

CONTRACT

FOR

ADMINISTRATION OF A PRESCRIPTION DRUG CARD AND MAIL ORDER PROGRAM

CONTRACT

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CONTRACT

THIS Contract for Administration of a Prescription Drug Card and Mail Order Program, hereinafter referred to as (“Contract”) is effective January 1, 2015 (“Effective Date”) by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and OptumRx Administrative Services LLC, on behalf of itself and its subsidiaries, with a place of business at 1600 McConnor Parkway, Schaumburg, Illinois 60173, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for Administration of a Prescription Drug Card and Mail Order Program; and

WHEREAS, the Contractor represents that its services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

- 1. Scope of Work:** This Contract specifies the contractual terms and conditions by which the County will obtain professional services as further set forth in Attachment A - Scope of Work. Services herein shall be provided by Contractor.
- 2. Pricing:** The Contract price, as specified in Attachment B hereto, includes full compensation for providing all services to be provided under this Contract.
- 3. Invoicing/Payment:** All invoicing and payment for services performed under this Contract shall be as specified in Attachment B, hereto.
- 4. Term of Contract:** This Contract shall commence upon execution of all necessary signatures and approval by the County Board of Supervisors, and shall continue in effect for a period of three (3) years (“Initial Term”). The Contract may be renewed thereafter for two (2) additional one (1) year periods (each a “Renewal Term”) upon mutual agreement of both Parties. The County does not have to give a reason if it elects not to renew this Contract; however County must provide ninety (90) day advance written notice of its intent to renew this Contract. The Initial Term and Renewal Term shall collectively be defined as the “Term.”
- 5. Entire Agreement:** This Contract, including its Attachments, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.
- 6. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties.

- 7. Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.
- 8. Appropriation/Contingency of Funds:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the Term of this Contract. If such appropriations are not approved, this Contract will be immediately terminated without penalty to the County.
- 9. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- 10. Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
- 11. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- 12. Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without express written notice to County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without express written notice to County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County consents to the subcontractors listed in Attachment C.3. Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all services required herein including but not limited to compliance with all relevant state and federal codes, regulations, ordinances, orders, or statutes. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its Attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents as relates to this Contract may be performed outside the United States of America. Further no participant specific data including but not limited to name, personal health information, social security numbers, addresses, information regarding dependents, or date of birth may be accessed outside the United States of America by Contractor, its affiliates, or their employees, directors, or subcontractors. Contractor is required to notify County of any changes to any subcontractor engaged to perform work specific to the County or to access County participant data before that work is performed. Contractor shall require all subcontractors that perform any of Contractor's obligations under this Contract to agree to protect County's Confidential Information as least as strictly as provided herein. If County reasonably requests that its Confidential Information not be disclosed to a subcontractor, Contractor will work with County in good faith to protect County's Confidential Information from such disclosure.

- 13. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1720 *et seq.*, of the California Labor Code.
- 14. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
- 15. Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
- 16. Warranty:** Contractor expressly warrants that the services covered by this Contract are: 1) merchantable and good for the ordinary purposes for which they are used; and 2) fit for the particular purpose for which they are intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 19 below and as more fully described in paragraph 19, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- 17. Patent/Copyright Materials/Proprietary Infringement:** Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 19 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

- 18. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 19 below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- 19. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. County reserves the right to retain legal counsel, at their own cost, at any time in connection with any cause of action referenced in this Section.
- 20. Limitation of Liability:** In no event shall either Party be liable to the other for any loss of profits, lost business opportunity or any special, indirect, consequential or incidental damages arising out of or in connection with this Contract, regardless of the cause of action.

Contractor will not be responsible for any claims, losses, or damages sustained as a result of the actions, or failure to act, by any retail pharmacy, pharmaceutical manufacturer or other pharmaceutical providers pursuant to this Contract.

21. Insurance:

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$10,000,000 per claims made or per occurrence
Network Security & Privacy Liability	\$5,000,000 per claims made

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

General Liability, Auto Liability, and Workers' Compensation insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability and/or Network Security & Privacy Liability is a "claims made" policies, Contractor shall agree to maintain professional liability coverage for two years following completion of Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract which shall be mutually agreed upon. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

22. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and other Confidential Information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees. Similarly, County agrees to maintain the confidentiality of all Contractor and Contractor-related records and Confidential Information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract.

Confidential Information. For purposes of this Contract, "Confidential Information" means any data or information that is proprietary to the Party making disclosure (the "Disclosing Party") and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such Party, its affiliates, subsidiaries and affiliated companies;

(ii) plans for products or services, and customer or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) any and all summaries, analysis, determinations, distillations, excerpts, work product, results or other documents utilizing or incorporating Confidential Information, whether in whole or in part; (vi) any Protected Health Information, as that term is defined by the HIPAA Privacy Rule, 45 C.F.R. Secs. 160 and 164, that is provided by either Contractor or County pursuant to this Contract; (vii) any information that either Party learns or becomes aware of, directly or indirectly, through the disclosure of Confidential Information; and (viii) any other information that should reasonably be recognized as confidential information of the Disclosing Party. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Party receiving the information (the “Receiving Party”) acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets. All Confidential Information shall at all times, and throughout the world, remain the property of either Contractor or the County (as the case may be), exclusively, and all applicable rights in patents, copyrights, trademarks, service marks, trade names and trade secrets shall remain vested in the appropriate Party, exclusively.

Use of Confidential Information. The receiving Party shall use the Confidential Information it receives pursuant to this Contract for the sole purpose of its obligations under this Contract. Except as specifically provided herein, in no event shall the receiving Party disseminate or communicate the Confidential Information in any form to any other person, firm, corporation or affiliate without the express written consent of the disclosing Party. The receiving Party shall only disclose Confidential Information to any third party who (i) needs to know the Confidential Information in order to accomplish the objectives in connection with this Contract, and (ii) is required to protect and otherwise not disclose or use the Confidential Information except as provided in this Contract. Any third party who receives any Confidential Information shall be subject to written agreement no less restrictive than this Section 22.

Derivatives of Confidential Information. Any reports, documents, notes or other information in whatever form or medium that are derived or result from the receipt of Confidential Information shall be governed by the same terms and conditions respecting confidentiality and used as it is the Confidential Information itself.

Rights in Confidential Information. All Confidential Information of the disclosing Party shall be and remain the property of the disclosing Party. The receiving Party shall not obtain any rights of any nature whatsoever in or to the Confidential Information as a result of such disclosure. Upon disclosing Party’s request, the receiving Party shall promptly destroy or return to the disclosing Party all of the disclosing Party’s Confidential Information. An officer of the receiving Party shall certify to the disclosing Party that all Confidential Information has been destroyed or returned to the disclosing Party. Notwithstanding the foregoing, the receiving Party may retain one original or one copy of the Confidential Information and must maintain the confidentiality of such Confidential Information in accordance with the terms of this section.

Exceptions. Notwithstanding any provisions contained in this Contract, the receiving Party shall not be required to maintain in confidence the following information: (i) information which, at the time of disclosure to the receiving Party, is in the public domain; (ii) information which, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Contract; (iii)

information which was in the receiving Party's possession at the time of disclosure to the receiving Party, and which was not acquired, directly or indirectly, from the disclosing Party; (iv) information which the receiving Party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing Party; (v) information which the receiving Party received from third parties, provided that such information was not obtained by such third parties from the disclosing Party on a confidential basis; or (vi) information which is produced in compliance with applicable law or a court order, provided that the disclosing Party is given reasonable notice of such law or order and an opportunity to attempt, at the expense of the disclosing Party, to preclude or limit such production. The receiving Party shall have the burden of showing any one or more of these exceptions apply. Such burden may be met by a public act request made under federal or state law or a court order, provided that the disclosing party is given reasonable notice of such request or court order and an opportunity to attempt to preclude or limit such production.

23. Contractor Personnel: Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

24. Contractor's Account Manager and Key Personnel: Contractor shall appoint an Account Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Account Manager shall be subject to approval by the County and unless the Account Manager leaves the Contractor organization or is promoted within the Contractor organization, shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.

The Contractor's Account Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who work within the Contractor organization and liaison directly with the Contractor's Account Manager.

25. Project Manager: The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor. The County's project manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract as further set forth in Section 24. The County's Project Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within thirty (30) days after written notice by the County's project manager unless County reasonably expresses that immediate removal is necessary to ensure appropriate performance under this Contract. The County's project manager shall review and approve the appointment of the replacement for the Contractor's Account Manager.

26. Reports/Meetings: The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's

Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

- 27. Ownership of Documents:** All documents, reports and other materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
- 28. Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
- 29. Records:** The Contractor shall keep an accurate record of time expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.
- 30. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County so long as such private auditor is not an individual or entity that is: a competitor of Contractor, a pharmaceutical manufacturer representative, or any retail, mail or specialty drug pharmacy representative or vendor) to once annually access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. Notwithstanding the foregoing, County's audit of Contractor records is limited to review of Claims transactions for adherence to and accuracy against the approved plan design and pricing under this Contract, for the limited purpose of verifying Contractor's compliance with the terms of this Contract. Any auditor will be required to sign a non-disclosure agreement with Contractor. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable written notice (not less than thirty days) of such an audit or inspection.

All expenses for such audits shall be at the expense of the requesting Party. County acknowledges that it shall not be entitled to audit: (i) documents, in whole or in part, that Contractor deems proprietary, confidential or trade secret; and (ii) documents, in whole or in part, that Contractor is barred from disclosing by law or pursuant to an obligation of confidentiality to a third party. All information and records reviewed pursuant to this section shall be considered Confidential Information for purposes of this Contract. Nothing in this paragraph shall prevent either the County or its third party auditor from access to any document or record necessary to ensure the financial and performance obligations made under this Contract are being fulfilled.

A final audit report shall be provided by County (or its auditor) in writing to Contractor within sixty (60) days of the end of the audit. Contractor shall have sixty (60) days to respond to auditor's

report. County (or its auditor) shall have 30 days to respond to Contractor's response. If County or auditor fails to provide a final audit report within 60 days or fails to respond within 30 days of Contractor's response, the audit will be considered closed.

The County reserves the right to audit and verify the Contractor's records before final payment is made. The audit scope will cover a period not to exceed twelve (12) months, unless the audit relates to a financial guarantee for a period exceeding twelve (12) months, in such case, shall be limited to the term of the financial guarantee, unless the audit relates to a significant change in Contractor's programs or claims processing platform that occurred mid-plan year, in which case the audit period may be extended to encompass that change. Requests for audit must be submitted within twelve (12) months of the end of the period to be audited. The audited period may not be re-audited once the audit is complete. Contractor will be liable for agreed upon findings attributable to the audit period and any subsequent claims incurred until the error is corrected. County may not initiate an audit of the Contractor pursuant to this Contract more than once in any twelve (12) month period, nor more than eighteen (18) months after the date of the termination of this Contract.

Contractor agrees to maintain such records for possible audit for ten years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

If Contractor changes its claims adjudication platform at any time during the Term of the Contract, Contractor agrees to allow County to conduct an additional audit to ensure that the claims adjudication system is functioning correctly. All expenses for such audits shall be at the expense of the County.

Contractor will provide full recovery in the event of a processing error found during an audit.

Notwithstanding the audit limitations set forth in this Section, Contractor shall cooperate in good faith with County in connection with any request or audit conducted by a federal or state governmental authority for information and documents or any governmental investigation, complaint or other inquiry. Furthermore, Contractor agrees that any such request or audit required by a federal or state governmental authority will not be considered an audit by County.

Contractor agrees that the County has the right to validate Contractor's self-reported performance metrics set forth in Attachment D annually during the Contract Term.

The County shall be responsible for payment of an auditor, but shall not be responsible for any Contractor expenses related to an operational or financial audit, including the provision of necessary records.

Annual Audit Allowance. Contractor shall reimburse County up to \$35,000 during Year 1 of the Contract, and \$30,000 during Year 2 and 3, for costs related to auditing expenses. Eligible expenses will include auditing expenses incurred by a third-party transitional consultant. County will be required to submit documentation to support the expenses it may seek reimbursement for. If County terminates the Contract before the end of first year of the Initial Term, County shall refund to

Contractor within thirty (30) days after the effective date of such termination the amount of Audit Allowances that have been provided by Contractor to County as of the effective date of such termination. It is the intention of the parties that, for the purposes of the Federal Anti-Kickback Statute, this audit allowance shall constitute and shall be treated as a discount against the price of drugs within the meaning of 42 U.S.C. 1320a – 7b(b)(3)(A).

- 31. Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
- 32. Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier contractor’s and third parties associated with accomplishing services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
- 33. County’s Authority Over Plan:** County acknowledges that it has the sole authority to control and administer the Plan. County further acknowledges that Contractor is engaged to perform services as an independent contractor and not as a fiduciary of the Plan or as an employee or agent of the County, or as the Plan administrator. Nothing in this Contract shall be construed or deemed to confer upon Contractor any responsibility for or control over the terms or validity of the Plan. Contractor shall have no discretionary authority over or responsibility for the Plan’s administration. Further, because Contractor is not an insurer, Plan sponsor, Plan administrator, or a provider of health care services to Participants, Contractor shall have no responsibility for (i) funding of Plan benefits; (ii) any insurance coverage relating to the County, the Plan or the Participants; or (iii) the nature or quality of professional health care services rendered to Participants.
- 34. Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 90 days’ written notice without cause. Contract may only be terminated without cause after the first contract year, unless otherwise specified in this Contract. Cause shall be defined as any breach of this Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall not relieve County of further obligations including payment obligations for all services provided through termination. Any accrued and unpaid Rebate amounts will be payable to County after the termination of this Contract if County has met all monetary terms set forth in this Contract and has not terminated this Contract in breach, as long as the Rebate amounts were earned during the term of this Contract as it applies to County and County does not owe any outstanding payments to Contractor. Notwithstanding the foregoing, if County terminates this Contract without

cause during the Initial Term, it shall be required to refund to Contractor in full all credits and allowances provided to the County under this Contract.

Contractor agrees to provide County with claims history detail in the standard NCPDP format, open refill files from mail and specialty, prior authorizations and any other non-confidential, non-proprietary information at no cost upon termination.

Contractor shall maintain complete records of all claims and payments for ten years past termination of the agreement or greater as required by law. At the end of this period, records shall either be transferred to the County or destroyed under the County's direction subject to record retention requirements and as required by law.

Termination for Change of Control: Contractor shall promptly notify County, but in no event later than ten (10) business days after the closing date, of any Change of Control by Contractor. County may terminate this Contract upon occurrence of a Change of Control by Contractor and written notice of termination from County within ninety (90) calendar days after County receives notice of such event, with such termination to be effective ninety (90) calendar days after such notice of termination is given to Contractor by County. For purposes of this Contract, "Change of Control" means the merger, consolidation, sale of substantially all of the assets or similar transaction or series of transactions, including without limitation a transaction or series of transactions as a result of which a Party's shareholders before such transaction or series of transactions, own less than fifty percent (50%) of the total number of voting securities of the surviving entity immediately after such transaction or series of transactions.

35. Breach of Contract: The failure of the Contractor to comply with any of the material terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
- b. Terminate this Contract immediately, without penalty to the County.

Monetary Default by County: If County fails to meet the payment obligations of Section II. 1 (a) of Attachment B within the time specified for two consecutive payment cycles, then County shall be deemed in breach of the Contract (such breach hereinafter referred to as "Monetary Default") and, notwithstanding Section II. 1. (a) of Attachment B of the Contract, or any other provisions contained herein, if County fails to cure such Monetary Default within five (5) business days, Contractor, in its sole discretion, shall have the non-exclusive and cumulative options to: (a) suspend processing of claims, (b) require County to pre-fund a pharmacy spend account in the amount of two (2) times the average monthly prescription drug spend of County, or (c) utilize available deposited or escrowed funds. In addition, if County fails to cure a Monetary Default within sixty (60) days, then Contractor will have the right to terminate this Contract immediately.

Non-Monetary Default by County: In addition to the right to terminate for Monetary Default as set forth above, Contractor may also terminate this Contract if County fails to perform any significant non-monetary obligations hereunder ("Non-Monetary Default"). Contractor will notify County of such Non-Monetary Default and County will have sixty (60) days to cure the Non-Monetary Default.

If County fails to cure such Non-Monetary Default within the sixty (60) day cure period, then Contractor may terminate this Contract immediately.

36. Disputes: The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

1. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract.
2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable. The Deputy Purchasing Agent shall then review Contractor's written demand and the Parties shall agree to meet in good faith to resolve the matter within 30 business days of receipt by Deputy Purchasing Agent of Contractor's written demand.
3. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

37. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of this Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

At the end of the term of this Contract or in the event of termination of this Contract by either party, the Contractor agrees to provide County with a computer history tape (in a form and format reasonable acceptable to the County) with claims history detail in the standard NCPDP format, open refill files from mail and specialty, prior authorizations and any other non-confidential, non-proprietary information at no cost upon termination..

At the end of the term of this Contract or in the event of termination of the Contract by either Party and upon the request of County Contractor agrees to continue the administration of claims incurred prior to the effective ending date of this Contract for a period of thirty (30) days after the termination date from Contractor owned or contracted pharmacies for thirty (30) and from Participants no later than sixty (60) days after the termination date. In compensation for this service, County agrees to remit the run-out fees identified in Attachment B.

38. Force Majeure: Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any reasonably available remedies.

- 39. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- 40. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- 41. Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing, except through the course of the County’s Project Manager and Contractor’s Project Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Human Resource Services/Employee Benefits
Attn: Project Manager, Barbara Voelkel
333 W. Santa Ana Blvd., Room 137
Santa Ana, CA 92701

cc: Human Resource Services/Employee Benefits
Attn: Tracy Vonada, Deputy Purchasing Agent
333 W. Santa Ana Blvd., Room 137
Santa Ana, CA 92701

Contractor: Catamaran LLC
Legal Department
1600 McConnor Parkway
Schaumburg, IL 60173

- 42. County Child Support Enforcement:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Contract.
- 43. Change Of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of County.

- 44. Precedence:** The documents herein consist of this Contract and its Attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the Attachments and Exhibits.
- 45. Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- 46. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 47. Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- 48. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
- 49. Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- 50. Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- 51. Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- 52. Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Attachment E hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Attachment E shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.

- 53. Exclusivity.** County agrees to utilize only Contractor to provide it with any of the services described herein during the term of this Contract.
- 54. Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18, 19, 20, 21 and 22 shall survive the termination of this Contract.
- 55. Employee Eligibility Verification:** 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 Contract meet the citizenship or alien status requirement set forth in Federal 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 or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., 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 the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- 56. Bills and Liens** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 19 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- 57. Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- 58. Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- 59. Incorporation:** The Attachments and Exhibits, attached hereto, and incorporated by reference and made a part of this Contract.

CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

OptumRx Administrative Services LLC

Print Name Title

Signature Date

Print Name Title

Signature Date

*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Print Name Title

Signature Date

Approved by Board of Supervisors on: Date _____

APPROVED AS TO FORM:

Deputy County Counsel

ATTACHMENT A SCOPE OF WORK

I. Definitions

1. “Average Wholesale Price” or (AWP) means the average wholesale price of a prescription drug, as determined by the current edition of the First Databank or MediSpan including supplements and ad hoc updates, on the day the drug is dispensed or filled to the Participant. The price shall be based on the actual 11-digit National Drug Code Number of the drug dispensed.
2. “Benefits Administrator” means a self-service contractor with which the County has a contract to provide full Benefits administration such as benefits eligibility and enrollment. The County currently contracts with Xerox.
3. “Brand Name Drug” means:
 - a. Brand Drugs are innovator multi-source and single-source prescription drugs.
 - b. Multi-source Brand Drugs are Brand-name prescription Drugs which are able to be manufactured and distributed as a generic.
 - c. Single-source Brand Drugs are patent-protected Brand-name prescription drugs that are available from one manufacturer and that have only ever been available from one manufacturer.
 - d. A drug will be designated as a single-source or multi-source Brand drug by an independent, nationally recognized drug pricing source on the day the product is dispensed.
4. “Copayment” shall mean a dollar amount or percentage of cost that a Participant is responsible for paying for a specific prescription medication, OTC medication or other supply or service based on the County’s Plan Design Document, and includes, but is not limited to, coinsurance, co-payment and deductible.
5. “Covered Prescription Drug Services” means those outpatient prescription drugs and pharmacy products, services and supplies as described in a current County Plan Document.
6. “County” means County of Orange.
7. “ Concurrent Drug Utilization Review” is a series of edits at the point-of-service that are applied to a prescription drug claim comparing member information with the drug dispensed and information in the database related to other medications the member is taking.
8. “Enrollee” or “Participant” means eligible subscribers and dependents enrolled in the County’s Premier Wellwise, Wellwise Choice or Wellwise Retiree plan.
9. “Explanation of Benefit” (EOB) is a periodic summary Statement of Plan and Participant paid amounts sent to Participants.
10. “Formulary” means the Contractor’s preferred drug list developed and maintained by the Contractor's P&T Committee and hereby adopted by the County.

11. “Generic Drug”
 - a. Generic Drugs are FDA-approved multi-source and single-source prescription drugs manufactured as off-patent products and referenced by the FDA's Electronic Orange Book (EOB).
 - b. Multi-source generic drugs are prescription drugs available from multiple manufacturers or those drugs available only from one manufacturer provided they had been available from multiple manufacturers in the past.
 - c. Single-source generic drugs are prescription drugs available from only one manufacturer due to exclusive or limited distribution rights.
 - d. A drug will be designated as a single-source or multi-source Generic Drug by an independent, nationally recognized drug pricing source on the day the product is dispensed.
 - e. When a drug is identified as a generic drug, it shall be considered a generic drug for all purposes under the contracted agreement.
12. “Health Plan Administrator” or “Third Party Administrator” (TPA) is the entity with which County has contracted to administer and process claims for the health plans. The County currently contracts with Blue Shield of California.
13. “Identification Cards” shall mean printed identification cards containing specific information about the prescription drug benefit that will be used by plan Participants. Currently identification cards are issued by the TPA.
14. “Implementation Date” means January 1, 2015, or such other date as the Parties mutually agree in writing on which Contractor shall begin to provide pharmacy benefit management services to the County pursuant to this Contract.
15. “MAC” means the maximum allowable cost for a Contractor determined list of retail generic drugs. It is derived from an analysis of several pricing information sources that include Wholesale Acquisition Cost from national wholesalers and Federal Upper Limit prices from the Health Care Finance Administration. The marketplace is continually monitored for price changes that may affect a drug’s MAC price; it shall be readily available in the market.
16. “Manufacturer Administrative Fee” means any fee or other amount paid to Contractor by a pharmaceutical manufacturer for the administration of the formulary rebate program which may be separately classified or calculated apart from “Rebates.”
17. “Participating Pharmacy” means a retail pharmacy that has entered into an agreement with Contractor under which the pharmacy has agreed to provide Covered Prescription Drug Services to Participants and to comply with applicable regulatory requirements.
18. “Pharmaceutical Manufacturer” means a pharmaceutical, biotech or device company which has entered into an agreement with the Contractor to offer rebates on pharmaceutical products, supplies or services utilized by Participants.
19. “Plan Design Document” means the benefit document prepared by the Contractor in conjunction with the County and approved in writing by the County, which is used by the Contractor in processing prescription drug claims in connection with this Contract.

20. “Prescription Drug Services” means the prescription drug services or supplies that are covered by the Plan as reflected in the County’s Plan Document.
21. “Project Manager” means Assistant Director of Human Resource Services, Employee Benefits or his/her designee.
22. “Rebates” mean base, formulary, incentive and market share rebates based upon the utilization of a pharmaceutical manufacturer’s brand drug pursuant to a valid prescription and exclusive of services fees and purchase discounts.
23. “Retrospective DUR” means a retrospective review of Members’ prescription claims to evaluate the appropriateness of each Member’s therapy based upon generally accepted current clinical pharmacy practices and clinical rules that focus on gaps in care and unsafe and clinically inappropriate therapy across widely utilized therapy classes.
24. "Specialty Drugs" shall mean medications that (i) treat unique populations, (ii) require close therapy management and monitoring, (iii) require special handling and/or storage, (iv) are produced through biotechnologies, (v) are expensive and may involve complex reimbursement processes, or (vi) are generally administered as injections or infusions.
25. “Usual and Customary” or “U&C” means the amount a Participating Pharmacy would charge to a cash paying customer for same strength, quantity and dosage form of a covered drug, as of the date the prescription is filled.

II. Financial/Pricing Terms

1. Contractor shall provide an annual brand discount guarantee (in aggregate), exclusive of U&C claims (retail only) and the impact of MAC on multi-source brand claims.
2. Contractor shall provide an annual overall effective generic discount (in aggregate), inclusive of the Contractor’s pricing on MAC and non-MAC generics.
3. Administrative fees shall be on a per prescription basis.
4. The Participating Pharmacy rates may vary and the amount paid to the Participating Pharmacy may not be equal to the amount billed to the County and Contractor shall retain any difference.
5. “Net Paid Claim” means all paid Claims minus reversals for a single prescription fill.
6. Contractor may, from time to time, receive reimbursement from pharmacies for its costs in connection with transmitting claims and discounts on its own behalf from wholesalers and manufacturers as a purchaser of pharmaceutical products for its mail service and specialty pharmacies. On March 30, 2009 the US District Court for the District of Massachusetts entered the final order and judgment approving the class action settlement for the First DataBank (FDB) and Medi-Span average wholesale price (AWP) litigation. As a result of this settlement, both FDB and Medi-Span reduced the mark-up factor used to calculate AWP for any drug whose mark-up is currently in excess of 1.20 to 1.20 times the wholesale acquisition cost (WAC) effective September 26, 2009. Additionally, both FDB and Medi-Span indicated their intention to apply the same adjustments to all other NDCs with a markup factor in excess of 1.20. Contractor agrees that costs set forth in Attachment B assume that (a) all pricing terms are reflective of the lower,

rolled-back AWP costs and (b) all AWP discounts will apply directly to the actual rolled-back AWP cost with no other adjustment.

7. Contractor agrees to utilize one consistent pricing source for determining average wholesale price (AWP) information for use in claims pricing and to disclose its source in the Contract with the County. If the Contractor decides to change its pricing source, it agrees to (1) provide the County with at least 90 days' notice of the change and (2) provide the County with written validation that the change in pricing source is economically neutral or beneficial to the County. Contractor will provide validation noted above to the County at least 75 days prior to the change.
8. Contractor will not exclude coverage of any drugs from the formulary unless mandated by the FDA or County has provided written consent.
9. Contractor agrees to provide pricing based on its broad national retail network that includes all major national and regional pharmacy chains.
10. Contractor agrees that if a participant pays 100% of the cost of a prescription, the County will not be billed for any portion of the claim exclusive of any applicable administrative fees.
11. County participants shall always pay the lower of:
 - a. Coinsurance,
 - b. U&C amount, or
 - c. Eligible Charge (AWP discount plus dispensing fee). Contractor will not be allowed to adjudicate based on “zero balance logic” or on a minimum copayment amount, and retail pharmacies will not be allowed to collect a minimum payment.
12. The guaranteed discount rates shall exclude the following from the calculation:
 - a. Compounds, and
 - b. Zero balance claims.
13. Compounds and zero balance claims shall not processed at a 100% discount.
14. Contractor agrees to adjudicate and report all claims priced at U&C with the ingredient cost equal to the submitted U&C price and a \$0.00 dispensing fee. Reporting to the County must not include a discount value attributable to the Contractor for U&C claims.
15. Contractor agrees that all compound drugs dispensed at retail and mail order will be priced using the proposed guaranteed retail and mail order pricing formulas, respectively; compound drugs will not be subject to a markup.
16. Contractor will adjudicate all retail claims including point-of-sale and paper claims at the lowest of: (a) the contracted discount plus dispensing fee; (b) MAC plus dispensing fee or (c) the usual and customary (U&C) price (including the pharmacy's sales price, if any). Contractor agrees claims shall adjudicate at the point of sale using the guaranteed methodology.
17. Contractor must adjudicate all mail order claims at the lesser of: (a) the contracted discount plus dispensing fee or (b) MAC plus dispensing fee.
18. Contractor must adjudicate all mail order claims according to the “lower of” logic such that the County members always pay the lower of the applicable coinsurance or the contracted price. Contractors will not be allowed to adjudicate based on a minimum mail order copayment.
19. Contractor agrees to use the same MAC product list at retail and mail order.

20. Contractor agrees that the MAC unit cost of every individual product on the MAC product list will always be lower at mail than at retail.
21. Contractor agrees to provide an aggregate annual minimum retail generic discount guarantee and an aggregate annual minimum mail order generic discount guarantee that are inclusive of all generic drugs (e.g., MAC'd generics and non-MAC'd generics; multi-source generics, single-source generics and/or any generic products involved in patent litigations and/or products available in limited supply and multi-source brands). At retail, this guarantee will also include specialty generic drugs dispensed at retail pharmacies but exclude U&C and zero balance claims from the calculation. Contractor will measure and reconcile these guarantees within 90 days and pay/credit the County 100% of any shortfall within 120 days of each annual period, with the County retaining 100% of any additional savings achieved. Generic discount guarantees and rebates for retail and mail order shall not exclude any generic products, as defined above.
22. Contractor agrees that if a single source generic drug is dispensed (filled), the member will be billed the generic copayment, and the County's discount (bill) will be the generic discount. Contractor agrees that all multi-source brands filled will also be billed to the member and to the County at the generic discount.
23. Contractor shall provide a Generic MAC Program to the County participants that includes the following:
 - a. A requirement that all generic drugs be A-B rated, and
 - b. Monthly notification to the County of any change to the MAC list, and
 - c. Disclosure of current MAC rates upon the County request, as appropriate.
24. Contractor shall adjudicate specialty drug claims that process through the Specialty Pharmacy according to the specialty pricing schedule. All specialty drug claims dispensed at retail shall be priced at the guaranteed discounts, dispensing fees and administrative fees for non-specialty drugs dispensed at retail.
25. All mail order shipping costs (standard delivery) shall be underwritten into the mail order pricing. Administrative or dispensing fees may not be adjusted during the Contract Term for postage rate increases.
26. Contractor's base administrative fees shall be on a paid claim basis only (e.g., no charge for denied or reversed claims).
27. Rebates are based upon the acceptance of the Contractor's Advantage Formulary for the Wellwise Choice plan and the Wellwise Retiree plan. If any new plan is added under this Contract after the Effective Date, County and Contractor shall review and mutually agree to a revision in the guarantees. The County must implement all current and future Contractor Formulary Advantage recommendations in entirety for the aforementioned plans without modifications. Should County decide to implement select programs; and/or certain therapeutic classes; and/or with modifications or grandfathering, Contractor reserves the right to adjust the guarantee.
28. Contractor agrees to offer consistent pricing for all standard mail order prescriptions regardless of the days' supply.
29. Contractor shall provide a quarterly rebate report with associated claim counts.
30. Contractor shall offer rebates for all specialty drugs dispensed at retail.

31. Contractor shall pay rebate guarantees within 180 days of the last day of the quarter in which the associated claims were incurred with a full annual reconciliation provided within 120 days after the end of the year.
32. Contractor agrees to provide a guaranteed rebate payment/credit equal to the greater of some specified percentage pass-through of actual total rebates (as defined below) or specified minimum per script rebate guarantees (as defined below) payable or credited to the County 180 days following the close of each calendar quarter. Payment will be accompanied by an accounting of the minimum per script rebate amounts due.
33. Contractor will not assess a rebate management fee to the County.
34. Contractor agrees that rebates will be guaranteed and paid on a per Net Paid brand prescription basis only and applicable to 100% of the prescriptions filled under the plan, including covered prescriptions where the member paid the full cost of the drug and the plan paid zero.
35. Contractor agrees that minimum per script rebate guarantees must be provided without minimum or average days' supply requirements.
36. Generic Dispensing Rate Guarantee.
 - a. Contractor shall provide a competitive generic dispensing rate guarantee at both retail and mail order for each year of the Contract.
 - b. Generic Dispense Rate Guarantee” or “GDR” means, for any full contract year, the number of Generic Drug prescriptions (including OTC prescriptions) divided by the total number of all prescriptions for such contract year (excluding any Specialty Drugs filled in any channel). To be eligible for the GDR, the County must maintain an average copay differential between generic and second tier brands of fifteen (\$15.00) or more within each Plan Design. The penalty for a missed GDR guarantee will be calculated by taking the total number of prescriptions multiplied by the percentage the GDR was missed by multiplied by the difference between the average cost for a brand drug and the average cost for a generic drug during the measurement period. Penalties will be calculated within ninety (90) days of the close of the full contract year.
 - c. The penalty for a missed GDR guarantee will be calculated by taking the total number of prescriptions multiplied by the percentage the GDR was missed by multiplied by the difference between the average cost for a brand drug and the average cost for a generic drug during the measurement period.
37. Contractor shall guarantee the financial elements of Attachment B for the life of the Contract.

Notwithstanding the foregoing, Contractor reserves the right to modify or amend the financial provisions of this Contract upon prior notice to County in the event of (a) any government imposed change in federal or, state laws or interpretation thereof or industry wide change impacting the pharmacy benefit management industry as a whole, that would make Contractor's performance of its duties hereunder significantly more burdensome or expensive; (b) a significant change in the number of Participants who are eligible for Medicare Part D under this Contract; (c) a change in the scope of services to be performed under this document upon which the financial provisions included in this document are based, including a change in the plan design and the exclusion of a service line (i.e. retail, mail, specialty) from County's service selection; (d) a reduction of greater than twenty percent (20%) in the total number of members from the number provided to Contractor during pricing negotiations upon which the financial provisions included in this document are based; (e) a court order or regulatory change that unexpectedly causes a branded product to move off-patent before the expected date or where there are generic or over-

the-counter substitutes available before the expected date, making Rebates no longer available for such products; (f) changes made to the AWP benchmark or the methodology by which AWP is calculated or reported; or (g) implementation or addition of one hundred percent (100%) Participant paid plans; (h) any substantive change in County's custom formulary, which may impact Rebates from Covered Manufacturers.

For modifications or amendment made pursuant to (a), (e) or (f) above, Contractor agrees to modify the pricing in an equitable manner to preserve the financial interests of both parties and provide document to demonstrate that the revised pricing terms are equitable.

For modifications or amendments made pursuant to any other subsection above, County shall provide Contractor at least ninety (90) days' notice prior to making any changes, and in the event that Contractor elects to modify pricing based on such planned change, Contractor shall provide County with the modified pricing within thirty (30) days of its receipt of all information reasonably necessary for Contractor to evaluate the pricing.

38. All guarantees shall be evaluated and reported quarterly and paid and reconciled annually against actual results and shall be backed dollar-for-dollar such that the County is made whole if any quarterly guarantee fails to be met. Shortfalls in one component guarantee may not be offset by overages in another component guarantee. Contractor will not be allowed to use "aggregate" or "averages" for reconciling brand guarantees and/or rebates. Usual and customary and zero balance claims will be excluded from all discount reconciliation methodologies including from the brand, MAC and/or generic discounts. No cross subsidization of discounts, guarantees, rebates are allowed at retail, mail or within the distribution channel. Compounds, Specialty claims filled at retail, 340B claims, Indian Health Services and/or Tribal claims, U & C claims and claims with ancillary charges will be excluded from the calculation. Additionally, claims filled outside of the Catamaran National Network shall be excluded from this calculation.
39. Aggregate guaranteed AWP discounts and dispensing fees shall be reported and reconciled within 90 days after each calendar quarter against the County's actual claims experience and all penalties shall be paid by the Contractor within 120 days after the end of each Contract year.
40. Contractor shall uphold contractual pricing for the life of the Contract should the County's claims volume or membership increase or decrease by less than or equal to 20%.
41. Market Check. During the third quarter of the second contract year of the Initial Term and the third quarter of the fourth contract year of the Renewal Term, County shall have the right to conduct a market check to confirm its pricing is competitive with that of similar clients. County agrees that the market check shall be based upon the same financial assumptions of this Contract, including plan design, and that the market check will be based upon similar clients in size and type (i.e. employer group) as County. In the event that County determines its pricing is less competitive with that of similar clients, County shall provide Contractor with its market check documentation no later than the end of the third quarter of the second contract year and Contractor agrees to enter into good faith negotiations to reach agreement on acceptable financial terms in accordance with the market check for similar clients. In the event the parties are unable to agree on pricing terms by the end of the second contract year, County may terminate this Contract upon providing written notice to Contractor.

III. Account Management

1. Contractor shall:

- a. Provide an account management team that is experienced in services similar to County's, trained in the County's plan issues, accessible to the County geographically and with sufficient capacity and authority to respond to the County's issues in a timely manner.
 - b. Provide an Account Manager as primary point-of-contact for day-to-day communications with the County and have an Account Assistant Manager and back-up plan when the primary person is unavailable.
 - c. Provide an escalation process to assist in matters which are unable to be resolved at the account team level.
 - d. Allow the County administration 30 days advance notice of any planned change in the primary account manager.
 - e. Provide the County administration the right to interview and agree to the intended replacement of the primary account manager. The County shall provide written or verbal approval of all proposed replacements.
 - f. Provide access to an electronic tracking and resolution log of the County issues.
 - g. Provide documentation of a process for prompt issue resolution in the event of a failure to perform a required service.
 - h. Attend monthly teleconferences and in person quarterly and annual program reviews on site as requested at the County benefits office to review Plan benefit performance, clinical issue, new therapeutic options, programs, financial results and servicing of County's account.
2. Contractor shall provide a cohesive and responsive Account Management team, including Clinical Pharmacist support and a Customer Service Liaison, focused on proactive and efficient management of the pharmacy drug program service, the operations and cost trend. The assigned Account Management team shall have accountability and authority to respond and resolve inquiries, requests, and issues raised by the County to assure compliance and overall service quality.
 3. Members of the Account Management Team are expected to respond to all account inquiries from the County staff within one (1) business day.
 4. Each individual of the account management team assigned to County will have at least two years' experience in prescription drug benefit account management, and will be available to County during normal business hours. In the event the primary account manager is not available, County is to have a back-up contact person with a guaranteed return call guarantee within 24 hours.
 5. The core participants of the Account Management team, including a minimum of the Account Director, Account Manager, Pharmacist, and Client Services Manager shall meet with the County representatives quarterly. The Account Manager and Pharmacist shall attend these meetings onsite, with the remaining participants in attendance via phone.
 6. Contractor shall have an assigned Clinical Pharmacist Manager that will dedicate a portion of his/her work hours to the County to provide analytical assistance, clinical advice, and/or working with the County providers/pharmacies on clinical programs. The assigned Pharmacist will serve as a point-of-contact for the County, as needed.
 7. The assigned Account Management team shall review the pharmacy section of the County's Plan Documents for accuracy and document any changes that occur each year as part of the base administrative fees and at no additional charge to the County.

8. At the request of County, Contractor shall be available to participate in all of County's open enrollment meetings and health fairs throughout the year up to a maximum of twenty one (21) meetings per calendar year. Attendance and promotional materials shall be provided by Contractor as part of the base administrative fees and at no additional charge to the County.
9. Contractor will pay all expenses for two County staff persons to attend the Contractor's annual conference/client meeting.
10. Contractor shall provide flexible plan design capabilities and flexible plan administration to enhance the integration of the County's pharmacy benefit plans with other health and disease management programs.
11. Contractor shall provide enrollment support specific to the County's plan design, including welcome packets, and handbooks, as part of the base administrative fees and at no additional charge to the County.
12. Contractor shall support quarterly account management satisfaction surveys/score cards, which are further detailed in Attachment D. Such surveys/score cards shall be administered quarterly, but any data collected shall be measured in the aggregate on an annual basis in accordance with the methods further described in Attachment D. Furthermore, Contractor will conduct an annual survey of members of County's management team to assess the performance of Contractor's Account Service team and the service being provided. Satisfaction will be evaluated using Contractor's standard client satisfaction survey and methodology. Any data collected will be reported, in aggregate, on an annual basis.

IV. Participant Services

1. Contractor shall, at County's discretion, produce and distribute communication material to participants which shall include, but not be limited to: program announcement letters and brochures, network pharmacy directories, periodic updates, customized communications, and mutually agreed upon communications targeted to specific participants and/or groups of participants. Mail order pharmacy communications shall include but not be limited to: mutually agreed upon educational material and coupons. Contractor shall perform the aforementioned distribution of communication materials at least twice a year. Materials and postage for standard communications shall be offered as part of the base administrative fees with no additional cost to County.
2. Annual Member Communications Allowance. Contractor shall, at County's direction, produce and distribute communication material to participants which shall include, but not be limited to: program announcement letters and brochures, network pharmacy directories, periodic updates, customized communications, and mutually agreed upon communications targeted to specific participants and/or groups of participants. Mail order pharmacy communications shall include, but not be limited to: mutually agreed upon educational material and coupons. Contractor shall perform the aforementioned distribution of communication materials at least twice a year and shall cover \$15,000 per annual period for such costs. County shall be responsible for all amounts that exceed the \$15,000 annual allowance. If County terminates the Contract before the end of the first year of the Initial Term, County shall refund to Contractor within thirty (30) days after the effective date of such termination the amount of member communications allowances that Contractor has covered for the County through such termination date. It is the intention of the parties that, for the purposes of the Federal Anti-Kickback Statute, this member communications

allowance shall constitute and shall be treated as a discount against the price of drugs within the meaning of 42 U.S.C. 1320a – 7b(b)(3)(A).

3. Contractor shall customize open enrollment materials. County logo, plan name, dedicated phone number and website address will be required on forms, and County specific website pages. Standard language that does not apply to the County will need to be removed. This shall be part of the base administrative fees and at no charge to County.
4. Contractor shall provide customer service activities to include, but not limited to: one dedicated single front-end, toll-free number with touch tone routing, for County participants with questions concerning their prescription (retail, mail or specialty), to refill a mail order or specialty prescription, to check on a mail order or specialty prescription, etc.; a voice response system with a user-friendly menu and alternative language options (or access to language translation services); and system availability 24 hours a day/7 days a week/365 days a year (excluding scheduled downtime) as part of the base administrative fees with no additional cost to the County.
5. Contractor shall provide a toll free number for Contractor’s Customer Service Department, which is available 24-hours-a-day, 365 days a year, including holidays, for County’s participants to access a registered Pharmacist for their medical questions regarding prescriptions filled through Contractor. Pharmacists will be available during regular business hours and on call for emergencies after hours.
6. Contractor shall provide a toll-free number for ordering refills of prescriptions through the mail order pharmacy, 24 hours a day, 365 days a year, including holidays.
7. Contractor shall provide IVR and Web access for participant access including mail service refills, benefit information, mail service prescription tracking, and ordering, forms, pricing, pharmacy locator and benefit information.
8. Contractor shall provide a designated, trained Customer Service Center team for County with electronic access to eligibility, mail order claims, and claims history from all of the claims adjudication systems. At a minimum, this designated team shall be responsible for taking all calls from County participants between the hours of 7:00 AM and 9:00 PM Pacific Time Monday - Friday and 8:00 AM to 5:00 PM Pacific Time Saturday and Sunday. Calls outside of these hours may be taken by CSRs that are trained on County benefits, but not part of the designated team.
9. Contractor will have a designated customer service unit (>80% of calls managed through designated center) for the County with real time electronic access to eligibility and claims history from all pharmacy (including specialty) adjudication systems.
10. Contractor shall ensure that people with limited English proficiency and those who are deaf or hearing impaired have access to communication services that enable participants to utilize the phone lines.
11. Contractor shall develop and use alternate ID numbers for participant identification in a format and style approved by County.
12. Contractor will conduct an annual member satisfaction survey of randomly selected members from across the population of members managed by Contractor who have experience with one or more of the following PBM services provided they are delivered and managed by Contractor: 1) general benefits, 2) mail service, and/or 3) specialty pharmacy. The survey methodology will be designed to achieve a statistically-valid sample that is representative of all members managed by Contractor. A “satisfied” rating is defined as three (3) or greater on a five (5) point scale or another scale equivalent. Any data collected will be reported, in aggregate, on an annual basis.

13. Contractor shall at the County’s request conduct a County-specific survey to the County if the Quality criteria and Standard from remedial training of the Customer Service staff in the Account Management Quality Improvement plan are not met within the specified timeline; or any three (3) of the seven (7) “Customer Services” performance guarantees listed in Attachment D are not met for two consecutive quarters. If the outcomes of the County’s specific survey resulted in a satisfaction of less than 90%, Contractor will implement a quality improvement plan to improve the satisfaction rate.

V. Clinical Programs and Formulary Management

1. Contractor agrees to adhere to, develop and administer an evidence- and value-based formulary program including ongoing pharmacy and therapeutics committee review and maintenance.
2. Contractor shall adhere to and support the use of evidence-based literature in the development of utilization management programs.
3. Contractor shall agree that the County is not mandated to participate in therapeutic interchange (i.e., “switch”) programs.
4. Contractor agrees that drugs on formulary can be moved to non-formulary a maximum of ~~twice~~~~once~~ per calendar year or as required by the FDA.
5. Contractor agrees that drugs will not be excluded from coverage unless required by FDA.
6. Contractor shall offer clinical program fees with no shared savings for the duration of this Contract. Contractor agrees that all proposed clinical programs will return 100% of savings to the County.
7. Contractor agrees that clinical programs subject to a fee or charge will be quoted on an unbundled (a la carte) basis.
8. Contractor must agree that pricing proposed is not dependent upon the County being required to adopt eliminate/exclude drugs from formulary.
9. Contractor shall provide concurrent DUR programs integrated across the retail, mail order and specialty distribution channels as part of the base administrative fees and at no additional charge to the County. Concurrent DUR is intended to assist the pharmacist in identifying possible drug interactions and other issues which may be indicative of prescribing inappropriate drugs.
10. Requirements for Contractor’s pharmacies shall include at least the following POS DUR activities:
 - a. Determination medication formulary status
 - b. Monitor for drug-drug and drug disease state interactions
 - c. Verify appropriate dosage(s)
 - d. Over and under utilization
 - e. Potential fraud alert
 - f. Patient education materials
11. Contractor shall agree that the County will have full authority to “turn off” any POS edits (e.g., quantity limit, step therapy) that the County does not want to implement or continue.
12. Contractor shall process prescription drug claims in accordance with the Plan and any and all subsequent modifications, revisions or amendments to the Plan. The Contractor will be responsible for conducting first level appeals. The County shall have sole authority to determine

the benefits to be administered under its Plan and will conduct second level appeals. The County has the sole right to resolve disputed claims under the Plan and shall promptly inform Contractor of such resolution. However, County shall rely primarily on information and recommendations provided by Contractor in resolving such disputed claims.

13. Contractor shall be responsible for managing requests for vacation overrides, dosage changes, and/or refill too soon exceptions from the County, participants and/or providers/pharmacists in accordance with guidelines approved by County.
14. Contractor shall notify County of deletions to the formulary at least 60 days before the changes are implemented.
15. Contractor shall provide all Clinical Programs as detailed in the Financial Proposal under the Base Clinical Fees.
16. Contractor shall provide the Concurrent DUR Program as part of the base administrative fees and at no additional charge to the County.
17. Contractor shall maintain an integrated prescription drug profile for each participant including all retail and mail service prescription drug claims.
18. Contractor agrees that brand-to-brand prescription substitutions will be permitted only to promote clinical outcomes and only in circumstances where substituted product results in a lower plan and member cost. Rebates may not be considered when determining plan or member cost.
19. Contractor shall provide a Prior Authorization Program which will be administered at the point-of-sale or at mailing, and is designed to promote appropriate utilization and safety in the prescribing of prescription drugs.
20. *At the County's discretion in whole or in part and as authorized in writing by the County,* Contractor shall provide a Retro DUR and direct member outreach program for Enrollees in the Wellwise Choice and Wellwise Retiree plans. The program shall include, but not be limited to, the following
 - a. *At the County's discretion and as authorized in writing by the County,* ~~P~~performing a retrospective review of Enrollees' prescription claims and, if available and agreed to by the parties, medical data, to evaluate the appropriateness of each Enrollee's therapy based upon generally accepted current clinical pharmacy practices. In the event Contractor identifies clinical concerns regarding an Enrollee's drug regimen, Contractor will communicate its findings to the Prescriber and/or the dispensing pharmacist.
 - b. *At the County's discretion and as authorized in writing by the County,* ~~p~~Performing a medication therapy management review designed to ensure that medications prescribed to Enrollees are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse medication interactions. Review categories shall include: polypharmacy, appropriateness of therapy and inappropriate medications in the elderly. Contractor will identify Enrollees and will, if applicable, recommend changes in such Enrollees' drug regimens to the respective Prescribers and/or the dispensing pharmacists and if applicable, to the Enrollees.
21. Contractor shall provide a Step Therapy Program for select Enrollees in the Wellwise Choice and Wellwise Retiree plans.
22. Currently the County handles all second level Administrative & Grievance Appeals (i.e., co-pay, drugs not covered, quality of service, cost of script) inquiries. The County funnels any first level appeals through Contractor. Contractor shall provide support to the County for these appeals within two business days of request for information.

23. The County will have the sole authority to control and administer its Plan. Contractor will agree to accept fiduciary responsibility for the sole purpose of reviewing first level appeals related to prescription drug benefits, based upon the County's plan design and prior authorization criteria approved by the County. Contractor cannot make medical necessity determinations.
24. Contractor will provide services that allow the County to be in compliance with the new appeals process as required by PPACA.
25. Contractor will provide ePrescribing product services, effective January 1, 2017, which delivers patient eligibility, medication history, and formulary information to enabled physicians at the point of care so they can review the County's formulary information, obtain a full medication history of their patient, and submit electronic prescribing of the prescriptions directly to the pharmacy. Contractor will respond, in real time, to requests from certified Electronic Medical Records for patient eligibility and medication history. Contractor will also provide updated formulary files to a network hub on a periodic basis. The product usage by physicians is voluntary. The product goals are to help to increase generic dispensing rates, increase formulary compliance, and reduce drug spend/costs. Benefits to the patients include promoting physician/patient dialogue on plan features; enabling medication safety through sharing of the patient's medication history across all of their participating prescribers; helping to reduce medication errors; and improving health outcomes from physician access to more robust information.

VI. Specialty Pharmacy Services

1. Contractor shall make the determination on whether or not a product is deemed specialty.
2. County participants may utilize either Contractor's specialty pharmacies or any retail pharmacy to fill specialty prescriptions.
3. Contractor shall adjudicate claims in accordance with any Enrollee copayment maximums set forth in the Premier Wellwise, Wellwise Choice and Wellwise Retiree Plan Documents.
4. If replacement is required due to manufacturer's defect or damage, Contractor contacts the manufacturer seeking product replacement. Contractor will provide a replacement medication at no charge to the patient or the County while waiting for manufacturer to replace inventory.

If replacement is required due to a refrigerated medication arriving outside of the manufacturer guidelines, Contractor will replace the medication at no charge to the patient or the County.

5. At the direction of the County, Contractor shall provide customized letters to participants and providers taking specialty medications to describe the enrollment process and the clinical services offered by the Specialty Pharmacy.
6. Contractor shall provide on-call support 24 hours a day/7 days a week/365 days a year to pharmacist and registered nurses that are hired by the Specialty Pharmacy and are appropriately trained in dealing with specialty medication inquiries.

7. Contractor shall monitor specialty drug utilization and refill compliance data to identify opportunities to minimize waste. Such activities shall be reported to the County on a quarterly basis.
8. Upon County's request, Contractor will provide County with an updated specialty drug list. Notwithstanding the foregoing, an updated specialty drug list, including pricing, shall also be provided to County on a quarterly basis.
9. The County will review the information provided during the Notification Period and has the right to refuse the addition of any medication to the Contractor's specialty list.

VII. Mail Order

1. Contractor shall be properly licensed, certified or credentialed to operate in the applicable states where dispensing mail order facilities and specialty operations reside.
2. Contractor shall maintain a mail order program for the Term of the Contract.
3. Upon receipt of a complete and fully accurate shipping address, Contractor's subcontracted mail order facility shall be financially responsible and Contractor shall not charge the County or the Participant for drug and reshipping costs where the shipment of the medication is to the wrong address or patient, is improperly packaged, or shipped by the wrong carrier.
4. Contractor shall agree to transfer mail order prescriptions to a retail pharmacy in the case of emergency, vacation refills or if multiple prescriptions are requested and one is out-of-stock.
5. Contractor will not charge the County or members for expedited delivery if its organization causes the prescription delay. Contractor agrees to offer any member experiencing a delay in the delivery of its order the option of filling their prescription at a participating retail pharmacy.
6. Contractor will be required to collect copayments for mail and specialty services with no balance billing to the County of unpaid copayments allowed.

VIII. Data and Systems

1. Contractor will not modify any operational or clinical program or process that substantially impacts the services Contractor provides to County during the Term of this Contract without the prior notification and approval of the County.
2. Contractor shall accept electronic data transfer and administer membership information in compliance with HIPAA standards for privacy, security and electronic data interchange.
3. Contractor shall agree to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by organization available to the Secretary of the Department of Health and Human Services for purposes of the Secretary of the Department of Health and Human Services determining organization's compliance with the privacy rules.
4. Contractor will adopt and implement written confidentiality policies and procedures in accordance with applicable law to ensure the confidentiality of member information used for any purpose.
5. Contractor will agree not use or further disclose protected health information (PHI) other than as permitted or required by the Business Associate Agreement or as required by law.

6. Contractor agrees to use appropriate safeguards to prevent the unauthorized use or disclosure of the PHI. Contractor agrees to report to the plan sponsor any unauthorized use or disclosure of the PHI.
7. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the federal privacy rule.
8. Contractor agrees to provide access to PHI in a "designated record set" in order to meet the requirements under 45 CFR 164.524.
9. Contractor agrees to make any amendment(s) to PHI in a "designated record set" pursuant to 45 CFR 164.526.
10. Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
11. The Contractor agrees to:
 - a. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits,
 - b. report to the plan sponsor any security incident (within the meaning of 45 CFR 164.304) of which Contractor becomes aware, and
 - c. ensure that any Contractor employee or agent, including any subcontractor to whom it provides PHI received from, or created or received by the Contractor agrees to implement reasonable and appropriate safeguards to protect such PHI.
12. Contractor will be required to perform claims review and routine audit functions to detect and prevent misbilled claims and fraud at retail, mail and specialty pharmacy.
13. Contractor will adjudicate claims based on the County's plan design.
14. Contractor will have electronic coordination of benefits.
15. Contractor will be required to load eligibility within 48 hours of receipt.
16. Contractor shall provide on-line, unlimited eligibility updating and entry capabilities for authorized County staff. Subject to applicable laws, rules and regulations relating to privacy and confidentiality, Contractor shall provide County's Benefits Administrator and the County's TPA with on-line access to read County's eligibility information.
17. Contractor shall conduct manual eligibility updates at no charge to the County. In the case of emergency eligibility Contractor shall provide access for the County's TPA staff to make on-line eligibility updates on a same-day basis.
18. Contractor shall contact County's Benefits Administrator and/or the County's TPA for verification of eligibility of a participant that is shown as ineligible online in the event of participant escalation.
19. Contractor shall receive on a weekly basis, an eligibility file of eligible County participants from County's PPO TPA in an existing format defined in a separate file layout. Contractor shall treat the eligibility file sent by County's TPA as a Full File eligibility file. Upon receipt of file, Contractor shall load and determine if any discrepancy thresholds are triggered. If so, County or its designee will be notified of eligibility discrepancies. Contractor shall update the eligibility file within two working days of receipt of the clean eligibility file. Currently, the eligibility file is

provided in HIPAA-compliant American National Standards Institute (ANSI) 834 format; however, County reserves the right to change it. Contractor shall be willing to accept ANSI 834 and flat file formats.

20. Contractor shall notify County or its designee, if the eligibility file is not received by the due date identified on the file schedule provided by the County's TPA.
21. Contractor shall notify County or its designee prior to the eligibility update application, of any material errors or coding problems on the eligibility file that exceeds agreed upon thresholds.
22. Contractor shall provide two complete claim files to the County's Employee Benefits Consultant and County's TPA on a quarterly basis via File Transfer Protocol. Contractor shall provide, on a monthly basis, claims information to County for each billing period in the format agreed to by County and Contractor. The claims information shall be reported separately for each group identified during the initial implementation process or for other sub-groups that may be added during the Contract Term.
23. Contractor will be required to provide electronic data feeds as needed at no additional cost for up to six unique contractors. Each data feed could be unique in nature and would range from daily to quarterly transmission intervals. Electronic data feeds may include but are not limited to: at least weekly feeds to the County's medical TPA; routine feeds to wellness contractors; financial claims history to consultants; clinical data to health plans and/or TPA; etc.
24. Contractor shall work with County's medical TPA to ensure that prescription drug paper claims are paid appropriately. If County chooses to continue having its TPA administer paper claims on an emergency basis, the Contractor shall share data as permitted by applicable laws, rules and regulations relating to privacy and confidentiality to ensure that prescriptions are not both paid under the pharmacy network and by County's TPA through a paper claim.
25. If requested, the Contractor must agree to process paper claims according to the fee structure detailed in Attachment B.
26. Contractor shall notify the County immediately upon identification of system-related problems, programming problems or data transfer problems. The Contractor shall make every effort necessary to correct such problems within 48 hours regardless of the time or date in order to minimize any disruption to participants.
27. Contractor shall provide necessary data files to respond to government requests or respond to class action lawsuits without additional fees for the length of the Contract. Such services shall be provided at standard programmer bill rates as defined by the County after the Contract has terminated.
28. Contractor shall provide Medicare Part D services, specifically providing support for the Retiree Drug Subsidy filing and related activities.
29. Contractor shall meet all current and future reporting requirements with the Centers for Medicare and Medicaid Services (CMS) for Medicare Modernization Act (MMA) Part D. Contractor shall remove Part B items (e.g., diabetic supplies) from the files to be sent to CMS for the subsidy. Contractor shall ensure that MMA support meets County's compliance, audit, and other standards.
30. Contractor shall be responsible for administering Coordination of Benefits (COB) as applicable for electronically processed claims. At County's option, the Contractor shall be responsible for administering COB and other functions and services in regards to Medicare Part D subsidy activity including the provision of cost reports and filing.

31. Contractor shall invoice the County for pharmacy claims no more frequently than weekly. Other fees shall be invoiced monthly.
32. Contractor shall process subrogate Medicaid claims according to the fee structure detailed in Attachment B.
33. In the event of a platform or name change, the Contractor will pay any charges associated with the creation and distribution of new member ID cards by the TPA.

IX. Reporting

1. Contractor shall collect and report statistics and/or summaries on a monthly, quarterly and annual basis as specified by the County. The reports may be standardized reports provided by the Contractor. If the reports do not adequately meet the County requirements, the Contractor shall customize the reports to the County's specifications. The County's requirements may change from time to time during the life of the Contract. Standard reports shall be provided as part of the base administrative fees; the charge for customized reports shall be \$150 per hour. For purposes of clarity, a customized report shall be a report that requires IT services and support for development.
2. Contractor shall provide a financial and program reporting package to County on a monthly basis. These standard reports will include Plan performance and financial information as required by County. Results of clinical, utilization management and savings programs will be reported quarterly.
3. Contractor shall abide by the following data requirements:
 - a. Data shall be submitted electronically and by hard copy as requested, according to agreed standards.
 - b. Data made available electronically shall conform to HIPAA data exchange standards once finalized.
 - c. The minimum data elements to be provided, where applicable, shall include, but are not limited to the following: patient name, patient date of birth, the County identification, pharmacy tax identification, claim valuation amounts, denial reason, prescribing provider (physician) number (if available), NDC or other designated product number, prescribing provider Drug Enforcement Administration number, pharmacy provider identification, dispensing fee, days supply, dispensed quantity, prescription number, DAW indicator and authorization indicator.
4. The Contractor shall provide County with access to a data management/reporting tool, with access provided to the Consultant identified by County. The tool will be provided as part of the base administrative fees with no additional charge to the County.
5. Contractor shall provide four user IDs to access the web-enabled on-line reporting tools as part of the base administrative fees with no additional charge to the County. The fee for additional users shall be \$150 per month for each additional user.
6. Contractor shall offer comprehensive onsite or web-based training for the on-line reporting tool for up to four users as part of the base administrative fees with no additional cost to the County.
7. Contractor shall provide requested plan design modeling analysis within two weeks of the County's request date.
8. Contractor shall provide requested trend forecast modeling analysis within two weeks of the County's request date.

X. Network Management

1. Contractor will be required to track and monitor pharmacy performance (i.e., generic dispensing, reversals, controlled substance dispensing, etc.) including Contractor's management of the network, providing performance reports upon request to the County.
2. Contractor shall supply a toll-free number for inquiries from Pharmacists regarding network issues and for physicians regarding pre-authorization answered 24/7/365 by the Contractor as part of the base administrative fees with no additional cost to the County.
3. Contractor shall perform on-site audits of at least 3% of the contracted network pharmacies on an annual basis, returning 75% of audit recoveries from the County utilization. Contractor shall retain 25% of the recovered amount.
4. Contractor will be required to provide network audit reporting on a quarterly basis.
5. Contractor shall implement measures to recover overpayments made to pharmacies/participants and employ a mechanism to ensure the County receives credit for these overpayments. Details of threshold recovery levels will be finalized at the time of Contract award.
6. Contractor will be required to return 75% of all the County audit recoveries to the County and to credit the County's invoices upon 90 days of audit recoveries. The standard of 25% of audit recoveries is retained by Contractor.
7. Contractor shall provide a program to audit 100% of the submitted claims using a sophisticated audit tool to identify submission errors, waste, fraud and abuse at no additional charge to the County. Contractor shall provide supporting reports on a quarterly basis to demonstrate the activity of this network auditing program.
8. At County's option, Contractor shall process claims for non-network pharmacies in accordance with the terms of the Plan (for example, when prescriptions are filled at a non-network pharmacy on an emergency basis while the participant is traveling).
9. Contractor shall provide network management services including: auditing, monitoring and credentialing of the network providers.
10. Contractor agrees to notify the County at least 90 days in advance whenever reasonably possible regarding termination of a current pharmacy chain or independent pharmacy.
11. Contractor shall provide a 90 day at retail program option which is designed for participants utilizing maintenance medications and all prescription medications eligible for a 90-day supply and offers participants the freedom to obtain a 90-day supply from all network pharmacies that have contracted to provide this type of service.

XI. Performance Guarantees

1. Contractor shall offer competitive and aggregate Performance Service Guarantees values in which its organization takes full financial risk for unsatisfied guarantees.
2. Contractor shall place annual penalties at risk for successfully maintaining Service Performance Guarantees as set forth in Attachment D. The County reserves the right to allocate the percent of the penalties at risk for each performance guarantee with no more than 20% allocated to any one performance standard. Additionally, the County requires the ability to re-allocate the amount at risk for each performance standard on an annual basis, with 30 days notification prior to the measurement period start date.

3. Guarantees shall be reported according to the appropriate measurement either the County-specific or BOB. Reports shall show actual results for the current period versus: (a) prior periods and (b) the guaranteed standard. The County shall not be responsible for requesting reports.
4. Contractor agrees that member satisfaction, account satisfaction, network access and system availability shall be measured and reported to the County within 60 days of each calendar year. All other service performance guarantees shall be measured and reported directly to the County within 60 days from the close of each quarter.
5. When performance issues are identified, Contractor will agree to provide a corrective action plan within 72 hours of identification of the issue. Once agreed to by the County, the actions and timelines will be adhered to.
6. Penalties associated with Performance Guarantees shall be reported and reconciled 60 days from the end of the Contract year and penalties, if any, shall be based on annual aggregate results and paid within 90 days after the end of the Contract year, and the County will not be required to request payment.
7. Penalties, if any, shall be paid annually based upon annual aggregated results no later than 90 days after the end of the Contract year. Annually, County will select a sampling of performance guarantees and request detailed back-up documentation to validate results. If Contractor failed to make timely penalties payment, then all monies due to County for Contractor's failure to meet a Performance Standard set forth below shall be automatically deducted from any monies due or owing to Contractor from County.
8. The service performance standards indicating Book of Business (BOB) shall be measured by the Contractor for all Contractor customers utilizing the same process platform.
9. Contractor agrees that all reporting provided to the County will include the County's aggregated plan experience unless the County requests reporting to be segregated by business unit or plan.
10. Annually, County will select a sampling of performance guarantee results for validation, and Contractor shall provide detailed back-up documentation to County within sixty (60) days of County's request.

XII. General

1. The County will not be required to fund any bank account nor provide a deposit or prefunding for any reason other than the County's default on Contractor payment terms.
2. Contractor must notify the County within ten (10) days of official court filings and relevant class action suits. Data required to participate in the class action suit will be provided to the County for up to three (3) years following Contract termination. Such data will be provided to County at no charge for up to one (1) year following Contract Termination. Any data provided thereafter will be provided to the County at Contractor's then current rates. Contractor's involvement will be limited to providing data.
3. In performing its services under this Contract, Contractor agrees to act in compliance with health care reform regulations. Each Party shall, in good faith, notify the other Party of any changes required by law that impact services provided under this Contract. Contractor shall provide written notice to County in the event that any such change in law requires additional services for which additional costs will be assessed to County. The Parties agree to enter into a mutually acceptable amendment for such additional services and associated costs. Each Party acknowledges that it shall remain solely responsible for its own compliance with health care reform.

ATTACHMENT B**COMPENSATION/PAYMENT****I. COMPENSATION**

1. County will pay Contractor for the services provided herein pursuant to the following table:

TRADITIONAL MODEL	YEAR ONE 2015	YEAR TWO 2016	YEAR THREE 2017	YEAR FOUR (if renewed) 2018	YEAR FIVE (if renewed) 2019
Administrative Fees					
Base Fees:	Retail 30: \$0.00 per Net Paid Claim Retail 90: \$0.00 per Net Paid Claim Mail Service: \$0.00 per Net Paid Claim Specialty: \$0.00 per Net Paid Claim				
Paper Claim Fee:	\$2.50 per paper claim (This fee is additive to the above indicated "Base Fee.")				
Retail 30 Pharmacy Network					
Brand Drugs	Lower of U&C or AWP minus 15.50% plus \$1.35 dispensing fee		Lower of U&C or AWP minus 17.00% plus \$1.00 dispensing fee		
Generic MAC Drugs	Lower of U&C, OptumRx MAC plus \$1.35 dispensing fee		Lower of U&C, OptumRx MAC plus \$1.00 dispensing fee		
Non-MAC Generic Drugs	Lower of U&C or AWP minus 15.50% plus \$1.35 dispensing fee		Lower of U&C or AWP minus 17.00% plus \$1.00 dispensing fee		
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 74.00%	Year 2: AWP minus 74.50%	Year 3: AWP minus 77.00%	Year 4: AWP minus 77.00%	Year 5: AWP minus 77.00%
Retail Pharmacy Network (> 83)					
Brand Drugs	Lower of U&C or AWP minus 18.50% plus \$0.00 dispensing fee		Lower of U&C or AWP minus 19.50% plus \$0.00 dispensing fee		
Generic MAC Drugs	Lower of U&C, OptumRx MAC plus \$0.00 dispensing fee				
Non-MAC Generic Drugs	Lower of U&C or AWP minus 18.50% plus \$0.00 dispensing fee		Lower of U&C or AWP minus 19.50% plus \$0.00 dispensing fee		
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 75.00%	Year 2: AWP minus 75.50%	Year 3: AWP minus 78.00%	Year 4: AWP minus 78.00%	Year 5: AWP minus 78.00%
OptumRx Mail Service Pharmacy**					

Brand Drugs	AWP minus 23.00% plus \$0.00 dispensing fee		AWP minus 23.50% plus \$0.00 dispensing fee		
TRADITIONAL MODEL	YEAR ONE 2015	YEAR TWO 2016	YEAR THREE 2017	YEAR FOUR (if renewed) 2018	YEAR FIVE (if renewed) 2019
Generic MAC Drugs	OptumRx MAC plus \$0.00 dispensing fee				
Generic Non-MAC Drugs	AWP minus 23.00% plus \$0.00 dispensing fee		AWP minus 23.50% plus \$0.00 dispensing fee		
Effective Overall Generic Guarantee (ingredient cost)	Year 1: AWP minus 76.00%	Year 2: AWP minus 76.50%	Year 3: AWP minus 80.00%	Year 4: AWP minus 80.00%	Year 5: AWP minus 80.00%
Specialty Pharmacy (Open)					
	Dispensing Fees are \$2.50		Dispensing Fees are \$0.00		
Rebates (Preferred 3-Tier, Catamaran Managed Formulary)***				Rebates (Premium)****	
Retail 30 Minimum	Greater of 100% or \$18.00 per Net Paid brand Claim		Greater of 100% or \$65.00 per Net Paid brand Claim		<i>Greater of 100% or \$95.00 per Net Paid brand Claim</i>
Retail 90 Minimum	Greater of 100% or \$30.00 per Net Paid brand Claim		Greater of 100% or \$65.00 per Net Paid brand Claim		<i>Greater of 100% or \$95.00 per Net Paid brand Claim</i>
Mail Minimum	Greater of 100% or \$50.00 per Net Paid brand Claim		Greater of 100% or \$250.00 per Net Paid brand Claim		<i>Greater of 100% or \$350.00 per Net Paid brand Claim</i>
Specialty Minimum	Greater of 100% or \$18.00 per Net Paid specialty brand Claim		Greater of 100% or \$250.00 per Net Paid specialty brand Claim		<i>Greater of 100% or \$500.00 per Net Paid specialty brand Claim</i>

***A minimum charge of \$7.99 shall apply for all mail service orders.*

****Contractor will pass through to County 100% of Rebates and Manufacturer Administrative Fees it receives that can be attributed to allowable utilization of Participants hereunder. Contractor shall retain other earned revenue which is deemed separate and apart from “Rebates” and “Manufacturer Administrative Fees.”*

*****Premium Formulary rebates are contingent upon: County's adoption, without deviation, of Contractor's formulary and formulary exclusions, as well as any changes Contractor makes to its formulary and formulary exclusions; and the implementation of the step therapies required by Contractor, as well as any changes Contractor makes to its formulary or utilization management programs; and a minimum 5 percent difference in coinsurance between preferred and non-preferred Brand Drugs.*

Generic Dispensing Rate Guarantee					
	Year 1	Year 2	Year 3	Year 4 (if renewed)	Year 5 (if renewed)
Retail	76.00%	77.00%	78.00%	78.00%	78.00%
Mail	77.00%	78.00%	79.00%	79.00%	79.00%

2. **ADDITIONAL SERVICES**. Certain services as indicated below are not included in the standard Administrative Fee and are available for an additional charge.

Program	Fee (Years 1 – 5)
Base Clinical Services (Shown Below)	Included in Base Administrative Fee
Concurrent DUR	No Charge
MTM/Retrospective DUR	MTM = \$0.62/PMPM; Total RDUR Fee = \$0.33/per Rx (Includes Safe and Appropriate Utilization, Abused Medications and Gaps in Care)
Inform Prescribing Program	No Charge
Quantity Limitations	No Charge
Prior Authorization Administrative Overrides	No Charge
Step Therapy	No Charge
Duration of Therapy Edits & Support	N/A
Quarterly Clinical Program Reporting	No charge for standard reports

Additional Clinical Programs	
Prior Authorization	\$40/per Clinical and Plan Tech Override
ePrescribing Product Services	\$.10 per eligibility and medication history transaction
Miscellaneous Fees	
Manual Eligibility Submission	No Charge
Formulary Delete Letter	No Charge
Ad Hoc Reports	\$150/Hour
Physician Standard Appeals	First Level Internal Clinical Appeal - \$100/Appeal; Second Level Internal Clinical Appeal - \$325/Appeal; First Level Internal Administrative Appeal - \$75/Appeal; Second Level Internal Administrative Appeal - \$244/Appeal; External Clinical Appeal - Cost + 20%; External Administrative Appeal - Cost + 20%
Mailings of Welcome Packets	No Charge
Plan Prior Authorization Contractor Entered	No Charge

Plan Brochures (w/o prepaid envelope)	Postage, Shipping and Handling
Claims Audit Review	Contractor retains 25% of recovered amount
Develop and Distribute Communication Materials Twice per Calendar Year	No Charge
Program	Fee (Years 1 – 5)
Miscellaneous Fees	
Develop and Distribute of Communication Material Beyond the Twice per Calendar Year at County's Request	Mailing, Shipping and Handling
Medicare Claims Files Submission and Support to the County - RDS Support Services	\$4,500
Optional (County may elect to add services at the costs stated below)	
Therapeutic Interchange	\$3.00/Intervention
Communication Customization	Cost varies depending on level of Customization. Customization, such as including the County's phone number and program name, are included. Personalization, such as addressing the letter Dear John Doe vs. Dear Member, will vary based on the level of customization.
Dose Optimization	\$3.00/Intervention
Adherence Management	Member Outreach = \$0.20 PMPM; Member & Prescriber Outreach = \$0.36 PMPM

II. PAYMENT

1. Payment Term-Payment in Arrears:

- a. Monthly and bi-monthly invoices are to be submitted in arrears. Claims shall be invoiced bi-monthly on the 15th and End of Month (EOM). Administrative fees shall be invoiced monthly EOM. Contractor shall reference this Contract number on each invoice. Payment terms will be net 30 days of invoice date for administrative fees and net 15 days of invoice date for claims.

Invoices shall cover services not previously invoiced. The Contractor shall reimburse County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

2. Payment – Invoicing Instructions:

The Contractor will provide a two-part invoice on the Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1 above
3. Name of County agency/department
4. Delivery/service address
5. Contractor/Subordinate Contract or Purchase Order number
6. Date of order
7. Type of fees/service
8. Sales tax, if applicable
9. Dates of fees/service
10. Brief description of fees/service
11. Contractor's Federal I.D. Number

The Contractor shall be fully responsible for providing an acceptable invoice to the County. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Invoices and support documentation (Monthly Program Summary) is to be sent to:

Project Manager, Barbara Voelkel
Human Resource Services/Employee Benefits
Hall of Administration
333 W. Santa Ana Blvd., Room 137
Santa Ana, CA 92701

ATTACHMENT C**STAFFING PLAN****1. Primary Staff to perform Contract duties**

Name	Classification/Title
Shannon Ross	Strategic Account Executive
Karla Anderson, PharmD	Clinical Consultant
Kindal Defranco	Senior Client Services Manager

2. Alternate staff (for use only if primary staff are not available)

Name	Classification/Title
Kathryn Friedman	Senior Account Director, State & Local Government

Substitution or addition of Contractor’s key personnel in any given category or classification shall be allowed only with prior written approval of the County Project Manager subject to the terms and conditions of paragraph 25 of the Contract.

The Contractor may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/class required. Assignment of additional key personnel shall be subject to County Project Manager approval. County reserves the right to have any of Contractor personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any Contractor personnel.

3. Sub-contractor(s), if applicable

In accordance with Article 12, “Assignment or Sub-Contracting”, listed below are Sub-contractor(s) anticipated by Contractor to perform services specified in this Contract.

Company Name	Service
InTech Health Ventures	Medicare Part D Retiree Drug Subsidy (RDS) Reporting
Fiserv	ID Card Production
Medical Review Institute of America	Claim Review

Aicare Medical Management	Claim Review
MCMC	Claim Review
To be provided upon contract execution	Rebate Aggregator

ATTACHMENT D**CONTRACTOR PERFORMANCE GUIDELINES**

Contractor shall adhere to the terms outlined in the Statement of Work regarding Performance Guarantees. Upon the later of the Effective Date OR the date that the Contract is executed by both parties, Contractor will measure its performance guidelines (the “**Guidelines**”) quarterly and report results to County. The maximum payment for missed Guidelines shall not exceed \$75,000 annually, with no more than 20% of this maximum for any one missed Guideline annually. Penalties associated with Performance Guarantees shall be reported and reconciled 60 days from the end of the Contract year and penalties, if any, shall be based on annual aggregate results and paid within 90 days after the end of applicable contract year, subject to County’s adherence to payment obligations under this Contract. Payments for Missed Guideline represent County’s sole and exclusive remedy for any Guideline set forth herein. Any such performance failure will not be deemed a material breach that gives County right to terminate under Section 35 of this Contract.

Service	Performance Guideline	Contractor or Client Book of Business	Standard
Eligibility processing	Ninety-nine percent or greater of Usable Eligibility Files will be loaded and active in the on-line claims adjudication system within 24 hours of Contractor’s receipt. Measure quarterly and reconcile annually and based upon client specific data.	County specific	≥99% within 24 hours of Contractor’s receipt
Eligibility error report	As long as the County's eligibility provider continues to accept electronic error reports, Contractor shall produce and transmit an error report on eligibility file updates to the firm-designated eligibility provider within 48 hours of the Contractor receiving a clean and complete eligibility file.	County specific	100%
System availability	The percent of time the claims processing system will be available to retail pharmacies as measured by the number of hours the system is available, divided by the total number of hours within the reporting period excluding regularly scheduled maintenance.	Contractor Book of Business	≥ 99.5%

Network pharmacy access	Contractor guarantees that 98% of members will have at least one (1) participating pharmacy within 1.5 miles urban, three (3) miles suburban or ten (10) miles rural of their home zip code (where a pharmacy exists within the specified standard)Measure and reconcile annually and based on client specific data.	County specific	98.0%
On-site pharmacy audits	As measured by the number of network pharmacies audited onsite each year divided by the total number of network pharmacies.	Contractor Book of Business	3%
Welcome booklets	Ninety-five (95%) or greater of welcome booklets will be produced and released for distribution to members within three (3) business days or less of Contractor's receipt of a useable eligibility file (for monthly changes) provided that County is using Contractor's standard welcome booklet production process. Welcome booklets will be issued in accordance with a mutually agreed upon schedule during implementation.	County specific	>= 95%
Call center average speed of answer (ASA)	Percent of all calls answered within an average of 30 seconds. Calculated as the amount of time that elapses once a call is placed into the customer service queue to the time the call is answered by a live customer service representative (CSR). Measurement excludes calls routed to interactive voice response (IVR) system.	Contractor Book of Business	100% within an average of 30 seconds
Pharmacist/clinical support ASA	Measured as the time elapsed once a participant requests to speak to a pharmacist from a CSR or selects this option from the IVR menu to the time the call is answered by a pharmacist.	Contractor Book of Business	< 45 seconds
Specialty care call center average speed of answer (ASA)	BriovaRx guarantees eighty percent (80%) of all calls will be answered within an average of 30 seconds or less (Average speed of answer (ASA)). This metric is measured quarterly, reconciled annually and based upon book of business data.	Contractor Book of Business	80%

Call center abandonment rate	Three percent (3%) or less of calls to Contractor's member service center will be abandoned after being connected for at least thirty (30) seconds. This metric is measured quarterly, reconciled annually and based upon book of business data.	Contractor Book of Business	$\leq 3.0\%$
First call resolution	Ninety-five percent (95%) or greater of calls to Contractor's help desk will be resolved within one (1) business day. This metric is measured quarterly, reconciled annually and based upon book of business data.	Contractor Book of Business	$\geq 95.0\%$
Responsiveness to written inquiries from members	Contractor guarantees that we shall respond to at ninety-five percent (95%) or greater of written inquiries from members within five (5) business days from date of receipt and 100% of written inquiries within ten (10) business days from date of receipt. Measured quarterly and reconciled annually and based upon book of business data.	Contractor Book of Business	$\geq 95.0\%$
Member satisfaction survey for members utilizing the pharmacy benefit	<p>Contractor will conduct an annual member satisfaction survey of randomly selected members from across the population of members managed by Contractor who have experience with one or more of the following PBM services provided they are delivered and managed by Contractor: 1) general benefits, 2) mail service, and/or 3) specialty pharmacy. The survey methodology will be designed to achieve a statistically-valid sample that is representative of all members managed by Contractor. A "satisfied" rating is defined as three (3) or greater on a five (5) point scale or another scale equivalent. Any data collected will be reported, in aggregate, on an annual basis.</p> <p>Contractor guarantees it will achieve an overall satisfaction rate of ninety percent (90%) provided that the plan design has not been altered during the measurement period. Contractor will make a good faith effort to achieve this sample size but will not be required to pay any of the failure penalty specified, regardless of the outcome, if the number of responses received does not comprise a statistically valid sample.</p>	County specific	$\geq 90.0\%$

Specialty medication member satisfaction survey	BriovaRx guarantees ninety percent (90%) overall customer satisfaction. This metric is measured and reported annually and based upon book of business data. A minimum of 20% response rate must be achieved for the performance standard to be applicable	County specific	90.0%
Account management satisfaction	<p>Based on the results of the Contractor's quarterly survey or report card submitted to County's benefits staff. Designated participants of County's benefits staff will complete a quarterly report card to evaluate the Contractor's account team, or the overall service performance. Guarantee will be measured using a mutually agreed upon survey tool to be developed and modified, if necessary, on an annual basis.</p> <p>Account team may be scored on: technical knowledge, accessibility, interpersonal skills, communication skills, and overall performance. Contractor's overall service may be scored on such dimensions as proactive communication of issues and recommendations, timeliness and accuracy of reports, responsiveness to day-to-day needs, adequacy of staffing and training, and overall ability to meet performance expectations.</p> <p>For those areas over which Contractor's account management maintains significant control, Contractor guarantees it will achieve an average rating, across all responses, of greater than or equal to three (3) on a five (5) point scale (measured to two decimal points, i.e. 3.75) or another scale equivalent.</p>	County specific	Average Rating ≥ 3 on a 5 point scale
Account service responsiveness	One hundred percent (100%) of telephone and email inquiries from County representatives will be returned or acknowledged by Contractor's account management representatives within one (1) business day of receipt of the telephone or email inquiry.	County specific	100%

Claims processing accuracy	Contractor guarantees that ninety-eight percent (98%) of the plans claims will be administered accurately in accordance with the plan’s signed documentation. Measured quarterly, reconciled annually and based upon client specific plan design documentation.	County specific	> 98.0%
Mail order/specialty pharmacy dispensing accuracy	Contractor Home Delivery will meet a Dispensing Accuracy Rate of 99.99%. “Dispensing Accuracy Rate” means (i) the number of all mail order pharmacy prescriptions dispensed by Contractor Mail less the number of those prescriptions dispensed by Contractor Mail which are reported to Contractor Mail and verified by Contractor Mail as having been dispensed with the incorrect drug, strength, patient, form, or directions, divided by (ii) the number of all mail order pharmacy prescriptions dispensed by Contractor Mail. Measured quarterly, reconciled annually and based upon book of business data.	County specific	≥ 99.99%
Retail paper claims processing time	Ninety-five percent (95%) of all paper claims will be processed within ten (10) business days from receipt.	County specific	≥ 95.0%
Mail order turnaround time (clean Rx)	Contractor Mail will dispense all routine prescriptions (those Mail Order Pharmacy Program prescriptions for Covered Drugs received by Contractor Mail that are in stock and which do not require physician or patient contact and/or other non-standard procedures prior to dispensing by Contractor Mail) within an average of two (2) business days of receipt of the order at the Mail Order Pharmacy. Measured quarterly, reconciled annually and based upon client specific data.	Contractor Book of Business	100% within 2 business days
Mail order turnaround time (non-clean Rx)	Contractor Home Delivery will dispense all non-routine prescriptions (those Mail Order Pharmacy Program prescriptions for Covered Drugs received by Contractor Mail that require physician or patient contact or other non-standard procedures prior to dispensing by Contractor Mail) within an average of five (5) business days of receipt of the order at the Mail Order Pharmacy. Measured quarterly, reconciled annually	Contractor Book of Business	100% within 5 business days

	and based upon client specific data.		
Account management meetings	Contractor agrees to meet with the County on a regular basis as follows: (a) Contractor will meet in person or by conference call with the County on a monthly basis as agreed upon to review ongoing account and service issues, (b) Contractor will meet with the County on a quarterly basis to review program performance including financial, clinical and plan design, with a year end review in the fourth quarter meeting and (c) Contractor will meet with the County on an annual basis with an overall program review including Contractor's book of business comparisons, prescription drug program trends, Contractor initiatives and recommendations for the firm program.	County specific	100%
Account management staffing changes	Contractor guarantees that the account management team will remain throughout the life of County's program with the exception of resignation, promotion, or termination of the account management team. Notwithstanding termination for cause or self-termination, if requested by County, Contractor will appoint a new account team within thirty (30) days of request.	County specific	100%
Account management reporting	Contractor will prepare and provide the County its standard management/utilization reports (including reviews and appeals management reports) and other standard reports to be mutually agreed upon.	County specific	100%
	Specified reports (as mutually agreed upon in advance) will be available online to the County within fifteen (15) business days of the end of the billing cycle that includes the last calendar day of the reporting month for monthly reports and thirty (30) business days of the end of the billing cycle that includes the last calendar day of the reporting quarter for quarterly reports and May of the following calendar year for annual reports.	County specific	100%

	Specified reports (as mutually agreed upon in advance) will be provided via hardcopy to the County within forty-five (45) calendar days of the end of the billing cycle that includes the last calendar day of the reporting month, quarter or year.	County specific	100%
Quality control documentation	Contractor will maintain a documented quality control and pre-implementation document and provide it to County for review and approval prior to implementation of any benefit or program change.	County specific	100%
Timely reconciliation of all financial guarantees	Reconciliation of all financial guarantees including but not limited to: AWP discounts, dispensing fees, and rebate guarantees.	County specific	100%
Timely reconciliation of all clinical savings guarantees	Reconciliation of all clinical program guarantees including but not limited to; DUR, coverage management and physician profiling.	County specific	100.00%
Plan administration accuracy	Contractor guarantees that ninety-eight percent (98%) of standard plan design and benefit set-up changes, including pricing contract terms, will be made accurately. This performance guarantee is based upon Contractor's ability to set up new or revised plan design changes based upon receipt of signed documentation from the client. Measure quarterly, reconcile annually and based upon client specific data.	County specific	98.0%

ATTACHMENT E

BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.

2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately (not more than 5 business days) any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to

properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI , Contractor shall notify County of such Breach no later than 5 business days of discovery, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County Privacy Officer at:

<p>Thea Bullock, County Privacy Officer 405 W. 5th Street Santa Ana, CA 92701 (714) 834-3154 tbullock@ochca.com privacyofficer@ocgov.com</p>	<p>Or Linda Le, Deputy County Privacy Officer 405 W. 5th Street Santa Ana, CA 92701 (714) 834-4082 lile@ochca.com HIPAA@ochca.com</p>
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a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

(1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(2) A description of the types of Unsecured PHI 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);

(3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

(4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

(5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor’s initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to

County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use

or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract is feasible.

2. Upon termination of the Contract, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

b. Contractor shall retain no copies of the PHI (except as required under the Contract so long as such retention is in accordance with HIPAA).

c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.

ATTACHMENT F

AWP CONTRACT LANGUAGE

Contractor agrees to utilize one consistent pricing source for determining average wholesale price (AWP) information for use in claims pricing and to disclose its source in the contract with the County. If the Contractor decides to change its pricing source, it agrees to (1) provide the County with at least 90 days notice of the change and (2) provide the County with written validation that the change in pricing source is economically neutral or beneficial to the County. Contractor will provide validation noted above to the County at least 75 days prior to the change.

Contractor agrees that when AWP-based pricing is replaced in the market it will (1) provide the County with at least 90 days notice of the new pricing methodology; (2) guarantee that any changes in pricing source/index result in economic equivalence or improvements to the County; (3) provide the County with an externally audited illustration of the economic equivalence and (4) hold the County harmless from any charges the PBM may incur from (a) making said changes (e.g., IT costs); (b) auditing or (c) external validation. Contractor will provide written illustration and the statement noted above to the County within at least 75 days of the change.

Contractor agrees that in the event of a pricing methodology change or a change in the Contractor's pricing source, in which the Contractor does not agree to pass through pricing improvements to the County, or if the change results in a higher gross cost (before member cost share) to the County, the County reserves the right to renegotiate financial terms or terminate the contract with 90 days written notice following notice from Contractor of the change in pricing methodology without penalty or early termination charges.

In the event of a pricing methodology change or a pricing source change, results in higher gross cost (before participant cost share) to the County then the County reserves the right to renegotiate contract terms or to terminate with 90 days written notice following notice from Contractor of the change in pricing methodology without any termination charges.

EXHIBIT 1

COUNTY OF ORANGE CHILD SUPPORT ENFORCMENT

CERTIFICATION REQUIREMENTS

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

(Additional sheets may be used if necessary)

"I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

Authorized Signature
Date

Name

Title