

340B ADMINISTRATIVE SERVICES AGREEMENT

This 340B Administrative Services Agreement ("Agreement") is by and between **COUNTY OF MONTEREY**, a political subdivision of the State of California, on behalf of the 340B covered entities operated by the Monterey County Health department, ("Covered Entity") and **WELLPARTNER, LLC** ("Wellpartner") and shall commence on the Effective Date.

WHEREAS, Covered Entity qualifies for and participates in the 340B Program.

WHEREAS, Covered Entity has or plans to enter into one or more Pharmacy Services Agreement(s) with a Pharmacy or Pharmacies to serve Eligible Patients; and

WHEREAS, Covered Entity desires to engage Wellpartner to provide Administrative Services to support Covered Entity's 340B program for the Contracted Pharmacy Locations, and Wellpartner desires to accept such engagement.

NOW, THEREFORE, Covered Entity and Wellpartner agree as follows:

1. DEFINITIONS

- 1.1 "340B Claims Qualification" means the process by which Wellpartner interacts with Pharmacy and Covered Entity in connection with a Claim in order to determine whether the drug covered by such Claim constitutes a 340B Processed Drug based on the criteria for determining patient eligibility established by Covered Entity.
- 1.2 "340B Price" means the 340B price available to Covered Entity on the date the Claim is qualified by Wellpartner as a 340B Processed Drug. 340B Price is obtained from the wholesaler price file in effect and the Covered Entity based on the 11-digit National Drug Code for the dispensed drug product.
- 1.3 "340B Processed Drug" means a drug dispensed under a Pharmacy Services Agreement, processed according to all 340B policies and procedures established by Covered Entity, and able to be replenished by Covered Entity.
- 1.4 "340B Program" means the federal drug discount program established under Section 340B of the Public Health Services Act which requires pharmaceutical manufacturers to extend discounted prices to entities that qualify for the program including Covered Entity.
- 1.5 "Additional Fee" means monies earned by Wellpartner and owed by Covered Entity in connection with Wellpartner's provision of an Additional Service, as calculated in accordance with **Attachment 4** of this Agreement.
- 1.6 "Additional Service" is a service that is in addition to and separate from the Administrative Services that, if elected by Covered Entity, Wellpartner agrees to provide and Covered Entity agrees to pay for pursuant to the terms of Section 6 and **Attachment 4** of this Agreement.

- 1.7 “Administrative Fee” means monies earned by Wellpartner and owed by Covered Entity in connection with Wellpartner’s provision of the Administrative Services, as calculated in accordance with **Attachment 1** to this Agreement.
- 1.8 “Administrative Services” are the services provided by Wellpartner to Covered Entity under Section 2, Section 3, Section 4, and Section 5 of this Agreement.
- 1.9 “Average Wholesale Price” means the price listed in Medispan or other national drug database selected by Wellpartner for an 11-digit National Drug Code.
- 1.10 “BAA” means the Business Associate Agreement between Covered Entity and Wellpartner and attached hereto as **Attachment 5**.
- 1.11 “Claim” means a prescription drug claim for a covered outpatient prescription drug dispensed by a Pharmacy that has been submitted by the Pharmacy to Wellpartner for verification and qualification of 340B eligibility based on Covered Entity’s eligibility criteria.
- 1.12 “Contracted Pharmacy Locations” means the Pharmacy locations for which a Pharmacy has agreed to serve Covered Entity’s Eligible Patients pursuant to an active Pharmacy Services Agreement and for which Wellpartner has agreed to provide services to Covered Entity under this Agreement. A single Pharmacy Services Agreement may include multiple Contracted Pharmacy Locations. The Contracted Pharmacy Locations are identified in **Attachment 3** and may be modified from time to time by mutual written agreement of the Parties.
- 1.13 “Contract Year” means each twelve (12) consecutive months, with the first Contract Year commencing on the Effective Date, and with each subsequent Contract Year commencing on the anniversary of the Effective Date.
- 1.14 “Co-payment” means that portion of the total charge for each 340B Processed Drug dispensed to an Eligible Patient that the Pharmacy is required under its agreement with a Third-Party Payer to collect from such Eligible Patient as indicated at the time of 340B Claims Qualification, regardless of whether such charge is designated as a fixed amount (e.g., \$5.00), a coinsurance amount (e.g., 20%), a deductible, or otherwise.
- 1.15 “Discount Cash Plan” means a financial assistance program established by Covered Entity for certain uninsured or underinsured Eligible Patients wherein Covered Entity subsidizes drug costs and Dispensing Fees for Eligible Patients.
- 1.16 “Dispensing Fee” means the fee owed by Covered Entity to Pharmacy pursuant to the Pharmacy Services Agreement.
- 1.17 “Effective Date” means the date on which the Parties have fully executed this Agreement.
- 1.18 “Eligible Patient List” means a list of Covered Entity’s Eligible Patients.

- 1.19 “Eligible Patient” means a patient who Covered Entity determines is eligible to receive 340B-discounted drugs according to the Health Resources and Services Administration’s (“HRSA’s”) patient definition criteria set forth at 61 Fed. Reg. 55156 (Oct. 24, 1996), as may be amended from time to time by HRSA. All Covered Entity patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program are expressly excluded from this definition, unless Covered Entity, Pharmacy, and the State have established an arrangement to prevent duplicate discounts and Covered Entity notifies HRSA of the arrangement.
- 1.20 “Encounter Data Files” means outpatient encounter data for Covered Entity and all 340B-eligible clinics and departments within Covered Entity (i.e., “child sites”).
- 1.21 “Party” or “Parties” means Covered Entity or Wellpartner, either individually or collectively as the case may be.
- 1.22 “Pharmacy” means a contract pharmacy that provides 340 Program services to the Covered Entity under a Pharmacy Services Agreement.
- 1.23 “Pharmacy Services” means the services provided by each Pharmacy pursuant to its Pharmacy Services Agreement with Covered Entity, including but not limited to the dispensing of 340B Processed Drugs to patients determined to be Eligible Patients by Covered Entity.
- 1.24 “Pharmacy Services Agreement” means the agreement between Pharmacy and Covered Entity for Pharmacy Services.
- 1.25 “Prescriber” means the health care professional that prescribes 340B Processed Drugs for Eligible Patients.
- 1.26 “Prescriber List” means a list of Covered Entity’s Prescribers.
- 1.27 “Software Services” means the optional 340B split-billing services provided by Wellpartner through its 340B SMART software.
- 1.28 “Third-Party Payer” means a commercial or governmental third-party payer or insurer providing health care benefits to an Eligible Patient under a health care benefit plan.
- 1.29 “Total Covered Entity Net Amount” means (i) total amount paid for all Eligible Patient Claims (regardless of who paid, e.g., Third-Party Payer, Eligible Patient, or Covered Entity) minus (ii) the amount paid by Covered Entity to the wholesaler for the 340B Processed Drug minus (iii) the total Dispensing Fees paid to Pharmacy, minus (iv) the total Administrative Fees paid to Wellpartner.
- 1.30 “Wellpartner Clarity” refers to Wellpartner’s web based portal that provides Wellpartner specified data reports to assist Covered Entity’s oversight of its participation in the 340B Program.

2. IMPLEMENTATION OF COVERED ENTITY'S 340B PROGRAM WITH WELLPARTNER

2.1 Covered Entity shall:

- 2.1.1 Ensure Wellpartner has all relevant and pertinent information related to Covered Entity's eligibility for participation in the 340B Program.
- 2.1.2 Assist Wellpartner in confirming proper set-up of Wellpartner's 340B Claims Qualification processing system to ensure all relevant and pertinent information for Covered Entity's 340B program is entered correctly.
- 2.1.3 Conduct periodic audits of reports and data extracts to ensure proper qualification of Claims eligible for 340B and provide that information to Wellpartner.
- 2.1.4 Coordinate with Wellpartner in the implementation of any quality assurance programs and process improvement initiatives reasonably requested by Covered Entity for Covered Entity's 340B program and Administrative Services provided under this Agreement.
- 2.1.5 Provide Wellpartner with initial BIN and PCN numbers to be included in or specifically excluded from its 340B Program, and update those numbers on a regular basis.
- 2.1.6 Provide Wellpartner reasonable access to appropriate Covered Entity personnel to ensure Parties can satisfy objectives and timelines for Covered Entity's 340B program.
- 2.1.7 Provide, where applicable, subject to the terms of the BAA, Encounter Data Files, electronic prescriptions, and Prescriber List in a format and on a schedule agreed to by the Parties.

2.2 Wellpartner upon Covered Entity's request and in coordination with Covered entity, shall:

- 2.2.1 Provide appropriate regional pharmacy mapping and engage in pharmacy outreach, and recommend to Covered Entity appropriate pharmacies that may serve in Covered Entity's network of contract pharmacies.
- 2.2.2 Use reasonable efforts to train Covered Entity and Pharmacy staff on Wellpartner's rules, policies and processes and 340B Program requirements.
- 2.2.3 Assist in defining the 340B Claims Qualification criteria for 340B Processed Drugs to be included in Covered Entity's 340B program.
- 2.2.4 As applicable, assist Covered Entity in its contracting for third-party vendor services as necessary for the ongoing management and support of Covered Entity's 340B program (e.g., drug wholesalers). If a wholesaler used by Wellpartner or Pharmacy needs to contract with Covered Entity, then Covered Entity agrees to use its best efforts to enter into an agreement with the wholesaler.

- 2.2.5 Assist Covered Entity as needed during its contracting process with pharmacies. Covered Entity acknowledges that, subject to applicable state and federal laws and related professional standards, the treatment of any patient and the prescribing of any drug is at the sole discretion of the Prescriber, and the decision to dispense any drugs is at the sole discretion of Pharmacy. Covered Entity acknowledges that in the performance of Administrative Services, Wellpartner makes no representations, either express or implied, with respect to the discretion exercised by the Prescriber or Pharmacy.
- 2.2.6 As applicable, assist Covered Entity with the administration of its Discount Cash Plan. In order for Wellpartner to properly administer Covered Entity's Discount Cash Plan, Covered Entity must assign a group code to patients who are eligible for the Discount Cash Plan and such group code must be presented at the time of 340B Claims Qualification.
- 2.2.7 Provide Administrative Services for all of the Contracted Pharmacy Locations identified in **Attachment 3**, as may be amended from time to time.

3. 340B PROCESSED DRUG DISPENSING AND PROGRAM REPORTS

- 3.1 Covered Entity shall determine which drugs qualify as 340B Processed Drugs by establishing 340B Claims Qualification criteria which shall be provided to Wellpartner in writing for each Contracted Pharmacy Location, or as such criteria are otherwise agreed to in writing by Covered Entity and Wellpartner. Wellpartner agrees to coordinate with Covered Entity as necessary in making such individual determinations if requested by Covered Entity. For avoidance of doubt, Wellpartner does not make any representations or warranties with respect to the qualification criteria for drugs as 340B eligible or as to which drugs will qualify as 340B Processed Drugs.
- 3.2 Wellpartner agrees to receive certain information regarding Claims as follows: (a) directly from Pharmacy in a format agreed to by Wellpartner or (b) from Pharmacy's Claim switching service, in a format agreed to by Wellpartner and provided that Wellpartner has agreed to utilize the identified switching service.
- 3.3 Wellpartner shall review Claims based on the 340B Claims Qualification criteria selected by Covered Entity. Wellpartner will, if requested, reasonably assist Covered Entity in developing such criteria.
- 3.4 Covered Entity acknowledges and agrees that Wellpartner may be unable to qualify and verify certain Claims in the event prescription information is incomplete or a prescription does not otherwise meet applicable federal and state laws and regulations including state Board of Pharmacy requirements.
- 3.5 Covered Entity will not take any action to prevent an Eligible Patient from choosing any pharmacy of his or her choice to fill the prescription. This Agreement shall not be interpreted, construed, or otherwise used to limit patient access or choice.

- 3.6 Wellpartner shall use the information from Claims that have been qualified as 340B eligible in order to create reports referenced in **Attachment 2** to this Agreement. Covered Entity shall have reasonable access to such reports via Wellpartner Clarity at any time via a username and password.

4. FINANCIAL RECONCILIATION SERVICES

- 4.1 Wellpartner shall provide the following 340B account reconciliation services to Covered Entity for the Contracted Pharmacy Locations:
- 4.1.1 Following the dispensing of a 340B Processed Drug by a Pharmacy, Wellpartner shall review the Claim information received from Pharmacy, the 340B Claims Qualification criteria, the Prescriber List, and the Encounter Data Files, and any other information which Wellpartner deems necessary for determining whether the Claim is 340B eligible, managing replenishment, ensuring the proper reconciliation of 340B Program accounts, and reporting under the 340B Program.
- 4.1.2 Wellpartner shall invoice and undertake the collection and remittance of the amounts due from the appropriate parties in connection with such Eligible Patient Claims; and/or coordinate with Covered Entity for the reconciliation of Claims and payments due under the applicable Pharmacy Services Agreement.
- 4.1.3 Neither Party will submit or cause to be included any Claim which is known by it to be paid, in whole or in part, by a fee-for-service Medicaid program, unless the Covered Entity, Pharmacy, and the State have established an arrangement to prevent duplicate discounts and Covered Entity notifies HRSA of the arrangement. Covered Entity shall provide Wellpartner with reasonable notice of any such arrangement permitting submission of Claims to fee-for-service Medicaid. Covered Entity agrees it is solely responsible for ensuring that any Claims submitted to fee-for-service Medicaid or Medicaid managed care comply with the 340B claims identification requirements imposed by HRSA, the State, or the applicable Medicaid managed care plan, including compliance with HRSA's Medicaid Exclusion File, if applicable.
- 4.1.4 The amount remitted to Covered Entity shall be the appropriate amount collected from the Pharmacy for Eligible Patient Claims dispensed during that dispensing period, less: (a) the applicable Dispensing Fee retained by Pharmacy, as applicable; (b) the Administrative Fee retained by Wellpartner; and (c) any offset amounts required for any inventory and financial reconciliations or reversals ("True-Up"). Wellpartner shall remit the aforementioned amount to Covered Entity approximately forty-five (45) days after Wellpartner's standard invoicing cycle. For Eligible Patient Claims where Covered Entity elects to contribute a share of the Eligible Patient's cost, the related portion shall be deducted from the amounts due to Covered Entity. The Parties shall otherwise abide by the payment terms agreed upon by Covered Entity and Wellpartner.
- 4.1.5 Wellpartner will initiate an Electronic Funds Transfer ("EFT") to the Covered Entity account. The EFT process used under this Agreement will be finalized and instituted

by the Parties at the time of Wellpartner implementation or Pharmacy implementation, as applicable.

- 4.1.6 Covered Entity acknowledges and agrees that Wellpartner shall be authorized to credit and/or offset against any amounts due a Party hereunder, any overpayments, reversals or other adjustments determined to be necessary or appropriate to properly reflect the terms of the applicable Pharmacy Services Agreement and this Agreement. Wellpartner shall not be responsible for pursuing any unresolved claims for payment that may exist with any Third-Party Payer, wholesaler, Medicaid agency or any other person or entity.
- 4.1.7 If as a result of any audit conducted pursuant to Records and Audits Section it is determined (and otherwise supported by the dispensing, payment, and reconciliation records and reports) that a Party was either overpaid or underpaid, or if an ineligible Claim was processed, then, as necessary, the Claim will be reprocessed and the Party owing such monies shall be obligated to make the necessary payment to the other Party within thirty (30) days receipt of such information supporting said obligation.
- 4.2 Covered Entity acknowledges that Wellpartner operates only as an intermediary between Covered Entity and Pharmacy. Wellpartner will not be obligated to pay Covered Entity or Pharmacy amounts which may become due hereunder or under the Pharmacy Services Agreement out of Wellpartner's own funds; rather, Wellpartner will pay or reconcile amounts from Pharmacy or Covered Entity funds after those funds are received by Wellpartner from a Pharmacy or Covered Entity, as applicable.
- 4.3 Each Party shall be responsible for the payment of their respective taxes, fees and/or similar assessments and any related penalties and interest assigned which is due or may become due in connection with the Agreement; including as a result of income/earnings (whether gross or net), property, employment, payroll, worker's compensation, unemployment or other similar assessment.

5. INVENTORY MANAGEMENT SERVICES

- 5.1 Covered Entity shall contract with one or more wholesalers to enable the replenishment of dispensed 340B Processed Drugs to Pharmacy. Covered Entity may request assistance from Wellpartner in contracting with one or more wholesalers for this purpose. On behalf of Covered Entity and under Covered Entity's applicable wholesaler contracts, Wellpartner agrees to initiate the processing of orders for 340B Processed Drugs directly from wholesaler to replenish 340B Processed Drugs dispensed to Eligible Patients by Pharmacy, based on Wellpartner records.
- 5.2 Wellpartner shall monitor and track 340B Processed Drugs dispensed by Contracted Pharmacy Locations to Eligible Patients to accurately assess proper replenishment of 340B Processed Drugs. Wellpartner shall arrange for such drugs to be shipped directly to Pharmacy and billed to Covered Entity (in the form of a "bill-to/ship-to" arrangement) and shall perform tracking, reporting, and auditing of replenishment orders consistent with applicable laws and regulations.

- 5.3 Wellpartner shall notify Covered Entity of any known discrepancies with respect to replenishment shipments received by a Pharmacy from a wholesaler and undertake commercially reasonable action to make Covered Entity and Pharmacy aware of the discrepancy; provided that Wellpartner shall not be liable for refunding amounts to the Covered Entity or wholesaler or assuring return of the 340B drug to the wholesaler or Covered Entity.
- 5.4 Covered Entity may utilize Wellpartner Clarity to conduct Claim audits to verify Wellpartner's compliance with obligations related to provision of Administrative Services. If as a result of any such audit, it is determined that an ineligible Claim was submitted or an Eligible Patient Claim was incorrectly adjudicated, Wellpartner shall take commercially reasonable steps in accordance with its rules, procedures and processes to reverse or recalculate the Claim.
- 5.5 Covered Entity shall immediately notify Wellpartner in the event of any suspected fraud or abuse related to the 340B Program by Covered Entity staff, or an Eligible Patient or person claiming to be an Eligible Patient of Covered Entity. Covered Entity shall work with Wellpartner and regulatory enforcement authorities to investigate and resolve any suspected fraud or abuse issue.

6. ADDITIONAL SERVICES

- 6.1 At Covered Entity's election, Wellpartner shall provide the Additional Service(s) in **Attachment 4**, each for an Additional Fee.

7. RECORDS AND AUDITS

- 7.1 Each Party shall maintain all records and other information relating to the performance of its obligations under this Agreement in a manner and for a period as required by the 340B statute and all other applicable law, regulation, and guidance, and otherwise consistent with the terms of this Agreement, during the term of this Agreement and for three (3) years thereafter.
- 7.2 Each Party grants to the other Party, and its duly authorized representatives, the right to audit its books and records, including all electronic records, to verify and ensure compliance with the duties, obligations, and transactions outlined under this Agreement. Any such audit shall be conducted at the auditing Party's sole cost and expense, during reasonable business hours, upon reasonable prior written notice, and in a manner so as not to interfere with the conduct of audited Party's business. Each Party agrees to use commercially reasonable efforts to cooperate with such audits in good faith. Any such examinations shall be subject to the requirements of state and federal laws regarding the confidentiality of medical and prescription drug records. Additionally, all information obtained as a result of any such examinations shall be held in strict confidence and used solely for the purposes of ensuring compliance with the Agreement. Audits may be made at any time during the term hereof, and for up to twelve (12) months after the expiration or termination of this Agreement.
- 7.3 The Parties agree that the 340B Administrative Services described in this Agreement are not Pharmacy Services and, therefore, this Agreement is not a written contract for contract pharmacy services covered by 75 Fed. Reg. 10272 (March 5, 2010).

8. COMPLIANCE

- 8.1 Subject to Covered Entity's cooperation, direction, and supervision, Wellpartner shall perform its Administrative Services under this Agreement consistent with the applicable requirements of the 340B statute and all other applicable laws, regulations, and guidance.
- 8.2 Wellpartner shall provide information and guidance to the Covered Entity to reasonably assist Covered Entity's compliance with the 340B Program and all other applicable laws, regulations, and guidance.
- 8.3 Covered Entity shall be responsible for all aspects of Covered Entity's participation in the 340B Program and for ensuring that such participation is in compliance with the 340B Program. Wellpartner shall rely on the information and data contained in the Prescriber List and Encounter Data Files when making Eligible Patient determinations hereunder.

9. INDEMNIFICATION; LIMITATION OF LIABILITY

- 9.1 Each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other party, its subsidiaries and affiliates and each of their respective officers, directors, agents, representatives, successors, assigns, and employees (collectively "Indemnified Party") from and against any and all third party claims, actions, suits, demands, damages, obligations, losses, settlements, judgments, costs, and expenses (including reasonable attorneys' fees) (collectively, "Claims") incurred by any Indemnified Party to the extent arising out of or relating to Indemnifying Party's negligence, willful misconduct, or breach of its obligations, representations or warranties set forth in this Agreement, except to the extent such Claims are caused by or result from the negligence or willful misconduct of the Indemnified Party. The Indemnified Party shall promptly notify the Indemnifying Party of any Claim for which indemnification is sought, upon actual knowledge of such Claim; provided, however, that failure to give such notice shall not relieve the Indemnifying Party of its obligations under the Indemnification Section of this Agreement except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party shall have the right and option to undertake and control such defense of such action with counsel of its choice. The Indemnifying Party shall select qualified counsel with demonstrable experience defending claims of the type to be defended and approved by the Indemnifying Party, which approval shall not be unreasonably withheld. The Indemnified Party shall not concede or settle or compromise any Claim without the prior written approval of the Indemnifying Party, which shall not be unreasonably withheld.
- 9.2 **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY OTHER SECTION OF THIS AGREEMENT, IN NO EVENT SHALL WELLPARTNER BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR FAILURE TO REALIZE SAVINGS OR LOSS OF PROFITS, REVENUE, OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. WELLPARTNER'S TOTAL LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO**

DAMAGES IN AN AMOUNT EQUAL TO THE AMOUNT OWED BY COVERED ENTITY TO WELLPARTNER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM IS MADE BY COVERED ENTITY.

10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Effective Date and shall continue for three (3) Contract Years ("Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive periods of one (1) Contract Year (each a "Renewal Term," and together with the Initial Term, the "Term") unless written notice is given by either Party to the other Party at least ninety (90) days prior to the end of the then current Term. Following any non-renewal of this Agreement, Wellpartner agrees to provide reasonable assistance to Covered Entity in transitioning services provided hereunder, as reasonably requested by Covered Entity under terms mutually agreed to by the Parties, for a period of ninety (90) days after the date of the expiration of the Term.
- 10.2 Prior to the end of the Initial Term or any Renewal Term hereunder, the Agreement may be terminated early as follows:
- 10.2.1 Either Party may terminate this Agreement for convenience without cause or penalty prior to the date the first Claim undergoes Wellpartner's 340B Claims Qualification process;
- 10.2.2 By mutual written agreement of Covered Entity and Wellpartner;
- 10.2.3 Upon prior written notice of a material breach of this Agreement by the non-breaching Party to the breaching Party, which is not cured to the reasonable satisfaction of the non-breaching Party within thirty (30) days. The Party's waiver or failure to take action with respect to the other Party's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of the right to insist on future compliance with such term or provision; or
- 10.2.4 Upon termination of Covered Entity's eligibility as a Covered Entity under the 340B Program. Covered Entity agrees to provide immediate written notice to Wellpartner of loss or termination of its 340B eligibility. Termination shall be effective whether or not notice is provided by the Covered Entity.
- 10.2.5 The Covered Entity's payments to Wellpartner under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the Covered Entity's purchase of the indicated quantity of services, then the Covered Entity may give written notice of this fact to Wellpartner, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the Covered Entity may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

11. NON-DISCLOSURE

- 11.1 Non-Disclosure. In the course of performing under this Agreement, a Party may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential of the other Party ("Confidential Information"). Without limiting the foregoing, the Parties acknowledge and agree that this Agreement, including the pricing terms of this Agreement, constitutes Confidential Information. For purposes of this Agreement, Confidential Information shall not include Protected Health Information, the security of which is provided for elsewhere. The Parties, including their respective employees, agents or representatives (i) shall not disclose to any third party the Confidential Information except as otherwise permitted by this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (1) after it becomes publicly available through no fault of a Party hereto; (2) which is later publicly released by a Party hereto in writing; (3) which is lawfully obtained from third parties without restriction; (4) which can be shown to be previously known or developed by a Party hereto independently of another Party; or (5) that is legally required by court order, law, or other governmental regulation or authority to be disclosed; provided, that unless prohibited by law, such disclosure may be made only after giving written notice to the Party whose Confidential Information is to be disclosed so that it may object to such disclosure and seek a protective order and; provided, further that the disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed. To the extent this Agreement is not exempt from disclosure under the California Public Records Act ("CPRA"), Covered Entity may disclose this Agreement upon request as set forth in the CPRA without giving prior written notice to Wellpartner.
- 11.2 Enforcement. Each of the Parties acknowledges and agrees that any breach by it of any of the provisions of the Non-Disclosure Section of this Agreement would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if a Party hereto breaches, or threatens to commit a breach of, Non-Disclosure, the other shall have the right and remedy (upon compliance with any necessary prerequisites imposed by law upon the availability of such remedy), which shall be independent and severally enforceable, and which shall be in addition to, and not in lieu of, any other rights and remedies available to it under law or in equity (including, without limitation, the recovery of damages), to have the Non-Disclosure specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against breaching Party of restraining orders and injunctions (preliminary, mandatory, temporary and permanent), without posting bond and without the need to prove damages, against violations, threatened or actual, and whether or not then continuing, of such covenants. The existence of

any claim or cause of action by the breaching Party, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of the Non-Disclosure. In addition, any breach of the Non-Disclosure shall constitute a material breach of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

- 12.1 Each Party represents and warrants that it (i) has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and (ii) is not a party to any other agreement that would prevent or restrict its performance hereunder.
- 12.2 Covered Entity represents and warrants that it is a covered entity as defined in Section 340B and will remain such throughout the term of this Agreement.
- 12.3 Covered Entity represents and warrants that it is not aware of any third-party claims or potential claims against it, Wellpartner, or Pharmacy related to the Administrative Services provided by Wellpartner hereunder nor is it aware of a basis for such a claim.
- 12.4 Covered Entity represents and warrants that it will be solely responsible for compliance with all federal and state laws, regulations and guidance prohibiting duplicate discounting by: (1) carving out from its definition and determination of Eligible Patient any patient that is a beneficiary of Medicaid, Medicaid managed care, AIDS Drug Assistance Program ("ADAP") coverage or other coverage if the use of 340B Processed Drugs for such patients results in prohibited duplicate discounting, and/or (2) making arrangements to prevent duplicate discounting, when required, including arrangements to comply with requirements applicable to covered entities or contract pharmacies to identify 340B claims and/or to submit 340B claims at legally or contractually specified pricing, with Medicaid agencies, Medicaid managed care organizations, ADAPs or other payers.
- 12.5 Wellpartner further represents and warrants to Covered Entity that (i) its performance under this Agreement shall at all times comply with all applicable federal, state and local laws and regulations; (ii) it will perform all services in a professional and competent manner using properly qualified and trained personnel; (iii) neither Wellpartner nor any of its owners, officers, directors, employees or agents has been excluded from payment for federal health care programs or appears on the List of Excluded Individuals/Entities of the Office of the Inspector General of the Department of Health and Human Services; and (iv) Wellpartner has not been sanctioned, excluded or debarred under Medicare, Medicaid, or any other state or federal program. Wellpartner agrees to report immediately, with relevant factual detail, to Covered Entity any sanction, exclusion or debarment of Wellpartner's or of any its owners, officers, directors, employees, or agents under Medicare, Medicaid, or any other state or federal program.
- 12.6 EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, WELLPARTNER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES.

13. MISCELLANEOUS


- 13.1 Non-Assignment. This Agreement may not be assigned by any Party without the prior written agreement of the other Parties, which agreement shall not be unreasonably delayed or withheld; provided, however, that the preceding restriction shall not apply to the assignment by a Party to an affiliated company or any successor entity through a sale, merger, or other similar transaction.
- 13.2 Compliance With Laws. The Parties hereto shall comply with all applicable federal, state and local laws, rules, regulations and requirements, including but not limited to federal and state anti-kickback laws, self-referral laws, false claims laws, and non-discrimination laws. Each Party is aware of the potential for civil or criminal penalties if the Party violates federal, state, or local laws.
- 13.3 Choice of Law. This Agreement shall be interpreted according to the substantive laws of the State of California.
- 13.4 Patient Privacy and HIPAA Compliance. The Parties shall at all times 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). Covered Entity agrees that Wellpartner is a Business Associate of the Covered Entity. In this regard, concurrent with their entering into of this Agreement, Covered Entity and Wellpartner will enter into the BAA attached at Attachment 5 requiring Wellpartner to comply with the HIPAA Rules concerning the confidentiality, privacy, and security of Protected Health Information. Covered Entity agrees that Pharmacy may transmit claims containing Protected Health Information to Wellpartner acting as the Business Associate and agent of the Covered Entity under this Agreement. Covered Entity agrees that it shall obtain Protected Health Information from Wellpartner only relating to patients who are Eligible Patients under this Agreement. The Covered Entity shall not request or receive Protected Health Information from Wellpartner relating to patients who are not Eligible Patients of the Covered Entity. Failure by either Party to abide by these requirements shall be a basis for immediate termination of this Agreement.
- 13.5 Insurance. With respect to the performance of its obligations under this Agreement, the Parties agree to the insurance requirement set forth in Attachment 6.
- 13.6 Intellectual Property. During the term of this Agreement, Covered Entity may access and use Wellpartner's Administrative Services or Additional Services (collectively, "Services") on a limited, non-sublicensable, non-transferable, and non-exclusive basis. Wellpartner retains all right, title, and interest in and to the Services and all logos and trademarks reproduced through the Services. This Agreement does not grant Covered Entity any intellectual property rights in the Services or any of its components.
- 13.7 Force Majeure. Except for the duty to pay, neither Party shall be liable in any manner for any delay or failure to perform its obligations hereunder which are beyond such Party's reasonable control, which for this purpose shall include any government acts and changes to applicable law and regulation.

- 13.8 Entire Agreement. This Agreement, including the recitals and all Exhibits and Attachments, represent the entire understanding of the Parties in the subject matter hereof. Such attachments are incorporated herein and made a part hereof. There are no other agreements or understandings among the Parties, either oral or written, relating to the subject matter hereof. Any amendments to this Agreement shall be in writing and signed by the Parties hereto. The Parties agree that to the extent that there is an inconsistency or conflict between the terms and conditions of any Exhibit and Attachment and this Agreement, the terms and conditions of the Exhibit or Attachment shall prevail.
- 13.9 Independent Contractors. The Parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. The provisions of this Agreement do not, and are not intended to, create a partnership, joint venture, agency or employment relationship among or between the Parties.
- 13.10 Third Party Beneficiaries. This Agreement is intended for the sole benefit of the Parties and does not create any third party beneficiary rights.
- 13.11 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.
- 13.12 Waiver. The failure of Covered Entity or Wellpartner to enforce at any time or for any period of time any one or more of the provisions hereof shall not be construed to be a waiver of the other's responsibilities or obligations under such provision(s) or of the right of a Party thereafter to enforce each such provision.
- 13.13 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.
- 13.14 Notice. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be delivered personally or in writing sent by certified or registered mail, return receipt requested or by overnight delivery by a nationally recognized courier, to the Parties at the addresses set forth on the signature pages hereto. Notice shall be effective on the day it is received.
- 13.15 Non-Discrimination. During the performance of this Agreement, Wellpartner shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Wellpartner's employment practices or in the furnishing of services to recipients. Wellpartner shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Wellpartner shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The

provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

IN WITNESS WHEREOF, Wellpartner and Covered Entity, by their duly authorized representatives, have executed this Agreement.

WELLPARTNER, LLC


By: 
Name: JAMES P. Love
Its: SVP
Date: December 2, 2019
Address: 20800 SW 115th Avenue, Suite 100
Tualatin, OR 97062

COUNTY OF MONTEREY


By: _____
Name: _____
Its: _____
Date: _____
Address: 1270 Natividad Road
Salinas, CA 93906

With copy to:
Monterey County Health Department
Clinic Services Administration
1615 Bunker Hill Way, Suite 140
Salinas, CA 93906

Reviewed as to fiscal provisions


Auditor-Controller
County of Monterey

12/12/19

Approved as to form ^{12/2/19}


ATTACHMENT 1
FINANCIAL TERMS

The reimbursement and other terms set forth in this **Attachment 1** contain the entire financial understanding between Wellpartner and Covered Entity with respect to the Administrative Services provided under the Agreement. Wellpartner and Covered Entity have freely negotiated the fees set forth herein and agree that such fees are consistent with fair market value for Administrative Services rendered.

- 1.1 For each 340B Processed Drug, Covered Entity shall reimburse Wellpartner an Administrative Fee equal to the greater of:
 - 1.1.1 \$4.00; or
 - 1.1.2 14% of the amount represented by the following formula: (i) total amount paid for a Claim (regardless of who paid, e.g. Third-Party Payer, Eligible Patient, or Covered Entity) minus (ii) the 340B Price.
- 1.2 For all Claims that have been excluded for any reason from the Covered Entity's 340B program at Covered Entity's request, including any payer exclusions (e.g., fee-for-service Medicaid), Covered Entity shall reimburse Wellpartner a pharmacy switch service fee of \$0.35 per Claim.
- 1.3 Notwithstanding any provision of this Agreement including this **Attachment 1**, Covered Entity understands and agrees that Wellpartner shall be entitled to receive the Administrative Fee calculated in Section 1.1 above for Claims that are reversed or required to be reversed because of inaccurate or incomplete data or information provided by Covered Entity.
- 1.4 The Parties acknowledge that the 340B Price in effect on the date the Claim is qualified by Wellpartner may differ from the price of the 340B drug that Covered Entity purchases to replenish the dispensed drug including when completing reconciliation of inventory. Covered Entity shall in all cases be responsible to pay for the 340B drugs using the amounts contained on wholesaler invoices or Wellpartner invoices or statements which may differ from the 340B Price used to calculate the amount owed to Wellpartner hereunder.
- 1.5 In the event of any change in industry standards or legal or regulatory requirements imposed on the Covered Entity, Wellpartner or Pharmacy related to Administrative Services or the reimbursement and/or payment terms set forth in the Agreement including this **Attachment 1**, the Parties agree to work in good faith to modify the terms of this Agreement including this **Attachment 1** so that the level of compensation received by Wellpartner prior to such change is maintained.

ATTACHMENT 2
WELLPARTNER CLARITY REPORTS

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

20. **Payer Summary:** Shows percentage of claims that carved in that insured or uninsured.
21. **Patient Carve-In Fluctuation:** Shows the number of claims that are carved in per patient and the carve-in percentage rate.

ATTACHMENT 3
CONTRACTED PHARMACY LOCATIONS

The Agreement shall apply to the Covered Entity's Contracted Pharmacy Locations which are listed in the following Pharmacy Services Agreement(s), including any amendments thereto:

The Pharmacy Services Agreement by and between County of Monterey and CVS Pharmacy, Inc. dated October 4, 2019.

ATTACHMENT 4
ADDITIONAL SERVICES AND ADDITIONAL FEES

[INTENTIONALLY OMITTED]

ATTACHMENT 5
HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective the Effective Date of the Agreement (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and Wellpartner, LLC, (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“E PHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

Definitions

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

Permitted Uses And Disclosures Of PHI

Unless otherwise limited herein, Business Associate may:

use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

Responsibilities Of The Parties With Respect To PHI

Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within five (5) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach;

use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within five (5) business days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

if all or any portion of the PHI is maintained in a Designated Record Set:

upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for Covered Entity's PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within five (5) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a

Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the a successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

Terms And Termination

Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

Miscellaneous

Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA or HITECH is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

CVS Health Privacy Office
P.O. Box 52072
Phoenix, AZ 85072-2072
1-866-443-0933
privacy.officer@cvshealth.com

If to Covered Entity, to:

1270 Natividad Road
Salinas, CA 93906
Attn: Director of Health
Tel: (831) 755-4526
Fax: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

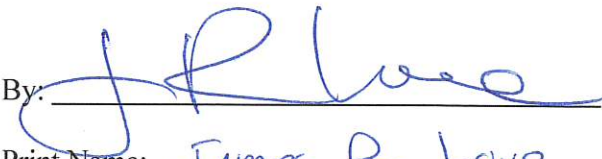
Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising directly out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

COUNTY OF MONTEREY, ON BEHALF OF 340B COVERED ENTITIES OPERATED BY THE COUNTY OF MONTEREY HEALTH DEPARTMENT **WELLPARTNER, LLC**

By: _____
Print Name: _____
Print Title: _____
Date: _____

By: 
Print Name: James R. Love
Print Title: SVP
Date: December 2, 2019

Reviewed as to fiscal provisions



Auditor-Controller
County of Monterey

12/12/19

ATTACHMENT 6

to 340B Services Agreement
by and between Wellpartner, LLC, ("Wellpartner" or "Administrator") and County of
Monterey, on behalf of the Monterey County Health Department ("Covered Entity" or
"County")

This Addendum, dated as of the date of execution of the Agreement by both parties, amends, modifies, and supplements the 340B Administrative Services Agreement ("Agreement") by and between Wellpartner and County. This Addendum has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, Wellpartner and County agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

Insurance.

Evidence of Coverage. Prior to commencement of the Agreement, Wellpartner shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

This verification of coverage shall be sent to the County's Contracts/Purchasing Office, unless otherwise directed. Wellpartner shall not receive approval for services for work under the Agreement until all insurance has been obtained as required and approved by the County. This approval of insurance shall neither relieve nor decrease the liability of Wellpartner.

Qualifying Insurers. All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.

Insurance Coverage Requirements. Without limiting Wellpartner's duty to indemnify, Wellpartner shall maintain in effect throughout the term of the Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. (Note: Independent contractors shall be required to maintain the required Commercial General Liability insurance)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under the Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers Compensation Insurance, if Wellpartner employs others in the performance of the Agreement, in accordance with California Labor Code section 3700 and with Employer's liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional Liability Insurance, if required for the professional service being provided, (e.g., those persons authorized by a license to engage in business or profession regulated by the California Business and Professional Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, Wellpartner shall, upon the expiration or earlier termination of the Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of the Agreement.

Other Insurance Requirements, All insurance required by the Agreement shall be issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by the Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date Wellpartner completes its performance of services under the Agreement.

Wellpartner shall provide the County with notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Certificates of insurance from each subcontractor will be provided showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement including the County of Monterey, its officers, agents, and employees as Additional Insured with respect to liability arising out of Wellpartner's work, including ongoing and complete operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by Wellpartner's insurance. (Note: Additional Insured status shall be provided under a blanket endorsement)

Prior to the execution of the Agreement by the County, Wellpartner shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that Wellpartner has in effect the insurance required by the Agreement. Wellpartner shall file a new or amended certificate of insurance within five (5) calendar days after any material change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in the Agreement, which shall continue in full force and effect.

Wellpartner shall at all times during the term of the Agreement maintain in force the insurance coverage required under the Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Office. If the certificate is not received by the expiration date, Wellpartner shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by Wellpartner to maintain such insurance coverage is a default of the Agreement, which entitles County, at its sole discretion, to terminate the Agreement immediately.