

**AGREEMENT BETWEEN
THE COUNTY OF SAN MATEO AND WALGREEN CO.**

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 Walgreen Co., 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, which may include 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 eligible 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:

- Exhibit A—Services
- Exhibit A-1—Supplemental 340B Program Terms
- Exhibit B—Payments and Rates
- Exhibit C—Pharmacy Locations
- Exhibit D—Business Associate Addendum
- 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 and A-1.

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 and A-1, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In no event shall County's total fiscal obligation under this Agreement exceed TEN MILLION DOLLARS (\$10,000,000). 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. 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 Intentionally omitted.

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. Notwithstanding the foregoing, County acknowledges and agrees it maintains sole responsibility to obtain any and all necessary approvals to operate a 340B drug program including the use of any contract pharmacies.

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 County shall promptly notify Contractor of 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. County acknowledges and agrees Contractor may insure through a program of self-insurance and that such information regarding such program is available at www.walgreens.com/insurance.

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 Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. 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.

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.

g. Reporting: Violation of Non-discrimination Provisions

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.

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 Exhibit A-1 shall prevail followed next by the body of the Agreement. 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. Controlling Law: Venue

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

18. 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, which may include 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.

19. 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

Field

In the case of Contractor, to:

Name/Title: Walgreen Co.
Address: 104 Wilmot Road, MS 1446 (JO)
Deerfield, IL 60015
Email: erin.kayser@walgreens.com

Field

20. 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: Contractor does not consent to electronic signatures.

* * *

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

WALGREEN CO.

Contractor's Signature _____

Date: 7/6/16



Karl E. Tsch 7.6.16

Exhibit A

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

General 340B Pharmacy Services and Inventory Maintenance 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:

Field

- 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 eligible patients of the hospital and these clinics. Specifically, Contractor agrees:

1. To provide a comprehensive solution that supports the clinical services provided by SMMC subject to the customary pharmacy practice of Contractor;
2. To integrate a 340B billing/replenishment platform with a closed network of Contractor's own pharmacies within San Mateo County;
3. 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;
4. 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;
5. To provide a complete audit trail through the life cycle of each 340B-related claim; and
6. To provide Third Party Administration (TPA) Services utilizing Contractor's own system. The TPA will be responsible for managing the replenishment of 340B drugs dispensed pursuant to this Agreement.
7. For 340B claims that are reimbursed to Contractor by a third-party payor or anyone, Contractor shall forward the remaining amount of the reimbursement to County after netting out fees and other amounts due Contractor. This also applies to co-pays and any payment Contractor receives from the patient.
8. Contractor will be dispensing 340B drugs through their inventory using a virtual

replenishment model. The dispensed drugs are owned by the County from the time Contractor places an order for replenishment until such time as Contractor takes delivery of the drugs. Accordingly, County shall pay the invoices it receives from its supplier for 340B replenished product ordered by Contractor.

The services listed in this Agreement apply only to prescriptions provided pursuant to the 340B program and do not apply to any other prescriptions. County acknowledges and agrees it maintains sole responsibility to determine patient eligibility for the 340B program and to communicate such eligibility to Contractor.

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.

The services provided by Contractor hereunder and the rights and obligations of both parties related to the 340B drug program are further described in Exhibit A-1, attached hereto

Exhibit A-1
Supplemental 340B Program Terms

1. DEFINITIONS

1.1. **"340B Drugs"** means drugs which are "covered outpatient drugs" as defined in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(2), and which are prescribed by an authorized medical provider affiliated with County. All 340B Drugs shall be subject to the limiting definition of "covered outpatient drug" set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(3).

1.2. **"340B Drug Program"** means the County's program to purchase and either dispense or arrange for the dispensing of 340B Drugs to Eligible Patients in accordance with Section 340B of the Public Health Service Act (the "Act").

1.3. **"Aged Drug"** means a 340B Drug dispensed by Contractor in an amount less than full package size that has not subsequently been dispensed within ninety (90) days of the date that such 340B Drug was last dispensed by any Pharmacy Location. Notwithstanding the foregoing, the parties acknowledge and agree Aged Drugs shall not apply to specialty Pharmacy Locations.

1.4. **"Average Wholesale Price" or "AWP"** means the Average Wholesale Price for each drug product in the database as defined by MediSpan or another nationally recognized source used by Contractor.

1.5. **"Contracted Rate"** means the contracted and/or agreed upon reimbursement rate between Contractor and the applicable Private Insurer and includes any Taxes, Eligible Patient co-pay, or other amounts that may be due from an Eligible Patient or Private Insurer or arise out of the coordination of benefits, as applicable. The Contracted Rate is Walgreen's proprietary and confidential information; therefore, County acknowledges and agrees that it will not request, and Contractor will not provide, the Contracted Rate or any information which may disclose or enable the County to determine the Contracted Rate.

1.6. **"County Location(s)"** means those individual County Locations listed on the HRSA web-site pursuant to an executed enrollment or registration form which authorizes Covered Entities to contract with a licensed pharmacy to manage and dispense 340B Drugs. County Locations shall only be eligible under this Agreement for so long as such locations are registered and identified as active in the HRSA 340B database.

1.7. **"DHHS"** means the United States Department of Health and Human Services.

1.8. **"Eligible Patient(s)"** means those County outpatients who County determines are eligible to purchase and/or receive 340B Drugs from County Locations, subject to the limiting definition of "Patient" set forth in 61 Federal Register 55156 (1996), as the same may be modified or amended. All County patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program are expressly excluded from this definition.

1.9. **"HRSA"** means the Health Resources and Services Administration.

1.10. **"Inventory Replenishment Rate"** means the amount due Contractor for each 340B Drug dispensed by Contractor but for which Contractor does not receive replenishment from the Supplier. The Inventory Replenishment Rate will be determined in accordance with Exhibit B.

1.11. **"Manufacturer"** means any pharmaceutical manufacturer of 340B Drugs purchased by County and delivered to Contractor via Supplier pursuant to the terms of this Agreement.

1.12. **"NDC-11"** means a medication's unique 11-digit number containing: (i) the labeler code assigned by the Food and Drug Administration; (ii) the product code; and (iii) the package size of the pharmaceutical product.

1.13. **"Non-Eligible 340B Drugs"** means drugs (based upon the NDC-11) that are not a 340B Drug, on the 340B Price File, and/or eligible for the 340B Drug Program.

1.14. **"Pharmacy Location"** means the specific pharmacy location(s) referenced in Exhibit C, which may include retail, mail order/online, and specialty pharmacies. Contractor shall provide County with written notice of any change in the specific pharmacy locations through which Contractor manages and dispenses medications pursuant to County's 340B Drug Program. The notice shall be accompanied by an updated Exhibit C reflecting such change(s), and shall identify the effective date of the change(s), which shall not be less than thirty (30) days following the issuance of the notice. Unless County provides Contractor with written notice of objection to the change(s) prior to the effective date specified in the notice, the term "Pharmacy Location" shall be deemed to refer to the pharmacy locations listed on the updated Exhibit C as of that effective date and County shall cooperate with Contractor in posting the revised list of Pharmacy Locations with HRSA. For purposes of clarity, the parties acknowledge and agree that the pharmacy locations listed in Exhibit C are contract pharmacies for purposes of HRSA's contract pharmacy guidelines (75 Federal Register 10272 (2010)), and as such they may be utilized to manage and dispense medications pursuant to County's 340B Drug Program. The Pharmacy Locations shall only be available to provide 340B Pharmacy Services for so long as such locations are registered and identified as active in the HRSA 340B database.

1.15. **"Prescriber List"** means the list of prescribers eligible to write prescriptions for 340B Drugs under the terms of this Agreement and the 340B Drug Program.

1.16. **"Price File"** means the list of 340B Drugs and associated pricing available from the Supplier.

1.17. **"Private Insurer"** means the third-party payor responsible: (i) for an Eligible Patient's prescription coverage; and (ii) to reimburse Contractor the Contracted Rate for pharmacy services. County acknowledges and agrees that absent a request from County to remove a Private Insurer from County's 340B Drug Program, all Private Insurers with whom Contractor is in-network may be included in County's 340B Drug Program. Private Insurer does not include a state fee-for-service Medicaid program. Contractor shall not be obligated to identify the Private Insurer to County for any 340B transaction.

1.18. **"Report"** means the report(s) available to County via Contractor's online reporting and tracking system that describes activity pertaining to Contractor's provision of 340B Pharmacy Services and Inventory Maintenance Services. County acknowledges availability of the Report is conditioned upon Supplier maintaining an Electronic Data Interchange with Contractor during the applicable Report period.

1.19. **"Slow Moving Drug"** means a 340B Drug dispensed by Contractor that has not reached a full package size within one hundred eighty (180) days from the date that the 340B Drug was initially dispensed by any Pharmacy Location. Notwithstanding the foregoing, the parties acknowledge and agree Slow Moving Drugs shall not apply to specialty Pharmacy Locations.

1.20. **"Supplier"** means the pharmaceutical manufacturer, supplier, or drug wholesaler that has entered into a written agreement with County to provide 340B Drugs to Contractor via a ship-to, bill-to arrangement.

1.21. **"Tax"** means any sales tax, imposition, assessment, excise tax or other government levied amount based on Contractor's retail sales of prescriptions to County's patients either on gross revenues or by transaction, whether such tax is designated a sales tax, gross receipts tax, retail occupation tax, value added tax, health care provider tax, transaction privilege tax, assessment, pharmacy user fee, or charge otherwise titled or styled. It includes any tax in existence or hereafter created whether or not the bearer of the tax is the retailer or consumer.

1.22. **"Usual and Customary Charge"** means the amount charged by the Pharmacy Location at the time of dispensing of a pharmaceutical product or service to a customer with no coverage by a third party payor, exclusive of: (i) Tax; (ii) discounts claimed; or (iii) discounts provided for prescription drug savings card or other similar discounts.

2. COUNTY RESPONSIBILITIES

2.1. Patient Eligibility Verification. County prescribers will provide all Eligible Patients with a valid prescription as required by law which will contain, but not necessarily be limited to, the applicable County Location name, address and identification number, the eligible prescriber's name, and the Eligible Patient's full name. The prescription must be written or sent to Contractor by an individual on the Prescriber List. County may also provide each Eligible Patient whose prescriptions are not reimbursable by a Private Insurer with a voucher or similar document that sets forth the amount that Contractor shall collect from the Eligible Patient at the time of dispensing. In addition, County will provide Contractor (or an entity designated by Contractor) with: (i) the Prescriber List on a mutually agreed upon frequency; (ii) either (a) a mutually agreed upon unique identifier affixed to prescriptions, or (b) an electronic file of County's patients that contains the data elements agreed to by the parties, updated a minimum of one time each day via electronic interface and subject to the terms of the Business Associate Addendum, attached hereto as Exhibit D; and (iii) any other patient eligibility information agreed to by the parties. The information described herein, as mutually agreed by the parties, and that County provides to Contractor or its delegate, will establish patient eligibility and serve as evidence of County's authorization for Eligible Patients to receive 340B Drugs ("**Authorization**"). In the event that at any time during the term of this Agreement Contractor does not receive the information necessary to establish Authorization, Contractor shall not be obligated to perform under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Contractor), until such time as Contractor receives the necessary Authorization information.

2.2. Supplier. County acknowledges and agrees that establishing a successful replenishment process with the Supplier is essential to this Agreement and Contractor's provision of 340B Pharmacy Services and Inventory Maintenance Services. County will use best efforts to establish and maintain a Supplier arrangement agreeable to Contractor. Concurrent with the Effective Date or as soon as reasonably practicable thereafter, County shall provide Contractor with written notice of the identity of the Supplier. County shall not utilize any Supplier to which Contractor reasonably objects. In the event that at any time during the term of this Agreement Contractor is unable to successfully place an order with Supplier for replacement 340B Drugs or reasonably believes such orders shall not be replenished by Supplier, Contractor shall not be obligated to perform its obligations under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Contractor), until such time as Contractor is able to place a successful order for replenishment.

2.3. Orders and Payment to Supplier. County shall purchase 340B Drugs through a written contract with Supplier and will ensure that Supplier: (i) bills County for such 340B Drugs; and (ii) ships such 340B Drugs to the applicable Pharmacy Location. County will notify Contractor at least one hundred twenty (120) calendar days prior to any change in the Supplier used to provide 340B Drugs hereunder. In the event County fails to notify Contractor of a change in Supplier as required herein: (i) County will reimburse Contractor in accordance with the Usual and Customary Charge for any pharmaceuticals dispensed by Contractor after the effective date of such change; and (ii) Contractor will not reverse any claim or make adjustments to its Invoices due to changes in the Supplier. The parties further agree that:

- 2.3.1. For each 340B Drug dispensed that reaches depletion at a full package size, Contractor will order from Supplier (on behalf of County) replacement 340B Drugs with the same NDC-11 as the 340B Drug dispensed. County, through Supplier, will ensure that such replacement 340B Drugs are delivered by Supplier to the applicable Pharmacy Location.
- 2.3.2. County shall promptly review the Report and notify Contractor of any discrepancies between the information contained on the Report and the amount billed to County by the

- Supplier. Upon request from Contractor, County will promptly provide Contractor with copies of Supplier invoices pertaining to 340B Drugs received by Contractor.
- 2.3.3. County will establish account numbers with Supplier for each Pharmacy Location and otherwise ensure that each such location may order and receive deliveries of replenishment 340B Drugs from Supplier.
- 2.3.4. County will make timely payments to Supplier in accordance with the terms of County's written agreement with Supplier.
- 2.3.5. County will hold title to replacement 340B Drugs from the time Supplier fills an order from Contractor made on behalf of County until the time that Contractor takes delivery of such drugs at the applicable Pharmacy Location, at which time title shall pass to Contractor.
- 2.4. Price File. Contractor will endeavor to obtain the Price File from Supplier. County acknowledges and agrees that: (i) if for any reason Contractor is unable to obtain the Price File from Supplier, County will provide the Price File to Contractor upon request from Contractor; and (ii) Contractor may rely on all information set forth on any Price File that Contractor receives. In the event that County fails to comply with the requirements of this Section 2.4, Contractor will not retroactively adjust claims.
- 2.5. Changes with Benefit Design. County will notify Contractor at least sixty (60) calendar days prior to any changes to the amount that Contractor shall collect at the time of dispensing from each Eligible Patient whose prescription is not reimbursable by a Private Insurer.
- 2.6. Patient Choice. County will inform Eligible Patients that they are free to choose a pharmacy provider of their choice and, at its discretion, advise Eligible Patients that they may be eligible for a discount on certain prescription drugs at County's authorized 340B pharmacy locations.
- 2.7. Compliance with Laws. County's compliance shall with laws shall include establishing appropriate control procedures to ensure that only Eligible Patients receive 340B Drugs from County's authorized 340B pharmacy locations. In addition, County represents and warrants that it has received all necessary approvals of its 340B Drug Program and this Agreement from the applicable State Board of Pharmacy and as otherwise required by applicable laws and regulations. County agrees to execute any documents Contractor deems reasonably necessary to effectuate the terms of this Agreement, including the provision of 340B Pharmacy Services and Inventory Maintenance Services, consistent with applicable law.
- 2.8. Product Warranty. Upon request from Contractor and to the extent it is reasonably able to do so, County shall pass through to Contractor all applicable benefits under any and all manufacturer warranties and indemnification obligations with respect to any merchandise which Contractor receives to replenish its inventory of 340B Drugs dispensed to Eligible Patients. Upon request from Contractor, County will obtain from the Supplier a certificate of insurance for product liability, continuing guarantee and indemnification for 340B Drugs. County will use commercially reasonable efforts to ensure that the Supplier obtains from all merchandise manufacturers an assumption of responsibility and the defense and indemnification of County and Contractor in connection with 340B Drugs, the packaging thereof, and any related materials for third party claims made against County and Contractor. In addition, County will use commercially reasonable efforts to ensure the Supplier complies with the applicable rules and regulations as promulgated by the U.S. Food and Drug Administration, and any other applicable federal, state and local laws and regulations in effect as of the Effective Date of this Agreement or as enacted or adopted during the term hereof, with respect to title and transfers thereof to the merchandise.

3. CONTRACTOR'S SERVICES AND RESPONSIBILITIES

- 3.1. 340B Pharmacy Services. Upon receipt of an Authorization, Contractor shall render to Eligible Patients all professional advice and comprehensive pharmacy services customarily provided by it to its patients or as otherwise required by law ("**340B Pharmacy Services**"). Eligible Patients may receive 340B Pharmacy Services from any Pharmacy Location as requested by the Eligible Patient, subject to Private Insurer benefit and coverage information and Contractor's customary business practice. Contractor agrees to render 340B Pharmacy Services as herein provided in accordance with the rules and regulations of the applicable State Board of Pharmacy and all applicable federal laws and

regulations. It is expressly understood that relations between an Eligible Patient and Contractor shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. Contractor shall be solely responsible, without interference from County or its agents, to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.

3.2. Withholding of Contractor Services. Notwithstanding any provision to the contrary, County acknowledges and agrees that Contractor may withhold dispensing of a 340B Drug to an Eligible Patient for good cause, including but not necessarily limited to, the Eligible Patient's failure to pay for services rendered (e.g., patient payment responsibility amounts); requests by Eligible Patient for quantities of drugs in excess of prescribed quantities or refill limitations; or where, in the professional judgment of the dispensing pharmacist, the prescription should not be filled.

3.3. Inventory Maintenance Services. Contractor shall provide the 340B Drug inventory maintenance services set forth herein with respect to County ("**Inventory Maintenance Services**"). Each 340B Drug shall be dispensed from a Pharmacy Location's customarily maintained non-340B-priced inventory at the 340B price and shall be replenished with 340B-priced inventory with the same NDC-11 as the drug dispensed. The Inventory Maintenance Services provided by Contractor hereunder will include the following:

- 3.3.1. In accordance with Section 2.3 of this Agreement, including sub-parts, for each 340B Drug that reaches depletion at a full package size, Contractor will order 340B Drugs from the Supplier on behalf of the applicable County Location in order to replenish the 340B Drugs dispensed to Eligible Patients by Contractor.
- 3.3.2. County will reimburse Contractor the Inventory Replenishment Rate for any 340B Drugs which Contractor cannot or does not receive at the NDC-11 level replenishment from the Supplier for a period greater than forty-five (45) calendar days from the original date of an order fulfillment attempt by the Supplier ("**Overdue Drug**").
- 3.3.3. Following notice by Contractor, Contractor may block the dispensing of any 340B Drugs on the Price File that Contractor determines it is unable to manage and dispense due to logistical and/or operational constraints ("**Blocked Drug**"). In addition, Contractor may require County to remove Blocked Drugs from the Price File or discontinue prescribing such drugs for their 340B Drug Program. County acknowledges that any 340B Drugs dispensed prior to becoming a Blocked Drug shall be subject to the Aged Drug or Slow Moving Drug replenishment process, as applicable. In the event a County prescriber writes a prescription for a Blocked Drug after the date of Contractor's notice, County acknowledges and agrees such prescription shall be considered a Non-Eligible 340B Drug and Contractor may collect the Usual and Customary Charge from the patient.
- 3.3.4. County will reimburse Contractor the Inventory Replenishment Rate for Aged Drugs and Slow Moving Drugs.

3.4. Tracking System. Contractor maintains proprietary electronic tracking software that is capable of tracking 340B Drugs received from the Supplier, preventing the diversion of 340B Drugs to individuals who are not Eligible Patients, and verifying that such diversion has not occurred ("**340B Complete®**"). 340B Complete® shall be able to provide comparisons of Eligible Patient prescriptions and dispensing records and a comparison of 340B Drug purchasing and dispensing records. Contractor will reasonably cooperate with County to address any potential irregularities detected in 340B Complete® and will make adjustments to 340B Complete® that are reasonably necessary to prevent diversion of 340B Drugs to individuals who are not Eligible Patients. Notwithstanding the foregoing, however, County acknowledges and agrees it is the sole responsibility of the County to review the Report and information available in 340B Complete® to confirm that no diversion has occurred and that the Report and 340B Complete® are tools provided by Contractor to assist County in that review. County agrees to report any suspected instance of diversion to Contractor within forty-five (45) days from the end of the month in which the prescription was dispensed and upon the mutual agreement of the parties, Contractor shall make adjustments to the claim (e.g., reclassify the product as a Non-Eligible 340B Drug).

3.5. Inventory Reconciliation. On a monthly basis, Contractor will reconcile 340B Drug inventory using the information available in the Report and 340B Complete®, and make any necessary financial or accumulator adjustments as described below ("**Reconciliation**"). Reconciliation shall be conducted at the NDC-11 level and only apply with respect to pharmaceuticals that have reached full package size, or are an Aged Drug or Slow Moving Drug, and for which Contractor has or should have received replenishment from the Supplier.

3.5.1. *Non-Eligible Patients and Excess Replenishment.* In the event Contractor determines that 340B Drugs have been dispensed to non-Eligible Patients or that the quantity of 340B Drugs provided to Contractor exceeds the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Contractor will adjust the virtual inventory so that such excess is applied against existing or future 340B Drug prescriptions dispensed hereunder. If such inventory credits are not depleted by subsequent 340B dispenses from Pharmacy Locations, Contractor will reimburse County for such remaining drugs in accordance with the 340B Drug price as set forth on the Price File. If Contractor determines that the 340B Drug price as set forth on the Price File is less than the amount the Manufacturer would charge Contractor at non-340B Drug Program rates, Contractor will also reimburse the Manufacturer the difference between such amounts. With respect to adjustments made for dispenses of 340B Drugs to non-Eligible Patients, the following additional financial adjustments will apply:

3.5.1.1. *Non-Eligible Patients With a Private Insurer.* The drugs associated with the adjusted claim(s) shall be considered Non-Eligible 340B Drugs and County shall not receive any amounts arising out of the Contracted Rate. To the extent County previously received, or was credited for, any amounts arising out of the Contracted Rate, County shall immediately remit such amounts to Contractor or forfeit such credits.

3.5.1.2. *Non-Eligible Patients Without a Private Insurer.* The drugs associated with the adjusted claim(s) shall be considered Non-Eligible 340B Drugs and County shall reimburse Contractor the difference between the Usual and Customary Charge and any amounts Contractor has already received with respect to such Non-Eligible 340B Drugs.

3.5.2. *Deficient Replenishment.* In the event Contractor determines that the quantity of 340B Drugs provided to Contractor is less than the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Contractor will notify County and County will instruct the Supplier to provide 340B Drugs to Contractor. If, for whatever reason, the Supplier is unable to provide 340B Drugs as the 340B Drug ordered hereunder, County will reimburse Contractor for said drugs at the Inventory Replenishment Rate.

3.6. Insurance. Contractor will self-insure or maintain at its sole expense, and in amounts consistent with industry standards, insurance for general and professional liability and such other insurance as may be necessary to insure Contractor, its employees, and agents against any claim or claims for damages arising directly or indirectly in connection with Contractor's negligent performance of any services under this Agreement, and the use of any property or facilities provided by Contractor. Contractor's insurance information is available at www.Contractor.com/insurance.

3.7. Specialty Pharmacy Services. Contractor shall provide separate Inventory Maintenance Services for the specialty Pharmacy Locations. County acknowledges and agrees Contractor shall not accumulate inventory among specialty Pharmacy Locations for purposes of placing replenishment orders. Contractor will maintain separate tracking for the specialty Pharmacy Locations in 340B Complete® and conduct separate Reconciliations for the specialty Pharmacy Locations. Claims for drugs dispensed from the specialty Pharmacy Locations will only be designated as 340B Drug claim(s) in the event that Contractor receives: (i) an Authorization; (ii) reimbursement from the third-party prescription insurance plan at Contractor's Contracted Rate; and (iii) replenishment 340B priced pharmaceuticals from the Supplier.

4. REIMBURSEMENT AND BILLING

4.1. Invoice for Services. Contractor will invoice County on a monthly basis for all amounts arising under this Agreement during the previous calendar month ("**Invoice**"). The Invoice will identify: (i) the number of prescriptions dispensed hereunder; (ii) any amounts due Contractor including any and all fees, costs, charges, or reimbursement amounts, including but not necessarily limited to any amount arising out of the Tax, changes in the Supplier, Overdue Drugs, Aged Drugs, Slow Moving Drugs, 340B Pharmacy Services, Inventory Maintenance Services and a Reconciliation ("**Contractor Balance**"); and (iii) any amounts due County arising out of a Reconciliation or Exhibit B, if applicable ("**County Balance**").

4.2. Monthly Payments. If the Contractor Balance is less than the County Balance, Contractor shall pay County the difference between such amounts within thirty (30) calendar days from the Invoice date. Contractor's payment to County shall be made via electronic funds transfer or to the location set forth elsewhere in this Agreement. If the County Balance is less than the Contractor Balance, County shall pay Contractor the difference between such amounts within thirty (30) calendar days from the Invoice date.

4.3. Late Payment Charge. County is solely responsible for all payments required herein and shall at no time withhold payment due Contractor, nor pay an amount less than that billed by Contractor on the Invoice. All sums owed to Contractor by County will bear interest of one and one-half percent (1.5%) per month from the date payment is due until paid; however, in no event will such interest rate be greater than the rate permitted by law. County is solely responsible for any and all costs associated with Contractor's collection of any delinquent amounts.

4.4. Payment for Private Insurer Coverage. For those Eligible Patients whose prescriptions are reimbursable by a Private Insurer, Contractor is responsible to process and bill such Private Insurer at the existing Contracted Rates.

4.5. Over/Underpayments. In the event County believes that it has made an overpayment, County shall immediately notify Contractor and provide a complete explanation thereof with specific details and documentation to support any claim of overpayment. Upon review and acceptance by Contractor of such overpayment, Contractor will pay County an amount equal to the overpaid amount within thirty (30) calendar days of Contractor's written acceptance of such overpayment. If Contractor believes that County made any underpayments to Contractor, Contractor shall immediately notify County and provide a complete explanation thereof with specific details and documentation to support any claim of underpayment. Upon review and acceptance by County of such underpayment, County will pay Contractor an amount equal to the underpaid amount within thirty (30) calendar days of County's written acceptance of such underpayment. Except for verified amounts arising out of any audit or Reconciliation permitted by this Agreement, or as otherwise required by law, all claims of overpayment or underpayment must be made within one hundred eighty (180) calendar days after payment is due.

5. AUDITS AND RECORDS

5.1. Audit by DHHS or Manufacturer. Both parties understand that, under Section 340B(a)(5)(C) of the Act, records that directly pertain to compliance with the Act are subject to audit by the Manufacturer and DHHS. The parties further understand that DHHS has published guidelines for such audits. Each party agrees to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time. Contractor and County understand and agree that a copy of this Agreement will be provided, upon request, to the Manufacturer; provided that the Manufacturer has signed a purchasing agreement with DHHS. In the event either party hereto receives such a request, it shall immediately inform the other party. County acknowledges and agrees that Contractor may, in its sole discretion, delete and/or redact all Contractor confidential and proprietary information set forth herein prior to the release of this Agreement.

5.2. County Records. County shall maintain customary records relating to its responsibilities under this Agreement, including but not limited to eligibility records for patients and payment information regarding the services provided by Contractor hereunder, for the periods required by law and shall make such records available to Contractor.

5.3. Contractor Records. Contractor shall maintain customary business and pharmacy records relating to its responsibilities under this Agreement, including without limitation prescription dispensing records regarding Eligible Patients, payments received from Eligible Patients and County, and 340B Drug ordering, receiving, and dispensing information ("**Contractor Records**") in an accessible and auditable form, separate from the records of Contractor's other operations, and in full compliance with all applicable state and federal laws, rules and regulations. Contractor Records shall be maintained by Contractor for such period as is required by applicable law. Notwithstanding the foregoing, unless otherwise provided for elsewhere in this Agreement or required by federal and state laws and regulations, Contractor Records shall not include Contractor's usual and customary pricing data, any other financial and administrative records not related to Contractor responsibilities under this Agreement, or any proprietary or confidential information related to Private Insurers or the Contracted Rate, including but not limited to the identity of a Private Insurer by claim.

5.4. County Audits. During normal working hours and upon fifteen (15) business days advance written notice to Contractor, Contractor shall permit County access to review Contractor Records in order to confirm that no diversion of 340B Drugs to non-Eligible Patients and no duplicate discounts have occurred ("**Audit**") and also the right to make photocopies of Contractor Records. Contractor acknowledges that County may contract with an independent outside auditor with experience auditing pharmacies to conduct the Audit. County shall provide Contractor with advance notice of the identity of any such independent outside auditor and shall not utilize any such auditor to which Contractor has reasonable objection. County shall conduct no more than one Audit per calendar year. The parties acknowledge and agree that in no event shall Audit findings or conclusions be based upon either statistical sampling or extrapolation. Nothing in this paragraph shall be construed to prevent or limit: (i) an audit originated by Manufacturer, DHHS, HRSA, or as otherwise required by law; or (ii) review of the Report by County or an Audit of the information contained therein.

5.5. Compliance Violations. In the event that County determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure compliance with the 340B Drug Program, then it must take immediate remedial action to assure compliance and notify the Office of Pharmacy Affairs regarding such compliance problems and actions taken to remedy those problems.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and A-1, and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

1. **Self-Pay Patients.** For those Eligible Patients whose prescriptions are not reimbursable by a Private Insurer, Contractor shall be reimbursed the following amounts:

- 1.1 \$0.50 administrative fee for the Inventory Maintenance Services ("**Self-Pay Administrative Fee**"); and
- 1.2 \$15.00 dispensing fee for the 340B Pharmacy Services ("**Self-Pay Dispensing Fee**").

At the time of dispensing, Contractor shall collect from the Eligible Patient the patient responsibility amount in accordance with County's 340B Drug Program benefit design or as maybe communicated to Contractor via the Authorization, and which such amount may include the price for the 340B Drug as set forth in the Price File ("**Self-Pay Co-Pay**"). The Self-Pay Administrative Fee and the Self-Pay Dispensing Fee shall collectively be referred to as the "**Self-Pay Fees**." If the Self-Pay Fees exceed the Self-Pay Co-Pay, Contractor shall invoice County in accordance with Article 5 for any remaining amounts due Contractor. If the Self-Pay Fees are less than the Self-Pay Co-Pay, upon determination by Contractor that County is otherwise current in its payment obligations to Contractor, Contractor shall, in accordance with Article 4 of Exhibit A-1, remit to County the difference between the Self-Pay Co-Pay and the Self-Pay Fees. Notwithstanding the foregoing, if at the time of dispensing Contractor determines the Usual and Customary Charge is equal to or less than the total of the Self-Pay Administrative Fee, Self-Pay Dispensing Fee, and the price for the 340B Drug as set forth in the Price File, such drug shall be considered a Non-Eligible 340B Drug and Contractor shall charge the Eligible Patient the Usual and Customary Charge.

2. **Private Insurer Patients.** For those Eligible Patients whose prescriptions are reimbursable by a Private Insurer, Contractor will process and bill the Eligible Patient's Private Insurer for the Contracted Rate provided to the Pharmacy Location at the time of dispensing. Subject to the provisions that follow, Contractor shall be entitled to retain 20% of the Contracted Rate for the Inventory Maintenance Services and such billing services ("**Private Insurer Administrative Fee**") and a \$15.00 dispensing fee for the 340B Pharmacy Services ("**Private Insurer Dispensing Fee**"). Upon determination by Contractor that it has received the Contracted Rate for the Eligible Patient's prescription and provided that: (i) County is current in its payment obligations to Contractor; and (ii) the Contracted Rate exceeds the sum of Private Insurer Dispensing Fee, the Private Insurer Administrative Fee, and the 340B Drug price as set forth on the Price File; Contractor will retain an amount equal to the sum of the Private Insurer Dispensing Fee and the Private Insurer Administrative Fee (such sum the "**Private Insurer Fee**") and, in accordance with Article 4 of Exhibit A-1, remit to County the difference between the Private Insurer Fee and the Contracted Rate. If the difference between the Contracted Rate and the Private Insurer Fee is less than or equal to the 340B Drug price as set forth on the Price File, Contractor agrees to accept and retain the Contracted Rate as payment in full and there will be no further adjustment between the parties.

3. **Private Insurer Specialty Pharmacy Patients.** Contractor will process and bill the Eligible Patient's Private Insurer for the Contracted Rate provided to the specialty Pharmacy Location at the time of dispensing. Notwithstanding the immediately preceding section above, and subject to the provisions that follow, for services provided out of a specialty Pharmacy Location Contractor shall be entitled to retain up to 20% of the Contracted Rate for the Inventory Maintenance Services and such billing services ("**Specialty Pharmacy Private Insurer Administrative Fee**") and a \$65.00 dispensing fee for the 340B Pharmacy Services ("**Specialty Pharmacy Private Insurer Dispensing Fee**"). Upon determination by Contractor that: (i) Contractor has received the Contracted Rate for the Eligible Patient's prescription; (ii) Contractor has received replenishment 340B priced pharmaceuticals from the Supplier; (iii) County is current in its payment obligations to Contractor; and (iv) the Contracted Rate exceeds the sum of Specialty Pharmacy Private Insurer Dispensing Fee, the Specialty Pharmacy Private Insurer Administrative Fee and the 340B Drug price as set forth on the Price File; Contractor will retain an

amount equal to the sum of the Specialty Pharmacy Private Insurer Dispensing Fee and the Special Pharmacy Private Insurer Administrative Fee (such sum the "**Specialty Pharmacy Private Insurer Fee**") and, in accordance with Article 5, remit to County the difference between the Specialty Pharmacy Private Insurer Fee and the Contracted Rate. If the difference between the Contracted Rate and the Specialty Pharmacy Private Insurer Fee is less than or equal to the 340B Drug price as set forth on the Price File, Contractor agrees to accept and retain the Contracted Rate as payment in full and there will be no further adjustment between the parties.

4. Inventory Replenishment Rate. The Inventory Replenishment Rate shall be the following:

- 4.1 *Brand Name Drugs:* the Average Wholesale Price of the dispensed pharmaceutical product minus 16.65%.
- 4.2 *Generic Drugs:* the Average Wholesale Price of the dispensed pharmaceutical product minus not less than 70%.

5. Annual Price Adjustment. On the one year anniversary date of the Effective Date and annually thereafter, the parties agree the dispensing fees described in this Exhibit A may each be increased by Walgreens by 2%, cumulative year-over-year.

6. Miscellaneous.

- 6.1 State Medicaid patients are subject to individual State eligibility and reimbursement regulations for 340B prescription services. State Medicaid prescription claims will be submitted under Contractor's existing contract with State Medicaid utilizing Contractor's owned inventory. They will be carved out from the 340B program and covered entity will not be replenishing this inventory. There could be other select government funded prescriptions or coordination of benefit scenarios which may disqualify the use of 340B drugs and it is County's obligation to identify such programs and notify Contractor of their exclusion from this Agreement. County acknowledges and agrees that absent such notification, Contractor will by default include the claim.
- 6.2 Travel times or expenses are not billable.
- 6.3 No costs for starting up services outlined by this Agreement shall be owed or paid.
- 6.4 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.
- 6.5 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.
- 6.6 All invoices must be emailed to the following email address: SMMC-Accounts-Payable@smcgov.org
- 6.7 Processing time may be delayed if invoices are not submitted electronically.
- 6.8 Contractor is not entitled to payment for work not performed as required by this Agreement.

Exhibit C
Pharmacy Locations

1. Retail Pharmacy Locations

NO.	LOCATION	ADDRESS	CITY	STATE	ZIP CODE
1	324	216 WESTLAKE CTR	DALY CITY	CA	94015
2	1807	22 SAN PEDRO RD	DALY CITY	CA	94014
3	2126	1414 EL CAMINO REAL	SAN CARLOS	CA	94070
4	2939	333 EL CAMINO REAL	SAN BRUNO	CA	94066
5	3296	191 E 3RD AVE	SAN MATEO	CA	94401
6	3346	399 EL CAMINO REAL	SOUTH SAN FRANCISCO	CA	94080
7	5006	4070 S EL CAMINO REAL	SAN MATEO	CA	94403
8	5365	6100 MISSION ST	DALY CITY	CA	94014
9	11261	520 PALMETTO AVE	PACIFICA	CA	94044
10	12141	328 UNIVERSITY AVE	PALO ALTO	CA	94301
11	12257	260 EL CAMINO REAL	BURLINGAME	CA	94010
12	15296	2262 MARKET ST	SAN FRANCISCO	CA	94114
13	15397	2238 WESTBOROUGH BLVD	SOUTH SAN FRANCISCO	CA	94080

2. Mail Order/Online Pharmacy Location

NO.	ADDRESS	CITY	STATE	ZIP CODE
14	8350 S RIVER PARKWAY	TEMPE	AZ	85284

3. Specialty Pharmacy Locations

NO.	LOCATION	ADDRESS	CITY	STATE	ZIP CODE
15	16287	130 ENTERPRISE DRIVE	PITTSBURGH	PA	15275
16	12314	9775 SW GEMINI DR, STE 1	BEAVERTON	OR	97008
17	15438	41460 HAGGERTY CIR S	CANTON	MI	48188
18	15443	10530 JOHN W ELLIOTT DR, STE 100	FRISCO	TX	75033
19	16280	10530 JOHN W ELLIOTT DR, STE 200	FRISCO	TX	75033

Exhibit D
Business Associate Addendum

This Business Associate Addendum ("**Addendum**") is entered into by and between County ("**Covered Entity**") and Contractor ("**BA**") and is effective as of the Effective Date of Underlying Agreement (as defined below) ("**Addendum Effective Date**"). This Addendum shall be incorporated into and made a part of the Underlying Agreement.

Covered Entity and BA have entered into an agreement whereby BA provides administrative services related to patient eligibility determinations in addition to dispensing pharmaceutical products pursuant to that certain 340B Contract Pharmacy Services Agreement ("**Underlying Agreement**");

The parties acknowledge that the provision of administrative services related to patient eligibility determinations are services provided by BA outside the scope of BA's normal covered pharmacy operations function and this Addendum is limited to the provision of such services ("**Services**");

Pursuant to the terms of the Underlying Agreement, Covered Entity wishes to disclose certain information to BA, some of which may constitute Protected Health Information (as defined below), and the parties wish to establish satisfactory assurances that BA will appropriately safeguard this PHI; and

The purpose of this Addendum is to satisfy certain standards and requirements of the HIPAA Rules (as defined herein), including, but not limited to, those at 45 C.F.R. §§ 164.314(a), 164.502(e), and 164.504(e), as the same may be amended from time to time, to be in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 ("**HITECH Act**"), and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E ("**Privacy Rule**"), the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C ("**Security Rule**"), and the Notification of Breach of Unsecured Protected Health Information requirements at 45 C.F.R. Part 164, Subpart D ("**Breach Notification Rule**").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **Definitions.** For the purposes of this Addendum, terms used, but not otherwise defined, shall have the meaning as those in 45 C.F.R. §§ 160.103, 164.304, 164.402, 164.501, and 164.504, and the following terms have the definitions set forth below:

1.1. "**Breach**" shall have the same meaning as the term "breach" at 45 C.F.R. § 164.402.

1.2. "**HIPAA Rules**" shall mean the Privacy Rule, the Security Rule, and the Breach Notification Rule collectively.

1.3. "**Individual**" shall mean the person who is the subject of the PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.4. "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" at 45 C.F.R. § 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI shall include Electronic Protected Health Information. Notwithstanding anything to the contrary in this Addendum, the term "PHI" as used in this Addendum shall not include any information that BA would otherwise be able to receive as a HIPAA covered entity in the patient's continuum of care.

1.5. "**Secretary**" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

1.6. **"Security Incident"** shall have the same meaning as the term "security incident" at 45 C.F.R. § 164.304.

1.7. **"Unsecured PHI"** shall have the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.

2. BA Obligations. The parties agree that BA shall:

2.1. Not use or disclose PHI other than as permitted by this Addendum, the Underlying Agreement, the Privacy Rule, or as Required By Law;

2.2. Use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum. BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. BA shall comply with the applicable requirements of Subpart C of Part 164 of the Security Rule;

2.3. Limit any uses, disclosures, and requests for PHI to the minimum amount necessary to perform or fulfill a specific function required or permitted by this Addendum in accordance with the HIPAA Rules;

2.4. Mitigate to the extent practicable, any harmful effect that is known to BA from a use or disclosure of PHI by BA in violation of this Addendum;

2.5. Timely report to Covered Entity any use or disclosure of PHI of which BA becomes aware that is not provided for or allowed by this Addendum or the HIPAA Rules, including Breaches of Unsecured PHI that BA discovers as required by, and in the manner set forth at, 45 C.F.R. § 164.410, and any Security Incident of which BA becomes aware. The parties acknowledge and agree that this section constitutes notice by BA to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but are not limited to, pings and other broadcast attacks on BA's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use, or disclosure of PHI;

2.6. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), require any of its agents or subcontractors that maintain, create, receive, and/or transmit PHI on behalf of BA to agree, in writing, to the same restrictions, conditions and obligations with respect to the use and disclosure of PHI that apply to BA under this Addendum;

2.7. Make available to Covered Entity such information in such form as Covered Entity may require to fulfill Covered Entity's obligations to provide an Individual with access to, amendment of, and an accounting of disclosures of PHI pursuant to 45 C.F.R. §§ 164.524, 164.526, and 164.528, respectively;

2.8. Make available to the Secretary its internal practices, books and records relating to the use and disclosure of PHI received from, or created by, BA on behalf of Covered Entity, for purposes of determining Covered Entity's compliance with the HIPAA Rules; and

2.9. To the extent BA is delegated to carry out any of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.

3. Permitted Uses and Disclosures. The parties agree that BA may:

3.1. Use and disclose PHI to perform the Services provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity;

3.2. Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities;

3.3. Use PHI in its possession to provide Data Aggregation services relating to the Health Care Operations of Covered Entity;

3.4. Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that: (i) the disclosures are Required By Law; or (ii) BA has received from the third party receiving the PHI reasonable assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required By Law or for the purpose for which it was disclosed to the third party, and that the third party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached; or

3.5. De-identify PHI and use and disclose the de-identified information, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and use the de-identified information for any purpose.

4. Obligations of Covered Entity. With respect to the use and/or disclosure of PHI by BA, Covered Entity shall:

4.1. Notify BA, in writing and in a timely manner, of any limitations in its notice of privacy practices, to the extent that such limitations may affect BA's use or disclosure of PHI;

4.2. Notify BA, in writing and in a timely manner, of any change in, or revocation of, consent or authorization by an Individual to use or disclose PHI, to the extent that such change may affect BA's permitted or required use or disclosure of the PHI;

4.3. Notify BA, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI to which Covered Entity is required, or has agreed in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect BA's use or disclosure of PHI;

4.4. Have entered into a "Business Associate Agreement", as required by 45 C.F.R. § 164.502(e) with any third parties to which Covered Entity directs and authorizes BA to disclose PHI; and

4.5. Only disclose to BA the minimum necessary PHI for BA to provide the Services to Covered Entity.

5. Term. This Addendum shall become effective on the effective date of the Underlying Agreement and shall expire when all of the PHI provided by Covered Entity to BA is destroyed or returned to Covered Entity pursuant to Section 7.

6. Termination. Notwithstanding any other provision under the Underlying Agreement, the parties agree that this Addendum may be terminated without penalty at any time by either Party if the other Party violates a material obligation under this Addendum, provided, however, the other Party is afforded thirty (30) days opportunity to cure the breach and the other Party does not cure the breach or end the violation within said thirty (30) days. If the parties mutually agree that cure is not possible, this Addendum shall terminate immediately.

7. Return or Destruction of PHI. Upon termination or expiration of this Addendum, BA shall return to Covered Entity any and all PHI received from, or created by BA on behalf of, Covered Entity that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to Covered Entity is not feasible, BA shall destroy any and all PHI maintained by BA in any form

whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to be not feasible, the parties agree that the terms of this Addendum shall extend to the PHI, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

8. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties agree to take such action as is necessary to comply with the standards and requirements of the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request due to a change in the law, the other Party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum.

9. Independent Contractors. In the performance of the Services and the obligations under this Addendum, the parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent, or master/servant relationship.

10. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity and BA to comply with the HIPAA Rules. The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement between the parties that may conflict or appear inconsistent with any provision of this Addendum.

11. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

12. Notice. Any notice required under this Addendum shall be delivered in writing to BA or Covered Entity, as appropriate, and submitted to the address indicated below:

For BA:	Walgreens Privacy Office 200 Wilmot Road, MS 9000 Deerfield, Illinois 60015 Phone: (847) 236-6518 Fax: (847) 236-0862 Email: privacy.office@walgreens.com Attn: Privacy Officer
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For Covered Entity:	The address set forth in the Underlying Agreement
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13. Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section in effect or as amended and for which compliance is required at the time.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

The person/entity listed below (the "Undersigned") recognizes SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

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

The Undersigned has the right to use the SMMC Disclosure Program by calling the Compliance Hotline or reporting incidents to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

The Undersigned understands that non-compliance with Federal health care program requirements could result in termination of the Agreement and/or any other penalties permitted by law.

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

The Undersigned will not offer, give or accept any bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships).

Subject to the Audit provisions of this Agreement, the Undersigned will cooperate fully and honestly with applicable internal audits and monitoring programs.

TO REPORT VIOLATIONS, CALL THE COMPLIANCE HOT LINE: (800) 965-9775

WALGREEN CO.


Name of Person/Entity (the "Undersigned")



Signature and Printed Name

7-6-16

Date


Karl E. T. L. 7.6.16

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☐ a. Employs fewer than 15 persons.
- ☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Name of Contractor(s): Walgreen Co.

Street Address or P.O. Box: 104 Wilmot Road, MS 1446 (JO)

City, State, Zip Code: Deerfield, IL 60015

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Title of Authorized Official:

Date:

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."