective root-cause for each non-compliant transaction identified each month for follow-up by the County with Contractor expert guidance.

Pharmacy Wholesale Contract Monitoring

Each quarter, Contractor will provide pharmacy wholesale contract monitoring reports for each of the four County of San Mateo Covered Entities as outlined in this Exhibit A. Quarterly calls, performed remotely, will be scheduled and led by the Contractor designated pharmacy team for each of the County of San Mateo covered entities. In order to ensure Contractor is providing the maximum performance and benefit for the County, Contractor offers the following performance metrics to be measured each calendar quarter.

- Pharmacy Wholesale Contract Monitoring Report – Each quarter, Contractor will provide a comprehensive list, by Covered Entity, of all identified discrepancies between the Apexus 340B price and wholesaler data. Contractor will include the following measurable performance metrics as part of this quarterly report:
 - Pricing discrepancies between the Apexus 340B price file and the wholesaler price file
 - Non-program medication purchases
 - Bundled payment medications
 - Inappropriate WAC purchases, including 340B accumulator problematic areas
- Remote calls for each Covered Entity – Quarterly, in follow up to delivering the Pharmacy
- Wholesale Contract Monitoring Report, the Contractor designated 340B pharmacy staff will schedule a remote call with the pharmacy leadership representing each of the four covered entities to discuss the report findings, any recommendations and answer questions on follow-up approach. The County can easily track the completion of each scheduled call, the subsequent outcomes as discussed, and the tangible report provided each quarter by Contractor.

340B Continuous Readiness Program

Contractor offers the following additional performance metrics as outlined below.

- Scorecard calls – In follow up to the 340B audit review, as part of the Continuous Readiness Program (CRP), the designated Contractor pharmacy team will meet with each County of San Mateo Covered Entity on no less than a quarterly basis to formerly “scorecard” weekly progress to the corrective action plan. Contractor will verify through written communication to the designated County leadership when these calls are scheduled and will send an email confirmation with any relevant call details after the scorecard discussion.
- Corrective action planning – Following the 340B audit report findings, Contractor provides year-round corrective action planning for the County of San Mateo as part of the 340B CRP solution. This vital Service will leverage the Contractor pharmacy team’s knowledge to provide specific recommendations to close any performance gaps which could potentially jeopardize the County’s 340B program. The County of San Mateo will work closely with the designated Contractor pharmacy team frequently, as determined in the County’s best interest, to implement corrective action steps and close all performance gaps. The County can measure this metric through regular communications with the Contractor pharmacy team and timely feedback provided.
- Hot topic 340B Webinars/eNewsletters – Contractor offers regular webinars to the County of San Mateo pharmacy staff on various hot topics and industry changes so that the County of San Mateo will always keep abreast of the changing landscape within 340B. Contractor also develops and disseminates a regular eNewsletter, with content provided by mostly Contractor consultants, packed full of insightful information and timely updates to educate the County of San Mateo with

real-time 340B education. The County of San Mateo can easily track webinars/eNewsletters we schedule and release over the contract term through email invitations to participate with an average of one webinar/eNewsletter provided per calendar quarter. Also, Contractor provides regular email 340B newsflash alerts with industry changes, including both legal and environmental, so that the County of San Mateo will always have any updates as soon as they are received. These are not scheduled with any frequency as they are based on industry changes, however Contractor will include the County of San Mateo on our email list to receive these timely updates and can verify enrollment upon request. All information provided by Contractor under this bullet is not specific to County and/or its Covered Entities, but rather may provide a high-level overview of the federal 340B drug pricing program, a detailed analysis of a particular component or topic of interest within the federal 340B drug pricing program, and/or recent changes made by the federal government to the federal 340B drug pricing program.

- Ad hoc Communications as needed – As a Contractor CRP client, the County of San Mateo will have incredible access to Contractor's nation leading 340B experts who are widely recognized in the industry and with top-tier program expertise and operational knowledge. As such, the County of San Mateo will have the ability to reach out to their dedicated Contractor pharmacy team on an as needed basis, either through phone calls or emails, with no specified limit. This can cover the full spectrum of 340B topics with the Contractor pharmacy teams with easy access by the County of San Mateo pharmacy staff. The County of San Mateo's four covered entities can measure this metric through weekly communications as they begin to reach out to their designated Contractor pharmacy team.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

Contractor recognizes and is fully dedicated to advancing San Mateo Medical Center's (SMMC) commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give, or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

TO REPORT VIOLATIONS,

CALL THE COMPLIANCE HOT LINE: (800) 965-9775

Contractor, in executing this Agreement, certifies that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and has committed Contractor to comply with this Code of Conduct.

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- b. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- c. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (E PHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- g. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- h. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

- i. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- j. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- k. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- l. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.
- m. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- n. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time

and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule; provided that in the case of requests by the County (that are not due to a request by the Secretary), County shall not make such a request more than one (1) time per calendar year, unless the County has a reasonable belief that Business Associate is not in compliance with the terms of this Attachment H.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within five (5) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach. Notwithstanding anything to the contrary herein, the parties acknowledge and agree that no additional notice to Covered Entity will be required with respect to the ongoing existence and

occurrence of attempts of Unsuccessful Security Incidents. For purposes of this Section, "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such event results in unauthorized access, use or disclosure of PHI.

- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

Business Associate is directed and permitted to de-identify PHI as provided in 45 C.F.R. 164.514(b)(2) and to use such de-identified information to create De-Identified Data. "De-Identified Data" means data that Business Associate receives from or on behalf of County pursuant to the Agreement and that: (i) is de-identified as provided in 45 C.F.R. 164.514(b)(2) (directly by BA or indirectly by a third party on behalf of Business Associate); and (ii) does not identify the County or any of County's customers. County acknowledges and agrees that, as between County and Business Associate, Business Associate shall at all times be the sole and exclusive owner of all rights, title and interests in and to the De-Identified Data. To the extent that ownership of any intellectual property or other right, title or interest in De-Identified Data does not automatically vest in Business Associate, County irrevocably assigns (and shall cause its personnel and contractors to assign) to Business Associate all right, title and interest held by County with respect thereto, and agrees to execute (and shall cause its personnel and contractors to execute) such documents as Business Associate may reasonably request in order to evidence such assignment and/or Business Associate ownership.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.
- f. **Limitation of Liability.** Notwithstanding any term or condition of the Agreement, the total aggregate liability of Business Associate, its affiliates, and their present, former, and future respective shareholders, managers, members, officers, employees, contractors, subcontractors and other representatives (each a "BA Related Party") in

connection with PHI and Protected Health Information related to County that is created, received, maintained or transmitted by a Business Associate contractor, subcontractor or other representative (“Contractor PHI”), including for all liabilities, damages, losses, judgements, sanctions, expenses and costs (“Losses”) arising from or in connection with acts, omissions, uses, disclosures, security incidents, and unauthorized access involving PHI and/or Contractor PHI that occur during or after the term of the Agreement or this BAA, shall not exceed \$1,000,000 (the “BA Liability Limit”). County (i) will not bring, initiate, maintain or pursue claims, actions or proceedings for Losses arising out of or in connection with PHI and/or Contractor PHI in excess of the Business Associate Liability Limit, and (ii) will indemnify, defend and hold harmless each Business Associate Related Party from and against, all third party claims for Losses arising out of or in connection with PHI and/or Contractor PHI in excess of the Business Associate Liability Limit.

County of San Mateo (CA) CPS Agreement 8-21-24

Final Audit Report

2024-08-21

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