

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND WELLPARTNER, INC.

This Agreement is entered into this _____ day of _____, 2016, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Wellpartner, Inc., 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 providing certain pharmacy-related services, including but not limited to dispensing, recordkeeping, drug utilization review, formulary management, patient profile, patient counseling, medication therapy management services, and other clinical pharmacy services, relating to County's participation in the 340B drug program for patients of the County's San Mateo Medical Center and its affiliated clinics.

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:

Attachment A (and related exhibits)—Wellpartner Services Standard Language
Exhibit A—Services
Exhibit B—Payments and Rates
Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)
Attachment I—§ 504 Compliance

2. Services to be performed by Contractor

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

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 determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000). 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.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2016, through June 30, 2021.

5. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Chief of the Health System 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.

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. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

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.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and 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.

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. 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.

11. 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, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or 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:

- ☒ Comprehensive General Liability \$1,000,000
(Applies to all agreements)

- ☐ Motor Vehicle Liability Insurance\$1,000,000
(To be checked if motor vehicle used in performing services)
- ☒ Professional Liability\$1,000,000
(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which 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.

12. 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, and regulations, 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 Exhibit D to Attachment A, 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. 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 or regulation, the requirements of the applicable law or regulation 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 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.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. 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

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☒ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

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 must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager 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 Section 12, above. Such duty shall include reporting of the filing 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 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 Manager, 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 Manager.

To effectuate the provisions of this Section, the County Manager 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.

14. 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 if this Agreement's total value listed in Section 3, above, is less than one-hundred thousand dollars (\$100,000), but Contractor 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.

15. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. 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. In the event that any term, condition, provision, requirement, or specification set forth in Exhibit A or Exhibit B of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Attachment (or exhibit to Attachment A), the provisions of Exhibit A or Exhibit B 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.

17. 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 the specific electronic format.

Upon any termination of the Agreement, regardless of the nature or timing of the termination, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue to receive from Contractor all maintenance and support services, at the then-applicable rates provided, however, that the annual support and maintenance fee shall be prorated and paid in advance on a monthly basis during such time, and the amount of such support and maintenance fee shall remain subject to the limitations set forth in the Agreement regarding any increase in such fee.

18. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) 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: Accounts Payable
Address: 222 W 39th Ave
San Mateo, CA 94403
Email: SMMC-Accounts-Payable@smcgov.org

In the case of Contractor, to:

Name/Title: Wellpartner, Inc.
Address: 20800 SW 115th Ave, Suite 100
Tualatin, OR 97062
Telephone: 877-231-6346

19. Electronic Signature

If 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, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☐ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

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

COUNTY OF SAN MATEO

By: _____

President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____

Clerk of Said Board

Wellpartner, Inc.

Contractor's Signature  _____

Signee: Ken Bodmer, Exec Vice President, Finance & Admin

Date: 30 June 2016

Attachment A – Wellpartner Services Standard Language

The language of this Attachment A and its exhibits constitute Wellpartner's standard language, as modified by the parties. The terms of this Attachment A clarify the rights and duties of the parties to the Agreement to which this Attachment A (and its exhibits) are attached. The Effective Date of this Attachment is the same as that of the Agreement.

RECITALS

WHEREAS, Section 602 of Public Law 102-585, the Veteran's Health Care Act of 1992, enacted Section 340B of the Public Health Services Act ("340B" or the "340B Act"), and provides for the limitation of pricing on certain drugs purchased by qualifying entities under the 340B Act;

WHEREAS, the 340B Act classifies certain health care facilities as "Covered Entities" making them eligible to purchase outpatient prescription drugs at preferential prices from certain drug manufacturers and/or Drug Wholesalers (as defined below) that have entered into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS") and to dispense, either directly or through the use of contracted pharmacies, such prescription drugs for use by certain qualifying patients of the Covered Entity (each a "340B Pharmacy Program");

WHEREAS, Entity hereby represents to Administrator that it is a Covered Entity within the meaning of Sections 4 and 5 of the 340B Act, 42 U.S.C. § 256b (a) (4), (5) and eligible to purchase Covered Drugs from Drug Wholesalers or manufacturers under the 340B Act;

WHEREAS, Administrator provides Covered Entities certain services to support their 340B Pharmacy Programs, including but not limited to prescription claims processing, pharmacy network management, inventory management, financial reconciliation of accounts and detailed program reporting (as such services are further described in this Agreement, the "Services");

WHEREAS, as a properly licensed pharmacy operating in accordance with applicable laws and regulations, Wellpartner also provides prescription dispensing and billing, patient counseling and therapy management, and related services for certain Covered Entities (as such services are further described in this Agreement, and whether performed by Wellpartner or another Contract Pharmacy, the "Pharmacy Services").

WHEREAS, Entity desires to engage Wellpartner to provide such Administrative Services and Pharmacy Services and Wellpartner desires to accept such engagement; and

WHEREAS, by entering into this Agreement, Entity and Administrator intend to facilitate Entity's participation in a 340B Pharmacy Program.

NOW THEREFORE, in consideration of the covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Entity and Wellpartner hereby agree as follows:

1. DEFINITIONS

- 1.1 “340B Cost” means the discounted cost available to Entity on the date the claim is processed by Administrator. 340B Cost is obtained from the wholesaler price file in effect for Contract Pharmacy and Entity based on the 11-digit National Drug Code (“NDC”) for the dispensed product.
- 1.2 “AccessConvergence® Program” means a 340B contract pharmacy program administered by Wellpartner that includes an enhanced reimbursement discount structure.
- 1.3 “AccessIntegra®” refers to Wellpartner’s web based portal that provides comprehensive data views and reports for 340B oversight. It includes but is not limited to, detailed claims data for auditing prescriptions and supporting documentation for inventory and financial tracking.
- 1.4 “Adjudication” means the process by which a Contract Pharmacy interacts with Entity and/or a Third Party Payer in connection with a Patient’s Claim in order to: (i) determine whether the drug covered by such Claim constitutes a Covered Drug; (ii) verify the Co-payment amount to be collected by Contract Pharmacy; (iii) establish the reimbursement amount received by Contract Pharmacy for dispensing the Covered Drug; and (iv) receive any other informational claim edits and messaging.
- 1.5 “Administrative Fee” means monies received by Administrator from Entity in connection with its provision of the Administrative Services, as calculated in accordance with Exhibit A to this Attachment A.
- 1.6 “Agreement” means this Attachment A and the Agreement to which it is attached, including all exhibits, schedules and addenda thereto, as they may be amended from time to time.
- 1.7 “Average Wholesale Price” means the price listed in Medispan or other national drug database selected by Wellpartner for an 11-digit National Drug Code.
- 1.8 “Bill-to/Ship-to Arrangement” means a contractual arrangement between Entity and its Drug Wholesaler(s) whereby (i) Wellpartner will, on behalf of Entity, order Covered Drugs from Drug Wholesalers for delivery directly to Contract Pharmacy to replenish drugs previously dispensed to Patients by Contract Pharmacy on behalf of Entity, and (ii) such Drug Wholesalers will invoice the Entity for the replenished drugs based on preferential prices under the 340B Pharmacy Program.
- 1.9 “Brand Name Drug and/or Brand Drug” means a Covered Drug that is available from a single manufacturer and designated as a brand name by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.10 “Claim” means a prescription claim for a Covered Drug that has been submitted by Contract Pharmacy for verification of coverage and reimbursement.

- 1.11 “Confidential Information” means all information or proprietary information of a Party, whether in oral, written or electronic form and whether prepared by a Party or its employees, agents, and/or other representatives, which shall include, but is not limited to, (i) concerns of the business of a Party, the terms of this Agreement, and/or the services provided by a Party pursuant to this Agreement, (ii) such Party’s proprietary business information, reimbursement rates, pricing information, reports, analyses, compilations, studies, operating margins, merchandising and selling techniques, internal policies and procedures, contracts, and other business or industry information that if disclosed could be used by another person or entity to disadvantage such Party; and (iii) information held or disclosed by such Party that, if disclosed, would result in a violation of applicable patient privacy or others laws. Confidential Information does not include any documents that are subject to disclosure pursuant to the California Public Records Act.
- 1.12 “Contract Pharmacy” means (i) those retail and/or mail order pharmacies that have entered into a Contract Pharmacy Services Agreement, either directly with Entity or with Administrator for the purpose of establishing the Services, reimbursement, and operational terms for such Contract Pharmacy to dispense Covered Drugs to Patients in accordance with this Agreement, the 340B Pharmacy Program and related laws and regulations and (ii) Wellpartner, when it is directly providing Pharmacy Services hereunder. For purposes of this Agreement, “Contract Pharmacy” may mean a single pharmacy or multiple pharmacies as listed in the Contract Pharmacy Service Agreement.
- 1.13 “Co-payment” means that portion of the total charge for each Covered Drug dispensed to a Patient that the Contract Pharmacy is required to collect from such Patient as indicated at the time of Claim Adjudication, regardless of whether such charge is designated as a fixed amount (e.g., \$5.00), a coinsurance amount (e.g., 20%), a deductible, or a credit (e.g., through the issuance of a voucher).
- 1.14 “Covered Drug” means a covered outpatient drug, as such term is defined in Section 1927(k) of the Social Security Act, 42 U.S.C. 1396r-8(k)(2) and (3). Covered Drug also includes drug products which have discounted prices under the 340B Prime Vendor Program (“PVP”), which was established in accordance with Section 340B of the Public Health Service Act, Public Law 102-585, and which are available to Entity through its participation in the PVP.
- 1.15 “Date of Service” means the date a Covered Drug is dispensed to a Patient pursuant to the terms of this Agreement.
- 1.16 “Dispensing Fee” means monies paid to Contract Pharmacy (or retained by Contract Pharmacy, as the case may be) in connection with its provision of Pharmacy Services to Patients on behalf of Entity according to the terms set forth in the applicable Schedule of Exhibit A of this Agreement. The Dispensing Fee shall be due only on a per completed eligible transaction basis (i.e. a prescription for a Covered Drug is appropriately dispensed to a Patient pursuant to the terms of this Agreement, the applicable Schedule, and applicable Pharmacy Program requirements). Only one Dispensing Fee shall be due and payable per eligible transaction and the Dispensing Fee shall be the Contract Pharmacy’s exclusive reimbursement for Pharmacy Services provided pursuant to this Agreement.
- 1.17 “Drug Wholesaler” means an entity that is licensed under applicable laws and regulations to

distribute legend and non-legend drugs and medical supplies to persons other than the final consumer or patient.

- 1.18 “Eligible Claim” means a prescription for a Covered Drug written by a Health Care Provider, which is dispensed by the Contract Pharmacy to a Patient and meets the 340B Claim qualification criteria set forth herein.
- 1.19 “Entity” means an entity which is eligible to participate in a Pharmacy Program identified in an Exhibit to this Agreement and which has contracted with Administrator for the administration of such Pharmacy Program; including the management of Pharmacy Services provided by Contract Pharmacy under this Agreement.
- 1.20 “Estimated Acquisition Cost” or “EAC” means the amount paid by Entity to *Contract Pharmacy* for Covered Drugs that cannot be replenished, either due to low volumes, market shortages, discontinuation or changes to the National Drug Code. The EAC will be paid according to the rates listed in Exhibit A to this Agreement.
- 1.21 “Generic Drug” means a Covered Drug that is designated as “generic” by Medispan or sourced from multiple manufacturers and is designated as a generic drug by a nationally recognized price-reporting service selected by Contract Pharmacy.
- 1.22 “Gross Savings” means the difference between the amount paid for a Claim, including Third Party Payor payments and Patient payments, and the 340B Cost.
- 1.23 “Health Care Provider” means any person duly licensed to render medical services to Patients; that is recognized under applicable laws and regulations as having authority to prescribe Covered Drugs; who is directly employed by Entity, or has a contractual arrangement with Entity to provide care to Patients or provides medical services as a result of a referral from Entity, and has responsibility for Patient’s care.
- 1.24 “Launch Date” means the date that any Adjudication first commences with respect to the 340B Pharmacy Program.
- 1.25 “NADAC” means the National Average Drug Acquisition Cost as published on a regular basis by the Centers for Medicaid and Medicare Services (“CMS”).
- 1.26 “Party” or “Parties” means Entity or Wellpartner, either individually or collectively as the case may be.
- 1.27 “Patient” means an individual who (i) has established a relationship with Entity such that Entity maintains a record of and responsibility for care; (ii) receives health care services from a Health Care Provider; (iii) otherwise satisfies the requirements for status as a “patient” as defined at 61 FR 207, pp. 55156 to 55158, or in any guidelines, rules or regulations hereafter published, issued or promulgated in amendment, supplement or replacement thereof; and (iv) has been prescribed a Covered Drug by a Health Care Provider.

- 1.28 “Pharmacy Program(s)” means a form of pharmacy benefit or pharmacy purchasing mechanism which Entity is eligible to access and has been implemented using the administrative and management services of Administrator through which Covered Drugs are provided to Patients under this Agreement in a manner consistent with a designated benefit or plan structure and applicable laws and regulations. The terms specific to the provision of Pharmacy Services and Contract Pharmacy’s Dispensing Fee in connection with a particular Pharmacy Program shall be established as a Schedule to Exhibit A of this Agreement.
- 1.29 “Pharmacy Services” means those professional services, including but not limited to the dispensing of Covered Drugs, provided by Contract Pharmacy under this Agreement.
- 1.30 “Specialty Drugs” means a Covered Drug that has one or more of the following characteristics: complex therapy for complex disease; specialized patient training and coordination of care (services, supplies, or devices) required prior to therapy initiation and/or during therapy; requires unique patient compliance and safety monitoring; includes unique requirements for handling, shipping and storage; and has potential for significant waste due to the high cost of the drug. For the purposes of this Agreement, Specialty Drugs are established as a Schedule to Exhibit E of this Attachment A or as otherwise agreed upon in writing by the Parties as part of the Project Plan listed in Section 2.1, below.
- 1.31 “Third Party Payer” means a payer of a Patient Claim, other than Entity, including without limitation: (i) an insurance company or pharmacy benefit manager providing a prescription insurance benefit or coverage; (ii) the applicable state Medicaid agency; (iii) the entity or organization that receives payment from the applicable state Medicaid agency for the Pharmacy Services provided to a Patient during the applicable premium payment period; (iv) a duly qualified Medicare Part D plan; and/or (v) any other authorized third party that pays or contributes a portion of the payment in connection with an Patient’s Claim for a Covered Drug.
- 1.32 “True-Up Process” refers to an inventory and financial reconciliation process through which Wellpartner identifies the outstanding balance of Covered Drugs previously dispensed by Contract Pharmacy to Patients under Entity’s 340B Pharmacy Program that have not been replenished by Entity within a specified time period and for which Entity shall remit to Contract Pharmacy (or Wellpartner shall offset from monies owed Entity) the Estimated Acquisition Cost of such dispensed inventory as set forth in this Agreement.
- 1.33 “Wholesale Acquisition Cost” or “WAC” means the current wholesale acquisition cost of the dispensed medication as defined in the latest edition published by Medispan, First Data Bank, Red Book or any other reference source (as Wellpartner may designate in its sole discretion). The parties acknowledge that WAC is a list price only and does not reflect discounts, fees or other amounts provided to wholesalers or others which may affect the product’s actual acquisition cost.

2. ESTABLISHMENT OF 340B PHARMACY PROGRAM

- 2.1 Within thirty (30) days of the Effective Date, the Parties shall work together in good faith to develop a project plan that will describe the manner in which the 340B Pharmacy Program will be established for Entity and set forth, among other things, the associated implementation

tasks, timeline and deadlines. Such project plan, as mutually agreed upon by the Parties and (the “Project Plan”), shall be executed by the Parties and deemed to be part of this Agreement.

2.2 Wellpartner shall, consistent with this Agreement and the Project Plan, provide Entity with the following Services:

2.2.1 Provide historic claim utilization analytics and recommendations to Entity in connection with its subsidy or other coverage program(s) for uninsured Patients.

2.2.2 Complete regional pharmacy mapping and relationship building and contracting with appropriate pharmacies that will serve as Entity’s network of Contract Pharmacies, as further described below.

2.2.3 Coordinate with Entity for the submission of information required by State and Federal oversight agencies, including the Office of Pharmacy Affairs (OPA).

2.2.4 As applicable, assist Entity in contracting with third-party vendors that are necessary for the ongoing management and support of the 340B Pharmacy Program (*e.g.*, Drug Wholesalers).

2.2.5 Develop and deliver Patient and Health Care Provider educational and outreach programs and marketing collateral designed to promote an understanding of the 340B Act and the benefits of Entity’s 340B Pharmacy Program.

2.2.6 In coordination with Entity, train Entity, Contract Pharmacy staff, and Health Care Providers on Wellpartner’s operational processes and the 340B Pharmacy Program requirements.

2.2.7 Determine qualification criteria (as defined below) for Covered Drugs to be included in the 340B Pharmacy Program.

2.3 In order for the parties to establish the 340B Pharmacy Program, Wellpartner shall work with Entity for the completion of the forms and files described in this Section 2.3, in each case prior to the Launch Date and as required throughout the term of this Agreement.

2.3.1 Entity Implementation Form: This form captures Entity information and must be completed prior to implementation of the 340B Pharmacy Program.

2.3.2 OPA Registration Form: This form connects Contract Pharmacy to Entity and must be completed for each Entity/Contract Pharmacy pair.

2.3.3 Wholesaler Account and Credit Application: This form (i) provides Entity with an account at the Wellpartner’s or Contract Pharmacy’s Drug Wholesaler and authorizes the Drug Wholesaler to conduct credit checks; (ii) enables Wellpartner to manage

inventory replenishment orders; and (iii) must be submitted to the Drug Wholesaler by Entity.

- 2.3.4 Prime Vendor (Apexus) Participation Agreement: This form registers Entity with the 340B Prime Vendor Program (“PVP”). The PVP is responsible for the negotiation of sub-ceiling 340B pricing on behalf of participating entities. This form is required only if Entity wishes to participate in the PVP.
- 2.3.5 Participating Provider Data Files: Entity shall provide, subject to the terms of the Business Associate Agreement (“BAA”) between the Parties and attached hereto as Exhibit D of this Attachment A, applicable participating Health Care Provider information as required to support operation of the 340B Pharmacy Program.
- 2.3.6 Encounter Data Files: Entity shall provide, where applicable, subject to the terms of the BAA, outpatient encounter data for all 340B-eligible clinics and departments within Entity. Data shall be provided by Entity in the format and on a schedule agreed to by the Parties.
- 2.3.7 Medicare Cost Report: If Entity is a hospital or includes a hospital, Entity is required to submit to Wellpartner, subject to the terms of Section 13 hereof, a copy of the most recent Medicare cost report as filed with CMS and copies of any future costs reports as required to be filed with CMS on an annual basis. Entity is solely responsible for the determination of eligible clinics and departments from the Medicare cost report; however, Wellpartner reserves the right to confirm eligibility through reference to Entity’s cost reports. Entity may redact any portions of the cost reports that are not necessary for the purpose of confirming clinic and department eligibility.
- 2.4 In order for the Parties to establish the 340B Pharmacy Program and enjoy the benefits of this Agreement and for Wellpartner to perform Administrative Services and Pharmacy Services hereunder, Entity shall act in good faith and in a timely manner to:
 - 2.4.1 Provide Wellpartner reasonable access to Entity personnel so that the Parties can satisfy objectives and timelines for the 340B Pharmacy Program.
 - 2.4.2 Implement a 340B Pharmacy Program educational program, such as Wellpartner’s current “*It Matters*” program, or other program of its choosing.
 - 2.4.3 Cooperate with Wellpartner in the implementation of Entity-approved quality assurance programs and process improvement initiatives for the 340B Pharmacy Program and Services provided under this Agreement.
- 2.5 In order to establish a network of Contract Pharmacies for the 340B Pharmacy Program:
 - 2.5.1 Wellpartner will locate and provide Entity with a list of potential Contract Pharmacies in areas as needed and requested by Entity.

- 2.5.2 Wellpartner will in consultation with Entity, negotiate on behalf of Entity and in Entity's best interests to secure agreements with Contract Pharmacies on terms agreed to by Entity and consistent with the Project Plan. Entity may not be bound by any such negotiations, however, without a duly-authorized executed agreement in writing in advance.
- 2.6 Entity acknowledges that, subject to applicable state and federal laws and related professional standards, the treatment of any patient and the prescribing of any drug is at the sole discretion of Health Care Provider, and the decision to dispense any Covered Drug is at the sole discretion of Contract Pharmacy. Entity acknowledges that in the performance of Administrative Services and Pharmacy Services, Wellpartner makes no representations, either express or implied, with respect to the discretion exercised by the Health Care Provider. For avoidance of doubt, Wellpartner shall not be liable or responsible for any injury, including death, suffered by any Patient as a result of the use of a Covered Drug prescribed under this Agreement, except to the extent such injury was caused by any violation by Wellpartner of its obligations under this agreement or any negligent or willful act or omission of Wellpartner in the performance of Pharmacy Services hereunder.

3. COVERED DRUG DISPENSING AND PROGRAM REPORTS

- 3.1 Entity, in coordination with Wellpartner, shall determine which Covered Drugs qualify for inclusion in its 340B Pharmacy Program based on the 340B Pharmacy Program formulary, drug availability, the 340B Pharmacy Program pricing availability and eligibility based on the requirements set forth in the 340B Act and applicable laws and regulations, dispensing frequency or a financial analysis of the value of the drug Claim when processed through the 340B Pharmacy Program, and other criteria established by and between Entity and Wellpartner ("qualification criteria"). Wellpartner agrees to assist Entity in making such determination, if requested by Entity. For avoidance of doubt, Wellpartner does not make any representations or provide any warranties as to which drugs will qualify as Covered Drugs.
- 3.2 Entity shall instruct Health Care Providers to provide Patients with prescriptions that meet applicable federal and state laws and regulations and state Board of Pharmacy requirements. Entity acknowledges that Wellpartner may be unable to process or record certain Claims in the event prescription information is incomplete or a prescription does not otherwise meet established prescription standards.
- 3.3 Entity will not take any action to prevent a Patient from choosing any pharmacy of his or her choice to fill the prescription. This Agreement shall not be interpreted, construed, or otherwise used to limit patient access or choice.
- 3.4 Wellpartner shall not directly or indirectly solicit or otherwise entice, and shall take commercially reasonable steps to restrict Contract Pharmacy from directly or indirectly soliciting or otherwise enticing, any Patient to transfer or otherwise fill or re-fill any prescriptions for Covered Drugs other than under and pursuant to the terms of this Agreement.
- 3.5 Entity and Wellpartner will identify the necessary information for Entity to meet its ongoing

responsibility of ensuring compliance with the 340B Pharmacy Program requirements and to establish mechanisms to ensure availability of that information for periodic independent audits performed by the Entity. Both Parties understand that they are subject to audits by outside parties (including by DHHS and participating manufacturers) of records that directly pertain to the Entity's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts. See 42 U.S.C. § 256b(a)(5)(c). Wellpartner shall ensure that appropriate accounts and dispensing records pertaining to the 340B Pharmacy Program are maintained during the term of the Agreement and for three (3) year thereafter, and shall permit Entity, upon reasonable business notice and during normal business hours, to examine such records.

Without limiting the generality of the foregoing, Wellpartner will ensure that all pertinent reimbursement accounts and dispensing records, maintained by Wellpartner, will be accessible separately from Wellpartner's own operations and will be made available to Entity, the DHHS Health Resources and Services Administration ("HRSA"), and any manufacturer in the case of an audit.

- 3.6 Wellpartner shall use the information from Claims that have been Adjudicated in order to create those reports referenced in Exhibit C to this Attachment A. Wellpartner shall provide copies of such reports to Entity via its online reporting portal in accordance with Wellpartner's standard reporting cycle. Additionally, Entity may request, and Wellpartner agrees to provide without charge, the reports referenced in Exhibit C to this Attachment A within forty-eight (48) hours of such request up to once per calendar quarter during the term of this Agreement, notwithstanding when such request falls within Wellpartner's standard reporting cycle. Entity may request, and Wellpartner may agree, to create and provide to Entity reports not referenced in Exhibit C to this Attachment A, with such agreement being on mutually agreeable terms to include a fee payable to Wellpartner of \$150 per hour for any related work with a minimum of Four (4) hours. All data generated hereunder and all reports generated with such data, shall be the sole and exclusive property of, and shall be considered proprietary to, Entity.
- 3.7 For Patients with insurance that covers outpatient prescription drugs, Entity shall:
 - 3.7.1 Ensure Wellpartner has all relevant and pertinent information related to Entity's eligibility for participation in the 340B Pharmacy Program; and
 - 3.7.2 Assist Wellpartner in confirming proper set-up of its processing system to ensure all relevant and pertinent information for the 340B Pharmacy Program is entered correctly.
 - 3.7.3 Conduct periodic audits of reports and data extracts to ensure proper processing of Claims eligible for preferential pricing under 340B.
- 3.8 For Patients without insurance covering prescription drugs, where Entity is providing a subsidy or other coverage, or who choose to pay for prescriptions outside of any insurance coverage, Entity shall:
 - 3.8.1 Ensure all prescriptions written for the 340B Pharmacy Program are for Patients;

- 3.8.2 Ensure that all prescriptions eligible for preferential pricing under 340B are identified as such (by 340B prescription pad, 340B stamp, SIG notation or other method, as mutually agreed upon by the Parties);
- 3.8.3 Encourage, consistent with the Patient choice requirements under 340B, Patients to utilize Wellpartner's pharmacy; and
- 3.8.4 Mark prescriptions eligible for preferential pricing under 340B to reflect appropriate share of cost or sliding scale fee (as applicable).

4. CONTRACT PHARMACY SERVICES REQUIREMENTS

- 4.1 To the extent Wellpartner is providing Pharmacy Services as a Contract Pharmacy hereunder:

- 4.1.1 Wellpartner shall prepare its operations and systems according to implementation requirements related to the 340B Pharmacy Program, which may include, but are not limited to: (a) configuration of an Adjudication platform; (b) execution of required forms to meet regulatory requirements of the 340B Pharmacy Program; (c) coordination with switch processor for access to Claims; and (d) training of staff with respect to specific 340B Pharmacy Program requirements.
 - 4.1.2 Wellpartner represents: (a) it is in good standing with Board(s) of Pharmacy in all states in which it is licensed and all other applicable government oversight agencies and possesses all licenses required to provide Pharmacy Services as set forth in this Agreement; (b) neither it, nor any of its pharmacists currently have a required license which is suspended or revoked; and (c) it shall ensure that the information provided to Entity in connection with Pharmacy Services is and will continue to be true and complete. Upon request of Entity, Wellpartner shall supply copies of any and all professional licenses, certifications, and/or other documentation required to be maintained under this Agreement. Wellpartner shall immediately notify Entity in the event Wellpartner or any of its pharmacists suffers the loss or revocation or suspension of any required license.
 - 4.1.3 Wellpartner shall lawfully render Pharmacy Services and/or cause Covered Drugs to be dispensed to Patients in a manner consistent with applicable legal and regulatory requirements, the terms of this Agreement and in the same manner and quality as provided in the ordinary course of business absent this Agreement.
 - 4.1.4 Wellpartner shall not discriminate in the provision of Pharmacy Services and shall in all instances dispense Covered Drugs to Patients pursuant to the terms set forth in this Agreement. Notwithstanding the foregoing, it shall not be considered discriminatory or otherwise a violation of its obligations under this Agreement if a Wellpartner pharmacist, based on his/her professional training, knowledge, skill and experience, refuses to dispense a Covered Drug to a Patient due to concerns regarding patient safety.

- 4.1.5 Wellpartner agrees to reasonably cooperate with Entity in the review and resolution of complaints or appeals by Patients related to the provision of Pharmacy Services.
 - 4.1.6 As permitted by applicable law, regulation and Wellpartner's professional standards, Wellpartner shall comply with Entity's drug formulary requirements. Wellpartner will use reasonable best efforts to contact the prescriber and encourage formulary compliance and request authorization to change a prescribed drug to a therapeutic equivalent formulary drug.
 - 4.1.7 Wellpartner shall maintain an adequate inventory of supplies, drugs, equipment, and other items as required for the provision of Pharmacy Services. Supplies used to provide Covered Drugs to Patients shall be sourced from a reputable manufacturer, Drug Wholesaler or other distributor subject to applicable state and federal laws. Wellpartner further represents and warrants that it will not use samples, returned, recalled, or expired supplies and/or products in the provision of Pharmacy Services, except to the extent permitted by state restocking laws.
- 4.2 Wellpartner shall ensure that Contract Pharmacies agree to comply with the above requirements when providing Pharmacy Services.

5. PHARMACY CLAIM PROCESSING AND REPORTING

- 5.1 To the extent Wellpartner is providing Pharmacy Services as a Contract Pharmacy hereunder:
- 5.1.1 When presented with a valid prescription from a Patient, Wellpartner shall submit a Claim for Adjudication and payment and dispense Covered Drugs to such Patient in accordance with the terms of this Agreement. Thereafter, Wellpartner shall track and reconcile such Adjudicated Claims as provided in Section 6.2.1 hereof.
 - 5.1.2 A Claim submitted by Wellpartner shall constitute a representation by Wellpartner that Pharmacy Services were provided in accordance with the terms of this Agreement. Wellpartner acknowledges that Claims that are not Eligible Claims ("Ineligible Claims") must be excluded from the 340B Pharmacy Program and Wellpartner will not receive a Dispensing Fee (as Contract Pharmacy) or Administrative Fee or replenishment drugs in connection with such Claims.
 - 5.1.3 Wellpartner acknowledges that proper Adjudication of Claims and Wellpartner's processing of Claims with respect to the 340B Pharmacy Program are dependent upon the accurate transmission and processing of Claims data. Wellpartner shall not be liable for any damages or actions arising out of any interruption in transmission or processing as a result of inaccurate Claims data, except as the same may be the result of Wellpartner's negligence or willful misconduct. Wellpartner shall use ordinary care and reasonable diligence in the performance of its duties under this Agreement. Wellpartner disclaims all express and implied warranties of any kind, including, but not limited to any warranty as to the quality, accuracy, or suitability for any particular purpose of the data used or generated by Wellpartner under this Agreement, except

that Wellpartner shall not intentionally adversely affect the quality, accuracy or suitability of data it receives from others.

- 5.1.4 Wellpartner shall have full responsibility for the collection of reimbursement amounts due from Third-Party Payers and Patients in connection with Pharmacy Services. In no case may Wellpartner refuse to provide Pharmacy Services to a Patient due to dissatisfaction with the reimbursement rate established with such Third Party Payers or in a Schedule to this Agreement.
 - 5.1.5 Unless otherwise directed in writing by Wellpartner, Wellpartner shall not seek or collect from a Patient any amount greater than as indicated on its system at the time of Adjudication of the applicable Claim. Wellpartner agrees that in no case, including but not limited to the nonpayment by a Third Party Payer or Entity, or as applicable, the failure to resupply Covered Drugs in accordance with the terms of this Agreement, it shall seek payment or reimbursement from or have recourse against a Patient for Pharmacy Services rendered.
- 5.2 Wellpartner shall ensure that Contract Pharmacies agree to comply with the above requirements, as applicable, when providing Pharmacy Services.

6. FINANCIAL RECONCILIATION SERVICES

- 6.1 The Parties agree that the terms set forth in Exhibit A to this Attachment A and as otherwise outlined in the Agreement represent the financial understanding between the Parties with respect to the Administrative and Pharmacy Services provided under the Agreement and are deemed part of this Agreement.
- 6.2 Wellpartner shall, consistent with this Agreement and applicable legal and regulatory requirements, provide the 340B Pharmacy Program account reconciliation services to Entity as follows:
 - 6.2.1 Wellpartner shall use its proprietary Claims tracking system and process to record and track all Claims that have been Adjudicated. Following Adjudication of a Claim and the dispensing of a Covered Drug by the Contract Pharmacy (including Wellpartner when acting as Contract Pharmacy), Wellpartner shall review the Claim information, qualification criteria, Eligible Patient Data Files, Participating Provider Data Files, and Encounter Data Files, and any other information which it deems necessary for determining whether the Claim is an Eligible Claim, managing replenishment, ensuring the proper reconciliation of 340B Pharmacy Program accounts, and reporting under the 340B Pharmacy Program.
 - 6.2.2 Wellpartner shall invoice and undertake the collection and remittance of the amounts due from the appropriate parties in connection with such Eligible Claims; and/or coordinate with Entity or its designated Third Party Payer for the reconciliation of Claims and payments due under this Agreement.

- 6.2.3 Neither Party will submit or cause to be included in the 340B Pharmacy Program under this Agreement any Claim which is known by it to be paid, in whole or in part, by a fee-for-service Medicaid program, unless otherwise directed by the applicable state Medicaid agency and to the extent consistent with the then-current Medicaid Exclusion File on HRSA's website.
- 6.2.4 Approximately forty-five (45) days after Wellpartner's standard invoicing cycle, Wellpartner shall remit or cause to be remitted to Entity funds due to reconcile accounts under this Agreement. The amount remitted to Entity shall be based on amounts appropriately collected by Contract Pharmacy for Eligible Claims minus: (a) the applicable Dispensing Fee retained by Contract Pharmacy, as applicable; (b) the Administrative Fee retained by Wellpartner; and (c) any offset amounts required for any True-Up Process or reversals.
- 6.2.5 The amounts represented in Entity remittance vouchers represent the difference between the amount due to Entity for the dispensing period, less any administrative fees or credits appropriately applied by Wellpartner (including true-up costs). Wellpartner will initiate an Electronic Funds Transfer ("EFT") to/from the Entity account. The EFT process used under this Agreement will be finalized and instituted by the parties at the time of Wellpartner implementation or Contract Pharmacy implementation, as applicable.
- 6.2.6 Entity acknowledges and agrees that Wellpartner shall be authorized to credit and/or offset against any amounts due a Party hereunder, any overpayments, reversals or other adjustments determined to be necessary or appropriate to properly reflect the terms of this Agreement. Wellpartner shall not be responsible for pursuing any unresolved claims for payment that may exist with any Third Party Payer, Drug Wholesaler, Medicaid agency or other person or entity.
- 6.2.7 Entity acknowledges that Wellpartner operates only as an intermediary between Entity and Contract Pharmacy. Wellpartner will not be obligated to pay Entity or Contract Pharmacy amounts which may become due hereunder out of Wellpartner's own funds; rather, Wellpartner will pay or reconcile amounts due after designated funds are received by Wellpartner.
- 6.3 Each Party shall be responsible for the payment of their respective taxes, fees and/or similar assessments and any related penalties and interest assigned which is due or may become due in connection with this Agreement; including as a result of income / earnings (whether gross or net), property, employment, payroll, workers compensation, unemployment or other similar assessment.

7. INVENTORY MANAGEMENT SERVICES

- 7.1 Entity shall contract, either directly or with the assistance of Wellpartner, with one or more Drug Wholesalers to enable the replenishment of dispensed Covered Drugs to Contract Pharmacy. Wellpartner shall, on behalf of Entity and under Entity's applicable Drug Wholesaler contracts, initiate the processing of orders for 340B Covered Drugs directly from the Drug Wholesaler to replenish stocks of 340B Covered Drugs dispensed in connection with Eligible Claims by Contract Pharmacy, based on Wellpartner records.

- 7.2 Wellpartner shall monitor and track Eligible Claims so that Wellpartner or Contract Pharmacy does not receive shipments to replenish 340B Covered Drugs in excess of quantities dispensed to Patients under the 340B Pharmacy Program. Wellpartner shall arrange for such drugs to be shipped directly to Contract Pharmacy and billed to the Entity (in the form of a Bill-to/Ship-to arrangement) and shall perform tracking, reporting, and auditing of replenishment orders consistent with applicable laws and regulations.
- 7.3 Title to Covered Drugs shall pass to Wellpartner or Contract Pharmacy, as applicable under the Bill-to/Ship-to Arrangement upon receipt by Wellpartner or Contract Pharmacy.
- 7.4 In the event Contract Pharmacy inventory (i) is not replenished within the period designated in the applicable Contract Pharmacy Services Agreement (not to be less than ninety (90) days) or (ii) is permanently discontinued, Entity will reimburse Contract Pharmacy the Estimated Acquisition Cost for such dispensed drugs. The EAC shall be based on the National Drug Code of the Covered Drug that is trued up. Trued-up drugs shall be identified and regularly reported to Entity for audit and reconciliation purposes.
- 7.5 Wellpartner shall notify Entity (and shall ensure that Contract Pharmacy notifies Wellpartner) of any discrepancies with respect to replenishment shipments received from a Drug Wholesaler and undertake commercially reasonable action to remedy any such issue.
- 7.6 The Parties shall take all commercially reasonable steps necessary to prevent the diversion of Covered Drugs (including, but not limited to, causing the shipment of Covered Drugs in connection with Ineligible Claims). In the event it is determined that an Ineligible Claim was submitted for processing, Wellpartner shall remove such Claim from the 340B Pharmacy Program and cause an inventory correction. Entity shall be required to true-up Contract Pharmacy, in accordance with the True-Up Process described in this Agreement, for Claims that are reported in error.
- 7.7 Wellpartner represents that the practices used at each Contract Pharmacy relating to replenishment of virtual inventory will comply with the 340B Act and all other applicable law, regulation, and guidance, including without limitation the prohibition on drug resale or transfer (i.e. diversion) or the prohibition against duplicate discounts.
- 7.8 During the term of this Agreement, Wellpartner shall conduct periodic automated Claim audits to verify its compliance with obligations related to provision of Services. If as a result of any such audit, Wellpartner determines that an Ineligible Claim was submitted or an Eligible Claim was incorrectly processed, Wellpartner shall take steps to ensure that Wellpartner reverses or properly re-adjudicates such Claim as appropriate. Upon request of Entity, Wellpartner shall provide Entity with copies of reports of automated Claim audits within five (5) business days of performing such audits.
- 7.9 Entity shall immediately notify Wellpartner in the event of any suspected fraud or abuse related to the 340B Pharmacy Program by Entity staff, a Patient or person claiming to be a Patient of Entity. Entity shall work with Wellpartner and regulatory enforcement authorities to investigate and resolve any suspected fraud or abuse issue.

8. RECORDS AND AUDITS

- 8.1 Each Party shall maintain all records and other information relating to the performance of its obligations under this Agreement in a manner and for a period as required by the 340B Act and all other applicable law, regulation, and guidance, and otherwise consistent with the terms of this Agreement, during the term of this Agreement and for the three (3) years thereafter.
- 8.2 Entity acknowledges and agrees that it is subject to audit by DHHS and by the drug manufacturers that supply Covered Drugs to Wellpartner or Contract Pharmacy. Entity agrees to fully comply and cooperate with any such audit. To assist Entity in complying with such audit, Wellpartner agrees to provide Entity copies of any reports referenced in Exhibit C and to make its appropriate personnel reasonably available to Entity during business hours to answer questions regarding such audit. In the event that Entity requests Wellpartner to provide any reports not referenced on Exhibit C or to make its personnel available to Entity for support “on-site,” (i) Wellpartner shall endeavor to provide Entity such non-standard reports and on-site support, and (ii) in exchange for such work, Entity shall pay to Wellpartner an additional fee of \$150 per person per hour of work and reimburse Wellpartner any of its out-of-pocket travel and other costs and expenses in performing such work.
- 8.3 Entity, or an independent auditor appointed by Entity, may periodically audit Wellpartner, either electronically or otherwise, to confirm Wellpartner’s compliance with its obligations as set forth in this Agreement.
- 8.4 Wellpartner shall permit Entity, and/or its duly authorized agents, upon reasonable notice and during normal business hours, and at its sole cost and expense, to examine Wellpartner's signature files, patient profiles, prescription records, and other records to the extent reasonably necessary to verify that Administrative Services and Pharmacy Services, including the provision of Covered Drugs hereunder by a Contract Pharmacy, were provided in a manner consistent with the terms of this Agreement. In lieu of signature files, Entity shall accept POS register receipts or patient verification letters as notice of Patients’ receipt of prescriptions. In addition, Wellpartner shall have the right from time to time during normal business hours, and at its sole cost and expense, to examine Entity’s books and records as necessary to audit and verify the accuracy of any amounts paid or received under this Agreement. Any such examinations shall be subject to the requirements of state and federal laws regarding the confidentiality of medical and prescription drug records. Additionally, all information obtained as a result of any such examinations shall be held in strict confidence and used solely for the purposes of ensuring compliance with this Agreement. Examinations may be made at any time during the term hereof, and for up to twelve (12) months after the expiration or termination of this Agreement. If any examination of Wellpartner's records reveals that Ineligible Claims were submitted for reimbursement, Wellpartner shall cause the administrative reversal of such Claims and all impacted accounts will be reconciled accordingly.
- 8.5 Wellpartner shall, during the term of this Agreement and for longer periods as required by law, maintain accurate dispensing records of Covered Drugs as necessary for Entity to meet regulatory reporting and audit requirements.
- 8.6 Wellpartner shall, during the term of this Agreement and for longer periods as required by law,

maintain accurate records of Claims processed through the 340B Pharmacy Program.

9. COMPLIANCE

- 9.1 Subject to Entity's cooperation, direction, and supervision, Wellpartner shall perform its Administrative Services and Pharmacy Services under this Agreement in accordance with the requirements of the 340B Act and all other applicable laws, regulations, and guidance. Further Wellpartner shall make reasonable efforts to ensure each Contract Pharmacy to perform its obligations under the applicable Contract Pharmacy Services Agreement in accordance with the requirements of the 340B Act and all other applicable laws, regulations, and guidance.
- 9.2 Wellpartner shall provide information and guidance to the Entity to assist it to design its 340B Pharmacy Program and its related systems, policies, and processes in order to maintain compliance with the 340B Act and all other applicable laws, regulations, and guidance.
- 9.3 Entity, with the assistance of Wellpartner, shall be responsible for overseeing all aspects of the Entity's 340B Pharmacy Program and for ensuring that such 340B Pharmacy Program remains in compliance with the 340B Act and all other applicable laws, regulations, and guidance. Wellpartner shall be responsible for Eligible Claim determinations (including determinations regarding Patient status) made hereunder using accurate Participating Provider Data Files and accurate Patient Encounter Files.

10. INSPECTION OF AGREEMENT BY DRUG MANUFACTURER

- 10.1 A copy of this Agreement will be provided by Entity, upon request, to a participating drug manufacturer that supplies Covered Drugs to Contract Pharmacy, as the licensed pharmacy providing Pharmacy Services hereunder under a Bill-to/Ship-to Arrangement; provided, however, that should a Party receive such request, such Party shall provide notice thereof to the other Party, which other Party shall then have fifteen (15) days following receipt of such notice to redact from this Agreement any information such Party believes is confidential or proprietary (to the extent permitted by law), and the Party responding to such request shall delete such information from the copy of the Agreement that is provided to the requesting drug manufacturer.

11. INDEMNIFICATION; LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES

- 11.1 Entity shall indemnify, defend and hold Wellpartner harmless from and against any and all liability, losses, claims, lawsuits, costs, damages and/or expenses whatsoever, including reasonable attorneys' fees and court costs in favor of any third party and arising out of or attributable to a material breach by Entity of its obligations under this Agreement.
- 11.2 Wellpartner shall indemnify, defend and hold Entity harmless from and against any and all liability, losses, claims, lawsuits, costs, damages and/or expenses whatsoever, including reasonable attorneys' fees and court costs arising out of or attributable to (i) a material breach by Wellpartner of its obligations under this Agreement, (ii) Wellpartner's failure to comply with laws, regulations, or guidance applicable to the 340B Pharmacy Program, or (iii) Contract

Pharmacy's failure to comply with law, regulations, or guidance applicable to the 340B Pharmacy Program, but only to the extent such failure was known at the time such failure occurred, or was not known at the time such failure occurred, to Wellpartner, due to its negligence or was part of a pattern of non-compliance that was known to Wellpartner or that was not known to Wellpartner, due to its negligence.

- 11.3 At the request of the indemnified Party based on any such action, the indemnifying Party shall at its sole cost and expense, defend such action with counsel reasonably acceptable to the indemnified Party which arises out of the foregoing indemnification obligation. The indemnified Party shall promptly notify the indemnifying Party of any such action, and if requested to defend said action, given full and complete authority, information and assistance for the defense of same, provided, however, the indemnifying Party shall have no authority to enter into any settlement or compromise on behalf of the indemnified Party without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.
- 11.4 **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER SECTION OF THIS AGREEMENT, ABSENT GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR (I) FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR (II) DIRECT AND OTHER DAMAGES IN EXCESS OF THE AMOUNT OF FEES EARNED BY WELLPARTNER UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE OF THE APPLICABLE CLAIM FOR DAMAGES, IN EACH CASE EVEN IF EITHER PARTY HAS BEEN ADVISED OF POSSIBILITY OF DAMAGES. THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION 11.4 SHALL APPLY TO ANY INDEMNIFICATION OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, BUT SHALL NOT APPLY TO BREACHES BY A PARTY OF ITS CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS UNDER THIS AGREEMENT. NOTHING IN THIS SECTION SHALL LIMIT THE LIABILITY OF A PARTY TO ANY THIRD PARTIES (IN NEGLIGENCE OR OTHERWISE) BASED ON THE NEGLIGENT OR INTENTIONAL ACTS OF THE PARTY TO THIS AGREEMENT.**
- 11.5 **EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, WELLPARTNER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.**

12. TERM AND TERMINATION

12.1 This Agreement shall commence as outlined in the Agreement to which this Attachment A is attached and shall continue for a period of five (5) years.

12.1.1 Notwithstanding the above paragraph, Either Party may terminate this Agreement for convenience at any time without cause or penalty prior to OPA Effective Date with thirty (30) days written notice.

12.2 Early Termination. Prior to the end of the Initial Term or any Renewal Term hereunder, the Agreement may be terminated as follows:

12.2.1 **Material Breach**. In the event of a material breach of any of the terms of this Agreement by a Party, the non-breaching Party may terminate this Agreement upon thirty (30) days prior written notice to the breaching Party unless the breaching Party cures such breach within such thirty (30) days; provided, however, that in the event Wellpartner fails to comply with applicable laws, regulations, or guidance in its provision of Pharmacy Services or Administrative Services under this Agreement, or as otherwise expressly provided herein, Entity may terminate this Agreement with immediate effect.

12.2.2 **Termination Due to Changes in Law or Guidance**. The Parties acknowledge that existing laws, regulations, or guidance may change and that the courts or state or federal agencies with appropriate jurisdiction may change their interpretation of existing law. In the event any such change: (i) renders this Agreement illegal, (ii) materially changes the obligations of a Party, (iii) results in a material decrease in 340B program utilization, or (iv) jeopardizes the tax-exempt status of a Party or creates a significant risk of civil penalties, the Parties shall use their best efforts during the ninety (90) day period thereafter to mutually agree to such amendments to the Agreement as to permit its valid and legal continuation. If, after such ninety (90) day period, the Parties are unable to agree to amend the Agreement, either Party may terminate its participation in this Agreement effective immediately by giving written notice of such termination to the other Parties.

12.2.3 Any term or provision set forth in this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnification obligations, confidentiality obligations, liability limitations and audit provisions.

13. CONFIDENTIALITY

13.1 Each Party (the “Receiving Party”) that receives Confidential Information from or on behalf of the other Party (the “Disclosing Party”) agrees (i) to keep and maintain as confidential such Confidential Information, and (ii) not to publish, disclose, divulge or use such Confidential Information, in each case except as necessary or appropriate to perform the Receiving Party’s obligations under this Agreement. For the purposes of this Section 13.1, “keep and maintain as confidential” means that the Receiving Party will protect such information in the same manner in which it protects its own confidential information of similar nature and, at a minimum, in accordance with applicable laws and regulations. Each Receiving Party acknowledges that any use or disclosure of Confidential Information, except in accordance with the provisions of this

Agreement, would cause irreparable injury to the Disclosing Party and therefore, in the event of any such disclosure, whether actual or threatened, in addition to any other remedies available to it, the Disclosing Party may seek injunctive or other equitable relief.

- 13.2 The Parties acknowledge that as used in this Agreement, the term Confidential Information does not include any information that: (i) was already known by the Receiving Party prior to the execution of this Agreement; (ii) is furnished to such Receiving Party by a third party who is lawfully in possession of such information without limitation as to confidentiality and who lawfully conveys such information to such party; (iii) becomes generally known to the public other than through a breach of this Agreement; (iv) was independently developed or discovered by the Receiving Party not in connection with the Confidential Information of the Disclosing Party; or (v) is a public record under the California Public Records Act.

13.3 Upon termination of this Agreement, or upon the written request of the Disclosing Party, the Receiving Party shall return all written or other physical or electronic embodiments of Confidential Information of the Receiving Party to the Disclosing Party, together with all copies thereof or copies of any part thereof, as shall then be in the Receiving Party's possession. If return of all written or other physical or electronic embodiments of Confidential Information is not commercially practical, then at the direction of the Disclosing Party, the Receiving Party shall account for all Confidential Information and either (i) destroy such Confidential Information, or (ii) continue to hold such Confidential Information in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Confidential Information shall not include information that must be retained by the Receiving Party as required by law or regulation for reporting or other purposes, or as otherwise contemplated in this Agreement. In any event, such Confidential Information shall at all times be maintained by the Receiving Party in a manner consistent with the terms of this Agreement.

- 13.4 In the event that a subpoena or other legal process in any way concerning the Confidential Information is served upon the Receiving Party and related to the Disclosing Party's Confidential Information, the Receiving Party shall notify the Disclosing Party promptly following its receipt of such subpoena or other legal process and shall reasonably cooperate with the Disclosing Party in any lawful effort by the Disclosing Party to contest the legal validity of such subpoena or other legal process.

- 13.5 The Parties acknowledge and agree that all Protected Health Information, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act and any regulations and official guidance promulgated thereunder (collectively, "HIPAA"), used by or disclosed to Wellpartner hereunder shall be subject to additional protections as provided in the BAA between the Parties attached hereto as Exhibit D.

14. MISCELLANEOUS

- 14.1 Each of the Parties represents and warrants that it has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 14.2 Each Party will at all times comply with all federal, state and local laws, rules, regulations and

requirements applicable to its obligations and responsibilities under this Agreement. Without limiting the foregoing, such Party shall not take any action that would violate (i) state or federal anti-kickback laws, including, without limitation, those provided for in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b), and (ii) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” and/or the “Act”) and its implementing regulations (45 CFR Parts 160 and 164) and standards related to Individually Identifiable Health Information (the “Privacy Rule”) and Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations (“ARRA”). In this regard, concurrent with their entering into of this Agreement, the Parties shall enter into the Business Associate Agreement, in the form attached hereto as Exhibit D (the “BAA”).

- 14.3 Each Party reserves its right in and control of its service marks, trademarks, trade names and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith. Each Party agrees not to use the service marks, trademarks, trade names and other such proprietary symbols and words of the other Party except as reasonably necessary to its obligations hereunder without the prior written consent of the other Party.
- 14.4 Except for the duty to pay, neither Party shall be liable in any manner for any delay or failure to perform its obligations hereunder which are beyond such Party's reasonable control, which for this purpose shall include any government acts and changes to applicable law and regulation.
- 14.5 The provisions of this Agreement may not be amended, supplemented, waived or changed, except by a writing signed by both Parties. No email, text message or similar communication shall be deemed to modify the terms of this Agreement. The failure of a Party to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any provision hereof or the right of such Party to thereafter enforce each and every provision of this Agreement. No waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non- fulfillment. The date of the execution of amendment, modification or waiver, if any, shall be deemed to be the date of the signed amendment, modification or waiver, and such amendment, modification or waiver will not be effective until its execution by all Parties thereto.
- 14.6 Neither Party shall assign its rights and/or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld, delayed or conditioned, except in connection with the sale of all or substantially all of such Party's assets or business.
- 14.7 This Agreement shall not be construed to create any relationship of joint venture, agency, partnership or co-employer between the Parties. Neither Party shall have any authority to bind the other Party into any agreement, nor shall either Party be considered to be an agent of the other Party in any respect.
- 14.8 All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective legal representatives, successors and permitted assigns, whether so expressed or not.

- 14.9 The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Unless the context of this Agreement otherwise requires, (i) words of any gender are deemed to include each other gender, (ii) words using singular or plural number also include the plural or singular, respectively, (iii) the terms “hereof”, “herein”, “hereby”, “hereto” and derivative or singular words refer to this entire Agreement, (iv) all references to dollars or “\$” shall be in U.S. dollars, and (v) the words “include”, “including” or “includes” shall be deemed to be followed by “without limitation”.
- 14.10 The Parties hereby agree from time to time to execute and deliver such further and other transfers, assignments and documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.
- 14.11 All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) e-mailed, hand delivered by messenger or courier service, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to a Party’s legal department at such Party’s address set forth in the signature blocks to this Agreement.
- 14.12 If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.
- 14.13 Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.
- 14.14 The Agreement to which this Attachment A is attached, including this Attachment and its exhibits, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all other negotiations, understandings and representations (if any) made by and between such Parties. All attachments, schedules and exhibits to this Agreement, as well as any appendices, schedules, attachments or addenda thereto, and any amendments to the foregoing, shall be considered a part of this Agreement and are expressly incorporated herein by this reference.
- 14.15 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic signatures shall be taken to be originals.

EXHIBIT A TO ATTACHMENT A

The reimbursement and other terms set forth in this Exhibit A represent the entire financial understanding between the Parties with respect to the Services provided under the Agreement. Wellpartner and Entity have freely negotiated the reimbursement terms set forth herein and agree that such terms are consistent with and otherwise represent a fair market value for Services rendered.

1. PATIENT SHARE OF COST

- 1.1 Patients without prescription drug coverage may receive Covered Drugs through the 340B Pharmacy Program. Patients will either pay full medication costs (discounted drug cost plus fees) or will receive full or partial coverage by Entity or through a grant program. Wellpartner will administer these uninsured programs on behalf of Entity. Entity can establish a fee scale for 340B-eligible Patients. Entity will assign all Patients to a group with a corresponding group code, based on a uniform method (such as ability to pay or poverty level). 340B eligible Patient's fee scale will be linked to the group code and used at the time of Claim Adjudication to determine the appropriate share of cost or copayment to be paid by Patient and collected by Wellpartner or Contract Pharmacy. The proper group code must be indicated on all 340B prescriptions, vouchers or electronic prescribing templates for all 340B prescriptions.

2. 340B CLAIM QUALIFICATION

- 2.1 Wellpartner shall receive information regarding Claims as follows: (a) directly from Contract Pharmacy through the Adjudication process; (b) from Contract Pharmacy's Claim switching service; and/or (c) from Covered Entity and/or through its designated pharmaceutical benefit manager (PBM).
- 2.2 Wellpartner shall review Claims based on the 340B Claim qualification criteria selected by Wellpartner and agreed to by Entity, which may include, among other things: (a) the 340B Pharmacy Program pricing availability and eligibility based on the requirements set forth in the 340B Act and applicable laws and regulations; (b) a financial analysis of Claims to minimize the net loss to the Entity on an aggregate basis for a dispensing and reporting period (including 340B cost of the Covered Drugs and Administrative Fees); and (c) other criteria established by and between Entity and Wellpartner.
- 2.3 Upon completion of Claim qualification, eligible Claims shall be included in the 340B Pharmacy Program under this Agreement and Ineligible Claims shall be excluded from the 340B Pharmacy Program.

3. 340B CLAIM REMITTANCE COORDINATION

- 3.1 For Claims paid for by a Third Party Payer, Wellpartner shall work with Contract Pharmacy to remit to Entity all amounts collected in connection with each Eligible Claim, including Patient's Copayment and Third Party Payer reimbursement (as applicable), less the Dispensing Fee and Administrative Fee (if applicable).

- 3.2 For Eligible Claims where Entity elects to contribute a share of the Patient's cost, the related portion collected by Wellpartner from Entity shall take the form of a credit calculated by Wellpartner and issued by Entity, less the Patient's payment (including but not limited to Copayments).

3.3 Vouchers are documents that accompany and identify prescriptions as: (a) eligible for 340B discounts; and/or (b) as prescriptions for which Entity will provide a direct subsidy (each a Voucher). Entity shall work with Wellpartner or Contract Pharmacy to manage the application of these Vouchers. Entity shall distribute Vouchers to 340B eligible Patients and these Vouchers must be retained by Wellpartner or Contract Pharmacy for audit purposes. Entity agrees that Vouchers are not to be returned to or retained by 340B eligible Patients after adjudication and dispensing. In no instance are Vouchers to be duplicated, sold, reused, or given away as this may result in Covered Drug diversion. Entity agrees that any failure to comply with this Voucher requirement may result in regulatory enforcement action and be grounds for termination of the Agreement by Wellpartner.

- 3.4 From all Patients on the date of service, Contract Pharmacy shall collect the applicable Copayment due based on messaging received at the time of Adjudication of the Claim or in subsequent payment reconciliation statements from a Third Party Payer or its designated Claims processor.

- 3.5 From Third-Party Payers, Contract Pharmacy shall, through its standard billing and remittance process, collect all contracted reimbursement amounts due in connection with the Claim irrespective of whether amounts are due from a primary or subsequent Third-Party Payer.

4. FEES

- 4.1 The following fees are paid to or retained by Wellpartner on a per-Eligible Claim basis (*i.e.*, a prescription for a Covered Drug written by a Health Care Provider, which is then dispensed by the Contract Pharmacy to a Patient and meets the 340B Claim qualification criteria set forth herein).

- 4.2 For eligible Claims processed via a AccessConvergence[®] program:

4.2.1 Contract Pharmacy Dispensing Fee – Contract Pharmacy shall retain 50% of the Gross Savings as its Dispensing Fee. Dispensing Fee shall be used to cover costs of Services.

4.2.2 There shall be no Administrative Fees assessed for Claims processed through the 340B AccessConvergence[®] program.

- 4.3 For eligible Claims processed *other than* via a AccessConvergence[®] program, Entity shall reimburse Wellpartner on a per-Claim basis, the Dispensing Fee as follows:

4.3.1 Pharmacy Services – Wellpartner. For Eligible Claims dispensed by Wellpartner Entity shall reimburse Wellpartner (or Wellpartner shall retain) on a per-Eligible Claim

basis, the Dispensing Fee as follows:

4.3.1.1 Brand Name Drugs: \$20.00

4.3.1.2 Generic Drugs: \$20.00

4.3.1.3 Specialty Drugs: \$150.00

4.3.2 Pharmacy Services – other Contract Pharmacies. For Eligible Claims dispensed by a Contract Pharmacy, other than Wellpartner, Entity shall reimburse Contract Pharmacy (or Contract Pharmacy shall retain) on a per-Eligible Claim basis, the Dispensing Fee negotiated by Wellpartner and Entity and to be outlined in the Contract Pharmacy Service Agreement.

4.4 Administrative Fees. For eligible Claims processed *other than* via a Access Convergence[®] program, Entity shall reimburse Wellpartner on a per-Claim basis, an Administrative Fee equal to the greater of:

4.4.1 \$4.00; or

4.4.2 14% of the amount represented by the following formula: (i) total amount paid for a Claim (regardless of who paid, *e.g.*, Third-Party Payer, Patient or Entity) minus (ii) the preferential price payable by the Entity under 340B

4.5 Specialty Drugs are set forth in Exhibit E of this Agreement, which Exhibit will be updated by Contract Pharmacy from time to time. The updated Specialty Drug list will be available through Wellpartner's AccessIntegra[®].

4.6 Notwithstanding any provision of this Agreement, Entity understands and agrees that Wellpartner shall be entitled to receive an Administrative Fee and Contract Pharmacy shall be entitled to receive a Dispensing Fee for Claims that are reversed or required to be reversed because of inaccurate or incomplete data or information provided by Entity.

5. OTHER

5.1 With respect to Covered Drugs dispensed by Contract Pharmacy to Patients that are not replenished because they do not constitute a full "package" size (based on the 11-digit National Drug Code [NDC] of the product dispensed), or they cannot be replenished, Administrator shall complete a True-Up of said covered drugs at the 90 day point with the true-up based on the remaining NDC units.

5.2 When a true-up is required for Covered Drugs, the Parties agree that the True-Up shall be based on the remaining dispensed units at the 11-digit NDC level, provided, however, that any true-up amount shall not be adjusted by the Dispensing Fee or Administrative Fee. All true-up amounts shall be at the Wholesale Acquisition Cost as follows:

- 5.2.1 The Wholesale Acquisition Cost in effect on the date a Covered Drug is dispensed to a Patient pursuant to the terms of this Agreement, or
- 5.2.2 When the Wholesale Acquisition Cost in effect on the date a Covered Drug is not available:
- 5.2.2.1 Brand Drugs: Average Wholesale Price minus 18%
- 5.2.2.2 Generic Drugs: Average Wholesale Price minus 65%
- 5.3 The Parties recognize that in certain cases the 340B cost of goods in effect at the time of Claim qualification and calculation of the Dispensing Fee and Administrative Fee may differ from the time when Entity replenishes or completes a true-up of inventory. Entity shall in all cases be responsible to pay the amounts contained on Drug Wholesaler invoices or Wellpartner invoices or statements.
- 5.4 Subject to Section 4 above, if as a result of any audit conducted pursuant to the terms of this Agreement it is determined (and otherwise supported by the dispensing, payment, and reconciliation records and reports) that a Party was either overpaid or underpaid, or if an Ineligible claim was processed under this Agreement, then, as necessary, the Claim will be re-adjudicated and the Party owing such monies shall be obligated to make the necessary payments within thirty (30) days receipt of such information supporting said payment.
- 5.5 In the event of any change in industry standards related to the reimbursement and/or payment terms set forth in this Agreement including this Exhibit, the Parties agree to work in good faith to modify the terms of this Agreement including this Exhibit so that the level of compensation received by Wellpartner prior to such change is maintained.

6. **WELLPARTNER NETWORK**

In the case of Pharmacy Services provided by Wellpartner under this Agreement, the terms set forth in this Exhibit A shall apply only to the provision of those Pharmacy Services on behalf of the Covered Entity by the pharmacy location listed below.

Wellpartner Name:	Wellpartner, Inc.
Wellpartner D/B/A Name:	Wellpartner Pharmacy
Corporate Address:	20800 SW 115 th Avenue, Suite 100, Tualatin, OR 97062
Remittance Address:	
NPI/NCPDP/DEA	1356325583 / 3814161 / BW7050975

EXHIBIT B TO ATTACHMENT A
CONSENT AND JOINDER AGREEMENT

The undersigned Facility hereby certifies that it has reviewed and hereby consents and agrees to the terms set forth in the Services Agreement (the "Agreement") by and between the undersigned Covered Entity and Wellpartner, Inc. ("Wellpartner"), a copy of which such Covered Entity has provided to such Facility. The undersigned Facility, to include child sites, hereby joins and consents to participate as an eligible Entity to receive services from Wellpartner under the Agreement and such Covered Entity's Pharmacy Program for the benefit of Patients of such Facility, and accordingly such Facility agrees to be bound by the provisions and to perform the applicable Covered Entity's obligations thereunder.

Name of Covered Entity: San Mateo Medical Center
Address of Covered Entity: 222W. 39th Ave.
San Mateo, CA 94403

Signature: _____
Name: Warren Slocum
Title: President, Board of Supervisors, San Mateo County
Date: _____

The undersigned certifies that they have legal authority to bind Entity.

Joining Facility Name: San Mateo Medical Center
Joining Facility Address: 222 W. 39th Ave San Mateo CA 94403
Joining Facility 340B ID: CH091140, DSH050113, STD944039, TB944037

Signature: _____
Name: Warren Slocum
Title: President, Board of Supervisors, San Mateo County
Date: _____

EXHIBIT C TO ATTACHMENT A

STANDARD REPORTS

Wellpartner will provide its 340B AccessIntegra® ("Portal") to Client. Client may use the AccessIntegra® to access 340B Pharmacy Program data, reports and summaries through the term of this Agreement. In addition, standard production reports will be provided via the Portal as listed below:

- 1) **Carved in Claims by Entity/Carved in Claims by Pharmacy:** Details dispensing events at the Claim level, including payment collection and reimbursement activity, Patient name, Health Care Provider's name, prescription number, drug NDC and quantity, and amounts charged and amounts collected.
- 2) **Carved Out Claims Report:** Shows claim's detail of claims that carved out of the program.
- 3) **Medicaid Claims Sent to State:** Shows claim's detail of claims that were carved in for Medicaid and sent to the State.
- 4) **Medicaid Payers Claims:** Shows claim's detail of Medicaid payer claims.
- 5) **Brand vs. Generic Summary:** Shows the number and percentage of claims that carved in for brand or generic drugs.
- 6) **340B Dashboard Report:** This replicates the Dashboard on the Portal
- 7) **Carved in Claim Financials by Entity/Carved in Claim Financials by Pharmacy:** Claim's detail showing financials (admin fee, dispensing fee, entity net, true-ups, etc).
- 8) **Entity Voucher:** Entity can download their vouchers from the Portal.
- 9) **Financial Performance Report:** shows the monthly financial performance of the 340B program, including Net Captured Claims, Entity Revenue, Admin fees, True-up Costs, Estimated 340B Cost, and Carve out Fees.
- 10) **Financial Summary:** Provides an executive summary of the 340B Program by reporting period.
- 11) **Back Ordered Items:** An inventory report that shows how many times Wellpartner has attempted to order specific Drug/NDC and if the drug is just out of stock, or discontinued.
- 12) **Inventory Control by Entity/Inventory Control by Pharmacy:** Details starting and ending balances in the 340B product accumulator, with dispensed and replenished amounts.
- 13) **Positive Inventory by Entity/Positive Inventory by Pharmacy:** Shows a list of positive inventory that has accrued during the 340B program.
- 14) **Purchase Order Details by Entity/ Purchase Order Details by Pharmacy:** Shows when purchase orders were placed, for what products, and the estimate cost.
- 15) **True-ups by Entity/True-ups by Pharmacy:** Shows when true-ups were processed, for what products, and at what cost.
- 16) **Encounter Summary:** Entity encounter data (patient, prescriber, encounter date, clinic code).
- 17) **Entity Patient List:** Entity patient list.
- 18) **Entity Prescriber List:** Entity prescriber list.
- 19) **Global Specialty List:** List of specialty drugs/NDC's.
- 20) **Payer Summary:** Shows percentage of claims that carved in that insured or uninsured.
- 21) **Patient Carve-In Fluctuation:** Shows the number of claims that carve in per patient and carve in percentage rate.

EXHIBIT D TO ATTACHMENT A
HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the "BAA") is entered into by and between Wellpartner Inc. (the "Business Associate") and Entity (the "Covered Entity") and effective as of the Effective Date of the Agreement.

Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from Covered Entity, or created by Business Associate on behalf of Covered Entity. Therefore, Business Associate agrees to the following terms and conditions set forth in this HIPAA Business Associate Agreement ("BAA").

This BAA is not intended to represent the Parties exclusive obligations with respect to the use and/or disclosure of Protected Health Information ("PHI") and/or Confidential Information and the absence of a specific requirement in this BAA shall not relieve a Party of its responsibility to be aware of and comply with any other applicable laws, rules and/or regulations.

1. **Definitions.** For purposes of this BAA, any terms used herein, unless otherwise defined, shall have the same meanings as used in the Privacy and Security Standards of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and its implementing regulations ("HITECH").
2. **Scope and Interpretation.** The terms and conditions of this BAA shall supplement and amend the Agreement and relationships between the parties ("Base Agreement" or collectively "Base Agreements") which provide for Business Associate's receipt, transmission, maintenance, creation, Use and Disclosure of PHI, in any form or medium, including electronic PHI, in Business Associate's capacity as a "Business Associate" to the Covered Entity. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with HIPAA. In case of any inconsistency or conflict between the Base Agreement(s) and the terms and conditions of this BAA, the terms and conditions of this BAA shall control. Except as supplemented and/or amended, the terms of the Base Agreement(s) shall continue to apply and effect to govern the matters addressed in the Base Agreement(s).
3. **Compliance with Applicable Law.** Beginning with the relevant effective dates, to the extent Business Associate meets the definition of a "Business Associate" of Covered Entity as such term is defined under HIPAA, Business Associate shall comply with its obligations under this BAA and with all obligations of a business associate under HIPAA, HITECH and other related laws, for so long as Business Associate uses, possesses, accesses or maintains PHI.
4. **Permissible Use and Disclosure of Protected Health Information.** In addition to the uses and disclosures permitted by the Base Agreement, Business Associate may use and disclose PHI: (i) for its own proper management and administration and (ii) to carry out its legal responsibilities. If Business Associate discloses PHI to a third party for either reason above, prior to making any such disclosure, Business Associate shall obtain: (a) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as Required By Law in

accordance with HIPAA or for the purposes for which it was disclosed to such receiving party; and (b) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.

5. **Limitations on Uses and Disclosures of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Base Agreement or this BAA, or as Required By Law. All uses and disclosures of, and requests by Business Associate for, PHI are subject to the Minimum Necessary rule of the Privacy Standards and shall be limited to the information contained in a Limited Data Set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH, and any other subsequently adopted guidance.
6. **Required Safeguards To Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the Privacy Standards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this BAA.
7. **Reporting of Improper Use and Disclosures of PHI.** Business Associate shall report to Covered Entity, within five (5) business days of discovery, a use or disclosure of PHI not provided for in this BAA by Business Associate, its officers, directors, employees, or agents, or by a third party to whom Business Associate disclosed PHI.
8. **Reporting of Breaches of Unsecured PHI.** Business Associate shall report to Covered Entity, within five (5) business days of discovery, a breach of unsecured PHI in accordance with the requirements set forth in 45 C.F.R. § 164.410. Business Associate shall fully cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for reasonable and necessary expenditures by Covered Entity for third-party services.
9. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA, including, but not limited to, compliance with any state law or contractual data breach requirements.
10. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any agent or subcontractor of Business Associate that will have access to PHI hereunder. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this BAA with respect to such PHI.
11. **Access to Information.** To the extent applicable, within ten (10) business days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated Record Set, as required by 45 C.F.R. § 164.524. In the event any individual delivers a request for access to PHI directly to Business Associate, Business Associate shall, within five (5) business days, forward such request to Covered Entity.

12. **Availability of PHI for Amendment.** Within ten (10) business days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall, within five (5) business days, forward such request to Covered Entity.
13. **Documentation of Disclosures.** Business Associate agrees to document uses and disclosures of PHI and information related to such uses and disclosures as required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
14. **Accounting of Disclosures.** Within ten (10) business days of notice by Covered Entity to Business Associate that Covered Entity has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) year period prior to the date on which the accounting was requested, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and health care operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days of receipt.
15. **Restrictions.** Business Associate shall comply with any restrictions on disclosure of PHI requested by an individual and agreed to by Covered Entity in accordance with 45 C.F.R. § 164.522.
16. **Security.** To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate shall:
- a. Comply with the security provisions found at 45 C.F.R. §§ 164.308, 310, 312, and 316 in the same manner as such provisions apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;
 - b. Ensure that any agent to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards in writing to protect such PHI; and
 - c. Report to Covered Entity within five (5) business days any Security Incident of which Business Associate becomes aware and which results in a use or disclosure of electronic PHI in violation of the Base Agreement or this BAA. For those Security Incidents that do not result in a use or disclosure of electronic PHI in violation of the Base Agreement or this BAA, reports may be made in the aggregate on at least quarterly basis. In this context, the term "Security Incident" shall have the same meaning as such term as defined in 45 CFR 164.304.

17. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Business Associate shall notify Covered Entity in writing prior to responding to such request to enable Covered Entity to object. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) business days of receipt of such request.
18. **Availability of Books and Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy Standards.
19. **Breach of Contract by Business Associate.** In addition to any other rights Covered Entity may have in the Agreement, this BAA or by operation of law or in equity, Covered Entity may, upon a breach or violation of this BAA, provide a reasonable opportunity for Business Associate to cure or end any such violation within the time specified by Covered Entity. If cure is not possible or if the Business Associate does not cure such breach or violation, Covered Entity may immediately terminate the Agreement. Covered Entity's option to have a breach cured shall not be construed as a waiver of any other rights Covered Entity has in the Agreement, this BAA or by operation of law or in equity.
20. **Effect of Termination of Agreement.** The parties acknowledge that the nature of Business Associate's data storage infrastructure makes return or destruction of PHI generally infeasible. Accordingly, upon the termination of the Base Agreement(s) or this BAA for any reason, Business Associate shall continue to apply the protections of this BAA to all PHI maintained on behalf of Covered Entity as of and after the effective date of termination until such PHI has been destroyed as provided in this Section 20. Business Associate shall destroy any PHI retained under this Section 20 prior to decommissioning or recycling any electronic media used in maintaining such PHI. This provision shall apply to PHI that is in the possession of Business Associate, its agents and subcontractors.
21. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this BAA would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
22. **Indemnification.** Business Associate shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate of its obligations under this BAA.
23. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI of Covered Entity.
24. **Third Party Rights.** The terms of this BAA do not grant any rights to any third parties.

25. **Obligations of the Covered Entity.** Covered Entity shall: (i) notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent such limitations affect Business Associate's Use or Disclosure of PHI; (ii) notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if and to the extent such changes affect Business Associate's Use and Disclosure of PHI; and (iii) consult with Business Associate regarding any restriction request on the Use or Disclosure of PHI in accordance with 45 C.F.R. § 164.522, to the extent such restriction may affect Business Associate's Use or Disclosure of PHI, and decline any requests that conflict with Base Agreement.
26. **Independent Contractor Status.** For the purposed of this BAA, Business Associate is an independent contractor of Covered Entity, and shall not be considered an employee or agent of the Covered Entity.
27. **Changes in the Law.** The parties shall amend this BAA to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards or Transactions Standards.
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EXHIBIT E TO ATTACHMENT A

SPECIALTY DRUG LIST

LAST REVISED: NOVEMBER 3, 2015

~ IS AVAILABLE VIA WELLPARTNER'S ACCESSINTEGRA®~

Can be added to contract upon request

Exhibit A

In consideration of the payments set forth in Exhibit B and otherwise in this Agreement and its attachments/exhibits, Contractor shall provide the following services:

General 340B Pharmacy Services Associated with SMMC Hospital and Clinics

San Mateo Medical Center (SMMC) operates an acute care hospital and outpatient clinics situated in Daly City, South San Francisco, Half Moon Bay, San Mateo, Redwood City, and Menlo Park, California. A complete list of the clinics can be found on the SMMC website at <http://www.sanmateomedicalcenter.org>. The list of clinics includes the following and subject to change:

- Coastside Clinic
- Daly City Clinic
- Daly City Youth Health Center
- Edison Clinic
- Fair Oaks Health Center
- Mobile Health Clinic
- Pediatrics - Main Campus
- Primary Care - Main Campus
- Senior Care Center
- Sequoia Teen Wellness Center
- South San Francisco Clinic
- Specialty Clinics
- TB Clinic

As a 340B covered entity, SMMC participates in the federal 340B purchasing program. Contractor agrees to provide 340B-related clinical and comprehensive pharmacy services for patients of the hospital and these clinics. Specifically, Contractor agrees:

1. The services provided by Contractor outlined by this Agreement shall consist of mail order prescriptions through the 340B Program that includes specialty drugs with a focus on expensive drugs, drugs that have a limited distribution network, and/or drugs that require close monitoring;
2. Services provided by Contractor shall include eligible SMMC patients participating through the Access Convergence program, which is for members of the Health Plan of San Mateo only;
3. To provide a comprehensive solution that supports the clinical services provided by SMMC;
4. To integrate a 340B billing/replenishment platform with Contractor's pharmacy operations;
5. The 340B contract pharmacy arrangement will complement SMMC's existing 340B program in order to ensure that only those prescriptions meeting the correct 340B relationships are filled;
6. Client reporting will be tracked at the NDC-11 level for all 340B medications dispensed, guaranteeing transparency in all facets of the program while preventing diversion;
7. To provide a complete audit trail through the life cycle of each 340B-related claim; and
8. To provide Third Party Administration (TPA) Services, either utilizing its own system or using a TPA that has already contracted with SMMC. The TPA will be responsible for managing the replenishment of 340B drugs dispensed pursuant to this Agreement.
9. For 340B claims that are reimbursed to Contractor by a third-party payor or anyone, Contractor shall forward the entire amount of the reimbursement to County. This also applies to co-pays and any payment Contractor receives from the patient.

10. Contractor will be dispensing 340B drugs through their inventory, but the dispensed drugs are owned by the County. Accordingly, County shall pay to have the stock of dispensed 340B drugs replenished periodically so as to maintain supplies.

The services listed in this Agreement apply only to prescriptions provided pursuant to the 340B program and do not apply to any other prescriptions.

Contractor acknowledges that, subject to applicable state and federal laws and related professional standards, the treatment of any patient and the prescribing of any drug is at the sole discretion of Health Care Provider, and the decision to dispense any Covered Drug is at the sole discretion of Contract Pharmacy. County acknowledges that in the performance of Administrative Services and Pharmacy Services, Contract Pharmacy makes no representations, either express or implied, with respect to the discretion exercised by the Health Care Provider. For avoidance of doubt, Contract Pharmacy shall not be liable or responsible for any injury, including death, suffered by any Patient as a result of the use of a Covered Drug prescribed under this Agreement, except to the extent such injury was caused by any violation by Contract Pharmacy of its obligations under this agreement or any negligent or willful act or omission of Contract Pharmacy in the performance of Pharmacy Services hereunder.

In Addition, Wellpartner shall, consistent with this Agreement and the Project Plan, provide Entity with the services outlined in Attachment A and the exhibits thereto.

In order for the parties to establish the 340B Pharmacy Program, Wellpartner shall work with Entity for the completion of the forms and files described in this Agreement, including Attachment A and its exhibits, in each case prior to the Launch Date and as required throughout the term of this Agreement.

Entity Implementation Form: This form captures Entity information and must be completed prior to implementation of the 340B Pharmacy Program.

OPA Registration Form: This form connects Contract Pharmacy to Entity and must be completed for each Entity/Contract Pharmacy pair.

Participating Provider Data Files: Entity shall provide, subject to the terms of the Business Associate Agreement ("BAA") between the Parties and attached hereto as Exhibit D to Attachment A, applicable participating Health Care Provider information as required to support operation of the 340B Pharmacy Program.

Encounter Data Files: Entity shall provide, where applicable, subject to the terms of the BAA, outpatient encounter data for all 340B-eligible clinics and departments within Entity. Data shall be provided by Entity in the format and on a schedule agreed to by the Parties.

Medicare Cost Report: If Entity is a hospital or includes a hospital, Entity is required to submit to Wellpartner, subject to the terms of Section 12 to Attachment A, a copy of the most recent Medicare cost report as filed with CMS and copies of any future costs reports as required to be filed with CMS on an annual basis. Entity is solely responsible for the determination of eligible clinics and departments from the Medicare cost report; however, Wellpartner reserves the right to confirm eligibility through reference to Entity's cost reports. Entity may redact any portions of the cost reports that are not necessary for the purpose of confirming clinic and department eligibility.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and otherwise in this Agreement and its attachments/exhibits and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

For claims covered under the Health Plan of San Mateo Access Convergence program (), Contractor shall track the difference between the amount paid by HPSM of each prescription and the 340B cost (the "340B Differential Amount"). For its sole compensation (inclusive of all dispensing fees) under this Agreement, Contractor shall keep 50% of the 340B Differential Amount. Contractor shall provide the County with the other 50% of the 340B Differential Amount. No administrative or other fees shall be owed to Contractor under this Agreement.

Travel times or expenses are not billable.

No costs for starting up services outlined by this Agreement shall be owed or paid.

Contractor shall collect all payments for the 340B drugs dispensed pursuant to this Agreement—whether in the form of co-pays, payments by the patient, or other third-party reimbursement—on behalf of the County and will forward said payments to County at the same time as invoices are sent to the County as outlined below. The above-listed payments for dispensing fees are separate from the cost of drugs and are paid to Contractor for the services outlined by this Agreement.

Contractor shall invoice County no more frequently than two times per month. All invoices will be approved by the Director of Pharmacy Services or their designee and paid within 30 days of receipt of the invoice.

Invoices

All invoices must be emailed to the following email address:

SMMC-Accounts-Payable@smcgov.org

Processing time may be delayed if invoices are not submitted electronically.

Contractor is not entitled to payment for work not performed as required by this Agreement.