



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Health System



**DATE:** June 17, 2011  
**BOARD MEETING DATE:** July 12, 2011  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** Jean S. Fraser, Chief, Health System  
Susan Ehrlich, MD, MPP, Chief Executive Officer  
San Mateo Medical Center

**SUBJECT:** Agreement with Cardinal Health Pharmacy Services, L.L.C

**RECOMMENDATION:**

Adopt a Resolution authorizing the:

- A) President of the Board to execute an Agreement with Cardinal Health Pharmacy Services, L.L.C. to provide Remote Order Entry pharmacy services for the San Mateo Medical Center for the term of July 1, 2011 through June 30, 2014, for a maximum fiscal obligation of \$600,000; and
- B) Chief of the Health System or designee to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

**BACKGROUND:**

During the validation survey by the Centers for Medicare and Medicaid Services (CMS) concluded on September 1, 2010, San Mateo Medical Center (SMMC) was found not to be in compliance with CMS conditions of participation because a pharmacist did not always review medication orders prior to administration of the first dose. This situation was caused in part because the SMMC pharmacy is not open 24 hours per day, seven days per week. The Plan of Correction was implemented by having charge nurses call the pharmacist-on-call when necessary to review new medications orders.

A follow-up survey on January 28, 2011, found that the plan did not meet the conditions of participation because the pharmacists did not have access to the pharmacy medication profile. The final CMS Plan of Correction required that SMMC enter into a contract with a company to provide Remote Medication Order Entry (ROE) during the hours the pharmacy is closed.

**DISCUSSION:**

In order to comply with the Plan of Correction, SMMC conducted a Request For Proposals for the required services and has chosen Cardinal Heath Pharmacy Services, L.L.C. (Cardinal) to provide ROE during the hours when the SMMC pharmacy is closed. Registered Pharmacists employed by Cardinal Health, through a secure connection, will review medication orders written when the pharmacy is closed and enter those orders in the pharmacy information system. Nurses will then obtain medications from either the automated dispensing cabinets or from the pharmacy night medication storage area after a pharmacist has reviewed those orders and found them to be appropriate. This service will permit SMMC to provide the same standard of care provided during the hours the pharmacy is open, and SMMC will be able to meet the CMS conditions of participation for pharmaceutical services.

County Counsel has reviewed and approved this Agreement and Resolution as to form. The Contractor’s insurance has been reviewed and approved by Risk Management.

The Contractor has assured compliance with the County’s Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memoranda, including but not limited to insurance, hold harmless, non-discrimination and equal benefits.

This Agreement contributes to the Shared Vision 2025 outcome of a Healthy Community by providing access to quality products for SMMC patients. It is anticipated that SMMC’s cost per adjusted patient day will increase from \$881 to \$918.

**Performance Measure:**

<b>Measure</b>	<b>FY 2009-10 Actual</b>	<b>FY 2010-11 Projected</b>
SMMC cost per adjusted patient day	\$881	\$918*

\*Due to increase in operating costs

**FISCAL IMPACT:**

The term of the Agreement is July 1, 2011 through June 30, 2014. The maximum fiscal obligation is \$600,000. Funds in the amount of \$200,000 are included in the SMMC tentatively Adopted FY 2011-12 Budget. Funds in the amount of \$200,000 will be included in the SMMC FY 2012-13 Recommended Budget. Similar arrangements will be made for future years.

Expenses at SMMC are covered by fees for services or third-party payors whenever possible. The portion of expenses for services provided to the medically indigent or to those covered by programs that do not meet the full costs of care are covered by the County’s General Fund contribution to SMMC.

### Request for Proposals Matrix

1.	General Description of RFP	Remote Pharmacy Order Entry Service
2.	List key evaluation criteria	<ul style="list-style-type: none"> <li>• Pharmacist review, verification and entry of medication orders on a real-time basis (within 1 hour of receiving the order) consistent with standards established by CMS and The Joint Commission;</li> <li>• Prioritizing orders that includes order entry of STAT medication orders within 15 minutes;</li> <li>• Utilization of the SMMC pharmacy medication order entry system;</li> <li>• Review drug information and relay to nursing and medical staff;</li> <li>• Clinical interventions and initiatives following SMMC policies, procedures and protocols.</li> </ul>
3.	Where advertised	San Mateo Medical Center Website
4.	In addition to any advertisement, list others to whom RFP was sent	Telepharmacy West Remote Pharmacy Staffing Remote Rx Staffing Advanced Pharmacy Staffing Virtual Pharmacy Staffing Rx Remote Solutions PharmD on Demand BioPharmaceutics Corp. Rxe-source Service MediStar Healthcare Connections Pipeline Telepharmacy Solutions TelNet-Rx Amerisource-Bergen Telepharmacy Solutions
5.	Total number sent to prospective proposers	12
6.	Number of proposals received	5
7.	Who evaluated the proposals	Ron Keating Contracts Coordinator Maxine da Roza Director of Materials Management Gary Horne Director of Pharmacy Jenna Bilinsk Nurse Manager Sue Petterson Clinical Nurse Philip Fortunato Controller

8.	In alphabetical order, names of proposers (or finalists, if applicable) and location	<p>Capstone Healthcare Group, Inc. 9841 Irvine Center Drive, Suite 150A Irvine, CA 92618</p> <p>Cardinal Health 1330 Enclave Parkway Houston, TX 77077</p> <p>MediStar Healthcare Connections Corp. 3300 N. Central Ave, Suite 2300 Phoenix, AZ 85012</p> <p>Pipeline Healthcare Solution 601 Montgomery St., Suite 1800 San Francisco, CA 94111</p> <p>Rx Remote Solutions 6409 Quail Hollow Rd. Memphis, TN 38120</p>
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**RESOLUTION NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

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**RESOLUTION AUTHORIZING THE: A) PRESIDENT OF THE BOARD TO EXECUTE AN AGREEMENT WITH CARDINAL HEALTH PHARMACY SERVICES, L.L.C. TO PROVIDE REMOTE ORDER ENTRY PHARMACY SERVICES FOR THE SAN MATEO MEDICAL CENTER FOR THE TERM OF JULY 1, 2011 THROUGH JUNE 30, 2014, FOR A MAXIMUM FISCAL OBLIGATION OF \$600,000; AND B) CHIEF OF THE HEALTH SYSTEM OR DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, on September 1, 2010, San Mateo Medical Center (SMMC) was found not to be in compliance with Centers for Medicare and Medicaid Services (CMS) conditions of participation because a pharmacist did not always review medication orders prior to administration of the first dose in part because the SMMC pharmacy is not open 24 hours a day; and

**WHEREAS**, a Plan of Correction was implemented by having charge nurses call the pharmacist-on-call when necessary to review new medications orders; and

**WHEREAS**, a follow-up survey on January 28, 2011 found that the plan did not meet the conditions of participation because the pharmacists did not have access to the pharmacy medication profile; and

**WHEREAS**, the final CMS Plan of Correction required that SMMC enter into a contract with a company to provide Remote Medication Order Entry (ROE) during the hours the pharmacy is closed; and

**WHEREAS**, SMMC conducted a Request For Proposals for the required services and has chosen Cardinal Heath Pharmacy Services, L.L.C. (Cardinal) to provide ROE services during the hours when the pharmacy is closed, thereby permitting SMMC to provide the same standard of care provided during the hours the pharmacy is open and to meet the CMS conditions of participation for pharmaceutical services; and

**WHEREAS**, both parties now wish to enter into an Agreement to provide ROE services for SMMC for the period of July 1, 2011 through June 30, 2014, for a maximum fiscal obligation of \$600,000; and

**WHEREAS**, this Board has been presented with a form of such Agreement, has examined and approved it as to both form and content, and desires to enter into it.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the President of this Board of Supervisors be and is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of the Board shall attest the President's signature thereto.

**BE IT FURTHER RESOLVED** that the Chief of the Health System or designee is authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract

term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

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## PHARMACY SERVICES AGREEMENT

This PHARMACY SERVICES AGREEMENT ("**Agreement**") is made and entered into by and between Cardinal Health Pharmacy Services, LLC, a Delaware limited liability company, with its principal place of business at 1330 Enclave Parkway, Houston, Texas 77077 ("**Cardinal Health**"), and San Mateo Medical Center, a California county facility, located at 222 West 39th Avenue San Mateo, CA 94403-4364 ("**Customer**") and is effective as of the Agreement Date defined in Section 4.01. Cardinal Health and Customer are sometimes individually referred to as ("**Party**"), or collectively referred to as ("**Parties**") within the terms of this Agreement.

### WHEREAS

Now therefore, for and in consideration of the mutual covenants and agreements contained herein, Cardinal Health and Customer agree as follows:

### ARTICLE I DEFINITIONS & DUTIES

#### 1.01 Definitions

- a. **R<sub>x</sub>e-source<sup>SM</sup> Services or Services:** Cardinal Health shall provide Customer its service of remote entry of physician medication orders.
- b. **Order Lines:** Individual medication orders entered, discontinued, or modified, including duplicate reviews, patient demographic additions or changes, and MAR printing, reviews, or modifications performed by Cardinal Health.
- c. **Order Entry Variance:** Includes, but is not limited to, a medication error or a medication entry entered by Cardinal Health that varies from the standard procedure according to Customer's hospital policy and procedures.

#### 1.02 Compliance

- a. Cardinal Health shall ensure compliance of its Services with applicable laws, ordinances, and regulations, with the written policies of Customer and the standards of all applicable accrediting bodies.
- b. Patient Care Cardinal Health understands and agrees that Customer, with its medical staff, retains professional and administrative responsibility for Services rendered to Customer patients. Further, Cardinal Health shall conduct activities in providing Services hereunder consistent with relevant law and regulation, Customer policy and procedures and the standards and regulations under The Joint Commission ("**TJC**"). The Parties shall implement a standardized approach to "hand off" communications. The Parties understand and agree that this provision is intended to fulfill requirements of TJC and state law and is not intended to modify the independent contractor relationship nor mutual indemnification requirements between the Parties herein.

1.03 Good Standing Each Party covenants that it is in good standing under the laws of the state in which it is organized and has the power and authority to enter into this Agreement. Each Party shall immediately notify the other should this status change.

#### 1.04 Licensure/Registration

- a. Pharmacists employed by Cardinal Health shall be duly licensed as pharmacists under the laws of the state from which the Services will be rendered and, where required, shall also be licensed in the state where Customer is located. Pharmacy Technicians employed by Cardinal Health shall be duly licensed, registered, or certified as required by the state from which the Services will be rendered and, where required, in the state where the Customer is





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- located.
- b. Customer covenants that all of Customer's employees, agents and staff working at Customer's facility are duly certified and/or licensed and in good standing as required by the laws of the state where Customer is located. Customer shall immediately notify Cardinal Health should this status change.
- 1.05 Insurance The Parties covenant that each shall maintain at its own expense for its own employees during the term of this Agreement or any extension thereof, Commercial General Liability, Pharmacists' Professional Liability, and Workers' Compensation Insurance. In addition, the Parties shall ensure that all agents and staff providing services at/to Customer maintain applicable insurance coverage as stated herein. The Parties may self-insure all or any portion of the above-required insurance. In the event that any of the required policies are written on a claims-made basis, then such policies shall be maintained during the entire period of this Agreement and for a period of not less than five (5) years following the termination or expiration of this Agreement.
- 1.06 Drugs Administered to Patients Customer affirms that drugs administered to the Customer's patients shall only be pursuant to lawful order therefore.
- 1.07 Customer Duties upon Execution of Agreement To assist in preventing delays in starting Services with Customer, within thirty (30) days of execution of this Agreement, Customer shall:
- Complete implementation forms provided by Cardinal Health;
  - Establish and complete connectivity with access and testing;
  - Provide software licenses and media as may be necessary for Cardinal Health to remotely access Customer's system and perform required pharmacy functions; and
  - Provide login (access) codes for Cardinal Health pharmacists and/or technicians.
- 1.08 Customer Duties After Start of Service Customer agrees to provide the following to Cardinal Health, as may be necessary, on an ongoing basis once Services have begun:
- New login (access) codes that are requested by Cardinal Health are to be provided within three (3) business days of such request;
  - Best efforts to meet connectivity and system speed standards consistent with Customer's on-site operations;
  - Best efforts to standardize Customer's order entry process and policies and procedures; and
  - Complete and fax Order Entry Variance forms.
- 1.09 Employee Confidentiality Cardinal Health will not provide employee-level confidential information, including but not limited to, Social Security Number ("SSN") and/or Date of Birth ("DOB") for reasons of assigning access codes to Customer's pharmacy computer system or for any other reason.
- 1.10 R<sub>x</sub>e-view™ Solution: Customer Responsibilities
- In order to access the R<sub>x</sub>e-view™ Solution, as defined below in Section 2.02, (the "**Software**"), Customer, at its sole expense, shall be responsible for providing its Authorized Users computer equipment, telecommunications, data connections and other equipment necessary to access the World Wide Web. Customer shall (i) be responsible for all activities that occur under Customer's user accounts; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software and notify Cardinal Health of any unauthorized use; and (iii) comply with all applicable local, state, federal and international laws in using the Software. Customer agrees that Customer and its Authorized Users shall not (i) interfere, or attempt to interfere, with the Software in any way; (ii) engage in spamming, spoofing or any fraudulent, illegal or unauthorized use of the Software; (iii) introduce into or transmit through the Software any virus, worm, trap door, or any other type of limiting routine, instruction or design or fail to take reasonable steps to prevent the foregoing; (iv) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to



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or contained within the Software; or (v) engage in or allow any action involving the Software that is inconsistent with the terms and conditions of the Solutions Agreement or the user's guide.

- b. Customer will notify Cardinal Health in the event that an Authorized User is terminated within five (5) business days of termination so that individual's rights may be removed.

### 1.11 R<sub>x</sub>e-view<sup>TM</sup> Solution: Cardinal Health Responsibilities.

- a. Cardinal Health shall (i) ensure that the Software is performing substantially in accordance with its documentation; and (ii) provide support twenty-four (24) hours a day, Monday through Sunday. Cardinal Health shall use commercially reasonable efforts to ensure the Software is generally available twenty-four (24) hours a day, seven (7) days a week except for (i) scheduled downtime; and (ii) downtime caused by circumstances beyond Cardinal Health's reasonable control, including without limitation, natural disasters, acts of God or government, civil unrest, acts of terrorism, strikes or other labor shortages, computer, Software, telecommunications or internet failures not within Cardinal Health's reasonable control, network or denial of service attacks occurring despite Cardinal Health's exercising reasonable care and diligence to avoid or mitigate such acts.
- b. Cardinal Health reserves the right to conduct periodic reviews of user account to ensure Authorized Users are still employed by Customer.

### 1.12 Software License

- a. During the term of a Solutions Agreement, Customer shall have a limited, revocable, non-exclusive, non-transferable, non-sub licensable license to use the Software provided by Cardinal Health within Customer's offices located at the address described in the Solutions Agreement or at other such locations approved in advance by Cardinal Health, on one or more computers for internal purposes only and solely for the Customer's internal business activities.
- b. Customer's employees shall be Authorized Users hereunder and shall (i) access and use the Software only as described in the user's guide and (ii) input, upload, access and maintain Customer's data and data files solely for Customer's internal use. Customer agrees that "Authorized Users" shall mean Customer's employees at the Customer site(s) set forth herein, who have a legitimate need to access the Software in connection with Customer's internal business operations. Authorized Users shall be granted a valid User identification and password by Customer or Cardinal Health at Customer's request. Each identification and password can be used by no more than one Authorized User.
- c. Unless otherwise specified in the Solutions Agreement, Cardinal Health reserves all rights not expressly granted to Customer in the Solutions Agreement, and the Solutions Agreement will not be construed as granting any other rights, whether by implication, estoppel, or otherwise.

## ARTICLE II

### SERVICES AND COMPENSATION

#### 2.01 R<sub>x</sub>e-source<sup>SM</sup> Services Cardinal Health R<sub>x</sub>e-source<sup>SM</sup> Services include:

- a. Cardinal Health staff shall review and enter all medication Order Lines into Customer's hospital pharmacy information system with a turnaround for stat Order Lines consistent with Customer's hospital policy;
- b. Cardinal Health pharmacists shall intervene on incomplete or questionable orders with appropriate Customer medical staff and shall make best efforts to resolve interventions during the shift;
- c. Cardinal Health pharmacists to be available by telephone to respond and/or provide



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- information and clinical support to Customer hospital staff; and
- d. Customer Director of Pharmacy (“DOP”) or designee shall have access to Cardinal Health’s web-based client portal from which Customer may print reports detailing Cardinal Health’s Order Line processing activities;
- e. Daily Order Line volume will be recorded and maintained by Cardinal Health to support Cardinal Health’s Order Line processing activities.
- f. Cardinal Health shall provide reports accessible via a customer-specific web-based reporting portal, measuring productivity, quality and clinical metrics in a manner sufficient to meet the Elements of Performance (“EOP”) for contracted services as required by TJC. Reports provided consist of order volume, order processing times, clinical consultation activity, variance tracking and billing summaries.

2.02 Re-view™ Solution. Cardinal Health shall provide its web based integrated order management and clinical consultation tracking tool that enables hospital pharmacies to identify key safety, quality, productivity and clinical improvements with robust reporting capabilities.

2.03 Hours of Service Cardinal Health shall provide Services to Customer during the designated hours of service (Pacific Time):

a.

START DAY	START TIME	END DAY	END TIME
Monday	10:00 p.m.	Tuesday	7:00 a.m.
Tuesday	10:00 p.m.	Wednesday	7:00 a.m.
Wednesday	10:00 p.m.	Thursday	7:00 a.m.
Thursday	10:00 p.m.	Friday	7:00 a.m.
Friday	10:00 p.m.	Saturday	7:00 a.m.
Saturday	6:00 p.m.	Sunday	7:00 a.m.
Sunday	6:00 p.m.	Monday	7:00 a.m.

b. Coverage hours on holidays will be from 6:00 p.m. on the holiday to 7:00 a.m. the day following the holiday; holidays are defined as: New Year's Day, Martin Luther King Day, Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving, Day after Thanksgiving, and Christmas Day. Customer shall request additional coverage, pursuant to Section 2.05, for extended coverage on any other observed holiday.

2.04 Monthly Fee(s) Pursuant to the hours of operation in Section 2.03, the following fees shall apply:

a. Order Line Fee Customer agrees to pay Cardinal Health an amount per Order Line (“**Order Line Fee**”) processed by Cardinal Health each month. The Order Line Fee for each month shall be determined according to the volume of Order Lines processed that month by Cardinal Health as follows:

Monthly Order Line Volume	Order Line Fee
Between 0 and 5,000 Order Lines	\$4.00
5,001 to 10,000 Order Lines	\$3.75
More than 10,000 Order Lines	\$3.50

b. Minimum Order Volume Guarantee Customer agrees to pay Cardinal Health a monthly “**Minimum Order Volume Guarantee**” in an amount equal a minimum monthly Order Line volume of 2,500 Order Lines multiplied by the Order Line Fee for that volume.



- c. R<sub>x</sub>e-view™ Solution Fee Cardinal Health shall provide Customer with its R<sub>x</sub>e-view™ Solution at no charge through April, 2013. Beginning May 1, 2013, Customer agrees to pay Cardinal Health a monthly R<sub>x</sub>e-view™ Solution Fee in the amount of two thousand four hundred sixteen dollars and sixty-seven cents (\$2,416.67).
  - d. Total Contract Value and Not-To-Exceed Amount The Parties agree that this contract is valued at five hundred seventy-six thousand dollars (\$576,000). This is based on an estimated volume of four thousand (4,000) Order Lines processed each month at four dollars (\$4.00) per Order Line for a period of thirty-six (36) months. Actual contract value may be higher or lower should Customer's Order Line volume exceed or not reach four thousand (4,000) Order Lines per month and based on other factors. However, in no circumstance shall Customer's fiscal obligation under this Agreement exceed \$600,000 for services under this Agreement, and Cardinal Health shall not be required to perform services beyond this not-to-exceed amount. Any change in this amount requires a written amendment to this Agreement.
- 2.05 Additional Coverage Fee Customer may request additional coverage outside of the routine hours of service, defined in Section 2.03, as Cardinal Health is available to do so within the operational hours of the Cardinal Health pharmacy service center and according to staff availability. Cardinal Health requires that Customer provide at least four (4) hours notice prior to requiring such coverage and twenty-four (24) hours notification, whenever possible. Cardinal Health's inability to service Customer's request for additional coverage shall be without penalty.
- a. Customer agrees to pay Cardinal Health one hundred dollars (\$100.00) for each additional hour covered. Any order lines processed during such additional coverage shall be invoiced pursuant to Paragraph 2.04 of this Agreement.
- 2.06 Price Indexing The Order Line Fee shall be indexed annually beginning on the first (1<sup>st</sup>) day of July, 2012, and on the first (1<sup>st</sup>) day of each month of July thereafter, by the annual percentage change in the Hospital and Related Services category of the Consumer Price Index for all Urban Consumers (CPI-U) as released by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI"). The index for the month of April, 2011, and each month of April thereafter, shall be the base for calculating the CPI annual percentage change. In no event shall the Price Index fall below zero percent (0%).
- 2.07 Start-Up Fee Customer agrees to pay Cardinal Health a one-time Start-Up Fee in the amount of ten thousand five hundred dollars (\$10,500). This fee includes the startup costs associated with the initial travel and onsite evaluation of Customer processes by Cardinal Health staff, training of Cardinal Health staff on Customer procedures, as well as computer-related expenses to integrate Cardinal Health Services into Customer's system.
- a. Should Customer require additional equipment or software licenses to enable integration into Cardinal Health's Services, the costs for such equipment or software license shall be in addition to the Start-Up Fee.
- 2.08 Customer Computer System
- a. In the event Customer chooses to change its pharmacy computer system and/or hospital computer system during the term of this Agreement, Cardinal Health requires advance notice from Customer of at least ninety (90) days prior to when Customer plans to implement its new system. It may be determined that Cardinal Health does not support Customer's new system and may not be able to provide service to Customer once the new system is operational. Therefore, Cardinal Health shall have the right to exercise its option to terminate services with Customer according to the termination provisions under this Agreement.
  - b. If Customer's new system is acceptable to Cardinal Health, Cardinal Health requires that it revisit Customer premises to assess Customer's new system to determine its integration into Cardinal Health processes. Customer agrees to pay Cardinal Health a Computer Change Fee in the amount of ten thousand (\$10,000), payable upon conclusion of the onsite visit.



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This fee includes the startup costs associated with the travel and onsite evaluation of Customer processes by Cardinal Health staff, training of Cardinal Health staff on Customer procedures, as well as computer-related expenses to integrate Cardinal Health Services into Customer's new system.

- 2.09 Order Transmission Process Change If Customer changes its process by which medication order sheets are transmitted to Cardinal Health, whether from "fax transmission" to "digital scan technology" or the reverse, or by way of another method altogether, either Party shall have the option to renegotiate the financial terms of this Agreement.

### ARTICLE III FINANCIAL ARRANGEMENTS

- 3.01 Payment of Start-Up Fee
- The Start-Up Fee, as defined in Section 2.07, shall be included on the first Service invoice to Customer.
  - Invoice cost for additional equipment or software license as purchased pursuant to Section 2.07 (a) shall appear as a line item charge on the next monthly Service invoice to Customer.
  - Should Customer's pharmacy computer system and/or hospital computer system change, the Computer Change Fee, as defined in Section 2.08 (b), shall be included on the first (1<sup>st</sup>) Service invoice to Customer following Cardinal Health's onsite visit.
- 3.02 Payment of Invoice Cardinal Health shall provide an invoice to Customer each calendar month for Services pursuant to this Agreement. Cardinal Health shall provide such invoice by the fifth (5th) day of the month after Service Month and such invoice payment shall be received from Customer no later than the fifteenth (15th) day of the month after the Service Month ("**Payment Due Date**"). If full payment is not received by the Payment Due Date, then Customer shall pay a finance charge on any undisputed unpaid balance in an amount equal to one percent (1.0%) per month or the maximum rate allowed by law, whichever is less.
- 3.03 Payment Address Customer shall make all payments to Cardinal Health under this Agreement by wire transfer of funds (FEDWIRE) to the appropriate Cardinal Health bank account provided below:

Wachovia National Bank  
201 South College Street  
Charlotte, NC 28288  
ABA number: 053 000 219  
Account name: Cardinal Health, Inc.  
Account number: 2000002932064  
Ref: CARDINAL HEALTH PHARMACY SERVICES, L.L.C.

or, alternatively, by mail, to the following address:

CARDINAL HEALTH PHARMACY SERVICES, L.L.C.  
21377 Network Place  
Chicago, Illinois 60673-1213



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- 3.04 Cardinal Health shall have the discretion to apply payments received under this Agreement to any invoice or principal amount owed by Customer.
- 3.05 Invoice Dispute If Customer disputes a portion of the invoice, it shall notify Cardinal Health in writing within thirty (30) calendar days of receipt of the invoice and shall pay that portion of the invoice not in dispute according to the terms of this Agreement. If the disputed amount is incorrect, for reasons attributable to Cardinal Health, the finance charge shall not be assessed on the disputed portion of the invoice only if that portion is paid within thirty (30) calendar days of the resolution. If the disputed amount is correct or if the disputed amount is incorrect for reasons attributable to Customer, the finance charge will apply. Any Cardinal Health invoice not objected to in writing within thirty (30) days after receipt is conclusively presumed to be correct in all respects.
- 3.06 Financing Statements Upon default in payment, at Cardinal Health's option, Cardinal Health may file a financing statement in favor of Cardinal Health, in the amount equal to all sums due to Cardinal Health by the Customer along with any other documents necessary to perfect this security interest.

### ARTICLE IV TERM AND TERMINATION

- 4.01 Agreement Date This Agreement shall become effective on July 1, 2011 ("**Agreement Date**").
- 4.02 Commencement Date Cardinal Health Services with Customer shall begin on July 1, 2011 or as may be modified pending the scheduling and outcome of Cardinal Health's onsite review of Customer processes and computer interface connectivity between Cardinal Health and Customer ("**Commencement Date**").
- 4.03 Termination Date The term of this Agreement shall be for a period of three (3) years from the Commencement Date or any extension thereof, unless subject to earlier termination as set forth below ("**Termination Date**").
- 4.04 Termination Provisions Subject to the terms and conditions provided herein, this Agreement may terminate upon the occurrence of any of the following events:
- a. Termination with Cause
- i. If either Party shall materially default in the performance of its obligations under this Agreement, the non-defaulting Party shall provide written notice of the default to the defaulting Party. The defaulting Party shall have sixty (60) days to cure such default. Thereafter the non-defaulting Party shall have the right, by further written notice, to terminate this Agreement effective as of any future designated date, not less than thirty (30) days from the date of the termination notice in the event the default is not cured.
  - ii. If Customer shall fail to make payment of any undisputed amount on or before the Payment Due Date, Cardinal Health shall have the option to terminate this Agreement upon ten (10) days' notice to the Customer without waiving any other rights or remedies Cardinal Health may have.
  - iii. If Customer enters into an agreement to outsource with a pharmacy management service other than Cardinal Health's pharmacy management service, Cardinal Health shall have the option to terminate this Agreement upon ten (10) days' written notice to the Customer, one (1) day prior to the termination of Cardinal Health's pharmacy management service, or one (1) day prior to the start of the new outsource company, whichever occurs first.
- b. Termination Without Cause
- i. Either Party may terminate this Agreement at any time after the initial twelve (12) months of Service from the Commencement Date of this Agreement upon ninety (90) days'



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advanced written notice to the other Party.

- c. Improper Notification of Termination In the event Customer requests to terminate the Agreement without providing Cardinal Health with proper notification of termination, or if Customer provides proper notification to Cardinal Health but terminates the Agreement prior to the end of the notification period, Customer agrees to pay Cardinal Health a calculated, prorated amount for all applicable fees extending through the end of the proper notification period, which shall be payable by Customer within ten (10) days of the invoice date.
- d. Notwithstanding anything hereinabove to the contrary, Customer shall have no right to terminate this Agreement unless its account with Cardinal Health is current with respect to all invoice amounts not disputed in good faith.

### 4.06 Cancellation of Services

#### a. Cancellation Prior to Start Of Service

- i. Should Customer terminate this Agreement prior to commencement of service and Cardinal Health has not performed the preliminary onsite visit as noted in Section 2.07, Customer agrees to pay Cardinal Health a Cancellation Fee equal to fifty percent (50%) of the Start-Up Fee.
- ii. If Cardinal Health has performed the preliminary onsite visit noted in Section 2.07 and Customer terminates this Agreement prior to commencement of service, it shall remain a responsibility of Customer to pay Cardinal Health the full Start-Up Fee amount.

#### b. Cancellation Upon Change of Customer Computer System

- i. If Cardinal Health has performed the onsite visit noted in Section 2.08(b) and Customer terminates this Agreement prior to commencement of a change in pharmacy computer system and/or hospital computer system, it shall remain a responsibility of Customer to pay Cardinal Health the full Computer Change Fee amount.
- ii. Such Computer Change Fee shall be payable by Customer within ten (10) days of the invoice date on Cardinal Health's invoice.

## ARTICLE V GENERAL PROVISIONS

5.01 Confidentiality In the performance of this Agreement, each Party may have access to proprietary and/or confidential information, owned, controlled or licensed by one of the Parties. As used in this Agreement, the term "**Proprietary and/or Confidential Information**" of a Party shall include all information, including, but not limited to, market information, prices and pricing structure, in-depth product and process knowledge, trade secrets, customer information, patient records, intellectual property rights, including, trademarks, patents and copyrights which is not generally available or disclosed to the public or which is marked or labeled "Proprietary and Confidential." Each Party acknowledges that all of such information constitutes confidential and/or proprietary information and agrees that it shall keep such information and data confidential and that it shall not copy or publish or disclose the information or data to anyone without the express written consent of the other Party or as required by law. Each Party shall use such information solely for the purpose of performing its obligations under this Agreement. Such information will only be disclosed to those employees or agents who require such information to perform their obligations under this Agreement.

- a. The Parties agree to execute a separate business associate agreement as it relates to the provisions set forth to protect confidential patient information under the Health Insurance Portability and Accountability Act of 1998 ("**HIPAA**") and the Privacy and Security Rules, 45 C.F.R. parts 160, 162 and 164.



## PHARMACY SERVICES AGREEMENT

### 5.02 Proprietary Rights.

- a. Reservation of Rights. Customer acknowledges that in providing the Solution, Cardinal Health uses proprietary information, materials, programs, names, logos, software, technology and other tangible and intangible property (collectively "Cardinal Health Technology") and that the Cardinal Health Technology is covered by intellectual property rights owned or licensed by Cardinal Health ("Cardinal Health IP Rights"). Other than as expressly set forth in the Solutions Agreement, no license or other rights in the Cardinal Health IP Rights are granted to the Customer and all such rights are hereby expressly reserved for Cardinal Health.
- b. Restrictions. Customer shall not modify, translate, create derivative works from, reverse engineer, disassemble or decompile the Solution; or copy or reproduce all or part of the Solution, except as provided for herein.
- c. Customer. All data submitted by Customer to Cardinal Health for the Solution ("Customer Data") remains the sole property of Customer. Customer grants to Cardinal Health a non-exclusive license to use, copy, store, modify and display the Customer Data solely to the extent necessary to provide the Solution and to create certain reports and statistical analyses about the Solution, such as usage or Authorized User traffic patterns, and make available in aggregate form to third parties, provided that such information does not include Customer's name or personally identifying information.
- d. Suggestions, Ideas and Feedback. Cardinal Health shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Solution and Customer agrees that such do not constitute confidential information of Customer.

5.03 Data Use Rights. "Data" means, collectively, data obtained by Cardinal Health from Customer related to Cardinal Health's performance of the Solutions Agreement. Customer grants Cardinal Health a perpetual, royalty-free license to use Data for any lawful purpose. If Data contains Protected Health Information as defined by 45 C.F.R. §164.501, then Cardinal Health shall de-identify that Data pursuant to 45 C.F.R. § 164.514 prior to using or disclosing that Data. Except as provided in Section 5.03, Cardinal Health shall disassociate Customer from the Data prior to disclosing the Data to a third party

5.03 Press Release or Public Announcements No press release or other public announcement, verbally or in writing, referring to the other Party or the Party's parent company or any of its subsidiaries, shall be made without prior written consent from the other Party. Any press release or other public announcement will require giving the other Party at least seventy-two (72) hours written notice of such release prior to its publication or announcement for approval.

### 5.04 Indemnification

- a. The Parties agree to protect, indemnify, defend, and hold each other harmless from and against all liability imposed upon or incurred by either Party, including judgments, court costs, penalties, interest, as well related expenses incurred in the defense of same (but excluding legal fees) caused by the acts or omissions of the other Party, or their agents, servants, or employees, in the performance of the terms of this Agreement.
- b. The Parties expressly acknowledge and agree that Cardinal Health is not the employer or joint employer of any of the individuals paid as employees of the Customer nor is the Customer the employer or joint employer of any of the individuals paid as employees of Cardinal Health. This provision shall survive the termination of this agreement.
- c. U.S.C. 1395x(v)(1)(1), or by any other applicable federal or state authority.

### 5.05 Warranties and Disclaimers

- a. Each Party represents and warrants that it has the right to enter into the Solutions Agreement.





CardinalHealth

## PHARMACY SERVICES AGREEMENT

- b. IN NO EVENT SHALL CARDINAL HEALTH'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SOLUTIONS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER FOR THE SOLUTION DURING THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. IN NO EVENT SHALL CARDINAL HEALTH HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT FOR ACTIONS FOR NON-PAYMENT, VIOLATIONS OF LAW, OR BREACH OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, NO ACTION (REGARDLESS OF FORM) ARISING OUT OF THE SOLUTIONS AGREEMENT MAY BE COMMENCED BY CUSTOMER MORE THAN TWO (2) YEARS AFTER THE TERMINATION OF THE SOLUTIONS AGREEMENT.
- c. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CARDINAL HEALTH MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INFORMATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT CARDINAL HEALTH KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE), WHETHER ARISING BY LAW, CUSTOM, USAGE IN THE TRADE OR BY COURSE OF DEALING. DUE TO THE COMPLEXITY OF THE INTERNET AND WORLD WIDE WEB, THE VARIABILITY OF USER HARDWARE AND SOLUTION CAPABILITIES AND THE PROVISION OF SERVICES TO CUSTOMER BY VARIOUS THIRD PARTY PROVIDERS, CARDINAL HEALTH DOES NOT GUARANTEE THAT CUSTOMER'S ACCESS WILL AT ALL TIMES BE UNINTERRUPTED OR ERROR FREE.

- 5.05 Governing Law This Agreement shall be governed in accordance with the laws of the State of California, without regard to the conflict of laws, rules, or principles thereof. Venue for any dispute resolution arising under this Agreement shall lie in county of the state where Customer is located.
- 5.06 Assignment Neither Party may assign any rights or obligations under the Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, provided that either Party may with notice assign all of such Party's rights and obligations under the Agreement without the other Party's consent: (i) to an affiliate; or (ii) incident to the transfer of all or substantially all of such Party's business assets.
- 5.07 Force Majeure If either Party fails to perform its obligations hereunder (except for the obligation to pay money) because of strikes, accidents, acts of God, weather conditions, acts of war, or action or inaction of any governmental body or other proper authority beyond the Party's control, then such failure to perform shall not be deemed a default hereunder and shall be excused without penalty until such time as said Party is capable of performing.
- 5.08 Notices Any notice or document required must be properly addressed to the Parties hereto at the respective addresses set forth below, or at such other addresses as they shall specify by written notice, and delivered in accordance herewith:

CARDINAL HEALTH PHARMACY SERVICES, L.L.C.  
Attention: Vice President of Operations, Pharmacy Resources  
1330 Enclave Parkway  
Houston, Texas 77077

SAN MATEO MEDICAL CENTER  
Attention: \_\_\_\_\_



# CardinalHealth

## PHARMACY SERVICES AGREEMENT

222 West 39th Avenue  
San Mateo, CA 94403-4364

- 5.09 Third Party Beneficiaries There shall be no third party beneficiaries to this Agreement.
- 5.10 Access to Books and Records Cardinal Health agrees to make available, upon written request of the Secretary of Health and Human Services, Comptroller General, or their representatives, this Agreement, and such books, documents and records as may be necessary to verify the nature and extent of the costs of Services rendered hereunder to the full extent required by the Health Care Financing Administration implementation of Section 952 of the Omnibus Reconciliation Act of 1980, codified at 42 U.S.C. 1395x(v)(1)(1), or by any other applicable federal or state authority.
- 5.11 Amendment This Agreement, as executed and approved, shall not be modified except by written amendment, expressly stating an intent to modify the terms of this Agreement, and signed by the Parties hereto.
- 5.12 Agreement Signatures This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument. Signatures to this Agreement may be delivered by facsimile, by electronic mail (e.g., a ".pdf" file) or by any other electronic means that is intended to preserve the original appearance of the document, and such delivery will have the same effect as the delivery of the paper document bearing the actual, hand-written signatures.
- 5.13 Sunset The terms and conditions of this Agreement shall be null and void if not executed and returned to Cardinal Health on or before July31, 2011.

In testimony whereof, this Agreement is executed as of the Agreement Date.

**Each person signing this Agreement represents that he/she intends to and has the authority to bind his/her Party to this Agreement.**

COUNTY OF SAN MATEO

CARDINAL HEALTH PHARMACY SERVICES,LLC

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

By: George J. Plava

Print: \_\_\_\_\_

Print: George J. Plava

Title: President, Board of Supervisors,

Title: VP, Sales and Customer Account Management

San Mateo County

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

Date Signed: 6-7-11

Attest:

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

Print: \_\_\_\_\_

Title: Clerk, Board of Supervisors, San Mateo County

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