

## PHARMACY SERVICES AGREEMENT

**THIS PHARMACY SERVICES AGREEMENT** (the "Agreement") is by and between **County of Monterey**, a political subdivision of the State of California, on behalf of the Monterey County Health Department, (hereinafter "Covered Entity") and **CVS Pharmacy, Inc.**, on behalf of itself and its subsidiaries/affiliates (hereinafter "Retail Pharmacy"). This Agreement shall become effective on the date ("Effective Date") on which it has been registered and made effective by the Health Resources and Services Administration ("HRSA"). Retail Pharmacy and Covered Entity are each individually a "Party" and collectively the "Parties". The term "Pharmacy" in this Agreement means the Retail Pharmacy.

**WHEREAS**, Covered Entity provides healthcare services to Eligible Patients at Covered Entity eligible sites that have been registered with HRSA for inclusion in its public database (each the "Covered Entity Site" and collectively "Covered Entity Sites");

**WHEREAS**, Covered Entity has engaged Wellpartner, L.L.C. ("340B Service Provider") to assist with Covered Entity's administration of the Section 340B pharmacy benefits management services and its relationship with Pharmacy for the Contracted Pharmacy Locations (as defined below), and to act as an agent for Covered Entity;

**WHEREAS**, Pharmacy has appropriate licensure in place in order to be able to provide services described in this Agreement; and

**WHEREAS**, Covered Entity desires to engage Pharmacy to provide Pharmacy Services, as defined in this Agreement, to Eligible Patients with respect to outpatient drugs purchased pursuant to Section 340B.

**NOW, THEREFORE**, the Parties agree as follows:

**1. The Parties.**

(a) Covered Entity is a covered entity as defined in Section 340B of the Public Health Service Act (herein "Section 340B") and is eligible to purchase certain outpatient drugs at reduced prices for use by Eligible Patients (as defined below in Section 3) from drug manufacturers that have signed a pharmaceutical pricing agreement with the United States Department of Health and Human Services (hereinafter "DHHS") and/or the manufacturers' wholesalers. Covered Entity is subject to the requirements of the 340B program including guidance issued from time to time by HRSA (the "340B Program"). The Parties agree that the terms and conditions of this Agreement shall apply to the Covered Entity, its Covered Entity Sites and all Covered Entity registered child sites. A list of the Covered Entity Sites registered in the HRSA 340B Program database as of the date on which this Agreement is executed are included as Attachment 1 to the applicable Addendum to this Agreement. The Parties agree that the list of Covered Entity Sites will be automatically updated on the first day of each calendar quarter to reflect sites that have been added or removed from the HRSA database. Updates will be by reference only without the need for either Party to revise the existing text of the applicable Addendum.

(b) The term "Retail Pharmacy" applies only to the arrangement between Retail Pharmacy and Covered Entity. Additional terms and conditions specific to the Retail Pharmacy arrangement are set forth in Addendum A.

**2. Pharmacy Services.**

(a) Pharmacy shall dispense 340B Processed Drugs (as hereinafter defined) to patients determined to be Eligible Patients by Covered Entity ("Pharmacy Services"). Pharmacy shall provide Pharmacy Services in accordance with all applicable State and Federal law and in accordance with the 340B Program and the professional judgment of the dispensing pharmacist.

(b) Pharmacy agrees it will provide Pharmacy Services contracted for under this Agreement at the site(s) listed on Attachment 2 of the applicable Addendum ("Contracted Pharmacy Locations").

(c) In addition to Pharmacy Services, Pharmacy may provide medical services (e.g., infusion) to Eligible Patients. The Parties understand and agree that Pharmacy provides such medical services on its own behalf, and may bill responsible payers for reimbursement for those services for its own account. Covered Entity is not entitled to and will not receive any reimbursement obtained by Pharmacy for medical services.

**3. Eligible Patients.** Covered Entity represents and warrants that:

(a) Covered Entity shall be responsible for determining whether a patient is an Eligible Patient and identifying such Eligible Patients to Pharmacy;

(b) Pharmacy shall be entitled to rely on the Covered Entity's determination and identification of Eligible Patients; and

(c) Covered Entity will consider a patient as an "Eligible Patient" under this Agreement only if the individual meets the prescribed patient definition criteria as set forth at 61 Fed. Reg. 55156 (Oct. 24, 1996), as may be amended from time to time by HRSA.

**4. 340B Processed Drugs.** "340B Processed Drugs" are defined as drugs that are covered by this Agreement and applicable Addendum, processed according to all 340B policies and procedures established by Covered Entity, and able to be replenished by Covered Entity.

**5. Maintaining Title.** Covered Entity shall purchase 340B Processed Drugs and Covered Entity shall maintain title to the 340B Processed Drugs and shall assume all responsibility for establishing the price of the 340B Processed Drugs subject to applicable Federal, State, and local laws.

**6. Ship To, Bill To Agreement.** A "ship to, bill to" procedure shall be used by the Parties pursuant to which the Covered Entity shall order 340B Processed Drugs directly from the drug manufacturer, a designated sales representative, or a drug wholesaler. Covered Entity, or 340B Service Provider on Covered Entity's behalf, shall arrange for Covered Entity to be billed directly for purchased 340B Processed Drugs. 340B Processed Drugs will be shipped directly to Pharmacy.

**7. Relationship of the Parties.**

(a) Pharmacy agrees to render all services provided under this Agreement in accordance with professional standards applicable to pharmacy services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Eligible Patient where such service would violate any statute, regulations, or professional standards applicable to pharmacy services. Covered Entity acknowledges and agrees that it is responsible for compliance with all legal and regulatory requirements under the 340B Program and represents and warrants that during the term of this Agreement Covered Entity will remain in compliance with all requirements of

the 340B Program. Pharmacy is responsible to provide the Pharmacy Services under the terms of this Agreement and makes no representation or warranty with respect to Covered Entity's compliance with the 340B Program. Covered Entity and Pharmacy agree to follow the mutually agreed upon operational procedures attached hereto as Attachment 4 in the applicable Addendum (the "Operational Procedures"). Any changes to the Operational Procedures must be approved in advance and in writing by Pharmacy.

(b) Covered Entity acknowledges that Pharmacy only works with 340B Service Providers that have been mutually approved by both Parties prior to the Effective Date of this Agreement. If Covered Entity subsequently chooses to transition to a 340B Service Provider that the Pharmacy does not work with, either party may choose to terminate the Agreement, which shall be effective prior to the date on which the new 340B Service Provider begins providing services. Covered Entity acknowledges and agrees that in making a decision to contract with a 340B Service Provider, it has not and will not rely on any statement or representation by Pharmacy or affiliates related to the qualifications and abilities of any potential or actual 340B Service Provider. Covered Entity agrees to provide Pharmacy with a minimum of sixty (60) days advance written notice prior to changing its 340B Service Provider. Such notice shall contain the name of the new 340B Service Provider and the new 340B Service Provider shall complete the vendor assessment requirements set forth by Pharmacy as a condition of Pharmacy's approval. Covered Entity agrees and Pharmacy acknowledges that 340B Service Provider shall act solely as Covered Entity's agent with respect to administering 340B pharmacy benefits management services and the Covered Entity's relationship with the Pharmacy. Covered Entity acknowledges and agrees that Pharmacy is relying on the Covered Entity and 340B Service Provider and their systems, policies and procedures, including 340B Service Provider's tracking system and information system (together, the "340B System"), and the Operational Procedures, to support the Pharmacy Services.

(c) Covered Entity agrees that it shall ensure that Pharmacy has reasonable access to Drug Supply Chain Security Act (DSCSA) information held and stored by its wholesaler.

(d) Covered Entity agrees that it shall ensure that Pharmacy has reasonable access to the 340B Software System that will, among other things on behalf of the Covered Entity: (i) perform automatic and ongoing review of claims adjudicated at the Pharmacies to determine 340B eligibility; (ii) facilitate ongoing inventory replenishment; (iii) produce revenue/expense reports for revenue reconciliation and applicable accounting; and (iv) facilitate audits associated with the performance of this Agreement. Covered Entity agrees that access to the 340B System shall be in a manner reasonably required by Pharmacy and Pharmacy shall be entitled to rely on any document or information provided by Covered Entity, 340B Service Provider and the 340B System as true and accurate. Covered Entity agrees that the Covered Entity or 340B Service Provider shall perform required or routine maintenance, upgrades and inspections on any software included in the 340B System and will make any adjustments reasonably necessary to prevent the diversion of 340B drugs to individuals who are not Eligible Patients.

**8. Payment for Pharmacy Services.** Pharmacy shall be timely paid by Covered Entity for Pharmacy Services in accordance with the terms provided in Attachment 3 to the applicable Addendum of this Agreement. Payment shall include a dispensing fee (the "Dispensing Fee") for each prescription of 340B Processed Drugs filled for Eligible Patients. The Parties have freely negotiated the terms of this Agreement and neither has offered or received any inducement or other consideration from another Party for entering into this Agreement. Pharmacy's compensation is consistent with fair market value in arms-length transactions for Pharmacy Services and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between or among the Parties for which payment may be made in whole or in part under a Federal or State healthcare program. Nothing in this Agreement shall be construed to require Covered Entity to make referrals of patients to Pharmacy.

9. **Patient Choice.** Pharmacy understands and agrees that Eligible Patients of Covered Entity may elect not to use Pharmacy for Pharmacy Services. In the event that an Eligible Patient elects not to use Pharmacy for such services, the patient may obtain the prescription from the prescriber and then obtain the drug(s) from a pharmacy provider of his or her choice.

10. **Reports.** Covered Entity acknowledges that all information and reports related to the 340B Processed Drugs will be provided by the 340B Service Provider, and not Pharmacy. Pharmacy will submit claims for drugs dispensed by Pharmacy to 340B Service Provider to support the 340B Service Provider's reporting and tracking requirements to the Covered Entity. The 340B Service Provider shall prepare a reconciliation report of 340B Processed Drugs no later than sixty (60) days from the date of termination of this Agreement and submit that report to both Covered Entity and Pharmacy to be used as a basis for negotiating a final reconciliation under the terms of this Agreement. The provisions of this Section 10 shall survive the expiration or termination of this Agreement for any reason.

11. **Prohibition on Resale or Transfer.** The Parties agree that they will not resell or transfer a 340B Processed Drug ordered under this Agreement pursuant to Section 340B to an individual who is not an Eligible Patient of Covered Entity. Covered Entity represents, warrants and agrees that it has established and will maintain an overall system to ensure that only Eligible Patients receive 340B Processed Drugs and that 340B Processed Drugs will be accounted for and tracked. Covered Entity acknowledges that it may be removed from the 340B Program's list of covered entities and made ineligible for 340B pricing should it violate this Section.

12. **Audits and Inspection.**

(a) The Parties understand and agree that a copy of this Agreement will be provided upon written request to the Office of Pharmacy Affairs. In addition, the Parties understand and agree that the Parties are subject to audit by HRSA and by drug manufacturers who have signed a drug purchasing agreement with HRSA, which audits may pertain to the Covered Entity's compliance with the prohibition on drug resale or transfer and the prohibition on duplicate Medicaid rebates and discounts. The Parties further understand that the HRSA has published guidelines for such audits. The Parties agree to cooperate with such audits and to comply with applicable provisions of the audit guidelines and amendments thereto that may be published from time to time.

(b) Pharmacy grants Covered Entity, and its duly authorized representatives, the right, on behalf of Covered Entity, to audit its books and records, including all electronic records, to verify and ensure compliance with the duties, obligations and transactions outlined hereunder. Any such audit shall be conducted during reasonable business hours, upon reasonable prior written notice, and in a manner so as not to interfere with the conduct of Pharmacy's business. Pharmacy agrees to use commercially reasonable efforts to cooperate with such audits in good faith.

(c) Pharmacy agrees to cooperate with Covered Entity to identify necessary information for Covered Entity to meet its ongoing responsibility of ensuring that the contract pharmacy services guidelines as promulgated by HRSA's Office of Pharmacy Affairs ("OPA") are being complied with and establish mechanisms to ensure the availability of that information for periodic independent audits (no less frequently than annually) that shall be performed by Covered Entity's independent auditors. In complying with these requirements, Covered Entity will register with HRSA using the online Contract Pharmacy Registration as required by OPA.

(d) Any payments made to either Party in excess of the payment amount due under this Agreement because of error, inaccurate claim, discrepancy, or any other reason may be recovered by



the other Party. The recovering Party shall notify the other Party in writing of such excess payments and shall have the right either to offset such excess payment amounts against any payments due to the other Party or to require reimbursement from the other Party of such excess payment amounts. If the recovering Party requires reimbursement, the other Party shall have thirty (30) days from the date of notification to reimburse the excess payment amounts. When the recovering Party collects amounts due as a result of audit compliance discrepancies, there shall be no collection, compensation or reimbursement from, or any recourse against, a patient for those amounts.

(e) This Section 12 shall survive the expiration or termination of this Agreement for any reason.

**13. Insurance.** With respect to the performance of their obligations under this Agreement, the parties agree to the Insurance Requirements set forth in Addendum B.

**14. Non-Assignment.** This Agreement may not be assigned by any Party without the prior written agreement of the other Party(ies), 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.

**15. Term and Termination.** This Agreement shall commence on the Effective Date and continue for two (2) years ("Initial Term") unless terminated earlier for reasons described herein. Thereafter this Agreement shall automatically renew for successive two (2) year terms (each a "Renewal Term"), unless Pharmacy provides a written notice of non-renewal to Covered Entity or Covered Entity provides a written notice of non-renewal to Pharmacy not less than thirty (30) days prior to the end of the Initial Term or any Renewal Term. The Parties recognize that this Agreement will become operational as soon as practical following the date this Agreement is fully executed, but in no event earlier than the Effective Date. Notwithstanding the foregoing, this Agreement may be terminated early:

(a) By mutual agreement of Pharmacy and Covered Entity;

(b) 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;

(c) Upon termination of Covered Entity's eligibility as a Covered Entity under the 340B Program. Covered Entity agrees to provide immediate written notice to Pharmacy of loss or termination of its 340B eligibility. Termination shall be effective whether or not notice is provided by the Covered Entity;

(d) By Pharmacy or Covered Entity without cause upon thirty (30) days prior written notice to the other Party.

(e) The Covered Entity's payments to Pharmacy 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 Pharmacy, 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.

16. **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, and false claims laws. Each Party is aware of the potential for civil or criminal penalties if the Party violates Federal, State, or local laws.

17. **Choice of Law.** This Agreement shall be interpreted according to the substantive laws of the State of California.

18. **Representations of Pharmacy.** Pharmacy represents and warrants to Covered Entity that:

(a) it employs, and will continue to employ throughout the term of this Agreement, sufficient qualified and credentialed personnel needed to manage and operate the Pharmacy and provide the services anticipated hereunder in a timely, professional, competent and ethical manner;

(b) it owns, possesses and employs, and will continue to employ throughout the term of this Agreement, sufficient technology and equipment as needed to manage and operate the Pharmacy and provide the services in the manner anticipated hereunder;

(c) it will render the services hereunder in accordance with prevailing pharmaceutical and medical standards and will apply them in the same fashion to all patients of Covered Entity; and

(d) it will render all services to Eligible Patients without regard to race, creed, color, age, sex, sexual orientation, citizenship, marital status, veteran status, national origin, disability, religion, arrest record or other protected status.

(e) its performance under this Agreement shall at all times comply with all applicable federal, state and local laws and regulations.

19. **Representations of Covered Entity and Pharmacy.** Covered Entity and Pharmacy each represent and warrant to the other that:

(a) all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the applicable terms of this Agreement and are under legal obligation, by contract or otherwise, sufficient to enable each of Covered Entity and Pharmacy to fully comply with all provisions of this Agreement including, without limitation, with respect to Pharmacy, the requirement that modifications or limitations that Covered Entity has agreed to adhere to with regards to the use and disclosure of Protected Health Information of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted will be communicated to Pharmacy, in writing, and in a timely fashion;

(b) they will reasonably cooperate with each other in the performance of the mutual obligations under this Agreement; and

(c) to the best of their knowledge, neither they, nor their respective shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under Federal or State law (including without limitation a plea of *nolo contendere*

or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (i) the neglect or abuse of a patient, (ii) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a Federal or State healthcare program, (iii) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any Federal, State or local government agency, (iv) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (v) interference with or obstruction of any investigation into any criminal offense described in (i) through (iv) above. Each of Covered Entity and Pharmacy further agrees to notify the other immediately after it becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

**20. Representations of Covered Entity.** Covered Entity represents and warrants to Pharmacy that:

(a) it is a Covered Entity as defined in Section 340B and will remain such throughout the term of this Agreement;

(b) it will be solely responsible for ensuring 340B Program compliance;

(c) it will be responsible for Covered Entity's 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, ADAP coverage or other coverage if the use of 340B Processed Drugs for such patients results in prohibited duplicate discounts, and/or (2) making other 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;

(d) (i) it has full right, power, and authority to enter into this Agreement; (ii) in doing so, it will not violate any other agreement, judgment, order, or decree to which it is a party; and (iii) it has taken all corporate action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement; and

(e) it will perform its responsibilities hereunder in a professional and diligent manner consistent with industry standards reasonably applicable to the performance thereof.

**21. Patient Privacy and HIPAA Compliance.** The Parties recognize that they are healthcare providers within the meaning of the federal Health Insurance Portability and Accountability Act ("HIPAA"). The Parties acknowledge that as covered entities under HIPAA, each must comply with HIPAA Rules concerning the confidentiality, privacy, and security of Protected Health Information as defined in 45 CFR 160.103, and the regulations promulgated from time to time thereunder.

Covered Entity agrees that the 340B Service Provider is a Business Associate of the Covered Entity and that the Covered Entity has entered into a Business Associate Agreement with the 340B Service Provider requiring the 340B Service Provider 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 the 340B Service Provider 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 the 340B Service Provider only relating to patients

who are Eligible Patients under this Agreement. The Covered Entity shall not request or receive Protected Health Information from the 340B Service Provider 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.

**22. Non-Disclosure.**

(a) 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; or (4) which can be shown to be previously known or developed by a Party hereto independently of another Party. The Agreement, including reimbursement rates and pricing, is a public record subject to disclosure pursuant to the California Public Records Act.

(b) Enforcement. Each of the Parties acknowledges and agrees that any breach by it of any of the provisions of Section 22(a) (“Non-Disclosure”) 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.

**23. Indemnification/Limitation of Liability.** Covered Entity shall defend, indemnify and hold harmless Pharmacy, its respective officers, directors, agents, representatives, successors, assigns, and employees (the “Pharmacy Parties”) from and against any and all claims, losses, costs, damages and/or

expenses incurred by any Pharmacy Party as a result of any claim made by a third party against a Pharmacy Party to the extent arising out of Covered Entity's negligence, willful misconduct, or breach of its obligations, representations or warranties set forth in this Agreement, except to the extent such claims or losses are caused by the negligence or willful misconduct of any Pharmacy Party. In particular, Covered Entity shall defend, indemnify and hold harmless the Pharmacy Parties for any claim arising out of the failure to comply with the requirements of the 340B Program.

Pharmacy shall defend, indemnify and hold harmless Covered Entity, its subsidiaries and affiliates and each of their respective officers, directors, agents, representatives, successors, assigns, and employees (the "Covered Entity Parties") from and against any and all claims, losses, costs, damages and/or expenses incurred by any Covered Entity Party as a result of any claim made by a third party against a Covered Entity Party to the extent arising out of or relating to Pharmacy's negligence, willful misconduct, or breach of its obligations, representations or warranties set forth in this Agreement, except to the extent such claims or losses are caused by the negligence or willful misconduct of any Covered Entity Party.

In no event shall Pharmacy or Covered Entity be liable to the other for any incidental, special, consequential, or punitive damages as a result of the performance or any default in the performance of their respective obligations under this Agreement; provided however it is understood by the Parties that fines and penalties which may be imposed for violation of Federal or State laws or regulations arising from a Party's performance of or failure to perform its duties under this Agreement shall not be deemed to constitute incidental, special, consequential, or punitive damages under this Section 23.

**24. Force Majeure.** A 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.

**25. Entire Agreement.** This Agreement, including the recitals and all Addenda 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 Addenda and Attachment and this Agreement, the terms and conditions of the Attachment or Addenda shall prevail.

**26. 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.

**27. Third Party Beneficiaries.** This Agreement is intended for the sole benefit of the Parties and does not create any third party beneficiary rights.

**28. Operation of Law.** In the event that this Agreement or any part of this Agreement is deemed to be contrary to local, State or Federal law by counsel for the Parties or, in the opinion of counsel, presents substantial legal risk to either Party, the Parties agree to use their best efforts to make changes to this Agreement to the minimum extent necessary to make this Agreement consistent with applicable laws, and to try to retain as closely as possible the original terms reflected in this Agreement. After the Parties have used their best efforts, if this Agreement cannot be modified or amended to comply with applicable law or mitigate the legal risk to the Parties in a way that is mutually agreeable to the Parties, then Pharmacy or Covered Entity may terminate this Agreement upon notice to the other.



29. **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.

30. **Waiver.** The failure of Covered Entity or Pharmacy 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.

31. **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.


32. **Notice.** Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be 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.

33. **Non-Discrimination.** During the performance of this Agreement, Pharmacy and its subcontractors, 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 Pharmacy's employment practices or in the furnishing of services to recipients. Pharmacy 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. Pharmacy and any subcontractor 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.


[signature page follows on next page]


IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date and year first above written.

**CVS PHARMACY, INC.**

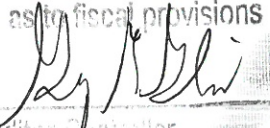
By:   
Name: Christian Reid  
Its: Sr. Director, 340B  
Date: 7/25/19  
Address: One CVS Drive  
HSA, MailStop 4036  
Woonsocket, RI 02895

**COUNTY OF MONTEREY**

By:   
Name: Elsa Jimenez  
Its: Director of Health  
Date: 10/04/2019  
Address: 1270 Natividad Road, Salinas, CA 93906

APPROVED AS TO FORM  
  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions

  
Auditor  
County of Monterey 9/15/19

**ADDENDUM A**  
**ATTACHMENT 1-a**

**RETAIL PHARMACY**

**COVERED ENTITY SITES\***

The Covered Entity Sites listed on this Addendum A Attachment 1-a shall be serviced by the Contracted Pharmacy Locations listed on Addendum A Attachment 2-a. Addendum A Attachment 1-a shall be amended, as necessary, to include future Covered Entity sites approved and registered with HRSA OPAIS following the execution of this Agreement, as mutually agreed by both parties.

| <b><u>340B ID</u></b> | <b><u>ENTITY NAME</u></b> | <b><u>ENTITY ADDRESS</u></b>                   | <b><u>CITY</u></b> | <b><u>STATE</u></b> | <b><u>ZIP</u></b> |
|-----------------------|---------------------------|--|--------------------|---------------------|-------------------|
| FQHCLA002A            | COUNTY OF MONTEREY        | 3155 DEFOREST ROAD                             | MARINA             | CA                  | 93933             |
| FQHCLA002B            | COUNTY OF MONTEREY        | 1156 FREMONT STREET                            | SEASIDE            | CA                  | 93955             |
| FQHCLA002C            | COUNTY OF MONTEREY        | 559 E ALISAL STREET,<br>SUITE 201              | SALINAS            | CA                  | 93905             |
| FQHCLA002D            | COUNTY OF MONTEREY        | 1441 CONSTITUTION BLVD,<br>BLDG 151, SUITE 16  | SALINAS            | CA                  | 93906             |
| FQHCLA002E            | COUNTY OF MONTEREY        | 1441 CONSTITUTION BLVD,<br>BLDG 400, SUITE 300 | SALINAS            | CA                  | 93906             |
| FQHCLA002G            | COUNTY OF MONTEREY        | 1441 CONSTITUTION BLVD,<br>BLDG 200, SUITE 101 | SALINAS            | CA                  | 93906             |
| FQHCLA002J            | COUNTY OF MONTEREY        | 1441 CONSTITUTION BLVD,<br>BLDG 400, SUITE 201 | SALINAS            | CA                  | 93906             |
| FQHCLA002K            | COUNTY OF MONTEREY        | 299 12 <sup>TH</sup> ST                        | MARINA             | CA                  | 93933             |
| FQHCLA002M            | COUNTY OF MONTEREY        | 1441 CONSTITUTION BLVD,<br>BLDG 400, SUITE 301 | SALINAS            | CA                  | 93906             |

**ADDENDUM A**  
**ATTACHMENT 2-a**

**RETAIL PHARMACY**

**CONTRACTED PHARMACY LOCATIONS**

The Contracted Pharmacy Locations listed on this Addendum A Attachment 2-a shall service the Covered Entity Site listed on Addendum A Attachment 1-a. Addendum A Attachment 2-a shall be amended, as necessary, to include future contracted pharmacy locations approved and registered with HRSA OPAIS following the execution of this Agreement, as mutually agreed by both parties. In the event there is a nonmaterial discrepancy between the information in the table below and on the 340B OPAIS listing (e.g. a typographical error, punctuation, abbreviation), the 340B OPAIS listing shall control and the Parties agree an amendment to this Agreement shall not be required.

| <b><u>STORE NUMBER</u></b> | <b><u>STORE ADDRESS</u></b> | <b><u>STORE CITY</u></b> | <b><u>STORE STATE</u></b> | <b><u>STORE ZIP</u></b> | <b><u>DEA NUMBER</u></b> |
|----------------------------|-----------------------------|--------------------------|---------------------------|-------------------------|--------------------------|
| 01300                      | 662 E BORONDA RD            | SALINAS                  | CA                        | 93906                   | FL1170795                |
| 03050                      | 268 RESERVATION RD          | MARINA                   | CA                        | 93933                   | FL1170682                |
| 09186                      | 110 E LAUREL DR             | SALINAS                  | CA                        | 93906                   | FL1170909                |
| 09320                      | 686 LIGHTHOUSE AVE          | MONTEREY                 | CA                        | 93940                   | FL1170872                |
| 09349                      | 347 E ALISAL ST             | SALINAS                  | CA                        | 93901                   | FL1170733                |
| 09506                      | 1140 S MAIN ST              | SALINAS                  | CA                        | 93901                   | FL1170707                |
| 09802                      | 2170 N FREMONT ST           | MONTEREY                 | CA                        | 93940                   | FL1170668                |
| 16447                      | 2040 CALIFORNIA AVE         | SAND CITY                | CA                        | 93955                   | FG5702940                |
| 16200                      | 1640 N MAIN ST              | SALINAS                  | CA                        | 93906                   | FG5701467                |

**ADDENDUM A**  
**ATTACHMENT 3**

**RETAIL PHARMACY**

**COMPENSATION FOR SERVICES – RETAIL PHARMACY DISPENSING FEE**

1. It is understood and agreed that Retail Pharmacy shall receive a Dispensing Fee for each successfully adjudicated claim for drugs dispensed by Retail Pharmacy to an Eligible Patient.
2. Retail Pharmacy's Dispensing Fee for Pharmacy Services shall be as follows:
  - (a) For Eligible Patients with third-party prescription insurance coverage:

\$30.00 for each Brand Name Drug dispensed.
  - (b) For Eligible Patients without third-party prescription insurance coverage:

\$30.00 for each Brand Name Drug dispensed.
3. Beginning April 1 following the Effective Date and each April 1 thereafter, the Dispense Fee shall adjust annually by an amount equivalent to any increase in the Medical Care Commodities Index ("CPI-U-MCC") as published by the United States Bureau of Labor Statistics. Such change shall not exceed five percent (5%) of the Dispensing Fee in any year and shall not be lower than one half percent (0.50%) of the Dispensing Fee in any year. In the event the identified CPI-U-MCC ceases to be published or updated, the Parties will substitute the approximate Consumer Price Index. Any other changes in the Dispensing Fee must be agreed to in writing and approved by both Parties.



**ADDENDUM A**  
**ATTACHMENT 4**

**RETAIL PHARMACY**

**OPERATIONAL PROCEDURES**

These Operational Procedures outline the parameters used to operationalize the Covered Entity's Retail 340B Program.

**Purpose**

340B Service Provider will review eligibility, track the patients, prescriptions and drugs dispensed to 340B eligible patients, and maintain a virtual inventory replenishment system on behalf of the Covered Entity and the Retail Pharmacy.

**Policy**

It is the policy of the Covered Entity that all contract pharmacies will receive drug inventory replenishments. For those drugs dispensed to Eligible Patients that reach or surpass the Unit of Issuance (as hereinafter defined), 340B Service Provider will order replenishment of Retail Pharmacy's drug inventory. Inventory replenishment is subject to the agreed upon terms herein and the availability of the drug from the wholesaler.

**Definitions**

1. "Unit of Issuance" refers to the package size of the drug as it is sold by the wholesaler.
2. "NDC" refers to the 11-digit National Drug Code and is the number assigned to each drug and includes information regarding drug, strength, manufacturer, package size, etc.
3. All other capitalized terms have the meaning ascribed to them in the Agreement, including its other Attachments, to which this Attachment 4 is attached.

**ADDENDUM A**  
**ATTACHMENT 4-a**

**RETAIL PHARMACY**

**PROCEDURES**

**A. Inventory Tracking and Replenishment**

1. 340B Service Provider will track the quantity of each Drug dispensed to a 340B Eligible Patient. "Drugs" include all prescription drugs (controlled and non-controlled substances), and Over the Counters (OTCs).
2. 340B Service Provider will tally the quantities dispensed of 340B Processed Drugs and determine the inventory to be replenished to Retail Pharmacy based upon the package size or Unit of Issuance associated with the dispensed drug's 11-digit NDC code.
3. *Cash Claims.* If mutually agreed upon, Covered Entity will define a 340B cash plan structure. Covered Entity will issue and distribute identification cards with 340B Service Provider's Bank Identification Number ("BIN") and Processor Control Number ("PCN") to Covered Entity patients as applicable. Retail Pharmacy will adjudicate these claims to the 340B Service Provider BIN and PCN. 340B Service Provider will evaluate the 340B eligibility and return pricing based upon mutually agreed upon parameters in the 340B discount cash plan structure. 340B Service Provider will reject any prescriptions that are not 340B eligible or respond with whichever amount is the lowest of the usual and customary or 340B discount cash plan amount.
4. On a schedule determined by the Retail Pharmacy, 340B Service Provider shall order, for delivery to Retail Pharmacy, all drugs which have been determined to be eligible and have reached a full package size but have not yet been delivered to Retail Pharmacy. Retail Pharmacy's wholesaler will be used as wholesaler for the purposes of replenishment, and is subject to change upon the request of the Retail Pharmacy.
5. *Generic Launch.* If a new generic drug is launched for an existing brand, Retail Pharmacy may temporarily discontinue eligibility and replenishment for the brand NDC. Any claims with the brand NDC that have not yet been replenished may be reconciled.
6. Controlled substances (other than Schedule II) are included in the 340B Service Provider system and will be replenished the same way as non-controlled substances.
7. *Excluded Drugs.* The following Drugs are excluded from the 340B Program. All other drugs excluded from the 340B Program must be agreed upon in writing by both the Retail Pharmacy and Covered Entity.
  - a. Schedule II controlled substances.
  - b. Immunizations and vaccines.
  - c. Prescriptions adjudicated with a compound code (National Council for Prescription Drug Programs ("NCPDP") compound code field 406-D6 value '2').

- b. Upon request, 340B Service Provider may place one last replenishment order (30 day hold is not applicable) to the drug wholesaler for Retail Pharmacy for all inventory due to Retail Pharmacy. For items remaining under-replenished after this order, Covered Entity shall remit payment to the Retail Pharmacy for the amounts of the drugs in question at WAC. Over-replenished drugs shall be reconciled as set forth in Section A.13 above.
- c. Final Reconciliation Reports. Final reconciliation report shall occur no later than sixty (60) days from the date of termination of this Agreement.

**D. Retail Pharmacy Operational Matrix**

| <u>Item</u>   | <u>Agree to terms</u>  |
|---|--|
| Inventory Replenishment Frequency                                 | Once weekly and subject to change by Pharmacy                        |
| 340B Eligibility Reversal Window                                  | Completed within thirty (30) days from date of service               |
| Dispensing Fee for 340B Processed Drugs                           | \$30.00 for insured and branded<br>\$30.00 for uninsured and branded |
| 340B Eligibility Retrospective Review (by Hospital/Administrator) | Completed within thirty (30) days from date of service               |
| Invoicing   | 1st & 15 <sup>th</sup> of each month                                 |
| Payment Terms   | Within twenty (20) days of date of Invoice                           |

**ADDENDUM B**  
**to Pharmacy Services Agreement**

by and between CVS Pharmacy, Inc., (“Retail Pharmacy”) and County of Monterey, a political subdivision of the State of California, on behalf of the Monterey County Health Department, (“Entity” or “County”)

This Addendum, dated as of the date of execution of the Agreement by both parties, amends, modifies, and supplements the Pharmacy Services Agreement (“Agreement”) by and between Retail Pharmacy 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, Retail Pharmacy 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 this Agreement, Retail Pharmacy 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. Retail Pharmacy shall not receive approval for services for work under this 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 Retail Pharmacy.

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 Retail Pharmacy duty to indemnify, Retail Pharmacy shall maintain in effect throughout the term of this 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 Retail Pharmacies 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 this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers Compensation Insurance, if Retail Pharmacy employs others in the performance of this 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, Retail Pharmacy shall, upon the expiration or earlier termination of this 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 this Agreement.

Other Insurance Requirements. All insurance required by this Agreement shall be issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this 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 Retail Pharmacy completes its performance of services under this Agreement.

The Retail Pharmacy shall give the County at least thirty (30) days written notice 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 the Retail Pharmacy' 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 the Retail Pharmacy's insurance. (Note: Additional Insured status shall be provided under a blanket endorsement.)*

Prior to the execution of this Agreement by the County, Retail Pharmacy shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that Retail Pharmacy has in effect the insurance required by this Agreement. Retail Pharmacy 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 this Agreement, which shall continue in full force and effect.

Retail Pharmacy shall at all times during the term of this Agreement maintain in force the insurance coverage required under this 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, Retail Pharmacy shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by Retail Pharmacy to maintain such insurance coverage is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.