340B PHARMACY SERVICES AGREEMENT

This 340B Pharmacy Services Agreement (the "Agreement"), by and between

County of Monterey

("Covered Entity") and Rite Aid Hdqtrs. Corp. ("Pharmacy"), who individually each may be referred to as "Party" or collectively as "Parties" is made and entered into on _____("Effective Date").

Whereas, Covered Entity participates in a federal drug discount program established under section 340B of the Public Health Service Act, being 42 U.S.C. §201 et seq.;

Whereas, Covered Entity desires to engage the services of a contract pharmacy, as permitted under 75 Fed. Reg. 10272 (March 5, 2010) ("Contract Pharmacy Services"), to serve patients eligible to receive 340B-discounted drugs ("Covered Entity Patients") at Covered Entity sites listed in **Exhibit A**;

Whereas, Pharmacy is authorized and willing to provide the Contract Pharmacy Services to Covered Entity Patients at the Pharmacy locations identified in **Exhibit B**;

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

1. Definitions. The following definitions shall apply to this Agreement**.**

1.1. **"340B Dispense Fee"** is hereby defined as the amount established by agreement between Covered Entity and Pharmacy as the fee for Pharmacy filling a single prescription.

1.2. **"340B Drug"** is hereby defined as any drug purchased through the 340B Program based on its qualification as a covered outpatient drug as defined in accordance with applicable laws and guidance at 42 U.S.C. § 256b(b), 42 U.S.C. § 1396r-8(k), and 59 Fed. Reg. 25,110 (May 13, 1994).

1.3. **"340B Program"** is hereby 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.

1.4. **"340B Program Administrator" is** a third party vendor that is contracted with the Covered Entity to coordinate, manage and facilitate certain obligations on behalf of the Covered Entity.

1.5. **"Agreement"** is hereby defined as the 340B Pharmacy Services Agreement, and accompanying exhibits, as well as any amendments, entered into by the Parties.

1.6. **"Brand Drug"** is hereby defined as a drug where the multi-source indicator in Medi-Span contains an "M" (multi-source brand), an "N" (single-source brand), an "O" (originator brand) that is not dispensed as a Generic Drug, or if the multi-source indicator of a Brand Drug is "O".

1.7. **"Covered Entity"** is hereby defined as an entity and its child sites that has registered with the OPA and has been assigned a 340B ID, and who is eligible to participate in a 340B Program, and

which has contracted for Contract Pharmacy Services provided by Pharmacy under this Agreement. The Covered Entity(ies) are listed in Exhibit A.

1.8. **"Department"** is hereby defined as the Department of Health and Human Services.

1.9. **"Generic Drug"** is hereby defined as a drug where the multi-source indicator in Medi-Span contains a "Y" (generic) or has a code of "M" (multi-source brand) and a generic indicator code of "G".

1.10. **"HRSA"** is hereby defined as the Health Resources and Services Administration, which is the agency within the Department that oversees activities of the Office of Pharmacy Affairs.

1.11. **"Implementation Date"** is hereby defined as the date on which all conditions or requirements have been met by Parties, Pharmacy Designee and 340B Program Administrator to identify and replenish 340B Qualified Claims.

1.12. **"NADAC"** is hereby defined as National Average Drug Acquisition Cost as published by the Centers for Medicare & Medicaid Services.

1.13. **"Non-340B Drug"** is hereby defined as any drug not purchased through the 340B Program.

1.14. **"OPA"** is hereby defined as the Office of Pharmacy Affairs, which is within the Health Resources and Services Administration and which administers the 340B Program.

1.15. **"Patient(s)"** is hereby defined as an individual who (i) has established a relationship with a Covered Entity such that Covered Entity maintains a record of care, (ii) receives health care services from a health care provider, (iii) otherwise satisfies the requirements for status as a "Patient" as defined at 61 Fed. Reg. 207, pp. 55156 to 55158, or in any guidelines, rules or regulations hereafter published, issued or promulgated in amendment, supplement or replacement thereof, and (iv) has been prescribed a 340B Drug by a health care provider.

1.16. **"Pharmacy"** is hereby defined as the legal entity identified in this Agreement. If there is more than one Pharmacy location that shall be utilized by a Covered Entity in order to serve Covered Entity Patients, each Pharmacy location shall be identified in an Exhibit B attached hereto and incorporated herein by reference.

1.17. **"Pharmacy Designee"** is hereby defined as the vendor contracted with the Pharmacy to coordinate, manage and facilitate certain obligations on behalf of the Pharmacy.

1.18. **"Qualified Claim"** is hereby defined as a prescription for a 340B Drug written by a health care provider, in accordance with the 340B Program, which is dispensed by Pharmacy to a Patient.

1.19. **"Reference Price"** shall be the National Average Drug Acquisition Cost minus 3.3% (NADAC - 3.3%), for the applicable drug applied as of the date the drug was captured for consideration as a Qualified Claim. In the event that NADAC is unavailable, WAC - 3.3% shall be used as the Reference Price. Pharmacy shall review the Reference Price on a quarterly basis and reserves the right to adjust the Reference Price by providing thirty (30) calendar days written notice to the Covered Entity.

1.20. **"Tracking System"** is a system used by Covered Entity or its 340B Program Administrator to track claim qualification, dispensing and replenishment of covered drugs as well as collection and distribution of funds between Parties.

1.21. **"WAC"** shall mean Wholesale Acquisition Cost as published by Medi-Span, First Data Bank or other nationally recognized pricing source.

2. Essential Compliance Elements. The Parties agree to comply with the following essential compliance elements specified by HRSA.

2.1. **"Ship To, Bill To" Arrangement**. Contractual arrangement between Covered Entity and a drug wholesaler whereby (i) Pharmacy Designee will, on behalf of Covered Entity, order 340B Drugs from such drug wholesalers for delivery directly to Pharmacy locations specified in Exhibit B to replenish drugs previously dispensed to Patients by Pharmacy on behalf of Covered Entity, and (ii) such drug wholesalers will invoice the Covered Entity for the replenished 340B Drugs based on preferential prices under the 340B Program.

2.2. **Contract Pharmacy Services**. The Parties agree to provide Contract Pharmacy Services to Covered Entity Patients. The respective responsibilities of the Parties in providing Contract Pharmacy Services are set forth in Section 4 below. Covered Entity has the option of individually contracting for Contract Pharmacy Services with one or more pharmacies of its choice. Covered Entity is not limited to providing Contract Pharmacy Services to any particular location and may choose to provide them at multiple locations and/or "in-house".

2.3. **Freedom of Choice**. Covered Entity shall inform all Covered Entity Patients of his or her freedom to choose a pharmacy provider. Covered Entity's health care provider will provide the Patient with his or her prescription and the Patient is then free to fill the prescription using the pharmacy provider of his or her choice.

2.4. **Reports**. Pharmacy shall rely on Covered Entity's 340B Program Administrator for required reports. Pharmacy Designee and 340B Program Administrator shall make commercially reasonable efforts to exchanged data sufficient to allow 340B Program Administrator to produce reports consistent with customary business practices.

2.5. **Patient Qualification**. Pharmacy shall rely on the Covered Entity's 340B Program Administrator for patient qualification. Pharmacy Designee may provide additional validation limited to Medicaid fee for service and Managed Medicaid (based on Pharmacy's reasonable efforts to identify Managed Medicaid Qualified Claims) exclusion criteria and identifying potential duplicate discounts.

2.6. **Prohibition Against Duplicate Discounts.** The Parties agree Medicaid fee for service and Managed Medicaid (based on Pharmacy's reasonable efforts to identify Managed Medicaid Qualified Claims) prescriptions shall not be included as Qualified Claims, unless the Parties and the State Medicaid program have established an arrangement to prevent duplicate discounts. Any such arrangement shall be in compliance with the current HRSA guidelines.

2.7. **Maintaining Compliance.** The Parties will identify the necessary information for the Covered Entity to meet its ongoing obligations of ensuring that the requirements listed herein are being complied with and establish mechanisms to ensure availability of that information for periodic independent audits performed by the Covered Entity and its duly authorized representatives. If Covered Entity engages a third party to conduct the audit on Covered Entity's behalf, such third

party will be required to sign a confidentiality agreement with Pharmacy and be approved by Pharmacy prior to third party being able to conduct the audit on Covered Entity's behalf.

2.8. **Outside Audits**. The Parties understand they are subject to audits by outside parties (HRSA and participating manufacturers) of records that directly pertain to the Covered Entity's 340B Program compliance. Pharmacy will assure that all pertinent reimbursement accounts and dispensing records will be accessible and will be made available to Covered Entity, HRSA and the participating manufacturer in the case of an audit. Such auditable records shall be maintained for a period of time that complies with all applicable federal, state and local requirements.

2.9. **Access to Agreement**. Upon written request by HRSA to the Covered Entity or Pharmacy, a copy of this Agreement will be provided to the OPA.

3. Ongoing Responsibility of Covered Entity to Ensure Compliance. Covered Entity is responsible for ensuring that the process for distribution of 340B Drugs complies with 340B statutory obligations to ensure against the diversion of 340B Drugs and to prevent duplicate discounts.

4. Implementation Responsibilities. In addition to the responsibilities described in Sections 2 and 3, the Parties agree to implement the Contract Pharmacy Services established under this Agreement by performing the following tasks.

4.1. **Replenishment**. The Parties shall establish and utilize a stock replacement system whereby Pharmacy is entitled to receive replacement Brand Drugs using a Ship To, Bill To Arrangement for the ordering and receipt of 340B Drugs for Qualified Claims that Pharmacy has dispensed to Covered Entity Patients.

4.1.1. **Ordering**. Pharmacy's Designee shall place orders for 340B Drugs on behalf of Pharmacy. Pharmacy and Pharmacy Designee will make reasonable efforts to ensure Electronic Data Interchange (EDI) files from the wholesaler designated by Pharmacy are made available to the 340B Program Administrator. The Pharmacy Designee will provide Covered Entity's 340B Program Administrator with ordering data to track and monitor 340B Drug orders for accuracy on behalf of Covered Entity. The Covered Entity or its 340B Program Administrator will be responsible for the set-up of appropriate 340B accounts with the wholesaler designated by the Pharmacy.

4.1.2. **Shipment**. Pharmacy Designee shall arrange for shipment of the 340B Drugs directly to Pharmacy.

4.1.3. **Receipt of 340B Drugs.** Upon receipt of 340B Drugs, Pharmacy or Pharmacy Designee shall compare all shipments received and, make commercially reasonable efforts within five (5) business days thereof, to report any discrepancies to Covered Entity or its 340B Program Administrator. Pharmacy shall be deemed to own the replenished 340B Drugs after confirming receipt thereof in accordance with the above procedures.

4.1.4. **NDC-by-NDC Replacement.** Drugs dispensed to Covered Entity Patients shall be replenished at the National Drug Code ("NDC") - 11 level.

4.1.5. **Selective Replenishment**. Subject to the provisions that follow, Pharmacy shall receive the 340B Dispense Fee specified in Section 4.6.2 for Contract Pharmacy Services provided to Covered Entity Patients for Qualified Claims. In the event the Reference Price minus Pharmacy 340B Dispense Fee is less than or equal to the 340B Drug price,

then the 340B Program Administrator may apply a financial filter to exclude that claim as a Qualified Claim. This does not apply to the true-up remediation process described in Section 4.1.6.

4.1.6. **Slow Moving, Out of Stock, and Discontinued Drugs.** Pharmacy or Pharmacy Designee will identify all Qualified Claims or portions thereof that do not qualify for 340B Drug replenishment because the quantity dispensed falls short of the NDC - 11 bottle or package size necessary to trigger replenishment with a 340B Drug. The Parties agree to a true-up remediation for any portion of a Qualified Claim that has not been replenished in ninety (90) or more calendar days of being deemed as a Qualified Claim. For Qualified Claims or portions thereof subject to true-up remediation, Covered Entity will no longer seek to replenish and Covered Entity shall pay Pharmacy for all outstanding Qualified Claim amounts at the original Reference Price of the quantity owed as calculated by the Pharmacy Designee. A true-up remediation file containing the claims and value of settled claims will be submitted to 340B Program Administrator for adjustment. Pharmacy shall apply the total true-up remediation amount as a credit to a subsequent amount owed for Qualified Claim(s).

4.1.7. **Look Back Period to Qualify Prescription Claims**. Covered Entity will limit re-examination of claims to sixty (60) calendar days unless mutually agreed upon by the Parties. If additional eligibility information has become available to make a previous ineligible claim a Qualified Claim, the claim will be processed as a 340B Qualified Claim.

4.2. **Payment Terms**. The Parties agree that 340B Program Administrator shall be responsible for managing the distribution of monies collected from Pharmacy with respect to Qualified Claims.

4.2.1. Pharmacy Designee shall invoice Pharmacy on the first (1^{st}) and sixteenth (16^{th}) of each month the Reference Price minus the 340B Dispense Fee for each Qualified Claim agreed upon by the Parties and set forth in Section 4.6.2.

4.2.2. Pharmacy agrees to remit the Reference Price less the 340B Dispense Fee for invoiced Qualified Claims to 340B Program Administrator within thirty-five (35) calendar days of invoice date.

4.2.3. 340B Program Administrator shall transfer to Covered Entity payments received from Pharmacy, minus the fees set forth in applicable 340B agreement between 340B Program Administrator and Covered Entity.

4.2.4. 340B Program Administrator, on behalf of the Covered Entity, will provide the above payment and collection functions and provide an accounting of all monies received from Pharmacy and paid to the Covered Entity.

4.3. **Reports.** Using 340B Program Administrator's Tracking System, the Parties will have access to regular reports reflecting the billing and collections described above through 340B Program Administrator.

4.4. **Recordkeeping**. The Parties agree to maintain auditable records relating to the purchase, dispensing and billing of 340B Drugs for Contract Pharmacy Services described in this Agreement.

4.4.1. **Maintenance of Pharmacy Services Records**. The Parties shall maintain all relevant records relating to their services provided under this Agreement, in accordance with applicable federal, state, and local laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH). The Parties shall maintain all auditable records for a period of time that complies with all applicable federal, state and local requirements.

4.4.2. **Access to Business Records**. Upon ten (10) business days advance written notice by Covered Entity to Pharmacy, Pharmacy shall provide Covered Entity, or its representatives, with commercially reasonable access to Pharmacy's business records relating to Contract Pharmacy Services for 340B Drugs under the Agreement, in response to a HRSA or manufacturer audit of Covered Entity, in order to ensure that Pharmacy is in compliance with applicable 340B regulations, and requirements.

4.5. **Other Pharmacy Responsibilities**. Pharmacy shall perform the following tasks and functions in addition to those described above.

4.5.1. **Practice of Pharmacy**. Pharmacy agrees to render its services as herein provided in accordance with the rules and regulations of the Board of Pharmacy of the state in which it is located, and all applicable federal and state laws and regulations. The relations between a Covered Entity Patient and Pharmacy shall be subject to the rules, limitations, and privileges of the pharmacy-patient relationship. Pharmacy shall be responsible to said Covered Entity Patient for pharmaceutical advice and service, including the right to refuse to service any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.

4.5.2. **Patient Counseling**. Pharmacy shall provide patient counseling services, medication therapy management services, and other clinical pharmacy services to Covered Entity Patients in accordance with applicable federal, state and local laws and regulations.

4.6. **Compensation**. The Parties agree to the following compensation arrangement:

4.6.1. For each Qualified Claim, Pharmacy shall reimburse Covered Entity an amount equal to the Reference Price minus the 340B Dispense Fee outlined below.

4.6.2. For each Qualified Claim, to include Brand Drugs only, Covered Entity agrees to pay Pharmacy a fee of $19 + 2% of Reference Price ("340B Dispense Fee"). Generic drugs and schedule II controlled substance drugs are excluded from the Contract Pharmacy Services.

4.6.3. Pharmacy shall deduct its 340B Dispense Fees from Reference Price on Qualified Claims and 340B Program Administrator shall subtract its fees from collections received from Pharmacy for Contract Pharmacy Services provided under this Agreement. If any such collections are less than the amounts due Pharmacy and/or 340B Program Administrator, Pharmacy and/or 340B Program Administrator shall invoice Covered Entity for the difference owed. Covered Entity shall pay any such undisputed invoice within thirty-five (35) calendar days of receipt.

4.6.4. The Parties have freely negotiated the payment terms provided herein and neither has offered or received any inducement or other consideration from the other Party for entering into this Agreement. The compensation paid to Pharmacy is consistent with fair market value in arms-length transactions for their respective services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the Parties for which payment may be made in whole or in part under Medicare, Medicaid or a state health care program.

5. Term and Termination. The term of this Agreement shall be for three (3) years commencing on the Effective Date, unless sooner terminated as set forth herein and shall automatically renew for subsequent one (1) year terms unless either Party gives the other at least ninety (90) days prior written notice of its intention not to renew prior to the expiration of the then current term. Notwithstanding the foregoing, this Agreement may be terminated early under the following provisions:

5.1. Either Party may terminate this Agreement immediately upon written notice to the other Party of any material breach of the terms of this Agreement, which is not cured to the reasonable satisfaction of the non-breaching Party within thirty (30) calendar days.

5.2. Either Party may terminate this Agreement at any time, with or without cause, by giving the other Party thirty (30) calendar days' prior written notice.

5.3. The Parties may terminate this Agreement immediately by mutual consent.

5.4. This Agreement shall terminate on the date a Covered Entity loses eligibility status as a 340B Covered Entity. In that event, Covered Entity shall immediately remediate any outstanding balance within thirty (30) calendar days of receipt of a final invoice.

5.5. Upon termination or expiration of this Agreement, Covered Entity is entitled to receive copies of files or other materials related to Covered Entity Patients required for audit purposes and not previously provided to Covered Entity, which may be in Pharmacy Designee's or 340B Program Administrator's possession or under Pharmacy Designee's or 340B Program Administrator's control.

5.6. Upon termination of this Agreement, the Parties shall in good faith conduct a reconciliation of all 340B Drugs that have not yet been replenished or remediated within thirty (30) days of the effective date of termination. Covered Entity shall pay Pharmacy for all outstanding Qualified Claim amounts at the original Reference Price of the quantity owed as calculated by the Pharmacy Designee. A final reconciliation file containing the Qualified Claims and value of amount owed will be submitted to 340B Program Administrator for payment. Each Party will reimburse the other Party any amounts due upon termination of this Agreement within thirty (30) calendar days of receipt of the reconciliation amount due. Termination will have no effect upon the rights or obligations of the Parties arising out of any transactions occurring prior to the effective date of such termination.

6. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict-of-laws principles.

7. Force Majeure. Each Party's delay in, or failure of, performance under this Agreement shall be excused where such delay or failure is caused by an act of nature, fire or other catastrophe, electrical, computer, software, transmissions, communications or mechanical failure, work stoppage, or delays or failure to act of any carrier or agent, or any other cause beyond such Party's direct control.

8. **Entire Agreement**. This Agreement, including the attached Exhibits and any and all amendments or addenda executed between the Parties, represents the entire understanding of the Parties in the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by both Parties hereto.

9. **Survival**. The provisions of this Agreement that by their nature are intended to continue in their effect following expiration or termination of this Agreement, including all payment obligations, shall survive any such expiration or termination of this Agreement.

10. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument. Signature execution by facsimile or other electronic means shall be considered binding.

11. **Notice**. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be deemed given: one (1) business day following delivery to a nationally recognized carrier, or three (3) business days after the date it is deposited in the United States mail, postage prepaid, certified or registered or hand delivered addressed to the Parties at the addresses set forth on the signature pages hereto.

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

12. **Relationship Between Parties**. Pharmacy and Covered Entity shall perform all professional and other services under the terms of this Agreement as independent contractors. They shall exercise their own judgment on all questions of professional practice. Nothing herein shall be deemed to make the Parties partners, create an agency relationship or create a joint venture.

13. **Confidentiality**.

    13.1. Disclosure of the terms of this Agreement and any exhibits or attachments to any third party (other than directors, officers, attorneys, accountants and similar persons with a bona fide need to know) by any Party is prohibited unless permission in writing is granted by the other Parties. This prohibition shall survive after the expiration and or termination of this Agreement.

    13.2. The Parties further acknowledge that, in the course of their relationship, they will receive, work with and be exposed to certain confidential information and knowledge concerning the business of the other Party and its affiliates, whether or not reduced to writing, including, without limitation, information and knowledge pertaining to products, inventions, developments, innovations, data, know-how, formulations, uses, research, processes, technology, software, hardware, designs, materials, ideas, plans, trade secrets, customers, proprietary information, and other information relating to the business of the other Party, as applicable (collectively, the "Confidential Information"), which each Party desires to protect from unauthorized disclosure or use. The Confidential Information also shall include, without limitation, any information system or computer hardware, software, Internet-enabled systems or other technology used by 340B Program Administrator. Each Party hereto agrees not to disclose the Confidential Information of the other Party (the "Disclosing Party") to any third party without the prior written consent of the Disclosing Party, except that a Party may disclose the Disclosing Party's Confidential Information to such Party's directors, officers, managers, attorneys, and such other persons who have a reasonable need to know such Confidential Information. Each Party agrees to use at least the same measures (but no less than reasonable care) to protect the Disclosing

Party's Confidential Information as it takes to protect its own Confidential Information. In addition, each Party agrees that it will not, without the prior written consent of the Disclosing Party, use the Disclosing Party's Confidential Information for any purpose other than to fulfill its obligations to the Disclosing Party under this Agreement. The following information shall not be deemed to be Confidential Information subject to the confidentiality restrictions set forth in this Section:

13.2.1. Information which a Party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the Disclosing Party or from a third party under an obligation of confidence to the Disclosing Party;

13.2.2. Information which is now or subsequently becomes known or available to the public or in the trade by publication, commercial use or otherwise through no act or fault on the part of the receiving Party;

13.2.3. Information which a Party is required to disclose in response to a valid court order or otherwise required to be disclosed by law, but only if such Party has given the Disclosing Party prompt written notice of the potential for such disclosure and the opportunity to seek a protective order or obtain other relief to preserve the confidentiality of the Confidential Information; and

13.2.4. Information provided by the Disclosing Party to the other Party expressly for public distribution, such as (i) marketing materials, advertising, brochures and similar information and (ii) general promotional information regarding the Disclosing Party and its business.

13.3. Upon termination of the Agreement, each Party agrees to cease use of the other's Confidential Information and to return it, or destroy it, at the sole discretion and of the request of the other Party.

13.4. The Parties expressly agree that a breach of this Section 13 may cause damages that cannot be adequately measured and that, in the event of a breach, the non-breaching Party shall be entitled to immediate injunctive relief, without the necessity of posting a bond. The remedy described herein shall be in addition to all other remedies available to the non-breaching Party in law or equity.

14. Attachments. Participating Covered Entity sites are summarized in Exhibit A. Pharmacy agrees it will provide Contract Pharmacy Services under this Agreement at only those Pharmacy locations listed on Exhibit B, which shall identify such Pharmacy locations by store number and address. Summary of Program Parameters are included as Exhibit C.

15. Representations and Warranties. The Pharmacy represents and warrants that it is the owner of the pharmacy named herein and that it has full right, power, and authority to make this offer. Covered Entity represents and warrants that it has full right, power, and authority to enter into this Agreement. Covered Entity shall be solely responsible for insuring 340B Program compliance, without limitation, including actions or inactions of its 340B Program Administrator. Pharmacy represents and warrants that it can legally dispense prescriptions for Medicare and Medicaid healthcare programs; and that it is not subject to exclusion, suspension or debarment from the Medicare, Medicaid or other government healthcare programs. No representations or warranties have been made or relied upon other than those expressly set forth in this Agreement.

16. **Federal Contractor Status**. The Parties hereto understand and acknowledge that Pharmacy is not a federal contractor or subcontractor and does not wish to become such. Irrespective of Covered Entity status as a federal contractor or subcontractor, Covered Entity nonetheless represents and warrants that this Agreement is not under the jurisdiction of the Office of Federal Contract Compliance Programs ("OFCCP"). Covered Entity further represents and warrants that this Agreement is not a federal contract or subcontract and that there is no underlying or prime agreement that could bring this Agreement, the arrangement hereunder, or the Parties hereto within the jurisdiction of OFCCP. 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 Covered Entity's breach of the representations and warranties set forth in this Section 16. Pharmacy may terminate this Agreement immediately, if it reasonably determines in its sole discretion that this Agreement is, or is likely to be, a government contract or subcontract.

17. **Insurance**. Pharmacy shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier in an amount not less than one million dollars ($1,000,000) per incident and three million dollars ($3,000,000) in the aggregate and which includes the Qualified Claims in its coverage. Covered Entity shall maintain during the term of this Agreement a policy of liability insurance with a responsible insurance carrier with at least the minimum limits that are customary in its industry. Covered Entity may satisfy such insurance requirements through a self-insurance program maintained in accordance with the requirements of state law and the Medicare program.

18. **Patient Privacy and HIPAA Compliance**. Parties agree to comply with the requirements of HIPAA as healthcare providers, and each Party agrees to require its designee, 340B Program Administrator for the Covered Entity and Pharmacy Designee for the Pharmacy, to comply with the requirements of HIPAA as a business associate. 340B Program Administrator shall enter into a Business Associate Agreement with Covered Entity and Pharmacy Designee shall enter into a Business Associate Agreement with Pharmacy. Failure by any Party to abide by the Business Associate Agreement shall be a basis for immediate termination of this Agreement.

19. **Indemnification**. Each Party shall indemnify, defend, and hold harmless the other Party from and against all claims, damages, causes of action, costs or expense, including court costs and reasonable attorneys' fees, which may arise as a result of the indemnifying Party's negligent performance of or failure to perform, any term or condition of this Agreement, the falsity of any representation and warranty set forth in Section 15 or Section 16 of this Agreement, and/or the exclusion, debarment, or revocation of a Party from any state or federal health care program or third party payor program. The obligation to indemnify shall survive termination of this Agreement regardless of the reason for termination.

20. **Compliance with Laws**.

    20.1. It is the intention of the Parties that this Agreement and the operations conducted hereunder shall be performed in accordance with all applicable state and federal laws, rules, regulations and orders. The Parties have entered into this Agreement solely upon the terms and conditions referenced herein and for such consideration stated herein. No part of the compensation set forth herein is in any way contingent upon the recommendation, or referral of items reimbursable in whole or in part by a state or federal health care plan. The Parties stipulate and agree that the consideration payable under this Agreement was negotiated at arm's length with the Parties represented by independent counsel and represents, to the extent reasonably

ascertainable, reasonable consideration and fair market value for the services provided hereunder.

20.2. To the extent that Section 1861(v)(1)(I) of the Social Security Act is applicable to this Agreement, the Parties shall, until four (4) years after the expiration of the services provided, comply with requests by the Comptroller General, the Secretary of the United States Department of Health and Human Services (DHHS), and their duly authorized representatives for access to this Agreement, as well as the books, documents and records which are necessary to verify the cost of the services provided. The Parties agree to notify and consult with each other immediately upon the occurrence of such a request for access to books, documents, and records.

20.3. If in the written opinion of counsel for either Party it is determined that any future interpretation of existing law or legislation is enacted or regulations are promulgated which make this Agreement inoperative or illegal or adversely impact its payment mechanism, the Parties hereto shall immediately renegotiate the Agreement. If they are unable to do so within a ninety (90) day period from the issuance of the written opinion of counsel to both Parties, the Agreement shall terminate immediately upon written notice of either Party to the other. If any future interpretation of existing law, or legislation is enacted or regulations promulgated which make invalid or unenforceable some portions of this Agreement, but which do not substantially affect the undertaking of the Parties, the Agreement shall be continued in all other respects as if such invalid or unenforceable provisions were omitted, and if necessary, substitute provisions shall forthwith be negotiated.

21. Miscellaneous Provisions.

21.1. In the event any provision or part thereof contained in this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision or part thereof contained herein.

21.2. In addition to the duties described elsewhere in this Agreement, the Parties acknowledge that there may be additional duties to be performed and procedures to be followed by each Party, that are required by state and federal laws, that are too numerous to detail in this Agreement. In the event any Party believes there is the need to clarify in more detail any additional duties and/or procedures to be followed by any other Party, the Parties shall negotiate in good faith to execute an appropriate amendment to this Agreement containing such clarification.

21.3. No Party may assign its rights or delegate its duties without the prior written consent of the other Parties.

21.4. The Parties agree that no Party, and no Party's officers, directors, employees or agents shall be liable to any of the Parties for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the fees paid by Covered Entity to the 340B Program Administrator pursuant to this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of the Party. In no event shall any Party or any Party's officers, directors, employees, or agents be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to this Agreement.

Signatures on following pages

In witness thereof, the Parties hereto have caused this Agreement to be executed by themselves or their duly authorized representatives as of the day and year first written above.

[PHARMACY]

The undersigned certifies that they have legal authority to bind Pharmacy

Signature: _____

Printed Name: Alison Farrell

Title: VP, Managed Care

Address: 30 Hunter Lane

City, State, Zip Code: Camp Hill, PA 17011

Date**:** _____

[COVERED ENTITY]

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

Signature: _____

Printed Name: Elsa Jimenez

Title: Director of Health

Address: 1270 Natividad Road

City, State, Zip Code: Salinas, CA 93906

340b ID: CHC33795-00

Date: _____

Effective Date: _____

EXHIBIT A

Covered Entity Sites

This Agreement applies to Covered Entity and all eligible child sites or associated grantee listed on the Office of Pharmacy Affairs database

340B ID	Entity Name	Street Address City/State/Zip
CHC33795-00	County of Monterey	1441 Constitution Blvd, Bldg. #200, Floor STE 101, Salinas, CA 93906

EXHIBIT B

Contracted Pharmacy Locations

Pharmacy Name	Address	City	State	Zip Code
Thrifty Payless Inc	Rite Aid #6310 - 602 Williams Road	Salinas	CA	93905
Thrifty Payless Inc	Rite Aid #6769 - 499 Alvarado Street	Monterey	CA	93940

EXHIBIT C

Program Parameters

Parameter	Description	Contract Stipulates
Replenishment Frequency	Pharmacy Designee shall order, for delivery to Pharmacy, all 340B Drugs which have been determined to be Qualified Claims and have reached a full package size but have not yet been delivered to Pharmacy	Daily if necessary to consolidate in the future
Wholesaler	Pharmacy Wholesaler	McKesson or the wholesaler designated by Pharmacy
Slow-Movers	Any portion of replenishable drug that that does not meet a full package size within a mutually agreed upon number of calendar days after being deemed as qualified will be reconciled as a credit to a subsequent amount owed for Qualified Claims	Ninety (90) or more calendar days
Model	Brand only Covered Entity may request 340B Program Administrator apply financial filter and exclude Qualified Claims as described in Section 4.1.5	Brand Drugs Only
Dispensing Fee (if applicable) for Qualified Claims	Brand Drugs only	Brand Drugs Only
Reprocessing Window	340B Program Administrator will continue to re-evaluate a claim for qualification and replenishment opportunity for a mutually agreed upon number of calendar days. Qualified Claims will not be reversed without Pharmacy's prior approval	Sixty (60) calendar days
Medicaid Managed Care	Excluded (based on Pharmacy's reasonable efforts to identify Managed Medicaid Qualified Claims) unless Covered Entity and State Medicaid have established compliant process preventing duplicate discounts and Pharmacy has specifically agreed prior to the inclusion of claims at bin/pcn/group level	Only after Pharmacy has agreed to a compliant process between Covered Entity and state Medicaid
340B Discount Cash Plan	Create Exhibit and Amendment if applicable	Requires Exhibit/Amendment
CIIIs-Vs	Include or exclude	Include
CIIs	Include or exclude	Exclude
Invoicing	Frequency with which Pharmacy is invoiced on behalf of the Covered Entity	1st & 16th of each month
Payment Terms	Within thirty-five (35) calendar days from invoice date, Pharmacy shall remit payment thereof by electronic funds transfer to 340B Program Administrator	Thirty-five (35) calendar days
Term and Termination	Either Party may terminate with prior written notice	Thirty (30) calendar days

NOTICE OF TRANSACTION DATA RELEASE FOR 340B DATA

Covered Entity:

(Name) County of Monterey (340B ID#) CHC33795-00

(Address) 1270 Natividad Road

(City) Salinas, (State) CA (Zip) 93906

Contract Pharmacy:

Rite Aid
30 Hunter Lane
Camp Hill, PA 17011

This is Covered Entity's notice to McKesson ("Wholesaler") that it is allowing Rite Aid to receive Covered Entity's confidential transaction information, transaction history, and transaction statements required to be maintained by a dispenser under Drug Supply Chain Security Act. This applies to all present and future 340B relationships between Covered Entity and Rite Aid.

Covered Entity requests that Wholesaler provide the applicable transaction information, transaction history and transaction statements to Rite Aid until notified otherwise by Covered Entity.

Covered Entity agrees to provide Wholesaler with written notice of the termination or expiration of its written agreement with Rite Aid. Promptly following receipt of such notice Wholesaler shall cease providing Rite Aid with the applicable transaction information, transaction history and transaction statements.

_____ Date: _____

Signature (On Behalf of Covered Entity)

Print Name