

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into this _____ day of _____, _____, between the San Mateo Health Commission, hereinafter referred to as "HPSM", and the County of San Mateo, Behavioral Health and Recovery Services, hereinafter referred to as "BHRS."

WHEREAS, it is necessary and desirable that the HPSM be retained by BHRS for the purpose of administering the Pharmacy benefits provided to Indigent Adults and Medi-Cal Members with Share of Cost;

WHEREAS, BHRS provides utilization management services for HPSM's members that are also clients of BHRS in applicable HPSM programs:

WHEREAS, BHRS uses HPSM's Pharmacy systems and acts as an extension of HPSM's pharmacy staff in the conduct of these services:

WHEREAS, BHRS desires to provide pharmacy services for indigent individuals and HPSM Medi-Cal members who have not met their share of cost requirements:

WHEREAS, these individuals and members are not participants in HPSM programs and BHRS is financially responsible for these individual and member claims

WHEREAS, BHRS and the Pharmacy Benefit Manager (PBM) for HPSM, have executed a Business Associate Agreement and allows BHRS to send client eligibility files directly to the PBM for purposes of establishing eligibility for Indigent Adults and Med-Cal share of cost members:

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, HPSM and BHRS hereby agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Benefit Plan. The term "Benefit Plan" shall mean the scope of pharmacy benefits offered to Eligible Participants by BHRS. BHRS shall be responsible for maintaining the Benefit Plan and communicating any changes to the PBM in a timely manner.
- 1.2 Downstream Entity. "Downstream Entity" means any party that enters into an acceptable written arrangement with HPSM below the level of this AGREEMENT to provide the services which HPSM has contracted to provide pursuant to this AGREEMENT. Any party that enters into an agreement with HPSM, other than BHRS, to provide services specifically related to fulfilling HPSM's obligations to BHRS under this agreement shall be a Downstream Entity.

- 1.3 Effective Date. The term “Effective Date” shall mean the date upon which this Agreement shall be effective. The Effective Date is July 1, 2015.
- 1.4 Eligible Participants. The term “Eligible Participants” shall mean those individuals who are entitled to Pharmacy Services, with Eligible Participants being defined as Indigent and Medi-Cal with Share of Cost and identified in the Eligible Participant List prepared and maintained by BHRS, and delivered to the PBM.
- 1.5 Eligible Participant List. The term “Eligible Participants List” shall have the meaning set forth in Section 2.1.
- 1.6 Formulary. The term “Formulary” shall mean the list of prescription drugs and medications that are recommended by the BHRS for routine use and which will be dispensed through those pharmacies contracted with the PBM.
- 1.7 Pharmacy Benefit Manager. The term “Pharmacy Benefit Manager” (“PBM”) shall mean the third party administrator of the HPSM and BHRS prescription drug programs. Responsibilities of the PBM include processing and paying prescription drug claims; maintaining the formulary; contracting with pharmacies; and negotiating discounts and rebates with drug manufacturers.
- 1.8 Prescription Drug Services. The term “Prescription Drug Services” shall mean those outpatient prescription drug services or supplies provided as a covered benefit to Eligible Participants as set forth in the Benefit Plan.

ARTICLE 2

DUTIES TO BE PERFORMED BY HEALTH SYSTEM

- 2.1 Eligible Participant List. BHRS shall provide to the PBM a data file of Eligible Participants (the “Eligible Participants List”) on a daily basis and at least fourteen (14) days prior to the Implementation Date provided that the data is supplied in a format acceptable to the PBM. BHRS shall be solely responsible for ensuring the accuracy of this Eligible Participants List. BHRS shall be obligated to pay HPSM for Claims accepted by HPSM that are submitted by or on behalf of persons listed on any Eligible Participants List. BHRS bears the entire risk of all fraudulent Claims submitted by Eligible Participants or by unauthorized persons using an Eligible Participant’s ID Card or identification number. The Eligible Participants List shall contain all elements required by the PBM.
- 2.2 Notification Requirements. BHRS will review all reports, statements, and invoices provided by HPSM and shall notify HPSM in writing of any errors or objections within ninety (90) days of receipt. Specifically, this shall also apply to all service requests and any operation change requests. Until BHRS notifies HPSM in writing of any errors or objections, HPSM will be entitled to rely on the information contained in the reports, statements, and invoices. If BHRS does not notify HPSM in writing of any errors or

objections within the ninety (90) day period, the information contained therein will be deemed accurate, complete, and acceptable to BHRS, and thereafter HPSM shall have no liability related thereto. This does not apply with respect to any undercharges or underpayments of BHRS. HPSM shall document and retain supporting documentation for audit purposes. If BHRS notifies HPSM within the ninety (90) day period of any errors or objections, HPSM shall compensate BHRS for any verifiable errors or objections. Nothing in this article will absolve HPSM of any liability of errors, discrepancies, objections, or omissions identified under 5.3 of this contract.

ARTICLE 3

DUTIES TO BE PERFORMED BY HPSM

- 3.1 Provision of Services to BHRS. HPSM shall provide to BHRS the services listed in Exhibit A, attached hereto and incorporated herein as referenced. These services shall be provided in accordance with the agreed upon reimbursement terms stated in Exhibit B, attached hereto and incorporated herein as referenced.
- 3.2 Compliance with Laws and Regulations. HPSM shall comply with all applicable Federal laws, regulations, reporting requirements, CMS instructions, and with BHRS's contractual obligations with the California Department of Health Care Services, including, but not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act, Federal criminal law, the False Claims Act (31 U.S.C. §3729 et.seq.) and the Anti-Kickback statute (section 1128B(b) of the Act), HIPAA, and the HIPAA administrative simplification rules at 45 CFR Part 160, 162, and 164. HPSM agrees to include the requirements of this section in its contracts with any Downstream Entity, and to require any Downstream Entity to comply accordingly.

ARTICLE 4

PAYMENT DUE HPSM AND TO HEALTH CARE PROVIDERS

- 4.1 Advance Payment/Pharmacy Cost Reserve. Within in two weeks of the execution of this Agreement, BHRS shall pay HPSM two hundred and fifty thousand dollars (\$250,000) as an advance payment to fund a Pharmacy Cost Reserve. This amount is equal to the expected cost of Covered Services provided to the maximum expected number of Eligible Participants for two (2) months. HPSM will deposit this amount into a separate and distinct bank account that will house the Pharmacy Cost Reserve for the BHRS Pharmacy Program. All payments made by HPSM to the PBM for Covered Services to Eligible Participants will be drawn from this account. Likewise, all payments received from BHRS as repayment for Pharmacy costs, as described in Section 4.3 below, shall be deposited to this account. BHRS and HPSM agree to review the sufficiency of the Pharmacy Cost Reserve every three months and make adjustments as necessary to ensure that it holds sufficient funds to cover each month's pharmacy payments. Interest earned on this account is to be credited therein and be used at the discretion of the BHRS.

- 4.2 Payment to Pharmacy Benefit Manager. HPSM shall process and issue payments to the PBM on a biweekly basis, based on approved claims for Covered Services provided to Eligible Participants. These payments shall be drawn from the Pharmacy Cost Reserve described in Section 4.1 above, assuming sufficiency of funds in the Pharmacy Cost Reserve to issue payment in full to the PBM. These payments may be co-approved by County staff. Notwithstanding the review of fund sufficiency described in Section 4.1 above, if for any given month there is not enough funding in the Pharmacy Cost Reserve to issue payment to the PBM, HPSM shall hold all payments until such time as HPSM has received payment from BHRS to cover payment in full. HPSM shall notify BHRS of the insufficient funds on the first business day that HPSM learns of the insufficiency.
- 4.3 Monthly Statement for Payment of Pharmacy Costs. Based on each bi weekly payment, HPSM shall send a bi weekly statement to BHRS for pharmacy costs paid under this AGREEMENT ("Pharmacy Costs Statement"). BHRS shall issue payment in the full amount of the Pharmacy Costs Statement to HPSM within thirty (30) calendar days from the date of the statement. Should said amount not be paid within thirty (30) calendar days, BHRS shall be subject to interest charged on all amounts due at an amount equal to one and one-half percent (1.5%) per month, to accrue on a daily basis on the unpaid balance. If BHRS questions the amount of the Pharmacy Costs Statement, BHRS may notify HPSM of its questions regarding said amount and shall still be obligated to pay the full amount of the Statement within thirty (30) calendar days. If HPSM receives such a notice, it shall make a reasonable effort to respond to such questions within thirty (30) calendar days.
- 4.4 Suspension of Services. If thirty (30) calendar days have elapsed from the time said amount described in Section 4.3 was due HPSM, and payment (including any accrued interest) has not been made to HPSM, then HPSM shall give notice to BHRS of HPSM's intent to suspend its services and system operations for BHRS. If thirty (30) calendar days after receiving such a notice of HPSM's intent to suspend, BHRS does not remit to HPSM said amount plus interest, HPSM may suspend its services. At any time thereafter, HPSM may terminate this AGREEMENT as provided in Section 10.2 below. If BHRS makes only partial payment of the full amount including interest, HPSM may still suspend its services and systems operations and terminate this AGREEMENT as provided herein. BHRS shall be responsible for all costs of collection and agrees to reimburse HPSM for such costs and expenses.

ARTICLE 5

RECORDS

- 5.1 Maintenance of Records. HPSM shall maintain documentation of all Claims processed for six (6) years from the date of adjudication of the Claim. Such documentation shall be in a format and media deemed appropriate by HPSM and BHRS, and accessible to BHRS upon thirty (30) days prior written notice.

- 5.2 Use of Information. HPSM and BHRS may use, reproduce, or adapt information obtained in connection with this Agreement, including Claims data information and eligibility information, in any manner they deem appropriate, except that each party and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, including the provisions of the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, (referred to in this Agreement as “HIPAA”), and may not use the information in any way prohibited by Law. Each party shall be solely responsible for its own use of the information, and shall indemnify and hold the other party harmless for, from and against any and all costs, losses, and damages incurred by such other party as a result of such use.
- 5.3 Right to Audit Claims and Business Records. BHRS and representatives of a regulatory or accreditation agency may inspect and audit, once annually, HPSM’s business records that directly relate to billings made to BHRS for Claims. HPSM may inspect and audit, or cause to be inspected and audited, once annually, the books and records of BHRS directly relating to this Agreement, including the existence and number of Eligible Participants. BHRS and HPSM shall fully cooperate with representatives of each other, with independent accountants hired by either party, and with representatives of any regulatory or accreditation agency, to conduct any such inspection or audit. To the extent that BHRS and/or HPSM have control of the following, such audits shall be at the auditing party’s sole expense and shall only be made during normal business hours, following thirty (30) days written notice, without undue interference to the audited party’s business activity, and in accordance with reasonable audit practices. Where a regulatory or accreditation agency imposes demands that do not meet the above standards for conducting an audit, BHRS and HPSM will cooperate with the requirements of the auditing agency to the extent possible. An audit of HPSM’s records shall be conducted at HPSM’s office where such records are located and shall be limited to transactions over the twenty four (24) month period preceding such audit. If a completed audit reveals a discrepancy in the results and the previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy. The parties shall use reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the parties. Upon a final and conclusive determination of a discrepancy revealed by an audit procedure under this Agreement, the party that owes money shall pay such sums to the other party within thirty (30) days of the delivery of the conclusive audit findings.

ARTICLE 6

INDEMNIFICATION

- 6.1 Indemnity by BHRS. BHRS shall indemnify and save harmless HPSM, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description brought for, or on account of: (A) injuries to or death of any person, including BHRS staff, or (B) damage to any property of any kind whatsoever and to whomsoever

belonging, (C) any sanctions, penalties or claims of damages resulting from HPSM's failure to comply 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 HPSM, its officers, agents, employees, or servants, resulting from the performance of any work required of HPSM or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which HPSM 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 BHRS to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- 6.2 Indemnity by HPSM. HPSM shall indemnify and save harmless BHRS, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description brought for, or on account of: (A) injuries to or death of any person, including HPSM staff, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from BHRS failure to comply 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 BHRS, its officers, agents, employees, or servants, resulting from the performance of any work required of BHRS or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which BHRS 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 HPSM to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- 6.3 Concurrent Negligence. In the event of concurrent negligence of BHRS, its officers and/or employees, and HPSM, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

ARTICLE 7

NON-DISCRIMINATION

7.1 Non-Discrimination.

- 7.1.1 HPSM shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.

- 7.1.2 *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- 7.1.3 *Equal employment opportunity.* HPSM 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. HPSM's equal employment policies shall be made available to BHRS upon request.
- 7.1.4 *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject HPSM to penalties, to be determined by the County of San Mateo County Manager ("County Manager"), including but not limited to:
- 7.1.4.1 termination of this Agreement;
 - 7.1.4.2 disqualification of HPSM from bidding on or being awarded a contract with the County of San Mateo for a period of up to 3 years;
 - 7.1.4.3 liquidated damages of \$2,500 per violation;
 - 7.1.4.4 imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine HPSM's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to HPSM under the Service Agreement or any other Service Agreement between HPSM and BHRS.

HPSM shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified HPSM that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. HPSM shall provide BHRS with a copy of their response to the Complaint when filed.

- 7.1.5 *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, HPSM shall comply with the San Mateo County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

7.1.6 Where applicable, HPSM shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

7.1.7 *Jury Service.* HPSM shall comply with the San Mateo County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from HPSM, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with HPSM or that HPSM deduct from the employees' regular pay the fees received for jury service.

ARTICLE 8

CONFIDENTIALITY

8.1 Confidential Information. The term "Confidential Information" means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"). Confidential Information includes, but is not limited to, matters of a technical nature such as trade secrets, methods, compositions, data and know-how, designs, systems, processes, computer programs, files and documentation, similar items or research projects, and any information derived therefrom; matters of a business nature, such as the terms of this Agreement (including any pricing terms and contract terms which must be subject to a protective order), marketing, sales, strategies, proposals, and lists of actual or potential Eligible Participants, Participating Providers as well as any other information that is designated by either party as confidential.

8.2 Treatment of Confidential Information. Subject to the California Public Records Act and related state and federal legislation, the Receiving party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information or any information derived therefrom to any third party unless required in the performance of the Receiving Party's duties under this Agreement or pursuant to controlling law; (iii) not to make any use whatsoever at any time of such Confidential Information except for the purpose of this Agreement and will not use it for its own or any third party's benefit; and (iv) not to copy, analyze, transcribe, transmit, decompile, disassemble or reverse engineer any such Confidential Information, and not use such Confidential Information in any patent application. The confidentiality obligations of this Section 8.2 shall not apply to information which, as evidenced in writing:

8.2.1 is or becomes publicly known by Receiving Party through no breach of this Agreement;

- 8.2.2 is learned by the Receiving Party from a third party entitled to disclose it;
- 8.2.3 is rightfully obtained by the Receiving Party prior to this Agreement; or
- 8.2.4 is required by law to be disclosed.

The confidential obligations contained in the foregoing clauses (i), (ii), (iii) and (iv) shall be perpetual. Receiving Party may make disclosures required by law or court order provided Receiving Party uses diligent, reasonable efforts to afford the Disclosing Party the opportunity to limit disclosure and to obtain confidential treatment or a protective order.

- 8.3 No Transfer Or Right Or Title. Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting, either expressly or by implication, or otherwise, the Receiving Party any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. Each party agrees that it may not be adequately compensated for damages arising from a breach or threatened breach of any of the covenants contained in this Article 8 by the other party, and each party shall be entitled to injunctive relief and specific performance in addition to all other remedies. None of the information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

ARTICLE 9

TERM AND TERMINATION

- 9.1 Term. This Agreement shall become effective on the Effective Date and shall be for a term of three (3) years, ending June 30, 2018, with the understanding that this agreement is, dependant on the availability or lack thereof of l funding.. At the option of BHRS and upon the availability of funding, two one (1) year terms may be extended with the same terms and conditions upon the execution of an Addendum that shall be finalized ninety (90) days prior to each anniversary date. Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination.
- 9.2 Termination With Cause. This Agreement may be terminated at anytime by either party based on a material breach of any terms or conditions herein stated provided that thirty (30) days' advance written notice of such material breach shall be given to the other party and such party shall have the opportunity to cure such material breach during such thirty (30) day notice period.
- 9.3 Effect of Termination. If this Agreement is terminated pursuant to this Article 10: (i) all further obligations of the parties under this Agreement shall terminate (but not such party's obligation to make payments arising prior to the termination of this Agreement or

any obligation surviving the termination hereof); (ii) all Confidential Information provided by either party shall, except for Confidential Information required by law to be retained by a party, be immediately returned by a Receiving Party (as defined in Section 9.1), or such Receiving Party shall certify to the Disclosing Party that such materials have been destroyed; (iii) should HPSM have a deposit from BHRS (as described in Section 4.2, above), such deposit shall be reduced by any offsets for payment defaults and collection costs before being returned; (iv) neither party shall be relieved of any obligation or liability arising from any prior breach of such party or any provision of this Agreement; and (v) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Sections 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 8.1, 8.2, 8.3, 10.1, 10.7, 10.9, 10.10, 10.13, 10.17, 10.18 and 10.19.

ARTICLE 10

GENERAL PROVISIONS

- 10.1 Use of HPSM Software. BHRS acknowledges that HPSM owns, or possesses license rights (including off-the-shelf vendor agreements) from certain third parties to the entire software system used by HPSM in processing Claims and preparing reports including computer programs, system and program documentation, and other documentation relating thereto (collectively, including certain license rights, the "HPSM Software System"), and that the HPSM Software System is the exclusive and sole property of HPSM. BHRS disclaims any rights to the HPSM Software System as described above (including access to any applicable source codes), any resultant reports, procedures or forms developed by HPSM, as well as development or modification of the HPSM Software System as a result of any customization performed by any party.
- 10.2 Insurance. Each party shall obtain (to the extent not already possessed) and maintain, with respect to the activities in which such party engages pursuant to this Agreement, professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by such party and comprehensive liability insurance. Upon request, either party shall promptly deliver to the other party evidence of such insurance. Each party agrees to notify the other party immediately upon such party's receipt of any notice canceling, suspending or reducing the coverage limits of its professional liability insurance or comprehensive liability insurance.
- 10.3 Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party hereto (whether by operation of law or otherwise) without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement (including this Section 12.3), no consent shall be required and this Agreement will apply to, be binding in all respects upon, and inure to the benefit of any successors of BHRS to this Agreement resulting from a Change of Control. A "Change of Control" shall occur if as

a result of one or a series of related transactions: (i) all or substantially all the assets of BHRS are disposed of to any entity not wholly owned and controlled by BHRS, outside the ordinary course of business; (ii) BHRS effects a merger with one or more other entities in which BHRS is not the surviving entity; or (iii) BHRS engages in a transaction that results in any entity holding securities possessing a majority of the voting power that does not hold such voting power as of the time of this Agreement. BHRS shall provide HPSM with thirty (30) days' advance written notice in the event of any transaction(s) resulting in a Change of Control, as well as an Officer's Certificate from the successor entity, agreeing to be bound by the terms and conditions of this Agreement.

- 10.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or other term or condition of this Agreement on any future occasion.
- 10.5 Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.6 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (at or after the date hereof) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 10.7 Choice of Law. This Agreement shall be construed, interpreted, and governed according to the laws of the State of California without regard to its conflict of laws and rules.
- 10.8 Force Majeure. The performance obligations of HPSM and/or BHRS respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes which are outside the control of HPSM and/or BHRS, and could not be avoided by the exercise of due care, including but not limited to suspension of funding, acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive or terrorist activity or sabotage, fires, floods, earthquakes, explosions, strikes, slow-downs, lockouts or labor stoppage, freight embargoes, or by any enforceable law, regulation or order. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as conditions cease, the party affected thereby shall fulfill its obligations as set forth under this Agreement. In order to benefit from the provisions of this Section 11.8, the party claiming force majeure must notify the other reasonably promptly in writing of the force majeure condition. If any event of force majeure, in the reasonable judgment of the

parties, is of a severity or duration such that it materially reduces the value of this Agreement, then this Agreement may be terminated without liability or further obligation of either party (except for any obligation expressly intended to survive the termination of this Agreement and except for all amounts that have become or will become due and payable hereunder).

- 10.9 Entire Agreement; No Third Party Beneficiaries. This Agreement, including the Exhibits: (i) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and (ii) is intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights, and this Agreement does not confer any such rights, upon any other third party.
- 10.10 Use of Name. Neither party shall use the other party's name, trade or service mark, logo, or the name of any affiliated company in any advertising or promotional material, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.
- 10.11 Notice. Any notice required or permitted by this Agreement, unless otherwise specifically provided for in this Agreement, shall be in writing and shall be deemed given: (i) one (1) day following delivery to a nationally reputable overnight courier; (ii) one (1) day following receipt by facsimile during the receiving party's business hours with written confirmation thereof; or (iii) three (3) days after the date it is deposited in the United States mail, postage prepaid, registered or certified mail, or hand delivered addressed as follows:

To: BHRS: Stephen Kaplan, Director
 Behavioral Health and Recovery Services
 225 37th Avenue
 San Mateo, CA 94403

To HPSM: Maya Altman, Chief Executive Officer
 Health Plan of San Mateo
 701 Gateway Blvd., Suite 400
 South San Francisco, CA 94080

Any party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

- 10.12 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile and upon such delivery the

facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the non receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

- 10.13 Independent Contractors. BHRS and HPSM are independent entities and nothing in this Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchiser and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Nothing in this Agreement is intended to be construed, or be deemed to create, any rights or remedies in any third party, including but not limited to an Eligible Participant. Nothing in this Agreement shall be construed or deemed to confer upon HPSM any responsibility for or control over the terms or validity of the Covered Services. HPSM shall have no final discretionary authority over or responsibility for BHRS administration. Further, because HPSM is not an insurer, plan sponsor, or a provider of health services to Eligible Participants, HPSM shall have no responsibility for: (i) any funding of BHRS or BHRS Pharmacy Program benefits; (ii) any insurance coverage BHRS or any plan contract of BHRS or Eligible Participants; or (iii) the nature or quality of professional health services rendered to Eligible Participants, except as described in Exhibit A.
- 10.14 Consent to Amend. This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of HPSM and BHRS.
- 10.15 Headings. The headings of Articles, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 10.16 Compliance with Laws and Regulations. This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance.
- 10.17 Construction.
- 10.17.1 For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.
- 10.17.2 The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

- 10.17.3 As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”
- 10.17.4 Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections” and “Exhibits” are intended to refer to Articles of this Agreement, Sections of this Agreement and Exhibits to this Agreement.
- 10.18 Remedies Cumulative; Specific Performance. The rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that to the extent permitted by applicable law, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement for the benefit of any other party to this Agreement, such other party shall be entitled (in addition to any other remedy that may be available to it) to: (i) a decree or order of specific performance to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Neither party shall be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or legal proceeding.
- 10.19 HIPAA Compliance. For the purposes of this Agreement, HPSM is deemed to be a “Business Associate” of BHRS as set forth in, but not limited to, Title 45, Section 164.502(e) and 164.504(e) of the Code of Federal Regulations (CFR) and contained in this Agreement. (Business Associate Requirements, Exhibit C, attached hereto and incorporated herein as referenced). The parties will endeavor to comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:
- 10.19.1 all services provided by HPSM under this Agreement will be provided in such a manner as to enable BHRS to remain at all times in compliance with all HIPAA regulations applicable to BHRS, to the extent that the BHRS compliance depends upon the manner in which such services are performed by HPSM;
- 10.19.2 all software, application programs and other products licensed or supplied by HPSM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that BHRS use of such software, application programs and other products and associate documentation from HPSM, when utilized by BHRS in the manner as directed by HPSM, will fully comply with the HIPAA regulations applicable to BHRS. In the event any amendment to this Agreement is necessary for BHRS to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, BHRS and HPSM will negotiate in good faith and amend this Agreement accordingly,


with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations; and

- 10.19.3 all software, application programs, eligibility lists or other member-specific information and other products licensed or supplied by BHRS under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that HPSM's use of such software, application programs and other products and associate documentation BHRS, when utilized by HPSM in the manner as directed by BHRS, will fully comply with the HIPAA regulations applicable to HPSM. In the event any amendment to this Agreement is necessary for HPSM to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, HPSM and BHRS will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations.

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assignees. This Agreement constitutes the entire understanding between the parties hereto.

SAN MATEO HEALTH COMMISSION
d.b.a. HEALTH PLAN OF SAN MATEO

COUNTY OF SAN MATEO



BY
MAYA ALTMAN
Chief Executive Officer

BY
**PRESIDENT, BOARD OF
SUPERVISORS**

Oct. 28, 2015

DATE

DATE

EXHIBIT "A"
SCOPE OF SERVICES

In consideration of the reimbursement set forth in Exhibit "B", HPSM shall provide the following services.

HPSM shall provide the outpatient pharmacy benefit to Eligible Participants under this contract using its pharmacy benefit manager (PBM). The outpatient pharmacy benefit shall be provided in accordance with BHRS guidelines. HPSM shall work with its PBM to implement a BHRS-approved formulary applicable to Eligible Participants. Medications not included on the formulary shall require prior authorization.

Eligible members must receive outpatient medications from contracted pharmacies. Prior authorization for the pharmacy benefit, as specified in the Benefit Plan, shall be conducted by BHRS. All potential denials shall be forwarded to BHRS Medical Director for review. Requests for non-formulary medications shall be forwarded to BHRS Pharmacy Services Manager for review.

HPSM shall oversee the PBM's claims processing and supplier contracting processes to ensure quality of service delivery.

EXHIBIT "B"
REIMBURSEMENT

BHRS is fully responsible for the Pharmacy costs incurred under Agreement in so far as they are properly adjudicated and paid by HPSM in accordance with the Benefit Plan for services provided to Eligible Participants as identified on the Eligible Participants List. Reimbursement for these Pharmacy costs shall be provided in accordance with Article 4 of this Agreement

Total costs for this contract payable by BHRS shall not exceed Two million seven hundred thousand dollars (\$2,700,000) during the term of the Agreement.