# 340B DIRECT <br> AMENDED AND RESTATED CONTRACT PHARMACY SERVICES AGREEMENT 

This 340B Contract Pharmacy Service Agreement ("Agreement"), by and between SAN MATEO, COUNTY OF ("Covered Entity") and Safeway, Inc. ("Pharmacy"), is made and will take effect upon the date of the last signature execution below (the "Effective Date").

WHEREAS, Covered Entity participates in a federal drug discount program established under section 340B of the Public Health Service Act ("340B Program");

WHEREAS, Covered Entity currently contracts with Pharmacy ("Original Agreement") to provide the services of a contract pharmacy to serve patients eligible to receive 340Bdiscounted drugs ("Covered Entity Patients"), as permitted under 75 Fed. Reg. 10272 (March 5, 2010);

WHEREAS, pursuant to 75 Fed. Reg. 10272, in addition to contracting with a single pharmacy for each clinical site, Covered Entities may pursue arrangements that include multiple pharmacies, provided that (1) there is a written agreement in place that meets 340B Program requirements, as articulated in 340B multiple contract pharmacy guidance; (2) the written agreement includes and addresses all of the elements outlined in Sections 2 and 3 of this Agreement; (3) the operation of the arrangement continues to meet all 340B Program requirements and does not create diversion of 340 B Drugs or duplicate discounts; (4) the arrangements are one of the following models either individually or in combination:
(i) the use of multiple contract pharmacy service sites and/or (ii) the utilization of a contract pharmacy/pharmacies to supplement in-house pharmacy services; and (5) the arrangement involves a single identifiable Covered Entity and does not include a network; and

WHEREAS, Pharmacy and Covered Entity wish to amend and restate the terms of the Original Agreement to reflect Covered Entity's participation in Pharmacy's 340B Direct Program as set forth herein.

NOW, THEREFORE, the Parties agree as follows:

## 1. Definitions.

a. "340B Direct Program" shall mean the services offered by Pharmacy relating to administration and management of 340B Program functions as further specified in this Agreement.
b. "340B Dispensing Fee(s)" shall mean those fees due to the Pharmacy pursuant to this Agreement as set forth on Exhibit A, as may be modified from time to time.
c. "340B Drugs" shall be defined in accordance with applicable laws and guidance at 42 U.S.C. § $256 \mathrm{~b}(\mathrm{~b}), 42$ U.S.C. § 1396r-8(k), and 59 Fed. Reg. 25,110 (May 13, 1994).
d. "340B Program" shall be defined as part of the 1992 Veteran's Health Care Act, which created Section 340B of the Public Health Services Act, allowing certain "Covered Entities" to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS").
e. "340B Program Administrator" shall mean the third party 340B services provider, if any, engaged by Covered Entity to manage or administer its 340B program and contract pharmacy arrangements.
f. "Agreement" shall mean this Contract Pharmacy Services Agreement and accompanying exhibits, if any, as may be amended from time to time.
g. "Covered Entity" shall mean the legal entity identified in this Agreement, including all of its 340 B eligible site locations. If there is more than one Covered Entity site which shall be encompassed by this Agreement, each site shall be identified in Exhibit C attached hereto and incorporated herein by reference, as may be modified from time to time.
h. "Covered Entity Patients" shall mean those individuals who satisfy HRSA's patient definition criteria at 61 Fed. Reg. 55,156-58 (Oct. 24, 1996), as may be amended from time to time.
i. "Department" shall mean the Department of Health and Human Services.
j. "HRSA" shall mean the Health Resources and Services Administration, which is the agency within DHHS that oversees activities of the Office of Pharmacy Affairs.
k. "Insured Claim" shall mean claim for a 340B Drug that is adjudicated at the point of sale in accordance with contracted rates between the Pharmacy and any applicable third party payor (i.e. Pharmacy Benefits Manager, plan or self-funded employer).

1. "Non-Replenishable Items" shall mean (i) any discontinued items, or items no longer available with the same NDC11as the originally dispensed item; or (ii) slow moving items, any 340B Drug (at the NDC11 level) which, at the time of the applicable Trueup, has not been replenished within the immediately preceding ninety (90) days.
m. "OPA" shall mean the Office of Pharmacy Affairs, which is within the Health Resources and Services Administration and which administers the 340B Program.
n. "Parties" or "Party" shall mean the signatories to this Agreement, which are the Covered Entity and Pharmacy.
o. "Pharmacy" shall mean the legal entity identified in this Agreement. If there is more than one Pharmacy location that shall be utilized by Covered Entity in order to serve Covered Entity Patients, each Pharmacy site shall be identified in an Exhibit D attached hereto and incorporated herein by reference.
p. "SWP" shall mean Suggested Wholesale Price as published by First Databank (or similar published compendium of suggested wholesale price).
q. "Tracking System" shall mean the system for identifying and monitoring the use of drugs through all phases of the Parties' involvement with such drugs, including the ordering of 340B Drugs, the receipt of 340B Drugs, Covered Entity's payment for 340B Drugs, internal transfers of 340B Drugs within the Pharmacy, Pharmacy's preparation and dispensing of 340B Drugs, and Pharmacy's billing of the Covered Entity Patient or third-party insurer for the 340B Drugs on behalf of Covered Entity.
r. "Uninsured Claim" shall mean any Claim that is adjudicated or paid at the point of sale in accordance with an uninsured 340B Program maintained by the Covered Entity and/or its 340B Program Administrator, including any subsidized or unsubsidized uninsured program.
s. "WAC" shall mean Wholesale Acquisition Cost as published by First Databank (or similar published compendium of suggested wholesale cost).

## 2. Essential Covered Entity Compliance Elements

a. Maintaining Title. Covered Entity shall purchase and maintain title to the 340B Drugs and shall assume all responsibility for establishing the price of the 340B Drugs subject to applicable Federal, State, and local laws.
b. Ship To, Bill To Agreement. A "ship to, bill to" procedure shall be used by the Parties, pursuant to which the Covered Entity or Pharmacy shall order on Covered Entity's behalf through the 340B Direct Program, 340B Drugs directly from the drug manufacturer, a designated sales representative, or a drug wholesaler. Covered Entity, or Pharmacy through the 340B Direct Program, shall arrange for Covered Entity to be billed directly for purchased 340B Drugs. If Covered Entity has more than one site, it may choose between having each site billed individually or designating a single Covered Entity billing address for all 340B Drug purchases. Covered Entity shall arrange for shipment of the 340B Drugs directly to Pharmacy.
c. Pharmacy Services. Pharmacy shall perform the following services (collectively, the "Pharmacy Services").

1) Dispense 340B Drugs to Covered Entity Patients in accordance with all applicable state and federal statutes and regulations;
2) Conduct patient drug utilization review;
3) Maintain patient drug profiles in accordance with Pharmacy's usual business practices;
4) Counsel and advise patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship.

Notwithstanding the foregoing, Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions with respect to Pharmacy Services. Pharmacy agrees to render Pharmacy Services in accordance with professional standards applicable to Pharmacy Services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Covered Entity Patient where such service would violate any statue, regulation, or professional standard applicable to Pharmacy Services.
d. Inventory Replenishment. Covered Entity or Pharmacy on behalf of Covered Entity through the 340B Direct Program shall order, for delivery to Pharmacy, all 340B Drugs which have been determined to be eligible and have reached a full package size but have not yet been delivered to Pharmacy. 340B Drugs dispensed to Covered Entity Patients shall be replenished at the NDC-11 level. Covered Entity and Pharmacy each agree that CIIs will be dispensed under this Agreement in connection with Covered Entity's 340B Program.

## 1) Slow Moving and Discontinued Items:

a. True-up. Pharmacy, in connection with the 340 B Administrator, shall conduct a "True-up" of Non-Replenishable Items, no less than once per calendar quarter. True-ups shall be conducted as follows:
i. True-up Charges: The Covered Entity shall reimburse the Pharmacy for all Non-Replenishable Items at the then current "Estimated Acquisition Cost" as defined and calculated in accordance with the then current Exhibit A.
ii. Partial Replenishment. Any True-up adjustments for less than the full amount of 340B Drugs dispensed in connection with applicable Captured Claims shall be made on a pro rata basis.
e. Freedom of Choice. Covered Entity shall inform all Covered Entity Patients that if he or she does not elect to use Pharmacy, Covered Entity will provide the Covered Entity Patient with his or her prescription form and the Covered Entity Patient is then free to fill the prescription using the pharmacy provider of his or her choice. If a Covered Entity Patient does not elect to use the services of Pharmacy or any Covered Entity pharmacy location (in-house or contracted), then the manufacturer is not required to offer the drug at the 340B price.
f. Adherence to All Applicable Laws. Covered Entity and Pharmacy shall adhere to all applicable Federal, State, and local laws, regulations, and requirements, including
but not limited to Federal and State anti-kickback laws, self-referral laws, and false claims laws. Both Covered Entity and Pharmacy are aware of the potential for civil or criminal penalties if they violate Federal, State or local laws and requirements.
g. Tracking System. The 340B Direct Program establishes and maintains a Tracking System using customary business records, suitable to prevent the diversion of 340B Drugs to individuals who are not Covered Entity Patients. The Tracking System allows Covered Entity to make periodic comparisons of Covered Entity prescribing records with Pharmacy dispensing records to detect potential irregularities.
h. Patient Verification. The 340B Direct Program includes a system to verify Covered Entity Patient eligibility, as defined by HRSA guidelines. The system shall be subject to modification in the event of change in such guidelines. Covered Entity and Pharmacy agree that they will not resell or transfer a 340B Drug to an individual who is not a Covered Entity Patient. Covered Entity and Pharmacy understand that either Party may be removed from the 340B Program if it participates in drug diversion.
i. Prohibition Against Diversion. Covered Entity and Pharmacy shall not resell or transfer 340B Drugs to any individual or any other entity who is not a Covered Entity Patient.
j. Prohibition Against Duplicate Discounts. Neither Party shall use 340B Drugs to dispense 'fee for service' Medicaid prescriptions, unless Covered Entity, Pharmacy and the State Medicaid program have established an arrangement to prevent duplicate discounts. Any such arrangement shall be reported to HRSA by the Covered Entity.
k. Maintaining Compliance. Covered Entity and Pharmacy will identify the necessary information for the Covered Entity to meet its ongoing 340B Program compliance obligations. Pharmacy will make such information as well as additional reports as agreed to by the Parties (including, but not limited to customary business reports), available under the 340B Direct Program to enable periodic independent audits performed by the Covered Entity.

1. Outside Audits. Covered Entity and Pharmacy understand that they are subject to audits by outside parties (the Department and participating manufacturers) of records that directly pertain to the Covered Entity's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts.
m. Access to Agreement. Upon written request to the Covered Entity, a copy of this Agreement will be provided to OPA.

## 3. Other Pharmacy and/or Covered Entity Responsibilities

a. Receipt of 340B Drugs. Pharmacy is responsible for the receipt of 340B Drugs purchased by Covered Entity. Upon receipt of 340B Drugs, Pharmacy shall compare all shipments received on behalf of Covered Entity and confirm that the shipments
conform to the related orders of 340B Drugs. If Pharmacy should find a discrepancy between the shipment and order of 340B Drugs, Pharmacy shall inform Covered Entity within five (5) business days of this discrepancy.
b. Central Inventory Replenishment, Maintenance, and Ordering. Pharmacy shall maintain systems and processes to track and report inventory dispensed to Covered Entity Patients on an aggregated basis across all participating Pharmacy locations, as listed in Exhibit D. Pharmacy will provide real time access and reporting related to applicable inventory levels and required replenishment. The 340B Direct Program will track all virtual inventory levels and manage the ordering of applicable replenishment inventory. For all Captured Claims, the Covered Entity shall purchase and replenish applicable inventory due to Pharmacy in accordance with the reported Captured Claims and the replenishment orders generated by the 340B Direct Program.
c. Eligibility and Claim Capture. When presented with a valid prescription from a Covered Entity Patient, Pharmacy shall adjudicate the claim and dispense the drugs to such Covered Entity Patient per the terms of the prescription order, this Agreement and the standard practices of the 340B Direct Program. Subject to Covered Entity's ongoing cooperation and compliance, the terms of this Agreement and the requirements of the 340B Direct Program, including without limitation the provision of accurate "Eligibility Data," as defined below, Pharmacy shall maintain systems and processes to enable Pharmacy to identify which pharmacy claims at participating locations were for Covered Entity Patients and which meet the other requirements of the 340B Direct Program, and when appropriate, capture such claims for the benefit of the Covered Entity (each a "Captured Claim"). In no event, without Pharmacy's prior written authorization, shall Pharmacy be required to capture any claims for a Covered Entity after thirty (30) days following the date that the underlying drug was sold to the applicable patient.
d. Eligibility Data. In accordance with the requirements of the 340B Direct Program, Covered Entity shall provide Pharmacy and/or its designee with "Eligibility Data" in a manner and frequency acceptable to Pharmacy, as determined during the 340B Direct Program implementation process. Eligibility Data shall include, without limitation, Covered Entity Patient information, prescriber and provider information, and such other information and data reasonably requested by Pharmacy.
e. Billing Third-Party Insurers. On behalf of Covered Entity, Pharmacy shall be responsible for billing applicable third-party insurers for 340B Drugs purchased by Covered Entity for Covered Entity Patients with third party coverage, and for billing Covered Entity Patients for insurance co-payments, where applicable with respect to Captured Claims. Pharmacy shall not be obligated to pay Covered Entity for any Captured Claim unless or until Pharmacy collects from the applicable third party payer and/or the Covered Entity Patient, as applicable. The Parties shall establish procedures for Pharmacy to follow (e.g. use of a sliding fee schedule, refer patient to Covered Entity's patient assistance program, etc.) with respect to Covered Entity

Patients who do not have prescription drug coverage and are unable to pay for their 340B Drugs.
f. Invoices and Payments. Under the 340B Direct Program, Pharmacy will prepare and electronically deliver an invoice which identifies all monies owed by Pharmacy to Covered Entity ("Invoice"). For each Captured Claim Pharmacy shall be entitled to a 340B Dispensing Fee for Pharmacy Services provided hereunder and Pharmacy shall reimburse the Covered Entity as specified in Exhibit A. The Pharmacy shall remit applicable payments due to the Covered Entity for Captured Claims for which Pharmacy has been paid as specified in Exhibit A. At the request and direction of the Covered Entity, Pharmacy shall also remit applicable administrative fee payments to Covered Entity's independent 340B Program Administrator, if any. Such remittances shall be in the manner indicated by the Covered Entity as set forth on Exhibit B.
g. Maintenance of Pharmacy Services Records. On behalf of Covered Entity, Pharmacy shall maintain all relevant records relating to the Pharmacy Services associated with 340B Drugs and Covered Entity Patients as well as the 340B Direct Program, in accordance with applicable Federal, State, and local laws and regulations, including but not limited to the Federal Standards for the Privacy of Individually Identifiable Health Information. Pharmacy shall maintain all auditable records for a period of time that complies with all applicable Federal, State and local requirements, in any event not less than a period of ten (10) years.
h. Access to Business Records. Under the 340B Direct Program, Pharmacy shall provide Covered Entity with $24 / 7$ access (subject to reasonable downtime for maintenance) to the 340B Direct Program reporting and information portal to enable Covered Entity to receive and access, regular reports, detailed Captured Claim information, virtual inventory levels, and order information reasonably necessary for Covered Entity to ensure that Pharmacy is in compliance with applicable Federal, State, and local laws, regulations, and requirements.
i. Maintenance of Account Records. Pharmacy shall ensure that all reimbursement accounts and dispensing records, and any and all other pertinent records relating to Pharmacy's responsibilities and duties under this Agreement, are maintained by Pharmacy separately from Pharmacy's own operations and will be made available to Covered Entity, HRSA, and manufacturers in the case of an audit.
j. Inspection of Records. Upon request, Covered Entity and Pharmacy shall disclose or permit inspection of any records or information relating to this Agreement, when necessary to comply with audits or investigations conducted by the Federal or State governments.
k. Drug Manufacturer Audits. Upon request, Pharmacy shall provide reasonable access by a drug manufacturer that sells 340B Drugs to Covered Entity to relevant records and materials for purposes of any audits conducted by the drug manufacturer relating to 340 B Drugs dispensed by Pharmacy pursuant to this Agreement, in
accordance with manufacturer audit guidelines as set forth at 61 Fed. Reg. 6540665413 (December 12, 1996).

1. Access to Program Information. Upon request, Covered Entity shall provide authorization and reasonable access for Pharmacy to relevant records and materials necessary for the administration of the 340B program under this Agreement including without limitation, Wholesaler pricing, ordering, and inventory information (i.e. 810, 832 and 855 files) and other files and information reasonably necessary to enable Pharmacy to perform its services under this Agreement.

## 4. Ongoing Responsibility of Covered Entity to Ensure Compliance.

a. Covered Entity shall be solely responsible for its 340B Program compliance, including ensuring the accuracy of its Eligibility Data, and Pharmacy is entitled to rely on the accuracy and completeness of this information. Covered Entity shall indemnify Pharmacy and its affiliates, employees, officers and directors, from any costs, losses or damages arising from Covered Entity's failure to provide accurate and timely data. Covered Entity shall be responsible for maintaining its eligibility and all applicable registration requirements as a 340B Covered Entity and shall immediately notify Pharmacy of any change in status or the status of any registered contract pharmacy relationship with Pharmacy.
b. Covered Entity is responsible for ensuring that the process for distribution of 340 B Drugs complies with 340B Program requirements to ensure against the diversion of 340B Drugs and prevent duplicate discounts. In accordance with 340B Program guidance, Covered Entity may therefore undertake annual, independent audits for the purpose of ensuring that the prohibitions against diversion and duplicate discounts are not breached.

Upon ten (10) business days prior advance written notice to Pharmacy's central office location set forth in Section 24, and subject to all applicable state and federal laws regarding the confidentiality of records, Covered Entity and their authorized representatives shall have the right, for the term of this Agreement (or such longer period required by law), to review, audit, examine, and receive copies of any of the Pharmacy's Records related to the determination of compliance with HRSA 340B guidance on the avoidance of duplicate discounts and drug diversion. For purposes of this Agreement, the term "Pharmacy's Records" shall consist of the following records: (i) prescriptions related to 340 B transactions under this Agreement, (ii) evidence that the prescription was filled, picked-up or delivered, and the applicable copayments or deductible were made; and (iii) claim information for the purposes of determining the existence of drug diversion or duplicate discounts. Notice shall include a description of the type, scope, number and date range of records to be audited, pharmacy store number and physical address. Unless the audit reveals a material issue, onsite Covered Entity audits shall be limited to no more than twenty (20) prescriptions per audit. The Parties acknowledge that the primary Pharmacy Records related to the 340B program are electronically stored in Pharmacy's 340B

Direct system and can be made available to the Covered Entity remotely. To the fullest extent practicable, audits shall be conducted remotely and, to the extent commercially reasonable, Pharmacy shall provide Covered Entity or its authorized representatives with electronic copies or electronic access to any reasonably required Pharmacy Records requested. To the extent that the Parties reasonably determine that an onsite audit is required, Covered Entity shall conduct such audit during Pharmacy's regular business hours, in a manner and at a time to minimize disruption to Pharmacy's business operations, and subject to the provisions of this section. Except by mutual agreement, Covered Entity shall not conduct an onsite audit more than once per calendar year per Pharmacy location. A written result of all audits shall be forwarded to Pharmacy within thirty (30) days of said audit. Pharmacy shall have thirty (30) days from the date of receipt of notification of audit results to address any compliance concerns raised by the audit and submit additional documentation for Covered Entity's consideration. Audit results may not be extrapolated; hence any determination must be specifically related to an actual claim.
c. The Covered Entity may maintain sole discretion over the selection of an independent, outside auditor to perform any audits referenced in this section 4. Such auditor shall have experience auditing pharmacies.
d. The Covered Entity shall determine, in consultation with the independent auditor, the methodology to be utilized in performing the audit.
e. In the event that Covered Entity determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure reasonable compliance, it must take immediate remedial action to assure compliance and notify OPA regarding such compliance problems and actions taken to remedy those problems.
5. Term and Termination. The Term of this Agreement shall be for five years commencing on the Effective Date through the fifth anniversary thereof.
a. In the event either Party materially breaches the terms of this Agreement, the nonbreaching Party may terminate this Agreement upon thirty (30) days' prior written notice to the other, specifying the nature of such breach and such breach remains uncured at the end of such thirty (30) day period.
b. Either Party may terminate this Agreement at any time, with or without cause, by giving the other sixty ( 60 ) days' prior written notice.
c. The Parties may terminate this Agreement at any time by mutual consent.
d. Upon termination or expiration of this Agreement, the Parties shall remain responsible for obligations which accrued prior to the date of termination or during any transition period, including, but not limited to Covered Entity's obligations to pay
fees due Pharmacy for Pharmacy Services rendered and Pharmacy's obligation to remit required payments to Covered Entity.

## 6. Confidentiality.

a. The Parties shall work in good faith to prevent the unauthorized use and/or disclosure of Trade Secrets received by a Party (the "Receiving Party") from the other Party (the "Disclosing Party"). For purposes of this Agreement, the term "Trade Secrets" has the meaning set forth in subdivision (d) of Section 3426.1 of the California Civil Code. Additionally, the Receiving Party agrees to maintain and transfer all information disclosed under this Agreement in a manner consistent with all applicable laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended.
b. Notwithstanding the foregoing, Trade Secrets may be disclosed to either Party's employees or contractors or to any third party (an "Authorized Representative") as reasonably necessary to carry out the purposes of this Agreement or the administration of the receiving Party's business and operations; provided any such contractor or third party has agreed to be bound by obligations of non-disclosure and non-use regarding the Trade Secrets that are at least as comprehensive as the obligations contained herein. Each Party shall be responsible for any breach of this Agreement by any Authorized Representative to which it discloses Trade Secrets under this Agreement. Pharmacy acknowledges that this Agreement and any amendments hereto shall be a public record under California law. Further, the Parties acknowledge that Covered Entity is subject to the California Public Records Act ("CPRA"). If any non-exempt information related to this agreement (other than the agreement itself or any amendment thereto, which are already public records) is properly requested by a third party from Covered Entity, Covered Entity shall give Pharmacy prompt notice of the request. Pharmacy shall have 10 days in which to obtain a court order prohibiting disclosure of such information. Absent receipt of such an order, Covered Entity shall thereafter bear no liability for disclosing the requested information pursuant to the request.
c. Trade Secrets shall not include any information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its agents, representatives or employees; (ii) was within the Receiving Party's possession on a non-confidential basis prior to disclosure by the Disclosing Party; or (iii) the Receiving Party is required by law or judicial order to disclose such information, provided that the Receiving Party shall promptly notify the Disclosing Party of such requirement so that the Disclosing Party may seek an appropriate protective order or otherwise seek to protect the confidentiality of such information.
d. Each Party shall retain full ownership rights of its Trade Secrets disclosed hereunder, including derivative works based on or otherwise incorporating such Trade Secrets.

Ownership rights shall include, but are not limited to, all rights associated with trade secrets, copyrights, trademarks, and patents.
e. 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 Trade Secrets to the Disclosing Party, together with all copies thereof or copies of any part thereof as shall then be in Receiving Party's possession. If return of all written or other physical or electronic embodiments of Trade Secrets is not commercially practical, then at the direction of the Disclosing Party, the Receiving Party shall account for all Trade Secrets and either: (i) destroy such Trade Secrets; or (ii) continue to hold such Trade Secrets in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Trade Secrets shall not include information that must be retained by the Receiving Party under law for auditing or other purposes or as otherwise provided in this Agreement. In any event, such Trade Secrets shall at all times be maintained by the Receiving Party in a manner consistent with the terms of this Agreement.

## 7. Indemnification.

a. Pharmacy shall indemnify, defend and hold Covered Entity harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by the negligence or willful misconduct of Pharmacy by or any of its employees, agents, contractors, or subcontractors; except that Pharmacy shall have no duty to indemnify, defend, or hold Covered Entity harmless for any liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by Covered Entity's provision of a prescription for 340B Drugs to an individual who is not an Covered Entity Patient or other inappropriate diversion of 340B Drugs by Covered Entity. Notwithstanding the foregoing, Pharmacy shall have no duty to indemnify, defend, or hold Covered Entity harmless for any liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) in relation to which Covered Entity has been determined by any court with jurisdiction to have caused the damage or harm at issue (whether through the concepts of comparative or contributory negligence or otherwise).
b. Covered Entity shall indemnify, defend and hold Pharmacy harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by the negligence or willful misconduct of any of duty or responsibility under this Agreement, by Covered Entity or any of its employees, agents, contractors, or subcontractors; except that Covered Entity shall have no duty to indemnify, defend, or hold Pharmacy harmless for any liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) in relation to which Pharmacy has been determined by any court with jurisdiction to have caused the
damage or harm at issue (whether through the concepts of comparative or contributory negligence or otherwise).
c. A Party seeking indemnification pursuant to this Section (the "Indemnified Party"), shall notify the other Party (the "Indemnifying Party") promptly upon becoming aware of any action to which such indemnification may apply. The Indemnifying Party shall have the right to assume and control the defense of the action at its own expense; provided that the Indemnifying Party may not make any settlement that requires any payment by the Indemnified Party or admission of wrong doing from the Indemnified Party without the Indemnified Party's prior written consent. If the right to assume and control the defense of any such action is exercised, the Indemnified Party shall have the right to participate in such defense. If the Indemnifying Party does not reasonably assume the defense of the action, the Indemnified Party may defend the action and shall be indemnified for reasonable costs of such defense.
d. EXCEPT TO THE EXTENT THAT LIABILITY ARISES FROM A PARTY'S INDEMNITY OBLIGATIONS SPECIFIED HEREIN, 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 LOSS OF PROFITS, REVENUE, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
8. Insurance. With respect to the performance of their respective obligations under this Agreement, Covered Entity and Pharmacy shall each maintain general liability insurance with limits of not less than one million dollars $(\$ 1,000,000)$ per occurrence and three million dollars $(\$ 3,000,000)$ in the aggregate per policy year. Upon request by a Party, the other Party shall provide evidence of such insurance.
9. Arbitration. Any and all disputes, controversies or claims (including without limitation tort claims, requests for provisional remedies or other interim relief and issues as to arbitrability of any matter) arising out of, in connection with, or relating to this Agreement, or the breach thereof, that cannot be settled through negotiation shall be settled by arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures; provided, however, that the provisions contained in this Agreement shall govern over any conflicting rules that may now or hereafter be contained in the JAMS rules. The Parties agree that the Expedited Procedures set forth in JAMS Comprehensive Rules 16.1 and 16.2 shall be employed. Any Dispute under $\$ 250,000.00$ (or such other amount allowed by JAMS) shall be handled in accordance with the JAMS Streamlined Arbitration Rules and Procedures. The arbitration shall be held in San Mateo, California before a single arbitrator and commence within sixty (60) days of the appointment of the arbitrator by JAMS. The arbitrator shall render an award no later than ten (10) days after the conclusion of such hearing, unless otherwise mutually agreed in writing by the Parties. The expenses of the arbitration, including reasonable
attorney's fees, will be paid for by the Party against whom the award of the arbitrator is rendered, and the arbitrator will be authorized to determine the identity of the Party against whom the award of the arbitrator is rendered. The award of the arbitrator will be final and binding on the Parties, and judgment upon such award may be entered in any court having jurisdiction thereof. The arbitration proceeding provided for herein is a private proceeding and neither Party shall disclose or publicize the decision of the arbitrator other than as required by law. The arbitrator will not have the power to alter, amend, or otherwise affect the terms of the dispute resolution provisions set forth in this section or any other provisions contained in this Agreement
10. Compliance with Applicable Law. The Parties shall comply with all federal and state laws, regulations and rules governing the practice of such Party under this Agreement. The Parties shall not take any action that would violate 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). The Parties acknowledge that during the course of fulfilling their respective obligations under this Agreement each shall comply with 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"); the requirements of all insurance commissioner regulations implementing Title V of the Gramm-Leach-Bliley Act (15 USC § 6801 et seq.) that are applicable to Parties relationship; and Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations ("ARRA"). The parties acknowledge that in performing Pharmacy Services under the terms and conditions of this Agreement, Pharmacy is acting as a health care provider and is therefore a "Covered Entity" as defined in 45 CFR section 160.103 and performing treatment, payment and health care operations for eligible Covered Entity Patients.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
12. Advertisement. Pharmacy reserves its rights in and control of the words "340B Direct Program", all of its symbols, trademarks, trade names, service marks and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith. Covered Entity will not use such words, symbols, trademarks, trade names or service marks without the prior written consent of Pharmacy, which consent is hereby granted, for the limited purpose of communicating Pharmacy's participation under this Agreement to applicable Covered Entity Patients.
13. Entire Agreement. This Agreement, including all Exhibits, Schedules, amends, supersedes, and replaces the Original Agreement in its entirety and constitutes the entire understanding between the Parties as to their respective obligations and, unless otherwise specified herein, may not be amended except by a writing signed by both Parties.
14. Third Party Beneficiaries. The Parties specifically agree that Covered Entity Patients shall not be third party beneficiaries to this Agreement.
15. Waiver \& Severability. Any failure by either Party to enforce or require the performance by the other Party of any of the terms or conditions of this Agreement shall not be constituted as a waiver of rights with respect to any subsequent breach of any term or condition of this Agreement. Any invalidity, illegality or unenforceability of any provision of this Agreement shall not invalidate or render illegal or unenforceable the remaining provisions hereof.
16. Survival. Any term of this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnities, confidentiality obligations, audit provisions, limitations of liability, and disclaimers.
17. Assignment. Neither this Agreement nor any of the obligations to be performed hereunder may be assigned, directly or indirectly, by either Party without the prior written consent of the other Party; provided, however, that the preceding restriction shall not apply to the assignment by Pharmacy to an affiliated company or any successor entity through a sale, merger or other similar transaction. Any assignment or attempted assignment in violation of this restriction shall be void. In the event of any such permitted assignment, the obligations set forth herein shall be binding upon the succeeding entity.
18. Force Majeure. 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 including, without limitation, delay or failure due to strikes, labor disputes, riots, earthquakes, extreme weather, fires, explosions, embargoes, war or other outbreak of hostilities, acts of terrorism, plague or disease, delay of carriers, suppliers or telecommunications providers, or government acts or regulations. If the period of nonperformance exceeds sixty (60) days, the unaffected Party shall have the right to terminate this Agreement by thirty (30) days written notice to the affected Party, without liability except to pay for services rendered.
19. Taxes. Each Party shall be responsible for its own state, federal and local tax obligations resulting from revenue earned or otherwise related to services performed under this Agreement.
20. Independent Contractor. This Agreement shall not be construed nor deemed to create an employer/employee, principal/agent, or any relationship between Covered Entity and Pharmacy other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. Pharmacy shall be solely responsible for its acts and omissions with respect to Pharmacy Services. Pharmacy agrees to render Pharmacy Services in accordance with professional standards applicable to Pharmacy Services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Covered Entity Patient where such service would violate any statue, regulation, or professional standard applicable to Pharmacy Services.
21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original as against any Party whose signature and or initials appears thereon, and all of which shall together constitute one and the same agreement. This Agreement shall become binding when one or more counterparts hereof, individual or taken together, shall bear the signatures of all of the parties.
22. Headings. The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
23. Remedies. The remedies specifically provided for herein are intended to be cumulative and shall not be deemed to exclude any other right or remedy that either party may have at law or in equity.
24. Notice. Any notice required or given under this Agreement shall be provided in writing by one of the following methods: hand delivery, placing in the U.S. Postal Service, first class postage prepaid, facsimile transmission or email transmission, to the addresses and to the attention of the person specified below, or as modified at any time by either Party by written notice hereunder. The effective date of the notice shall be three (3) days after mailing as set forth above or upon confirmation delivery in the event of hand delivery, facsimile, or email transmission.

## Notice shall be sent to the following:

## SAN MATEO, COUNTY OF

222 W 39th Ave
San Mateo, California 94403-4364
ATTN: _Gary Horne $\qquad$ (Print Name)

Phone: _650-573-2366
Email: ghorne@smcgov.org
Safeway, Inc.
250 East Parkcenter Blvd
Boise, ID 83706
ATTN: Ronald Richmond
Group Director of Managed Care
Phone: (630) 948-6285
Email: Ronald.Richmond@albertsons.com

## 25. Miscellancous.

## I. CONTRACT DOLLAR AMOUNT

In no event shall total payment for services under this Agreement exceed TEN MILLION DOLLARS, $\$ 10,000,000$.

## II. AVAILABILITY OF FUNDS

Covered Entity may immediately terminate this Agreement based upon unavailability of Federal, State, or County funds by providing written notice to Pharmacy as soon as is reasonably possible after Covered Entity learns of said unavailability of funding.

## III. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of $\$ 100,000$ must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.
a. X Pharmacy complies with the County's Employee Jury Service Ordinance.
b. $\square$ Pharmacy does not comply with the County's Employee Jury Service Ordinance.
c. $\square$ Pharmacy is exempt from this requirement because (check all that apply):
$\square$ The contract is for $\$ 100,000$ or less.
$\square$ Pharmacy is a party to a collective bargaining agreement that began on type date here and expires on type date here, and intends to comply when the bargaining agreement expires.
$\square$ Pharmacy has no employees.
$\square$ Pharmacy has no employees who live in San Mateo County.

## IV. NON-DISCRIMINATION (check appropriate boxes)

a. $\quad \square$ Finding(s) of discrimination have been issued against Pharmacy within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
b. No finding of discrimination has been issued in the past year against the Pharmacy by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

## V. COMPLIANCE WITH COUNTY'S EQUAL BENEFITS ORDINANCE

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

## VI. 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.

## VII. SECTION 504 OF THE REHABILITATION ACT OF 1973

Pharmacy 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.

## VIII. ELECTRONIC SIGNATURE

Electronic Signature. If both Covered Entity and Pharmacy wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and Covered Entity'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 written notice to the other party.

For Covered Entity: $\quad \square$ If this box is checked by Covered Entity, Covered Entity consents to the use of electronic signatures in relation to this Agreement.
For Pharmacy: $\square$ If this box is checked by Pharmacy, Pharmacy consents to the use of electronic signatures in relation to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

## AUTHORIZED SIGNATURE

## COUNTY OF SAN MATEO

By: $\qquad$
President, Board of Supervisors, San Mateo County

Date: $\qquad$

## ATTEST:

By: $\qquad$
Clerk of Said Board

Albertsons Companies

Pharmacy's Signature


Date: $\quad 11-23-2016$

## Exhibit A <br> Covered Entity Reimbursement and Payment Terms <br> All Claims Model

1. All Claims Model. Subject to the terms of this Agreement and the eligibility rules determined by the Parties, Pharmacy will capture all brand and generic claims.

## 2. Covered Entity Reimbursement.

a. Insured Claims. For each Insured Captured Claim, Pharmacy shall reimburse (or if applicable, charge) Covered Entity an amount equal to the Estimated Acquisition Cost (as defined below) minus the 340B Dispensing Fee calculated as follows (the "CE Reimbursement"):
i. Generic Drugs $=\$ 11.00+10 \%$ of the EAC
ii. Brand Drugs $=\$ 11.00+11 \%$ of the EAC
b. Uninsured Claims. For each Uninsured Captured Claim, Pharmacy shall reimburse (or if applicable, charge) Covered Entity an amount equal to the amount paid by the Covered Entity Patient at the point of sale minus a 340B Dispensing Fee of $\mathbf{\$ 1 5 . 2 5}$ (the "CE Reimbursement").
3. Payment Terms. For all Captured Claims for which Pharmacy has received payment from the applicable payer, Pharmacy shall remit amounts due to Covered Entity on a semi-monthly basis.
4. Definitions: For the purposes of this Agreement the following terms shall have the meanings set forth below:
i. "Estimated Acquisition Cost" or "EAC" shall be no greater than: Brand Drugs: WAC-4\%
ii. For Generics:

1. The NADAC Price; or
2. If the NADAC Price is not available, SWP-70\%
a. "NADAC Price" shall mean an estimated wholesale acquisition cost of the applicable drug (by NDC 11) in effect as of the date Pharmacy sold the drug to the patient, based on the National Average Drug Acquisition Cost, as published by the Centers for Medicare \& Medicaid Services.

## Exhibit A (continued) <br> Covered Entity Reimbursement and Payment Terms All Claims Model

5. Modification: Pharmacy, from time to time, by no less than thirty (30) days prior written notice to the Covered Entity, shall have the right to modify the CE Reimbursement terms and this Exhibit A to ensure that the CE Reimbursements are commercially reasonable in light of actual program performance and drug mix. At any time during the thirty (30) day period following notice of a change in the CE Reimbursements, the Covered Entity shall have the right to terminate the Agreement by written notice to Pharmacy.
6. Program Commencement. The actual commencement of the 340B Contract Pharmacy Services under this Agreement shall occur only upon mutual written agreement by both Parties. Either Party may, by written notice to the other, terminate this Agreement at any time prior to program commencement. The Parties agree and acknowledge that upon actual program commencement, the Pharmacy will process and capture 340B eligible claims up to a maximum of thirty (30) days prior to the actual program commencement date and shall occur only upon mutual written agreement by both Parties.

## Exhibit B

## Funds Transfer Authorization Remit 340B Funds Directly to Covered Entity

Each payment cycle Pharmacy and/or ProviderPay shall submit an invoice to Covered Entity outlining any amounts Pharmacy is required to remit to Covered Entity and any amounts Covered Entity owes Pharmacy pursuant to this Agreement. Such invoices shall contain sufficient detail to permit Covered Entity to understand the basis for all such amounts. Covered Entity shall have the right to review such invoices, and any dispute about the amounts shall be resolved between the parties within a reasonable amount of time up to thirty (30) days after submission of the invoice, and no payments shall be required prior to resolution of any such dispute between the parties.

Covered Entity hereby authorizes Pharmacy's designee, PPS Data, LLC, dba ProviderPay ("ProviderPay") to remit funds directly to its bank account. Pharmacy's designee, ProviderPay, will remit funds only through Automated Clearing House (ACH) transfer (specifically, ACH credit transfer to Covered Entity initiated by ProviderPay) at agreed upon payment schedules. Covered Entity shall provide Pharmacy and/or ProviderPay sufficient account information to permit such transfers to occur. Pharmacy's designee ProviderPay shall, subject to the review process outlined above, have the right to offset against the remitted funds any amount owed to Pharmacy by Covered Entity including, but not limited to, fees, charges or other monetary obligation arising out of this Agreement. However, under no circumstances shall ProviderPay initiate an AHC debit transaction against Covered Entity's account. Covered Entity is responsible for notifying Pharmacy thirty (30) days in advance of changes to transfer requirements.

To the extent that in any payment cycle, Covered Entity owes Pharmacy an amount in excess of the amount Pharmacy is required to remit to Covered Entity, the invoice provided by Pharmacy and/or ProviderPay to Covered Entity shall list the total amount of payment due (again with sufficient detail to permit Covered Entity to understand the basis for the amount). Within twenty-five (25) days of receipt of such invoice, or upon resolution of any timely dispute regarding the amount, whichever is later, Covered Entity shall remit such funds directly to Pharmacy via Pharmacy's designee, ProviderPay, only through ACH credit transfer initiated by Covered Entity. Pharmacy and/or ProviderPay shall provide Covered Entity sufficient account information to permit such transfers to occur. Covered Entity shall, subject to the review process outlined above, have the right to offset against the remitted funds any amount owed to Covered Entity by Pharmacy including, but not limited to, fees, charges or other monetary obligation arising out of this Agreement. However, under no circumstances shall Covered Entity initiate an AHC debit transaction against Pharmacy's or ProviderPay's account. ProviderPay is responsible for notifying Covered Entity thirty (30) days in advance of changes to transfer requirements.

Covered Entity and Pharmacy agree to be bound by automated clearing house association rules.

## Exhibit B <br> Funds Transfer Authorization Remit 340B Funds Directly to Covered Entity Continued

Covered Entity warrants the account is owned by Covered Entity and that the signer of this Funds Transfer Authorization is an authorized representative of Covered Entity with authority to determine where funds are transferred.

## BANKING INFORMATION

Bank Name:
Bank Street:
Bank City: Zip:
Bank Contact Name:
Bank Contact Phone:
Bank Contact Email:
Bank Routing \#: $\qquad$
Bank Account \#: $\qquad$
Tax ID \#: $\qquad$

Authorized Signature: $\qquad$
Printed Name: $\qquad$
Title: $\qquad$
Date: $\qquad$

## Exhibit C

List of Covered Entity Sites

| 340BID | Name | Address | City | State | Zip |
| :---: | :---: | :---: | :---: | :---: | :---: |
| CH091140 | SAN MATEO, COUNTY OF | 222 W 39th Ave | San Mateo | CA | 94403 |
| CH09114D | SAN MATEO MEDICAL CENTER | 2780 JUNIPERO <br> SERRA | DALY CITY | CA | 94015 |
| CH09114E | SAN MATEO MEDICAL CENTER | 630 LAUREL STREET | REDWOOD CITY | CA | 94063 |
| CH09114F | SAN MATEO MEDICAL CENTER | 380 90TH STREET | DALY CITY | CA | 94015 |
| CH09114L | SAN MATEO MEDICAL CENTER | 2710 MIDDLEFIELD <br> ROAD | REDWOOD CITY | CA | 94063 |
| CH09114N | SAN MATEO MEDICAL CENTER | 225 S CABRILLO HIGHWAY, \#100A | HALF MOON BAY | CA | 94019 |
| CH091140 | SAN MATEO MEDICAL CENTER | 306 SPRUCE STREET | SOUTH SAN <br> FRANCISCO | CA | 94080 |

## Exhibit D

List of Contracted Pharmacy Location(s) *

| Pharmacy Name | Store <br> $\#$ | OPA <br> Effective <br> Date | DEA | NCPDP | NPI | Address | State | City | Zip |
| :--- | :---: | :---: | :---: | :---: | :---: | :---: | :---: | :--- | :--- |
| Safeway Pharmacy | 0305 | $07 / 01 / 2013$ | BS3820861 | 0542173 | 1780620393 | 1071 El Camino | CA | Redwood <br> City | 94063 |
| Safeway Pharmacy | 2719 | $07 / 01 / 2013$ | BS6678037 | 0553304 | 1265461289 | 525 El Camino Real | CA | Menlo Park | 94025 |
| Safeway Pharmacy | 0747 | $07 / 01 / 2013$ | BS2962288 | 0545410 | 1639108657 | 850 Woodside Rd | CA | Redwood <br> City | 94061 |
| Safeway Pharmacy | 0970 | $07 / 01 / 2013$ | BS0845074 | 0587090 | 1093751604 | 1655 El Camino <br> Real | CA | San Mateo | 94402 |

*The Covered Entity or its agent will register or cause to be registered such unregistered contract pharmacies during the next available OPA registration period.

## EXHIBIT E

## ADDITIONAL TERMS FOR

## COVERED ENTITIES UTILIZING SENTRY DATA SYSTEMS, INC

This Exhibit E, Additional Terms for Covered Entities Using Sentry Data Systems, Inc. (the "Sentry Exhibit") is incorporated into and made part of that certain 340B Direct Contract Pharmacy Services Agreement between Covered Entity and Pharmacy.

Defined terms in the Agreement, unless otherwise defined herein, shall have the meaning set forth in the Agreement. In the event of a conflict between this Sentry Exhibit and the Agreement, the terms of this Sentry Exhibit shall apply.

## 1. Claim Eligibility and Verification.

1.1. Sentry Responsibility. Sentry, on behalf of Covered Entity, will perform its 340B claim eligibility determination to identify those 340B eligible claims that are appropriate for capture as 340B claims for Eligible Covered Entity Patients as defined by HRSA guidelines, and the eligibility rules determined by Covered Entity,
1.2. Eligibility Information. In the manner and frequency acceptable to Sentry and Pharmacy, Covered Entity authorizes and directs Sentry to provide Pharmacy with:
1.2.1. A daily "Captured Claims File" to enable Pharmacy to obtain patient encounter details. The Captured Claims File shall include: (i) all claims that Sentry identifies as eligible (including all specific data elements identified in Section 2.1 below); (ii) patient name; (iii) patient date of birth; and (iii) the applicable patient visit dates; (iv) the relevant encounter provider ID (DEA no. or NPI no.); and provide name, DEA and NPI.
1.2.2. Any specific drug exclusions (other than CIIs) or BIN exclusions (other than Fee-for-Service Medicaid BINs) that the Covered Entity has determined are not eligible to capture under the Covered Entity's 340B Program.
1.2.3. Sentry and Pharmacy will re-examine all claims that have been processed for thirty (30) days. If additional eligibility information has become available to make a previous ineligible claim now 340B eligible, Sentry and Pharmacy will add the additional 340B eligible claims from agreed upon previous number of days to the current invoicing period.
1.3. Pharmacy Claims Verification. The Pharmacy will perform a secondary claim eligibility verification and capture only those claims that meet the minimum eligibility requirements of Pharmacy. On a daily basis, the Pharmacy will provide Sentry, on behalf of the Covered Entity, a report identifying (i) those verified claims accepted and captured by

Pharmacy; and (ii) those claims that did not meet the Pharmacy's requirements or were otherwise not able to be verified by Pharmacy. Pharmacy shall not make eligible any claims that were not previously indicated by Sentry as eligible, as set forth in Sections 1.1 and 1.2 above.
2. Inventory Management and Ordering. Pharmacy will perform its own ordering and inventory management based on accumulators from the eligible claims process above. In order to perform this function, the following information is required at the time of the implementation of the Covered Entity onto the 340B Direct Program platform:
2.1. Historical Captured Claims file - this is a history of all paid/captured 340B claims in the last one year (or since inception, which-ever is shorter) from all Pharmacy stores participating in network, including at a minimum:
2.1.1. HRSA 340B ID
2.1.2. Pharmacy NCPDP
2.1.3. Pharmacy NPI
2.1.4. Prescription Date of Service
2.1.5. Prescription Date Written
2.1.6. Rx Number
2.1.7. First Name
2.1.8. Last Name
2.1.9. Patient Birthdate
2.1.10. Gender
2.1.11. NDC
2.1.12. NDC description
2.1.13. Quantity
2.1.14. Fill Number
2.1.15. Claim Revenue
2.1.16. Dispensing Fee
2.1.17. Claim ID
2.1.18. Entity Discharge Date/Visit Date
2.1.19. Provider First Name
2.1.20. Provider Last Name
2.1.21. Provider DEA
2.1.22. Provider NPI
2.2. An Inventory Snapshot - this is a snapshot of ending inventory after all claims are captured and any orders are placed and reconciled at the time of the Covered Entity implementation. The following fields are required:
2.3. HRSA 340B ID
2.4. Pharmacy NCPDP
2.5. Pharmacy NPI
2.6. NDC
2.7. NDC Description

### 2.8. Replenishable Packages and associated claims

2.9. The Pharmacy will provide, Sentry, on behalf of Covered Entity, copies of all relevant $832,850,855$ and 810 files and a weekly inventory balance file to enable Sentry to independently track 340B inventory on behalf of the Covered Entity.
3. Invoicing and Payments. Pharmacy will make payments directly to the Covered Entity twice monthly on the Pharmacy's standard payment cycle (the 1st and 15th of each month). All payments to the Covered Entity's will be equal to the total of all third party payments minus the cumulative dispensing fees due for the relevant period. The Covered Entity will be responsible for paying any fees due to Sentry in accordance the agreement between Covered Entity and Sentry.
4. Reporting and Statements. For each payment cycle, the Pharmacy will provide a statement and report to Sentry, for the benefit of the Covered Entity. The report and statement shall identify all claims and payment details for the relevant payment cycle.
5. Program Compliance. Upon the Covered Entity's request, the Pharmacy will cooperate with Covered Entity and its 340B program administrator, Sentry, on a commercially reasonable basis to support the Covered Entity's compliance programs and any self-audit process. In the event that the Covered Entity determines that 340B drug diversion or duplicate discounts has occurred involving the Pharmacy which exceeds the materiality threshold established by the Covered Entity in connection with its 340B Program, the Pharmacy shall provide commercially reasonable support to Covered Entity and Sentry in determining and executing such remedial or corrective action.

## EXHIBIT F

## CORPORATE COMPLIANCE SAN MATEO MEDICAL CENTER ("SMMIC") CODE OF CONDUCT (THIRD PARTIES)

The person/entity listed below (the "Undersigned") recognizes and is fully dedicated to advancing 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 applicable Federal, State or other governmental health care program requirements and with SMMC's policies and procedures relating to SMMC's Corporate Compliance Program, including the requirements set forth in the Corporate Integrity Agreement (CIA) to which SMMC is a party (available online at http:// oig.hhs.gov/fraud/cia/agreements/the_county_of_san_mateo_03062009.pdf).

The Undersigned, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

The Undersigned will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements or of SMMC's Compliance Program policies and procedures.

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 and SMMC's Compliance Program policies and procedures, and failing to report such violations, could result in termination of the Undersigned's agreement with San Mateo, County 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). The Undersigned will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

The Undersigned will not engage in any financial, business, or other activity which competes with SMMC/County business, which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources, except to the extent consistent with the SMMC/County Incompatible Activities and Outside Employment policy and the Agreement. Notwithstanding the foregoing, SMCC/County acknowledges and agrees that the Undersigned's provision of 340B pharmacy services to third parties shall not be considered competitive with SMMC/County business hereunder.

The Undersigned will cooperate fully and honestly with internal audits and monitoring programs to help assure that SMMC's compliance is maintained with all applicable federal/state regulations, the Joint Commission standards, and hospital system-wide policies.

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

The Undersigned hereby certifies by signing below that an authorized representative has received this Code of Conduct, understands it, has authority to commit the Undersigned to this Code of Conduct, and hereby commits the Undersigned to comply with this Code of Conduct.

Safeway Inc. (the "Undersigned")


$$
\frac{11-23-2016}{\text { Date }}
$$

## ATTACHMENT I <br> Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractors)") hereby agrees that it will comply, as applicable, 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 Contractors) gives/give this assurance for the purpose of obtaining contracts after the date of this assurance. The Contractors) 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 Contractors), 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 Contractors): (Check a or b)
a. Employs fewer than 15 persons.
$\boxtimes$ 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 persons) to coordinate its efforts to comply with the DHHS regulation.
$\square$

## Name of Contractor (s): <br> Safeway Inc.

Street Address or P.O. Box: 11555 Dublin Canyon Road

City, State, Zip Code: Pleasanton, CA 94588

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


Title of Authorized Official:


Date: $11-23-2016$

[^0]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."


[^0]:    *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

