

## 340B CONTRACT PHARMACY SERVICES AGREEMENT

This 340B Contract Pharmacy Services Agreement ("**Agreement**") is made and entered into July 1, 2019 ("**Effective Date**") by and between the City of San Antonio ("**City**") on behalf of the San Antonio Metropolitan Health District ("**Covered Entity**") and Walgreen Co. ("**Walgreens**" or "**Contractor**").

### 1. RECITALS

- 1.1. Covered Entity qualifies for and participates in a federal drug discount program established under Section 340B of the Public Health Service Act that requires participating pharmaceutical manufacturers to extend discounted pricing to certain health care providers classified as covered entities;
- 1.2. Covered Entity is authorized: (i) to purchase prescription and non-prescription medications at reduced cost through Section 340B of the Public Health Service Act for outpatients of Covered Entity Locations; and (ii) to contract with a licensed pharmacy to manage and dispense its 340B Drugs;
- 1.3. Covered Entity desires to contract with Walgreens to manage and dispense Covered Entity's 340B Drugs pursuant to Covered Entity's 340B Drug Program; and
- 1.4. Walgreens agrees to manage and dispense Covered Entity's 340B Drugs pursuant to the terms and conditions of this Agreement.
- 1.5. In consideration of the promises, covenants and agreements hereinafter set forth, Covered Entity and Walgreens hereby agree to the following terms and conditions:

### 2. DEFINITIONS

- 2.1. "**340B Drugs**" means drugs which are "covered outpatient drugs" as defined in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(2), and which are prescribed by an authorized medical provider affiliated with Covered Entity. All 340B Drugs shall be subject to the limiting definition of "covered outpatient drug" set forth in Section 1927(k) of the Social Security Act, 42 USC 1396r-8(k)(3).
- 2.2. "**340B Drug Program**" means the Covered Entity's program to purchase and either dispense or arrange for the dispensing of 340B Drugs to Eligible Patients in accordance with Section 340B of the Public Health Service Act (the "**Act**").
- 2.3. "**Aged Drug**" means a 340B Drug dispensed by Walgreens in an amount less than full package size that has not subsequently been dispensed within ninety (90) days of the date that such 340B Drug was last dispensed by any Pharmacy Location.
- 2.4. "**Average Wholesale Price**" or "**AWP**" means the Average Wholesale Price for each drug product in the database as defined by MediSpan or another nationally recognized source used by Walgreens.
- 2.5. "**Contracted Rate**" means the contracted and/or agreed upon reimbursement rate between Walgreens and the applicable Private Insurer and includes any Taxes, Eligible Patient co-pay, or other amounts that may be due from an Eligible Patient or Private Insurer or arise out of the coordination of benefits, as applicable. The Contracted Rate is Walgreen's proprietary and confidential information;

therefore, Covered Entity acknowledges and agrees that it will not request, and Walgreens will not provide, the Contracted Rate or any information which may disclose or enable the Covered Entity to determine the Contracted Rate.

2.6. **“Covered Entity Location(s)”** means those individual Covered Entity locations related to Covered Entity, including all associated eligible child sites, that are listed on the HRSA web-site pursuant to an executed enrollment or registration form which authorizes Covered Entities to contract with a licensed pharmacy to manage and dispense 340B Drugs. Covered Entity Locations shall only be eligible under this Agreement for so long as such locations are registered and identified as active in the HRSA 340B database and for which Covered Entity is the designated billing provider.

2.7. **“DHHS”** means the United States Department of Health and Human Services.

2.8. **“Eligible Patient(s)”** means those Covered Entity outpatients who Covered Entity determines are eligible to purchase and/or receive 340B Drugs from Covered Entity Locations, subject to the limiting definition of “Patient” set forth in 61 Federal Register 55156 (1996), as the same may be modified or amended. All Covered Entity patients who are Medicaid beneficiaries and for whom claims for pharmaceuticals are reimbursable by a state fee-for-service Medicaid program are expressly excluded from this definition.

2.9. **“HRSA”** means the Health Resources and Services Administration.

2.10. **“Inventory Replenishment Rate”** means the amount due Walgreens for each 340B Drug dispensed by Walgreens but for which Walgreens does not receive replenishment from the Supplier. The Inventory Replenishment Rate will be determined in accordance with Exhibit A.

2.11. **“Manufacturer”** means any pharmaceutical manufacturer of 340B Drugs purchased by Covered Entity and delivered to Walgreens via Supplier pursuant to the terms of this Agreement.

2.12. **“NDC-11”** means a medication’s unique 11-digit number containing: (i) the labeler code assigned by the Food and Drug Administration; (ii) the product code; and (iii) the package size of the pharmaceutical product.

2.13. **“Non-Eligible 340B Drugs”** means drugs (based upon the NDC-11) that are not a 340B Drug, on the 340B Price File, and/or eligible for the 340B Drug Program.

2.14. **“Pharmacy Location”** means the specific pharmacy location(s) referenced in Exhibit B, which may include retail, mail order/online, and specialty pharmacies. Walgreens shall provide Covered Entity with written notice of any change in the specific pharmacy locations through which Walgreens manages and dispenses medications pursuant to Covered Entity’s 340B Drug Program. The notice shall be accompanied by an updated Exhibit B reflecting such change(s), and shall identify the effective date of the change(s), which shall not be less than thirty (30) days following the issuance of the notice. Unless Covered Entity provides Walgreens with written notice of objection to the change(s) prior to the effective date specified in the notice, the term “Pharmacy Location” shall be deemed to refer to the pharmacy locations listed on the updated Exhibit B as of that effective date and the parties shall cooperate in posting the revised list of Pharmacy Locations with HRSA. For purposes of clarity, the parties acknowledge and agree that the pharmacy locations listed in Exhibit B are contract pharmacies for purposes of HRSA’s contract pharmacy guidelines (75 Federal Register 10272 (2010)), and as such

they may be utilized to manage and dispense medications pursuant to Covered Entity's 340B Drug Program. The Pharmacy Locations shall only be available to provide 340B Pharmacy Services for so long as such locations are registered and identified as active in the HRSA 340B database.

2.15. **"Prescriber List"** means the list of prescribers eligible to write prescriptions for 340B Drugs under the terms of this Agreement and the 340B Drug Program.

2.16. **"Price File"** means the list of 340B Drugs and associated pricing available from the Supplier.

2.17. **"Private Insurer"** means the third-party payor responsible: (i) for an Eligible Patient's prescription coverage; and (ii) to reimburse Walgreens the Contracted Rate for pharmacy services. Covered Entity acknowledges and agrees that absent a request from Covered Entity to remove a Private Insurer from Covered Entity's 340B Drug Program, all Private Insurers with whom Walgreens is in-network may be included in Covered Entity's 340B Drug Program. Private Insurer does not include a state fee-for-service Medicaid program. Walgreens shall not be obligated to identify the Private Insurer to Covered Entity for any 340B transaction.

2.18. **"Report"** means the report(s) available to Covered Entity via Walgreens' online reporting and tracking system that describes activity pertaining to Walgreens' provision of 340B Pharmacy Services and Inventory Maintenance Services. Covered Entity acknowledges availability of the Report is conditioned upon Supplier maintaining an Electronic Data Interchange with Walgreens during the applicable Report period.

2.19. **"Slow Moving Drug"** means a 340B Drug dispensed by Walgreens that has not reached a full package size within one hundred eighty (180) days from the date that the 340B Drug was initially dispensed by any Pharmacy Location.

2.20. **"Supplier"** means the pharmaceutical manufacturer, supplier, or drug wholesaler that has entered into a written agreement with Covered Entity to provide 340B Drugs to Walgreens via a ship-to, bill-to arrangement.

2.21. **"Tax"** means any sales tax, imposition, assessment, excise tax or other government levied amount based on Walgreens' retail sales of prescriptions to Covered Entity's patients either on gross revenues or by transaction, whether such tax is designated a sales tax, gross receipts tax, retail occupation tax, value added tax, health care provider tax, transaction privilege tax, assessment, pharmacy user fee, or charge otherwise titled or styled. It includes any tax in existence or hereafter created whether or not the bearer of the tax is the retailer or consumer.

2.22. **"Usual and Customary Charge"** means the amount charged by the Pharmacy Location at the time of dispensing of a pharmaceutical product or service to a customer with no coverage by a third party payor, exclusive of: (i) Tax; (ii) discounts claimed; or (iii) discounts provided for prescription drug savings card or other similar discounts.

### 3. COVERED ENTITY RESPONSIBILITIES

3.1. Patient Eligibility Verification. Covered Entity prescribers will provide all Eligible Patients with a valid prescription as required by law which will contain, but not necessarily be limited to, the applicable Covered Entity Location name, address and identification number, the eligible prescriber's name, and

the Eligible Patient's full name. The prescription must be written or sent to Walgreens by an individual on the Prescriber List. Covered Entity may also provide each Eligible Patient whose prescriptions are not reimbursable by a Private Insurer with a voucher or similar document that sets forth the amount that Walgreens shall collect from the Eligible Patient at the time of dispensing. In addition, Covered Entity will provide Walgreens (or an entity designated by Walgreens) with: (i) the Prescriber List on a mutually agreed upon frequency; (ii) either (a) a mutually agreed upon unique identifier affixed to prescriptions, or (b) an electronic file of Covered Entity's patients that contains the data elements agreed to by the parties, updated a minimum of one time each day via electronic interface and subject to the terms of the Business Associate Agreement, attached hereto as Exhibit C; and (iii) any other patient eligibility information agreed to by the parties. The information described herein, as mutually agreed by the parties, and that Covered Entity provides to Walgreens or its delegate, will establish patient eligibility and serve as evidence of Covered Entity's authorization for Eligible Patients to receive 340B Drugs ("**Authorization**"). In the event that at any time during the term of this Agreement Walgreens does not receive the information necessary to establish Authorization, Walgreens shall not be obligated to perform under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Walgreens), until such time as Walgreens receives the necessary Authorization information.

3.2. Supplier. Covered Entity acknowledges and agrees that establishing a successful replenishment process with the Supplier is essential to this Agreement and Walgreens' provision of 340B Pharmacy Services and Inventory Maintenance Services. Covered Entity will use best efforts to establish and maintain a Supplier arrangement agreeable to Walgreens. Concurrent with the Effective Date or as soon as reasonably practicable thereafter, Covered Entity shall provide Walgreens with written notice of the identity of the Supplier. Covered Entity shall not utilize any Supplier to which Walgreens reasonably objects. In the event that at any time during the term of this Agreement Walgreens is unable to successfully place an order with Supplier for replacement 340B Drugs or reasonably believes such orders shall not be replenished by Supplier, Walgreens shall not be obligated to perform its obligations under this Agreement, including its obligations to provide 340B Pharmacy Services or Inventory Maintenance Services (except with respect to any 340B Drugs already dispensed by Walgreens), until such time as Walgreens is able to place a successful order for replenishment.

3.3. Orders and Payment to Supplier. Covered Entity shall purchase 340B Drugs through a written contract with Supplier and will ensure that Supplier: (i) bills Covered Entity for such 340B Drugs; and (ii) ships such 340B Drugs to the applicable Pharmacy Location. Covered Entity will notify Walgreens at least one hundred twenty (120) calendar days prior to any change in the Supplier used to provide 340B Drugs hereunder. In the event Covered Entity fails to notify Walgreens of a change in Supplier as required herein: (i) Covered Entity will reimburse Walgreens in accordance with the Usual and Customary Charge for any pharmaceuticals dispensed by Walgreens after the effective date of such change; and (ii) Walgreens will not reverse any claim or make adjustments to its Invoices due to changes in the Supplier. The parties further agree that:

3.3.1. For each 340B Drug dispensed that reaches depletion at a full package size, Walgreens will order from Supplier (on behalf of Covered Entity) replacement 340B Drugs with the same NDC-11 as the 340B Drug dispensed. Covered Entity, through Supplier, will ensure that such replacement 340B Drugs are delivered by Supplier to the applicable Pharmacy Location.

3.3.2. Covered Entity shall promptly review the Report and notify Walgreens of any discrepancies between the information contained on the Report and the amount billed

to Covered Entity by the Supplier. Upon request from Walgreens, Covered Entity will promptly provide Walgreens with copies of Supplier invoices pertaining to 340B Drugs received by Walgreens.

- 3.3.3. Covered Entity will establish account numbers with Supplier for each Pharmacy Location and otherwise ensure that each such location may order and receive deliveries of replenishment 340B Drugs from Supplier.
- 3.3.4. Covered Entity will make timely payments to Supplier in accordance with the terms of Covered Entity's written agreement with Supplier.
- 3.3.5. Covered Entity will hold title to replacement 340B Drugs from the time Supplier fills an order from Walgreens made on behalf of Covered Entity until the time that Walgreens takes delivery of such drugs at the applicable Pharmacy Location, at which time title shall pass to Walgreens.

3.4. Price File. Walgreens will endeavor to obtain the Price File from Supplier. Covered Entity acknowledges and agrees that: (i) if for any reason Walgreens is unable to obtain the Price File from Supplier, Covered Entity will provide the Price File to Walgreens upon request from Walgreens; and (ii) Walgreens may rely on all information set forth on any Price File that Walgreens receives. In the event that Covered Entity fails to comply with the requirements of this Section 3.4, Walgreens will not retroactively adjust claims.

3.5. Changes with Benefit Design. Covered Entity will notify Walgreens at least sixty (60) calendar days prior to any changes to the amount that Walgreens shall collect at the time of dispensing from each Eligible Patient whose prescription is not reimbursable by a Private Insurer.

3.6. Patient Choice. Covered Entity will inform Eligible Patients that they are free to choose a pharmacy provider of their choice and, at its discretion, advise Eligible Patients that they may be eligible for a discount on certain prescription drugs at Covered Entity's authorized 340B pharmacy locations.

3.7. Compliance with Laws. Covered Entity's compliance with laws shall include establishing appropriate control procedures to ensure that only Eligible Patients receive 340B Drugs from Covered Entity's authorized 340B pharmacy locations. In addition, Covered Entity represents and warrants that it has received all necessary approvals of its 340B Drug Program and this Agreement from the applicable State Board of Pharmacy and as otherwise required by applicable laws and regulations. Covered Entity agrees to execute any documents Walgreens deems reasonably necessary to effectuate the terms of this Agreement, including the provision of 340B Pharmacy Services and Inventory Maintenance Services, consistent with applicable law.

3.8. Product Warranty. Upon request from Walgreens and to the extent it is reasonably able to do so, Covered Entity shall pass through to Walgreens all applicable benefits under any and all manufacturer warranties and indemnification obligations with respect to any merchandise which Walgreens receives to replenish its inventory of 340B Drugs dispensed to Eligible Patients. Upon request from Walgreens, Covered Entity will obtain from the Supplier a certificate of insurance for product liability, continuing guarantee and indemnification for 340B Drugs. Covered Entity will use commercially reasonable efforts to ensure that the Supplier obtains from all merchandise manufacturers an assumption of responsibility and the defense and indemnification of Covered Entity and Walgreens in connection with 340B Drugs, the packaging thereof, and any related materials for third party claims made against Covered Entity and Walgreens. In addition, Covered Entity will use commercially reasonable efforts to ensure the Supplier complies with the applicable rules and regulations as

promulgated by the U.S. Food and Drug Administration, and any other applicable federal, state and local laws and regulations in effect as of the Effective Date of this Agreement or as enacted or adopted during the term hereof, with respect to title and transfers thereof to the merchandise.

#### 4. WALGREENS' SERVICES AND RESPONSIBILITIES

4.1. 340B Pharmacy Services. Upon receipt of an Authorization, Walgreens shall render to Eligible Patients all professional advice and comprehensive pharmacy services customarily provided by it to its patients or as otherwise required by law ("**340B Pharmacy Services**"). Eligible Patients may receive 340B Pharmacy Services from any Pharmacy Location as requested by the Eligible Patient, subject to Private Insurer benefit and coverage information and Walgreens' customary business practice. Walgreens agrees to render 340B Pharmacy Services as herein provided in accordance with the rules and regulations of the applicable State Board of Pharmacy and all applicable federal laws and regulations. It is expressly understood that relations between an Eligible Patient and Walgreens shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. Walgreens shall be solely responsible, without interference from Covered Entity or its agents, to said Eligible Patient for pharmaceutical advice and service, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations.

4.2. Withholding of Walgreens Services. Notwithstanding any provision to the contrary, Covered Entity acknowledges and agrees that Walgreens may withhold dispensing of a 340B Drug to an Eligible Patient for good cause, including but not necessarily limited to, the Eligible Patient's failure to pay for services rendered (e.g., patient payment responsibility amounts); requests by Eligible Patient for quantities of drugs in excess of prescribed quantities or refill limitations; or where, in the professional judgment of the dispensing pharmacist, the prescription should not be filled.

4.3. Inventory Maintenance Services. Walgreens shall provide the 340B Drug inventory maintenance services set forth herein with respect to Covered Entity ("**Inventory Maintenance Services**"). Each 340B Drug shall be dispensed from a Pharmacy Location's customarily maintained non-340B-priced inventory at the 340B price and shall be replenished with 340B-priced inventory with the same NDC-11 as the drug dispensed. The Inventory Maintenance Services provided by Walgreens hereunder will include the following:

- 4.3.1. In accordance with Section 3.3 of this Agreement, including sub-parts, for each 340B Drug that reaches depletion at a full package size, Walgreens will order 340B Drugs from the Supplier on behalf of the applicable Covered Entity Location in order to replenish the 340B Drugs dispensed to Eligible Patients by Walgreens.
- 4.3.2. Covered Entity will reimburse Walgreens the Inventory Replenishment Rate for any 340B Drugs which Walgreens cannot or does not receive at the NDC-11 level replenishment from the Supplier for a period greater than forty-five (45) calendar days from the original date of an order fulfillment attempt by the Supplier ("**Overdue Drug**").
- 4.3.3. Walgreens may block the dispensing of any 340B Drugs on the Price File that Walgreens determines it is unable to manage and dispense due to logistical and/or operational constraints ("**Blocked Drug**"). In addition, Walgreens may require Covered Entity to remove Blocked Drugs from the Price File or discontinue prescribing such drugs for their 340B Drug Program. Covered Entity acknowledges that any 340B Drugs dispensed prior to becoming a Blocked Drug shall be subject to the Aged Drug or Slow Moving Drug replenishment process, as applicable. In the event a Covered Entity prescriber writes a

prescription for a Blocked Drug, Covered Entity acknowledges and agrees such prescription shall be considered a Non-Eligible 340B Drug and Walgreens may collect the Usual and Customary Charge from the patient.

- 4.3.4. Covered Entity will reimburse Walgreens the Inventory Replenishment Rate for Aged Drugs and Slow Moving Drugs.

4.4. Tracking System. Walgreens maintains proprietary electronic tracking software that is capable of tracking 340B Drugs received from the Supplier, preventing the diversion of 340B Drugs to individuals who are not Eligible Patients, and verifying that such diversion has not occurred ("**340B Complete**"). 340B Complete® shall be able to provide comparisons of Eligible Patient prescriptions and dispensing records and a comparison of 340B Drug purchasing and dispensing records. Walgreens will reasonably cooperate with Covered Entity to address any potential irregularities detected in 340B Complete® and will make adjustments to 340B Complete® that are reasonably necessary to prevent diversion of 340B Drugs to individuals who are not Eligible Patients. Notwithstanding the foregoing, however, Covered Entity acknowledges and agrees it is the sole responsibility of the Covered Entity to review the Report and information available in 340B Complete® to confirm that no diversion has occurred and that the Report and 340B Complete® are tools provided by Walgreens to assist Covered Entity in that review. Covered Entity agrees to report any suspected instance of diversion to Walgreens within forty-five (45) days from the end of the month in which the prescription was dispensed and upon the mutual agreement of the parties, Walgreens shall make adjustments to the claim (e.g., reclassify the product as a Non-Eligible 340B Drug).

4.5. Inventory Reconciliation. On a monthly basis, Walgreens will reconcile 340B Drug inventory using the information available in the Report and 340B Complete®, and make any necessary financial or accumulator adjustments as described below ("**Reconciliation**"). Reconciliation shall be conducted at the NDC-11 level and only apply with respect to pharmaceuticals that have reached full package size, or are an Aged Drug or Slow Moving Drug, and for which Walgreens has or should have received replenishment from the Supplier.

- 4.5.1. *Non-Eligible Patients and Excess Replenishment*. In the event Walgreens determines that 340B Drugs have been dispensed to non-Eligible Patients or that the quantity of 340B Drugs provided to Walgreens exceeds the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Walgreens will adjust the virtual inventory so that such excess is applied against existing or future 340B Drug prescriptions dispensed hereunder. If such inventory credits are not depleted by subsequent 340B dispenses from Pharmacy Locations, Walgreens will reimburse Covered Entity for such remaining drugs in accordance with the wholesale acquisition cost. Covered Entity shall be responsible for assessing if the adjustment is the result of any noncompliance and if so determine whether it is required to self-disclose the noncompliance per HRSA guidelines. Walgreens shall not contact a drug manufacturer regarding a 340B Drug purchased by Covered Entity without the express prior approval of Covered Entity. The parties acknowledge and agree that Covered Entity shall remain ultimately responsible for the compliance of its 340B Drug Program and any corresponding self-reporting as necessary. With respect to adjustments made for dispenses of 340B Drugs to non-Eligible Patients, the following additional financial adjustments will apply:

- 4.5.1.1. *Non-Eligible Patients With a Private Insurer*. The drugs associated with the adjusted claim(s) shall be considered Non-Eligible 340B Drugs and Covered Entity shall not receive any amounts arising out of the Contracted Rate. To the

extent Covered Entity previously received, or was credited for, any amounts arising out of the Contracted Rate, Covered Entity shall immediately remit such amounts to Walgreens or forfeit such credits.

4.5.1.2. *Non-Eligible Patients Without a Private Insurer.* The drugs associated with the adjusted claim(s) shall be considered Non-Eligible 340B Drugs and Covered Entity shall reimburse Walgreens the difference between the Usual and Customary Charge and any amounts Walgreens has already received with respect to such Non-Eligible 340B Drugs.

4.5.2. *Deficient Replenishment:* In the event Walgreens determines that the quantity of 340B Drugs provided to Walgreens is less than the quantity of 340B Drugs dispensed to Eligible Patients hereunder, Walgreens will notify Covered Entity and Covered Entity will instruct the Supplier to provide 340B Drugs to Walgreens. If, for whatever reason, the Supplier is unable to provide 340B Drugs as the 340B Drug ordered hereunder, Covered Entity will reimburse Walgreens for said drugs at the Inventory Replenishment Rate.

4.6 Insurance. Prior to the commencement of any work under this Agreement, Walgreens shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled "**PHARMACY SERVICES FOR 340B PRESCRIPTION DRUG DISPENSING**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Walgreens shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;



a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000.00 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.

Walgreens agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Walgreens herein, and provide a certificate of insurance and endorsement that names the Walgreens and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Walgreens shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Walgreens shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Walgreens shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Health Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Walgreens 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, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Walgreens shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Walgreens to stop work hereunder, and/or withhold any payment(s) which become due to Walgreens hereunder until Walgreens demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Walgreens may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that Contractor'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 operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

Walgreens and any Subcontractors are responsible for all damages to their own equipment and/or property.

## 5. REIMBURSEMENT AND BILLING

5.1. Invoice for Services. Walgreens will invoice Covered Entity on a monthly basis for all amounts arising under this Agreement during the previous calendar month ("**Invoice**"). The Invoice will identify: (i) the number of prescriptions dispensed hereunder; (ii) any amounts due Walgreens including any and all fees, costs, charges, or reimbursement amounts, including but not necessarily limited to any amount arising out of the Tax, changes in the Supplier, Overdue Drugs, Aged Drugs, Slow Moving Drugs, 340B Pharmacy Services, Inventory Maintenance Services and a Reconciliation ("**Walgreens Balance**"); and (iii) any amounts due Covered Entity arising out of a Reconciliation or Exhibit A, if applicable ("**Covered Entity Balance**").

5.2. Monthly Payments. If the Walgreens Balance is less than the Covered Entity Balance, Walgreens shall pay Covered Entity the difference between such amounts within thirty (30) calendar days from the Invoice date. Walgreens' payment to Covered Entity shall be made via electronic funds transfer or to the

location set forth in Section 8.11 of this Agreement. If the Covered Entity Balance is less than the Walgreens Balance, Covered Entity shall pay Walgreens the difference between such amounts within thirty (30) calendar days from the Invoice date.

5.3. Late Payment Charge. Each party is solely responsible for its payments required herein and shall at no time withhold payment due the other party, nor pay an amount less than that owed the other party. All sums owed to Walgreens by Covered Entity will be assessed in accordance with the Texas Prompt Payment Act. Each party is solely responsible for any and all costs associated with collection of any delinquent amounts.

5.4. Payment for Private Insurer Coverage. For those Eligible Patients whose prescriptions are reimbursable by a Private Insurer, Walgreens is responsible to process and bill such Private Insurer at the existing Contracted Rates.

5.5. Over/Underpayments. In the event Covered Entity believes that it has made an overpayment, Covered Entity shall immediately notify Walgreens and provide a complete explanation thereof with specific details and documentation to support any claim of overpayment. Upon review and acceptance by Walgreens of such overpayment, Walgreens will pay Covered Entity an amount equal to the overpaid amount within thirty (30) calendar days of Walgreens' written acceptance of such overpayment. If Walgreens believes that Covered Entity made any underpayments to Walgreens, Walgreens shall immediately notify Covered Entity and provide a complete explanation thereof with specific details and documentation to support any claim of underpayment. Upon review and acceptance by Covered Entity of such underpayment, Covered Entity will pay Walgreens an amount equal to the underpaid amount within thirty (30) calendar days of Covered Entity's written acceptance of such underpayment. Except for verified amounts arising out of any audit or Reconciliation permitted by this Agreement, or as otherwise required by law, all claims of overpayment or underpayment must be made within one hundred eighty (180) calendar days after payment is due.

## **6. AUDITS AND RECORDS**

6.1. Audit by DHHS or Manufacturer. Both parties understand that, under Section 340B(a)(5)(C) of the Act, records that directly pertain to compliance with the Act are subject to audit by the Manufacturer and DHHS. The parties further understand that DHHS has published guidelines for such audits. Each party agrees 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. Walgreens and Covered Entity understand and agree that a copy of this Agreement will be provided, upon request, to the Manufacturer; provided that the Manufacturer has signed a purchasing agreement with DHHS. In the event either party hereto receives such a request, it shall immediately inform the other party. Covered Entity acknowledges and agrees that Walgreens may, in its sole discretion, delete and/or redact all Walgreens confidential and proprietary information set forth herein prior to the release of this Agreement.

6.2. Covered Entity Records. Covered Entity shall maintain customary records relating to its responsibilities under this Agreement, including but not limited to eligibility records for patients and payment information regarding the services provided by Walgreens hereunder, for the periods required by law and shall make such records available to Walgreens.

6.3. Walgreens Records. Walgreens shall maintain customary business and pharmacy records relating to its responsibilities under this Agreement, including without limitation prescription dispensing records regarding Eligible Patients, payments received from Eligible Patients and Covered Entity, and 340B Drug ordering, receiving, and dispensing information (“**Walgreens Records**”) in an accessible and auditable form, separate from the records of Walgreens’ other operations, and in full compliance with all applicable state and federal laws, rules and regulations. Walgreens Records shall be maintained by Walgreens for such period as is required by applicable law. Notwithstanding the foregoing, unless otherwise provided for elsewhere in this Agreement or required by federal and state laws and regulations, Walgreens Records shall not include Walgreens’ usual and customary pricing data, any other financial and administrative records not related to Walgreens responsibilities under this Agreement, or any proprietary or confidential information related to Private Insurers or the Contracted Rate, including but not limited to the identity of a Private Insurer by claim.

6.4. Covered Entity Audits. During normal working hours and upon fifteen (15) business days advance written notice to the address set forth in Section 8.11, below, Walgreens shall permit Covered Entity access to review Walgreens Records in order to confirm that no diversion of 340B Drugs to non-Eligible Patients and no duplicate discounts have occurred (“**Audit**”) and also the right to make photocopies of Walgreens Records. Walgreens acknowledges that Covered Entity may contract with an independent outside auditor with experience auditing pharmacies to conduct the Audit. Covered Entity shall provide Walgreens with advance notice of the identity of any such independent outside auditor. Covered Entity shall conduct no more than one Audit per calendar year. The parties acknowledge and agree that in no event shall Audit findings or conclusions be based upon either statistical sampling or extrapolation. Nothing in this paragraph shall be construed to prevent or limit: (i) an audit originated by Manufacturer, DHHS, HRSA, or as otherwise required by law; or (ii) review of the Report by Covered Entity or an Audit of the information contained therein.

6.5. Compliance Violations. In the event that Covered Entity determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure compliance with the 340B Drug Program, then it must take immediate remedial action to assure compliance and notify the Office of Pharmacy Affairs regarding such compliance problems and actions taken to remedy those problems.

## 7. TERM AND TERMINATION

Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect for a one (1) year period thereafter, unless terminated earlier as provided herein. Upon agreement of the Parties, this Agreement may be renewed for two (1) one (1) year terms on the same terms and conditions. Renewals shall be in writing and signed by the Director of Metro Health without further action by the San Antonio City Council.

7.1.

7.2. Implementation of this Agreement. Covered Entity and Walgreens will establish a mutually agreed upon implementation schedule, which may include implementing 340B Drugs, Pharmacy Locations, Covered Entity Locations, and eligible prescribers on a rolling basis. The implementation schedule will be documented in an email or other written communication between the parties. Walgreens’ obligation to provide services hereunder, including but not limited to 340B Pharmacy Services and Inventory Maintenance Services, will commence upon the applicable date(s) set forth in the implementation schedule established by the parties (“**Implementation Date(s)**”). Individual Pharmacy

Locations will only be implemented after they are registered and identified as active in the HRSA 340B database. Unless otherwise mutually agreed upon by the parties, 340B claims will not be processed retroactively for the period preceding the applicable Implementation Date(s); provided that in no event shall any claims be processed retroactively for the period preceding the HRSA effective date.

7.3. Termination. Either party may immediately terminate this Agreement at any time upon written notice to the other party in the event any of the following occurs:

- 7.3.1. The omission or the commission by the other party of any act or conduct for which its authority to provide services may be revoked or suspended by any governmental or administrative body (whether or not such suspension or revocation actually occurs);
- 7.3.2. The other party becomes insolvent or bankrupt;
- 7.3.3. It is determined by the terminating party that the other party lacks any federal, state, or local license, permit, or approval, including, without limitation, certificate of need approval required for the services and operations contemplated by this Agreement or that such services and operations or the arrangements set forth in this Agreement may be inconsistent with, or subject a party to, potential negative consequences under any provision of federal or state law regulating the services contemplated by this Agreement or the arrangements between the parties as set forth herein; or
- 7.3.4. There is a material breach of the Agreement by the other party, which includes, but is not limited to, non-payment by a Party of any required fees and/or reimbursement amounts within the time frames set forth in this Agreement.

7.4. Termination without Cause. Notwithstanding any provision to the contrary, either party may terminate this Agreement at any time and without cause upon thirty (30) calendar days' prior written notice to the other party. In addition, either party may terminate any or all of the Pharmacy Locations at any time and without cause upon thirty (30) days' prior written notice to the other party. Termination of such locations shall not be deemed a termination of the remaining Pharmacy Locations or of this Agreement.

7.5. Suspension. Either party may suspend this Agreement or any portion thereof (including but not limited to, any 340B Drugs, Pharmacy Locations, Covered Entity Locations, and eligible prescribers) at any time either: (i) without cause upon thirty (30) calendar days' prior written notice to the other party; or (ii) for material breach immediately upon written notice to the other party. Further, in the event any Pharmacy Location or Covered Entity Location is not properly registered and identified as active in the HRSA 340B database, such locations will be automatically suspended under this Agreement until such time as they are properly registered and identified as active. In the event the Agreement or any portion thereof is suspended, the parties shall document (in an email or other written communication) their mutual agreement to reinstate the Agreement, or portion thereof, prior to such reinstatement.

7.6. Effect of Termination or Suspension. Upon termination or suspension of this Agreement, Walgreens will provide Covered Entity with an Invoice, which will include those drugs dispensed under the 340B Drug Program which have not been replenished as of the termination or suspension effective date. Covered Entity will reimburse Walgreens for those pharmaceutical products at the Inventory Replenishment Rate, and all other amounts identified on the Invoice, within thirty (30) days of receipt of the Invoice. Walgreens will remit to Covered Entity any amounts due Covered Entity identified on the Invoice following termination or suspension. Termination or suspension will have no effect upon the

rights or obligations of the parties arising out of any transactions occurring prior to the effective date of such termination or suspension.

## **8. GENERAL PROVISIONS**

8.1. Advertising. Neither party may advertise or use any trademarks, service marks, or symbols of the other party without first receiving the written consent of the party owning the mark and/or symbol with the following exceptions: (i) Covered Entity may use the name and the addresses of Walgreens in Covered Entity's informational brochures or other publications Covered Entity provides to its patients or potential patients; and (ii) Walgreens may use Covered Entity's name, trademark, service mark, and/or symbols to inform patients and the general public that Walgreens is a pharmacy contracted for the dispensing of 340B Drugs to Eligible Patients. Any other reference must be pre-approved, in writing, by both parties.

8.2. Assignment. Neither party may assign or otherwise transfer its rights, obligations, and/or duties under this agreement without the prior written consent of the other party; provided that with prior written approval of City, Walgreens may assign this Agreement to any direct or indirect parent, subsidiary or affiliated company or to a successor company. Any permitted assignee will assume all obligations of Walgreens under this Agreement. No assignment will relieve Walgreens of responsibility for the performance of any obligations which have already occurred. This Agreement will inure to the benefit of and be binding upon Walgreens, its respective successors and permitted assignees. Covered Entity may not assign this Agreement without the prior written consent of Walgreens.

8.3. Confidentiality. To the extent allowed by law, the parties agree to protect the confidentiality of each other's records and business information disclosed to them and not to use such information other than as necessary and appropriate in connection with performance of this Agreement. Each party acknowledges that disclosure of confidential information of the other would cause the other party irreparable harm and may, without limiting the remedies available for such breach, be enjoined at the instance of the harmed party. Upon termination of the Agreement, each party agrees to cease use of the other's information and to return it, or destroy it, if allowed by law. The parties further agree that: (i) the negotiations of the terms of this Agreement and the entire Agreement are confidential; and (ii) they may disclose, on an as needed basis, the terms of this Agreement only to their employees (including employees of affiliates) and contractors, and as otherwise necessary and appropriate in connection with the performance of this Agreement. Nothing in this paragraph shall be construed to prevent either party from providing a copy of this Agreement to the Manufacturer or DHHS upon their request.

Walgreens acknowledges that the City as a Texas municipality is subject to the Texas Public Information Act.

8.4. Delegation. With City's prior written approval, Walgreens may delegate or subcontract the performance of any obligation agreed to be performed by Walgreens hereunder to a related entity, contractor, or subcontractor, provided that as a condition precedent to such delegation or subcontract, all services or other activities performed by such entity, contractor or subcontractor shall be consistent with and comply with Walgreens' obligations under this Agreement.

8.5. Dispute Resolution. The parties shall attempt to resolve any dispute or claim arising out of the interpretation of or performance under this Agreement through informal discussions. When a dispute arises, either party may submit a written complaint to the other party describing and proposing the manner of resolving that dispute. The party receiving that complaint shall respond by accepting,

rejecting, or modifying that proposal, in writing, within thirty (30) calendar days upon receipt of such complaint. If the claim or dispute cannot be resolved through informal discussions, the claimant may bring a legal action in a court of competent jurisdiction to adjudicate its claim or to enforce or interpret any part of this Agreement.

8.6. Enforceability. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those to which it is held invalid or unenforceable, will not be affected or impaired thereby.

8.7. Entire Agreement. This Agreement represents the entire understanding of the parties and supersedes any previous contract. Each party hereto warrants and represents that there are no other agreements or understandings between the parties, either oral or written, relating to the subject matter of this Agreement. Any amendments and/or modifications to this Agreement shall be in writing and will become effective and binding upon execution by authorized representatives of the parties hereto.

8.8. Force Majeure. The performance by either party hereunder will be excused to the extent of circumstances beyond such party's reasonable control, such as flood, tornado, earthquake, or other natural disaster, epidemic, war, material destruction of facilities, fire, acts of God, etc. In such event, the parties will use their best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the party's failure to perform.

8.9. Indemnification.

**Walgreens covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all costs, 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 Walgreen's activities under this Agreement, including any acts or omissions of Walgreens, any agent, officer, director, representative, employee, consultant or subcontractor of Walgreens, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT WALGREENS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.**

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. Both Parties shall promptly advise the other in writing of any claim or demand against them related to or arising out of their activities under this Agreement.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by WALGREENS in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. WALGREENS shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If WALGREENS fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and WALGREENS shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of WALGREENS, 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 WALGREENS or any subcontractor under worker's compensation or other employee benefit acts.

8.10. Independent Contractor. None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship between the parties hereto other than that of independent entities contracting solely for the purposes of effecting the provisions of this Agreement. Neither of the parties shall be construed to be the partner, co-venturer, or employee or representative of the other party.

8.11. Notice. Any notice required or given under this Agreement shall be provided in writing sent by U. S. certified mail, return receipt requested, postage prepaid, or by overnight delivery service providing proof of receipt, to the addresses of the parties as set forth below:

CITY OF SAN ANTONIO  
1100 SOLEDAD, STE. 1000  
SAN ANTONIO, TX 78205  
ATTN: DIRECTOR OF SAN ANTONIO  
METROPOLITAN HEALTH DISTRICT

WALGREEN CO.  
104 WILMOT ROAD, MS-1446  
DEERFIELD, IL 60015  
ATTN: 340B LEGAL (JRR)  
AND SEND VIA EMAIL TO:  
[HealthLawLegalNotices@Walgreens.com](mailto:HealthLawLegalNotices@Walgreens.com)

Each party may designate by notice any future or different addresses to which notices will be sent. Notices will be deemed delivered upon receipt or upon refusal to accept delivery.

8.12. Patient Privacy and HIPAA Compliance. The parties recognize that each may be a healthcare provider and a covered entity within the meaning of the federal Health Insurance Portability and Accountability Act ("HIPAA"). The parties agree to protect and respect the patient's right to privacy and confidentiality concerning their medical and pharmaceutical records, and to protect all individually identifiable health information as protected health information from misuse or disclosure, in compliance with all applicable state and federal law. Walgreens shall exercise strict confidentiality and security regarding all patient health information (PHI) collected from Covered Entity and maintain protected health information pursuant to applicable federal and state laws, rules and regulations, this Agreement and **Attachment C-Business Associate Agreement** attached hereto and incorporated herein for all purposes Without limiting the generality of the foregoing, the parties agree to use patient-specific information: (i) only for permitted treatment, billing and related record-keeping



purposes; or (ii) as otherwise permitted by law. In the event that any patient information created, maintained or transmitted in connection with this Agreement is to be transmitted electronically, the parties agree that they shall comply in all respects with the requirements of HIPAA governing electronic transmission of individually identifiable patient information. Failure by either party to abide by these requirements shall be a basis for immediate termination of this Agreement.

8.13. Regulatory Compliance. Each party agrees to comply with applicable federal and state laws and regulations. Covered Entity and Walgreens mutually acknowledge that their intent in entering into this Agreement is solely to facilitate Covered Entity's 340B Drug Program. The services provided hereunder are only those necessary in order to fulfill this intent, and all financial arrangements established herein are mutually determined to represent either cost or fair market value for the items and services received. The parties expressly do not intend to take any action that would violate state or federal anti-kickback prohibitions, such as those appearing in Section 1128B of the Social Security Act, 42 USC Section 1320a-7b. Instead, it is the intention of the parties that this Agreement, and all actions taken in connection herewith, shall to the greatest extent possible be construed to be consistent with the regulatory requirements of the safe harbor for personal services and management contracts appearing in 42 CFR Section 1001.952(d) or health centers appearing in 42 CFR Section 1001.952(w). Both parties agree that they will neither knowingly resell nor transfer a 340B Drug to an individual who is not an Eligible Patient nor will they dispense 340B Drugs to any person whose prescription is reimbursable by a State Medicaid Agency.

8.14. Signature Authority. Each party to this Agreement warrants that it has full power and authority to enter into this Agreement and that the person signing this Agreement on behalf of either party warrants that he or she has been duly authorized and empowered to enter into this Agreement.

8.15. Trademark License. Both Walgreens and Covered Entity grant a reciprocal trademark license for use of the other party's Trademarks on mutually agreed items identifying the relationship between Walgreens and the Covered Entity for the term of this Agreement. Each of the parties hereto shall have a right of inspection and approval of such trademark use prior to release of such mutually agreed items bearing the Trademarks. Such approval shall be at the sole discretion of the party whose Trademark is incorporated on the agreed item. Subsequent to the termination of this Agreement, the parties agree that the items will not be used subsequent to the Termination date. For purposes of this provision, the term "Trademark" means registered and common law trademarks of the parties hereto as identified by the parties.

8.16. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

8.17 Amendments. Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Walgreens, and subject to approval by the City Council, as evidenced by passage of an ordinance. The Director of Metro Health without further City Council action may execute contract amendments on behalf of City in the following circumstances: cost of living adjustments (COLA) to be applied to the dispensing fee.

8.18 Non-Discrimination. As a party to this contract, Walgreens 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.

8.19 Debarment. Walgreens certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program. Walgreens shall provide immediate written notice to City, in accordance with 8.11 Notice, if, at any time during the term of this contract, including any renewals hereof, Walgreens learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

8.20 Prohibition on contracts with companies boycotting Israel.

Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

8.21 Contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations prohibited

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Walgreens hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Walgreen's certification. If found to be false, or if Walgreens is identified on said list during the course of its contract with City, City may terminate the Contract for material breach.

**[SIGNATURE PAGE FOLLOWS]**

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

CITY OF SAN ANTONIO

WALGREEN CO.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approval:

\_\_\_\_\_  
Pharmacy Services

\_\_\_\_\_  
Legal

## Exhibit A

## Fee Schedule

1. Self-Pay Patients. For those Eligible Patients whose prescriptions are not reimbursable by a Private Insurer, Walgreens shall be reimbursed the following amounts:

- 1.1 \$0.50 administrative fee for the Inventory Maintenance Services ("**Self-Pay Administrative Fee**"); and
- 1.2 \$13.00 dispensing fee for the 340B Pharmacy Services ("**Self-Pay Dispensing Fee**").

At the time of dispensing, Walgreens shall collect from the Eligible Patient the patient responsibility amount in accordance with Covered Entity's 340B Drug Program benefit design or as may be communicated to Walgreens via the Authorization, and which such amount may include the price for the 340B Drug as set forth in the Price File ("**Self-Pay Co-Pay**"). The Self-Pay Administrative Fee and the Self-Pay Dispensing Fee shall collectively be referred to as the "**Self-Pay Fees**." If the Self-Pay Fees exceed the Self-Pay Co-Pay, Walgreens shall invoice Covered Entity in accordance with Article 5 for any remaining amounts due Walgreens. If the Self-Pay Fees are less than the Self-Pay Co-Pay, upon determination by Walgreens that Covered Entity is otherwise current in its payment obligations to Walgreens, Walgreens shall, in accordance with Article 5, remit to Covered Entity the difference between the Self-Pay Co-Pay and the Self-Pay Fees. Notwithstanding the foregoing, if at the time of dispensing Walgreens determines the Usual and Customary Charge is equal to or less than the total of the Self-Pay Administrative Fee, Self-Pay Dispensing Fee, and the price for the 340B Drug as set forth in the Price File, such drug shall be considered a Non-Eligible 340B Drug and Walgreens shall charge the Eligible Patient the Usual and Customary Charge.

2. Private Insurer Patients. For those Eligible Patients whose prescriptions are reimbursable by a Private Insurer, Walgreens will process and bill the Eligible Patient's Private Insurer for the Contracted Rate provided to the Pharmacy Location at the time of dispensing. Subject to the provisions that follow, Walgreens shall be entitled to retain 13% of the Contracted Rate for the Inventory Maintenance Services and such billing services ("**Private Insurer Administrative Fee**") and a \$13.00 dispensing fee for the 340B Pharmacy Services ("**Private Insurer Dispensing Fee**"). Upon determination by Walgreens that it has received the Contracted Rate for the Eligible Patient's prescription and provided that: (i) Covered Entity is current in its payment obligations to Walgreens; and (ii) the Contracted Rate exceeds the sum of Private Insurer Dispensing Fee, the Private Insurer Administrative Fee, and the 340B Drug price as set forth on the Price File; Walgreens will retain an amount equal to the sum of the Private Insurer Dispensing Fee and the Private Insurer Administrative Fee (such sum the "**Private Insurer Fee**") and, in accordance with Article 5, remit to Covered Entity the difference between the Private Insurer Fee and the Contracted Rate. If the difference between the Contracted Rate and the Private Insurer Fee is less than or equal to the 340B Drug price as set forth on the Price File, Walgreens agrees to accept and retain the Contracted Rate as payment in full and there will be no further adjustment between the parties.

3. Inventory Replenishment Rate. The Inventory Replenishment Rate shall be the following:

- 3.1 *Brand Name Drugs*: the Average Wholesale Price of the dispensed pharmaceutical product minus 16.65%.
- 3.2 *Generic Drugs*: the Average Wholesale Price of the dispensed pharmaceutical product minus not less than 70%.

4. Annual Price Adjustment. On the one year anniversary date of the Effective Date and annually thereafter, the parties agree the administrative fees and dispensing fees described in this Exhibit A shall each be increased in an amount equal to the then current Consumer Price Index-All Urban Consumers, All Items, for the Region where Covered Entity is located, as reported by the U.S. Department of Labor, Bureau of Statistics.

**Exhibit B****Pharmacy Locations**

## 1. Retail Pharmacy Locations

NO.	LOCATION	ADDRESS	CITY	STATE	ZIP CODE
1	11521	10858 WURZBACH RD	SAN ANTONIO	TX	78230
2	16485	7302 LOUIS PASTEUR DR, #104	SAN ANTONIO	TX	78229

Exhibit C

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

**This HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio ("Covered Entity"), and Walgreens Company, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on July 1, 2019, whereby BA provides professional services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. **Definitions.** For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (3) "Parties" shall mean Covered Entity and BA. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.
- (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

- (5) "Security Rule" shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.
- (6) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "E PHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, 164, and under HITECH.
- (7) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- (8) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (9) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.
- (10) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. **BA Obligations and Activities.** BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable,



unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (9) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including PHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the dated of the breach and date of discover; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all HIPAA Security Rule requirements;
- (13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective July 1, 2019, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152,

or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

**C. Permitted Uses and Disclosures by BA**

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

**D. Obligations of Covered Entity.** Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.
- (4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

**E. Permissible Requests by Covered Entity.**

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. **Term and Termination.**

- (1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of July 1, 2019, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (3) Effect of Termination.
  - (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
  - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. **Amendment to Comply with Law.** The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

H. **Survival.** The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.

I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*
- M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- P. **Entire Agreement.** This Agreement constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

**EXECUTED** to be effective July 1, 2019, by the **City of San Antonio**, signing by and through its program manager.

**COVERED ENTITY**  
**By City of San Antonio**

By: \_\_\_\_\_

Print Name: Jennifer Herriott, PhD, MPH  
Print Title: Interim Director  
San Antonio Metropolitan Health District

**BUSINESS ASSOCIATE:**  
**Walgreens Company**

By: \_\_\_\_\_

Print Name:  
Print Title:

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew Segovia, City Attorney