



## Innovative Delivery Solutions On-Site Contract Pharmacy Agreement

This Cardinal Health On-site Contract Pharmacy Agreement ("Agreement"), is entered into by and between Cardinal Health 132, LLC, located at 1330 Enclave Parkway, Houston, Texas 77077 ("Cardinal Health") and County of San Mateo on behalf of San Mateo Medical Center, located at 222 West 39<sup>th</sup> Avenue, San Mateo, California 94403 ("Customer"). Cardinal Health and Customer are each a "Party" and, collectively, the "Parties."

Whereas, Customer operates a medical office building/ community health center located at Fair Oaks Health Center, 2710 Middlefield Road, Redwood City, California 94063 ("Customer Site"); and

Whereas, Customer is authorized as a Covered Entity and is eligible to purchase prescription and non-prescription medications at reduced cost through Section 340B of the Public Health Service Act for its Eligible Patients, as defined below; and to contract with a licensed pharmacy to dispense its 340B drugs; and

Whereas, Cardinal Health is duly licensed as a pharmacy in the State of California; and

Whereas, Customer desires to engage Cardinal Health to provide pharmacy services, as specified in this Agreement, to Eligible Patients and to legally qualified health care providers affiliated with Customer on behalf of Eligible Patients with respect to outpatient drugs purchased pursuant to Section 340B.

Now, therefore, the Parties agree as follows:

1. This Agreement is contingent on Customer and Cardinal Health executing a separate lease agreement for space at Customer Site on which Cardinal Health shall operate a pharmacy. Should the Parties be unable to execute the separate lease agreement, this Agreement shall be null and void. The Cardinal Health services outlined in this Agreement shall commence when Cardinal Health's pharmacy, located at Customer Site, is operationally ready and eligible to fill a 340B prescription on behalf of Customer ("Opening Date").
2. **Eligibility.** Customer is responsible for qualifying patients under the 340B program. Furthermore, Customer will provide to Cardinal Health data necessary to validate patient eligibility under the 340B discount program ("Eligible Patients"). Customer shall grant Cardinal Health access to Customer's electronic medical record (EMR) for the purpose of monitoring and validating the qualification of prescriptions as eligible for the 340B drug discount program. All individuals who are Medicaid beneficiaries and for whom claims for prescription drugs are reimbursable by a state fee-for-service and County Organized Health System (COHS) Medicaid (Medi-Cal) program are expressly excluded from the definition of Eligible Patients and will not receive Customer's 340B drugs.
3. **Exclusive Provider.** Cardinal Health shall be Customer's only contract pharmacy on-site at Customer's medical office building/community health center provided that, Cardinal Health acknowledges and agrees that the Customer's patients are free to seek pharmaceutical services from any other pharmacy or provider.
4. **Lease Agreement.** The Parties agree to execute a separate lease agreement for the space at Customer Site in which Cardinal Health will own and operate its outpatient pharmacy. In the event such lease agreement is not executed, the terms and conditions of this Agreement shall be null and void.
5. **Purchase and Shipment of Drugs.** Cardinal Health shall be responsible for purchasing the initial non-340B drug inventory ("Seed Inventory") that will be used at Customer Site and shall carry the value of the Seed Inventory as an asset on its books. Customer shall purchase Covered Drugs, and assume responsibility for establishing the price of Covered Drugs. Cardinal Health shall monitor its inventory of prescription drugs and maintain sufficient supplies of such drugs to meet the day-to-day needs of Eligible Patients. Cardinal Health will routinely provide Customer with an electronic dispensing report which lists all prescriptions filled for Eligible Patients under this Agreement, including

the name of the Eligible Patient, drug name and strength, NDC, quantity dispensed, and date of dispensing.

Cardinal Health, by and through its 340B Administrator, shall reorder the prescription outpatient drugs provided to Eligible Patients ("Covered Drugs") on behalf of Customer when seventy percent (70%) full package size reorder quantities have been met and shall advise Customer what Covered Drugs were ordered.

Covered Drugs will be shipped to Cardinal Health's pharmacy at Customer Site and Customer will be billed directly by wholesaler/manufacturer for the purchase of the Covered Drugs.

Not less than quarterly, Customer shall reimburse Cardinal Health for less than full packages, still remaining in-stock, of drugs dispensed to Eligible Patients under the 340B program ("Partial Pkg Inventory"). Such Partial Pkg Inventory shall be reimbursed at Cardinal Health's acquisition cost.

- a. Cardinal Health will replenish Covered Drugs on an 11-digit NDC basis.
- b. Cardinal Health will determine the Customer's most cost effective method of replenishing prescriptions filled for Eligible Patients, comparing the revenue received and expenses incurred when the dispensed drugs are replenished with Customer's Covered Drugs versus Cardinal Health's non-340B drugs. Cardinal Health agrees to replenish with Covered Drugs only when it is a less costly option for Customer and Eligible Patients.
- c. Covered Drugs will be shipped to Cardinal Health's pharmacy at Customer Site and Customer will be billed directly by wholesaler/manufacturer for the purchase of the Covered Drugs.
- d. Out-of-Stock Drugs. When a replenishment order is for a drug that is out-of-stock, the out-of-stock drug will be reordered in the next inventory replenishment order. If, however, after two (2) consecutive invoice periods, the drug(s) remain out-of-stock, the Parties agree that the prescription will not be replenished with Covered Drugs and any monies collected and paid to Customer for the drugs will be returned to Cardinal Health.
- e. Slow Moving Drugs and Discontinued Drugs. Cardinal Health will identify all drugs that have been dispensed to Eligible Patients but do not qualify for a 340B replenishment order because the quantity of such drugs falls short of the NDC-11 package size necessary to trigger replenishment with Covered Drugs. If more than three (3) months have passed since the un-replenished drugs have been dispensed, the Parties agree that they will no longer seek to replenish the drugs and any monies collected and paid to Customer for the drugs will be returned to Cardinal Health.
- f. Reconciliation
  - i. Cardinal Health will conduct a monthly reconciliation ("Inventory Reconciliation") of Covered Drugs dispensed against those Covered Drugs received by Cardinal Health. If Cardinal Health uncovers a discrepancy as a result of the dispensed drugs being out-of-stock, slow-moving or discontinued, the Parties will resolve such discrepancies in accordance with Section 5(d) or 5(e) above.
  - ii. In the event Cardinal Health determines that the quantity of Covered Drugs provided to Cardinal Health exceeds the quantity of drugs dispensed to Eligible Patients hereunder, Cardinal Health will notify Customer of the overage. Customer will apply any unreplenished accumulator balance to the overage (reducing the balance by the quantity applied). If any overage remains, Cardinal Health will address the excess inventory by selecting whichever of the following options is operationally feasible, is transparent, and minimizes the time that excess inventory is held:
    1. return the excess quantity to Customer's supplier;
    2. set aside the over-purchased drugs for dispensing only to Eligible Patients;



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3. transfer the over-purchased drugs to Customer;
    4. repurchase the drug from Customer's supplier on a non-340B account through a credit-and-rebill process; or
    5. adjust the virtual inventory so that such excess is applied against future 340B Drug prescriptions dispensed hereunder.
  - iii. In the event Cardinal Health determines that the quantity of Covered Drugs provided to Cardinal Health is less than the quantity of drugs dispensed to Eligible Patients hereunder (including those awaiting replenishment), Cardinal Health will notify Customer of the shortfall and attempt to order replacement Covered Drugs sufficient to eliminate the shortfall. Cardinal Health will provide Customer with supporting documentation reflecting any discrepancies identified in accordance with the above.
  - iv. The Parties will conduct a final Inventory Reconciliation within sixty (60) days of the termination of the Agreement.
- 6. Ongoing Responsibility of Customer to Ensure Compliance.** Compliance with the 340B program shall remain Customer's responsibility and Customer shall be responsible for the payment of any financial remedies that result from any penalty for noncompliance that is not directly caused by Cardinal Health. The Parties shall identify the necessary information for the Covered Entity to meet its ongoing responsibility of ensuring compliance. The Parties agree that they will not resell or transfer drugs purchased at 340B prices to an individual who is not a patient of Customer. If Cardinal Health is found to have violated the drug diversion prohibition, it will pay Customer the amount of the discount in question so that Customer can reimburse the manufacturer. Customer understands that it may be removed from the list of covered entities because of its participation in drug diversion and no longer be eligible for 340B pricing.
- 7. Tracking System.**

Cardinal Health shall establish and maintain a tracking system suitable to prevent the diversion of Covered Drugs to individuals who are not Eligible Patients (e.g. a periodic printout of Eligible Patient's prescriptions with the dispensing records and a six-month comparison of purchasing and dispensing records). Routinely, Cardinal Health will provide to Customer a listing of all drugs dispensed to Eligible Patients including the name of the patient, name, strength and quantity of the drug(s) dispensed and date of dispensing.

Customer shall have the opportunity, upon reasonable notice and during business hours, to examine the tracking system. Cardinal Health shall permit Customer or its duly authorized representatives to have reasonable access to Cardinal Health's records specific to dispensations that qualified as 340B under Customer's provider number during the term of this Agreement in order to make periodic checks regarding the efficacy of such tracking system. Cardinal Health agrees to make any and all adjustments to the tracking system that Customer advises are reasonably necessary to prevent diversion of Covered Drugs to individuals who are not Eligible Patients.
- 8. Communication.** Customer and Cardinal Health agree to communicate on a monthly basis or as needed to discuss payment and program function.
- 9. Prescriptions.** Cardinal Health shall dispense Covered Drugs upon receipt of a prescription ordered on behalf of an Eligible Patient by a legally qualified health care provider affiliated with Customer that is subsequent to patient care provided by Customer.
  - a. Customer will furnish a list to Cardinal Health of all such qualified health care providers and will provide timely updates to such list of providers to reflect any changes.
- 10. Cardinal Health Services.** Cardinal Health shall provide the following services:
  - a. Obtain and maintain all necessary licensing and payer contracts.



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- b. Dispense prescription drugs and provide pharmacy services consistent with dispensing drugs to Eligible Patients in accordance with all applicable State and Federal statutes and regulations.
- c. On behalf of Customer, be responsible for adjudicating patient claims with third party payers.
- d. Submit claims to third party payers in accordance with payer requirements, including any applicable requirements specific to the 340B program.
- e. Collect payment from patients and/or third party payers for drugs dispensed by the Pharmacy pursuant to eligible 340B prescriptions (collectively, "Collections") and deposit Collections into a Cardinal Health account. Once a month, Cardinal Health shall make a payment to Customer in an amount equal to the prior month's Collections minus the prior month's Prescription Fees as set forth in Section 12. In the event the Prescription Fees exceed Collections, Customer shall be invoiced the remaining balance due and payment terms shall be as set forth in Section 13. Cardinal Health shall perform a quarterly reconciliation of Collections ("Collections Reconciliation") and the resulting true-up shall be included in the next monthly payment.
- f. Implement Customer defined sliding-scale fee schedule for patients who do not have prescription drug coverage through a third-party payer.
- g. Perform formulary maintenance related to 340B pricing to Customer on the purchases of Covered Drugs.
- h. Maintain and review Eligible Patient prescription drug profiles.
- i. Counsel and advise Eligible Patients consistent with the rules, limitations and privileges incident to the pharmacy-patient relationship.

**11. Independent Contractor.** Cardinal Health is an independent contractor and shall be solely responsible for its acts and omissions regarding advice and services it is required to provide to Eligible Patients and Customer. Cardinal Health agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with all applicable state and federal rules and regulations. Cardinal Health shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulation, or professional standard applicable to pharmacy services. Cardinal Health shall notify Customer of any refusal of service within twenty-four (24) hours of such refusal.

**12. Fees for Services.** Customer agrees to pay Cardinal Health in accordance with the terms below. Customer and Cardinal Health have freely negotiated the payment terms provided herein and neither has offered or received any inducement or other consideration from the other party for entering into this Agreement. The compensation to be paid to Cardinal Health is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referral or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program. In no event shall total payment for services under this Agreement exceed Ten Million Dollars (\$10,000,000).

- a. **Base Prescription Fee.** Customer agrees to pay Cardinal Health on a monthly basis an amount equal to sixteen dollars and fifty cents (\$16.50) for each 340B eligible Sliding Scale, ACE, cash and immunization administration prescription dispensed during that month.
- b. **Managed Care Prescription Fee.** Customer agrees to pay Cardinal Health on a monthly basis an amount equal to eighteen dollars and zero cents (\$18.00) for each Managed Care prescription (exclusive of all Medicaid prescriptions) dispensed during that month.
- c. **Minimum Monthly Prescription Volume.** If the combined actual volume of the Base and Managed Care Prescriptions, above, is less than the Minimum Monthly Prescription Volume as set forth below, the Customer agrees to pay Cardinal Health at the Base



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Prescription Fee for the balance. The Minimum Monthly Prescription Volume is set forth below:

Month Following Pharmacy Opening	Minimum Monthly Prescription Volume
Month 1	120
Month 2	240
Month 3	480
Month 4	720
Month 5	960
Month 6	1,200
Month 7	1,440
Month 8	1,680
Month 9	1,920
Month 10	2,160
Month 11	2,400
Month 12	2,582
Month 13 and thereafter	3,500

- d. **Annual Index.** The Base Prescription Fee and Managed Care Prescription Fee shall be indexed on the anniversary date of the Agreement Effective Date and annually thereafter using the annual percentage change in the index for the month three months prior (the most current month available at the time) for the Hospital and Related Services category of the Consumer Price Index for all Urban Consumers (CPI-U) as released by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI"). Notwithstanding the foregoing, any such annual CPI increase to the Prescription Fee shall not exceed three percent (3%).

**13. Payment.** Customer shall pay Cardinal Health the fees set forth above in U.S. dollars. All fees are non-refundable.

- Fees shall be due and payable twenty (20) days after receipt of invoice. ("Payment Due Date")
- Customer shall pay to Cardinal Health interest on any amount not paid by the Payment Due Date at a rate equal to the lower of (a) one percent (1.0%) per month or (b) the maximum rate of interest allowable under applicable law.
- Customer shall make all payments to Cardinal Health under this Agreement by wire transfer of funds or (ACH) initiated by Customer to the appropriate Cardinal Health bank account provided below:

Wells Fargo  
401 South Tryon Street  
Charlotte, North Carolina 28288  
ABA number: 1210 0024 8  
Account name: Cardinal Health, Inc.  
Account number: 2000002932064  
Ref: Cardinal Health 132, LLC

or, alternatively, by mail, to the following address:

Cardinal Health 132, LLC  
21377 Network Place  
Chicago, Illinois 60673-1213

**14. Taxes.** Each Party shall be responsible for paying any sales, use, property or other taxes or



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assessments of any kind as they might individually incur as a result of their participation in this Agreement.

- 15. Patient Choice.** The Parties understand and agree that Eligible Patients of Customer may elect not to use Cardinal Health for pharmacy services. In the event that an Eligible Patient elects not to use Cardinal Health for such service, the patient may obtain the prescription from the pharmacy provider of his or her choice.
- 16. Quarterly Financial Reports.** Cardinal Health shall provide Customer with quarterly financial statements relating to 340B eligible prescriptions, a detailed status report of collections and a summary of receiving and dispensing records in a form satisfactory to Customer. Such reporting shall include a reconciliation of 340B and retail drugs received and dispensed in order to verify no diversion has occurred.
- 17. Prohibition of Resale or Transfer.** Cardinal Health agrees that it will not sell or transfer a Covered Drug to an individual who is not an Eligible Patient.
- 18. Audits.**
  - a. The Parties understand and agree that both Cardinal Health and Customer are subject to audit by HRSA and/or OPA and by drug manufacturers who have signed a drug purchasing agreement with DHHS. These audits may pertain to Customer's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. The Parties further understand that HRSA and/or OPA have published proposed guidelines for such audits. Cardinal Health agrees to reasonably cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.
  - b. Cardinal Health acknowledges that Customer is expected to conduct annual independent audits of its contract pharmacy arrangements. Customer shall maintain sole discretion over the selection of an independent auditor. Customer shall determine the methodology to be utilized in performing the audit consistent with industry practice. Cardinal Health agrees to reasonably cooperate with such audits.
- 19. Copy of Agreement.** Upon written request to Customer by Office of Pharmacy Affairs ("OPA"), a copy of this Agreement will be provided to OPA.
- 20. Insurance and Related Matters.** Each Party agrees that upon execution of this Agreement and through its entire effective period, to obtain and maintain insurance coverage with limits and conditions as specified below.
  - a. Commercial General Liability insurance with a per occurrence limit of two million dollars (\$2,000,000);
  - b. Professional Liability insurance with a per occurrence limit of five million dollars (\$5,000,000);
  - c. Workers' Compensation and Employer's Liability insurance, with statutory limits for Workers' Compensation and Employer's Liability limits of one million dollars (\$1,000,000) per accident; Each Party shall waive subrogation rights against the other for Workers' Compensation benefits and will obtain a waiver from any insurance carriers with whom each carries Workers' Compensation insurance, releasing their subrogation rights against the other.
  - d. Cardinal Health acknowledges that Customer is self-insured for commercial general liability and medical malpractice up to \$1,000,000, with excess coverage policies in place above that amount. Cardinal Health agrees that this coverage is sufficient to meet Customer's obligations under this section.

In the event that any of the above described insurance policies are written on a claims made basis, then such policy(ies) shall be maintained during the entire period of this Agreement and for a period of not less than three (3) years following the termination or expiration of this Agreement.



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The Parties hereby acknowledge and agree that each may self-insure and self-administer all or any portion of the required insurance, and to the extent that each does self-insure, such insurance will not be deemed to exceed the scope of coverage and/or limits that would have been provided in an actual policy of insurance that satisfies the insurance requirements set forth in this Section 20. Further, no insurance coverage maintained by either Party, whether self-insurance or otherwise, will be construed to expand any indemnification obligations that may be contained in this Agreement.

Upon execution of this agreement and upon renewal of the required insurance policies, each Party agrees to provide evidence of the required insurance. A Memorandum of Insurance evidencing Cardinal Health insurance can be found at <https://aonline.aon.com> (user name: EOCCardinal; password: Card-299). Customer shall be an additionally insured on Cardinal Health's insurance.

- 21. Non-Assignment.** Neither Party may assign any rights or obligations under the Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, provided that either Party may with notice assign all of such Party's rights and obligations under the Agreement without the other Party's consent. (i) to an affiliate; or (ii) incident to the transfer of all or substantially all of such Party's business assets.
- 22. Term of Agreement.** The term of this Agreement shall be for a period beginning on October 1, 2017 ("Effective Date") and ending on December 31, 2022 unless subject to earlier termination as set forth below ("Termination Date"). At the end of the term, Customer has the right to purchase the pharmacy for a fee mutually agreed upon by the Parties. Upon termination of this Agreement, the separate lease agreement between the Parties would also terminate.

a. Default

- i. Default by Customer. If Customer (i) loses its lease to operate at Customer Site, (ii) becomes insolvent or bankrupt, (iii) fails to make payment to Cardinal Health or (iv) loses federal, state, or local license, permit, or approval, including 340B eligibility, or in any way violates federal or state law regulating the services and operations contemplated by this Agreement, then Cardinal Health may by notice declare Customer to be in material breach and may elect to the extent permitted by applicable law in addition to and without prejudice to any other remedy available at law or equity to cancel the then-remaining performance of this Agreement.
  - ii. Default by Cardinal Health. If Cardinal Health (i) loses its lease for pharmacy space at Customer Site, (ii) becomes insolvent or bankrupt, (iii) fails to transfer revenues collected on behalf of Customer to Customer, or (iv) should lose federal, state, or local license, permit, or approval, or in any way violates federal or state law regulating the services and operations contemplated by this Agreement, then Customer may by notice declare Cardinal Health to be in material breach and may elect to the extent permitted by applicable law in addition to and without prejudice to any other remedy available at law or equity to cancel the then-remaining performance of this Agreement.
- b. Termination of Lease Agreement. This Agreement shall be coterminous with Cardinal Health's lease agreement with Customer for the space at Customer Site in which Cardinal Health is operating its pharmacy.
- c. Changes in 340B Program. Should there be changes in 340B program laws, regulations, guidance, or pharmacy reimbursement that alter the business conditions under which this Agreement was executed, the Parties agree to renegotiate the terms of this Agreement. Should the Parties be unable to mutually agree on terms, either Party may terminate this Agreement effective upon thirty (30) days' written notice.
- d. Loss of Customer's 340B Eligibility. Should Customer lose its eligibility to participate in the 340B program or federally qualified health center status, Cardinal Health may elect to the

extent permitted by applicable law in addition to and without prejudice to any other remedy available at law or equity to cancel the then-remaining performance of this Agreement.

- e. Financial Viability. After the Opening Date of the Contract Pharmacy, the Parties agree to meet quarterly to evaluate and discuss the financial viability of the Services under this Agreement. Either Party may request, in good faith, a renegotiation of the terms of this Agreement or a mutual agreement to terminate the Agreement if that party deems the arrangement economically infeasible.
- f. Limitation of Liability. EXCEPT FOR CUSTOMER'S (i) INDEMNITY OBLIGATIONS IN SECTION 28 (ii) MATERIAL BREACH OF CONFIDENTIALITY OBLIGATIONS IN SECTION 23 AND (iii) VIOLATIONS OF APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- g. Build-out Expense Repayment. Build-out Expenses, as defined below, shall be amortized over the sixty (60) month period following the Opening of the pharmacy ("Initial Term"). In the event this Agreement is terminated, for any reason except for termination by Customer pursuant to Section 22 (a)(ii), during the Initial Term, Customer agrees to pay Cardinal Health the unamortized balance of the "Build-out Expenses." The Build-out Expenses include but are not limited to those expenses associated with the build-out of the physical space, pharmacy computer system and pharmacy 340B split billing software subscription. The final dollar amount of the Build-out Expenses shall be mutually agreed upon by the Parties and set forth by written Letter of Agreement to this Agreement on or around the Opening of the Pharmacy.

## **23. Confidentiality.**

- a. In the performance of this Agreement, each Party may have access to proprietary and/or confidential information, owned, controlled or licensed by one of the Parties. As used in this Agreement, the term proprietary and/or confidential ("Proprietary and/or Confidential") information of a Party shall include this Agreement and all information, including, but not limited to, market information, prices and pricing structure, in-depth Product and process knowledge, trade secrets, customer information, patient records, and intellectual property rights, including trademarks, patents and copyrights which are not generally available or disclosed to the public or which are marked or labeled Proprietary and/or Confidential. Each Party acknowledges that all such information constitutes Proprietary and/or Confidential information and agrees on behalf of itself and its employees, officers, affiliates and subcontractors that it shall keep such information and data confidential and that it shall not copy, publish or disclose the information or data to anyone without the express written consent of the other Party. Each Party shall use such information solely for the purpose of performing its obligations under this Agreement. Such information shall only be disclosed to those employees, agents or staff who require such information to perform their obligations under this Agreement, and subject to a confidentiality agreement with terms at least as restrictive as the terms contained herein.
- b. All manuals, procedures, documents and computer software, owned by Cardinal Health and utilized in Cardinal Health, are Proprietary and/or Confidential to Cardinal Health and constitute valuable intellectual property of Cardinal Health. All rights in and to such materials are exclusively reserved to Cardinal Health.
- c. The terms of this Confidentiality Paragraph shall survive termination of this Agreement.
- d. Notwithstanding anything else in this Section 23, Cardinal Health acknowledges that Customer is subject to the California Public Records Act ("CPRA"). Neither this agreement (and any amendments hereto) nor any other material that is subject to disclosure under the





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CPRA is Confidential under this section. In the event that any information is requested from Customer other than this agreement or any amendments hereto (all of which are not confidential), Customer shall give Cardinal Health notice of such request. Cardinal Health shall have ten (10) days in which to seek a protective order or other order of a court in California prohibiting disclosure of such information. If such order is denied or Customer's counsel advises Customer they are required to disclose such information, Customer shall be free to disclose the requested information without any penalty or other legal consequence.

- 24. Discounts.** If any discount, credit, rebate or other Product incentive is paid or applied by Cardinal Health regarding the Products, then it is a "discount or other reduction in price" pursuant to the Medicare/Medicaid Anti-Kickback Statute. Each Party shall comply with the "safe harbor" regulations stated in 42 C.F.R. § 1001.952(h).
- 25. Access to Records.** All pertinent reimbursement accounts and dispensing records maintained by Cardinal Health shall be accessible separately from Cardinal Health's own operations and will be made available to Customer, HRSA, and the manufacturer in the case of an audit. For a period of four (4) years after Cardinal Health has performed the Agreement, Cardinal Health shall make available, upon written request of the Secretary of the Department of Health and Human Services ("Secretary"), or upon request of the Comptroller General of the United States ("Comptroller"), or any of their duly authorized representatives (collectively, the "Requesting Party"), the Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to Cardinal Health pursuant to the Product Agreement ("Access"). If Cardinal Health pays a subcontractor more than \$10,000 over a twelve (12) month period to perform the Agreement, then Cardinal Health shall obligate the subcontractor to permit Access to the Requesting Party.
- 26. Press Release or Public Announcements.** No press release or other public announcement, verbally or in writing, referring to the other Party or the Party's parent company or any of its subsidiaries, shall be made without prior written consent from the other Party. Any press release or other public announcement shall require giving the other Party at least seventy-two (72) hours written notice of such release prior to its publication or announcement for approval.
- 27. Data.** Customer grants Cardinal Health the right to access and use data for research, benchmarking, and aggregate analysis (i.e., more than one health center). If such data contains Protected Health Information as defined by 45 CFR §164.501, then Cardinal Health shall use such data in conformance with the Privacy Rule and, before disclosing that data, de-identify that data pursuant to 45 CFR §164.514 and dissociate that data from Customer.
- 28. Indemnification.**
  - a. To the extent permitted by law, the Parties agree to protect, indemnify, defend, and hold each other harmless from and against all liability imposed upon or incurred by the one Party, including judgements, court costs, penalties, interest incurred in the defense of same caused by the acts or omissions of the other Party, or their agents, servants, employees, or staff in the performance of the terms of this Agreement.
  - b. The terms of this Indemnification Paragraph shall survive the termination of this Agreement.
- 29. Force Majeure.** If a Party is reasonably prevented from performing an obligation of the Agreement because of fire, flood, wind, earthquake, explosion or other disaster, acts of military authorities, acts of civil authorities unrelated to any violation of law by the Party, war, riot, insurrection, act of terrorism or other cause beyond the Party's reasonable control (collectively, a "Force Majeure Event"), then that Party shall not be in breach of the Agreement during the period that Party is prevented from performing that obligation, provided that the Party: (i) promptly delivers notice to the other Party identifying the Force Majeure Event; and (ii) immediately uses best efforts to perform the obligation notwithstanding the Force Majeure Event.
- 30. Notices.** Any notice from one Party to the other Party shall be in writing and shall be deemed to be given: (i) upon delivery if by hand or by overnight courier; or (ii) three days after mailing, if by certified



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or registered mail to the receiving Party's Notice Address below. Either Party may change its Notice Address upon delivery of notice to the other Party.

Cardinal Health 132, LLC  
Attn: Product Leader, Outpatient Solutions & Central Fill  
1330 Enclave Parkway  
Houston, Texas 77077

San Mateo Medical Center  
Attn: Chief Executive Officer  
222 West 39<sup>th</sup> Avenue  
San Mateo, California 94403

- 31. Severability; Non-Waiver.** If a court or other body of competent jurisdiction declares any term of the Agreement invalid or unenforceable, then the remaining terms shall continue in full force and effect. No right created by the Agreement shall be deemed waived unless specifically and expressly waived in a writing signed by the Party possessing the right.
- 32. Governing Law.** The Agreement shall be governed by the laws of the state identified in Customer's Notice Address above, without regard to that state's conflicts of law provisions.
- a. Equal Benefits Ordinance. Cardinal Health 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 Cardinal Health's employee is of the same or opposite sex as the employee.
  - b. Employee Jury Service. If required by law, Cardinal Health shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Cardinal Health 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 Cardinal Health, 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 Cardinal Health or that the Cardinal Health may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Cardinal Health certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Cardinal Health has no employees in San Mateo County, it is sufficient for Cardinal Health to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Cardinal Health 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, Cardinal Health 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 if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Cardinal Health acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.
- 33. Entire Agreement; Amendment.** The Agreement constitutes the entire agreement and understanding of the Parties regarding the subject matter of the Agreement and supersedes all prior written and oral agreements, proposals, and understandings between the Parties regarding the subject matter of the Agreement. No changes to the Agreement shall be effective unless signed by each Party.
- 34. Agreement Signatures.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument. Signatures to this Agreement may be delivered by facsimile, by electronic mail (e.g., a ".pdf" file) or by any other



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electronic means that is intended to preserve the original appearance of the document, and such delivery will have the same effect as the delivery of the paper document bearing the actual, handwritten signatures.

- 35. Business Associate Agreement.** Customer and Cardinal Health recognize that each may be a healthcare provider and a covered entity within the meaning of the Health Insurance Portability and Accountability Act of 1998 ("HIPAA"). Therefore, the Parties agree to execute a separate business associate agreement as it relates to the provisions set forth herein to protect confidential patient information under the Health Insurance Portability and Accountability Act of 1998 ("HIPAA"), the Privacy and Security Rules, 45 C.F.R. parts 160, 162 and 164 and the Health Information Technology for Economic and Clinical Health Act, included in Division A, Title XIII, Subtitle D of The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 15 (February 17, 2009), and any regulations or agency guidance issued pursuant thereto ("HITECH").
- 36. History of Discrimination.** Cardinal Health certifies that no finding of discrimination has been issued in the past 365 days against Cardinal Health 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 Cardinal Health within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Cardinal Health 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

Each person signing this Agreement represents that he/she intends to and has the authority to bind his/her Party to this Agreement.

For Cardinal Health: Cardinal Health 132, LLC

Michael D. Brown  
Michael D. Brown (Aug 10, 2017)

Signature

Aug 10, 2017

Date

Michael D. Brown  
Name (please print)

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COUNTY OF SAN MATEO

By: \_\_\_\_\_

President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board