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June 19, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF A SOLE SOURCE, TEMPORARY, MONTH TO MONTH 340B CONTRACT PHARMACY ADMINISTRATOR SERVICES AGREEMENT WITH RAMSELL CORPORATION (ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

**SUBJECT**

Under Los Angeles County Code, Section 2.121.250(B)(3), request approval of a sole source, temporary, month-to-month 340B Contract Pharmacy Administrator Services Agreement with Ramsell Corporation.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Authorize the Director of Health Services (Director), or his designee, to execute a 340B Contract Pharmacy Administrator Services Agreement, which is exempt from the competitive solicitation requirements of County Code Chapter 2.121, on the basis that it is a temporary and professional or technical service pursuant to Section 2.121.250(B)(3), with Ramsell Corporation, effective date of Board of Supervisor approval, on a month-to-month basis, for up to twelve months, for 340B Contract Pharmacy Administrator services, at an estimated cost not to exceed \$5.9 million per month for pharmaceutical ingredient costs, and \$300,000 per month for transaction costs, pharmacy dispensing fees, and delivery/ mailing fees, of which up to \$60,000 per month is payable to Ramsell, for a total cost not to exceed \$75 million for one year.
2. Delegate authority to the Director, or his designee, to execute 340B Covered Entity Services Agreements with Ramsell on behalf of Department of Health Services (DHS or Department) "covered entities", and to execute 340B Covered Entity Contract Pharmacy

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

#74-D June 19, 2012

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Agreements with retail pharmacies, as needed, to maximize patient access to necessary medications, subject to final review and approval by County Counsel.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS**

The California Department of Health Care Services (DHCS), Centers for Medicare and Medicaid (CMS), and the Health Resources and Services Administration (HRSA), determined that Low Income Health Program (LIHP) – eligible persons with HIV must enroll in the LIHP, rather than receiving their medical care through the Ryan White Part A program and receiving their pharmaceuticals through the State and Ryan White-funded AIDS Drug Assistance Program (ADAP). The federal agencies confirmed that Ryan White funding is funding of “last resort” and thus determined that HIV patients who are LIHP eligible must enroll in the LIHP to receive federal funding for their LIHP covered services.

As many as 5,000 patients in Los Angeles County will be impacted by this transition. The mandatory transition of these patients will begin on July 1, 2012, when the State requires LIHP eligibility screening as part of the ADAP enrollment/re-enrollment process. In preparation of that transition date, the DHCS has informed the County's Department of Health Services (DHS) that DHCS intends to “change screens” in its ADAP eligibility computer system in preparation for the patient transition during June 2012. Accordingly, beginning July 1, 2012, ADAP patients seeking recertification (renewal) of their ADAP benefits will be automatically screened for LIHP eligibility. Those that appear LIHP-eligible will be required to apply for the LIHP.

Patients enrolled in the LIHP, known as Healthy Way LA (HWLA) in Los Angeles County, will need to access medications through HWLA pharmacy networks, and will no longer have access to medications through ADAP.

During the transition, this temporary 340B Contract Pharmacy Administrator Services Agreement with Ramsell is critical to maintaining the health of HIV patients in Los Angeles County, and ensuring compliance with Federal 340B regulations. Timely, uninterrupted access to medications is essential for HIV patients, and lack of access could result in devastating health consequences for this vulnerable population.

This temporary agreement is Los Angeles County's best mechanism to ensure pharmacy access for HIV patients because it provides a broad pharmacy network to patients seen in HWLA HIV clinics, enabling compliance with Federal 340B regulations. Current ADAP patients have access to a pharmacy network comprised of hundreds of easily accessible pharmacies including major chains and HIV specialty pharmacies across the County. Without these 340B contract pharmacy administrator services provided by Ramsell, ADAP patients transitioning to HWLA would be limited to accessing clinic onsite pharmacies, given current federal regulations. HWLA clinics

without onsite pharmacies would have significant difficulty in providing 340B-compliant pharmacy access, given the complicated federal requirements in place for the use of 340B contract pharmacies. In this vulnerable population, which often experiences challenges in areas such as transportation and childcare, long pharmacy commutes and waiting times would likely result in delayed or missed medications and serious health consequences.

With this 340B contract pharmacy network in place, HWLA will be able to provide patients with continuity of care, as many patients will not have to change pharmacies. The HWLA clinics will be able to select the pharmacies most suitable to their patients, and DHS anticipates that many of these pharmacies will be the patient's existing pharmacy sites. The 340B contract pharmacy administrator services will also enable HWLA clinics to access 340B pricing for all dispensed HIV medications, which is particularly important given HWLA's existing 340B pharmaceutical reimbursement model.

It must be noted that Ramsell's dual role as the HWLA 340B contract pharmacy administrator and the State's ADAP claims administrator, provides the ability to reconcile HWLA eligibility information and ADAP enrollment information to maximize accurate responses to claims submissions from pharmacies throughout both the ADAP and HWLA network, all in a real-time manner. This access to information promotes seamless patient care by preventing delays in patients obtaining critical medications, and maximizes access to up-to-date enrollment information for the HWLA clinic, the contract pharmacy, and the HWLA program.

It should also be noted that access to the discounts available under the federal 340B program for these very costly medications is absolutely essential to the financial viability of both the County and community clinics who care for these and other patients across the County. Managing federal 340B compliance for a network of eligible providers, patients and pharmacies is a highly complex and specialized function, requiring a robust software and tracking system. The County would not have the ability to manage these functions independently, particularly given the imminent transition date of July 1.

To that end, the recommended temporary agreement follows a contract pharmacy model approved by the federal government pursuant to its 340B Program. A summary of 340B contract pharmacy administrator services, and how those services fit within the highly regulated and technical requirements of the federal 340B Program, is attached as Attachment I.

Finally, a critical component of transitioning patients with minimal interruption to care is allowing them the opportunity to remain under the care of the same medical provider. Because of the importance of this factor, DHS has sought to maximize continuity by offering all current Ryan White medical care providers HWLA contracts. However,

without the access to real-time electronic claims processing that is provided by the 340B pharmacy administrator contract, HWLA HIV clinic providers would need to carry the high costs of HIV drugs while awaiting payment under the County's current HWLA retroactive reimbursement system. For some providers, maintaining this ongoing expenditure while awaiting retroactive reimbursement would have significant impact clinic cash flow, resulting in a potential inability to remain with the HWLA program, thus causing disruption to patient care.

The Ryan White patient care transition plan, *Ensuring Continuity of Care for Ryan White Beneficiaries*, was submitted to the Board on October 20, 2011. In that report, DHS notified the Board that the Department was working with County Counsel to negotiate an agreement, to be presented to the Board as soon as possible, with a 340B contract pharmacy administrator. At that time, DCHS intended to transition the Ryan White patients to the LIHP imminently, no later than November 1, 2012. Thus, County DHS did not have time to complete a competitive selection process, which typically takes one year or more to complete.

Because negotiations with the vendor could not be completed, in December, 2012, County DHS determined to enter into negotiations with Ramsell Corporation, the State's ADAP provider. On February 7, 2012, DHS sought delegated authority from the Board to enter into a sole source agreement with Ramsell Corporation. County DHS entered into that agreement on March 15, 2012.

On April 11, 2012, AIDS Healthcare Foundation filed suit in the Los Angeles Superior Court, alleging that the County's agreement violated the requirements of Los Angeles County Code Chapter 2.121, commonly known as Proposition A. AHF alleged that the County should have competitively solicited or negotiated the agreement, and that its failure to do so violated Proposition A. It sought a writ declaring the County's agreement with Ramsell void and directing the County to undertake a competitive selection, either a Request for Proposals (RFP) or a competitive negotiation.

On June 6, 2012, Judge Ann Jones ruled that the County abused its discretion in awarding this agreement on a sole source basis, without a competitive selection process that complies with Proposition A. She ruled that the agreement is void and must be set aside. Finally, she ordered the County to file, no later than October 22, 2012, its "return" on the writ, explaining the steps that it will take to comply with her ruling.

This recommendation is the first of a multi-step process that DHS will undertake as the result of Judge Jones' ruling. Consistent with the authority expressly conferred to the County under Proposition A, this temporary, month-to-month agreement will permit DHS to provide this essential service for up to one year while it undertakes a competitive,

Proposition A compliant RFP, consistent with Judge Jones' determination that this agreement is a Proposition A service.

Approval of the first recommendation will allow the Director, or his designee, to execute a sole source, temporary, month-to-month agreement for up to one year, substantially similar to Exhibit I, with Ramsell Corporation for 340B Contract Pharmacy Administrator Services.

Approval of the second recommendation will allow, under the recommended Agreement, for DHS facilities with HIV clinics to have the option to enter into contracts with retail pharmacies to supplement onsite DHS pharmacies, and provide additional patient pharmacy access on an as-needed basis. Under 340B regulations, each facility is a "covered entity" and, under the 340B contract pharmacy model approved by HRSA, would be required to have a 340B pharmacy administrator contract with Ramsell as well as with the contract pharmacies in its network. DHS will establish a separate agreement or agreements with Ramsell for the DHS "covered entity" facilities.

#### **Implementation of Strategic Plan Goals**

The recommended actions support Goal 1, Operational Effectiveness of the County's Strategic Plan.

#### **FISCAL IMPACT/FINANCING**

Under the recommended Temporary Agreement, and consistent with the federal 340B contract pharmacy administrator model, DHS will provide funds to Ramsell to allow it to reimburse the County's Community Partners (CPs) for pharmaceuticals dispensed either directly by the CP or by the contract pharmacies at the established 340B price for brand name drugs or established MAC maximum allowable cost for generic drugs, whichever is less. DHS also will pay Ramsell administrative fees for administering this service. In addition, DHS will provide funds to Ramsell to allow for payment of dispensing fees to HWLA-contracted pharmacies.

Ramsell will receive only administrative fees, not to exceed \$60,000 per month, under the terms of the Temporary Agreement. It should be noted that the majority of costs under this agreement are not related to Ramsell's administrative fees but to the actual 340B costs of the pharmaceuticals themselves and the expenses of participating network pharmacies to provide these drugs, which includes pharmacy dispensing fees and mail order/delivery costs. Ramsell is not a provider of pharmaceuticals, but is simply the fiscal intermediary that will arrange for the HWLA clinic to provide access to 340B-priced drugs through contracted pharmacies across a vast array of pharmacy sites, including but not limited to onsite clinic pharmacies, community retail pharmacies, and chain drug store pharmacies, all in an effort to promote continuity and patient

access. Thus, while it will pass through funds for the County, it is entitled to reimbursement only for its administrative costs, up to \$60,000 per month.

The estimated pharmaceutical ingredient cost per month is not expected to exceed \$5.9 million. The estimated monthly cost for dispensing and patient delivery fees is not expected to exceed \$225,000. As part of the HWLA–Matched Program, federal reimbursement is 50 percent of the costs. For Fiscal Year 2012-13, the fiscal impact will depend on the number of patients who transition to HWLA, but in no way should the cost exceed \$75 million in total.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Consistent with Section 2.121.250(B)(3) of the County Code, the recommended Temporary Agreement is a temporary and professional or technical service and, as such, is exempt from Proposition A, including its competitive selection requirements.

Under the termination provisions of the Temporary Agreement, the County or Ramsell may terminate this agreement without cause upon thirty (30) day notice to Ramsell. This will accommodate DHS' implementation of the successor; Proposition A compliant agreement that will be recommended as the result of the planned RFP.

The Temporary Agreement contains all of the latest Board mandated provisions. The Temporary Agreement also contains provisions to handle the transition of data to the County in the event of termination or upon expiration, to enable the transition to another service provider. The Temporary Agreement also contains a provision on future solicitation, under which Ramsell acknowledges that the County will solicit this service compliant with Proposition A, that the County may enter into a contract for this service as a result, and that Ramsell has no greater right than any other competitor to be selected for that contract by virtue of its present status as a temporary service contractor. County Counsel has reviewed and approved Exhibit I as to form.

### **CONTRACTING PROCESS**

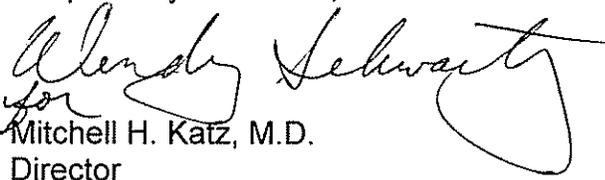
The recommended Temporary Agreement with Ramsell is a temporary service agreement, consistent with the authority for such under Proposition A. DHS will conduct a Proposition A compliant RFP as the next step in its contracting process.

The Honorable Board of Supervisors  
June 19, 2012  
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**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the recommendations will enable DHS to meet the July 1, 2012, transition date for the Ryan White patients by ensuring that these patients have access to vital pharmacy services.

Respectfully submitted,

  
for  
Mitchell H. Katz, M.D.  
Director

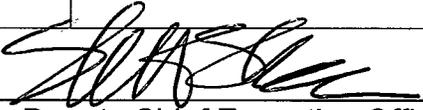
MHK:pps

Enclosure

c: Chief Executive Office  
County Counsel  
Executive Office, Board of Supervisors

## SOLE SOURCE CHECKLIST

Check (√)	<b>JUSTIFICATION FOR SOLE SOURCE CONTRACTS</b>
	Identify applicable justification and provide documentation for each checked item.
	➤ Only one bona fide source for the service exists; performance and price competition are not available.
X	<p>➤ Quick action is required (emergency situation).</p> <p>On June 6, 2012, Judge Ann Jones ruled that the County's existing agreement with Ramsell Corporation for 340B Contract Pharmacy Administrator Services violated Proposition A, Chapter 2.121 of the Los Angeles County Code. Judge Jones declared that contract void and set aside. DHS requires this service for the impending July 1, 2012, transition of Ryan White Care Act beneficiaries into the Low Income Health Program, known in the County as the Health Way Los Angeles Matched Program. This temporary agreement will permit DHS to begin the patient transition and serve the needs of this patient population while it undertakes and completes a Proposition A compliant RFP process</p>
	➤ Proposals have been solicited but no satisfactory proposals were received.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.
	➤ It is most cost-effective to obtain services by exercising an option under an existing contract.
X	<p>➤ It is in the best interest of the County e.g., administrative cost savings, excessive learning curve for a new service provider, etc.</p> <p>On July 1, 2012, the California Department of Health Care Services (CDHCS) intends to begin the transition of eligible Ryan White Care Act beneficiaries into the County's Healthy Way Los Angeles Matched Program. Starting this month, CDHCS began programming its computer system for this transition of the patients from Ryan White and its linked AIDS Drug Assistance Program to the County's HWLA Program. DHS must be ready to meet the needs of this patient population no later than July 1, 2012, when they will be informed that they must apply to the Healthy Way Los Angeles Program. It is in the best</p>

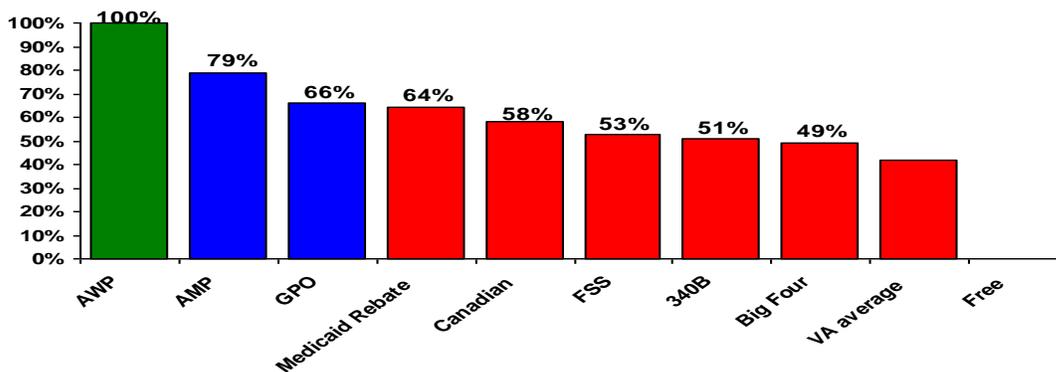
	<p>interest of the County and the transitioning patient population to enter into a temporary agreement for this service pending a Proposition A compliant RFP. Further, it should be noted that Ramsell is the current ADAP contractor to CDHCS and has access to ADAP enrollment and disenrollment data. They are positioned to identify gaps in this care transition, particularly in this vulnerable patient population, to assist the HWLA Matched Program to identify patients who do not enroll and to follow up on their enrollment to ensure that they continue to receive medical and pharmaceutical care.</p>
<p>X</p>	<p>➤ Other reason. Please explain:</p> <p>This is a mitigating action in light of the adverse ruling voiding and setting aside the County's existing agreement for these services. Pursuant to Los Angeles County Code, section 2.121.250(B)(3), a contract for professional or technical services that are also temporary is legally permissible. A temporary and professional/technical services contract is not subject to Proposition A's competitive solicitation/negotiation provision. As such, the County has the discretion to contract for this service. It will competitively solicit, under a Proposition A compliant RFP, during the term of the temporary agreement.</p>
<p>  Deputy Chief Executive Officer, CEO</p>	<p>6/15/12  Date</p>

## The Current ADAP Model for HIV Pharmacy

**HIV Clinics:** All HIV agents for uninsured patients are currently processed through licensed pharmacies, and billed to the State ADAP (AIDS Drug Assistance Program) for reimbursement. HIV clinics currently have a robust ADAP pharmacy network available to them, and do not dispense pharmaceuticals through the use of a dispensary. The current State reimbursement methodology provides a significant margin to the pharmacy submitting the claim for payment, as the acquisition cost is significantly lower than the reimbursement cost for these agents. Some specific 340B HIV clinics have established onsite pharmacies that access HIV agents at a further discount (340B pricing) and bill the State ADAP program at the higher reimbursement rate, which is often 40-50% higher than the drug cost. For agents that cost \$1000 or more per month, there is a significant margin captured by both of these arrangements. Other 340B clinics that do not operate onsite pharmacies direct patients to a wide network of State ADAP contract pharmacies who provide medication dispensing to patients at a non-340B acquisition cost. The State has a dual reimbursement method in place- one for 340B pricing and the other for drugs acquired at a non-340B price.

### PRICING – CLAIMS REIMBURSEMENT

Accessing 340B pricing is critical to both the Community Provider and to the HwLA Program, as this low-pricing tier maximizes the ability to provide uninsured patients with access to the lowest cost for branded drugs. This federal drug pricing program offers significant discounts, particularly important to ensure access to costly brand name agents and this fact becomes extremely relevant in the HIV population, where pharmaceutical treatment primarily involves the use of these costly branded agents. The chart below, derived from information supplied by the Congressional Budget Office (June 2005) -Prices for Brand-Name Drugs Under Selected Federal Programs<sup>1</sup>, identifies the various available US pricing options and average associated discounts for brand name drugs. Note that the VA healthcare system is the only entity type that receives a lower price than the 340B program.



**Legend:**

AWP= publically available average wholesale price paid by drug wholesalers and pharmacies  
 AMP= average manufacturer price paid by wholesalers, net of prompt pay discounts  
 GPO= negotiated group purchasing organization price  
 Medicaid rebate= price paid by Medicaid programs after required manufacturer rebates are deducted  
 FSS= Federally negotiated price for federal purchasers  
 Big Four= Department of Veterans Affairs (VA), the Department of Defense (DoD), the Public Health Service, and the Coast Guard.  
 VA Average= price paid by VA; includes preferred formulary discounts

<sup>1</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/64xx/doc6481/06-16-prescriptdrug.pdf>

It is important to understand that 340B pricing access is critical to ensuring affordable HWLA access to branded drugs for uninsured patients. A drug's 340B price is calculated utilizing a specific formula established by HRSA, and typically results in discounts in the 30-60% range (or higher); this discount is predicated upon calculated discounts from the established AMP price (the average manufacturer price). When a pharmaceutical manufacturer first develops a new drug, the FDA (US Food and Drug Administration) provides the manufacturer with a drug patent for a time period of up to 20 years. This patent protection allows for the manufacturer to recoup their development costs for their new drug, as the sole source for the agent, as well as set the selling price across the various available pricing schemes identified above. Once the drug patent expires, the FDA allows competitors to also manufacture the drug, resulting in significantly lower drug cost through multisource-generic competitive pricing. Multisource generics, through forces of competition, are priced much lower.

The 340B drug pricing program is beneficial when purchasing branded pharmaceutical agents, as there is no market competition for these branded agents- the prices are established by the manufacturer. Therefore, 340B access is critical when purchasing branded agents, and is not as important for multisource generic drug purchases, as these are generally considerably less expensive, and market competition ensures a low cost.

### **340B REGULATIONS**

The Federal government, through the HRSA Office of Pharmacy Affairs, has established specific regulations that govern 340B covered entity access to 340B priced drugs. The primary focus of these regulations: (1) prevent drug diversion and (2) ensure that Medicaid duplicate discounts are avoided. As the number of participants in the 340B program has grown, HRSA focus on strengthening regulations has increased, particularly as there are many non-profit hospitals that now have access to 340B pricing.

In terms of the HWLA program, the focus on prevention of drug diversion is the most important, as the patients do not qualify for Medicaid. Federal regulations require that 340B priced drugs are used only for registered patients of the Covered Entity, with the following "patient definition" in place:

1. the Covered Entity has established a relationship with the individual, such that the covered entity maintains records of the individual's health care; AND
2. the individual receives health care services from a health care professional who is either employed by the Covered Entity or provides health care under contractual or other arrangements (e.g. referral for consultation) such that responsibility for the care provided remains with the covered entity; AND
3. the individual receives a health care service or range of services from the Covered Entity which is consistent with the service or range of services for which grant funding or Federally-qualified health center look-alike status has been provided to the entity. *Note-Disproportionate share hospitals are exempt from this requirement.*

Therefore, 340B programs must be established to ensure compliance with the 3-pronged patient definition above in order to ensure regulatory compliance.

Prior to March 2010, a one-to-one relationship was required between the 340B covered entity and the pharmacy, i.e. each clinic could only utilize a single pharmacy, either a self-owned pharmacy or a contracted pharmacy.

In March 2010, HRSA published “Multiple Contract Pharmacy” guidelines<sup>2</sup> in the Federal Register. These new guidelines focused on increasing patient access via the use of multiple pharmacies by a single 340B clinic, rather than the previous one-to-one relationships in place prior to 2010. However, given the increased potential drug diversion possibilities with the use of multiple pharmacies, HRSA identified required specific regulations and contracts to be established in effort to increase detection of drug diversion.

The multiple contract pharmacy model allows clinics to utilize community retail pharmacies, who provide service to a variety of patients, to dispense clinic-purchased 340B priced drugs. There is an understandable concern in relation to potential drug diversion. Imagine the scenario—a community pharmacy that sees walk-in patients from a variety of sources, must contractually ensure that 340B-purchased drugs are only dispensed to patients of the contracted covered entity, despite the fact that the pharmacy dispenses the same medications for other non-340B qualified patients.

Per HRSA multiple contract pharmacy regulations, a 340B clinic must have specific policies in place prior to utilizing multiple contract pharmacies, including the establishment of processes and contracts to prevent drug diversion. The contractual requirements are clearly described in the Federal Register notice, and highlighted below:

1. Required contract between the 340B covered entity clinic and each contract pharmacy
2. Maintenance of auditable records demonstrating compliance with 340B regulatory requirements
3. Clinic to submit registration with HRSA for each identified contract pharmacy so that this information is readily available to the public on the HRSA 340B database
4. Establishment of a “ship to/bill to” wholesaler arrangement between the 340B covered entity clinic and the drug wholesaler

After review of the federal requirements and recognizing the complexity of the information exchange required for the multiple contract pharmacy model, DHS identified that the use of a vendor to provide the necessary infrastructure, 340B contracting expertise, and software was a necessary element of expansion of the HwLA contract pharmacy model. The need for this vendor infrastructure was identified as critical when CMS notified HwLA of the need to enroll HIV-positive patients in the HwLA program.

### **340B CONTRACT PHARMACY ADMINISTRATOR**

Per information identified above, the requirement to track each 340B drug purchase, to the required tablet/capsule unit level, through the large HwLA healthcare network provided a significant challenge, including provision of the appropriate infrastructure to support the required elements of the HRSA multiple contract pharmacy model. In this model, each time that a patient prescription is dispensed, the systems in place must ensure that the patient,

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<sup>2</sup> <ftp://ftp.hrsa.gov/bphc/pdf/opa/frn011207.pdf>

prescriber, clinic and pharmacy all meet 340B patient definition requirements. Additionally, the wholesaler drug replenishment model, whereby the contract pharmacy is replenished in actual drug (not cost) for each unit dispensed, involves a sophisticated software and systems infrastructure. See attached, "HWLA 340B Contract Pharmacy Process" flowchart.

### **340B BRANDED DRUG PURCHASES**

Per the information provided above (under the "Pricing" section), 340B pricing is utilized only for branded drugs, as the program does not provide a significant advantage for drugs available as multisource generics. As the percentage of branded drugs increases, utilizing 340B pricing is crucial. The HWLA 340B contract pharmacy administrator is contractually obligated to analyze three identified pricing scenarios each time a HWLA claim is processed, and will identify the lowest price. The three pricing scenarios are:

- (1) 340B drug price + negotiated 340B dispensing fee;
- (2) multisource generic MAC (maximal allowable cost) + generic dispensing fee
- (3) usual and customary pharmacy pricing, e.g. \$4 pharmacy programs.

Each time a pharmacy claim is submitted, the 340B contract pharmacy administrator will run the claim through these 3 pricing scenarios and utilize the lowest price. Note- the 340B drug replenishment process identified above will only be used when scenario (1) 340B drug price + 340B dispensing fee is identified as the lowest. If scenario (2) and (3) are identified as the lowest, the administrator will reimburse the pharmacy directly without use of 340B drug replenishment.

For HWLA HIV clinics, the use of 340B drug replenishment will become critical, given the high percentage of branded drugs used in HIV treatment, and the very high cost of these medications.

**340B CONTRACT PHARMACY ADMINISTRATOR  
TEMPORARY SERVICES AGREEMENT**

This 340B Contract Pharmacy Administrator Services Temporary Agreement (“Temporary Agreement”) is entered into this \_\_\_\_ day of June 2012 (“Temporary Agreement Effective Date”), by and between Ramsell Corporation and its affiliates (“Ramsell”), a California corporation, with its principal place of business at 200 Webster Street, Oakland, California 94607; and the County of Los Angeles on behalf of its Department of Health Services (“County”), with its principal place of business at 313 N. Figueroa, Los Angeles, California 90012. Ramsell and County may hereinafter be referred to collectively as the “Parties” or individually as a “Party” to this Temporary Agreement.

**RECITALS**

A. **WHEREAS**, Ramsell is an administrator that provides and manages transparent 340B pharmacy programs, provides pharmacy claims processing and adjudication, negotiates and manages contracts between itself and its network pharmacies, provides 340B administrative services and provides for other related pharmacy benefit administrative services; and,

B. **WHEREAS**, effective July 1, 2012, the California Department of Health Care Services will begin the transition of 5,000 Ryan White Care Act Program beneficiaries to the County's Low Income Health Program, operated by County's Department of Health Services as the Healthy Way Los Angeles Matched Program (“HWLA”); and,

C. **WHEREAS**, integral to the County's ability to accommodate the transition of these patients to its HWLA Matched Program is the ability of those patients and the HWLA Matched Program medical clinics, known in Los Angeles County as the "Community Partners," to access pharmaceuticals; and,

D. **WHEREAS**, County has, among its purposes and objectives under the HWLA Matched Program, in light of the impending patient transition, the need to provide the Community Partners which have 340B Covered Entity status under the Veterans Health Care Act of 1992, with access to a 340B contract pharmacy benefit administrator service for the provision of prescription drug administrative services as a means to decrease the administrative and financial burdens placed upon the Community Partners by this patient transition and as a means to ensure continuity of pharmacy care as well as access to pharmacy care by their patients; and,

E. **WHEREAS**, Ramsell will offer to each HWLA Community Partner with 340B Covered Entity status the opportunity to enter into a separate agreement with Ramsell whereby Ramsell will provide 340B contract pharmacy benefit administrative services to include 340B contract pharmacy network development and management, virtual inventory management, and administrative services as further described herein; and,

F. **WHEREAS**, County and Ramsell desire to enter into this Temporary Agreement pursuant to which Ramsell will serve as a 340B contract pharmacy administrator and 340B solutions provider and provide certain pharmacy benefit administrative services as herein set forth; and,

**G. WHEREAS**, this Temporary Agreement is authorized pursuant to Sections 31000 and 26227 of the California Government Code, by Sections 1445 and 1451 of the California Health and Safety Code, and by Chapter 2.121 of the Los Angeles County Code based upon this service being of an extraordinary professional or technical nature and of a temporary nature.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, County and Ramsell agree as follows:

## STATEMENT OF TEMPORARY AGREEMENT

### ARTICLE 1

#### DEFINITIONS

1.1. **Definitions.** As used in this Temporary Agreement, the following terms have the meanings set forth below:

(a) “**340B Covered Drug**” means a drug covered under the federal 340B Drug Pricing Program approved by the Covered Entity for dispensing to a Patient.

(b) “**340B Drug Pricing Program**” means the federal drug discount program established under Section 340B of the Public Health Service Act, 42 U.S.C. § 256b.

(c) “**Formulary**” means a listing of all prescriptions medications that are covered by the HWLA Matched Program by therapeutic class and NDC 11 Number, as determined by the County formulary.

(d) “**340B Prescription Drug Services**” means the prescription drug services to be rendered by Ramsell to each Covered Entity and Contract Pharmacy in accordance with the RAMSELL and Covered Entity Temporary Agreement and applicable Pharmacy Plan specifications.

(e) “**Acquisition Cost**” means the cost of the Formulary Drug charged by the manufacturer to each Covered Entity plus any Wholesaler fee.

(f) “**Administrative Fee**” means the administrative fee payable to RAMSELL pursuant to this Temporary Agreement.

(g) “**Authorized Provider**” means any individual licensed to prescribe medication in the State of California that is employed or contracted by the Covered Entity licensed to prescribe medications to a Patient.

(h) “**Claim**” means a Pharmacy's billing or invoice for a single prescription for Formulary Drugs dispensed to a Patient.

(i) “**Contract Pharmacy**” means a California- licensed a pharmacy which has entered into a Pharmacy Provider Temporary Agreement with a Covered Entity and RAMSELL to dispense 340B Covered Drugs to Patients.

(j) “**Contract Pharmacy Services**” means the dispensing and associated services provided by a Contract Pharmacy pursuant to a Pharmacy Provider Temporary Agreement.

(k) “**Covered Entity**” means the HRSA identified Covered Entity as defined under the 340B legislation.

(l) “**Covered Entity Temporary Agreement**” means the Temporary Agreement between RAMSELL and Covered Entity for services provided to the Covered Entity by RAMSELL.

(m) “**Dispensing Fee**” means the amount payable to a Contract Pharmacy as agreed to in the Pharmacy Services Temporary Agreement entered into by the Covered Entity, the Contract Pharmacy and RAMSELL as specified in Exhibit B of this Temporary Agreement.

(n) “**Excluded Governmental Program**” means any governmental program involving a rebate Temporary Agreement with a manufacturer which would result in a duplicate discount or rebate under the 340B Drug Pricing Program with respect to a 340B Covered Drug.

(o) “**HWLA Enrollees**” means any patient who has been identified by the County as an enrolled patient within the Los Angeles County Healthy Way Los Angeles Matched Program.

(p) “**LA County Clinics**” means any clinic operated by the County of Los Angeles.

(q) “**Lower of Pricing**” means the lower of (1) 340B drug acquisition cost plus negotiated dispensing fee, (2) usual and customary pharmacy charge, or (3) MAC cost plus negotiated MAC dispensing fee, or or (4) negotiated reimbursement as set forth in the pharmacy provider Temporary Agreement.

(r) “**Patient**” means an individual who is registered with a Covered Entity and in whose name a prescription for a 340B Covered Drug is written by an Authorized Provider and dispensed by a Pharmacy.

(s) “**Pharmacy Provider Temporary Agreement**” means a Pharmacy Provider Temporary Agreement between the Contract Pharmacy and RAMSELL with respect to Contract Pharmacy Services.

(t) “**Plan**” means the HWLA Formulary covered by the Los Angeles County Department of Health Services including varying co-payments,

deductibles, maximum quantities, maximum days, benefit eligibility, benefit limitations in the Plan and the corresponding accurate price calculations.

(u) ***“Usual and Customary”*** means the lowest price each Contract Pharmacy would charge to a Patient if the Patient were paying cash for the identical Formulary Drug of the same date of services. This includes any applicable discounts including, but not limited to, senior discounts, frequent shopper discounts and other special discounts offered to customers, inclusive of the dispensing fee.

(v) ***“Wholesaler”*** means the wholesale distributor of 340B Covered Drugs designated by the County or the Covered Entity as the distributor from whom 340B Covered Drugs are purchased by the Covered Entity.

(w) ***“MAC Cost”*** means the maximum ingredient unit cost established by RAMSELL and County for a multisource drug included on RAMSELL’s MAC drug list.

(x) ***“340B Claims Fee- with drug inventory replenishment”*** means the RAMSELL administrative fee paid for 340B replenished medication.

(y) ***“340B Claims Fee- without drug inventory replenishment for Antiretroviral drugs only”*** means the RAMSELL administrative fee paid for 340B replenished medication for Antiretroviral drugs only.

(z) ***“340B Claims Fee- without drug inventory replenishment- for drugs other than Antiretrovirals”*** means the RAMSELL administrative fee paid for medications that are not Antiretrovirals and are not 340B replenished medication.

1.2. **Exhibits.** All exhibits referenced herein and attached to this Temporary Agreement are incorporated by reference herein and constitute part of this Temporary Agreement. The Exhibits to this Temporary Agreement are:

Exhibit A – Administrative Services;

Exhibit B – Schedule of Administrative Fees;

Exhibit C – Covered Entity Contract Pharmacy Agreement;

Exhibit D – Standard Reports; and,

Exhibit E – County’s Standard Terms and Conditions

## ARTICLE 2

### RESPONSIBILITIES OF RAMSELL

2.1. **RAMSELL Services.** RAMSELL agrees to provide to the Los Angeles County Department of Health Services all of the services required to be provided by RAMSELL

pursuant to the terms of this Temporary Agreement. Such services include, but are not limited to, the following services summarized below and described in more detail in this Article 2:

- (i) Claims processing.
- (ii) Plan design, review, and management.
- (iii) Timely notification to Contract Pharmacies and Covered Entities of HWLA Formulary revisions.
- (iv) Reporting of claims data to be provided to County and the Covered Entity.
- (v) On-line, real-time drug utilization review of all Claims.
- (vi) Ordering of and payment for 340B Covered Drugs from the Wholesaler to replenish stocks of 340B Covered Drugs dispensed by Contract Pharmacies, subject to the approval of each Covered Entity.
- (vii) Ongoing maintenance and reporting of virtual inventory of 340B Covered Drugs at Contract Pharmacies, including inventory tracking of partial units dispensed.
- (viii) Payment of the 340B Drug acquisition costs or MAC costs to each 340B Covered Entity, using Lower of Pricing logic for each submitted claim to obtain lowest reimbursement cost.
- (ix) Payment of the negotiated Dispensing Fee to the 340B Contract Pharmacy.
- (x) Provision of a software application to be licensed to and used by County and each Covered Entity, whereby the receipt and translation of electronic invoice data from the Wholesaler is available for review.
- (xi) Provision of a system tool used by the County for prior authorization processing.
- (xii) Electronic maintenance of all Patient profiles including on-line additions and deletions of Patients, per defined LA County Department of Health Services Healthy Way LA eligibility file.
- (xiii) Electronic record keeping of all Claim data, Patient eligibility files, Formulary drugs dispensed and lists of all Contract Pharmacies and Covered Entity-Authorized Providers.
- (xiv) Account for receipt and tracking of 340B Contract Pharmacy inventory amounts, dispensing fees and Administrative Fees.

- (xv) Coordination of benefits (COB) to ensure payer of last resort and no duplication of claims payments with the State AIDS Drug Assistance Program, State Medi-Cal program, or other insurance provider. COB methods to be documented and approved by RAMSELL and LA County Department of Health Services within thirty (30) days of execution of this Temporary Agreement.
- (xvi) Payment to Covered Entity established drug Wholesaler, if applicable, as specified in Covered Entity Temporary Agreement.
- (xvii) Drug utilization evaluation consistent with the National Council for Prescription Drug Program (NCPDP) Telecommunication Standard electronic claims processing.
- (xviii) Antiretroviral claim prospective and retrospective drug utilization evaluation and Formulary management services as defined in Exhibit B.

2.1. **Claims Processing.** RAMSELL shall provide or shall contract with a claims processor to provide electronic claims processing, as required by this Temporary Agreement. RAMSELL shall provide the claims processing services related to Claims for prescriptions dispensed by Contract Pharmacies on or after the Effective Date of this Temporary Agreement, using its own BIN number. Upon termination of this Temporary Agreement, RAMSELL shall be responsible to process only those Claims which are for prescriptions dispensed by Contract Pharmacies prior to the termination date and which are received by RAMSELL within thirty (30) days of the termination date.

RAMSELL agrees to accurately process Claims received from Contract Pharmacies, determine whether such Claims are covered on behalf of the County within the Plan specifications and accurately calculate the price of such Claims. The following electronic real-time, adjudication services shall be performed by RAMSELL upon receipt of an electronic prescription Claim from a Contract Pharmacy:

- (i) Verification that the submitted Claim has been received from a Contract Pharmacy.
- (ii) Verification that the Claim submitted is for a Patient and that the Patient is entitled to receive 340B Covered Drugs on the date of service based on information provided to RAMSELL by the County HWLA eligibility file.
- (iii) Verification that the prescription is from an Authorized Provider based on information provided to RAMSELL by the Covered Entity.
- (iv) Verification that the Claim is within any quantity or days supply limitations detailed within the County's Plan specifications.
- (v) Accurately calculate the Claim cost in compliance with the Plan specifications and the sliding fee scales provided to RAMSELL by County.

(vi) Accurately calculate the Patient's Co-Payment, using the Patient's data Plan specifications, if applicable.

(vii) Accurately accept or reject all Claims transmitted to RAMSELL by the Contract Pharmacy, including rejecting Claims from an Excluded Governmental Program.

(viii) Accurately calculates each claim to ensure reimbursement is the lowest of the following pricing scenarios: 340B cost plus dispensing fees, usual and customary, or MAC cost.

**2.2. Plan Design and Review.** RAMSELL agrees to assist the County to develop and load the Plan limits and dispensing guidelines including the applicable price files for the Formulary.

RAMSELL shall implement changes in the pharmacy Plan requested by the County within thirty (30) calendar days after receipt of such request. RAMSELL shall implement Formulary changes within seventy-two (72) hours after receipt of such request.

RAMSELL agrees to implement the specific formularies as established by County. RAMSELL agrees not to substitute or allow the substitution of a prescription drug for a formulary drug prescribed to a Patient.

In the event that the County determines to discontinue a Covered Drug from inclusion in the Formulary, County shall notify the RAMSELL within 72 hours and RAMSELL shall account, within fifteen (15) calendar days after the discontinuation of such Covered Drug, for the inventory of such discontinued Covered Drug. Arrangements shall be made for the return of any remaining inventory of discontinued 340B Covered Drug to the Wholesaler for appropriate credit if possible. In the event that such remaining inventory of 340B Covered Drugs cannot be returned to the Wholesaler for appropriate credit, then:

(i) If such remaining inventory of 340B Covered Drugs was purchased by the Contract Pharmacy at its expense and dispensed to Patients, the Covered Entity shall reimburse the Contract Pharmacy at the lesser of (1) the most recent published price of a manufacturer of a 340B Covered Drug charged to the Wholesaler as the wholesale acquisition cost for such 340B Covered Drug before any manufacturer rebate or discount as of the time of payment or (2) the actual price paid by the Contract Pharmacy to purchase such 340B Covered Drug, or

(ii) If such remaining inventory was replenished by the Covered Entity, the Covered Entity may elect to (1) be reimbursed by the Contract Pharmacy for such remaining inventory at the lesser of (a) the most recent published price of a manufacturer of a 340B Covered Drug charged to the Wholesaler as the wholesale acquisition cost for such 340B Covered Drug before any manufacturer rebate or discount as of the time of payment or (b) the actual price paid by the Contract Pharmacy to purchase such 340B Covered Drug by mutual Temporary Agreement with the Contract Pharmacy, (2) direct the Contract Pharmacy to appropriately destroy and dispose of such inventory of discontinued 340B Covered Drug on behalf of the Covered Entity and attest to the Covered Entity in writing that such

340B Covered Drugs have been destroyed and disposed of appropriately on behalf of the Covered Entity, or (3) direct the Contract Pharmacy to return such remaining inventory to the Covered Entity

2.3. **Reporting of Claims Data.** RAMSELL shall collect and report in a format, acceptable to County, complete claims data for each HWLA-contracted clinic to meet any requirements for audit by County, the Covered Entity, Office of Pharmacy Affairs and/or Office of Inspector General, to assure the integrity of the 340B drug pricing program. Data collected and reported by RAMSELL shall be sufficient to monitor 340B Covered Drug purchase orders, 340B Covered Drug payments, and 340B Covered Drug inventory, including partial units dispensed, of each Contract Pharmacy. Data shall be made available in an electronic data file via the RAMSELL system or via an electronic data exchange at a frequency as mutually agreed upon by the County and RAMSELL.

Data will be reported within ten (10) days after the calendar month end to County electronically and shall include, but not limited to, the following:

- (i) The Covered Entity name where the prescription was prescribed.
- (ii) The prescription number, or the unique serial number of the prescription which is dispensed by Contract Pharmacy to Patient.
- (iii) The calendar date of the Claim.
- (iv) The unique identification number assigned to the Patient.
- (v) The Patient's gender.
- (vi) The Patient's last name.
- (vii) The Patient's first name.
- (viii) The Patient's date of birth.
- (ix) Sliding-scale Co-Payment level, when applicable.
- (x) The Authorized Provider's unique identification number.
- (xi) The last name of the Authorized Provider.
- (xii) The national unique identification code assigned to the Contract Pharmacy.
- (xiii) The name of the Contract Pharmacy dispensing the prescription to the Patient.
- (xiv) The NDC 11 Number of the medication dispensed to the Patient.

(xv) The name, strength and dosage form of the medication dispensed to the Patient.

(xvi) The quantity of dosage units (number) of medication being dispensed to the Patient.

(xvii) The calculated number of days (dosage days) the prescription should cover if the medication is taken as prescribed by the Authorized Provider.

(xviii) Whether the dispensed medication is a generic or a brand named drug item.

(xix) The Acquisition Cost of the drug.

(xx) The Dispensing Fee.

(xxi) The Administrative Fee paid to RAMSELL for each prescription dispensed by a Contract Pharmacy to a Patient of the Covered Entity.

2.4. **Drug Utilization Review.** RAMSELL shall accurately perform real-time, electronic drug utilization review, Claim edits and return accurate messages within the NCPDP standard to Contract Pharmacy for any resulting error messages. RAMSELL shall provide drug utilization evaluation and review for Antiretrovirals medication as described in Exhibit B.

2.6. **Prior Authorization Tool.** RAMSELL will provide an online tool for County to enter approved prior authorization claims. Prior authorization request reviews will be handled by County, with approved PA requests entered into RAMSELL's information system.

2.7. **340B Drug Pricing.** RAMSELL shall be solely responsible for obtaining and accurately maintaining a drug pricing file containing the price of all 340B Covered Drugs under the 340B Drug Pricing Program. RAMSELL is hereby appointed the fiscal intermediary in order to obtain 340B pricing applicable to each Covered Entity. Price updates shall be implemented no later than three (3) business days after the price information for any 340B Covered Drugs is received. RAMSELL shall compare 340B drug pricing, by specific NDC number, against the wholesaler 340B pricing file to ensure that accurate pricing is maintained.

2.8. **Drug Ordering.** RAMSELL shall generate and submit to each Covered Entity, for approval by the Covered Entity, an electronic purchase order for drugs to replenish the Contract Pharmacies' drug inventory used to dispense 340B Covered Drugs. Purchase orders will specify drugs by NDC 11 Number, unit quantity and other required data needed to complete such purchase order. Upon receipt of approval from the Covered Entity, RAMSELL shall submit such purchase order to the Covered Entity's Wholesaler.

RAMSELL shall provide a system to enable each Covered Entity and Contract Pharmacies to validate shipment from the Wholesaler to the Covered Entity and the Contract Pharmacies, of all orders for 340B Covered Drugs and report any discrepancies to the Covered Entity within five (5) business days after receipt by the Covered Entity of receipt of such shipment.

2.9. **Virtual Inventory.** RAMSELL agrees that it will manage each Covered Entity's individual 340B Contract Pharmacy inventory and cause orders to be generated to replenish the 340B inventory based on replenishment levels established in the Plan specifications. The replenishment of the inventory will be made at the then current Acquisition Cost of the 340B Covered Drugs.

RAMSELL shall perform daily loading into a data management system of valid processed Claims of 340B Covered Drugs by Contract Pharmacy for product replenishment for each Covered Entity.

RAMSELL agrees to manage and track current 340B Covered Drug inventories by NDC 11 Number including unit quantities used and unit quantities remaining with each Contract Pharmacy.

2.10. **Software License.** RAMSELL shall make available to County and each Covered Entity the use of RAMSELL's proprietary software application by which the Covered Entity may view and track 340B claims and purchase order data for 340B Covered Drugs that the Covered Entity receives from the Covered Entity's Wholesaler. The Software License shall be provided for use of the RAMSELL's proprietary software application on or after the effective date of this Temporary Agreement to County and each Covered Entity that enters into a Temporary Agreement with RAMSELL. In the event of a terminated Temporary Agreement, RAMSELL will revoke all Software License and Covered Entity access to such software. All right, title and interest in and to the Software that is in use by or on behalf of RAMSELL and made available to County and each Covered Entity, including any copyrights with respect thereto, shall be the sole and exclusive property of RAMSELL.

2.11. **Management Reports.** Based upon data submitted to RAMSELL by Pharmacy, RAMSELL shall prepare and deliver to County core reports detailing all purchases and shipments of 340B Covered Drugs within ten (10) days of the end of a calendar month. RAMSELL shall also prepare and deliver to County core reports detailing all paid non-340B claims. These reports may also be provided to each Covered Entity and Contract Pharmacy to review on-line via web. At no time shall Contract Pharmacies have access to any 340B drug pricing information. Standard reports to be delivered to the County are referenced in Exhibit D.

**2.12. Management of Patient Profiles.** RAMSELL agrees to implement and provide ongoing management of a Patient eligibility system. Such eligibility system shall allow for additions and deletions of the Eligible Patient eligibility file on-line. RAMSELL agrees to load the Patient eligibility files upon receipt not to exceed twenty-four (24) hours of receipt of complete file.

Eligible Patient information and all information associated with the County HWLA program, the Covered Entity, Covered Entity's Contract Pharmacies shall be considered confidential. All such information, regardless of whether it is or is not marked as confidential information, shall be treated by RAMSELL as confidential information and shall not be disclosed by RAMSELL without the prior written consent of County. RAMSELL agrees that it will not share this information for any reason, with any other party, without the prior consent of County, except where such disclosure is required pursuant to state or federal laws or regulations.

RAMSELL may only use and disclose the information of County, the contracted Covered Entity and/or the Patient in its possession internally for its proper management and administration, provided that such use or disclosure does not violate or breach any provision of this Temporary Agreement.

RAMSELL and County agree that all Patient information relating to 340B Covered Drugs and non-340B Covered drugs prescribed by an Authorized Provider, and other records identifying Patient, shall be treated by RAMSELL and each Covered Entity as confidential except to the extent that disclosure may be required pursuant to state or federal laws or regulations or as may be permitted.

RAMSELL agrees to provide billing information to be included on County Eligible Patient identification cards as part of the services to be rendered by RAMSELL.

**2.13. Management and Development of Network.** RAMSELL agrees to use reasonable industry efforts to locate and provide alternative Contract Pharmacy(ies) in areas as needed and requested by the County and/or each Covered Entity.

RAMSELL agrees to perform an ongoing credentialing process with each Contract Pharmacy pursuant to the applicable Pharmacy Provider Temporary Agreement. RAMSELL agrees to solicit Contract Pharmacies at the direction, and on behalf of, County and/or each Covered Entity.

RAMSELL agrees to secure an executed Pharmacy Provider Temporary Agreement with each Contract Pharmacy setting forth the Contract Pharmacy services, Dispensing Fee, rules for electronically transmitting Claims, definition of audit processes, mutual indemnification of the parties and a business associate Temporary Agreement.

RAMSELL shall perform audits of pharmacy dispensing at an agreed upon sampling as approved by the County within thirty (30) days of the execution of this Temporary Agreement. RAMSELL shall provide a 340B contract pharmacy audit plan to the County within thirty (30) days of the execution of this Temporary Agreement.

2.14. **Invoice.** RAMSELL shall invoice County on a monthly frequency, or other frequency as mutually agreed by RAMSELL and County. The invoice shall include the costs for all drug dispensing to include: pharmacy Dispensing Fee, 340B Acquisition Cost or MAC (maximum allowable cost) or Usual & Customary Charge, Administrative Fee, and dispensed drug information.

Invoice shall be submitted to County via the RAMSELL's proprietary system or other secure electronic method as mutually agreed upon by RAMSELL and County. The invoice shall be accompanied by detail dispensed drug information.

2.15. **340B Covered Entity Payment.** RAMSELL shall make payments to the Contract Pharmacies based on the amounts as paid by County. The payment to the 340B Contract Pharmacy shall be equal to Lower of Pricing.

2.16. **Help Desk.** RAMSELL shall provide a toll free, 24 X 7 accessible help desk line and a full-time website and e-mail address to assist County, each Covered Entity, 340B Contract Pharmacy in the provision of RAMSELL and 340B services.

### ARTICLE 3

#### OTHER RESPONSIBILITIES OF RAMSELL

3.1. **Implementation of Pharmacy Plan.** Upon the complete execution of this Contract, RAMSELL agrees to provide an implementation team to County and each Covered Entity to develop a written, flexible implementation plan that will evaluate Covered Entity's program needs and requirements in a mutually agreed upon timeframe. RAMSELL also agrees to take all reasonable and prudent measures to assist County in setting up all elements of the Covered Entity's 340B Contract Pharmacy, including the assignment of a dedicated account manager to assist Covered Entity.

### ARTICLE 4

#### OBLIGATIONS OF THE COUNTY

4.1. **County Responsibilities.** County agrees to meet all of the obligations pursuant to the terms of this Temporary Agreement. Such responsibilities include, but are not limited to, the following services summarized below and described in more detail in this Article 4:

(i) Eligibility. HWLA shall facilitate Patient eligibility data exchange and shall be responsible for identifying eligible Patients and communicating eligibility to RAMSELL.

(ii) Patient Information. The County or its agents shall submit to RAMSELL the following minimal Patient information:

(A) Patient's unique identification number.

(B) Patient's gender.

- (C) Patient's full name (last, first).
- (D) Patient's date of birth.
- (E) Authorized contracted Covered Entity Clinic assigned to Patient.

(iii) 340B Covered Drug Pricing Information. Each Covered Entity shall designate RAMSELL as a fiscal intermediary for the purpose of receiving and updating 340B applicable pricing from the Covered Entity's Wholesaler. RAMSELL shall arrange for pricing to be updated and loaded for adjudication of claims at each Contract Pharmacy site. The adjudicated price will be the Lower of Pricing. Each Covered Entity shall retain the fiduciary responsibility to approve the pricing of all 340B Covered Drugs and monitor and manage the 340B pricing information. 340B Covered Drug Pricing Information shall be used in the creation of the County invoices.

(iv) Invoices. County shall receive and pay invoices as generated by the RAMSELL for payment of each Covered Entity's 340B Covered Drug costs, MAC cost, or Usual & Customary Costs as calculated in the Lower of Pricing logic, and RAMSELL Administrative Fee.

(v) Payments. County shall provide a mechanism to make payment to RAMSELL for drug dispensing. If payments to the RAMSELL are not received within thirty (30) business days from the time invoice has been sent, Contract Pharmacy and RAMSELL have the right to suspend pharmacy services until such payments have been made in full.

## ARTICLE 5 PAYMENT AND BILLING

5.1. **Administrative Fee.** In consideration for all of the services to be provided to County by RAMSELL pursuant to this Temporary Agreement, RAMSELL shall receive an Administrative Fee according to the fee schedule as referenced in Exhibit B. Administrative fees represented in Exhibit B shall remain confidential and proprietary.

The Administrative Fee applicable to billable claims and services shall be paid as a disbursement to RAMSELL along with the 340B Contract Pharmacy Dispense Fee, and the 340B Drug inventory replenishment costs for 340B drug claims. If payments to the RAMSELL are not received within thirty (30) business days from the time notice has been sent, Pharmacy and RAMSELL have the right to suspend pharmacy services until such payments have been made in full.

Pharmacy Benefit Management Claim fee for non-replenished products as referenced in Exhibit B shall be charged by, or payable to, RAMSELL, for non-340B drug claims.

No Administrative Fee shall be charged by, or payable to, RAMSELL until Claims have been accurately processed to the reasonable satisfaction of County and the Covered Entity.

5.2. **Pharmacy Dispense Fee.** In consideration for all of the services to be provided by the Contract Pharmacy, pursuant to the Pharmacy Services Temporary Agreement between the Contract Pharmacy and the Covered Entity, each Contract Pharmacy shall receive a Dispense Fee according to the negotiated fee schedule as referenced in the fully executed Pharmacy Services Temporary Agreement.

The Dispense Fee applicable to billable claims and services is confidential and proprietary, and shall be paid as a disbursement to RAMSELL from funds received by RAMSELL from County. If payments to the RAMSELL are not received within thirty (30) business days from the time notice has been sent, Contract Pharmacy and RAMSELL have the right to suspend pharmacy services until such payments have been made in full.

5.3. **Communication of Co-Payment Amounts.** RAMSELL shall communicate to the Covered Entity or Contract Pharmacy, as the case may be, the Co-Payment amounts, as applicable to 340B Covered Drugs being purchased by Patients real time, at the point of sale.

5.4. **Communication of Amounts Payable.** RAMSELL shall communicate to the Contract Pharmacy the lowest reimbursement amount at the point of sale. This lowest price for 340B replenished drugs shall be equal to the Lower of Pricing.

5.5. **Accuracy of Eligibility and Other Data.** The County will covenant that all Eligibility and other information submitted by the County to RAMSELL shall be accurate and complete via the Temporary Agreement between the County and RAMSELL. In the event the County identifies any inaccurate information as having been transmitted to RAMSELL, the County shall promptly notify RAMSELL, and the County shall promptly provide corrected information to RAMSELL.

## ARTICLE 6

### TERM AND TERMINATION

6.1. **Term.** This Temporary Agreement shall commence on the date of approval by the County of Los Angeles Board of Supervisors (Board), and shall continue thereafter on a month-to-month basis for a period not to exceed one year unless otherwise terminated pursuant to the terms set forth in Section 6.2, below.

6.2. **Termination.** This Temporary Agreement may be terminated only as follows:

6.2.1. Termination with Cause. In the event that a party materially breaches the terms of this Temporary Agreement, the non-breaching party may terminate this Temporary Agreement if the other party has failed to cure such breach within thirty (30) calendar days after the non-breaching party gives written notice of such breach.

- 6.2.2. Termination without Cause. Either RAMSELL or County may terminate this Temporary Agreement without cause by providing the other party with at least thirty (30) calendar days advance written notice.
- 6.2.3. Insolvency. Either County or RAMSELL may terminate this Temporary Agreement immediately upon delivering written notice to the other party in the event the other party makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to all or a substantial part of a party's property, or a proceeding is commenced against it which will substantially impair its ability to perform hereunder (collectively, an "Insolvency"). The other party (to the extent it may lawfully do so) shall not at any time insist upon, plead, or in any manner claim, or take advantage of any stay or extension law that may affect the performance of this Temporary Agreement, and hereby expressly waives all benefit or advantage of any such law.
- 6.2.4. Fraud; Debarment/Suspension. Either County or RAMSELL may terminate this Temporary Agreement by notice to the other party if the other party is found guilty of fraud, or is the subject of a debarment/suspension with termination effective on receipt of such notice.
- 6.2.5. Subcontractors. County may terminate this Temporary Agreement in the event of any material breach by a subcontractor or RAMSELL of any subcontractor Temporary Agreement if such breach is not cured within thirty (30) days after the non-breaching party gives written notice of such breach (or, if such breach is curable but not curable within thirty (30) days without unreasonable effort or expense, the breaching party has failed to commence and diligently pursue such cure until completion and has not completed such cure within ninety (90) days after notice of such breach) or immediately in the event that any subcontractor becomes the subject of an Insolvency or a debarment.
- 6.2.6. Termination of Federal Funding or Changes in Laws. The RAMSELL or County may terminate this Temporary Agreement upon termination or expiration of any federal funding provided to the County by any federal governmental agency or under any federal governmental program. In the event of any changes in applicable federal or state laws or regulations that would have a material adverse effect on the 340B Drug Pricing Program or the legal responsibilities of a party to this Temporary Agreement, the parties hereto shall agree to negotiate any required changes to this Temporary Agreement in good faith. If the parties are unable to reach a mutual Temporary Agreement regarding any required amendment of this Temporary Agreement within thirty (30) days after such new law or regulation becomes effective, either party may terminate this Temporary Agreement upon notice to the other party.
- 6.2.7 Upon advance written notice by County that a successor agreement has been competitively solicited and recommended to the Board as the result of a competitive process which County will undertake in compliance with Los

Angeles County Code, Chapter 2.121, commonly known as Proposition A. The notice shall set forth the actual termination date of this Agreement based on the County's best estimate of when the successor will be prepared to provide the replacement services.

6.3. **Effect of Termination.** In the event this Temporary Agreement is terminated in whole or in part, RAMSELL shall make an accounting of all inventories of 340B Covered Drugs and all monies due to County within thirty (30) calendar days after the date of termination. On termination of this Temporary Agreement, arrangements shall be made to the satisfaction of the Covered Entity and the Contract Pharmacy for the return of such 340B Covered Drugs to the Wholesaler for appropriate credit if possible. In the event that such inventory of 340B Covered Drugs cannot be returned to the Wholesaler for appropriate credit, then:

- i. if such remaining inventory of 340B Covered Drugs was purchased by the Contract Pharmacy at its expense and dispensed to Patients, County shall be invoiced by RAMSELL for the Contract Pharmacy drug costs at the applicable Settlement Price for such remaining inventory. If such remaining inventory was replenished, County may elect to (a) be reimbursed by the Contract Pharmacy for such remaining inventory at the applicable Settlement Price by mutual Temporary Agreement with the Contract Pharmacy, (b) direct the Contract Pharmacy to appropriately destroy and dispose of such inventory of 340B Covered Drug on behalf of the Covered Entity and attest to the Covered Entity in writing that such 340B Covered Drugs have been destroyed and disposed of appropriately on behalf of the Covered Entity, (c) direct the Contract Pharmacy to return such remaining inventory to the Covered Entity, or (d) wholesaler credit as allowed by Covered Entity drug wholesaler.

Payment of all final sums due and owing to any party shall be made within thirty (30) calendar days of the completion of RAMSELL's internal accounting with respect to any remaining inventory of 340B Covered Drugs.

6.4. **Data Transition.** Upon notice of termination or, if none, immediately upon termination of this Temporary Agreement, RAMSELL and County (or its authorized designee) shall begin to work cooperatively and in good faith toward transitioning that data that belongs to County based on the terms of this Temporary Agreement. Notwithstanding any other provision of this Temporary Agreement, under no circumstances, shall RAMSELL be entitled to withhold County data or refuse to transition the data in accordance with the terms of this Temporary Agreement and based on reasonable requests by County (or its authorized designee). RAMSELL'S obligation to transition County's data is absolute.

6.5 **Post-termination Claims Processing.** In accordance with Section 2.2 of this Agreement, RAMSELL will process claims received within 30 days after the termination of this Temporary Agreement for those drugs that were dispensed prior to the termination of this Temporary Agreement. County shall make its best efforts to ensure that the affected pharmacies do not submit claims to RAMSELL for drugs dispensed on or after the termination date of this Temporary Agreement or beyond this 30-day cut-off. RANSELL will cooperate with County to re-direct claims inappropriately submitted to RAMSELL. During this 30-day period, County shall sill have access to data regarding the claims in accordance with Section

2.10. County hereby acknowledges, however, that this access shall be used exclusively by County for the purposes set forth in Section 2.10, and that it will not provide access to or information regarding RANSELL'S proprietary software application to any third parties, including any vendors who later provide services to County similar to those covered by this Temporary Agreement. Upon expiration of the 30-day period, RAMSELL will revoke all licenses and access provided to County or the Covered Entities under this Agreement as set forth in Section 2.2.

## ARTICLE 7

### CONFIDENTIALITY, PRIVACY AND SECURITY

7.1. **Confidentiality.** Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 31.0 - Record Retention and Inspection/Audit Settlement of Exhibit E – County's Standard Terms and Conditions of this Temporary Agreement; as well as any documents that may have been submitted in response to a solicitation process for this Temporary Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". Upon receipt of a Public Records Act request related to this Temporary Agreement, County shall notify Contractor of the request and shall provide Contractor with a copy of the request. County shall provide Contractor with copies of records produced in response to any such request. The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

7.2. **Privacy and Security of Protected Health Information.** In the event that County perform any function with RAMSELL involving the use or disclosure of Confidential Information, other than the provision of 340B Covered Drugs to Patients, the County and/or such Contract Pharmacy shall execute a business associate Temporary Agreement with RAMSELL which complies with the requirements set forth at 45 CFR § 164.504(e).

## ARTICLE 8

### GENERAL PROVISIONS

8.1. **Amendments.** This Temporary Agreement may only be amended by mutual written consent of the duly authorized representatives of RAMSELL and County. In the event of any changes in applicable federal or state laws or regulations that would have a material adverse effect to this Temporary Agreement, the parties hereto shall agree to negotiate any required

changes to this Temporary Agreement in good faith. If the parties are unable to reach a mutual Temporary Agreement regarding any required amendment of this Temporary Agreement within thirty (30) days after such new law or regulation becomes effective, either party may terminate this Temporary Agreement upon notice to the other party.

8.2. **Severability.** In the event that any provision in this Temporary Agreement, shall be found by any government agency, court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Temporary Agreement shall not in any way be affected or impaired thereby.

8.3. **Indemnification.** Each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other Party (the, Indemnified Party”), its Special Districts, elected and appointed officers, employees, and agents from and against any and all third-party liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Indemnifying Party’s acts or omissions arising from or relating to the Indemnifying Party’s performance under this Temporary Agreement. Such indemnification shall include all actions, including investigations, brought by any government entity or its agent arising out of the Indemnifying Party’s performance under this Temporary Agreement.

8.3.1. Under no circumstances shall either party be liable for any indirect, incidental, special, punitive, or consequential damages (including, without limitation, damages for lost profits, revenue, data, use, or savings) incurred by either party, or any third party, whether in an action in contract or tort, even if the other party or any other person has been informed of the possibility of such damages. Contractor’s total liability under this Temporary Agreement, for any cause of action whatsoever shall be limited to the amount of fees paid to contractor under the applicable statement of work from which such liability arises. This article shall survive the termination or expiration of this Temporary Agreement.

8.4. **340B Covered Drug Diversion.** Neither RAMSELL nor its affiliates and subcontractors shall sell, transfer or give away any prescription drug inventory, nor shall RAMSELL or its affiliates and subcontractors permit any Contract Pharmacy to sell, transfer or give away any prescription drug inventory, purchased under the 340B Drug Pricing Program pursuant to this Temporary Agreement, except to Patients pursuant to the terms of this Temporary Agreement. The parties to this Temporary Agreement acknowledge that drug diversion is a federal offense punishable by fine and/or imprisonment and agree to take all necessary actions to prevent any drug diversion of 340B Covered Drugs.

8.5. **Notices.** Any notice to be given hereunder by any party to any other party shall be deemed to have been given (a) if mailed, three (3) calendar days after being deposited in any general or branch office of the United States Postal Service, enclosed in a properly addressed registered or certified postage-paid envelope, provided that any notice of change of address shall be effective only upon receipt, (b) if sent by facsimile transmission, when so sent and receipt acknowledged by an appropriate telephone or facsimile receipt or (c) by courier that provides

confirmation delivery; or (d) if sent by other means, when actually received by the party to which such notice has been directed, in each case at the respective addresses or number set forth below or such other address or number as such party may have been fixed by notice.

If to RAMSELL: Ramsell Corporation  
200 Webster Street, Suite 200, Oakland, CA 94607  
Attn: Sophia J. Byndloss  
Phone: 510-587-2606  
Fax: 510-587-2790

If to LA County: Los Angeles County Department of Health Services  
313 N. Figueroa, Suite 701, Los Angeles, CA 90012  
Attn: Amy Gutierrez, Pharm.D.  
Phone: (213) 240-7717  
Fax: (213) 975-9623

Los Angeles County Department of Health Services  
313 N. Figueroa, Suite 614, Los Angeles, CA 90012  
Attn: Kathy Hanks, C.P.M.  
Phone: (213) 240-7819  
Fax: (213) 250-2958

8.6. **Intellectual Property.** Except as otherwise provided herein, RAMSELL and LA County agree that it will not use for its own commercial purposes any trademark, service mark, or corporate name of the other party hereto without the prior written consent of the other party.

8.7. **Professional Pharmacy Judgment.** It is understood and agreed that the operation and maintenance of the Contract Pharmacy(ies) and their respective facilities and equipment and the dispensing of 340B Covered Drugs shall be solely and exclusively under the control and supervision of the Contract Pharmacy. All decisions respecting the dispensing of 340B Covered Drugs are rendered solely by the Covered Entity's Authorized Provider, and a Contract Pharmacy and their respective duly authorized personnel, and not by RAMSELL or County. It is expressly understood that the relationship between a Patient and Contract Pharmacy(ies) shall be subject to the rules, limitations and privileges incident to the pharmacist-patient relationship.

8.8. **Governing Law.** This Temporary Agreement shall be governed and construed in accordance with Federal law. In the event of a conflict between this Temporary Agreement and Federal law, Federal law shall prevail. To the extent this Temporary Agreement is not governed by Federal law, this Temporary Agreement shall be governed by the laws of the State of California.

8.9. **Assignment.** This Temporary Agreement may not be assigned by any party hereto without the consent of the other party hereto. Any permitted assignee shall assume all obligations of its assignor under this Temporary Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations, which have accrued prior to such assignment. Consent shall not be unreasonably withheld.

Partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Temporary Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Temporary Agreement. Such consent shall not be unreasonably withheld.

Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, or buyout, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Temporary Agreement which may result in the termination of this Temporary Agreement, unless Contractor can cure the breach within 30 days by cancelling the assignment, delegation, or takeover. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.10. **Force Majeure.** Non-compliance with the obligations hereunder for reasons of force majeure such as acts of God; war or civil commotion; destruction of production facilities and materials; fire, earthquake, hurricane or storm; labor disturbances; failure of public utilities or common carrier; or any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

8.11. **Warranty of Authority.** County represents and warrants to RAMSELL that the individual executing this Temporary Agreement on behalf of County has the requisite right, power and authority to enter into this Temporary Agreement on behalf of County and has been duly authorized to do so by all necessary action; and when this Temporary Agreement is executed by such individual, it shall create valid and binding obligations upon County, enforceable against County in accordance with the terms of this Temporary Agreement. RAMSELL represents and warrants to County that the individual executing this Temporary Agreement on behalf of RAMSELL has the requisite right, power and authority to enter into this Temporary Agreement and has been duly authorized to do so by all necessary corporate or other action; and when this Temporary Agreement is executed by such individual, it shall create valid and binding obligations of RAMSELL enforceable against RAMSELL in accordance with the terms of this Temporary Agreement.

8.12. **Execution.** This Temporary Agreement may be executed in two or more counterparts and, as so executed, shall constitute one and the same Temporary Agreement binding on all parties. In addition, for purposes of executing this Temporary Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine shall be treated as an original document. The signature of any party thereon, for purposes hereof, shall be considered as an original signature, and the document transmitted shall be considered to have the same binding effect as an original signature on an original document. At the request of either party, any facsimile document shall be re-executed in original form by the party who executed the

facsimile document. No party may raise the use of a facsimile machine or telecopy machine as a defense to the enforcement of this Temporary Agreement.

8.13. **Entire Temporary Agreement.** This Temporary Agreement, including the Exhibits attached hereto, contains the entire Temporary Agreement and understanding between the parties with respect to the provision of 340B Contract Pharmacy Administrator Services to County.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have executed and delivered this Temporary Agreement as of the date set forth above (signature execution via facsimile shall be considered binding).

**County of Los Angeles on behalf of its  
Department of Health Services:**

By: \_\_\_\_\_  
Name: Mitchell H. Katz, M.D.  
Title: Director of Health Services

**Ramsell Corporation:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM  
BY THE OFFICE OF THE COUNTY COUNSEL

<b>RAMSELL</b>	
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## EXHIBIT A

### 340B COVERED ENTITY SOLUTION ADMINISTRATIVE SERVICES

All of the services are required to facilitate the RAMSELLRAMSELL and 340B contract pharmacy services and are included in the defined claim fee as described in the Table 1 below.

**Table 1- Claims Processing Fee Included Services**

Item #	Processing Services	340B Drug Replenishment Claims	Antiretroviral Claims	340B Drug Excluded Claims
1	Eligibility Management (Electronic)	Included	Included	Included
2	Electronic Claims Adjudication	Included	Included	Included
3	PMDC Systems™ (program data management system)	Included	Included	Included
4	Number of users supported on PMDC Systems™	Included (unlimited users)	Included (unlimited users)	Included (unlimited users)
<b>Pharmacy Network Services</b>				
5	Pharmacy Help Desk, toll free 24 X 7	Included	Included	Included
6	Network Administration (related to the 340B contract pharmacy service claims adjudication)	Included	Included	Included
7	Pharmacy Payment	Included	Included	Included
<b>Formulary Management</b>				
8	Formulary Analysis (implementation and annual review)	Included	Included	
9	DUR, Prospective/Concurrent	Included	Included	Included
10	HIV/AIDS DUR, Prospective/Concurrent	Included	Included	
11	Pharmacy provider management and education	Included	Included	
12	Drug utilization review (prospective/concurrent)	Included	Included	
13	Administrative Prior authorizations (standard edits)	Included	Included	
14	Step therapy	Included	Included	
15	Antiretroviral Drug Dose Optimization through	Included	Included	

Item #	Processing Services	340B Drug Replenishment Claims	Antiretroviral Claims	340B Drug Excluded Claims
	Application of DHHS dosage guidelines to antiretroviral drugs within prospective DUR process			
16	Dose Optimization applied to applicable other (non ARV) formulary medications	Included	Included	
17	Development and application of dispensing guidelines	Included	Included	
18	Treatment exception requests handling	Included	Included	
	<b>Clinical Services</b>			
19	Prior Authorization Step Therapy	Standard edits: Included	Standard edits: Included	Standard edits: Included
20	Utilization Management Tools	Included	Included	Included
21	Quality Assurance Desk Audit	Included	Included	Included
	<b>Account Management</b>			
22	Account Management Services and Quarterly face-to-face meetings	Included	Included	Included
	<b>340B Replenishment and Inventory Management</b>			
23	340B Inventory Order Management	Included		
24	Wholesaler Order EDI Support	Included		
25	340B Inventory Management Reports	Included		
26	340B Inventory Management System	Included		
27	Wholesaler Fiscal Intermediary Services	Included		
	<b>Covered Entity Invoice and Payment Services</b>			
28	340B Drug Inventory Costs Invoice	Included		
29	340B Covered Entity Payment	Included		
30	PMDC Systems™ (program data management system)	Included		
31	Number of users supported on PMDC Systems™	5 users per site		

Confirmation that I have read and understand this Exhibit A:

**Ramsell Corporation:**

**County of Los Angeles:**

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

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

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

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

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

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

**EXHIBIT B**

**SCHEDULE OF ADMINISTRATIVE FEES**

**Table 2- Administrative Fees**

Processing Services	Associated Fees
Annual Minimum (due and payable as invoiced on the day before expiration of the year term) <sup>1</sup>	\$150,000
<b>340B Claims Fee- with drug inventory replenishment</b>	
Pharmacy Benefits Management Claim Fee (Volume based on a monthly claims processing)	0 – 10,000 claims - \$5.50/claim 10,001 – 50,000 claims - \$5.00/claim 50,001 – 100,000 claims - \$4.00/claim 100,001 – 300,000 claims - \$3.25/claim 300,001 – 900,000 claims - \$2.50/claim >900,000 claims \$2.25/claim
340B Replenished Product through wholesaler	
<b>340B Claims Fee- without drug inventory replenishment - for Antiretroviral drugs only</b>	
Claim Fee for antiretroviral medication	\$3.25/claim
<b>340B Claim Fee – without drug inventory replenishment – for drugs other than antiretrovirals</b>	
Pharmacy Benefits Management Claim Fee	\$0.15/claim

Fees are based on HWLA program projections as referenced in this Temporary Agreement

**Table 3- Implementation Services and Associated Fees**

Services	Associated Fees
<b>Implementation Services</b>	
Implementation fee for services - Card information - System configuration - User access and authorization - Benefit design and planning	\$2,000.00

Additional services that are not included in the claims processing fee, but made available at an associated fee in Table 4 below:

**Table 4- Additional Fees**

Services	Associated Fees
<b>Member Services</b>	

<sup>1</sup> If the agreement is terminated prior to the expiration of the year, the minimum will be due and payable as invoiced by Ramsell on the effective date of termination.

Member Cards (initial card)	\$0.45/per card
<b>Non-Standard Reporting Services</b>	
Developer Ad Hoc Reports- for reports that require system programming and must be developed and do not exist in the PMDC Systems™ report query tool.	\$200.00/per hour

**Table 5- 340B Contract Pharmacy Dispensing Fees**

RAMSELLRAMSELL will execute a Pharmacy Provider Temporary Agreement with 340B Contract Pharmacies that adheres to County DHS's maximum allowable dispensing fees in Table 5.

Services	Associated Fees
<b>340B Replenished Pharmacy Dispense Fee</b>	
Brand Drugs- maximum fee	\$12.00/dispensed drug
Generic Drugs- maximum fee	\$7.00/dispensed drug
Mail Delivery Fee	\$7.50/patient mailing per month
<b>Non 340B Replenished Dispensing</b>	
Brand Drugs Pharmacy Dispense Fee	\$2.00
Generic Drugs Pharmacy Dispense Fee	\$2.00
Generic Drugs- Drug Ingredient Cost	Maximum Allowable Cost (MAC) Net Effective Rate

Confirmation that I have read and understand this Exhibit B:

**Ramsell Corporation:**

**County of Los Angeles:**

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

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

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

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

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

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

**EXHIBIT C**

**COVERED ENTITY CONTRACT PHARMACY AGREEMENT**

Confirmation that I have read and understand this Exhibit C:

**Ramsell Corporation:**

**County of Los Angeles on behalf of its  
Department of Health Services:**

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

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

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

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

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

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

## **340B Covered Entity Contract Pharmacy Agreement**

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This Agreement, dated as of \_\_\_\_\_ (hereinafter referred to as "Agreement"), is made and entered into between \_\_\_\_\_ (hereinafter referred to as "Covered Entity"), whose principal place of business is located at \_\_\_\_\_, and \_\_\_\_\_ (hereinafter referred to as "Contract Pharmacy"), whose principal place of business is located at \_\_\_\_\_.

A. **WHEREAS** \_\_\_\_\_ is a Covered Entity under the provisions of Section 340B of the U.S. Public Health Service Act, and

B. **WHEREAS** The Covered Entity desires to utilize a Contract Pharmacy to dispense retail prescriptions to Patients of the Covered Entity.

C. **WHEREAS** Contract Pharmacy is a licensed pharmacy in the State of California, which wishes to provide retail Contract Pharmacy Services to Patients of the Covered Entity pursuant to Section 340B of the Public Health Services Act and under the terms and conditions herein set forth.

**NOW THEREFORE** \_\_\_\_\_ designates \_\_\_\_\_ as a Contract Pharmacy, subject to the terms set forth in this Agreement. The parties agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

1.1. **Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

(a) **"340B Covered Drug"** means a drug covered under the federal 340B Drug Pricing Program approved by the Covered Entity for dispensing to a Patient.

(b) **"340B Covered Entity"** means an entity as defined in Section 340B(a)(4) of the Public Health Service Act, 42 U.S.C. § 256b(a)(4).

(c) **"340B Drug Pricing Program"** means the federal drug discount program established under Section 340B of the Public Health Service Act, 42 U.S.C. § 256b.

(d) **"340B Formulary"** means a listing of all prescriptions medications the Covered Entity will purchase by therapeutic class and NDC 11 Number.

(e) “**340B Prescription Drug Services**” means the prescription drug services to be rendered by PBA to a 340B Covered Entity and Contract Pharmacy in accordance with this Agreement and applicable Pharmacy Plan Specifications.

(f) “**Authorized Provider**” means a physician, advanced nurse practitioner or physician assistant or other provider employed or contracted by the Covered Entity to provide services to a Patient.

(g) “**Contract Pharmacy**” means a facility that is licensed to operate a pharmacy and which entered into an Agreement with a Covered Entity to dispense 340B Covered Drugs to Patients.

(h) “**Contract Pharmacy Services**” means the dispensing and other services provided by a Contract Pharmacy pursuant to this Agreement.

(i) “**Co-Payment**” means those deductibles, co-payments, coinsurance or other cost sharing amounts which may be charged to a Patient for 340B Covered Drugs pursuant to the Pharmacy Plan Specifications.

(j) “**Effective Date**” means the date set forth in the first paragraph of this Agreement.

(k) “**Excluded Governmental Program**” means any governmental program involving a rebate agreement with a manufacturer which would result in a duplicate discount or rebate under the 340B Drug Pricing Program with respect to a 340B Covered Drug.

(l) “**Patient**” means an individual who is registered with a Covered Entity and in whose name a prescription for a 340B Covered Drug is written by an Authorized Provider and dispensed by a Pharmacy.

(m) “**Pharmacy Benefit Administrator (PBA)**” means the administrator contracted with the Covered Entity to oversee the 340B Contract Pharmacy services, claims processing, and the receipt of Third Party Payments.

(n) “**Plan**” means the 340B Formulary covered by a Covered Entity including varying co-payments, deductibles, maximum quantities, maximum days, benefit eligibility, benefit limitations in the Plan and the corresponding accurate price calculations.

(o) “**Pharmacy Provider Agreement**” means an Agreement between Contract Pharmacy and PBA with respect to Contract Pharmacy Services.

(p) “**Third Party Claims**” means any paper or electronic claim(s) submitted to a Third Party Insurer by a Contract Pharmacy seeking payment to the Contract Pharmacy or reimbursement to a Patient, for Pharmacy Services delivered by Contract Pharmacy to Patient.

(q) “*Third Party Insurer*” means any Health Maintenance Organization, insurance company, employer association, trust fund, state or local governmental agency or program, or other organization having financial responsibility for payment of covered Pharmacy Services to patient of the Pharmacy Plan other than an Excluded Governmental Program.

(r) “*Third Party Payments*” means any financial payments made on behalf of a Patient or reimbursed to a Patient by a Third Party Insurer.

(s) “*Usual and Customary Charge*” means the lowest price Contract Pharmacy would charge to a Patient if the Patient were paying cash for the identical 340B Covered Drug on the same date of service. This includes any applicable discounts including, but, not limited to, senior discounts, frequent shopper discounts and other special discounts offered to attract customers to the Contract Pharmacy.

(t) “*Wholesaler*” means the wholesaler distributor of 340B Covered Drugs designated by the Covered Entity as the distributor from whom 340B Covered Drugs are purchased by the Covered Entity.

## ARTICLE 2

### OBLIGATIONS OF THE COVERED ENTITY

#### 2.1. The Covered Entity’s Responsibilities.

(a) The Covered Entity shall be responsible for compliance with all applicable laws and regulations relating to the 340B Drug Pricing Program, including, but not limited to, assuring that no diversion or duplicate discount of 340B Covered Drugs occurs, maintaining readily auditable records and otherwise complying with all other 340B Drug Pricing Program requirements.

(b) The Covered Entity shall submit to the Office of Pharmacy Affairs a signed certification that the Covered Entity has this Agreement in effect which meets all the requirements of the 340B Drug Pricing Program.

(c) The Covered Entity, or its authorized agent, shall order 340B Covered Drugs directly from the manufacturer or the Wholesaler and shall arrange to be billed directly, and shall pay for, all such ordered drugs. A ship to, bill to procedure will be used in which the Covered Entity will purchase the covered drug, and the covered drug will be shipped directly to the Contract Pharmacy.

(d) The Covered Entity shall ensure that a tracking system exists which will ensure that drugs purchased under the 340B Drug Pricing Program are not diverted to individuals who are not Eligible Patients. Such records can include: prescription files, velocity reports, and records of ordering and receipt.

(e) The Covered Entity shall furnish a list to the PBA and the Contract Pharmacy of all Authorized Providers affiliated with the Covered Entity and will update the list of Authorized Providers to reflect any changes. The Authorized Providers shall be used to electronically process and adjudicate all electronic prescription claims from the Contract Pharmacy.

(f) As the Covered Entity under Section 340B of the U.S. Public Health Service Act, additional obligations of the Covered Entity shall include:

- (i) Designate Contract Pharmacies;
- (ii) Submit data regarding Contract Pharmacy and Covered Entity status to the U.S. Office of Pharmacy Affairs as required for 340B participation;
- (iii) Determine who shall be designated as a Patient of the Covered Entity; and
- (iv) Approve all purchase orders for, and assume responsibility for pricing of, all 340B Covered Drugs.

### **ARTICLE 3**

#### **RESPONSIBILITY OF CONTRACT PHARMACY**

##### **3.1. The Contract Pharmacy's Responsibilities.**

(a) Contract Pharmacy shall electronically transmit all claims for Contract Pharmacy Services it delivers to Patients, to PBA, in accordance with the NCPDP Telecommunication Standards for electronic claims submission process as defined by the PBA.

(b) Contract Pharmacy will have a tracking system, which will ensure that drugs purchased under the 340B Drug Pricing Program are not diverted to individuals who are not Eligible Patients. Such records can include: prescription files, velocity reports, and records of ordering and receipt.

Pursuant to this agreement, Contract Pharmacy will permit the covered entity or its duly authorized representatives to have reasonable access to Contract Pharmacy's facilities and records during the term of this Agreement in order to make periodic checks regarding the efficacy of such tracking systems.

Contract Pharmacy agrees to make any and all adjustments to the tracking system, which are reasonably necessary to prevent diversion of covered drugs to individuals who are not Eligible Patients.

(c) Contract Pharmacy agrees that it will not resell or transfer a drug purchased at section 340B pricing to an individual who is not a Patient of the covered entity. If Contract Pharmacy is found to have violated the drug diversion prohibition contained in Section 340B of the U.S. Public Health Service Act, Contract Pharmacy will pay the amount of the discount in question so that the Covered Entity can reimburse the manufacturer (consistent with the HRSA requirement contained in Federal Register / Vol. 72, No. 8 / Friday, January 12, 2007).

(d) Contract Pharmacy will not receive 340B drug replenishment for any prescription that has been billed to an Excluded Governmental Program under section 340B.

(e) Contract Pharmacy understands and agrees that Eligible Patients of the Covered Entity may elect not to use Pharmacy for pharmacy services. Contract Pharmacy will inform the Eligible Patient of his or her freedom to choose a pharmacy provider.

(f) The Contract Pharmacy agrees that it will provide pharmacy services up to and including:

- (i) Eligible Patient drug utilization review;
- (ii) Maintaining Eligible Patient drug profiles;
- (iii) Counseling and advising Eligible Patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship.

### **3.2. Claims Submission Requirements.**

(a) Contract Pharmacy shall electronically submit all Claims for 340B Covered Drugs provided under this Agreement via Point-of-Sale to PBA on the date of service. All Claims for 340B Covered Drugs shall be submitted to PBA in accordance with the most current approved NCPDP Telecommunications Standard. Failure to submit a Claim within thirty (30) thirty days from the date of fill may result in non-payment of such Claim.

(b) Contract Pharmacy shall submit Claims on-line through PBA to the appropriate Third Party Insurer or pharmacy benefit manager for all Covered Entity Eligible Patients who have a Third Party Insurer, excluding governmental programs involving a rebate agreement with a manufacturer which would result in a duplicate discount or rebate under the 340B Drug Pricing Program with respect to a 340B Covered Drug.

(c) Contract Pharmacy shall submit to the PBA via the NCPDP Telecommunication claim the amount of all Co-Payments and/or Third Party Payments received by the Contract Pharmacy.

(d) If the Contract Pharmacy receives 340B drug replenishment for Third Party Payer prescription claims, Contract Pharmacy shall return all Third Party Payments to the PBA in accordance with instructions from PBA as included the PBA Pharmacy Provider Agreement.

(e) Contract Pharmacy shall adhere to the accurate submission of a claim for a 340B Covered Drug provided to Patient by Contract Pharmacy:

(i) Contract Pharmacy must submit the NDC 11 Number for the original package size from which the 340B Covered Drug was dispensed.

(ii) The drug dispensed shall comply with the dispensing limitations obtained through the PBA's on-line processing and adjudication system.

(iii) Contract Pharmacy shall contact the Help Desk established by PBA for assistance to Contract Pharmacy for any Claims involving incorrect or deficient Claim information.

(iv) Each 340B Covered Drug approved for payment but not received by a Patient within ten (10) calendar days of submission must be electronically reversed on-line by Contract Pharmacy.

(f) Contract Pharmacy shall be solely responsible for expenses, including any applicable switch fees relating to transmitting Claims or other on-line activities or information to PBA. Neither PBA nor 340B Covered Entity shall have any responsibility for any such charges, fees, or expenses.

(g) Contract Pharmacy shall be responsible for obtaining and maintaining its own computer terminal or other computer equipment and software necessary to submit claims or other on-line data or information under this Agreement, including all equipment and software necessary to make the connection to the PBA Claims processing system and to achieve the Claims data format required under this Agreement.

(h) Contract Pharmacy shall be solely responsible for its own expenses in performance of its duties and responsibilities contained in this Agreement.

### **3.3. Collection of Patient Co-Payments.**

(a) Contract Pharmacy shall collect from a Patient, Co-Payments in accordance with the Covered Entity's Plan and shall remit the same to the PBA when

applicable. Contract Pharmacy cannot waive, discount, reduce or increase the Co-Payment amount communicated to Contract Pharmacy by PBA unless otherwise authorized in writing by the Covered Entity.

(b) Contract Pharmacy shall accept the Dispensing Fee as payment in full for the services of the Contract Pharmacy in dispensing 340B Covered Drugs to Patients. In no event, including, but not limited to, non-payment by the Covered Entity for 340B Covered Drugs dispensed to Patient by Contract Pharmacy, non-payment of the Dispensing Fee, Insolvency of the Covered Entity, or breach by the Covered Entity of any term or condition of this Agreement, shall Contract Pharmacy bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any Patient or persons acting on behalf of the Patient for 340B Covered Drugs eligible for reimbursement under this Agreement; provided, however, that Contract Pharmacy may collect from the Patient, Co-Payments or other charges for services not covered for the Patient under the Covered Entity's Plan. The provisions of this Section shall (a) apply to all 340B Covered Drugs dispensed while this Agreement is in force; (b) survive the termination of this Agreement regardless of the cause of termination; (c) be construed to be for the benefit of Patient; and (d) shall supersede any oral or written agreement, existing or subsequently entered into, between Contract Pharmacy and a Patient or a person acting on a Patient's behalf, that requires the Patient to pay for 340B Covered Drugs.

**3.4. Formulary Compliance.** In providing any 340B Covered Drugs to a Patient, Contract Pharmacy shall comply with the 340B Formulary to the extent the 340B Formulary applies to such 340B Covered Drugs. Contract Pharmacy will not implement any substitution program for the Patient that is inconsistent with the Covered Entity's applicable 340B Formulary.

**3.5. Prescriptions and Signature Logs.** Contract Pharmacy shall maintain records of all prescriptions dispensed pursuant to this Agreement and a signature log specifically approved by the Covered Entity for each 340B Covered Drug dispensed to a Patient, which acknowledges receipt of the 340B Covered Drug. Each Patient (or his or her authorized agent) who receives a 340B Covered Drug shall be required to sign the log acknowledging the date the 340B Covered Drug was received and the Contract Pharmacy's prescription number.

**3.6. Liability Insurance.** Contract Pharmacy must at all times, at Contract Pharmacy's sole expense, be insured under policies for professional liability and malpractice insurance, as well as comprehensive general liability insurance, with limits of no less than One Million Dollars (\$1,000,000) for each claim and Three Million Dollars (\$3,000,000) aggregate coverage. Contract Pharmacy shall also assure that all

pharmacists and other health care professionals employed or under contract with Contract Pharmacy to render Contract Pharmacy Services to Patients procure and maintain such insurance, unless they are covered under Contract Pharmacy's insurance policy. Contract Pharmacy must furnish copies of said policies to the Covered Entity upon enrolling under this Agreement.

### **3.7. Payment Provisions.**

(a) Contract Pharmacy shall be compensated a Dispensing Fee in accordance with Exhibit A hereto for each prescription drug item that it dispenses in the delivery of 340B Covered Drugs to Patients of the Covered Entity, and in compliance with the Covered Entity's Plan. PBA shall remit the Dispensing Fee to the Contract Pharmacy on behalf of the Covered Entity.

(b) PBA, in cooperation with Contract Pharmacy and Covered Entity, shall initiate drug replenishment purchase orders for the purchase of the replacement drug inventory under the 340B Drug Pricing Program based upon 340B Formulary status and Contract Pharmacy's in-stock position of the medication dispensed to a Patient of the Covered Entity as follows:

- (i) 340B Formulary medications stocked by Contract Pharmacy shall be replaced by the Covered Entity to Contract Pharmacy.
- (ii) The medications shall be ordered and paid by the Covered Entity or its designated agent.
- (iii) The medications shall be replenished when a full stock bottle of such 340B Covered Drug has been dispensed to Patients.

### **3.8. Payment Process.**

(a) For Claims that are eligible for payment under the terms of this Agreement, the average time for payment of Dispensing Fees to Contract Pharmacy shall not exceed thirty (30) business days from the date of receipt of the prescription claim.

(b) The PBA shall pay Contract Pharmacy the contracted Dispensing Fee referenced in Section 3.7(a) above.

(c) Contract Pharmacy shall electronically submit to PBA all Claims for 340B Covered Drugs delivered to Patient.

(d) Covered Entity hereby agrees and directs Contract Pharmacy and PBA to conduct a periodic reconciliation of 340B drugs dispensed against those 340B drugs received by Contract Pharmacy. If inventory package size has not been identified for replenishment after a six (6) month period, the Contract Pharmacy will: (a) adhere to the PBA requirements for a systematic adjustment the virtual inventory; and (b) receive reimbursement for the settlement of drug inventory at the applicable True Up Price for such remaining inventory.

#### ARTICLE 4

##### CONFIDENTIALITY, PRIVACY AND SECURITY

4.1. **Confidentiality.** PBA, the Covered Entity and Contract Pharmacy shall maintain the confidentiality of any confidential or proprietary information of the other party, including, but not limited to, any confidential pricing; 340B Formulary information; information on invoices and reports provided by the Covered Entity or PBA; and any other information designated as confidential or proprietary by the disclosing party (collectively, "*Confidential Information*"). If a party is compelled by law to disclose Confidential Information of the other party, and/or terms of this Agreement, it will use reasonable efforts to provide written notice to the other party before making such disclosure.

4.2. **Privacy and Security of Protected Health Information.** The Covered Entity and Contract Pharmacy acknowledge that each are a "HIPAA Covered Entity," as defined in the HIPAA Privacy Rule and the HIPAA Security Rule set forth at 45 CFR §§ 160 and 164. Contract Pharmacy shall comply with the requirements of the HIPAA Privacy Rule and the HIPAA Security Rule and any other applicable HIPAA Regulations in the performance of this Agreement. In the event the Contract Pharmacy performs any function for the Covered Entity or PBA involving the use or disclosure of Confidential Information, other than the provision of 340B Covered Drugs to Patients, the Contract Pharmacy shall execute a Business Associate Agreement with the Covered Entity or PBA, as the case may be, which complies with the requirements set forth at 45 CFR § 164.504(e).

#### ARTICLE 5

##### ADDITIONAL REGULATORY REQUIREMENTS

5.1. **Compliance with Law.** Contract Pharmacy shall be responsible for obtaining and/or verifying all licenses and permits required under the State law for Contract Pharmacy to furnish 340B Covered Drugs to Patients. Contract Pharmacy shall be responsible for determining and complying with all laws and regulations, including, but not limited to, regulations applicable to record keeping requirements, the furnishing of 340B Covered Drugs to Patients and to the performance of this Agreement. Each of

Contract Pharmacy and PBA agrees to comply in all material respects with all applicable laws, including, but not limited to, to the extent applicable, the Specified Federal Laws.

**5.2. Maintenance of Records; Audits.** Contract Pharmacy shall keep and maintain in accordance with prudent business practices, accurate, complete and timely books, records and accounts of all transactions occurring as part of the furnishing of 340B Covered Drugs to Patients. Contract Pharmacy shall retain such books and records during the term of this Agreement and for a period of at least seven (7) years after the termination of this Agreement and for such longer period of time as required by an on-going audit or investigation of any party to this Agreement or any governmental agency. Contract Pharmacy shall permit PBA, the Covered Entity or any authorized governmental agency to have the right to inspect, evaluate and audit the books, records, contracts, documents, papers and accounts relating to Contract Pharmacy's performance of this Agreement. The right to audit shall include, but not be limited to, Pharmacy Services to Patients, Usual and Customary Charge submissions and Claims paid to the Contract Pharmacy by the Covered Entity. The rights of PBA, the Covered Entity and authorized governmental agencies to inspect, evaluate and audit any of the foregoing types of information shall exist during the term of this Agreement and for a period of seven (7) years after the termination of this Agreement and for such longer period of time as required to complete an on-going audit or investigation. Contract Pharmacy shall maintain its signature log of 340B Covered Drugs provided to Patients of the Covered Entity for a period of seven (7) years after the date such 340B Covered Drugs were provided, and shall make such records available for audit by the Covered Entity. Signature logs shall be filed in order of consecutive date to facilitate easy and logical review by the Covered Entity or representative appointed by 340B Covered Entity. PBA, the Covered Entity or any governmental agency or their respective representatives, have the right to inspect all records of Contract Pharmacy relating to this Agreement, during the normal business hours of Contract Pharmacy, after providing at least ten (10) days written notification to Contract Pharmacy of its desire to conduct an audit of Contract Pharmacy.

**5.3. Audit Resolution Process.** Any payments made to Contract Pharmacy that are in excess of the amount of the contract payment under this Agreement because of error, inaccurate claims, or discrepancies or due to any other reason may be recovered by the Covered Entity. The Covered Entity or PBA shall notify Contract Pharmacy in writing of such excess payments and shall have the right either to offset such excess payment amounts against any payments that may be due to Contract Pharmacy or to require reimbursement from Contract Pharmacy of such excess payment amounts. If the Covered Entity requires reimbursement from Contract Pharmacy, Contract Pharmacy shall have thirty (30) days from the date of notification by the Covered Entity or PBA to reimburse the Covered Entity the excess payment amounts. When the Covered Entity collects from Contract Pharmacy amounts due as a result of audit compliance discrepancies, Contract Pharmacy cannot collect, seek compensation or reimbursement from, or have any recourse against a Patient in relation to any such collection.

5.4. **Medicaid.** Each party to this Agreement acknowledges and agrees that such party shall not use drugs purchased under the 340B Drug Pricing Program to dispense Medicaid prescriptions.

## ARTICLE 6

### TERMS AND TERMINATION

6.1. **Term.** This Agreement shall commence upon the Effective Date and shall expire three (3) years from that date; provided, however, that upon the expiration of the Initial Term, this Agreement shall automatically be renewed for successive one (1) year renewal terms (the "*Renewal Term*") unless otherwise terminated pursuant to the terms set forth in Section 6.2, below.

6.2. **Termination.** The Initial Term of this Agreement or any Renewal Term may be terminated only as follows:

(a) **Termination with Cause.** In the event that a party materially breaches the terms of this Agreement, the non-breaching party may terminate this Agreement if the other party has failed to cure such breach within thirty (30) calendar days after the non-breaching party gives written notice of such breach. Notwithstanding the foregoing, the Covered Entity may immediately terminate this Agreement in the event that: Contract Pharmacy fails to maintain any licensed status required by applicable law; Contract Pharmacy fails to comply with all 340B Drug Pricing Program provisions; PBA or any Subcontractor of PBA fails to maintain any licensed status required by applicable law for its services required to be performed under this Agreement, Contract Pharmacy fails to transmit the amount of any Co-Payment or Third Party Payment as required by this Agreement within five (5) days after such payment is due.

(b) **Termination without Cause.** Either Contract Pharmacy or the Covered Entity may terminate this Agreement without cause by providing the other party with at least ninety (90) calendar days advance written notice of termination.

(c) **Insolvency.** Either the Covered Entity or Contract Pharmacy may terminate this Agreement immediately upon delivering written notice to the other party in the event the other party makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to all or a substantial part of a party's property, or a proceeding is commenced against it which will substantially impair its ability to perform hereunder (collectively, an "*Insolvency*"). The other party (to the extent it may lawfully do so) shall not at any time insist upon, plead, or in any manner claim, or take advantage of any stay or extension law that may affect the performance of this Agreement, and hereby expressly waives all benefit or advantage of any such law.

(d) **Fraud; Debarment/Suspension.** Either the Covered Entity or Contract Pharmacy may terminate this Agreement by notice to the other party if the other

party is found guilty of fraud, or is the subject of a Debarment/Suspension with termination effective on receipt of such notice.

## ARTICLE 7

### GENERAL PROVISIONS

7.1. **Amendments.** This Agreement may only be amended by mutual written consent of the duly authorized representatives of Contract Pharmacy and the Covered Entity. Contract Pharmacy shall be deemed to have accepted any modification proposed by Covered Entity if Contract Pharmacy fails to object to such modification, in writing, within a thirty (30) day notice period.

7.2. **Dispute Resolution.**

(a) For the Covered Entity. In the event the Covered Entity has deemed status under the Federal Tort Claims Act, or is otherwise prohibited from arbitration by any federal or state statute, then in any dispute arising under this Agreement, the parties should not enter into arbitration but agree to meet and confer in good faith to resolve any such disputes. The laws of the United States shall apply to any problem or dispute hereunder that cannot be resolved by and between such parties in good faith and either party is permitted to take appropriate legal action. In the event the Covered Entity does not have deemed status under the Federal Tort Claims Act, or is otherwise prohibited from arbitration by any federal or state statute, then in any dispute arising under this Agreement, the parties agree to meet and confer in good faith to resolve any such disputes. Any dispute hereunder that is eligible for arbitration that cannot be resolved by and between such parties in good faith shall be submitted to the dispute resolution procedure pursuant to Section 7.2(b).

(b) **Arbitration.** Any disputes that may arise regarding the performance, duties or obligations of either party under this Agreement, prior to initiation of arbitration, shall be discussed initially by the respective parties. In the event that the parties, after fifteen (15) calendar days of such discussions and using their best effort to resolve any such disputes, fail to reach agreement satisfactory to both parties, then the dispute shall be submitted, upon the motion of either party, to arbitration. The parties agree that any such decision shall be final and binding and at a location as mutually agreed upon.

(c) **Indemnification.** Contract Pharmacy shall indemnify and hold harmless the Covered Entity, PBA and their respective officers, directors, shareholders, employees and other agents, from and against any claims, liabilities, damages, judgments or other losses including, but not limited to, attorney's fees incurred by them arising out of or as a result of any acts or omissions of Contract Pharmacy or their respective officers, directors, employees or other agents in connection with the performance of any of their duties and obligations contained under this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective officers, duly authorized to do so, effective as of the date stated below.

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

**Covered Entity**

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

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

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

**Contract Pharmacy**

NCPDP: \_\_\_\_\_

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

Telephone No.: ( ) \_\_\_\_\_ - \_\_\_\_\_ x \_\_\_\_\_

Fax No.: ( ) \_\_\_\_\_ - \_\_\_\_\_ x \_\_\_\_\_

Email Address: \_\_\_\_\_

## EXHIBIT A

### PHARMACY REIMBURSEMENT

**A. Dispensing Compensation:** For each 340B Covered Drug dispensed hereunder, Contract Pharmacy will receive the following dispensing fee:

*Insert Reimbursement Table*

**B. True Up Price.** For each 340B Covered Drug dispensed by Contract Pharmacy hereunder for which Contract Pharmacy does not receive replenishment from the Supplier according to the True Up Reconciliation timeframe established within the agreement, Covered Entity agrees to reimburse Contract Pharmacy as follows:

(i) Brand Name Drugs: the Average Wholesale Price<sup>1</sup> of the dispensed pharmaceutical product minus \_\_\_\_\_% plus \_\_\_\_\_ dispense fee based on the time of dispense. In the event of the demise of the AWP, an equivalent pricing benchmark shall be used.

(ii) Generic Drugs: the Average Wholesale Price of the dispensed pharmaceutical product minus \_\_\_\_\_% plus \_\_\_\_\_ dispense fee based on the time of dispense. In the event of the demise of the AWP, an equivalent pricing benchmark shall be used.

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<sup>1</sup> The parties acknowledge and agree that the Average Wholesale Price shall be based on the NDC number of the dispensed medication. Such AWP's will be updated in the Covered Entity's designated PBA's system on a weekly basis to reflect the current price.

**EXHIBIT D**

STANDARD REPORTS- FOR BOTH ENTIRE HWLA NETWORK AND BY EACH COVERED ENTITY

<b>Description</b>	<b>Purpose</b>
Prescription utilization summary	Summarize approved/non-reversed prescription claims utilization over any given period of time based on adjudication date
Brand generic utilization	Summarize and compare prescription claims based on the brand class attributes (single source, multisource, and generic)
Top drugs by label name	Summary of the top utilized drugs by both claim cost and volume of prescriptions
Top drugs by generic name	Summary of the top utilized drugs by both claim cost and volume of prescriptions
Top drugs By NDC-11	Summary of the top utilized drugs by both claim cost and volume of prescriptions
Top therapeutic classes by HIC-3	Summary of the top HIC-3 therapeutic drug classes by both claim cost and volume of prescriptions
Top pharmacy summary reports	Summary of the top pharmacies based on claim cost and prescription volume
Top prescriber summary reports	Summary of the top prescribers based on claim cost and prescription volume
Controlled drug usage	Summary of controlled drug utilization over any given period of time based on fill date
Inventory order	Summary of 340B replenishment orders
Top covered entity summary report	Summary of the top covered entities based on claim cost and prescription volume
Top non-formulary/prior authorization utilization	Summary of the top non-formulary/prior authorization drugs by both claim cost and prescription volume

Confirmation that I have read and understand this Exhibit D:

**Ramsell Corporation:**

**County of Los Angeles:**

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

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

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

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

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

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

## **EXHIBIT E**

### **COUNTY'S STANDARD TERMS AND CONDITIONS**

#### **1.0 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Temporary Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Temporary Agreement (including any extensions), and the services to be provided by the Contractor under this Temporary Agreement shall also be reduced correspondingly. The County's notice to the Contractor regarding any projected reduction in payment obligation shall be provided within sixty (60) calendar days of the County's determination of a budget reduction. Contractor shall have ten (10) calendar days after receipt of such notice to either a) agree to the reduction in compensation and a commensurate reduction in services, or b) terminate this Temporary Agreement upon effective date of the compensation reduction.

#### **2.0 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (2 C.F.R Part 376)**

Contractor hereby acknowledges that the County is prohibited from contracting with and making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose principals are suspended, debarred, ineligible, or excluded from securing federally funded contracts. By executing this Temporary Agreement, Contractor certifies that neither it nor any of its owners, officers, partners, or directors or other principals is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Further, by executing this Temporary Agreement, Contractor certifies that, to its knowledge, none of its subcontractors, at any tier, or any owner, officer, partner, director, or other principal

of any subcontractor is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Contractor shall immediately notify County in writing, during the term of this Temporary Agreement, should it or any of its subcontractors or any principals of either be suspended, debarred, ineligible, or excluded from securing federally funded contracts. Failure of Contractor to comply with this provision shall constitute a material breach of this Temporary Agreement upon which the County may immediately terminate or suspend this Temporary Agreement.

### **3.0 COMPLAINTS**

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints from 340B covered entity community partners or contract pharmacies concerning services pursuant to this Temporary Agreement.

- 3.1 Within thirty (30) business days after Temporary Agreement effective date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to user complaints.
- 3.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.
- 3.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within ten (10) business days for County approval.
- 3.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.
- 3.5 The Contractor shall preliminarily investigate all complaints and notify the County's Director of Pharmacy Affairs of the status of the investigation within five (5) business days of receiving the complaint.
- 3.6 When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

#### **4.0 COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS**

In the performance of this Temporary Agreement, each party shall comply with all current and applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures. Any third-party claims or government action against one party based on the other party's violation of this Section 4.0 shall be subject to the indemnification provisions of Temporary Agreement sub-paragraph 8.3.

#### **5.0 COMPLIANCE WITH CIVIL RIGHTS LAWS- ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION LAWS**

- 5.1 The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17); the Fair Employment & Housing Act, Government Code Section 12920-12922; and Affirmative Action in County Agreements, Chapter 4.32 of the Los Angeles County Code to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Temporary Agreement or under any project, program, or activity supported by this Temporary Agreement.
- 5.2 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 5.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without

regard to race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 5.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation.
- 5.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Temporary Agreement or under any project, program, or activity supported by this Temporary Agreement.
- 5.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 5.0 when so requested by the County. Notwithstanding anything in this Temporary Agreement to the contrary, any access to employee records shall be in accordance with federal and state law and consistent with the employees' rights to privacy and confidentiality. County acknowledges that it may not have access to employment records without the informed, written consent of the employee in order to comply with applicable state and federal law and to protect employee rights. Contractor agrees to facilitate

any such required consent. In any event, County acknowledges that any information it receives from the relevant employment records is confidential and should be used solely to determine Contractor's compliance with this sub-paragraph 5.0. Any disclosure by County or its agents or employees of such confidential information to unauthorized third parties shall be the sole responsibility of County and any claims or actions brought against Contractor based on such disclosure shall be subject to the indemnity provisions of Temporary Agreement sub-paragraph 8.3 - Indemnification.

5.7 The parties agree that in the event the Contractor is alleged to have violated any of the anti-discrimination provisions of this Temporary Agreement, Contractor and County may agree that Contractor pay to County the sum of Five Hundred Dollars (\$500) for each such alleged violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Temporary Agreement. The Parties acknowledge that in agreeing to this liquidated sum, Contractor is not admitting that it violated any anti-discrimination provisions of this Temporary Agreement nor shall the payment of this liquidated sum be used as evidence that Contractor violated any of the anti-discrimination provisions of this Temporary Agreement. To that end and in accordance with Section 1152 of the California Evidence Code, such payments and any related conduct or communications shall not be admissible in any proceeding to prove that Contractor violated any of the anti-discrimination provisions of this Temporary Agreement.

5.8 **Anti-discrimination in Services:**

Contractor shall not discriminate in the provision of services hereunder because of race, color, religious creed, national origin, ethnic group identification, ancestry, age, sex, sexual orientation, medical condition, marital status, political affiliation, or physical or mental disability in accordance with requirements of Federal and State laws. For the purpose of this sub-paragraph, discrimination in the provision of services may

include, but is not limited to, the following: Denying any person any service or benefit or the availability of a facility; providing any service or benefit to a person which is not equivalent or is provided in a non-equivalent manner or at a non-equivalent time, from that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit. Contractor shall take affirmative action to ensure that intended beneficiaries of this Temporary Agreement are provided services without regard to race, color, religious creed, national origin, ethnic group identification, ancestry, sex, sexual orientation, age, medical condition, marital status, political affiliation, physical or mental disability.

5.9 The Contractor shall certify to, and comply with, the provisions of Attachment I - Contractor's EEO Certification.

## **6.0 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **6.1 Jury Service Program:**

This Temporary Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Attachment II and incorporated by reference into and made a part of this Temporary Agreement.

### **6.2 Written Employee Jury Service Policy.**

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or

that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any subcontractor to perform services for the County under the Temporary Agreement, the subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the Temporary Agreement.
3. If the Contractor is not required to comply with the Jury Service Program when the contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall

immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the contract and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.

4. Contractor's violation of this sub-paragraph of the Temporary Agreement may constitute a material breach of the Temporary Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Temporary Agreement and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

## **7.0 CONFLICT OF INTEREST**

- 7.1 No County employee whose position with the County enables such employee to influence the award or administration of this Temporary Agreement or any competing contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Temporary Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- 7.2 The County and Contractor shall comply with all applicable conflict of interest laws, ordinances, and regulations now in effect. Contractor requests an amendment to the contract to identify and reflect future

changes to such laws or regulations that affect Contractor's performance of this Temporary Agreement. The County and Contractor warrant that they are not now aware of any facts that create a conflict of interest. If the County or Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the other party. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be a material breach of this Temporary Agreement.

**8.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the effective date of this Temporary Agreement to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Temporary Agreement.

**9.0 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

9.1 Should the Contractor require additional or replacement personnel after the effective date of this Temporary Agreement, the Contractor shall give reasonable consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. If the Contractor decides to pursue consideration of GAIN/GROW participants for hiring, the Contractor shall provide information regarding job openings and job

requirements to DPSS' GAIN/GROW staff at [GAINGROW@dpss.lacounty.gov](mailto:GAINGROW@dpss.lacounty.gov). The County will refer GAIN/GROW participants by job category to the Contractor.

9.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

## **10.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **10.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

### **10.2 Chapter 2.202 of the County Code**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

### **10.3 Non-responsible Contractor**

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a

nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

#### **10.4 Contractor Hearing Board**

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or

terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **10.5 Subcontractors of Contractor**

These terms shall also apply to subcontractors of County Contractors.

**11.0 CONTRACTOR’S ACKNOWLEDGEMENT OF COUNTY’S  
COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County’s policy to encourage all County Contractors to voluntarily post the County’s “Safely Surrendered Baby Law” poster in a prominent position at the Contractor’s place of business. The Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor’s place of business. The County’s Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

**12.0 CONTRACTOR’S EXCLUSION FROM PARTICIPATING IN A  
FEDERALLY FUNDED PROGRAM**

12.1 Contractor hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program funded by the Federal government, directly or indirectly, in whole or in part, and that Contractor will notify Director within ten (10) calendar days in writing of: (1) any event that would require Contractor or a staff member’s mandatory exclusion from participation in a Federally funded health care program; and (2) any exclusionary action taken by any agency of the Federal government against Contractor or one or more staff members barring it or the staff members from participating in a Federally funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

12.2 Contractor shall indemnify and hold County harmless against any and all loss or damage County may suffer arising from any Federal exclusion of Contractor or its staff members from such participation in a Federally funded health care program.

12.3 Failure by Contractor to meet the requirements of this sub-paragraph shall constitute a material breach of contract upon which County may immediately terminate or suspend this Temporary Agreement.

**13.0 CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM**

13.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

13.2 As required by the County’s Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor’s duty under this Temporary Agreement to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Temporary Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**14.0 CONTRACTOR’S WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

14.1 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their Los Angeles County property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

- 14.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles Code Chapter 2.206.

## **15.0 COUNTY'S QUALITY ASSURANCE PLAN**

- 15.1 The County or its agent will evaluate the Contractor's performance under this Temporary Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Temporary Agreement terms and conditions and performance standards identified in the Statement of Work. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Temporary Agreement in jeopardy if not corrected will be reported to the Board of Supervisors.
- 15.2 The report will include a reasonable improvement/corrective action measures taken by the County and the Contractor. Failure to improve consistent with corrective action plan measures may be a material breach of this Temporary Agreement if Contractor has failed to cure such breach within thirty (30) calendar days after County gives written notice of such breach.
- 15.3 The County maintains databases that track/monitor Contractor performance history. Truthful and accurate information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

## **16.0 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 16.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Temporary Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall

obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

#### **17.0 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

#### **18.0 FEDERAL ACCESS TO RECORDS**

If, and to the extent that, Section 1861(v)(1)(l) of the Social Security Act (42 U.S.C. Section 1395x(v)(1)(l) is applicable, Contractor agrees that for a period of seven (7) years following the furnishing of services under this Temporary Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorize representatives, the Temporary Agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such

subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

**19.0 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

The County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH). Under this Temporary Agreement, the Contractor provides services to the County and the Contractor receives, has access to, and/or creates Protected Health Information as defined in Attachment III in order to provide those services. The County and the Contractor therefore agree to the terms of Attachment III, Contractor's Obligations as a "Business Associate" under Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) (Business Associate Agreement).

**20.0 INDEPENDENT CONTRACTOR STATUS**

20.1 This Temporary Agreement is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

20.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Temporary Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes,

or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

20.3 The Contractor understands and agrees that all persons performing work pursuant to this Temporary Agreement are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Temporary Agreement.

## **21.0 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

Without limiting Contractor's indemnification of County, and in the performance of this Temporary Agreement and until all of its obligations pursuant to this Temporary Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in subparagraphs 21.0 and 22.0 of this Temporary Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other Contractual obligation imposed upon Contractor pursuant to this Temporary Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Temporary Agreement.

### **21.1 Evidence of Coverage and Notice to County**

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Temporary Agreement.

- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Temporary Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Temporary Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street, 6E  
Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contract Administration & Monitoring

and

County of Los Angeles  
Department of Health Services  
Centralized Contract Monitoring Division  
5555 Ferguson Drive, Suite 210  
Commerce, CA 90022

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Temporary Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

**21.2 Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents and Employees (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

**21.3 Cancellation of or Changes Insurance**

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer,

limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

**21.4 Failure to Maintain Insurance**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. Alternatively, the County may purchase the Required Insurance at commercially reasonable rates and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement

**21.5 Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

**21.6 Contractor's Insurance Shall Be Primary**

Contractor's insurance policies, with respect to any claims related to this Temporary Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

**21.7 Waivers of Subrogation**

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Temporary Agreement. The Contractor shall require its insurers to

execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

**21.8 Sub-Contractor Insurance Coverage Requirements**

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

**21.9 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

**21.10 Claims Made Coverage**

If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date shall precede the effective date of this Temporary Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Temporary Agreement expiration, termination or cancellation.

**21.11 Application of Excess Liability Coverage**

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the

underlying primary policies, to satisfy the Required Insurance provisions.

**21.12 Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

**21.13 Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

**22.0 INSURANCE COVERAGE**

**22.1 Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$2 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

**22.2 Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Temporary Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**22.3 Professional Liability/Errors and Omissions**

Insurance covering Contractor's liability arising from or related to this Temporary Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Temporary Agreement's expiration, termination or cancellation.

**23.0 LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES**

Contractor shall obtain and maintain in effect during the term of this Temporary Agreement, all valid licenses, permits, registrations, accreditations, and certificates required by law which are applicable to its performance of this Temporary Agreement, and shall ensure that all of its officers, employees, and agents who perform services hereunder obtain and maintain in effect during the term of this Temporary Agreement, all licenses, permits, registrations, accreditations, and certificates required by law which are applicable to their performance of services hereunder. All such licenses, permits, registrations, accreditations, and certifications relating to services hereunder shall be made available to County upon request.

**24.0 INTENTIONALLY LEFT BLANK**

**25.0 EXCLUSIVITY**

County shall have an exclusive arrangement with the Contractor during the term of this Temporary Agreement. This Temporary Agreement shall restrict the Department of Health Services from acquiring similar, equal or like goods and/or services from other entities or sources. Nothing in the forgoing shall be construed to limit or affect any arrangement by County with a pharmacy benefit manager.

**26.0 NOTICE OF DELAYS**

Except as otherwise provided under this Temporary Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Temporary Agreement, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

**27.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

If applicable, the Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

**28.0 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Attachment IV of this Temporary Agreement and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**29.0 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Temporary Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

### **30.0 PUBLICITY**

30.1 The Contractor shall not disclose any details in connection with this Temporary Agreement to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Temporary Agreement within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Temporary Agreement, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the Director or his/her designee. The County shall not unreasonably withhold written consent.

30.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Temporary Agreement with the County of Los Angeles, provided that the requirements of this sub-paragraph 30.0 shall apply.

### **31.0 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

31.1 Contractor and approved subcontractors for this Temporary Agreement are required to maintain financial and accounting records and other documents and evidence, directly related to the billing for services performed under this contract, including but not limited to electronic versions, hereinafter "documents", pertaining to the fulfillment of the contract obligations in accordance with generally accepted accounting principles. Contractor must make these documents available to the County, or its authorized representatives, upon request during reasonable business hours and with advance notice to the Contractor during the

contract term. Contractor must retain these documents for seven (7) years from the date of final payment of the contract, unless the County's written permission is given to dispose of any such material prior to such time. Contractor must ensure that all County-approved subcontractors providing services under the contract, if any, fully comply with the audit provisions referenced in this subsection.

- 31.2 In the event that an audit of the Contractor is conducted specifically regarding this Temporary Agreement by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, including audits conducted by the Medicare and Medi-Cal programs, or both, then the Contractor shall file a copy of each such audit report, including Statement of Auditing Standards No. 70 Type 2 Reports, with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Temporary Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 31.3 Failure on the part of the Contractor or County to comply with any of the provisions of this sub-paragraph 31.0 shall constitute a material breach.
- 31.4 If, at any time during the term of this Temporary Agreement or within seven (7) years after the expiration or termination of this Temporary Agreement, representatives of the County conduct an audit of the Contractor regarding the work performed under this Temporary Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then Contractor shall refund to the County any undisputed amount within 30 days of the County's demand. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Temporary Agreement

exceed the funds originally appropriated by the County for the purpose of this Temporary Agreement.

**32.0 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Temporary Agreement.

**33.0 RESTRICTIONS ON LOBBYING**

If any Federal funds are to be used to pay for Contractor's services under this Temporary Agreement, Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Temporary Agreement also fully complies with all such certification and disclosure requirements.

**34.0 SUBCONTRACTING**

The Parties agree that for the purposes of this and every provisions of their Temporary Agreement, Contractor's contracted pharmacies shall not be sub-contractors the Contractor, not shall those vendors who provide support services to Contractor in providing these services to County. Only those vendors to whom Contractor delegates actual performance of services under this Temporary Agreement shall be deemed sub-contractors to the Contractor for the purposes of this Temporary Agreement.

34.1 The requirements of this Temporary Agreement may not be subcontracted by the Contractor without the advance approval of the County. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Temporary Agreement.

34.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the subcontractor;
  - A draft copy of the proposed subcontract; and
  - Other pertinent information and/or certifications requested by the County.
- 34.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.
- 34.4 The Contractor shall remain fully responsible for all performances required of it under this Temporary Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 34.5 The County's consent to subcontract shall not waive the County's right, if any, to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Temporary Agreement. The Contractor is responsible to notify its subcontractors of this County right.
- 34.6 The Director or his/her designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and, if applicable, subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 34.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
- 34.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street – 6E  
Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contract Administration & Monitoring

before any subcontractor employee may perform any work hereunder.

**35.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in sub-paragraph 13.0 - Contractor's Warranty of Adherence to County's Child Support Compliance Program shall constitute default under this Temporary Agreement. Without limiting the rights and remedies available to the County under any other provision of this Temporary Agreement, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Temporary Agreement pursuant to Temporary Agreement sub-paragraph 6.2.1 - Termination with Cause and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

**36.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in sub-paragraph 14.0 - Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program shall constitute default under this Temporary Agreement. Without limiting the rights and remedies available to County under any other provision of this Temporary Agreement, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this Temporary Agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

**37.0 TERMINATION FOR IMPROPER CONSIDERATION**

- 37.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Temporary Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Temporary Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Temporary Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Temporary Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.
- 37.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Fraud Hotline at (800) 544-6861 or [www.lacountyfraud.org](http://www.lacountyfraud.org).
- 37.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

**38.0 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Temporary Agreement, upon which the

County may in its sole discretion, immediately terminate or suspend this Temporary Agreement.

**39.0 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Temporary Agreement, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Temporary Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Temporary Agreement in the County's Budget for each such future fiscal year. Under no circumstances shall Contractor be obligated to perform any duties under this Temporary Agreement until funds have been appropriated for the fiscal year. County will notify Contractor no later than June 30 of each year whether the County's Board of Supervisor's has appropriated sufficient funds for this Temporary Agreement. At its sole discretion, Contractor may continue to provide services past June 30 of any given year with the expectation that if the funds are later appropriated, County will pay Contractor for those services. Notwithstanding any earlier election by the Contractor, it may stop performing under this Temporary Agreement at any time after notice by the County that insufficient funds have been appropriated.

**40.0 WAIVER**

No waiver by either Party of any breach of any provision of this Temporary Agreement shall constitute a waiver of any other breach or of such provision. Failure of a Party to enforce at any time, or from time to time, any provision of this Temporary Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this sub-paragraph 40.0 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Temporary Agreement.

**41.0 WARRANTY AGAINST CONTINGENT FEES**

41.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Temporary Agreement upon any Temporary Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

41.2 For breach of this warranty, the County shall have the right to immediately terminate this Temporary Agreement.

**42.0 SOLICITATION OF BIDS OR PROPOSALS:** Contractor acknowledges that County, prior to expiration or earlier termination of this Temporary Agreement, will exercise its right to request proposals for the continued provision of the services delivered or contemplated under this Temporary Agreement. County and its DHS, shall make the determination to request proposals in accordance with applicable County and DHS policies and shall comply with Chapter 2.121 of the Los Angeles County Code for the solicitation of these services. Contractor acknowledges that County may enter into a contract for the future provision of services, based upon the proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future request for proposals by virtue of its present status as Contractor.

## CONTRACTOR'S EEO CERTIFICATION

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 Contractor Name
 

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 Address
 

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 Internal Revenue Service Employer Identification Number
 

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### GENERAL CERTIFICATION

In accordance with Section 4.32.010 of the Code of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

### CONTRACTOR'S SPECIFIC CERTIFICATIONS

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| 1. The Contractor has a written policy statement prohibiting discrimination in all phases of employment.   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. The Contractor periodically conducts a self analysis or utilization analysis of its work force.   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. The Contractor has a system for determining if its employment practices are discriminatory against protected groups.  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Where problem areas are identified in employment practices, the Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

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 Authorized Official's Printed Name and Title
 

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 Authorized Official's Signature
 

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 Date
 

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Title 2 ADMINISTRATION  
Chapter 2.203.010 through 2.203.090  
CONTRACTOR EMPLOYEE JURY SERVICE

**2.203.010 Findings.**

The board of supervisors makes the following findings. The county of Los Angeles allows its permanent, full-time employees unlimited jury service at their regular pay. Unfortunately, many businesses do not offer or are reducing or even eliminating compensation to employees who serve on juries. This creates a potential financial hardship for employees who do not receive their pay when called to jury service, and those employees often seek to be excused from having to serve. Although changes in the court rules make it more difficult to excuse a potential juror on grounds of financial hardship, potential jurors continue to be excused on this basis, especially from longer trials. This reduces the number of potential jurors and increases the burden on those employers, such as the county of Los Angeles, who pay their permanent, full-time employees while on juror duty. For these reasons, the county of Los Angeles has determined that it is appropriate to require that the businesses with which the county contracts possess reasonable jury service policies. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.020 Definitions.**

The following definitions shall be applicable to this chapter:

- A. "Contractor" means a person, partnership, corporation or other entity which has a contract with the county or a subcontract with a county contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more such contracts or subcontracts.
- B. "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.
- C. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county but does not include:
  - 1. A contract where the board finds that special circumstances exist that justify a waiver of the requirements of this chapter; or
  - 2. A contract where federal or state law or a condition of a federal or state program mandates the use of a particular contractor; or
  - 3. A purchase made through a state or federal contract; or
  - 4. A monopoly purchase that is exclusive and proprietary to a specific manufacturer, distributor, or reseller, and must match and inter-member with existing supplies, equipment or systems maintained by the county pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-3700 or a successor provision; or
  - 5. A revolving fund (petty cash) purchase pursuant to the Los Angeles County Fiscal Manual, Section 4.4.0 or a successor provision; or
  - 6. A purchase card purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section P-2810 or a successor provision; or
  - 7. A non-agreement purchase with a value of less than \$5,000 pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section A-0300 or a successor provision; or

Title 2 ADMINISTRATION  
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8. A bona fide emergency purchase pursuant to the Los Angeles County Purchasing Policy and Procedures Manual, Section PP-1100 or a successor provision.
- D. "Full time" means 40 hours or more worked per week, or a lesser number of hours if:
1. The lesser number is a recognized industry standard as determined by the chief administrative officer, or
  2. The contractor has a long-standing practice that defines the lesser number of hours as full time.
- E. "County" means the county of Los Angeles or any public entities for which the board of supervisors is the governing body. (Ord. 2002-0040 § 1, 2002: Ord. 2002-0015 § 1 (part), 2002)

**2.203.030 Applicability.**

This chapter shall apply to contractors who enter into contracts that commence after July 11, 2002. This chapter shall also apply to contractors with existing contracts which are extended into option years that commence after July 11, 2002. Contracts that commence after May 28, 2002, but before July 11, 2002, shall be subject to the provisions of this chapter only if the solicitations for such contracts stated that the chapter would be applicable. (Ord. 2002-0040 § 2, 2002: Ord. 2002-0015 § 1 (part), 2002)

**2.203.040 Contractor Jury Service Policy.**

A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.050 Other Provisions.**

- A. Administration. The chief administrative officer shall be responsible for the administration of this chapter. The chief administrative officer may, with the advice of county counsel, issue interpretations of the provisions of this chapter and shall issue written instructions on the implementation and ongoing administration of this chapter. Such instructions may provide for the delegation of functions to other county departments.
- B. Compliance Certification. At the time of seeking a contract, a contractor shall certify to the county that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.060 Enforcement and Remedies.**

For a contractor's violation of any provision of this chapter, the county department head responsible for administering the contract may do one or more of the following:

1. Recommend to the board of supervisors the termination of the contract; and/or,
2. Pursuant to chapter 2.202, seek the debarment of the contractor. (Ord. 2002-0015 § 1 (part), 2002)

Title 2 ADMINISTRATION  
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CONTRACTOR EMPLOYEE JURY SERVICE

**2.203.070. Exceptions.**

- A. Other Laws. This chapter shall not be interpreted or applied to any contractor or to any employee in a manner inconsistent with the laws of the United States or California.
- B. Collective Bargaining Agreements. This chapter shall be superseded by a collective bargaining agreement that expressly so provides.
- C. Small Business. This chapter shall not be applied to any contractor that meets all of the following:
  - 1. Has ten or fewer employees during the contract period; and,
  - 2. Has annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, are less than \$500,000; and,
  - 3. Is not an affiliate or subsidiary of a business dominant in its field of operation.

“Dominant in its field of operation” means having more than ten employees and annual gross revenues in the preceding twelve months which, if added to the annual amount of the contract awarded, exceed \$500,000.

“Affiliate or subsidiary of a business dominant in its field of operation” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation. (Ord. 2002-0015 § 1 (part), 2002)

**2.203.090. Severability.**

If any provision of this chapter is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. (Ord. 2002-0015 § 1 (part), 2002)

**BUSINESS ASSOCIATE AGREEMENT****CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE"  
UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY  
ACT OF 1996 (HIPAA) AND THE HEALTH CARE INFORMATION  
TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

Under this Agreement, Contractor ("Business Associate") provides services ("Services") to County ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into a contract with Business Associate ("Business Associate Agreement") in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

**DEFINITIONS**

- 1.1 "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.

- 1.2 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate’s internal operations or to other than its employees.
- 1.3 “Electronic Health Record” has the same meaning as the term “electronic health record” in the HITECH Act, 42 U.S.C. section 17921. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 1.4 “Electronic Media” has the same meaning as the term “electronic media” in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission. The term “Electronic Media” draws no distinction between internal and external data, at rest (that is, in storage) as well as during transmission.
- 1.5 “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.6 “Individual” means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.7 "Minimum Necessary" refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.
- 1.8 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.

- 1.9 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Health Information.
- 1.10 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.11 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.
- 1.12 "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160 and 164.
- 1.13 "Services" has the same meaning as in the body of this Agreement.
- 1.14 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

- 1.15 “Use” or “Uses” mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations.
- 1.16 Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

### **2.1 Permitted Uses and Disclosures of Protected Health Information.** Business Associate:

- (a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Agreement;
- (b) shall Disclose Protected Health Information to Covered Entity upon request;
- (c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:
  - (i) Use Protected Health Information; and
  - (ii) Disclose Protected Health Information if the Disclosure is Required by Law.

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

### **2.2 Prohibited Uses and Disclosures of Protected Health Information.** Business Associate:

- (a) shall not Use or Disclose Protected Health Information for fundraising or marketing purposes.
- (b) shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.

(c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

(a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.

(b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate

(a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, Agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise required by law.

(b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.

(c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is

an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency.

2.4.1 Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information by telephone call to [To Be Determined], telephone number 1(800) 711-5366.

2.4.2 Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Suite 525  
Los Angeles, California 90012  
HIPAA@auditor.lacounty.gov  
(213) 974-2166

- (a) The notification required by section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and
- (b) The notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:
  - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iii) Any other details necessary to conduct an assessment of whether there is a risk of harm to the Individual;

(iv) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the breach;

(v) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and

(vi) The name and contact information for the person most knowledgeable regarding the facts and circumstances of the Breach.

If Business Associate is not able to provide the information specified in section 2.3.2 (a) or (b) at the time of the notification required by section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

- 2.4.3 Request for Delay by Law Enforcement. Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.
- 2.5 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.
- 2.6 Breach Notification. Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information, provide Breach notification for each and every Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or subcontractors, in a manner that permits Covered

Entity to comply with its obligations under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Privacy and Security Regulations, including:

- (a) Notifying each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of such Breach;
- (b) The notification required by paragraph (a) of this Section 2.6 shall include, to the extent possible:
  - (i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - (ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - (iii) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;
  - (iv) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  - (v) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
  - (vi) The notification required by paragraph (a) of this section shall be written in plain language.

Covered Entity, in its sole discretion, may elect to provide the notification required by this Section 2.6, and Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, including costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information.

- 2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

- 2.8 Access to Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and copy that Protected Health Information. Business Associate shall provide such access for inspection of that Protected Health Information within two (2) business days after receipt of request from Covered Entity. Business Associate shall provide copies of that Protected Health Information within five (5) business days after receipt of request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- 2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Covered Entity determines that any Protected Health Information constitutes a “designated record set” as defined by 45 C.F.R. § 164.501, make any amendments to Protected Health Information that are requested by Covered Entity. Business Associate shall make such amendment within ten (10) business days after receipt of request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.
- 2.10 Accounting of Disclosures. Upon Covered Entity’s request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors, in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information maintained in an Electronic Health Record for treatment, payment, and health care operations.

*[Optional, to be used when all Uses and Disclosures permitted in order to perform the Services will be for the Covered Entity’s payment or health care operations activities: However, Business Associate is not required to provide an Accounting of Disclosures that are necessary to perform the Services because such Disclosures are for either payment or health care operations purposes, or both.]*

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure.

Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.

- 2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties and fines (including regulatory penalties and/or fines), and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement; Business Associate's obligations under this provision extend to compliance and/or enforcement actions and/or activities, whether formal or informal, of Secretary of the federal Department of Health and Human Services and/or Office for Civil Rights.

### **3.0 OBLIGATION OF COVERED ENTITY**

- 3.1 Obligation of Covered Entity. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

### **4.0 TERM AND TERMINATION**

- 4.1 Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.
- 4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall:
- (a) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;

- (b) Immediately terminate this Agreement if a party has breached a material term of this Agreement and cure is not possible; or
- (c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

#### 4.3 Disposition of Protected Health Information Upon Termination or Expiration.

- (a) Except as provided in paragraph (b) of this section, upon termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

### **5.0 MISCELLANEOUS**

- 5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Business Associate Agreement.
- 5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.

- 5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy and/or Security Regulations means the section as in effect or as amended.
- 5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Regulations.
- 5.6 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Regulations and other privacy laws governing Protected Health Information

# *Safely* Surrendered



No shame. No blame. No names.

In Los Angeles County: 1-877-BABY SAFE • 1-877-222-9723

[www.babysafela.org](http://www.babysafela.org)



# Safely Surrendered Baby Law

## What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents or other persons, with lawful custody, which means anyone to whom the parent has given permission to confidentially surrender a baby. As long as the baby is three days (72 hours) of age or younger and has not been abused or neglected, the baby may be surrendered without fear of arrest or prosecution.

## How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially, and safely surrender a baby within three days (72 hours) of birth. The baby must be handed to an employee at a hospital or fire station in Los Angeles County. As long as the baby shows no sign of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, staff will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent or other surrendering adult.

## What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their baby within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

## Can only a parent bring in the baby?

No. While in most cases a parent will bring in the baby, the Law allows other people to bring in the baby if they have lawful custody.

## Does the parent or surrendering adult have to call before bringing in the baby?

No. A parent or surrendering adult can bring in a baby anytime, 24 hours a day, 7 days a week, as long as the parent or surrendering adult surrenders the baby to someone who works at the hospital or fire station.

## Does the parent or surrendering adult have to tell anything to the people taking the baby?

No. However, hospital or fire station personnel will ask the surrendering party to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the baby. The questionnaire includes a stamped return envelope and can be sent in at a later time.

## What happens to the baby?

The baby will be examined and given medical treatment. Upon release from the hospital, social workers immediately place the baby in a safe and loving home and begin the adoption process.

## What happens to the parent or surrendering adult?

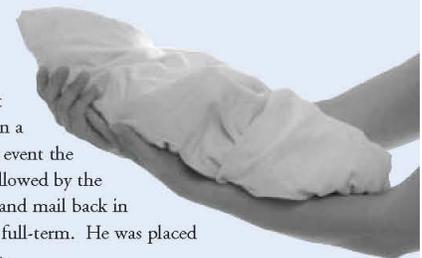
Once the parent or surrendering adult surrenders the baby to hospital or fire station personnel, they may leave at any time.

## Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned, hurt or killed by their parents. You may have heard tragic stories of babies left in dumpsters or public bathrooms. Their parents may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had no one or nowhere to turn for help, they abandoned their babies. Abandoning a baby is illegal and places the baby in extreme danger. Too often, it results in the baby's death. The Safely Surrendered Baby Law prevents this tragedy from ever happening again in California.

## A baby's story

Early in the morning on April 9, 2005, a healthy baby boy was safely surrendered to nurses at Harbor-UCLA Medical Center. The woman who brought the baby to the hospital identified herself as the baby's aunt and stated the baby's mother had asked her to bring the baby to the hospital on her behalf. The aunt was given a bracelet with a number matching the anklet placed on the baby; this would provide some identification in the event the mother changed her mind about surrendering the baby and wished to reclaim the baby in the 14-day period allowed by the Law. The aunt was also provided with a medical questionnaire and said she would have the mother complete and mail back in the stamped return envelope provided. The baby was examined by medical staff and pronounced healthy and full-term. He was placed with a loving family that had been approved to adopt him by the Department of Children and Family Services.



# *Ley de* Entrega de Bebés *Sin Peligro*



*Los recién nacidos pueden ser entregados en forma segura al personal de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles*

Sin pena. Sin culpa. Sin nombres.

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# Ley de Entrega de Bebés Sin Peligro

## ¿Qué es la Ley de Entrega de Bebés sin Peligro?

La Ley de Entrega de Bebés sin Peligro de California permite la entrega confidencial de un recién nacido por parte de sus padres u otras personas con custodia legal, es decir cualquier persona a quien los padres le hayan dado permiso. Siempre que el bebé tenga tres días (72 horas) de vida o menos, y no haya sufrido abuso ni negligencia, pueden entregar al recién nacido sin temor de ser arrestados o procesados.

*Cada recién nacido se merece la oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele que tiene otras opciones. Hasta tres días (72 horas) después del nacimiento, se puede entregar un recién nacido al personal de cualquier hospital o cuartel de bomberos del condado de Los Angeles.*

## ¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura dentro de los tres días (72 horas) del nacimiento. El bebé debe ser entregado a un empleado de cualquier hospital o cuartel de bomberos del Condado de Los Ángeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazaletes y el padre/madre o el adulto que lo entregue recibirá un brazaletes igual.

## ¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden comenzar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Ángeles al 1-800-540-4000.

## ¿Sólo los padres podrán llevar al recién nacido?

No. Si bien en la mayoría de los casos son los padres los que llevan al bebé, la ley permite que otras personas lo hagan si tienen custodia legal.

## ¿Los padres o el adulto que entrega al bebé deben llamar antes de llevar al bebé?

No. El padre/madre o adulto puede llevar al bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, siempre y cuando entreguen a su bebé a un empleado del hospital o cuartel de bomberos.

## ¿Es necesario que el padre/madre o adulto diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital o cuartel de bomberos le pedirá a la persona que entregue al bebé que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para cuidar bien del bebé. El cuestionario incluye un sobre con el sello postal pagado para enviarlo en otro momento.

## ¿Qué pasará con el bebé?

El bebé será examinado y le brindarán atención médica. Cuando le den el alta del hospital, los trabajadores sociales inmediatamente ubicarán al bebé en un hogar seguro donde estará bien atendido, y se comenzará el proceso de adopción.

## ¿Qué pasará con el padre/madre o adulto que entregue al bebé?

Una vez que los padres o adulto hayan entregado al bebé al personal del hospital o cuartel de bomberos, pueden irse en cualquier momento.

## ¿Por qué se está haciendo esto en California? ?

La finalidad de la Ley de Entrega de Bebés sin Peligro es proteger a los bebés para que no sean abandonados, lastimados o muertos por sus padres. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Los padres de esos bebés probablemente hayan estado pasando por dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus bebés porque tenían miedo y no tenían nadie a quien pedir ayuda. El abandono de un recién nacido es ilegal y pone al bebé en una situación de peligro extremo. Muy a menudo el abandono provoca la muerte del bebé. La Ley de Entrega de Bebés sin Peligro impide que vuelva a suceder esta tragedia en California.

## Historia de un bebé

A la mañana temprano del día 9 de abril de 2005, se entregó un recién nacido saludable a las enfermeras del Harbor-UCLA Medical Center. La mujer que llevó el recién nacido al hospital se dio a conocer como la tía del bebé, y dijo que la madre le había pedido que llevara al bebé al hospital en su nombre. Le entregaron a la tía un brazaletes con un número que coincidía con la pulsera del bebé; esto serviría como identificación en caso de que la madre cambiara de opinión con respecto a la entrega del bebé y decidiera recuperarlo dentro del período de 14 días que permite esta ley. También le dieron a la tía un cuestionario médico, y ella dijo que la madre lo llenaría y lo enviaría de vuelta dentro del sobre con franqueo pagado que le habían dado. El personal médico examinó al bebé y se determinó que estaba saludable y a término. El bebé fue ubicado con una buena familia que ya había sido aprobada para adoptarlo por el Departamento de Servicios para Niños y Familias.

