

## PHARMACY 340B SERVICES AGREEMENT

THIS PRESCRIPTION DRUG SERVICES AGREEMENT ("AGREEMENT") is made and entered into by and between County of Tulare ("COVERED ENTITY") and Rite Aid HDQTRS. Corp. for itself and its affiliates and subsidiaries operating Pharmacies listed in attachment Schedule A ("PHARMACY"), as of July 9<sup>th</sup> Day of 2017 ("EFFECTIVE DATE")

**WHEREAS**, The 1992 Veteran's Health Care Act created Section 340B of the Public Health Services Act, which classifies certain health care clinics, Federally Qualified Health Centers and Look-alikes, Ryan White Centers, Black Lung Centers, Hemophilia Treatment Centers, Critical Access Hospitals, Disproportionate Share Hospitals, Children's Hospitals, Sole Community Hospitals, and including this COVERED ENTITY, as Covered Entities eligible to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS").

**WHEREAS**, COVERED ENTITY and PHARMACY mutually desire to enter into a "ship to/bill to" arrangement under which PHARMACY will dispense such drugs on behalf of COVERED ENTITY only to eligible COVERED ENTITY outpatients, charge and collect for such drugs, all on COVERED ENTITY's behalf (receive drug shipments from COVERED ENTITY's drug wholesale 340b vendor to replenish inventory of PHARMACY) and COVERED ENTITY will be billed by wholesaler and will pay for such drugs, in compliance with applicable laws and regulations.

**WHEREAS**, COVERED ENTITY has retained a third party administrator to coordinate, manage, and facilitate: member eligibility and claims adjudication, formulary, 340B drug price management, co-payments, payments to PHARMACY, collections from PHARMACY, 340B drug inventory control and ordering for PHARMACY replenishment, disbursements to COVERED ENTITY, and other related pharmacy benefits management services.

**WHEREAS**, COVERED ENTITY and PHARMACY mutually acknowledge that their intent in entering into this Agreement is solely to facilitate COVERED ENTITY's participation in the 340B drug purchasing program. The services provided each to the other 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.

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements hereinafter set forth, COVERED ENTITY and PHARMACY hereby agree to the following terms and conditions:

### DEFINITIONS

#### 340B DRUG PRICE

The term "340B DRUG PRICE" refers to the price required to be charged under the 340B Program by manufacturers to COVERED ENTITY to replenish COVERED DRUGS dispensed to ELIGIBLE PATIENTS of the COVERED ENTITY. The Parties agree to verify and adjust pricing to reflect true pass through pricing as to mark up or down for COVERED DRUGS.

#### CLAIMS OR CLAIM FORMS

"CLAIMS" or "CLAIM FORMS" shall refer to the procedure for transmitting information to the applicable payor for the COVERED DRUGS and COVERED ENTITY's 340B third party administrator and/or its claims processor via on-line point-of-sale ("POS"), electronic file, Universal Claim Form ("UCF"), magnetic tape, or diskette by the COVERED ENTITY and PHARMACY(s), and the content thereof, as necessary to evaluate whether a prescription order filled by COVERED ENTITY meets the standards established by COVERED ENTITY for dispensing COVERED DRUGS.

#### COLLECTED AMOUNT

"COLLECTED AMOUNT" means the amount of CO-PAYMENTS and THIRD PARTY PAYMENTS received by PHARMACY for dispensing COVERED DRUGS.

#### CO-PAYMENTS

"CO-PAYMENT" means any co-payment, deductible or coinsurance amount that PHARMACY is required to collect from ELIGIBLE MEMBERS. This may include such amounts required to be collected by PHARMACY(s) from ELIGIBLE MEMBERS using the Federal Drug Discount Card – FDDC™, pursuant to the policies of the COVERED ENTITY. CO-PAYMENTS may include a zero (0) CO-PAYMENT, partial CO-PAYMENT, or (by way of example and not limitation) a one hundred percent (100%) CO-PAYMENT whereby the ELIGIBLE PATIENT pays the entire prescription fee as applicable if the CaptureRx Federal Drug Discount Card (i.e., cash card) ("FDDC") is utilized.

#### COVERED DRUGS

"COVERED DRUGS" refer to drugs that are approved by COVERED ENTITY's 340B third party administrator, as authorized and approved by COVERED ENTITY, for an ELIGIBLE MEMBER and dispensed by a PHARMACY(s) and replenished by COVERED ENTITY to PHARMACY under the 340B drug purchase program.

#### ELIGIBLE MEMBERS OR ELIGIBLE PATIENTS

"ELIGIBLE MEMBERS" OR "ELIGIBLE PATIENTS" shall refer to those individuals whom COVERED ENTITY determines meet the statutory 340B patient definition and criteria as set forth in the guidance issued by the Health Resources and Services Administration ("HRSA") Office of Pharmacy Affairs ("OPA") in 61 Fed. Reg. 55156, as may be amended from time

to time and are entitled to prescription services for COVERED DRUGS through the COVERED ENTITY and the COVERED ENTITY'S 340B third party administrator. ELIGIBLE PATIENTS shall include only those patients who receive COVERED DRUGS where the 340B DRUG PRICE is less than the COLLECTED AMOUNT. All COVERED ENTITY patients who are Medicaid beneficiaries and for whom CLAIMS for pharmaceuticals are reimbursable by a state Medicaid program are expressly excluded from this definition, unless COVERED ENTITY and the state have established a mechanism to avoid duplicate discounts and such mechanism is agreed upon by the Parties hereto. Any such arrangement shall be in compliance with the current HRSA guidelines.

#### **FILL FEE**

The term "FILL FEE" means that amount established by agreement between COVERED ENTITY and PHARMACY on the date of execution hereof as listed in the attached Schedule A, and modified thereafter by agreement between PHARMACY and COVERED ENTITY, as the standard fee for PHARMACY filling and dispensing a single prescription to an ELIGIBLE PATIENT on behalf of COVERED ENTITY.

#### **PAYMENT BATCH and PAYMENT BATCH PERIOD**

The terms "PAYMENT BATCH" and "PAYMENT BATCH PERIOD" refer to the CLAIMS and the time in which CLAIMS are compiled by COVERED ENTITY's third party administrator. A PAYMENT BATCH is compiled no greater than seventy-two (72) business hours after the close of a "PAYMENT BATCH PERIOD" which includes CLAIMS for half of the month's days.

#### **REPLENISHMENT**

"REPLENISHMENT" refers to the process by which the COVERED ENTITY's 340B third party administrator ordering COVERED DRUGS on the COVERED ENTITY's behalf from the SUPPLIER at 340B DRUG PRICES to replace the inventory used by PHARMACY to fulfill the COVERED ENTITY's prescription request for ELIGIBLE MEMBERS. Unless otherwise agreed to by PHARMACY, all REPLENISHMENTS shall be made by matching the eleven (11) digit NDC number ("NDC#") for the COVERED DRUGS in compliance with applicable law.

#### **THIRD PARTY CLAIMS and PAYMENTS**

The terms "THIRD PARTY CLAIMS" and "THIRD PARTY PAYMENTS" refer to prescriptions of COVERED DRUGS submitted by PHARMACY(s) for COVERED ENTITY's ELIGIBLE MEMBERS to payers other than COVERED ENTITY and fee-for-service State Medicaid ("Third Party Payors"), and payments received by PHARMACY(s) from these payers. For clarity, Third Party Payors do not include fee-for-service State Medicaid. However, Third Party Payors will include Medicare Part D Programs and Managed Medicaid where allowed by laws and regulations. In addition, PHARMACY and/or COVERED ENTITY may provide to its third party administrator a list of BIN/PCN and groups which shall be excluded from third party claims review.

#### **1. OBLIGATION OF PHARMACY. During the term of this Agreement, PHARMACY shall:**

- A. **Third Party Administrator Contract** – Unless otherwise agreed to in writing by the parties, PHARMACY must contract with COVERED ENTITY's designated "340B third party administrator," CaptureRx®, of San Antonio, Texas and use the "CaptureRx® 340B Pharmacy Network Agreement" and any other related processing contract necessary to process and adjudicate COVERED ENTITY's ELIGIBLE MEMBER claims under this Agreement.
- B. **Office Of Pharmacy Affairs Self Certification** –COVERED ENTITY, in conjunction with the 340B third party administrator, will register with HRSA using the online Contract Pharmacy Registration as required by the Office of Pharmacy Affairs. PHARMACY shall not provide services under this Agreement unless and until such registration is effective.
- C. **Render PHARMACY SERVICES and COVERED DRUGS**. – PHARMACY shall provide PHARMACY SERVICES to COVERED ENTITY ELIGIBLE MEMBERS by stocking and dispensing "COVERED DRUGS", which are: 1). "Legend Drugs," that is those drugs which by federal law can be dispensed only pursuant to a prescription and are required to bear the Legend "Caution – Federal Law prohibits dispensing without a prescription." Or "Rx Only", AND 2). Ordered prescriptions by COVERED ENTITY medical staff and other legally qualified health care providers affiliated with COVERED ENTITY as approved by COVERED ENTITY through on-line claims adjudication or retrospective THIRD PARTY CLAIMS analysis, AND 3) Approved by COVERED ENTITY's through its designated 340B third party administrator by on-line adjudication or retrospective THIRD PARTY CLAIMS analysis. The COVERED DRUGS ordered for REPLENISHMENT by COVERED ENTITY, subject to this Agreement, are the property of the COVERED ENTITY less those amounts which have been dispensed by the PHARMACY from PHARMACY's own drug stock.
- D. **PHARMACY SERVICES Charges** - PHARMACY shall render PHARMACY SERVICES to COVERED ENTITY's ELIGIBLE PATIENTS and charge for such services in accordance with the rate set forth in Schedule A of this Agreement, such Schedule to have addendums attached from time to time, after receiving written approval by both Parties to this Agreement. PHARMACY will charge the FILL FEE and/or CO-PAYMENT(s) set forth in Schedule A of the Agreement, and shall not bill any ELIGIBLE PATIENT for covered benefits except to the extent of any deductible or CO-PAYMENTS. Any and all switch or transaction charges may be deducted from reimbursements as stated in Schedule A of this Agreement.

- E. Claims Submission. – PHARMACY shall submit CLAIMS by electronic on-line systems using prevailing NCPDP (National Council for Prescription Drug Programs) standards. All CLAIM submissions must also include patient demographic information, but not limited to, patient first name, patient last name, patient date of birth, and patient sex.
- F. Acceptance of REPLENISHMENT Orders. – PHARMACY shall accept all inventory REPLENISHMENTS of COVERED DRUGS from the wholesaler mutually agreed upon by COVERED ENTITY and PHARMACY. PHARMACY is not responsible for any fee associated with the delivery of COVERED DRUGS from wholesaler.
- G. Collection of FDDC™ CO-PAYMENTS. – As defined in Schedule A of this Agreement, PHARMACY shall allow COVERED ENTITY and its 340B third party administrator, to collect any and all CO-PAYMENTS paid to PHARMACY by COVERED ENTITY ELIGIBLE MEMBERS for COVERED DRUGS. Any CO-PAYMENTS shall be collected and submitted to COVERED ENTITY by PHARMACY on a semi-monthly basis. The method and process of collection shall be defined in Schedule A of this Agreement.
- H. Collection of THIRD PARTY PAYMENTS and CO-PAYMENTS. – PHARMACY shall remit to COVERED ENTITY and/or its 340B third party administrator, any and all THIRD PARTY PAYMENTS received by PHARMACY from Third Party Payors for COVERED DRUGS dispensed to COVERED ENTITY's ELIGIBLE MEMBERS, and any Third Party Payor CO-PAYMENTS paid by COVERED ENTITY's ELIGIBLE MEMBERS for COVERED DRUGS to PHARMACY less subsequent payment to PHARMACY of PHARMACY FILL FEES as set forth in Schedule A of this Agreement. Any collected THIRD PARTY PAYMENTS and CO-PAYMENTS shall be submitted to COVERED ENTITY by PHARMACY on at least monthly basis. The method and process of collection shall be defined in Schedule A of this Agreement. Under no circumstances will Third Party Payors include any fee-for-service State Medicaid, unless COVERED ENTITY, PHARMACY and the State Medicaid agency have established an arrangement to prevent duplicate discounts, in compliance with the current HRSA guidelines.
- I. Maintenance of Records & Logs. – PHARMACY agrees to maintain accurate, complete, up-to-date, and otherwise in conformance with all applicable state and federal laws and regulations and generally accepted standards and good pharmacy practice auditable records for services provided hereunder to ELIGIBLE MEMBERS, so as to permit effective patient care and quality review allowing the COVERED ENTITY to confirm compliance with 340B Program standards and this Agreement. PHARMACY agrees to retain such records for a period of five (5) years from the date of service or as required by law, whichever is greater. PHARMACY shall require COVERED ENTITY patients to sign a signature log at the delivery of COVERED DRUGS prescription, and shall maintain such signatures on file. Notwithstanding the foregoing, as permitted by law, in lieu of a signature log, PHARMACY may maintain an electronic tracking system or use its POS to record and confirm the receipt of COVERED DRUGS in accordance with industry standards.
- J. Audits. – Subject to all laws, rules and regulations applicable to patient confidentiality, COVERED ENTITY, designated auditing agents of COVERED ENTITY, drug manufacturers, and the Office of Pharmacy Affairs, a division of the U.S. Health Resources and Services Administration, and their authorized agents respectively, shall be permitted access during the PHARMACY's regular business hours, at COVERED ENTITY's sole cost and expense, and upon reasonable notice, to review such books, records, and prescription files of the PHARMACY directly related to the services provided by PHARMACY hereunder as may be reasonably necessary to perform an audit under the terms of this Agreement, following generally accepted auditing procedures. It is understood that such audits may be made at any time during the term of this Agreement and within one year after its expiration, subject to all laws, rules and regulations applicable to the 340B program and patient confidentiality. Should such audit determine that a claim(s) was (were) submitted which resulted in overpayment to PHARMACY and/or diversion of COVERED DRUGS, COVERED ENTITY shall have the right to recover the amount that was overpaid for such COVERED DRUGS in PHARMACY's stock by submitting written notice to PHARMACY of the amount of the purported overpayment. PHARMACY shall have fourteen (14) days to dispute the overpayment or COVERED DRUG diversion. The Parties will then use "best efforts" to resolve the dispute within 30 days. No deduction or withholding shall be made until the dispute is resolved. Under no circumstance shall COVERED ENTITY, 340B third party administrator or their respective agent require PHARMACY to be bound by extrapolation as a basis for calculating adjustments to claims previously paid without PHARMACY's prior written approval of the extrapolation methodology; absent such prior approval, adjustments to claims previously paid shall be based only on actual identifiable error(s) in the submission, processing or payment of a particular claim(s). COVERED ENTITY is liable to the drug manufacturers of the COVERED DRUGS in the amount equal to any reduction, overpayment, rebate or recoupment related to the price of the COVERED DRUGS. Should such audit determine that a claim(s) was (were) submitted which resulted in underpayment to PHARMACY, COVERED ENTITY shall have fourteen (14) days to dispute the underpayment or COVERED DRUG replenishment. The Parties will then use "best efforts" to resolve the dispute within 30 days. No deduction or withholding shall be made until the dispute is resolved. Under no circumstances shall COVERED ENTITY be bound by extrapolation as a basis for calculating adjustments without its prior written approval or government order.
- K. Compliance with Laws. - PHARMACY shall be solely responsible for all professional advice and prescription drug services rendered by it for COVERED ENTITY's ELIGIBLE MEMBERS. PHARMACY

is responsible for and agrees to render services as herein provided in accordance with the rules and regulations of the applicable State Board of Pharmacy, all laws of the applicable State, and all applicable laws and regulations resulting from the Veteran's Health Care Act of 1992 (P.L. 102-585, sec 602). It is expressly understood that relations between the ELIGIBLE MEMBERS and PHARMACY shall be subject to the rules, limitations, and privileges incident to the pharmacy-patient relationship. PHARMACY shall be solely responsible, without interference from the COVERED ENTITY or its agents, to said ELIGIBLE MEMBER for PHARMACY SERVICES and advice, including the right to refuse to serve any individual where such service would violate pharmacy ethics or any pharmacy laws or regulations. PHARMACY will comply with all applicable requirements and restrictions of Section 340B of the Public Health Service Act and any accompanying regulations or guidelines, including, but not limited to, the prohibitions on duplicate discounts/rebates, and drug diversion. PHARMACY agrees to be in compliance with the provisions of the Contract Pharmacy Services Guidelines as amended or superseded and as currently set forth in the Federal Register, Vol. 75, No. 43, March 5, 2010, which can be found at <https://www.gpo.gov/fdsys/pkg/FR-2010-03-05/pdf/2010-4755.pdf> and any subsequent revisions to same made during the term of this Agreement. The Parties acknowledge and agree that the benefits to PHARMACY hereunder do not require, are not payment for and are not in any way contingent upon the referral, admission or any other arrangement for the provision of any item or service. The Parties further acknowledge and agree that, notwithstanding anything herein to the contrary, neither Party is required to refer any patient to any health care provider or purchase pharmacy services from any source. The Parties further acknowledge and agree that this Agreement shall not be construed to induce or encourage the referral of patients or the purchase of pharmacy services or supplies.

- L. Insurance. - PHARMACY shall maintain appropriate Professional Malpractice and General Liability insurance including blanket contractual liability in amounts not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) aggregate. PHARMACY shall provide COVERED ENTITY, or its agent, evidence of such insurance upon request during the entire term of this Agreement. PHARMACY hereby acknowledges that it shall return the signed Agreement along with a copy of its licenses.
- M. Medicaid Prescriptions. - Notwithstanding anything herein to the contrary, PHARMACY will not use COVERED DRUGS to dispense prescriptions paid for by fee-for-service state Medicaid, but will use its non-340B inventory, and bill and collect Medicaid on its own account.
- N. Prohibition on Resale or Transfer. - PHARMACY agrees that it will not resell or transfer a COVERED DRUG, less those amounts which have been dispensed by the PHARMACY from PHARMACY's own drug stock, to an individual who is not an ELIGIBLE MEMBER and has not been approved by the COVERED ENTITY's 340B third party administrator.
- O. Patient Choice. - PHARMACY understands and agrees that ELIGIBLE MEMBERS may elect not to use PHARMACY for PHARMACY SERVICES. In the event that ELIGIBLE MEMBERS elects not to use PHARMACY for such services, the ELIGIBLE MEMBERS may obtain the prescription from the pharmacy provider of his or her choice. Subject to a patient's freedom to choose a provider of pharmacy services, COVERED ENTITY may inform patients that they may be eligible for a discount on prescription drugs ordered by COVERED ENTITY, other than Medicaid prescriptions, and advise them that such discount has been arranged for only at PHARMACY.
- P. 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 of 1996 ("HIPAA"), and therefore responsible for compliance with HIPAA standards. The Parties agree to protect and respect the rights of the patients of COVERED ENTITY and PHARMACY 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 only as permitted by applicable laws, rules and regulations, and to protect patient-specific information from unnecessary disclosure to persons not employed or contracted for by the parties, and from their own employees and contractors unless they have a need to know and agree to maintain the confidentiality of patient-specific information. 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 transmissions of protected health information. Failure by either party to abide by these requirements and cure as set forth in Section 3 shall be a basis for immediate termination of this Agreement. In furtherance of the foregoing, and during the term of this Agreement, COVERED ENTITY shall enter into a HIPAA-compliant Business Associate Agreement with third party administrator, whereby the third party administrator is COVERED ENTITY's business associate, and PHARMACY shall enter into a HIPAA-compliant Business Associate Agreement with third party administrator, whereby third party administrator is PHARMACY's business associate.
- Q. COVERED ENTITY Location(s) Serviced. - PHARMACY agrees it will provide PHARMACY SERVICES contracted for under this Agreement, as specified in Schedule A.

2. OBLIGATION OF COVERED ENTITY. During the term of this Agreement, COVERED ENTITY shall:

- A. Eligibility and Adjudication. - COVERED ENTITY shall contract with a 340B third party administrator to approve COVERED DRUGS dispensed by PHARMACY for COVERED ENTITY ELIGIBLE MEMBERS via an online claims adjudication system. PHARMACY may provide 340B third party administrator with a list of prohibited third party payors whose members and/or claims may not be processed in any event as COVERED ENTITY ELIGIBLE MEMBERS or COVERED DRUGS, respectively. If COVERED ENTITY disagrees with PHARMACY list of prohibited third party payers, COVERED ENTITY has the right to terminate Agreement.
- B. Inventory Management and Tracking. - The parties to this Agreement understand that, pursuant to Section 340B, COVERED ENTITY may be liable to the drug manufacturers of the COVERED DRUGS in the amount equal to the reduction in the price of the COVERED DRUGS in the event that the COVERED DRUG is sold or otherwise transferred to a non-COVERED ENTITY ELIGIBLE MEMBER. PHARMACY shall not be liable to drug manufacturers as a result of COVERED DRUGS being sold or otherwise transferred to a non-COVERED ENTITY ELIGIBLE MEMBER. COVERED ENTITY and/or its designated wholesaler and/or 340B third party administrator shall establish and maintain a tracking system of COVERED DRUGS inventory at PHARMACY.
- C. REPLENISHMENT of PHARMACY Drug Stock. - COVERED ENTITY shall purchase Drug Stock for REPLENISHMENT of COVERED DRUGS dispensed by PHARMACY for ELIGIBLE MEMBERS and approved by COVERED ENTITY's 340b third party administrator. Replenishment of PHARMACY's inventory shall be by eleven (11) digit NDC (National Drug Code) Number (NDC#) and quantity used. Replenishment begins after the total quantity unit(s) of a bottle, package or vial has been filled by PHARMACY for COVERED ENTITY ELIGIBLE MEMBERS and approved by COVERED ENTITY's 340B third party administrator. Any quantity unit overage or underage by NDC#, shall be managed under Section 2, Paragraph B. "Inventory Management & Tracking" of this Agreement. Delivery of replenished stock shall be defined by the Schedule A of this Agreement. Delivery shall be provided by a drug wholesaler designated and contracted by COVERED ENTITY. All payments of drug wholesaler invoices are the sole responsibility of the COVERED ENTITY. In the event a COVERED DRUG is out of stock or no longer available in the marketplace ("UNAVAILABLE DRUG"), COVERED ENTITY shall be required to immediately pay PHARMACY the actual cost of such UNAVAILABLE DRUG. For UNAVAILABLE DRUGS, actual cost will be determined using 340B third party administrator's global acquisition cost.
- D. Payments of FILL FEES to PHARMACY by COVERED ENTITY. - COVERED ENTITY and its 340B third party administrator shall make any and all FILL FEE payments to PHARMACY as set forth in Schedule A of this Agreement. Payments shall be made to PHARMACY after each PAYMENT BATCH.
- E. Inventory Remediation for PHARMACY. - COVERED ENTITY and its 340b third party administrator will conduct Inventory Remediation monthly, by which the 340b third party administrator will review any claim quantity balance that has not been replenished by orders greater than 90 days from the date in which the claim has been approved by the 340B third party administrator. The balance of claim quantity will be set to zero and the amount due to the pharmacy and the value of this balance of these drug items shall be paid to PHARMACY as outlined in Schedule A.
- F. Reports to PHARMACY. - COVERED ENTITY and its 340B third party administrator shall provide after each PAYMENT BATCH to PHARMACY the following reports, including but not limited to: (These reports may also be provided to PHARMACY to review by on-line systems and in an editable agreed upon electronic format)
- i. EOB Pharmacy Report (Approved 340B Claims)
  - ii. 340B Inventory Pending Balances Report
  - iii. 340B Inventory Replenishment Order Report
  - iv. Pharmacy Account Ledger
  - v. Filling Fee Reconciliation Report (Invoice)
- G. On-Line System. - COVERED ENTITY and its 340B third party administrator shall provide PHARMACY access to an on-line system which determines 340B eligibility and what are COVERED DRUGS, tracks and manages inventory, places orders for REPLENISHMENT, creates and manages PAYMENT BATCHES, and allows for reporting and exportation of data. The Parties agree that this shall be through the CaptureRx system.
- H. Recoupment of Retroactive Denials. - COVERED ENTITY and its 340B third party administrator, CaptureRx®, shall be jointly and severally responsible for any and all recoupments from PHARMACY resulting from an audit or retroactive denial (e.g. for Medicaid or commercial conflicts) for COVERED DRUGS dispensed to COVERED ENTITY ELIGIBLE MEMBERS. PHARMACY will notify COVERED ENTITY and/or its 340B third party administrator regarding any retroactive recoupment for COVERED DRUGS dispensed to COVERED ENTITY ELIGIBLE MEMBERS to ensure timely repayment to the third party payor by COVERED ENTITY. Upon receipt of a report from PHARMACY to COVERED ENTITY and its 340B third party administrator, identifying any COVERED DRUGS' THIRD PARTY PAYMENTS and COPAYMENTS previously collected by COVERED ENTITY and its 340B third party

administrator that were not paid to, charged-back, and/or collected by PHARMACY in the amounts previously collected by COVERED ENTITY and its 340B third party administrator, COVERED ENTITY and its 340B third party administrator shall recalculate the claim and credit or debit PHARMACY any difference in payments within 30 days of receipt of report from PHARMACY as to which COVERED ENTITY and 340B third party administrator agree is an accurate report.

- I. Compliance with Laws. - COVERED ENTITY shall be solely responsible for all professional advice and health care services rendered by it to ELIGIBLE MEMBERS. COVERED ENTITY will comply with all of the requirements and restrictions of Section 340B of the Public Health Service Act and any accompanying regulations or guidelines, including, but not limited to, the prohibitions on duplicate discounts/rebates, and drug diversion. COVERED ENTITY agrees to be in compliance with the provisions of the Contract Pharmacy Services Guidelines as set forth in the Federal Register, Vol. 75, No. 43, March 5, 2010, which can be found at <ftp://ftp.hrsa.gov/bphc/pdf/opa/FR08231996.pdf and any subsequent amendments made during the term of this Agreement as well as applicable healthcare laws, including but not limited to HIPAA and any other laws, rules and or regulations applicable to its performance hereunder. COVERED ENTITY agrees to notify the Office of Pharmacy Affairs, in writing, of any changes in the contract arrangement. The Parties acknowledge and agree that the benefits to COVERED ENTITY hereunder do not require, are not payment for and are not in any way contingent upon the referral, admission or any other arrangement for the provision of any item or service. The Parties further acknowledge and agree that, notwithstanding anything herein to the contrary, neither Party is required to refer any patient to any health care provider or purchase pharmacy services from any source. The Parties further acknowledge and agree that this Agreement shall not be construed to induce or encourage the referral of patients or the purchase of pharmacy services or supplies. The Parties further acknowledge and agree that any compensation to be paid to Rite Aid and or PHARMACY has been negotiated through an arms-length transaction, is consistent with fair market value of services and was not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under State or Federal healthcare programs including Medicaid and/or Medicare.
- J. Medicaid. - COVERED ENTITY shall be responsible for determining and identifying COVERED ENTITY patients who are beneficiaries (whether fee-for-service or Managed Medicaid) and COVERED ENTITY shall be responsible for prohibiting the designation of any such patients as ELIGIBLE PATIENTS.

**3. TERM AND TERMINATION.** 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 either party provides prior written notice to the other of such party's intention not to renew, at least sixty (60) days prior to such anniversary date, or until earlier terminated by:

- 3.1. Mutual agreement of the parties;
- 3.2. Thirty (30) days prior written notice by either party;
- 3.3. COVERED ENTITY, immediately, upon a material breach of this Agreement by PHARMACY and failure to cure such breach within thirty (30) days of written notice of such breach. Without limiting COVERED ENTITY's right to assert any other act or failure to act as constituting a material breach by PHARMACY, PHARMACY's dispensing of a Covered Drug to an individual who is not an ELIGIBLE MEMBER or any other diversion of a COVERED DRUG shall be deemed to be a material breach if such breach cannot be reconciled under Section 1 Paragraph J. COVERED ENTITY's failure to take action with respect to PHARMACY's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of COVERED ENTITY's right to insist on future compliance with such term or provision. COVERED ENTITY may immediately terminate this Agreement upon the suspension, revocation or limitation of PHARMACY's Medicaid or Medicare provider status or any license, certification and/or ability to provide Pharmacy Services.
- 3.4. PHARMACY, immediately upon a material breach of this Agreement by COVERED ENTITY or its 340B third party administrator and the failure to cure such breach within thirty (30) days written notice of such breach. Without limiting PHARMACY's right to assert any other act or failure to act as constituting a material breach by COVERED ENTITY, COVERED ENTITY's failure to timely restock COVERED DRUGS dispensed by PHARMACY or prescribing of a COVERED DRUG to an individual who is not an ELIGIBLE MEMBER or any other diversion of a COVERED DRUG shall be deemed to be a material breach. PHARMACY's failure to take action with respect to COVERED ENTITY's failure to comply with any term or provision of this Agreement shall not be deemed to be a waiver of PHARMACY's right to insist on future compliance with such term or provision.
- 3.5. Either party, immediately upon written notice to the other, for material breach of patient confidentiality requirements under HIPAA, as specified under Section 1 Paragraph P of this Agreement, or failure to comply with applicable laws as set forth in this Agreement or upon the filing by or against the other party for any act under the Federal Bankruptcy Act or any other law or act constituting or implicating insolvency, reorganization or extension for the relief of creditors.

**4. EFFECT OF TERMINATION.** COVERED DRUGS ordered for REPLENISHMENT by COVERED ENTITY, subject to this Agreement, are the property of the COVERED ENTITY less those amounts which have been dispensed by the PHARMACY from PHARMACY own drug stock. Therefore, COVERED DRUGS which are the property of the COVERED ENTITY upon termination of this AGREEMENT must be returned to COVERED ENTITY or COVERED ENTITY's designated Agent, within thirty (30) days of termination of this Agreement. Reconciliation of any and all FILL FEE payments to and/or CO-PAYMENT

collections from PHARMACY shall also be completed within thirty (30) days of termination of this Agreement. COVERED DRUGS which are property of COVERED ENTITY which can not be returned to COVERED ENTITY or accounted for by PHARMACY as destroyed outdated drugs or drugs previously released to COVERED ENTITY for its own use shall be reconciled under Section 2 Paragraph B except PHARMACY will be considered to have fulfilled reconciliation for such underage by payment by PHARMACY to COVERED ENTITY of the difference between the invoice 340B cost for such COVERED DRUGS and the actual retail cost as determined using 340B third party administrator's global acquisition cost unless the PHARMACY provides proof of its actual retail costs, for COVERED ENTITY to return to Manufacturer when such underage cannot be cured because of unavailability of the exact NDC#.

**5. NOTICES.** All notices provided for in this Agreement shall be in writing sent by facsimile or email followed by regular U.S. mail or shall be sent by registered or certified mail followed by facsimile addressed to the other party at the address shown in this Agreement, or such other address as may be provided to the other party in the same manner as that provided for the giving of any notice. All notices shall be deemed to have been received on the THIRD (3rd) day after the date said notice was mailed or one business day following the time of said notice if sent by facsimile or email, followed by regular mailing.

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

Rite Aid Headquarters Corporation  
  
30 Hunter Lane  
Camp Hill, PA 10711

**6. INDEMNIFICATION** The parties agree to indemnify, hold harmless and defend the other from any liability, loss, damage, claim or expense of any kind, including costs and attorney's fee, which results from the negligent or willful act or omission of the indemnifying party or its agents or employees.

**7. REPRESENTATIONS.** PHARMACY represents and warrants that he or it, as the case may be, is the owner of the pharmacy named herein and that it has full right, power, and authority to enter into this Agreement. COVERED ENTITY represents and warrants that it has full right, power, and authority to enter into this Agreement. PHARMACY warrants that professional pharmaceutical services shall only be rendered by licensed pharmacists to eligible persons, warrants that each prescription ordered shall be dispensed in accordance with a lawful prescriber's directions, and warrants that it is a pharmacy duly licensed under the pharmacy laws of the state in which it operates, and that the pharmacy hereby states that it is not on probation with any State Board of Pharmacy. PHARMACY represents and warrants that it can legally dispense prescriptions for Medicare and Medicaid healthcare programs; and that it is not currently subject to exclusion, suspension or debarment from the Medicare, Medicaid or other government healthcare programs. No representations or warranties have been made or relied upon other than those expressly set forth in this Agreement. COVERED ENTITY and 340b third party administrator hereby represent and warrant that each will screen and remove any fee-for-service Medicaid patients prior to such patient being deemed a COVERED ENTITY ELIGIBLE MEMBER.

**8. RELATIONSHIP BETWEEN PARTIES.** PHARMACY shall perform all professional and other services under the terms of this Agreement as an independent contractor. It shall exercise its own professional judgment on all questions of professional practice. Nothing in this Agreement shall be construed to negate an existing Agreement to provide prescription services between PHARMACY and COVERED ENTITY. or to prevent PHARMACY from marketing COVERED ENTITY to directly contract for similar services from PHARMACY upon pending expiration of a Term under the Agreement or Termination by any Party under the Agreement.

**9. ENTIRE AGREEMENT.** This Agreement, together with referenced implementing documents, constitutes the entire understanding between the parties hereto and shall not be altered or amended except in writing signed by both parties.

**10. 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. 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 Pharmacy that Pharmacy has previously identified as confidential. If Covered Entity determines that it must disclose any information that Pharmacy previously identified as confidential, then it shall promptly give Pharmacy's written notice of its intention to disclose such information Pharmacy shall have a period of five (5) calendar 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 Pharmacy in any efforts to seek such a court order. Covered Entity shall not disclose the information until the five (5) day period has expired without a response from Pharmacy, or Pharmacy has notified Covered Entity that it will not seek such an order, or Pharmacy has sought and a court has declined to issue a protective order for such information. If Pharmacy seeks a protective order for such information, Pharmacy shall defend and indemnify Covered Entity from any and all loss, injury, or claim arising from Covered Entity's withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of Covered Entity and Pharmacy to maintain confidentiality of information under this section continues beyond the term of this Agreement.

**11. MISCELLANEOUS PROVISIONS.** This Agreement, when accepted by COVERED ENTITY, constitutes the entire understanding between the parties hereto. In the event any provision or part thereof contained in the Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not

affect the validity or enforceability or any other provision or part thereof contained herein. This Agreement shall be governed by and interpreted according to the laws of the Commonwealth of Pennsylvania. Any dispute, claim or controversy arising out of or relating to this Agreement shall be determined in the Court of Common Pleas in Cumberland County, Pennsylvania.

**12. FEDERAL HEALTHCARE PROGRAMS.** PHARMACY and COVERED ENTITY each represent and warrant that it and/or any of its employees, agents and subcontractors performing services related to this Agreements are not currently excluded from participation under federal health care programs pursuant to 42 U.S.C. 1320a-7, are not currently the subject of any pending exclusion proceeding under that section, and have not been adjudicated or determined to have committed any action that would subject it to mandatory or permissive exclusion under that section for which such an exclusion has not been implemented.

**13. FEDERAL CONTRACTOR STATUS.** The parties hereto understand and acknowledge that PHARMACY is not a federal contractor or subcontractor and does not wish to become such. COVERED ENTITY represents and warrants that it is not, by virtue of this Agreement, a federal contractor or subcontractor subject to the jurisdiction of the Office of Federal Contract Compliance Programs ("OFCCP.") COVERED ENTITY represents and warrants, to the best of its knowledge, that this Agreement is not a federal contract or subcontract and that there is not underlying prime agreement that could bring this Agreement or the arrangement hereunder, within the jurisdiction of OFCCP. COVERED ENTITY shall indemnify, defend and hold PHARMACY harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by COVERED ENTITY'S breach of the representations and warranties set forth in this Section 12. PHARMACY may terminate this Agreement immediately, if it reasonably determines in its sole discretion that this Agreement is, or is likely to be, a government contract or subcontract.

**14. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument. Signature execution by facsimile or other electronic means shall be considered binding.

**15. ATTACHMENTS.** Schedule A shall be attached hereto and incorporated herein as referenced.

**[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

RITE AID

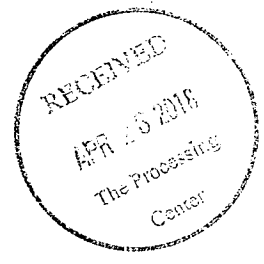
Date: 4/25/2018

By: [Signature] ALISON FARRELL  
Title: VP Managed Care

Approved as to Form  
County Counsel

By: [Signature]  
Deputy 2018674

Date: 4/30/18



**PHARMACY 340B SERVICES AGREEMENT  
Schedule A (Rite Aid)**

**CONTRACT PHARMACY(S) LOCATION(S):**

As set forth on the signature page of the 340B PHARMACY SERVICES AGREEMENT (the "Agreement"), the PHARMACY(S) is located at the following sites:

HRSA EFFECTIVE DATE: 10/01/2014

| Store #        | Address                 | City    | State | Zip   |
|----------------|-------------------------|---------|-------|-------|
| RITE AID #5795 | 1051 WEST VISALIA ROAD  | EXETER  | CA    | 93221 |
| RITE AID #6459 | 1735 E WALNUT AVENUE    | VISALIA | CA    | 93292 |
| RITE AID #5806 | 5212 WEST WALNUT AVENUE | VISALIA | CA    | 93277 |
| RITE AID #6454 | 1645 E TULARE AVENUE    | TULARE  | CA    | 93274 |
| RITE AID #5798 | 262 NORTH HIGHWAY 65    | LINDSAY | CA    | 93247 |
| RITE AID #6522 | 875 NORTH ALTA AVENUE   | DINUBA  | CA    | 93618 |

**COVERED ENTITY LOCATION(S) SERVICED:**

As set forth on the signature page of the 340B PHARMACY SERVICES AGREEMENT (the "Agreement"), the COVERED ENTITY is located at the following sites:

| Covered Entity                                     | Address                 | City   | State | Zip   |
|--|-------------------------|--------|-------|-------|
| Tulare County Health Services dba County of Tulare | 5957 South Mooney Blvd. | Tulare | CA    | 93277 |

This agreement applies to **COVERED ENTITY** and all eligible child sites. **COVERED ENTITY** is the designated billing entity for all child sites.

**PHARMACY FILL FEES:**

**COVERED ENTITY FDDC® or Cash Sliding Fee Patient Prescriptions (If applicable)**

The FILL FEE to be paid for each prescription dispensed for a "COVERED DRUG" shall be:

Twenty- Eight Dollars and Zero Cents (\$28.00) for 340B Approved Claims.

340B COVERED DRUGS shall be limited to only Brand Drugs as defined by PHARMACY and shall not include Controlled Substances Level II (CII) Drugs.

The following are the Pharmacy Reimbursements for non-340B Claims:

Brand: AWP-12% + \$2.50 Dispense Fee  
Generic: MAC or AWP-12% (Equivalent to overall AWP-65%) + \$2.50 Dispense Fee

Single or Dual (one Authorized Generic) Source Generic Drugs shall be reimbursed at Brand Rate for six months from date launched and shall not be included in overall AWP Discount calculation.

**Patient Third Party Prescriptions.**

The FILL FEE to be paid for each prescription dispensed for a "COVERED DRUG" shall be:

Twenty-Eight Dollars and Zero Cents (\$28.00)

COVERED DRUGS shall be limited to only Brand Drugs as defined by PHARMACY and shall not include Controlled Substances Level II (CII) Drugs.

**INVENTORY REMEDIATION:**

As defined in the 340B PHARMACY SERVICES AGREEMENT, COVERED ENTITY shall pay PHARMACY for all remediated inventory, either PHARMACY's Actual Retail Acquisition Cost (ARA), if the PHARMACY provides proof of its actual retail cost, or CaptureRx Retail Acquisition Cost (CRA), which is an average of actual retail acquisition costs across participating pharmacies.

**COLLECTION OF PAYMENT BATCH:**

As defined in Section 1 Paragraph G & H of the 340B PHARMACY SERVICES AGREEMENT PHARMACY shall initiate and submit by ACH (Automatic Clearing House) to COVERED ENTITY's 340B third party administrator, the PAYMENT BATCH amount due. PHARMACY shall pay PAYMENT BATCH within thirty (30) days from its creation and not to exceed thirty-five (35) days from its creation.

**DELIVERY OF REPLENISHMENT STOCK:**

As defined in Section 2 Paragraph B of the Agreement, PHARMACY shall receive REPLENISHMENT STOCK up to five (5) times per week.

**RITE AID PROFESSIONAL SERVICES**  
**CONTRACTS**  
**EXHIBIT A**  
**INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

**A. Minimum Scope & Limits of Insurance**

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$3,000,000.
4. Professional Liability (Medical Malpractice) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$3,000,000 aggregate.

**B. Specific Provisions of the Certificate**

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the contract work.
2. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. CONTRACTOR shall provide prompt written notice to COUNTY should any of the policies required by the agreement be canceled.

**C. Deductibles and Self-Insured Retentions**

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

**D. Acceptability of Insurance**

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

**F. Verification of Coverage**

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.