

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

between

COUNTY OF SANTA BARBARA

and

340B HOLDINGS, LLC (formerly SUNRx LLC)

for

PRESCRIPTION DRUG ADMINISTRATIVE SERVICES

FIFTH AMENDMENT

Effective March 25, 2017

This Fifth Amendment (the "**Fifth Amendment**") to the SUNRx Prescription Drug Administrative Services Agreement ("**Agreement**") is entered into this 25th day of March, 2017, by 340B Holdings, LLC (hereinafter referred to as "**SUNRx**"), a limited liability corporation organized under the laws of the State of Delaware, whose principal place of business is located at 3220 Tillman Drive, Suite 100, Bensalem, PA 19020, and Santa Barbara County Public Health Department (the "**Eligible Entity**"), whose principal place of business is located at 300 North San Antonio Rd Santa Barbara, CA 93110. (Each a "Party" and collectively the "Parties").

A. The Eligible Entity and SUNRx entered into the Agreement on June 19th, 2012 whereby the Eligible Entity receives certain prescription drug administrative services from SUNRx for Eligible Entity's 340B program.

B. CVS Pharmacy, Inc., on behalf of itself and all retail pharmacies it owns and/or operates including Caremark RX, LLC and any successor thereto ("Member Pharmacy" or "CVS") wishes to contract directly with Eligible Entity as a 340B Contract Pharmacy, whose operations and obligations vary from those of current SUNRx Contract Pharmacies.

C. SUNRx and Eligible Entity desire to amend the Agreement to provide for the exceptions with CVS as a 340B pharmacy in relation to the 340B Administrative Services provided under the Agreement and to enable the Eligible Entity to enter into a direct relationship with CVS.

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound, the Parties agree as follows:

1. The parties understand and agree that the Agreement and the 340B Addendum to the MedCare agreement contain duties and obligations related to Contract Pharmacies for 340B services. Eligible Entity acknowledges and agrees that this Fifth Amendment only relates to CVS and hereby modifies SUNRx's and its subcontractors' duties and obligations as relating to CVS. If not modified herein then in accordance with Section 12 herein, all terms and conditions obligating SUNRX and its subcontractors remain in full force and effect as related to CVS." Any and all audits and/or disputes

arising as a result of the agreement between Eligible Entity and CVS shall be solely as between Eligible Entity and CVS and shall not involve or obligate SUNRx or its Subcontractor.

2. **Exclusivity.** Exclusivity set forth in the Agreement shall be revised as follows: Unless expressly prohibited by applicable HRSA guidelines or requirements, Eligible Entity agrees that, during the term of this Agreement, SUNRx shall be the sole and exclusive agent for Eligible Entity for each of the services described in this Agreement, including without limitation the 340B virtual inventory services. Notwithstanding the above, SUNRx agrees that the exclusivity requirements of this Section 9, shall not apply to all CVS pharmacies, Rite Aid pharmacies, Walgreens pharmacies, Safeway pharmacies, and Sears/Kmart pharmacies located in Santa Barbara County, and Eligible Entity may enter into a direct contract pharmacy relationship with CVS pharmacies, Rite Aid, Walgreens, Safeway, and/or Sears/Kmart.
3. **Network Rate.** Network Rate, as defined in the Agreement, shall be excluded for non-340B claims adjudicated through CVS.
4. **Third Party Claims.** All qualifying Third Party Claims, as defined in the agreement between Eligible Entity and CVS and adjudicated by CVS, will be processed as a Third Party Claim.
5. **Schedule Drugs.** Schedule II drugs are not eligible as a 340B Covered Drug.
6. **Slow Moving Drugs.** Any Covered Drug that has not met a full unit of issuance (i.e. the entire bottle size has not been depleted/dispensed) within one-hundred twenty (120) days of last dispensing will be reconciled by SUNRx and credited on the ensuing invoice. The reconciled amount will be based on the then current drug's Wholesale Acquisition Cost ("WAC") for the National Drug Code (NDC) prorated according to the amount that cannot be replenished.
7. **Out of Stock Drugs.** For all out of stock drugs owed by the Eligible Entity to CVS, the drug will be reordered on a daily basis for the subsequent forty-five (45) days. If upon the forty-sixth (46th) day the drug remains out of stock, the out of stock Covered Drug that has not met a full unit of issuance will be reconciled by SUNRx and credited on the ensuing invoice. The reconciled amount will be based on the then current drug's WAC for the NDC prorated according to the amount that cannot be replenished.
8. **Invoices and Payments.** Any monies owed by CVS to Eligible Entity will be paid directly by CVS to the Eligible Entity. In turn, SUNRx will bill the Eligible Entity separately for applicable fees (including but not limited to administrative fees and network relay switch fees) owed to SUNRx. Eligible Entity shall immediately remit payment to SUNRx upon receipt of invoice to the following lockbox address:

MedImpact Healthcare Systems, Inc.
PO Box 511334
Los Angeles, CA 90051-7889

9. **Close out and Final Reconciliation.** In the event that CVS or Eligible Entity terminates the agreement between Eligible Entity and CVS, any portion of the Covered Drug(s) that cannot be replenished will be reconciled based on the prorated amount at the NDC's then current WAC.
10. **Payment.** Any overpayments made to Eligible Entity or amounts owed by Eligible Entity to SUNRx (including but not limited to claims processing fees, network relay switch fees, administrative charges, claim overpayments and reversals) may be deducted from amounts otherwise payable to Eligible Entity.
11. **Disintermediation.** During the term of the Agreement and for a period of twenty-four (24) months thereafter, Eligible Entity shall not enter into a direct agreement with CVS for 340B claims processing or other services provided under a 340B program. As between CVS and SUNRx, Eligible Entity shall defer to SUNRx only on all 340B claims processing terms and inquiries. The parties agree that should Eligible Entity violate this Section 11, because of the difficulty of ascertaining the amount of damages in the event of such a breach, SUNRx shall be entitled to recover, at its option, as liquidated damages and not as a penalty,(i) during the term of the Agreement, an amount equal to the greater of the remaining months under the Term of the Agreement or six (6) months multiplied by the average monthly revenue earned by SUNRx under the Agreement with Eligible Entity; or (ii) in the event of a breach post termination, an amount equal to the average monthly revenue earned by SUNRx under the agreement with Eligible Entity multiplied by twenty four (24). Anticipated revenue shall include (but is not limited to) claims processing fees and administration fees. Such amount shall become immediately due and payable by Eligible Entity upon notice from SUNRx. The Parties agree that the existence of this remedy will not preclude SUNRx from seeking or receiving injunctive relief. This provision survives termination of the Agreement for any reason and survives any change of ownership or change of control of the Eligible Entity.
12. **Agreement and 340B Addendum Incorporation.** This Fifth Amendment only relates to CVS and hereby modifies SUNRx's and its subcontractors' duties and obligations as relating to CVS. If not modified herein then all terms and conditions obligating SUNRx and its subcontractors remain in full force and effect as related to CVS."

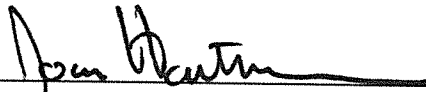
All capitalized terms in this Fifth Amendment, not specifically defined herein, shall have the meaning of such terms as defined in the Agreement.

Fifth Amendment to Agreement for Prescription Drug Administrative Services between the County of Santa Barbara and 340B Holdings, LLC.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to be effective March 25, 2017.

COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD



Chair, Board of Supervisors

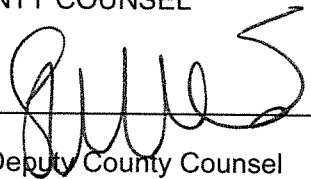
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By: 

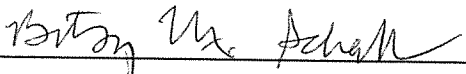
Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
THEODORE A. FALLATI, CPA
AUDITOR-CONTROLLER

By: 

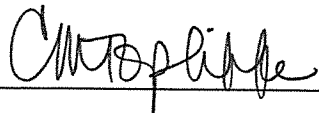
Deputy County Counsel

By: 

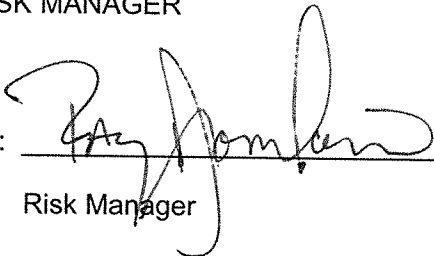
Deputy

APPROVED:
CARRIE TOPLIFFE
INTERIM DIRECTOR
PUBLIC HEALTH DEPARTMENT

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: 

Director

By: 

Risk Manager

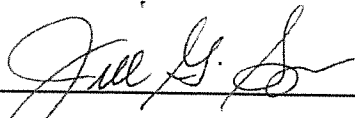


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340B Holdings, LLC.

By: _____



Name: Jill G. Simoes, General Manager

Date: _____

3/17/2017