

**ST. MARY'S HEALTHCARE, INC.
MEDICATION REPLENISHMENT AND SUPPLY AGREEMENT**

THIS MEDICATION REPLENISHMENT AND SUPPLY AGREEMENT (“**Agreement**”) is made and entered by and between **MONTGOMERY COUNTY SHERIFF'S OFFICE**, a New York municipal corporation having its principal place of business at _____ (“**Provider**”), and **ST. MARY'S HEALTHCARE**, a New York nonprofit corporation having its principal place of business at 427 Guy Park Avenue, Amsterdam, New York, 12010 (“**St. Mary's**” or “**Hospital**”). St. Mary's and Provider are individually referred to as a “**Party**” and collectively as “**Parties**” herein.

RECITALS

WHEREAS, St. Mary's is a charitable, nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code that operates a general, acute care hospital licensed by the New York Department of Health that provides medical care to the general public in Amsterdam, New York and surrounding communities regardless of the patient's ability to pay for such services;

WHEREAS, as part of its operations, St. Mary's also operates an institutional dispenser class 3 pharmacy licensed by the New York Department of Health (“**Pharmacy**”);

WHEREAS, Provider is an advanced life support agency, meaning it is either a certified ambulance service or certified advanced life support first response service which is authorized by the medical director of an advanced life support system to provide advanced life support care;

WHEREAS, in connection with its operations as an advanced life support agency, Provider possesses a class 3(c) institutional dispenser limited license;

WHEREAS, as a holder of a class 3(c) institutional dispenser limited license, Provider would like to obtain certain medications, including controlled substances, non-controlled substances and general medical supplies, and state law requires Provider to enter into a written agreement with a hospital which maintains an institutional dispenser class 3 pharmacy license in order to receive these controlled substances;

WHEREAS, in accordance with state and federal law, Provider desires for St. Mary's to restock certain controlled and non-controlled substances and medical supplies (collectively, “**Supplies**”) for use in Provider's pre-hospital environment, all in accordance with the terms and conditions of this Agreement; and

WHEREAS, Hospital and Provider hereby intend and in good faith believe that this Agreement will meet the Ambulance Replenishing safe harbor as described in 42 C.F.R. §1001.952(v).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree as follows:

1. **SERVICES.**

1.1 **Provider Obligations.**

1.1.1 **Representation and Warranties.** Provider represents and warrants that it provides emergency ambulance services at least an average of three (3) times per week.

1.1.2 **First Responder Use of Supplies.** Supplies initially used by a first responder and replenished at the scene of an illness or injury by the Provider shall be deemed to have been used by Provider for purposes of this Agreement so long as such patient is subsequently transported by Provider to Hospital.

1.1.3 **Documentation.** Provider shall complete documentation as follows:

(a) **Record of Replenished Supplies.** Maintain records of the replenished Supplies and the transported patient on which the replenished Supplies were used for a period of five (5) years (a pre-hospital care report such as a trip sheet, patient care report or patient encounter report prepared by Provider and filed with Hospital shall satisfy this documentation requirement; provided that it documents the specific type and amount of Supplies used on the patient and subsequently replenished).

(b) **Copies of Documentation.** Provide a copy of such records to Hospital within twenty-four (24) hours of the patient's transport and the replenishing (unless Hospital notifies the Provider in writing that it is separately maintaining records of the replenished Medication and Supplies).

(c) **Access to Documentation.** Make such records available to the Secretary of Health and Human Services promptly upon request.

1.2 **Provision of Supplies.** St. Mary's agrees to replenish for Provider subject to its ambulance replenishment program, through its Pharmacy, Supplies used by Provider in connection with the care and treatment of any patient transported by Provider to Hospital (including any Supplies used by a first responder that was replenished by Provider at the scene of an illness or injury). Provider shall interface with a licensed pharmacist in Pharmacy in order to obtain initial medication stock and medications necessary to replace Provider's expired or damaged medications. With respect to controlled substances, Pharmacy shall replenish for Provider only controlled substances that are approved for use by advanced life support agencies as specified by the New York State Department of Health and Provider's Medical Director

1.3 **Expired/Damaged Medications.** Provider shall be responsible for ensuring proper restocking of expired or damaged medications. Provider shall be solely responsible for disposal of any expired and/or damaged medications in a method that is consistent with applicable federal and state laws. Provider shall be solely responsible for completing all documentation related to medication disposal which may be required by the New

York State Department of Health, the Federal Drug Enforcement Agency (“DEA”) or any other applicable regulatory agency and shall provide proof of such documentation to St. Mary’s upon written request.

1.4 **Qualifications**. During the term of this Agreement, St. Mary’s’ Pharmacy shall maintain an unrestricted license as an institutional dispenser class 3 pharmacy and Provider must maintain its class 3(c) institutional dispenser limited license and valid DEA registration, and shall provide proof of such qualifications to St. Mary’s upon request. In the event either Party’s license required under this Section is limited, suspended or terminated, or in the event either Party receives notice that its license may be limited, suspended or terminated, such Party agrees to immediately notify the other Party and this Agreement may be immediately terminated.

1.5 **Training**. Each Party shall only be responsible to appropriately train and educate its own staff regarding obligations under this Agreement, including the sale, maintenance and disposal of any medications furnished pursuant to this Agreement.

1.6 **Eligible Ambulance Providers**. Hospital shall uniformly replenish all emergency ambulance providers in its service area which meet the requirements for Provider and agree to the terms and conditions under this Agreement. Hospital shall post a written disclosure of its replenishing program in the Hospital emergency department.

2. **COMPENSATION**.

2.1 **Reimbursement**. Provider agrees to pay to St. Mary’s the Wholesale Acquisition Price for all non-medication Supplies provided to Provider pursuant to this Agreement (“Fees”). At any time, Provider may request a current price list associated with the supplies purchased under this Agreement. St. Mary’s shall supply Provider with such documentation within fifteen (15) days of such request.

2.2 **Invoices**. St. Mary’s will invoice Provider on a monthly basis for all Fees due for the prior month. Provider shall pay all Fees due to St. Mary’s within thirty (30) days of receipt of St. Mary’s’ invoice.

2.3 **Fair Market Value**. The Parties intend for this Agreement to comply with all applicable statutes, rules, regulations and standards, and believe and intend any and all payments or other consideration exchanged hereunder to reflect fair market value and otherwise reasonable compensation for goods or services rendered. The Parties have entered into this Agreement without regard to volume or value of referrals.

2.4 **Billing**. Provider shall be solely responsible for billing any third party payor, including any Federal or State health care programs or the patient, for any Supplies provided by Hospital to Provider under this Agreement. Provider shall ensure that all billing and claims submission for a Federal health care program beneficiary shall comply with all applicable Federal health care program payment and coverage rules and regulations. Accordingly, Hospital shall be prohibited from submitting a claim for payment for any such Supplies provided to Provider by Hospital pursuant to this Agreement to any third party payors, including any Federal or State health care programs or the patient.

3. **TERM AND TERMINATION.**

3.1 **Term.** This Agreement shall be deemed effective on _____, 20__ (“**Effective Date**”) and shall continue for an initial term of one (1) year, unless terminated earlier as provided herein. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless terminated in accordance with Section 3.2 of this Agreement.

3.2 **Termination.** This Agreement may be terminated:

3.2.1 Upon the mutual written agreement of the Parties;

3.2.2 By either Party without cause upon ninety (90) days’ advance written notice to the other Party; or

3.2.3 Through written notice by either Party, upon the material breach or violation of the terms of this Agreement by the other Party, provided the breaching Party has been given written notice specifying the nature of the breach or violation and a period of thirty (30) days in which to cure such breach or violation.

3.3 **Effect of Termination.** Upon termination of this Agreement, the Parties shall have no further obligations under this Agreement except for those accruing prior to the date of termination or those that by their terms expressly survive termination.

3.4 **Termination in Less Than One Year.** If this Agreement is terminated before one (1) year from its initial Effective Date, then the Parties shall not enter into a subsequent agreement regarding the subject matter of this Agreement prior to the expiration of one (1) year after the initial Effective Date of this Agreement.

4. **INSURANCE.** Provider and St. Mary’s shall each maintain adequate professional and general liability insurance and such other insurance coverages as are reasonable and customary in the industry. Provider and St. Mary’s shall, upon written request of the other Party, promptly provide satisfactory evidence of such coverage.

5. **INDEMNIFICATION.** Except as set forth in this Agreement, each Party is responsible for all acts and omissions of itself and its employees and neither Party agrees to indemnify the other Party for those acts or omissions. However, this provision does not constitute a waiver by any Party of any right to indemnification, contribution, subrogation, or other remedy available to that Party at law or in equity.

6. **MISCELLANEOUS.**

6.1 **Independent Contractor.** The Parties’ relationship hereunder is that of independent contractors. This Agreement does not create any employment, agency, franchise, joint venture, partnership or other similar legal relationship among St. Mary’s or Provider. No Party has the authority to bind or act on behalf of the other Party except as otherwise specifically stated herein.

- 6.2 **Ethical and Religious Directives.** In carrying out the terms of this Agreement, St. Mary's shall not be required to act in any way that would be construed to require St. Mary's to violate the *Ethical and Religious Directives for Catholic Health Care Services* as promulgated by the United States Conference of Catholic Bishops, Washington, D.C., of the Roman Catholic Church or its successor. A copy of such directives is available at <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/>.
- 6.3 **HIPAA Compliance.** Each Party agrees that it will comply in all material respects with all federal and state-mandated regulations, rules or orders applicable to privacy, security and electronic transactions, including without limitation, regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- 6.4 **Exclusion from Federal Health Care Programs.** Each Party hereby represents and warrants that it is not and at no time has been excluded from participation in any federally-funded health care programs, including Medicare and Medicaid. Each Party hereby agrees to immediately notify the other Party of any threatened, proposed or actual exclusion from any federally-funded health care program, including Medicare and Medicaid, with respect to it or any of its employees or contractors. In the event that a Party is excluded from participation in any federally-funded health care program during the term of this Agreement, or if at any time after the effective date of this Agreement it is determined that a Party is in breach of this requirement, this Agreement shall automatically terminate, as of the effective date of such exclusion or breach. In the event that a Party's employee is excluded from participation in any federally-funded health care programs, including Medicare and Medicaid, while then an employee of such Party, then such employer (the "**Notifying Employer**") shall immediately remove the excluded employee from providing any services in connection with this Agreement and shall notify the other Party in writing, stating the information known by the Notifying Employer regarding the basis for the exclusion and the steps taken to remove the excluded employee from providing services in connection with this Agreement. If the other Party determines in its reasonable discretion that the continued employment of the excluded employee impairs its ability to bill for services, then such Party may terminate this Agreement upon thirty (30) days' prior written notice to the Notifying Employer; provided, however, that such notice shall be of no effect if the Notifying Employer terminates the employment of such employee prior to the end of the notice period.
- 6.5 **Change in Law.** If it is the reasonable opinion of counsel with expertise in health care law selected by St. Mary's, that due to new or existing state or federal laws, rules or regulations or due to any action of any governmental authority to enforce any existing state or federal law, rule or regulation, including, but not limited to, the Medicare and Medicaid fraud and abuse statutes and regulations, the Anti-Kickback Statute, the Robinson-Patman Price Discrimination Act, the Food and Drug Administration regulations, New York pharmacy statutes, and all regulations governing use of facilities financed with tax exempt bonds and all applicable Hospital group purchasing contracts and accreditation standards ("**Applicable Law**"), that (i) the transaction contemplated by this Agreement does not comply, or is not reasonably likely to be found by a court with applicable authority to comply with Applicable Law, or (ii) the Provider or St.

Mary's is not or is no longer entitled to Medicare or Medicaid reimbursement, then St. Mary's and the Provider shall negotiate in good faith to attempt to alter their legal relationship to comply with applicable law or to continue to be eligible for Medicare or Medicaid reimbursement while preserving the material terms of this contractual relationship. In the event that such compliance cannot be accomplished or achieved, this Agreement will terminate, and St. Mary's will have no further obligations under this Agreement.

- 6.6 **No Inducement to Refer.** Provider is not obligated or required to refer any patients to Hospital, or any affiliate of Hospital, to obtain or receive any medical diagnosis, care or treatment from Hospital, or to purchase any health care related services or products from Hospital, other than those products as set forth in this Agreement, which cost and supply shall not take into account the volume or value of referrals to the Hospital. None of the Parties are entering into this Agreement with an expectation that any unlawful patient referrals will occur, or other business will be generated between the parties or between Provider and Hospital.
- 6.7 **Assignment.** Nothing contained in this Agreement shall be construed to permit the assignment or delegation by St. Mary's or Provider of any rights or obligations hereunder and such assignment is expressly prohibited; provided, however, St. Mary's may assign this Agreement in its sole discretion to another organization related to St. Mary's.
- 6.8 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York.
- 6.9 **Severability.** In the event that any provision or term of this Agreement is found to be void or unenforceable to any extent for any reason, it is the agreed upon intent of the Parties hereto that all remaining provisions or terms of the Agreement shall remain in full force and effect to the maximum extent permitted by law and that the Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.
- 6.10 **Entire Agreement.** This Agreement contains the entire understanding and agreement of both Parties with respect to the subject matter hereof and supersedes all prior agreements, representations and understandings of the Parties that may relate to the subject matter of this Agreement. It may only be modified by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification, extension or discharge is sought.
- 6.11 **Notice.** Service of all notices under this Agreement shall be sufficient if given in person or sent by certified mail, return receipt requested, to the other Party at their respective addresses set forth below, or at such address as such Party may provide in writing from time to time:

If to Provider:

Attn: _____

If to St. Mary's:

Attn: Julieann Diamond, General Counsel
St. Mary's Healthcare
427 Guy Park Avenue
Amsterdam, NY 12010

- 6.12 **Amendment**. No modification, amendment or addition to this Agreement shall be valid or enforceable unless in writing and signed by all Parties hereto.
- 6.13 **Binding Agreement**. This Agreement is binding on all Parties, their legal representatives, successors and assigns except as otherwise stated herein.
- 6.14 **Captions**. Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience and are not intended to be fully accurate descriptions of the content thereof. As appropriate, words used in this Agreement in a singular shall include the plural and words used in any gender shall include all genders.
- 6.15 **Waiver**. Failure to insist upon full performance of the obligation or failure to exercise rights under this Agreement shall not constitute a waiver as to future defaults or exercise of rights.

IN WITNESS WHEREOF, St. Mary's and Provider have executed this Agreement as of the last date written below.

ST. MARY'S HEALTHCARE

**MONTGOMERY COUNTY SHERIFF'S
OFFICE**

By: _____
Jeffrey M. Methven
President & Chief Executive Officer

By: _____
[Name/Title]

Date: _____

Date: _____

