

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as “**CITY**”), a Texas Municipal Corporation, acting by and through its CITY Manager or designee pursuant to Ordinance No. _____ passed and approved on September 8, 2016 and CaremarkPCS Health, L.L.C. (“CVS Health”) (hereinafter referred to as “**VENDOR**”).

I. PURPOSE & DEFINITIONS

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration of the **CITY’S** pharmacy services for its employee/retiree plan participants and their dependants (collectively referred to as “Plan Members”).

RECITALS

WHEREAS, the CITY has established and adopted the Plan; and

WHEREAS, the CITY on behalf of the Plan desires to retain the **VENDOR** to provide certain administrative services with respect to the Plan; and

WHEREAS, it is desirable to set forth more fully the obligations, duties, rights and liabilities of the **VENDOR** and the CITY, as sponsor of the Plan, with respect to the Plan;

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the parties hereby agree as follows:

- 1.1 Definitions. Capitalized terms shall have the meaning provided in this Section I.
- 1.2 “**AWP**” means the “average wholesale price” for a standard package size of a prescription drug from the most current pricing information provided to **VENDOR** by Medi-Span Prescription Pricing Guide (with supplements), or following notice to **CITY**, any other nationally available reporting service of pharmaceutical prices as utilized by **VENDOR** as a pricing source for prescription drug pricing. The standard package size applicable to a mail service pharmacy shall mean the actual 11-digit NDC of the package size used to fulfill the quantity dispensed. The standard package size applicable to a Participating Pharmacy shall be the actual package size dispensed from a Participating Pharmacy as reported to such Participating Pharmacy to **VENDOR**.
- 1.3 “**Brand Drug**” shall mean any drug, as identified by **VENDOR**, using the Med-Span Master Drug Database (Medi-Span) indicators, and their associated files, or indicators provided by another nationally available reporting service of pharmaceutical drug information.

- 1.4 **“Claims”** means those prescription drug claims processed through **VENDOR**’s on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this **CONTRACT** in connection with **CITY**’s Plan.
- 1.5 **“Contract Year”** means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this **CONTRACT** remains in effect.
- 1.6 **“Covered Drug”** means a drug which, under applicable law, requires a prescription and which is covered under the formulary adopted by the plan.
- 1.7 **“Generic Drug”** shall mean any drug, as identified by **VENDOR**, using the Medi-Span Master Drug Database (Medi-Span) indicators, and their associated files, or indicators provided by another nationally available reporting service of pharmaceutical drug information.
- 1.8 **“Losses”** means all claims, liability, demands, damages, losses, costs or expenses of any kind, including, without limitation, reasonable attorneys’ fees and expenses.
- 1.9 **“Maximum Allowable Cost”** or **“MAC”** means the unit price that has been established by **VENDOR** for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to **CITY**, which list may be amended from time to time by **VENDOR** in maintaining its generic pricing program. **CITY** acknowledges that the **MAC** list applicable to **CITY** is not the same as the **MAC** list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration, or **“HCFA MAC”**). A copy of such **MAC** drug list shall be provided to **CITY** prior to execution of this **CONTRACT** and thereafter upon **CITY**’s reasonable request.
- 1.10 **“PDL”** means **VENDOR**’s formulary and includes the “Performance Drug List” and the “Prescribing Guide”, and is a ranking of Covered Drugs into preferred and non-preferred tiers, as created, maintained and amended by **VENDOR** from time to time, (a) which has been approved by **VENDOR**’s Pharmacy and Therapeutics Committee, and (b) represents the formulary that **VENDOR** recommends that its clients adopt as their plan formulary.
- 1.11 **“Plan Design Document”** or **“PDD”** means various documents or forms, including implementation forms, clinical management forms, clinical utilization or other documents, prepared by **VENDOR** and approved by **CITY**, as may be modified by **CITY** from time to time.
- 1.12 **“Rebates”** means the formulary rebates, including base and market share rebates, collected by **VENDOR** in its capacity as a group purchasing organization for the Plan from various pharmaceutical companies that are attributable to the utilization of brand, prescription drugs by Plan Members.

- 1.13 **“Specialty Drugs”** means certain pharmaceuticals, biotech or biological drugs, that are Covered Drugs and that are used by **VENDOR**, that are used in the management of chronic or genetic disease, including but not limited to, injectible, infused, or oral medication, or product that otherwise require special handling.
- 1.14 **“Usual and Customary”** or **“U&C”** means a Participating Pharmacy’s usual selling price for a prescription drug.

II. SCOPE OF SERVICES

- 2.1 **VENDOR** shall provide all services as set forth in **CITY’S** Request for Proposal and **VENDOR’S** Proposal, dated April 4, 2016, attached hereto respectively as Exhibits “A” and “B” and incorporated herein. The terms of this **CONTRACT** shall be final and binding where there is any conflict between the terms of the Request for Proposal, the **VENDOR’S** Proposal, and the terms of this **CONTRACT**, and the **CITY’S** Request for Proposal shall control where it conflicts with the **VENDOR’S** Proposal.
- 2.2 **VENDOR** shall work with the **CITY’S** Human Resources Director or Designee and appropriate **CITY** officials to perform any and all related tasks required by the **CITY** and agreed to by **VENDOR** in order to fulfill the purpose of this **CONTRACT**.
- 2.3 In addition, **VENDOR** shall provide the following managed pharmacy services:

<p>Implementation:</p> <ul style="list-style-type: none"> • Mutually agreeable account structure for interfacing employee data • Participate in employee education meetings as needed • Participate in on-site enrollment sessions as needed • Weekly implementation meetings involving IT; Human Resources; and Finance personnel to ensure accurate completion of account structure; banking and communication deliverables • Completion of pharmacy matrix for each plan in an accurate and timely manner • Coordination with third party VENDORs of data for the accurate recording of member account information (deductible, out-of-pocket, etc.) • ID cards for initial enrollment to be provided by January 1, following receipt of eligibility file by December 9. ID cards will be provided that include PBM VENDOR information <ul style="list-style-type: none"> • VENDOR will provide a one-time implementation credit to defray implementation costs as set forth in Exhibit B. • VENDOR to work with CITY’S former pharmacy benefit manager to obtain open mail order claims, prior authorizations approved
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appeals status to transition Plan Members.

ACCOUNT MANAGEMENT

VENDOR will provide designated account management which will be responsible for communication and account management functions including:

- Evaluating plan operation issues and offering solutions
- Making recommendation to **CITY** regarding options to balance cost and benefits
- Offering strategic, proactive plan management
- Coordinating the implementation of any add-on business
- Facilitating the preparation of claims utilization and costing analysis as needed
- Appearing at leadership and council meetings during budget preparation period with reasonable notice
- Conducting mid- year and annual performance review

Claim Processing:

- 30 day at Retail
- 90-day at Retail
- 90 day Mail-Order
- Claim costs shall consist of the adjudicated ingredient cost (which shall be the lowest of the discounted rate, the Participating Pharmacy's reported U&C price, if applicable, and the **VENDOR** MAC rate, if applicable), plus the applicable dispensing fee
- **VENDOR** will perform Claims processing services for products dispensed by Participating Pharmacies and **VENDOR**'s mail and specialty pharmacies. **VENDOR** will perform standard drug utilization services, as described in this Section 2.3, for each Claim submitted by Participating Pharmacies, and **VENDOR**'s mail and specialty pharmacies. To the extent authorized by the PDD, **VENDOR** will process paper Claims submitted by Plan Members directly to **VENDOR** with Vendor's standard procedures.
- Pharmacy Network Management: **VENDOR** contracts with retail pharmacies ("Participating Pharmacies"), which are independent contractors, to provide prescription drugs and related products and services with respect to the Plan.
- Support Staff: Pharmacy management support teams – clinical, sales, operations, service.
- The **VENDOR'S** Participating Pharmacies will dispense prescriptions to **CITY** plan members according to the **CITY'S** plan, and shall collect from the Plan Member the lowest of the applicable co-payment, the discounted price, the **VENDOR** MAC rate, if applicable, or the Participating

Pharmacy's Usual and Customary price.

- The **VENDOR** shall provide customer service support for the **CITY** members twenty-four hours a day, seven days a week.
- The **VENDOR** shall provide the following prescription benefit services:
 - Retrospective Drug Utilization Review (“DUR”)
 - Concurrent DUR
 - Over Utilization Review
 - Therapeutic Duplication Monitoring
 - Clinical Prior Authorization Program (Notification)
 - Step Therapy Program
 - Specialty Pharmacy
 - Mandatory Generics
 - **VENDOR** to employ processes that detect fraud, waste, and abuse on Plan Member level, prescriber level and pharmacy level.
- Conduct Participating Pharmacy audits as follows:
 - (i) **VENDOR** shall conduct weekly on-site and off-site audits of certain Participating Pharmacies as selected by **VENDOR** to help verify such Participating Pharmacies’ compliance with their respective pharmacy network agreements with **VENDOR** (“Periodic Audits”). **VENDOR** shall have the sole right to audit Participating Pharmacies. Such audits shall include a daily review of Claims greater than one thousand dollars (\$1,000); and
 - (ii) To the extent **VENDOR** determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with **VENDOR**’s pharmacy network agreements (“Audit Discrepancies”), **VENDOR** shall make reasonable attempts to reconcile such Audit Discrepancies. In the event an Audit Discrepancy has a financial impact to **CITY**, **VENDOR** shall reconcile **CITY**’s invoice, or credit **CITY**, based upon such recovered Audit Discrepancy. **VENDOR** shall notify **CITY** of any Audit Discrepancy that has impacted **CITY**’s financial obligation to **VENDOR** by greater than one thousand dollars (\$1,000) that **VENDOR** determines to be reasonably uncollectible by **VENDOR**. **CITY** acknowledges and agrees that **VENDOR** may, but is not required to, initiate any collection action to collect any Audit Discrepancies. In the event **VENDOR** does initiate a collection action against a Participating Pharmacy for any Audit Discrepancy, **VENDOR** may offset any reasonable costs, including reasonable attorneys’ fees and expenses, arising from any such action, provided that such costs may not exceed the recovered amounts. Such expenses will be allocated among **VENDOR**’s affected or impacted clients on a prorated basis against the amount of the recovery. **VENDOR**’s obligation to conduct Periodic Audits and to attempt collection and reconciliation, as

described, shall be VENDOR's sole obligation with respect to remedying Audit Discrepancies.

- Process Government Agency Submitted Claims as follows:

Government agencies, or their agents may seek eligibility or similar data from VENDOR regarding Plan Members. Additionally, government agencies, or their agents, may submit to VENDOR claims for reimbursement for prescription drug benefits provided by such government agencies, or their agents, to Plan Members ("Government Claims"). CITY authorizes VENDOR to provide such data as requested by government agencies or their agents and further authorizes VENDOR to process such Government Claims. CITY acknowledges that VENDOR may advance payment for Government Claims on behalf of CITY. CITY will reimburse VENDOR, in accordance with CITY's payment obligations under this CONTRACT, for all amounts advanced by VENDOR for payment of Government Claims. CITY acknowledges that Government Claims submitted by or on behalf of a state Medicaid agency shall be paid if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. CITY shall also reimburse VENDOR for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. The administrative fee for processing Government Claims will be invoiced at the paper submitted Claim rate stated in Exhibit D or as otherwise agreed in writing by VENDOR and CITY. VENDOR reserves the right to (i) terminate these services upon ninety (90) days' prior notice to CITY, or (ii) delegate these services to a third party claims processor.

Eligibility Processing

- Establish eligibility interfacing with CITY'S medical plan TPA to ensure delivery of ID Cards prior to December 31, 2016, subject to the milestones set forth in **VENDOR's** implementation plan.
- Following implementation, eligibility files to be provided biweekly by third party medical plan provider to be for immediate uploading by Vendor
- Vendor to provide real time file transfers to third parties for administration of programs.
- **Communications.** Vendor to provide electronic version of benefit booklet for each plan in English and Spanish to be posted to Vendor's website for member review.

Vendor to provide standard, ad hoc and customized reporting as needed.
Vendor to provide Summary Benefit Coverage documents for posting to City's website.

Vendor to provide Soc 1 Type II financial reporting annually to City.

Vendor to provide standard claims forms for manual submittal

Vendor to provide processing for coordination of benefits

Vendor to provide designated customer service representatives to respond to employee requests, questions, issues.

Vendor to provide City access to claims data via online portal

Clinical advisor to meet with City to present bi-annual and annual performance of plan.

Customer Service

- **VENDOR** shall provide an interactive response unit available 24/7 and toll free to provide the following to Plan Members:
 - Order prescription refills
 - Check the status of an order
 - Confirm the cost of a particular drug
 - Order a new ID card
 - Locate a convenient retail network pharmacy
 - Obtain an order form or claim form
 - Telephonic emergency pharmacist (which may be provide through a call-back service)
 - **VENDOR** to provide communications to Plan Members and **CITY** regarding drug recalls or withdrawals known to **VENDOR** as reasonably

practical.

- Service representative able to communicate in English or Spanish

Formulary Management

- **VENDOR** shall manage at its own cost the CVS Health PDL, as in effect from time to time, which the CITY has adopted as part of the Plan design and as CITY's formulary.
- Changes made by **VENDOR** to the PDL, may be based upon, among other things, the introduction of new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry or its practices, introduction of new Generic Drugs, new legislation and regulations. **VENDOR** shall provide CITY with thirty (30) days notice prior to the addition, removal or movement within tiers of a drug on the PDL, which may include but not limited to, movement of a drug from a preferred to a non-preferred tier, or vice versa. The parties acknowledge that **VENDOR** may elect to add to the PDL new drugs to the market, or line-extensions of certain drugs. In the event safety concerns or regulatory action require **VENDOR** to remove a drug sooner, **VENDOR** shall notify CITY of the removal of a drug from the PDL within five (5) business days.
- With regards to any drugs **VENDOR** does not identify as a Covered Drug, or removes from the PDL, **VENDOR** may make such decisions based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, introduction of new Generic Drugs, new legislation and regulations. **VENDOR** agrees, however, (i) that except for Specialty drugs, drugs shall be removed from the PDL only once per calendar year; (ii) to provide such notice on or around July of each calendar year. In the event of a removal of a drug from the PDL **VENDOR** agrees to provide targeted communications to Plan Members prior to the date of removal at **VENDOR's** own cost.
- **VENDOR** shall manage at its own cost the CVS Health

Advance Control Specialty Formulary, as in effect from time to time, which the CITY has adopted as part of the Plan design and as CITY's Specialty Drug formulary. **VENDOR** (i) may remove or add drugs from or to the Advanced Control Formulary from time to time; and (ii) will provide CITY quarterly notification of any changes to the Advanced Control Formulary. In the event of a removal of a drug from the Advance Control Specialty Formulary **VENDOR** agrees to provide targeted communications to Plan Members prior to the date of removal at **VENDOR's** own cost.

Pharmaceutical Contracts and Rebates

- **CITY's Authorization.** CITY authorizes **VENDOR** to contract with pharmaceutical companies for Rebates as a group purchasing organization for the Plan.
- **Remittance of Rebates.** **VENDOR** will remit to CITY the Rebates received by **VENDOR** with respect to CITY's Claims during the prior calendar quarter pursuant to Exhibit B. CITY acknowledges and agrees that it shall not have a right to interest on, or the time value of, any Rebate payments received by **VENDOR** or monies payable under this CONTRACT. Upon termination of this CONTRACT or upon CITY's breach of this CONTRACT, **VENDOR** may delay remittance of Rebates to allow for final adjustments.
- **Rebate Limitations.** CITY waives, releases and forever discharges **VENDOR** from any Losses arising from a pharmaceutical company's (i) failure to pay Rebates; or (ii) breach of an agreement related to Rebates, except to the extent cause by **VENDOR's** negligence. CITY acknowledges and agrees that **VENDOR** may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event **VENDOR** does initiate collection action against a pharmaceutical company to collect Rebates, **VENDOR** may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action, provided such expenses shall not exceed the amounts recovered.
- **Disclosure of Manufacturer Fees.** As an authorized group purchasing organization for the Plan, **VENDOR** or its affiliates may hold contracts with pharmaceutical companies relating to

products covered under this CONTRACT. In connection with such contracts, **VENDOR** or its affiliates may have a financial relationship with such pharmaceutical companies and may receive and retain fees or other compensation from pharmaceutical companies for services rendered and property provided to pharmaceutical companies, including, without limitation, administrative fees that range between one percent (1%) and four percent (4%) of the Wholesale Acquisition Cost (“WAC”) of the products dispensed across **VENDOR**’s book of business. In addition, **VENDOR** or its affiliates may receive concurrent or retrospective discounts from pharmaceutical companies which are attributable to or based on products purchased by **VENDOR** affiliated dispensing pharmacies. The term “Rebates” as used in this CONTRACT does not include the fees, compensation, and concurrent or retrospective discounts associated with the purchase price of products described in this Section which belong exclusively to **VENDOR** or its affiliates.

- **Non-Interference.** **CITY** agrees that during the Term of this CONTRACT, **CITY** will not directly or indirectly negotiate, contract, or agree with any pharmaceutical company, or any other third party, for the purpose of obtaining rebates or other discounts related to the drug utilization of Plan Participants, including, but not limited to the use of over the counter products. **CITY** represents and warrants that, as of the Effective Date, it does not have any direct or indirect agreements, arrangements and/or contracts with any pharmaceutical company or other third party related to any rebates or discounts. **CITY** acknowledges and agrees that a breach of this Section shall be deemed a material breach of this CONTRACT.

2.4 **VENDOR** acknowledges that the services listed below are identified as additional services that **CITY** may request **VENDOR** to provide. If requested, **VENDOR** shall provide said service(s) under the same terms and conditions of this Contract and without the need for further Council action.

CITY will affect such a request for contingent additional services by forwarding a written request, executed by the Director of Human Resources or her designee, to the coordinator entity at its respective address provided herein. Within said request, the Director of Human

Resources shall state the scope of services **VENDOR** is to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, as agreed upon with **VENDOR**.

The following services are herein designated as contingent additional services:

Managed care services; disease management; products to support employee wellness and increase employee engagement

2.5 CITY Obligations Regarding Services.

- (A) Plan Participant Authorizations. CITY represents and warrants that it has obtained from Plan Participants all consents and/or authorizations required, if any, for VENDOR to perform the Services and for the use and disclosure of information, including PHI, as permitted under this CONTRACT.

- (B) Control of Plan. CITY represents that the Plan is not governed by ERISA. Unless otherwise stated in this CONTRACT, CITY and/or plan administrator retain the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and any assets of the Plan. CITY and/or Plan administrator shall also have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Claims or provision of benefits, to review denied Claims and to resolve complaints by Plan Participants. VENDOR agrees to be a fiduciary solely for the purpose of initial Claim adjudication and appeals relating to the coverage of prescription drug benefits. VENDOR and CITY acknowledge and agree that, except with respect to its fiduciary obligations as specifically delegated and accepted by VENDOR pursuant to this CONTRACT, VENDOR shall not be (i) the administrator of the Plan for any purpose; (ii) a named fiduciary with respect to the Plan for purposes of ERISA or any applicable state law; (iii) delegated discretionary authority or responsibility, or exercise discretionary authority or control, with respect to the Plan or its administration; or (iv) deemed a fiduciary with respect to the Plan for purposes of ERISA or any applicable state law.

- (C) PDD. (a) CITY represents and warrants that the PDD accurately reflects the applicable terms of the Plan for purposes of this CONTRACT.

(b) CITY shall provide VENDOR with sixty (60) days' prior written notice of any proposed changes to the PDD, or other material Plan amendments that may impact prescription drug coverage under the Plan, which changes shall be consistent with the scope and nature of the Services to be performed by VENDOR under this CONTRACT; provided, however, for changes to the PDD to be implemented between October 15 and January 15, CITY shall provide VENDOR with ninety (90) days' prior written notice. CITY agrees that it is responsible for Losses resulting from (i) any failure to implement Plan design changes which are not communicated in a written format acceptable to VENDOR, or (ii) VENDOR's implementation of CITY's verbal or written direction regarding exception or overrides to the PDD. CITY shall notify Plan Participants of any Plan design changes prior to the effective date of any such changes as required by PPACA or other applicable law.

- (D) Government Programs. To the extent required by applicable law or contractual commitment, CITY agrees to fully and accurately disclose and report to Medicare, Medicaid or other government health care programs any discount or rebate or other credit received by CITY under this CONTRACT, whether reflected in the fees for the products and services or otherwise provided hereunder, as discounts against the price of the drugs under all applicable state or federal programs that provide reimbursement to CITY for products or services provided by VENDOR. It is the intention of the parties, that for purposes of the Federal Anti-kickback Statute, any discount, rebate or other CITY credit, shall constitute and be treated as discount against the price of drugs within the meaning of 42 U.S.C. §1320a-7b(b)(3)(A).
- (E) Plan Member Copayment. VENDOR may, but shall not be obligated to, dispense a prescription even if the prescription is not accompanied by the Copayment. VENDOR will credit any amount submitted by Plan Member in excess of the Plan Participant's Copayment. In the event a Plan Member submits to VENDOR an insufficient Copayment and the Plan Member fails to remit the balance of the Copayment amount to VENDOR within thirty (30) days of VENDOR's request, then VENDOR shall have the right to invoice CITY for, and CITY shall have an obligation to pay VENDOR, the amount of the uncollected Copayment (s). Shipping of prescriptions submitted without the appropriate Copayment may be delayed and these delayed shipments shall not be included in the measurement of any applicable performance guarantees.

III. PERFORMANCE STANDARDS

3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this administrative services agreement with **CITY**, **VENDOR** agrees to meet or exceed the following performance standards and administrative fee adjustments:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Experience Period, which shall be one contract year, and to claims processed in the experience period as defined herein regardless of incurred date. The audit will be completed in the year following the period to which the performance guarantee results apply. If **CITY** conducts a performance audit, either party to this **CONTRACT** may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this **CONTRACT**. The cost of the first audit conducted by the **CITY** in any Experience Period will be paid by **CITY**.

Performance Standards as defined herein will be adjusted, as needed and no more than once per year, as mutually agreed upon, and will be based on a performance review of a representative sample of randomly selected **CITY** claims or reports from **VENDOR** as follows:

PERFORMANCE STANDARDS

PERFORMANCE STANDARDS FOR PHARMACY BENEFITS

Unless otherwise specified, these standards apply to the pharmacy benefits and are effective for the period from January 1 through December 31 of each contract year. The settlement of penalties will be performed on an annual basis at the time of the year-end reconciliation. With respect to the aspects of **VENDOR'S** performance addressed in Exhibit A, these amounts at risk are **CITY'S** exclusive financial remedies. The Total Dollars at risk will be \$175,000 as set forth in Exhibit A.

[See Exhibit A – Performance Guarantees]

3.2 **CITY** shall monitor, review and evaluate **VENDOR'S** performance in accordance with the Performance Standards established in this **CONTRACT**. Should **VENDOR** fall below the established Performance Standards, **VENDOR** agrees to the identified amounts at risk as set forth in Exhibit A Performance Guarantees.

3.3 Only claims for **CITY** will be used to determine the accuracy and service levels achieved by **VENDOR** related to the Claims Operations Performance Standards.

- 3.4 Any amount at –risk due because of failure to meet performance standards shall be adjusted from amount due **VENDOR** no later than 60 days after the reporting by **VENDOR** of any failure to perform as defined in Exhibit A Performance Guarantees (or after the close of any annual audit finding that the reported results were inaccurate).
- 3.5 **VENDOR** agrees that all non-claim grievance will be addressed within 10 business days from receipt. The **VENDOR** agrees to fully investigate and to facilitate resolution of any and all grievance complaints received from **CITY** plan participants with regard to services resulting from this **CONTRACT**. **CITY** Plan Members have the right to appeal any such resolution.
- 3.6 **VENDOR** agrees to log and to maintain all **CITY** Plan Member’s grievances. The **VENDOR** further agrees to make available to the **CITY** the **VENDOR’S** Grievance Report, inclusive of the resolution to each complaint.

IV. GENERAL ASSURANCES

- 4.1 **VENDOR** covenants and agrees to perform all services described in this **CONTRACT** in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 4.2 **VENDOR** agrees to assign a designated account management team including, but not limited to a Strategic Account Executive who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 4.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. AUDITS

- 5.1 Pharmacy claims audits may be conduct at the discretion of **CITY**, but (i) are limited to one (1) on site audit per plan year and the audit must be completed within two years of the end of

the time period being audited, and (ii) the same time period and data may not be audited more than once. **CITY** will provide **VENDOR** with reasonable notice (thirty days) of audit. Notice will include scope, and other information as required in standard auditing procedures in accordance with paragraph “C”, below. Audits will be performed at the location where City’s claims are processed. If a systemic deficiency is found during the course of the audit, **CITY** can return to conduct another onsite audit to validate correction of deficiency without any additional charge. **CITY** will provide a copy of any audit report to **VENDOR** within 30 business days. Audits of any performance guarantees must be completed in the year following the period to which the performance guarantee results apply.

Audit Scope:

A. Claims Audits. CITY, or a mutually acceptable independent third party retained by CITY, may conduct an annual Claims audit and such audit shall be limited to the prior Contract Year of VENDOR data that directly relates to Claims billings. Any mutually agreed upon third party auditor engaged by CITY shall execute VENDOR’s form confidentiality agreement prior to conducting a Claims audit ensuring that all information reviewed during such audit and all details will be treated as confidential and will not be revealed in any manner or form by or to any third party. The scope and procedures of the Claims audit shall be in accordance with the procedures set forth in Subsection C, below. CITY acknowledges that, except as expressly set forth herein, it shall not be entitled to audit agreements with vendors, pharmaceutical companies, Participating Pharmacies or other providers of products or services to VENDOR as part of a Claims audit.

B. Rebate Audits. CITY, through a mutually agreeable independent third party auditor retained by CITY, may conduct an annual Rebate audit for the prior Contract Year. Such audit shall be limited to a review of up to ten (10) pharmaceutical company contracts directly related to CITY’s Rebates as selected by CITY. Such review of pharmaceutical company contracts may include formulary and Rebate provisions to the extent permitted by such contracts and shall be limited to information necessary for validating the accuracy of the Rebate amounts remitted to CITY by VENDOR. The scope and procedures of the Rebate audit shall be in accordance with the procedures set forth in Subsection C, below. Any mutually agreed upon third party auditor engaged by CITY shall execute VENDOR’s form confidentiality agreement prior to conducting a Rebate audit ensuring that all information reviewed during such audit and all details and terms of any pharmaceutical company contract reviewed will be treated as confidential and will not be revealed in any manner or form by or to any third party, including CITY.

C. Audit Procedures. VENDOR and CITY agree the following guidelines shall apply to any audit described by this Contract.

i. Audit Notification Letter A CITY request for an audit of VENDOR will be directed to the CITY's account manager either in writing on CITY's letterhead or by e-mail. Audits require thirty (30) days prior written notice, including receipt of a fully executed confidentiality agreement by the CITY's auditor and VENDOR, detailed audit scope document, and a complete Claims sample, if applicable.

ii. Use of Third Party Auditor In the event a third party auditor is used, the auditor shall be a mutually acceptable independent third party retained by CITY. The third party auditor shall execute a confidentiality agreement with VENDOR in a form and substance reasonably acceptable to VENDOR prior to conducting an audit.

iii. Teleconference Upon VENDOR's receipt of a request for an audit, VENDOR will organize and conduct an initial teleconference between CITY and VENDOR. This teleconference will address the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other CITY representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims tape needs and costs
- Prescription copies: timelines, availability and cost
- Guidelines for acceptable verification of audit questions
- VENDOR's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to CITY
- Audit process confirmation letter
- Other appropriate issues.

iv. Mutually Agreed Timelines CITY and VENDOR will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (from the time a signed confidentiality agreement is secured):

- Claim tape request – two (2) weeks (for the prior Contract year)
- Standard screen prints – two (2) weeks
- Mail service prescription copies – six (6) weeks (cost is typically \$5.00 per script copy)
- Audit report reply – one (1) month for a maximum of 300 Claims sample.

v. Response to Sampling Questions The CITY can submit to VENDOR questions related to provided Claim samples. Answers to generic questions are normally provided

within two (2) weeks after the questions have been presented. Answers to Claim level questions are normally provided within 30-days for a maximum of 300 Claims sample.

vi. Claims Tape Requests Claims tape specifications shall be clarified during the initial teleconference and processed following **VENDOR**'s receipt of a signed confidentiality agreement from any third party auditor. Delivery to the specified party normally takes place within two (2) weeks for the prior Contract Year of data. Reissue of Claims data for audits, if requested, shall be at **VENDOR**'s standard cost and a mutually agreed upon timetable.

vii. Audit Report In the event of an audit by a third party, the third party auditor or **CITY** shall provide **VENDOR** with a copy of any proposed audit report, and **VENDOR** will have a reasonable opportunity to comment on any such report before it is finalized.

viii. Close of Audit Upon finalization of audit results and agreement between **CITY** and **VENDOR** on any identified financial discrepancies, the audit period under review will be closed. Any adjustments, payments and/or reimbursements determined to be necessary as a result of any examination or audit shall be paid by the appropriate party within thirty (30) days of execution of an appropriate release document covering the audit period.

ix. Audit Costs **CITY** shall be responsible for all reasonable expenses of audits of greater than two years of data or taking place more than two years after the end of the period being audited.

5.2 If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years. Audit procedures in the event of termination are further set forth in Section XXIII Termination.

5.3 **VENDOR** will provide annual audited financial statements and a report on the processing of transactions as required by SSAE16 (SOC1) prepared by an independent certified public accountant. Both documents will be submitted up request to **CITY** annually upon completion for the duration of the **CONTRACT**.

VI. CONSIDERATION & BILLING

6.1 **In consideration of **VENDOR**'S performance hereunder, **CITY** shall pay **VENDOR** as follows:**

[See Exhibit B – Administrative Fees].

6.2 **Providing Funds for Benefits.** The Plan is Self-Funded. **CITY** is solely responsible for providing funds for payment for all Plan benefits payable to Participants, Network Providers, or **VENDOR's** affiliated pharmacies.

6.3 Payments to **VENDOR** shall be in the amount shown by the periodic billings provided four times monthly and other documentation submitted and shall be subject to **CITY'S** reasonable approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this **CONTRACT** for services that are unsatisfactory, or that have not been approved by **CITY**. **CITY** shall pay **VENDOR** all invoiced amounts for Claims and service fees by ACH funds transfer within five (5) days after **CITY** receives an invoice from **VENDOR** except for those amounts that are disputed in good faith, provided **VENDOR** is notified of the dispute and **CITY** has provided a detailed description justifying the dispute. **VENDOR** and **CITY** agree to actively work to resolve any dispute as outlined herein. Other than as stated above, **CITY** shall have no right to offset disputed amounts or amounts due or allegedly due from **VENDOR** from such payment, except as previously approved in writing by **VENDOR**. The final payment due herein will not be paid until the reports, data, and documents required under this **CONTRACT** have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this **CONTRACT**.

6.4 **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

6.5 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this **CONTRACT** or after its termination, provided however, that **CITY** shall reimburse **VENDOR** for claims incurred during the term of this **CONTRACT** that are processed after termination.

6.6 Suspension of Performance. In the event **CITY** is five (5) days in arrears on its payment obligations under this Contract, and **CITY** fails to cure such arrearage within two (2) business days of **VENDOR** notifying **CITY** of such outstanding amount, **VENDOR** may immediately, and without penalty or any liability for any **CITY** losses, suspend performance of Services hereunder until such time as any of the aforementioned conditions cease to exist. Suspension of performance by **VENDOR** shall not constitute termination of this **CONTRACT**.

VII. TERM

7.1 This **CONTRACT** is for a period of five (5) years commencing January 1, 2017, through December 31, 2021. **CITY** shall have the right to renew for one (1) additional two (2) year

term at City's sole option subject to and contingent upon appropriation of funds and authorization by City Council. However, **CITY** may terminate this **CONTRACT** at any time, as set forth in Section XXI, or if funds are restricted, withdrawn, or not approved; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

VIII. OWNERSHIP OF PRODUCT

- 8.1 **VENDOR** recognizes that **CITY** shall own any and all information in whatsoever form and character produced and/or maintained in accordance with this **CONTRACT** that is produced solely and exclusively for **CITY** and not produced for or offered to **VENDOR'S** clients generally, and shall be used as **CITY** desires, provided that **VENDOR** does not waive any rights it may have to protect its confidential trade secret information that may be included in such information, as permitted by law. Claims, as well as eligibility information which is deidentified in accordance with HIPAA and other applicable law, and which is not identifiable on a **CITY** or Plan member basis, may be used, disclosed, reproduced, adapted or sold by **VENDOR** only as allowed by federal or state law. Such deidentified data may be provided to nationally recognized data integration firms to support appropriate administration of **VENDOR'S** drug management programs. This benchmarking data enables **VENDOR** to compare against other drug population sets and improve programs and Services for clients.

IX. RETENTION AND ACCESSIBILITY OF RECORDS

- 9.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 9.2 The books and records must be maintained for the term of this **CONTRACT** to which they relate or for the seven (7) year period following their creation, if longer.
- 9.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of recordkeeping and all requirements of federal or state law.
- 9.4 The Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as required by federal or state law. **CITY** shall have access to audit such records as set forth in Section V Audits.
- 9.5 **CITY** is entitled to continuing access to these books and records, as set forth in Section 5.1, above.

- 9.6 **VENDOR** may, at **VENDOR'S** option, fulfill the requirements of this Section of this **CONTRACT** by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

X. HIPAA COMPLIANCE

- 10.1 **VENDOR** will maintain the confidentiality of all prescription and other patient-identifiable health information specifically relating to Plan Members ("Protected Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the HIPAA Security Rule of the Health Insurance Portability and Accountability Act of 1996("HIPAA"), as may be amended from time to time.
- 10.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 10.3 **VENDOR** acknowledges that it is a "Business Associate" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit E and incorporated herein by reference.

XI. PUBLICATION

- 11.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XII. NOTICE OF VENDOR'S CAPACITY

- 12.1 **VENDOR** shall give notice to Plan Members of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XIII. AMENDMENT

- 13.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIV. ASSIGNING INTEREST

- 14.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation. Notwithstanding anything in this Section 14.1 to the contrary, **VENDOR** may delegate duties to be performed under this **CONTRACT** without the consent of **CITY** to any of its subsidiaries or affiliates at any time, provided that **VENDOR** shall remain liable for the proper performance of all Services. Furthermore, **CITY** acknowledges that **VENDOR** utilizes a number of third-party vendors to support its capabilities to provide certain non-core functions across its book of business.
- 14.2 **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors engaged to support this **CONTRACT**.
- 14.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than 50%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change, or as soon as permitted by applicable law if later.
- 14.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this **CONTRACT**.
- 14.5 **CITY** must approve all substitutions of subcontractors engaged to support the **CONTRACT** to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XV. INSURANCE AND BONDING

- 15.1 Prior to the commencement of any work under this **CONTRACT**, **VENDOR** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to City's Human Resources Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown

thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, or form must have the agent's original signature, including the signer's company affiliation, title and telephone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or to perform under this CONTRACT until such certificate has been delivered to City's Human Resources Department and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

15.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to reasonably modify insurance coverages and its limits, with the mutual review and approval of **VENDOR**, when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

15.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, **VENDOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at **VENDOR'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation or Texas Non-Subscription	Statutory Limits
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$2,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
5. Professional Liability – Claims Made Basis	\$5,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in

	professional services.
6. Commercial Crime/Employee Dishonesty (Or Fidelity Bond in same amount).	\$2,000,000 per occurrence

- 15.4 As they may apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the declaration page and all endorsements thereto as they apply to the limits required by **CITY**.
- 15.5 **VENDOR** agrees that, with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this **CONTRACT** with the **CITY**, with the exception of the workers’ compensation and professional liability policies;
 - Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
 - **VENDOR’S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of its operations under this **CONTRACT** with **CITY**; and
 - Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.
- 15.6 **VENDOR** within five (5) calendar days of suspension, cancellation, or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR’S** performance should there be a lapse in coverage at any time during the **CONTRACT**. Failure to provide and to maintain the required insurance shall constitute a material breach of this **CONTRACT**. All notices shall be given to **CITY** at the following addresses:

**City of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966**

- 15.7 In addition to any other remedies **CITY** may have upon **VENDOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due, to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.
- 15.8 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this **CONTRACT**.
- 15.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT**.

XVI. INDEMNITY

- 16.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, third party claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **VENDOR'S** activities under this **CONTRACT**, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, **VENDOR** or subcontractor of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or

property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 16.2 **The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**
- 16.3 **VENDOR shall advise the CITY in writing within 10 days of any claim or demand against the CITY related to or arising out of VENDOR'S activities under this contract.**
- 16.4 **In any and all claims against any party indemnified hereunder by any employee of VENDOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for VENDOR or any subcontractor under workers' compensation or other employee benefit acts.**

XVI. INDEPENDENT CONTRACTOR

- 17.1 **VENDOR covenants and agrees that it is an independent VENDOR and not an officer, agent, servant or employee of CITY; that VENDOR shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, VENDORS and subcontractors; that the doctrine of *respondeat superior* shall not apply as between CITY and VENDOR, its officers, agents, employees, VENDORS and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and VENDOR.**

- 17.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 17.3 No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this **CONTRACT**; and (2) the terms of this **CONTRACT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

XVIII. COMPLIANCE WITH SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

18.1 Solicitation Response and Contract Requirements and Commitment

VENDOR understands and agrees that the following provisions shall be requirements of this **CONTRACT** and **VENDOR** commits to comply with these requirements.

18.2 SBEDA Program

The **CITY** has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's International and Economic Development (IEDD) website page and is also available in hard copy form upon request to the **CITY**. The SBEDA Ordinance Compliance Provisions contained in this section of the agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the **CITY** pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this agreement. Unless defined in a contrary manner herein, terms used in this section of the agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

18.3 SBEDA Program Compliance – Affirmative Procurement Initiatives

The **CITY** has applied the following contract-specific Affirmative Procurement Initiative to this contract:

M/WBE Mentor Protégé Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (e), this contract is being awarded pursuant to the M/WBE Mentor Protégé Program and, if included in the CONTRACTOR'S proposal, CONTRACTOR shall comply with all requirements of the Program in accordance with CONTRACTOR's signed Mentorship Commitment Form.

XIX. NON-WAIVER

19.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this CONTRACT.

XX. FRAUD AND ABUSE PREVENTION

20.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated, if recovered, shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such recovery.

20.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

XXI. CONFLICT OF INTEREST

- 21.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 21.2 **VENDOR** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 21.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this **CONTRACT** upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 21.4 If at any time it shall be found that the person, firm or corporation to whom a **CONTRACT** has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY**’s option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XXII. TERMINATION

- 22.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 22.2 Termination by Notice. This CONTRACT may be canceled by **CITY** without cause upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 90 calendar days nor more than 120 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 90 calendar days after receipt of the notice by **CITY**. It is understood that in the event of Termination by Notice initiated by **CITY**, a pro rata share of any credits disbursed by **VENDOR** for the calendar year in which the termination occurred as well as a pro rata share of the actual implementation credit amount disbursed by **VENDOR** (prorated over the initial term of the Contract) would be repaid by **CITY** to **VENDOR**.
- 22.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have thirty (30) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such thirty (30) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the thirtieth (30th) day after the receipt of the notice by the defaulting party.
- 22.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 22.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate and files being provided to replacement **VENDOR** shall be scrubbed of **VENDOR’S** confidential information. Any records transfer shall be completed within a time period mutually agreed upon by the parties. Any such transfer of records or funds shall be completed at **VENDOR’S** sole cost and expense, provided **CITY** has completed at least three (3) years’ of the initial CONTRACT term. All files are the property of the **CITY** and, at the **CITY’S**

request, will be delivered to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.

22.6 Upon termination or cancellation of this **CONTRACT**, **CITY** may commence audit of **VENDOR'S** books, accounts, and records upon reasonable notice within one (1) year of the effective date of termination. Within 30 calendar days after final agreement on the results of said audit, the party owing a net amount to the other shall pay that party any amount shown by said audit. No waiver of existing default shall be deemed to waive any subsequent default.

22.7 If **CITY** conducts an audit, either party to this **CONTRACT** may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

22.8 Upon termination of this **CONTRACT**, and/or its non-renewal, **CITY** shall have the option to:

22.8.1 Assume all open claims pending for the terminated or non-renewed portion of the **CONTRACT**, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,

22.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.

22.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation

shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the City Council.

- 22.9 Within 30 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this **CONTRACT** through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date and excluding any claims reversals or adjustments made after the date of termination which shall be settled with the **CITY** promptly. **CITY** acknowledges that government payor claims may be submitted substantially later than the termination of the Contract, as provided in applicable law.

XXIII. COMPLIANCE WITH LAWS

- 23.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, and binding policies and procedures.
- 23.2 Non-Discrimination. As a party to this contract, **VENDOR** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXIV. SUCCESSORS AND ASSIGNS

- 24.1 This **CONTRACT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXV. NOTICES

- 25.1 Any notice required or permitted to be given under this **CONTRACT** shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad
San Antonio, TX 78205

VENDOR

CaremarkPCS Health, L.L.C. (“CVS Health”)
2211 Sanders Road, NBT-10
Northbrook, Illinois 60062
Attn: Vice President and Senior Counsel, Healthcare Services

With a copy to:

CaremarkPCS Health, L.L.C.
9501 E. Shea Blvd.
Scottsdale, AZ 85260
Attn: Senior Vice President, Health Care Services

XXVI. EXHIBITS

26.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

VENDOR’S Performance Guarantees	Exhibit A
Administrative Fees	Exhibit B
HIPAA Business Associate Agreement	Exhibit C
SBEDA	Exhibit D
CITY’s Request for Proposal	Exhibit E
VENDOR’S Proposal	Exhibit F

26.2 **VENDOR** understands and agrees that Exhibits A, B, C, D, E and F are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by

VENDOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

- 26.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY'S** Request for Proposal, **VENDOR'S** Proposal and the terms of this CONTRACT; **CITY'S** Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXVII. LEGAL AUTHORITY

- 27.1 The signer of this CONTRACT for **VENDOR** represents, warrants, assures and guarantees full legal authority to execute this CONTRACT on behalf of **VENDOR** and to bind **VENDOR** to all of the terms, conditions, provisions and obligations herein contained.

XXVIII. VENUE AND GOVERNING LAW

- 28.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas, or the federal courts of the Western District of Texas, San Antonio Division. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXIX. GENDER

- 29.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXX. CAPTIONS

- 30.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXXI. ENTIRE AGREEMENT

- 31.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXII. SEVERABILITY

- 32.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXIII. CONFIDENTIAL AND PROPRIETARY

- 33.1 Confidential Information. The term “Confidential Information” includes, but is not limited to, any information of either **CITY** or **VENDOR** (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to either party’s inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party’s business. **VENDOR** asserts that certain information contained in this Contract constitutes Confidential Information. “Confidential Information” does not

include PHI, the use and disclosure of which is governed by the Business Associate Agreement between the parties.

- 33.2 Confidentiality Obligations. (i) **VENDOR** and **CITY**, consistent with subsection (iii), below, shall not disclose or make use of any Confidential Information except as permitted under this Contract without the prior written consent of the non-disclosing party, which consent may be conditioned upon the execution of a confidentiality agreement. Each party may disclose Confidential Information of the other party only to its employees, agents, consultants, or authorized representatives who have a need to know the Confidential Information in order to accomplish the purpose of this Contract and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) with respect to agents, consultants or authorized representatives, have agreed in writing not to disclose it to others and to treat it in accordance with the requirements of this Section. **VENDOR** or **CITY**, as applicable, shall be responsible to the other party for any breach of this Contract by its respective employees, agents, consultants, or authorized representatives.
- (ii) Authorization to Release Data to CITY's Designated Third Party Service Providers. **CITY** hereby authorizes **VENDOR** to disclose Confidential Information and other data, including Claims, utilization, eligibility, and cost data to **CITY's** designated health benefit plan(s), consultants, auditors and third party service provider(s) (each a "CITY Service Provider") so that such CITY Service Provider may provide services to **CITY** with regard to such Confidential Information and data. **CITY** acknowledges that any such disclosure shall be subject to the execution of a separate confidentiality agreement by **VENDOR** and CITY Service Provider, which shall govern the disclosure and use of such Confidential Information as between **VENDOR** and CITY Service Provider. **CITY** authorizes **VENDOR** to provide Confidential Information to such CITY Service Provider for whatever time periods **VENDOR** holds the Confidential Information and other data or until **CITY** revokes this authorization in writing. **CITY** acknowledges and agrees that to the extent any data disclosed to a CITY Service Provider includes Plan Member information, including PHI, such Plan Member information shall be disclosed by **VENDOR** on behalf of **CITY** and subject to the Business Associate Contract between **CITY** and CITY Services Provider. **CITY** acknowledges that CITY Services Provider is not a downstream business associate of **VENDOR** for any purpose in connection with any such disclosure of data or Confidential Information. **CITY** agrees that **VENDOR** and its subsidiaries and affiliates, and each of their respective officers, directors, employees and agents, will have no liability arising, in whole or in part, from: (i) the release of Confidential Information or PHI by **VENDOR** to a CITY Service Provider pursuant to **CITY's** direction; or (ii) the use or subsequent release of Confidential Information or PHI by CITY Service Provider or **CITY**.

(iii) Public Information Act. The parties acknowledge that **CITY** is a public entity and subject to the Texas Public Information Act (“PIA”). **CITY** agrees that the confidential and proprietary information of **VENDOR** which is in writing and marked as confidential and proprietary, shall be afforded protection under the PIA. Prior to disclosing such confidential and proprietary information of **VENDOR**, **CITY** shall immediately notify **VENDOR** of any requests for information made by a third party pursuant to the PIA or applicable state statute or local ordinance and shall further provide **VENDOR** sufficient time, as permitted by law, to claim applicable exemptions and/or designate those portions of this information that constitute proprietary information exempt from disclosure under applicable state statute or local ordinance. **CITY** further acknowledges that it will not release any information identified by **VENDOR** as exempt from disclosure without first providing notice to **VENDOR** of such intent and allowing **VENDOR** to present its case to the Texas Attorney General or to seek judicial relief to prevent such disclosure. **CITY** agrees not to oppose any action of **VENDOR** to obtain a declaratory judgment or other appropriate remedy. If the Texas Attorney General or a court thereafter determines that **CITY** is legally required to disclose such proprietary information, **CITY** shall disclose the minimum required pursuant to the order.

33.3 Permitted Disclosure of Confidential Information. The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a non-appealable court order. Except in accordance with the requirements of this Section 10.3, neither party nor its employees, agents, consultants, or authorized representatives may disclose, or permit to be disclosed, Confidential Information of the other party as an expert witness in any proceeding, or in response to a request for information by oral questions, interrogatories, document requests, subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise. If either party, or any of its respective employees, agents, consultants, or authorized representatives, is requested to disclose the Confidential Information of the other party for any of the reasons described in the preceding sentence such party shall give prompt prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any requested disclosure. The receiving party agrees to cooperate with the disclosing party in any action by the disclosing party to obtain a protective order or other appropriate

remedy. If the receiving party is ultimately legally compelled to disclose such Confidential Information, the receiving party shall disclose the minimum required pursuant to the court order or other legal compulsion.

XXXIV. ACKNOWLEDGMENT

34.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2016.

CITY OF SAN ANTONIO

**CaremarkPCS Health, L.L.C.
(CVS Health)**

Sheryl Sculley
City Manager

Diane Galo
Vice President

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney