

**SAFEWAY 340B DIRECT
CONTRACT PHARMACY SERVICES
AGREEMENT**

This 340B Contract Pharmacy Service Agreement (“Agreement”), by and between SANTA BARBARA COUNTY DEPARTMENT OF PUBLIC HEALTH (“Covered Entity”) and Safeway, Inc. (“Pharmacy”), is made and will take effect on May 15, 2016 (the “Effective Date”), and supersedes all other agreements between Covered Entity and Pharmacy.

WHEREAS, Covered Entity participates in a federal drug discount program established under section 340B of the Public Health Service Act (“340B Program”);

WHEREAS, the exclusive agreement for Prescription Drug Administrative Services between 340B Holdings, LLC (formerly “SUNRx”) and Covered Entity has been amended to permit Covered Entity to enter into a direct agreement with Pharmacy;

WHEREAS, pursuant to 75 Fed. Reg. 10272 (March 5, 2010), in addition to contracting with a single pharmacy for each clinical site, Covered Entities may pursue arrangements that include multiple pharmacies, provided that (1) there is a written agreement in place that meets 340B Program requirements, as articulated in 340B multiple contract pharmacy guidance; (2) the written agreement includes and addresses all of the elements outlined in Sections 2 and 3 of this Agreement; (3) the operation of the arrangement continues to meet all 340B Program requirements and does not create diversion of 340B Drugs or duplicate discounts; (4) the arrangements are one of the following models either individually or in combination: (i) the use of multiple contract pharmacy service sites and/or (ii) the utilization of a contract pharmacy/pharmacies to supplement in-house pharmacy services; and (5) the arrangement involves a single identifiable Covered Entity and does not include a network;

WHEREAS, Covered Entity desires to contract with Pharmacy to manage and dispense Covered Entity’s 340B Drugs pursuant to Covered Entity’s 340B Drug Program; and

WHEREAS, Pharmacy agrees to manage and dispense Covered Entity’s 340B Drugs pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions.

- a. “340B Direct Program” shall mean the services offered by Pharmacy relating to administration and management of 340B Program functions as further specified in this Agreement.

- b. "340B Dispensing Fee(s)" shall mean those fees due to the Pharmacy pursuant to this Agreement as set forth on Exhibit A, as may be modified from time to time upon written agreement by both Parties.
- c. "340B Drugs" shall be defined in accordance with applicable laws and guidance at 42 U.S.C. § 256b(b), 42 U.S.C. § 1396r-8(k), and 59 Fed. Reg. 25,110 (May 13, 1994).
- d. "340B Program" shall be defined as part of the 1992 Veteran's Health Care Act, which created Section 340B of the Public Health Services Act, allowing certain "Covered Entities" to purchase outpatient prescription drugs for their patients at favorable discounts from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services ("DHHS").
- e. "340B Program Administrator" shall mean the third party 340B services provider, if any, engaged by Covered Entity to manage or administer its 340B program and contract pharmacy arrangements.
- f. "Agreement" shall mean this Contract Pharmacy Services Agreement and accompanying exhibits, if any, as may be amended from time to time upon written agreement by both Parties.
- g. "Covered Entity" shall mean the legal entity identified in this Agreement, including all of its 340B eligible site locations. If there is more than one Covered Entity site which shall be encompassed by this Agreement, each site shall be identified in **Exhibit C** attached hereto and incorporated herein by reference, as may be modified from time to time.
- h. "Covered Entity Patients" shall mean those individuals who: (1) satisfy HRSA's patient definition criteria at 61 Fed. Reg. 55,156-58 (Oct. 24, 1996), (2) are covered by Medicare and/or a CenCal Health program, and (3) satisfy such other patient eligibility requirements as may be agreed to from time to time in writing by both Parties. All Covered Entity Patients who are uninsured are expressly excluded from this definition for this Agreement.
- i. "HRSA" shall mean the Health Resources and Services Administration, which is the agency within DHHS that oversees activities of the Office of Pharmacy Affairs.
- j. "MCO Claim" shall mean any claim for a 340B Drug that is adjudicated at the point of sale in accordance with contracted rates between the Pharmacy and any applicable Medicaid managed care organization payor (e.g., CenCal Health).
- k. "Non-Replenishable Items" shall mean (i) any discontinued items, or items no longer available with the same National Drug Code (NDC-11) as the originally dispensed item; or (ii) slow moving items, any 340B Drug (at the NDC-11 level) which, at the

time of the applicable True-up, has not been replenished within the immediately preceding ninety (90) days.

- l. "OPA" shall mean the Office of Pharmacy Affairs, which is within the Health Resources and Services Administration and which administers the 340B Program.
- m. "Parties" or "Party" shall mean the signatories to this Agreement, which are the Covered Entity and Pharmacy.
- n. "Pharmacy" shall mean the legal entity identified in this Agreement. If there is more than one Pharmacy location that shall be utilized by Covered Entity in order to serve Covered Entity Patients, each Pharmacy site shall be identified in an **Exhibit D** attached hereto and incorporated herein by reference.
- o. "SWP" shall mean Suggested Wholesale Price as published by First Databank.
- p. "Tracking System" shall mean the system for identifying and monitoring the use of drugs through all phases of the Parties' involvement with such drugs, including the ordering of 340B Drugs, the receipt of 340B Drugs, Covered Entity's payment for 340B Drugs, internal transfers of 340B Drugs within the Pharmacy, Pharmacy's preparation and dispensing of 340B Drugs, and Pharmacy's billing of the Covered Entity Patient or third-party insurer for the 340B Drugs on behalf of Covered Entity.
- q. "Captured Claims" shall mean all MCO Claims for Covered Entity Patients originating at participating Pharmacy locations which meet the other requirements of the 340B Direct Program, and are captured for the benefit of the Covered Entity pursuant to the applicable eligibility and capture rules applicable to Covered Entity (each a "Captured Claim").

2. **Essential Covered Entity and Pharmacy Compliance Elements**

- a. **Maintaining Title.** Covered Entity shall purchase and maintain title to the 340B Drugs and shall assume all responsibility for establishing the price of the 340B Drugs subject to applicable Federal, State, and local laws.
- b. **Ship To, Bill To Agreement.** A "ship to, bill to" procedure shall be used by the Parties, pursuant to which the Covered Entity or Pharmacy shall order on Covered Entity's behalf through the 340B Direct Program, 340B Drugs directly from the drug manufacturer, a designated sales representative, or a drug wholesaler. Covered Entity, or Pharmacy through the 340B Direct Program, shall arrange for Covered Entity to be billed directly for purchased 340B Drugs. If Covered Entity has more than one site, it may choose between having each site billed individually or designating a single Covered Entity billing address for all 340B Drug purchases. Covered Entity shall arrange for shipment of the 340B Drugs directly to Pharmacy.

- c. **Pharmacy Services.** Pharmacy shall perform the following services (collectively, the “Pharmacy Services”).
- 1) Dispense 340B Drugs to Covered Entity Patients in accordance with all applicable state and federal statutes and regulations;
 - 2) Conduct patient drug utilization review;
 - 3) Maintain patient drug profiles in accordance with Pharmacy’s usual business practices;
 - 4) Counsel and advise patients consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship.

Notwithstanding the foregoing, Pharmacy is an independent contractor and shall be solely responsible for its acts and omissions with respect to Pharmacy Services. Pharmacy agrees to render Pharmacy Services in accordance with professional standards applicable to Pharmacy Services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Covered Entity Patient where such service would violate any statute, regulation, or professional standard applicable to Pharmacy Services.

- d. **Inventory Replenishment.** Covered Entity or Pharmacy on behalf of Covered Entity through the 340B Direct Program shall order, for delivery to Pharmacy, all 340B Drugs which have been determined to be eligible and have reached a full package size but have not yet been delivered to Pharmacy. 340B Drugs dispensed to Covered Entity Patients shall be replenished at the NDC-11 level. Covered Entity and Pharmacy each agree that Class II medications will not be dispensed under this Agreement in connection with Covered Entity’s 340B Program.

1) Slow Moving and Discontinued Items:

- a. True-up. Pharmacy, in connection with the 340B Program Administrator, shall conduct a “True-up” of Non-Replenishable Items, no less than once per calendar quarter. The intent of such True-ups shall be to return the Pharmacy and Covered Entity to the position they would have been in if the applicable claim had not been captured for 340B. True-ups shall be conducted as follows:

- ii. MCO Claims: MCO Claims for Non-Replenishable items shall be reconciled assuming that the retail reimbursement or usual and customary rate that the Pharmacy would have received for the applicable 340B Drugs was: (a) SWP less 15% plus a \$3.00 dispensing fee for Brand Name Drugs; and (b)

SWP less 65% plus a \$3.00 dispensing fee for Generic Drugs. All amounts paid by or charged to the Covered Entity (including 340B Dispensing Fees) in connection with the capture of the MCO Claim shall be adjusted such that the Pharmacy shall receive only the amount set forth above and the Covered Entity shall no longer be required to replenish the applicable 340B Drugs.

- b. Partial Replenishment.** Any True-up adjustments for less than the full amount of 340B Drugs dispensed in connection with applicable MCO Claims shall be made on a pro rata basis.
- e. **Freedom of Choice.** Covered Entity shall inform all Covered Entity Patients that if he or she does not elect to use Pharmacy, Covered Entity will provide the Covered Entity Patient with his or her prescription form and the Covered Entity Patient is then free to fill the prescription using the pharmacy provider of his or her choice. If a Covered Entity Patient does not elect to use the services of Pharmacy or any Covered Entity pharmacy location (in-house or contracted), then the manufacturer is not required to offer the drug at the 340B price.
- f. **Adherence to All Applicable Laws.** Covered Entity and Pharmacy shall adhere to all applicable Federal, State, and local laws, regulations, and requirements, including but not limited to Federal and State anti-kickback laws, self-referral laws, and false claims laws. Both Covered Entity and Pharmacy are aware of the potential for civil or criminal penalties if they violate Federal, State or local laws and requirements.
- g. **Tracking System.** The 340B Direct Program establishes and maintains a Tracking System using customary business records, suitable to prevent the diversion of 340B Drugs to individuals who are not Covered Entity Patients. The Tracking System allows Covered Entity to make periodic comparisons of Covered Entity prescribing records with Pharmacy dispensing records to detect potential irregularities.
- h. **Patient Verification.** The 340B Direct Program includes a system to verify Covered Entity Patient eligibility, as defined by HRSA guidelines. The system shall be subject to modification in the event of change in such guidelines. Covered Entity and Pharmacy agree that they will not resell or transfer a 340B Drug to an individual who is not a Covered Entity Patient. Covered Entity and Pharmacy understand that either Party may be removed from the 340B Program if it participates in drug diversion.
- i. **Prohibition Against Diversion.** Covered Entity and Pharmacy shall not resell or transfer 340B Drugs to any individual or any other entity who is not a

Covered Entity Patient. If Covered Entity reasonably determines within 90 days that Pharmacy has violated the prohibition against the diversion of 340B Drugs, Pharmacy shall pay Covered Entity the applicable amount of the 340B Drug discount so that Covered Entity may reimburse the drug manufacturer for such amount.

- j. **Prohibition Against Duplicate Discounts.** Neither Party shall use 340B Drugs to dispense 'fee for service' Medicaid prescriptions, unless Covered Entity, Pharmacy and the State Medicaid program have established an arrangement to prevent duplicate discounts. Any such arrangement shall be reported to HRSA by the Covered Entity.
- k. **Maintaining Compliance.** Covered Entity and Pharmacy will identify the necessary information for the Covered Entity to meet its ongoing 340B Program compliance obligations. Pharmacy will make such information as well as additional reports as agreed to by the Parties (including, but not limited to customary business reports), available under the 340B Direct Program to enable periodic independent audits performed by the Covered Entity.
- l. **Outside Audits.** Covered Entity and Pharmacy understand that they are subject to audits by outside parties (Federal and State regulatory agencies and participating manufacturers) of records that directly pertain to the Covered Entity's compliance with the drug resale or transfer prohibition and the prohibition against duplicate discounts. Pharmacy understands it shall be subject to the examination and audit of the California State Auditor, at the request of the Covered Entity or as part of any audit of the Covered Entity, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Pharmacy shall participate in any audits and reviews, whether by Covered Entity or the State, at no charge to Covered Entity.

Audit recoveries shall be limited to claim overpayment and will not include any fees, fines or financial penalties. In the event an audit reveals that Pharmacy has been underpaid, Covered Entity shall compensate Pharmacy within thirty (30) days of such discovery. In the event an audit reveals that Pharmacy has been overpaid, Pharmacy shall compensate Covered Entity within thirty (30) days of such discovery.

- m. **Access to Agreement.** Upon written request to the Covered Entity, a copy of this Agreement will be provided to OPA.

3. **Additional Responsibilities of the Respective Parties**

- a. **Receipt of 340B Drugs.** Pharmacy is responsible for the receipt of 340B Drugs

- purchased by Covered Entity. Upon receipt of 340B Drugs, Pharmacy shall compare all shipments received on behalf of Covered Entity and confirm that the shipments conform to the related orders of 340B Drugs. If Pharmacy should find a discrepancy between the shipment and order of 340B Drugs, Pharmacy shall inform Covered Entity within five (5) business days of this discrepancy.
- b. **Central Inventory Replenishment, Maintenance, and Ordering.** Pharmacy shall maintain systems and processes to track and report inventory dispensed to Covered Entity Patients on an aggregated basis across all participating Pharmacy locations, as listed in **Exhibit D**. Pharmacy will provide real time access and reporting related to applicable inventory levels and required replenishment. The 340B Direct Program will track all virtual inventory levels and manage the ordering of applicable replenishment inventory. For all Captured Claims, the Covered Entity shall purchase and replenish applicable inventory due to Pharmacy in accordance with the reported Captured Claims and the replenishment orders generated by the 340B Direct Program.
 - c. **Eligibility and Claim Capture.** When presented with a valid prescription from a Covered Entity Patient, Pharmacy shall adjudicate the claim and dispense the drugs to such Covered Entity Patient per the terms of the prescription order, this Agreement and the standard practices of the 340B Direct Program. Subject to Covered Entity's ongoing cooperation and compliance, the terms of this Agreement and the requirements of the 340B Direct Program, including without limitation the provision of accurate "Eligibility Data," (as defined in Section 3d, herein), Pharmacy shall maintain systems and processes to enable Pharmacy to identify which pharmacy claims at participating locations were for Covered Entity Patients and which meet the other requirements of the 340B Direct Program, and when appropriate, capture such claims for the benefit of the Covered Entity.
 - d. **Eligibility Data.** In accordance with the requirements of the 340B Direct Program, Covered Entity shall provide Pharmacy and/or its designee with "Eligibility Data" in a reasonable manner and frequency acceptable to Pharmacy, as determined during the 340B Direct Program implementation process. Eligibility Data shall include, without limitation, Covered Entity Patient information, prescriber and provider information, and such other information and data reasonably requested by Pharmacy.
 - e. **Billing Third-Party Insurers.** On behalf of Covered Entity, Pharmacy shall be responsible for billing applicable third-party insurers for 340B Drugs purchased by Covered Entity for Covered Entity Patients with third party coverage, and for billing Covered Entity Patients for insurance co-payments, where applicable with respect to Captured Claims. Pharmacy shall not be obligated to pay Covered Entity for any Captured Claim unless or until Pharmacy collects from the applicable third party payer and/or the Covered Entity Patient, as applicable. The Parties shall establish and agree to procedures in writing that Pharmacy will

follow (e.g. use of a sliding fee schedule, refer patient to Covered Entity's patient assistance program, etc.) with respect to Covered Entity Patients who do not have prescription drug coverage and are unable to pay for their 340B Drugs.

- f. **Invoices and Payments.** Under the 340B Direct Program, Pharmacy will prepare and electronically deliver an invoice which identifies all monies owed by Pharmacy to Covered Entity ("Invoice"). For each Captured Claim Pharmacy shall be entitled to a 340B Dispensing Fee for Pharmacy Services provided hereunder and Pharmacy shall reimburse the Covered Entity as specified in **Exhibit A**. The Pharmacy shall remit applicable payments due to the Covered Entity for Captured Claims for which Pharmacy has been paid as specified in **Exhibit A**. At the request and direction of the Covered Entity, Pharmacy shall also remit applicable administrative fee payments to Covered Entity's independent 340B Program Administrator, if any. Such remittances shall be in the manner indicated by the Covered Entity as set forth on **Exhibit B**.
- g. **Maintenance of Pharmacy Services Records.** On behalf of Covered Entity, Pharmacy shall maintain all relevant records relating to the Pharmacy Services associated with 340B Drugs and Covered Entity Patients as well as the 340B Direct Program, in accordance with applicable Federal, State, and local laws and regulations, including but not limited to the Federal Standards for the Privacy of Individually Identifiable Health Information. Pharmacy shall maintain all auditable records for a period of time that complies with all applicable Federal, State and local requirements, in any event not less than a period of ten (10) years.
- h. **Access to Business Records.** Under the 340B Direct Program, Pharmacy shall provide Covered Entity with 24/7 access (subject to reasonable downtime for maintenance) to the 340B Direct Program reporting and information portal to enable Covered Entity to receive and access, regular reports, detailed Captured Claim information, virtual inventory levels, and order information reasonably necessary for Covered Entity to ensure that Pharmacy is in compliance with applicable Federal, State, and local laws, regulations, and requirements.
- i. **Maintenance of Account Records.** Pharmacy shall ensure that all reimbursement accounts and dispensing records, and any and all other pertinent records relating to Pharmacy's responsibilities and duties under this Agreement, are maintained by Pharmacy separately from Pharmacy's own operations and will be made available to Covered Entity, Federal and State regulatory agencies and manufacturers in the case of an audit.
- j. **Inspection of Records.** Upon request, Covered Entity and Pharmacy shall disclose or permit inspection of any records or information relating to this Agreement, when necessary to comply with audits or investigations conducted by the Federal or State governments.

- k. **Drug Manufacturer Audits.** Upon request, Pharmacy shall provide reasonable access by a drug manufacturer that sells 340B Drugs to Covered Entity to relevant records and materials for purposes of any audits conducted by the drug manufacturer relating to 340B Drugs dispensed by Pharmacy pursuant to this Agreement, in accordance with manufacturer audit guidelines as set forth at 61 Fed. Reg. 65406-65413 (December 12,1996).
- l. **Access to Program Information.** Upon request, Covered Entity shall provide authorization and reasonable access for Pharmacy to relevant records and materials necessary for the administration of the 340B program under this Agreement including without limitation, Wholesaler pricing, ordering, and inventory information (i.e. 810, 832, and 855 files) and other files and information reasonably necessary to enable Pharmacy to perform its services under this Agreement.

4. Ongoing Responsibility of Covered Entity to Ensure Compliance.

- a. Covered Entity shall be solely responsible for its 340B Program compliance, including ensuring the accuracy of its Eligibility Data, and Pharmacy is entitled to rely on the accuracy and completeness of this information. Covered Entity shall indemnify Pharmacy and its affiliates, employees, officers and directors, from any costs, losses or damages arising from Covered Entity's failure to provide accurate and timely data, . Covered Entity shall be responsible for maintaining its eligibility and all applicable registration requirements as a 340B Covered Entity and shall immediately notify Pharmacy of any change in status.
- b. Covered Entity is responsible for ensuring that the process for distribution of 340B Drugs complies with 340B Program requirements to ensure against the diversion of 340B Drugs and prevent duplicate discounts. In accordance with 340B Program guidance, Covered Entity may therefore undertake annual, independent audits for the purpose of ensuring that the prohibitions against diversion and duplicate discounts are not breached.
- c. The Covered Entity may maintain sole discretion over the selection of an independent, outside auditor to perform any audits referenced in this Section 4. Such auditor shall have experience auditing pharmacies.
- d. The Covered Entity shall determine, in consultation with the independent auditor, the methodology to be utilized in performing the audit.
- e. In the event that Covered Entity determines that 340B Drug diversion or duplicate discounts have occurred or that it is otherwise unable to comply with its responsibility to ensure reasonable compliance, it must take immediate remedial action to assure compliance and notify OPA regarding such compliance problems and actions taken to remedy those problems.

5. Term and Termination. The Term of this Agreement shall be for one year commencing upon the Effective Date, unless sooner terminated as set forth herein and shall automatically renew for subsequent yearly terms unless either Party gives the other at least sixty (60) days' prior written notice of its intention not to renew prior to the expiration of the then current term.

- a. In the event either Party materially breaches the terms of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days' prior written notice to the other, specifying the nature of such breach and such breach remains uncured at the end of such thirty (30) day period.
- b. Either Party may terminate this Agreement at any time, with or without cause, by giving the other sixty (60) days' prior written notice.
- c. The Parties may terminate this Agreement at any time by mutual consent.
- d. Upon termination or expiration of this Agreement, the Parties shall remain responsible for obligations which accrued prior to the date of termination or during any transition period, including, but not limited to Covered Entity's obligations to pay fees due Pharmacy for Pharmacy Services rendered and Pharmacy's obligation to remit required payments to Covered Entity.

6. Confidentiality.

- a. The Parties shall work in good faith to prevent the unauthorized use and/or disclosure of Trade Secrets received by a Party (the "Receiving Party") from the other Party (the "Disclosing Party"). For purposes of this Agreement, the term "Trade Secrets" has the meaning set forth in subdivision (d) of Section 3426.1 of the California Civil Code. Additionally, the Receiving Party agrees to maintain and transfer all information disclosed under this Agreement in a manner consistent with all applicable laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended.
- b. Notwithstanding the foregoing, Trade Secrets may be disclosed to either Party's employees or contractors or to any third party (an "Authorized Representative") as reasonably necessary to carry out the purposes of this Agreement or the administration of the receiving Party's business and operations; provided any such contractor or third party has agreed to be bound by obligations of non-disclosure and non-use regarding the Trade Secrets that are at least as comprehensive as the obligations contained herein. Each Party shall be responsible for any breach of this Agreement by any Authorized Representative to which it discloses Trade Secrets under this Agreement. Pharmacy acknowledges that this Agreement shall be a public record under California law.

- c. Trade Secrets shall not include any information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its agents, representatives or employees; (ii) was within the Receiving Party's possession on a non-confidential basis prior to disclosure by the Disclosing Party; or (iii) the Receiving Party is required by law or judicial order to disclose such information, provided that the Receiving Party shall, to the extent practicable, promptly notify the Disclosing Party of such requirement so that the Disclosing Party may seek an appropriate protective order or otherwise seek to protect the confidentiality of such information.
- d. Each Party shall retain full ownership rights of its Trade Secrets disclosed hereunder, including derivative works based on or otherwise incorporating such Trade Secrets. Ownership rights shall include, but are not limited to, all rights associated with trade secrets, copyrights, trademarks, and patents.
- e. Upon termination of this Agreement, or upon the written request of the Disclosing Party, the Receiving Party shall return all written or other physical or electronic embodiments of Trade Secrets to the Disclosing Party, together with all copies thereof or copies of any part thereof as shall then be in Receiving Party's possession. If return of all written or other physical or electronic embodiments of Trade Secrets is not commercially practical, than at the direction of the Disclosing Party, the Receiving Party shall account for all Trade Secrets and either: (i) destroy such Trade Secrets; or (ii) continue to hold such Trade Secrets in a secure manner until return or destruction is possible. Notwithstanding the foregoing, the return or destruction of Trade Secrets shall not include information that must be retained by the Receiving Party under law for auditing or other purposes or as otherwise provided in this Agreement. In any event, such Trade Secrets shall at all times be maintained by the Receiving Party in a manner consistent with the terms of this Agreement.

7. Indemnification.

- a. Pharmacy shall indemnify, defend and hold Covered Entity harmless from any and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by the negligence or willful misconduct of Pharmacy by or any of its employees, agents, contractors, or subcontractors; except that Pharmacy shall have no duty to indemnify, defend, or hold Covered Entity harmless for any liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by Covered Entity's provision of a prescription for 340B Drugs to an individual who is not an Covered Entity Patient or other inappropriate diversion of 340B Drugs by Covered Entity.
- b. Covered Entity shall indemnify, defend and hold Pharmacy harmless from any

and all liability, loss, claim, lawsuit, cost, damage or expense whatsoever (including reasonable attorney's fees) arising out of, incident to or in any manner occasioned by the negligence or willful misconduct of Covered Entity or any of its employees, agents, contractors, or subcontractors.

- c. A Party seeking indemnification pursuant to this Section (the "Indemnified Party"), shall notify the other Party (the "Indemnifying Party") promptly upon becoming aware of any action to which such indemnification may apply. The Indemnifying Party shall have the right to assume and control the defense of the action at its own expense; provided that the Indemnifying Party may not make any settlement that requires any payment by the Indemnified Party or admission of wrong doing from the Indemnified Party without the Indemnified Party's prior written consent. If the right to assume and control the defense of any such action is exercised, the Indemnified Party shall have the right to participate in such defense. If the Indemnifying Party does not reasonably assume the defense of the action, the Indemnified Party may defend the action and shall be indemnified for reasonable costs of such defense.
 - d. EXCEPT TO THE EXTENT THAT LIABILITY ARISES FROM A PARTY'S INDEMNITY OBLIGATIONS SPECIFIED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT (WHETHER IN AN ACTION IN NEGLIGENCE, CONTRACT OR TORT OR BASED ON A WARRANTY OR OTHERWISE) FOR LOSS OF PROFITS, REVENUE, OR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
8. **Insurance.** With respect to the performance of their respective obligations under this Agreement, Covered Entity and Pharmacy shall each maintain general liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate per policy year. Upon request by a Party, the other Party shall provide evidence of such insurance.
 9. **Intentionally omitted.**
 10. **Compliance with Applicable Law.** The Parties shall comply with all federal and state laws, regulations and rules governing the practice of such Party under this Agreement. The Parties shall not take any action that would violate state or federal anti-kickback laws, including, without limitation, those provided for in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b). The Parties acknowledge that during the course of fulfilling their respective obligations under this Agreement each shall comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA" and/or the "Act") and its implementing regulations (45 CFR Parts 160 and 164) and standards related to Individually Identifiable Health Information

(the “Privacy Rule”); the requirements of all insurance commissioner regulations implementing Title V of the Gramm-Leach-Bliley Act (15 USC § 6801 et seq.) that are applicable to Parties relationship; and Title XIII of the American Recovery and Reinvestment Act of 2009 and its implementing regulations (“ARRA”). The Parties acknowledge that in performing Pharmacy Services under the terms and conditions of this Agreement, Pharmacy is acting as a health care provider and is therefore a “Covered Entity” as defined in 45 CFR section 160.103 and performing treatment, payment and health care operations for eligible Covered Entity Patients.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
12. **Advertisement.** Pharmacy reserves its rights in and control of the words “340B Direct Program”, all of its symbols, trademarks, trade names, service marks and other such proprietary symbols and words presently existing or hereafter acquired, and all symbols related thereto or used in connection therewith. Covered Entity will not use such words, symbols, trademarks, trade names or service marks without the prior written consent of Pharmacy, which consent is hereby granted, for the limited purpose of communicating Pharmacy’s participation under this Agreement to applicable Covered Entity Patients.
13. **Entire Agreement.** This Agreement, including all Exhibits, Schedules, constitutes the entire understanding between the Parties as to their respective obligations and, unless otherwise specified herein, may not be amended except by a writing signed by both Parties.
14. **Third Party Beneficiaries.** The Parties specifically agree that Covered Entity Patients shall not be third party beneficiaries to this Agreement.
15. **Waiver & Severability.** Any failure by either Party to enforce or require the performance by the other Party of any of the terms or conditions of this Agreement shall not be constituted as a waiver of rights with respect to any subsequent breach of any term or condition of this Agreement. Any invalidity, illegality or unenforceability of any provision of this Agreement shall not invalidate or render illegal or unenforceable the remaining provisions hereof.
16. **Survival.** Any term of this Agreement which by its nature extends beyond the termination hereof shall survive, including but not limited to obligations to pay amounts due hereunder, indemnities, confidentiality obligations, audit provisions, limitations of liability, and disclaimers.
17. **Nonassignment.** Neither this Agreement nor any of the obligations to be performed hereunder may be assigned, directly or indirectly, by either Party without the prior written consent of the other Party; provided, however, that the preceding restriction shall not apply to the assignment by Pharmacy to an affiliated company or any

successor entity through a sale, merger or other similar transaction. Any assignment or attempted assignment in violation of this restriction shall be void. In the event of any such permitted assignment, the obligations set forth herein shall be binding upon the succeeding entity.

- 18. Force Majeure.** Neither Party shall be liable in any manner for any delay or failure to perform its obligations hereunder which are beyond such Party's reasonable control including, without limitation, delay or failure due to strikes, labor disputes, riots, earthquakes, extreme weather, fires, explosions, embargoes, war or other outbreak of hostilities, acts of terrorism, plague or disease, delay of carriers, suppliers or telecommunications providers, or government acts or regulations. If the period of non-performance exceeds sixty (60) days, the unaffected Party shall have the right to terminate this Agreement by thirty (30) days written notice to the affected Party, without liability except to pay for services rendered.
- 19. Taxes.** Each Party shall be responsible for its own state, federal and local tax obligations resulting from revenue earned or otherwise related to services performed under this Agreement.
- 20. Independent Contractor.** This Agreement shall not be construed nor deemed to create an employer/employee, principal/agent, or any relationship between Covered Entity and Pharmacy other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. Pharmacy shall be solely responsible for its acts and omissions with respect to Pharmacy Services. Pharmacy agrees to render Pharmacy Services in accordance with professional standards applicable to Pharmacy Services and in accordance with rules and regulations of the applicable State Board of Pharmacy. Pharmacy shall have the right to refuse to serve any Covered Entity Patient where such service would violate any statute, regulation, or professional standard applicable to Pharmacy Services.
- 21. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original as against any Party whose signature and or initials appears thereon, and all of which shall together constitute one and the same agreement. This Agreement shall become binding when one or more counterparts hereof, individual or taken together, shall bear the signatures of all of the Parties.
- 22. Headings.** The headings of sections contained in this Agreement are for reference only and should not affect the meaning or interpretation of this Agreement.
- 23. Remedies.** The remedies specifically provided for herein are intended to be cumulative and shall not be deemed to exclude any other right or remedy that either party may have at law or in equity.
- 24. Notice.** Any notice required or given under this Agreement shall be provided in

writing by one of the following methods: hand delivery, placing in the U.S. Postal Service, first class postage prepaid, facsimile transmission or email transmission, to the addresses and to the attention of the person specified below, or as modified at any time by either Party by written notice hereunder. The effective date of the notice shall be three (3) days after mailing as set forth above or upon confirmation delivery in the event of hand delivery, facsimile, or email transmission.

Notice shall be sent to the following:

SANTA BARBARA COUNTY DEPARTMENT OF PUBLIC HEALTH

ATTN: Dana Gamble

300 North San Antonio Road, Building 1

Santa Barbara, California 93110-1332

Phone: (805) 681-5171

Fax: (805) 681-5200

Email: Dana.Gamble@sbcphd.org

Safeway Inc.

252 East Parkcenter Blvd.

Boise, ID 83706

ATTN: Ronald Richmond

Group Director of Managed Care

Phone: (847) 916-4592

Email: Ronald.Richmond@albertsons.com

- 25. Independent Contractor.** It is mutually understood and agreed that Pharmacy (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to Covered Entity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of Covered Entity. Furthermore, Covered Entity shall have no right to control, supervise, or direct the manner or method by which Pharmacy shall perform its work and function. However, Covered Entity shall retain the right to administer this Agreement so as to verify that Pharmacy is performing its obligations in accordance with the terms and conditions hereof. Pharmacy understands and acknowledges that it shall not be entitled to any of the benefits of a Covered Entity employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Pharmacy shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Pharmacy shall be solely responsible and save Covered Entity harmless from all matters relating to payment of Pharmacy's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Pharmacy may be providing services to others

unrelated to the Covered Entity or to this Agreement.

- 26. Standard of Performance.** Pharmacy represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Pharmacy shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Pharmacy is engaged.
- 27. Debarment and Suspension.** Pharmacy certifies to Covered Entity that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Pharmacy certifies that it shall not contract with a subcontractor that is so debarred or suspended.
- 28. Conflict of Interest.** Pharmacy covenants that Pharmacy presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Pharmacy further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Pharmacy. Pharmacy must promptly disclose to Covered Entity, in writing, any conflict of interest. Covered Entity retains the right to waive a conflict of interest disclosed by Pharmacy if Covered Entity determines it to be immaterial, and such waiver is only effective if provided by Covered Entity to Pharmacy in writing.
- 29. Nondiscrimination.** Covered Entity hereby notifies Pharmacy that the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Pharmacy agrees to comply with said ordinance.
- 30. Nonexclusive Agreement.** Pharmacy understands that this is not an exclusive Agreement and that Covered Entity shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Pharmacy as the Covered Entity desires.
- 31. Authority.** All signatories and Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this

Agreement, Pharmacy hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Pharmacy is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

ATTEST:

COUNTY OF SANTA BARBARA:

Mona H. Miyasato

County Executive Officer

Clerk of the Board

By:

By:

Deputy Clerk

Chair, Board of Supervisors

Date:

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:

Takashi Wada, MD, MPH

Ray Aromatorio, ARM, AIC

Department of Public Health

Risk Management

By:

By:

Department Head

Risk Management

APPROVED AS TO FORM:

**APPROVED AS TO ACCOUNTING
FORM:**

Michael C. Ghizzoni

Theodore A. Fallati, CPA

County Counsel

Auditor-Controller

By:

By:

Deputy County Counsel

Deputy

CONTRACTOR:

Safeway, Inc.

By:

Name: _____
Dan Salemi

Title: Group Vice President, Pharmacy
Services

Exhibit A
Dispensing Fees and Payment Terms
(Brand and Generic)

1. **Dispensing Fee.** For each Captured Claim the Pharmacy shall be entitled to 340B Dispensing Fees equal to:

a. MCO Claims - the “Flat Dispensing Fee” as follows:

MCO Claims 340B Dispensing Fee = \$17.00

2. **Payment Terms.** For all Captured Claims for which Pharmacy has received payment from the applicable payer, Pharmacy shall remit amounts due to Covered Entity as follows:

a. **Initial Reimbursement:** On a semi-monthly basis Pharmacy shall make an “Initial Reimbursement” of the Estimated Acquisition Cost minus the 340B Dispensing Fee;

b. **Reconciliation Payment:** On no less than a monthly basis Pharmacy shall reconcile amounts due to the Covered Entity based on applicable third party payments. The Reconciliation amount shall be the 3rd party payment minus Initial Reimbursement minus the 340B Dispensing Fee.

3. **Modification:** Pharmacy, from time to time, by no less than thirty (30) days prior written notice to the Covered Entity, shall have the right to modify the Flat Dispensing Fee to ensure that the 340B Dispensing Fees are commercially reasonable in light actual program performance and drug mix. At any time during the 30 day period following notice of a change in 340B Dispensing Fees, the Covered Entity shall have the right to terminate the Agreement by written notice to Pharmacy.

Exhibit B
Funds Transfer Authorization
Remit 340B Funds to 340B Program Administrator

SANTA BARBARA COUNTY DEPARTMENT OF HEALTH CARE SERVICES (“Covered Entity”) hereby authorizes Safeway, Inc. (“Pharmacy”) to remit funds directly to my 340B Program Administrator. Pharmacy will remit funds only through ACH transfer to supported 340B Program Administrators at agreed upon payment schedules. Pharmacy shall have the right to offset against the remitted funds any amount owed to Pharmacy owed by Covered Entity including, but not limited to fees, 340B administration charges or other monetary obligation arising out of this Agreement. Covered Entity is responsible for notifying Pharmacy thirty (30) days in advance of changes to transfer requirements, including having funds remitted directly to Covered Entity bank account.

Covered Entity hereby warrants and holds harmless Pharmacy for funds transferred to third-party 340B Program Administrator under this Agreement and that the signer of this Funds Transfer Authorization is an authorized representative of Covered Entity with authority to determine where funds are transferred.

340B Program Administrator Name: **SUNRx**

SANTA BARBARA COUNTY HEALTH CARE

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

List of Covered Entity Sites

340BID	Name	Address	City	State	Zip
CH090830	SANTA BARBARA COUNTY HEALTH CARE	345 Camino del Remedio	SANTA BARBARA	CA	93110
CH09083A	SANTA BARBARA, COUNTY OF	2115 Centerpointe Pkwy	Santa Maria	CA	93455
CH09083AA	SANTA BARBARA COUNTY HEALTH CARE	931 Walnut Avenue	Carpinteria	CA	93013
CH09083AF	SANTA BARBARA, COUNTY OF	401 W. MORRISON	SANTA MARIA	CA	93458
CH09083AG	SANTA BARBARA, COUNTY OF	816 CACIQUE ST	SANTA BARBARA	CA	93103
CH09083AH	SANTA BARBARA, COUNTY OF	535 E. YANONALI ST	SANTA BARBARA	CA	93103
CH09083D	SANTA BARBARA COUNTY HEALTH CARE	301 NORTH R STREET	LOMPOC	CA	93436
CH09083Z	SANTA BARBARA COUNTY HEALTH CARE	1136 E. Montecito Street	Santa Barbara	CA	93103

List of Contracted Pharmacy Location(s)

Pharmacy Name	Store #	NCPDP	DEA	Address	City	State	Zip
Vons Pharmacy	1738	0588535	BV8129567	729 N H St	Lompoc	CA	93436

Exhibit F
Part 2 (if applicable)
List of Unregistered Contract Pharmacy Location(s)*

*The Covered Entity or its agent will register or cause to be registered such unregistered contract pharmacies during the next available OPA registration period.