



340B CONTRACT PHARMACY SERVICES AGREEMENT

This 340B Contract Pharmacy Services Agreement ("**Agreement**") is made and entered into October 1, 2017 ("**Effective Date**") by and between County of Tulare ("**Covered Entity**") and Walgreen Co. ("**Walgreens**").

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 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.

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 Covered Entity shall cooperate with Walgreens 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 Addendum, 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 340B Drug price as set forth on the Price File. If Walgreens determines that the 340B Drug price as set forth on the Price File is less than the amount the Manufacturer would charge Walgreens at non-340B Drug Program rates, Walgreens will also reimburse the Manufacturer the difference between such amounts. 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. Walgreens will self-insure or maintain at its sole expense, and in amounts consistent with industry standards, insurance for general and professional liability and such other insurance as may be necessary to insure Walgreens, its employees, and agents against any claim or claims for damages arising directly or indirectly in connection with Walgreens' negligent performance of any services under this Agreement, and the use of any property or facilities provided by Walgreens. Walgreens' insurance information is available at www.walgreens.com/insurance.

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. Payment in Full. Covered Entity is solely responsible for all payments required herein and shall at no time withhold payment due Walgreens, nor pay an amount less than that billed by Walgreens on the Invoice. Covered Entity is solely responsible for any and all costs associated with Walgreens' 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 and shall not utilize any such auditor to which Walgreens has reasonable objection. 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

7.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect for a three (3)-year period thereafter, unless terminated earlier as provided herein. Upon expiration of the initial three (3)-year term, this Agreement shall be renewed automatically for three (3) successive one-year terms, unless terminated earlier as provided herein.

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 Covered Entity 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 to Walgreens in any Covered Entity materials must be pre-approved, in writing, by Walgreens.

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 Walgreens may assign this Agreement to any direct or indirect parent, subsidiary or affiliated company or to a successor company following 60 days' notice to Covered Entity. 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. 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. Upon termination of the Agreement, each party agrees to cease use of the other's information and to return it, or destroy it, as appropriate. The parties further agree that: (i) 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. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, Covered Entity may not disclose to third parties any information it receives from Walgreen that Walgreens has previously identified as confidential. Covered Entity acknowledges and agrees Walgreens has identified the pricing information contained in this Agreement as confidential and that it shall be excluded from disclosure. If Covered Entity determines that it must disclose any information that Walgreens previously identified as confidential, then it shall immediately give Walgreens written notice of its intention to disclose such information. Walgreens shall have a period of five (5) business days thereafter within which to seek a protective court order to prevent such disclosure or to notify Covered Entity that it will not seek such an order. Covered Entity shall cooperate with Walgreens in any efforts to seek such a court order. Covered Entity shall not disclose the information until the five (5) business day period has expired without a response from Walgreens, or Walgreens has notified Covered Entity that it will not seek such an order, or Walgreens has sought and a court has declined to issue a protective order for such information. The duty of Covered Entity and Walgreens to maintain confidentiality of information under this section continues beyond the term of this Agreement.

8.4. Delegation. Walgreens may delegate or subcontract the performance of 340B Pharmacy Services or Inventory Maintenance Services to a related entity, contractor, or subcontractor, following 60 days' notice to Covered Entity and 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. Governing Law. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

8.10. Indemnification. Each party shall indemnify, defend, and hold harmless the other party from and against all third party claims, damages, causes of action, costs or expense, including court costs and reasonable attorneys' fees, which may arise as a result of the indemnifying party's negligent performance of or failure to perform, any term or condition of this Agreement. The obligation to indemnify shall survive termination of this Agreement regardless of the reason for termination.

8.11. 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.

8.12. 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:

COUNTY OF TULARE
HEALTH & HUMAN SERVICES AGENCY
5957 SOUTH MOONEY
VISALIA, CA 93277
ATTN: CONTRACTS UNIT

WALGREEN CO.
104 WILMOT ROAD, MS-1446
DEERFIELD, IL 60015
ATTN: 340B LEGAL (JO)
AND SEND VIA EMAIL TO:
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.

8.13. 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. 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.

8.14. 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.

8.15. 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.

8.16. 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 and such items will be destroyed within 30 days of the Termination Date and the destroying party shall confirm such destruction. For purposes of this provision, the term "Trademark" means registered and common law trademarks of the parties hereto as identified by the parties.

8.17. 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.

The parties, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

[SIGNATURE PAGE FOLLOWS]

COUNTY OF TULARE

Date: _____

By: _____
Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

WALGREEN CO.

Date: 4-19-2018

By: _____
Title: OSP Contracting & Procure

Approved: [Signature] 4.17.18
Pharmacy Services

Legal [Signature]

Approved as to Form
County Counsel

By: [Signature]
Deputy 2018544

Date: 4/23/18

**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 maybe 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	2869	1407 N DINUBA BLVD	VISALIA	CA	93291
2	3476	100 W WALNUT AVE	VISALIA	CA	93277
3	6298	49 W TULARE AVE	TULARE	CA	93274
4	6683	5328 W CYPRESS AVE	VISALIA	CA	93277
5	10002	1418 E PROSPERITY AVE	TULARE	CA	93274
6	10201	170 W EL MONTE WAY	DINUBA	CA	93618
7	11407	3010 N DEMAREE ST	VISALIA	CA	93291

Exhibit C
Business Associate Addendum

This Business Associate Addendum (“**Addendum**”) is entered into by and between Covered Entity and Walgreen Co. (“**BA**”) and is effective as of the Effective Date of Underlying Agreement (as defined below) (“**Addendum Effective Date**”). This Addendum shall be incorporated into and made a part of the Underlying Agreement.

Covered Entity and BA have entered into an agreement whereby BA provides administrative services related to patient eligibility determinations in addition to dispensing pharmaceutical products pursuant to that certain 340B Contract Pharmacy Services Agreement (“**Underlying Agreement**”);

The parties acknowledge that the provision of administrative services related to patient eligibility determinations are services provided by BA outside the scope of BA’s normal covered pharmacy operations function and this Addendum is limited to the provision of such services (“**Services**”);

Pursuant to the terms of the Underlying Agreement, Covered Entity wishes to disclose certain information to BA, some of which may constitute Protected Health Information (as defined below), and the parties wish to establish satisfactory assurances that BA will appropriately safeguard this PHI; and

The purpose of this Addendum is to satisfy certain standards and requirements of the HIPAA Rules (as defined herein), including, but not limited to, those at 45 C.F.R. §§ 164.314(a), 164.502(e), and 164.504(e), as the same may be amended from time to time, to be in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (“**HITECH Act**”), and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E (“**Privacy Rule**”), the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C (“**Security Rule**”), and the Notification of Breach of Unsecured Protected Health Information requirements at 45 C.F.R. Part 164, Subpart D (“**Breach Notification Rule**”).

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:

1. Definitions. For the purposes of this Addendum, terms used, but not otherwise defined, shall have the meaning as those in 45 C.F.R. §§ 160.103, 164.304, 164.402, 164.501, and 164.504, and the following terms have the definitions set forth below:

1.1. “**Breach**” shall have the same meaning as the term “breach” at 45 C.F.R. § 164.402.

1.2. “**HIPAA Rules**” shall mean the Privacy Rule, the Security Rule, and the Breach Notification Rule collectively.

1.3. “**Individual**” shall mean the person who is the subject of the PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.4. **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI shall include Electronic Protected Health Information. Notwithstanding anything to the contrary in this Addendum, the term “PHI” as used in this Addendum shall not include any information that BA would otherwise be able to receive as a HIPAA covered entity in the patient’s continuum of care.

1.5. **“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

1.6. **“Security Incident”** shall have the same meaning as the term “security incident” at 45 C.F.R. § 164.304.

1.7. **“Unsecured PHI”** shall have the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.

2. **BA Obligations.** The parties agree that BA shall:

2.1. Not use or disclose PHI other than as permitted by this Addendum, the Underlying Agreement, the Privacy Rule, or as Required By Law;

2.2. Use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum. BA shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. BA shall comply with the applicable requirements of Subpart C of Part 164 of the Security Rule;

2.3. Limit any uses, disclosures, and requests for PHI to the minimum amount necessary to perform or fulfill a specific function required or permitted by this Addendum in accordance with the HIPAA Rules;

2.4. Mitigate to the extent practicable, any harmful effect that is known to BA from a use or disclosure of PHI by BA in violation of this Addendum;

2.5. Timely report to Covered Entity any use or disclosure of PHI of which BA becomes aware that is not provided for or allowed by this Addendum or the HIPAA Rules, including Breaches of Unsecured PHI that BA discovers as required by, and in the manner set forth at, 45 C.F.R. § 164.410, and any Security Incident of which BA becomes aware. The parties acknowledge and agree that this section constitutes notice by BA to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” shall include, but are not limited to, pings and other broadcast attacks on BA’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized acquisition, access, use, or disclosure of PHI;

2.6. In accordance with 45 C.F.R. §§ 164.308(b)(2) and 164.502(e)(1)(ii), require any of its agents or subcontractors that maintain, create, receive, and/or transmit PHI on behalf of BA to agree, in

writing, to the same restrictions, conditions and obligations with respect to the use and disclosure of PHI that apply to BA under this Addendum;

2.7. Make available to Covered Entity such information in such form as Covered Entity may require to fulfill Covered Entity's obligations to provide an Individual with access to, amendment of, and an accounting of disclosures of PHI pursuant to 45 C.F.R. §§ 164.524, 164.526, and 164.528, respectively;

2.8. Make available to the Secretary its internal practices, books and records relating to the use and disclosure of PHI received from, or created by, BA on behalf of Covered Entity, for purposes of determining Covered Entity's compliance with the HIPAA Rules; and

2.9. To the extent BA is delegated to carry out any of Covered Entity's obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.

3. Permitted Uses and Disclosures. The parties agree that BA may:

3.1. Use and disclose PHI to perform the Services provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity;

3.2. Use PHI in its possession for its proper management and administration and to fulfill any of its present or future legal responsibilities;

3.3. Use PHI in its possession to provide Data Aggregation services relating to the Health Care Operations of Covered Entity;

3.4. Disclose PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that: (i) the disclosures are Required By Law; or (ii) BA has received from the third party receiving the PHI reasonable assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as Required By Law or for the purpose for which it was disclosed to the third party, and that the third party will notify BA of any instances of which it is aware in which the confidentiality of the information has been breached; or

3.5. De-identify PHI and use and disclose the de-identified information, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b) and use the de-identified information for any purpose.

4. Obligations of Covered Entity. With respect to the use and/or disclosure of PHI by BA, Covered Entity shall:

4.1. Notify BA, in writing and in a timely manner, of any limitations in its notice of privacy practices, to the extent that such limitations may affect BA's use or disclosure of PHI;

4.2. Notify BA, in writing and in a timely manner, of any change in, or revocation of, consent or authorization by an Individual to use or disclose PHI, to the extent that such change may affect BA's permitted or required use or disclosure of the PHI;

4.3. Notify BA, in writing and in a timely manner, of any restriction to the use and/or disclosure of PHI to which Covered Entity is required, or has agreed in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect BA's use or disclosure of PHI;

4.4. Have entered into a "Business Associate Agreement", as required by 45 C.F.R. § 164.502(e) with any third parties to which Covered Entity directs and authorizes BA to disclose PHI; and

4.5. Only disclose to BA the minimum necessary PHI for BA to provide the Services to Covered Entity.

5. Term. This Addendum shall become effective on the effective date of the Underlying Agreement and shall expire when all of the PHI provided by Covered Entity to BA is destroyed or returned to Covered Entity pursuant to Section 7.

6. Termination. Notwithstanding any other provision under the Underlying Agreement, the parties agree that this Addendum may be terminated without penalty at any time by either Party if the other Party violates a material obligation under this Addendum, provided, however, the other Party is afforded thirty (30) days opportunity to cure the breach and the other Party does not cure the breach or end the violation within said thirty (30) days. If the parties mutually agree that cure is not possible, this Addendum shall terminate immediately.

7. Return or Destruction of PHI. Upon termination or expiration of this Addendum, BA shall return to Covered Entity any and all PHI received from, or created by BA on behalf of, Covered Entity that is maintained by BA in any form whatsoever, including any copies or replicas. If returning the PHI to Covered Entity is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies or replicas. Should the return or destruction of the PHI be determined by BA to be not feasible, the parties agree that the terms of this Addendum shall extend to the PHI, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible.

8. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties agree to take such action as is necessary to comply with the standards and requirements of the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request due to a change in the law, the other Party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum.

9. Independent Contractors. In the performance of the Services and the obligations under this Addendum, the parties acknowledge and agree that each Party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent, or master/servant relationship.

10. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity and BA to comply with the HIPAA Rules. The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement between the parties that may conflict or appear inconsistent with any provision of this Addendum.

11. No Third Party Beneficiaries. Nothing express or implied in this Addendum 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.

12. Notice. Any notice required under this Addendum shall be delivered in writing to BA or Covered Entity, as appropriate, and submitted to the address indicated below:

For BA: Walgreens Privacy Office
200 Wilmot Road, MS 9000
Deerfield, Illinois 60015
Phone: (847) 236-6518
Fax: (847) 236-0862
Email: privacy.office@walgreens.com
Attn: Privacy Officer

For Covered Entity: The address set forth in the Underlying Agreement

13. Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section in effect or as amended and for which compliance is required at the time.