

SUNRx PRESCRIPTION DRUG ADMINISTRATIVE SERVICES AGREEMENT

by

SUNRX, LLC

and

SANTA BARBARA COUNTY PUBLIC HEALTH DEPARTMENT

Generation Date: May 31, 2012

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Notice: **Draft Contracts not fully executed within 60 Days from the Generation Date are not valid and shall be subject revision based on SUNRx's then Current Version.**

SUNRx PRESCRIPTION DRUG ADMINISTRATIVE SERVICES AGREEMENT

This SUNRx Prescription Drug Administrative Services Agreement ("**Agreement**") is entered into this 19th day of June, 2012, by SUNRx, 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 3260 Tillman Drive, Suite 75, Bensalem, PA 19020, and Santa Barbara County Public Health Department (the "**Eligible Entity**"), a local government organized under the laws of the State of California, whose principal place of business is located at 300 N. San Antonio Road, Santa Barbara, CA 93110. (Each a "Party" and collectively the "Parties".)

Preliminary Statement

A. SUNRx is a pharmacy services provider that assists Covered Entities in establishing and operating 340B contract and in-house pharmacy arrangements by offering consulting, processes and software to support the evaluation, planning, implementation, dispensing, inventory control, replenishment, reporting and auditing of 340B and other pharmacy transactions to Eligible Patients.

B. The Eligible Entity is a Covered Entity as defined in Section 340B of the Public Health Service Act ("Section 340B") and is eligible to purchase covered outpatient drugs at reduced prices for use by individuals ("Eligible Patients") who meet prescribed patient definition criteria as set forth at 61 Fed. Reg. 55156 (Oct. 24, 1996), as may be amended from time to time by the Health Resources and Services Administration ("HRSA"). Covered Entities may purchase covered outpatient drugs ("340B Covered Drugs") from drug manufacturers that have signed a Pharmaceutical Pricing Agreement with the United States Department of Health and Human Services.

C. Eligible Entity wishes to expand its pharmacy program through its in-house outpatient pharmacy as well as by establishing Contract Pharmacy arrangements in order to dispense 340B Covered Drugs and other drugs to Eligible Patients of the Eligible Entity.

D. The Eligible Entity desires to enter into this exclusive Agreement with SUNRx, whereby SUNRx will negotiate and manage Contract Pharmacy arrangements exclusively on behalf of Eligible Entity and/or assist with in-house pharmacy programs and provide 340B Prescription Drug Services, as further described herein.

E. SUNRx is familiar with HRSA's 340B guidelines and shall perform its duties, as described in this Agreement, in accordance with 340B program requirements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **Obligations of SUNRx** – The general obligations of SUNRx are set forth below, but the precise procedures that it follows may be modified from time to time in its discretion to further administrative efficiency.
 - 1.1. Drug Programs. SUNRx will establish or enable access for Eligible Entity to three different drug pricing models:
 - 1.1.1. Usual and Customary (which is the price that Contract Pharmacy charges its uninsured patients);
 - 1.1.2. 340B priced drugs (340B); and

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- 1.1.3. The "Network Rate," as defined below. The "Network Rate" shall be the rate, as modified from time to time by the PBM and SUNRx based on prevailing market conditions, which SUNRx, in connection with the program PBM, makes available to uninsured or cash Patients of the Eligible Entity to purchase non-340B Covered Drugs from participating Contract Pharmacies. The current prevailing Network Rate will be made available to Eligible Entity upon written request.
 - 1.1.4. The SUNRx system shall compare each of the above prices at the time an Eligible Patient prescription is presented, including applicable 340B Dispensing Fees, SUNRx Administration Fees, and Eligible Entity administration fees, if any. The SUNRx system shall identify which of the three drug pricing models should be utilized in order to ensure the lowest cost to the Eligible Entity for the Eligible Patient prescription.
 - 1.1.5. SUNRx shall acquire Third Party Claims Data to attempt to capture for Eligible Entity any differential in price between Third Party Payments to the Pharmacy on claims for Eligible Patients and the 340B cost of the prescription, hereinafter referred to as the "Price Margin."
 - 1.2. Persistence Program. In relation to all "Monitored Claims" as defined in accordance with this Section 1.2, SUNRx shall provide its "Persistence Program" services to Eligible Patients. Under SUNRx's "Persistence Program" SUNRx shall, on behalf of the Eligible Entity: (i) monitor patient adherence to medication therapies prescribed in connection with Monitored Claims; (ii) provide Eligible Patient outreach to alert the Eligible Patient and/or prescribers in the event of non-compliance; and (iii) encourage Eligible Patients to comply with medication therapies or to seek the advice of the applicable prescriber. For the purposes of this Agreement, "Monitored Claims" shall mean all: (i) all Third Party claims captured for 340B processing under this Agreement; and (ii) any other claim type as may be requested by Eligible Entity.
 - 1.3. Payor Partnership Opportunities: SUNRx may from time to time identify third party payors ("Payors") who are interested in entering into an agreement with Eligible Entity that will give Payors a portion of the savings resulting from the use of 340B drugs dispensed to Eligible Patients who are their enrollees. Such agreements will be structured to comply with the safe harbor for discounts as set forth at 42 C.F.R. section 1001.952(h), including, as applicable, any reporting obligations. In these agreements, Payors will either assign more patients to the Eligible Entity or assist Eligible Entity in expanding its services to the Payor's enrollees. In these agreements, the difference between the Network Price paid Contract Pharmacy for the third party claims by the Payor and the total cost of the claims using 340B drugs would be calculated and shared between the Eligible Entity and the Payor in accordance with a negotiated shared savings arrangement. In the event that Eligible Entity chooses to enter into such an agreement, such agreement will be outlined in Exhibit IV of this Agreement, and the PBM will distribute savings accordingly.
 - 1.4. Ordering 340B Drugs. SUNRx shall, on behalf of the Eligible Entity, order 340B Covered Drugs directly from the drug Wholesaler to replenish stocks of 340B Covered Drugs dispensed by Contract Pharmacy. SUNRX shall arrange for such drugs to be shipped to Contract Pharmacy and billed to Eligible Entity.
 - 1.5. 340B Drug Price Changes. The Parties acknowledge that, when virtual inventory is used to fill 340B prescriptions for Eligible Patients, drugs are priced by drug Wholesaler before they are purchased by the Eligible Entity for the purpose of replenishing inventory that has been dispensed to Eligible Patients at 340B prices. There may therefore be a variance between the

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cost of these drugs at the time the drugs are dispensed and the claims are initially adjudicated, and the time at which an order is placed to replenish the inventory dispensed. This variance may impact upon the anticipated profit or loss for the Eligible Entity for these claims.

- 1.6. Access to Software Application. SUNRx shall provide access to its web-based software application to Eligible Entity, whereby Eligible Entity can monitor inventory status, drug costs and revenues, drug purchases, drug claims by provider, site and pharmacy and other features of their drug program.
- 1.7. Inventory Management. SUNRx shall perform ongoing maintenance and reporting of physical and virtual inventory of Eligible Entity's 340B Covered Drugs.
- 1.8. Pharmacy Plan/Formulary. SUNRx agrees to assist the Eligible Entity in developing and loading the Eligible Entity's Pharmacy Plan, including the applicable wholesaler price files for the 340B Formulary. SUNRx shall implement changes in the Pharmacy Plan requested by the Eligible Entity in writing within thirty (30) calendar days after receipt of such request.
- 1.9. Claims Processing.
 - 1.9.1. SUNRx shall provide, or shall contract with a Claims Processor to provide, electronic claims processing and claims reporting as required by this Agreement.
 - 1.9.2. SUNRx agrees to process claims accurately based on eligibility, formulary, sliding scale and provider files received from Eligible Entity.
- 1.10. Monitoring of SUNRx Subcontractor Agreements. SUNRx reserves the right to utilize the services of subcontractor(s) of its choosing in the performance and execution of its duties under this Agreement. SUNRx shall supervise, monitor, assess and enforce all agreements with any subcontractors with which it may contract in the performance and execution of its duties under this Agreement.
- 1.11. Reporting. The SUNRx system provides an extensive suite of reports that cover claims, profitability, inventory control and audit tools. Customized reports are available at a cost to the Eligible Entity of the then-current SUNRx custom programming hourly rate. SUNRx, will make Standard utilization data to Eligible Entity at no additional cost.
- 1.12. Securing Contract Pharmacy Services. SUNRx shall take the following measures to establish and secure Contract Pharmacy arrangements on behalf of the Eligible Entity.
 - 1.12.1. SUNRx agrees to use reasonable industry efforts to locate and provide Contract Pharmac(ies) in areas as needed and requested by Eligible Entity.
 - 1.12.2. SUNRx agrees to solicit a Contract Pharmacy, utilizing a request for proposal process at the direction, and on behalf of, Eligible Entity.
 - 1.12.3. SUNRx agrees to use commercially reasonable efforts to secure an executed Pharmacy Services Agreement between and among Contract Pharmacy, Eligible Entity, a Pharmacy Benefit Manager ("PBM"), and SUNRx, which shall set forth the obligations and responsibilities of each of the Parties to the Pharmacy Services Agreement. SUNRx shall assist Eligible Entity and Contract Pharmacy in ensuring that the Pharmacy Services Agreement comports with HRSA's contract pharmacy

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guidelines. In addition to the obligations set forth herein, Eligible Entity agrees to comply with all of the terms of the Pharmacy Services Agreement.

- 1.13. Authorized 340B Dispensing Fee Structures. SUNRx shall attempt to engage Contract Pharmacies who will accept 340B Dispensing Fees under the following alternative structures acceptable to Eligible Entity (note that certain pharmacies may not agree to participate under certain 340B Dispensing Fee Structures):

340B Dispensing Fee Structure

- XX Fixed Fee – Contract Pharmacy will be entitled to fixed 340B Dispensing Fees on all 340B captured Claims in the amounts agreed to prior to execution of the applicable Pharmacy Services Agreement.
- XX Profit Plus - The 340B Dispensing Fee applicable to Third Party captured Claims shall be adjusted (up or down) on a quarterly basis to an amount equal to the Contract Pharmacy's average anticipated profit (third party reimbursement rate minus the actual wholesale acquisition cost) on Third Party Claims, as determined by SUNRx, plus \$2.00.
- XX Blended Rate - The 340B Dispensing Fee applicable to Third Party captured Claims and Cash captured Claims shall be adjusted (up or down) on a quarterly basis to amounts that, based on Claim type and volume would have resulted in the average 340B Dispensing Fees applicable to such Claims in the amount agreed upon prior to execution of the applicable Pharmacy Services Agreement.

1.14. Record Keeping.

- 1.14.1. SUNRx system will report on all drug claim and drug purchase transactions for the term of this agreement.
- 1.14.2. Upon termination an electronic copy of all transactions shall be delivered to Eligible Entity in Microsoft Excel format. Once delivered, SUNRx's record keeping responsibility is completed.
- 1.14.3. The Eligible Entity shall review such reports promptly upon receipt, and shall report any errors within 30 days of receipt. All such reports shall be deemed complete and accurate unless the Eligible Entity notifies SUNRx otherwise within the 30 day period.

1.15. Collection and Payment.

- 1.15.1. Contract Pharmacy shall bill third party payors on behalf of Eligible Entity for drugs dispensed to Eligible Patients.
- 1.15.2. SUNRx shall provide, through a PBM, financial reconciliation and funds distribution to all Parties. The PBM shall collect from Contract Pharmacy Co-Payments from Eligible

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Entity patients and Third Party Payments made by payors to the Contract Pharmacy. PBM shall transfer these funds to the Eligible Entity, less the SUNRx Administrative Fee, and the Contract Pharmacy 340B Dispensing Fee. PBM shall then distribute to SUNRx its Administrative Fee, and shall distribute to Contract Pharmacy its 340B Dispensing Fee. The PBM shall not be required to pay the Eligible Entity until the PBM collects from the Contract Pharmacy

1.15.3. As to Network Claims, PBM is not required to render payments to 340B Contract Pharmacies for Claims unless and until PBM has received payment for the Claims from CenCal Health Systems. In the event that PBM renders Claims payments to 340B Contract Pharmacies prior to receipt of Claims payment from CenCal Health Systems, such payments shall not constitute a waiver of any of PBM's remedies with respect to non-payment and shall not establish a course of dealing between PBM and 340B Covered Entity..

1.15.4. Any party owing money will pay within thirty (30) days of receipt of invoice.

1.16. Third Party Claims.

1.16.1. SUNRx shall require each Contract Pharmacy to cause its network relay switch or other pharmacy claims data provider to provide SUNRx with claims data to enable SUNRx to identify claims that originated from a prescription from a legally qualified health care provider affiliated with Eligible Entity for drugs dispensed to a Eligible Person and which are payable by third party payors for which the 340B Price is less than the amount the applicable Contract Pharmacy received from the third party payor for such Claims. SUNRx shall then reconcile such Third Party Claims data (including without limitation the Third Party pharmacy rates that the 340B Contract Pharmacy received from the applicable Third Party payors, the Co-pays, and the applicable 340B Prices to determine the difference between the fully loaded 340B Price and amount paid to the amount paid by the third party payor to the 340B Contract Pharmacy.

1.16.2. On a regular basis, SUNRx shall aggregate this data and provide the Program PBM with sufficient data relating to such Third Party Claims to enable Program PBM to perform the necessary billing adjustments. SUNRx shall aggregate Third Party Claim data in such a way as to prevent the disclosure to the Program PBM of confidential Third Party Claims reimbursement information including without limitation the applicable Third Party pharmacy rates. SUNRx or the Program PBM shall then bill or offset the appropriate amounts due to or received by the Contract Pharmacy in connection with captured Third Party Claim and reconcile all amounts due to the parties under this Agreement based on the aggregated amounts determined by SUNRx as stated above.

1.16.3. Eligible Entity shall be responsible for all costs incurred by SUNRx for the purchase of Third Party Claims data from retail network switches, Contract Pharmacy, pharmacy billing company or other data provider as necessary to enable SUNRx to perform the retrospective review of third party claims. Notwithstanding the above, Eligible Entity shall not, during any billing cycle, be responsible for any Third Party Claims Data Costs in excess of the amounts due to Eligible Entity in connection with captured Third Party Claims during the applicable period. Subject to the terms of the applicable Pharmacy Services Agreement, SUNRx and/or Eligible Entity shall have the right to terminate any applicable Contract Pharmacy relationship in the event that

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the Third Party Claims Data Cost exceeds the amounts due to Eligible Entity in connection with captured Third Party Claims during the applicable period for any three consecutive months.

1.17. Compliance and Compliance Support.

1.17.1. Subject to Eligible Entities cooperation, direction and supervision, SUNRx shall perform SUNRx's Services in accordance with the requirements of Section 340B.

1.17.2. Prior to implementation of the 340B Program, and from time to time upon the reasonable written request of Eligible Entity, SUNRx shall:

1.17.2.1. provide information and guidance to the Eligible Entity to assist it to design the 340B Program and its related systems, policies, and processes in order to maintain compliance with the 340B Law,

1.17.2.2. As SUNRx becomes aware of material changes to the requirements of Section 340B and related guidance and regulations that may have a material impact on the 340B Program, SUNRx shall use commercially reasonable efforts to advise the Eligible Entity of changes and to revise the 340B Program accordingly;

1.17.3. Notwithstanding the above, the ultimate responsibility for the compliance with Section 340B and other laws and rules governing the Eligible Entity will remain the responsibility of the Eligible Entity.

2. Obligations of Eligible Entity

2.1. Covered Entity. Eligible Entity shall take reasonable steps to maintain its status as a 340B Covered Entity as defined in the Preliminary Statement of this Agreement. In the event that Eligible Entity no longer qualifies as a Covered Entity, Eligible Entity shall immediately notify SUNRx.

2.2. Eligible Patients. CenCal Health or Eligible Entity shall provide to SUNRX all necessary information for SUNRx's management of a Patient eligibility system. Such information shall include Eligible Patients' unique identification number, gender, complete name, date of birth, patient code, Authorized Provider's DEA number and license number, Third Party insurance and enrollment status in a Governmental Program, including Medicaid and Medicare, if any. Eligible Entity shall provide prompt updates and changes to such information for Eligible Patients to the SUNRx system, and shall enter such information for new Eligible Patients on an ongoing basis.

2.3. DEA/NPI Licensure. Eligible Entity shall assure that all of its physicians on staff who prescribe medications shall maintain a current and valid DEA/NPI license and shall immediately enter in the SUNRx system any suspension, termination or revocation of any physician's license.

2.4. Payments for Services. Eligible Entity shall pay SUNRx fees in accordance with the fee schedule attached as Exhibit II hereto. SUNRx shall, at its sole option, with or without advance notice to Eligible Entity, have the right to apply a reduced or discounted SUNRx administrative fee or "Flex Fee" to any Claim as SUNRx may see fit in order to enable SUNRx and the Eligible Entity to capture additional claims for the 340B processing and

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increase the income to the Eligible Entity. No single application of the Flex Fee shall be deemed a waiver or modification of SUNRx's right to apply the standard fees to any other Claim or otherwise impact Eligible Entity's obligation to pay such fees. Eligible Entity shall also pay 340B Dispensing Fees to Contract Pharmacy in accordance with terms set forth in the Pharmacy Services Agreement or Exhibits thereto.

- 2.5. Patient Choice. Eligible Entity shall recognize the right of an Eligible Patient to elect not to use Eligible Entity's program for pharmacy services and obtain the prescription from the pharmacy provider of his or her choice.
- 2.6. Provision of Eligible Entity Information. Eligible Entity shall be solely responsible for 340B program compliance, including ensuring the accuracy of its Eligible Entity Information provided to SUNRx or its subcontractor. Eligible Entity bears the entire risk of all fraudulent Claims submitted by Eligible Patients or by unauthorized persons using an Eligible Person's identification.

3. Audits

- 3.1. The Parties understand that Eligible Entity and Contract Pharmacy may be subject to audits in accordance with Section 340B requirements, by the Federal government and drug manufacturers who have signed a Pharmaceutical Pricing Agreement ("PPA") with the United States Department of Health and Human Services ("HHS"), which audits may pertain to Eligible Entity's compliance with the prohibition on drug resale or transfer or the prohibition against duplicate discounts. The Parties further understand that HRSA has published guidelines pertaining to manufacturer audits. In the event of such audit, SUNRx agrees to provide records, data, and information necessary to assist Eligible Entity and Contract Pharmacy in complying with the audit.

4. Inspection by Manufacturer

- 4.1. Upon receipt of a written request from a drug manufacturer that has signed a PPA with HHS, SUNRx and Eligible Entity may provide a copy of this Agreement to the requesting manufacturer. Any Party that receives such a request shall immediately inform the other Party of the request. Each Party shall have the right to delete any of its confidential or proprietary information prior to the Agreement being submitted to the requesting manufacturer.

5. Term and Termination

- 5.1. Term. This Agreement shall become effective upon the date of signing by the last signatory and shall continue for a period of 3 years, unless otherwise terminated as indicated below ("Initial Term"). At the end of the initial 3 year term, this Agreement shall renew for an additional one (1) year term and shall continue to renew for successive additional one (1) year terms thereafter. Notwithstanding the above either Party may terminate this agreement at any time after expiration of the Initial Term by providing ninety (90) days prior written notice to the other party .
- 5.2. Termination.
 - 5.2.1. Termination for Material Breach. Either Party may terminate this Agreement upon a material breach that is not cured within 90 days after written notice specifying in detail the nature of the breach is provided.

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- 5.2.2. Termination for Cause by Eligible Entity. Eligible Entity may terminate this Agreement immediately upon written notice to SUNRx upon the occurrence of any of the following events:
- 5.2.2.1. SUNRx fails to comply with the terms and conditions of the Pharmacy Services Agreement;
 - 5.2.2.2. SUNRx's failure to maintain the required insurance as set forth in Section 10.1 hereof.
- 5.2.3. Termination for Cause by SUNRx. SUNRx may terminate this Agreement immediately upon written notice to Eligible Entity upon the occurrence of any of the following events:
- 5.2.3.1. If Eligible Entity ceases to be eligible to participate as a Covered Entity in the Section 340B program;
 - 5.2.3.2. If Eligible Entity is subject to an enforcement action for violating 340B program requirements.
 - 5.2.3.3. If Eligible Entity is more than 30 days past due in payments.
 - 5.2.3.4. If Eligible Entity fails to comply with the responsibilities of the Pharmacy Services Agreement.
 - 5.2.3.5. If for a full calendar quarter during the Term, the Eligible Entity's 340B Program fails to result in a minimum average of at least 500 340B price claims per month.
- 5.2.4. Termination due to Inability to Secure Contract Pharmacy relationship. This Contract can be terminated by either party if a Contract Pharmacy relationship is not secured within six months of the date of this Agreement.
- 5.2.5. Mutual Agreement. The Parties may terminate this Agreement at any time by mutual written consent.
- 5.2.6. Termination Due to Changes in Law or Guidance. The Parties acknowledge that existing regulations, laws, or HRSA guidance may change and that the courts or State or Federal agencies with appropriate jurisdiction may change their interpretation of existing law. Upon the enactment or amendment of any State or Federal law or regulation, or of HRSA guidance, or upon the issuance of any judicial opinion or interpretative ruling on any existing State or Federal law, regulation, or guidance, that: (i) renders this Agreement illegal, (ii) materially changes the obligations of the Parties, or (iii) jeopardizes the tax-exempt status of a Party or creates a significant risk of civil penalties, as determined by a written opinion of counsel for the Party asserting that there has been a change in law, the Parties shall use their best efforts during the 90 day period thereafter to mutually agree to such amendments to the Agreement as to permit its valid and legal continuation. If, after such 90 day period, the Parties are unable to agree to amend the Agreement, either Party may terminate its participation in this Agreement effective immediately by giving written notice of such termination to the other Parties.

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- 5.2.7. Termination Due to Bankruptcy. Either Party may terminate this Agreement by written notice if another Party shall apply for or consent to the appointment of a receiver, trustee, or liquidator, file a voluntary petition-in-bankruptcy, admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer in any judicial proceedings seeking reorganization or arrangement with creditors or taking advantage of any insolvency law, or if an order, judgment or decree shall be entered against that Party by a court of competent jurisdiction on the application of a creditor of such Party, adjudicating such Party as bankrupt or insolvent or approving a petition seeking reorganization of such Party or appointing a receiver, trustee or liquidator of such Party and such order, judgment, decree or proceeding is not dismissed or vacated within a period of 90 consecutive days.
- 5.2.8. Responsibilities Upon Termination. Upon termination or expiration of this agreement, SUNRx shall return to Eligible Entity any and all copies of files or other materials related to Eligible Entity's patients which may be in SUNRx's possession or under SUNRx's control. Eligible Entity shall also return to SUNRx any materials related to SUNRx operations, procedures, or policies, or any other such information. Upon termination of this Agreement, SUNRx shall be responsible to process only those Claims which are for prescriptions dispensed by Contract Pharmacy prior to the termination date and which are received by SUNRx within thirty (30) days of the termination date.
- 5.2.9. Accounting of Inventories. In the event this Agreement is terminated in whole or in part, SUNRx shall make an accounting of 340B Covered Drugs owed to Pharmacy by Eligible Entity within thirty (30) calendar days after the date of termination.
- 5.2.10. 340B Covered Drugs owed Pharmacy by Eligible Entity. Upon termination of the Agreement, Contract Pharmacy may have dispensed drugs to 340B Eligible Patients that will have not yet been replenished into the Contract Pharmacy inventory by the Eligible Entity, thus creating a liability on the part of the Eligible Entity. To the extent permitted by law, these outstanding claims shall be reversed and resubmitted by the Contract Pharmacy to the PBM, at Network rates. PBM, upon final reconciliation, will pay Contract Pharmacy on behalf of Eligible Entity at Network rates for the resubmitted claims, less any 340B Dispensing Fee paid on the reversed claims. This shall satisfy the liability referred to herein. The Parties shall have the opportunity to adjust this process in the event that HRSA issues future guidance that is relevant to the process.

6. Indemnification

- 6.1. Eligible Entity shall indemnify, defend and hold harmless SUNRx, and its parents, subcontractors, subsidiaries and affiliates, and their respective officers, directors, employees, agents and representatives, from and against any and all liabilities, claims, demands, actions, causes of action, losses, judgments, damages, costs and expenses, including reasonable attorneys' fees, directly resulting from: (i) a breach by Eligible Entity of any of Eligible Entity's representations, warranties, covenants or agreements in this Agreement, or (ii) any negligent or wrongful acts or omissions of Eligible Entity (including but not limited to 340B In-House Pharmacy) in connection with the performance of this Agreement.
- 6.2. SUNRx shall indemnify, defend and hold harmless Eligible Entity, and its parents, subsidiaries and affiliates, and their respective officers, directors, employees, agents and

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representatives, from and against any and all liabilities, claims, demands, actions, causes of action, losses, judgments, damages, costs and expenses, including reasonable attorneys' fees, directly resulting from: (i) a breach by SUNRx of any of SUNRx's representations, warranties, covenants or agreements in this Agreement, or (ii) any negligent or wrongful acts or omissions of SUNRx in connection with the performance of this Agreement.

7. Dispute Resolution

- 7.1. Good Faith Efforts. The parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 45 days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies. .
- 7.2. Limitation of Liability. IN NO EVENT SHALL SUNRX, SUNRX SUBCONTRACTOR, OR ANY AFFILIATE THEREOF BE LIABLE TO ELIGIBLE ENTITY, 340B IN-HOUSE PHARMACY, ANY ELIGIBLE PATIENT, OR ANY AFFILIATE OF SUCH PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, ARISING OUT OF OR RELATED TO SUNRX OR SUNRX'S SUBCONTRACTOR PERFORMANCE UNDER THIS AGREEMENT OR BREACH HEREOF, EVEN IF SUNRX OR SUNRX SUBCONTRACTOR HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. SUNRX'S AND ANY OF ITS SUBCONTRACTOR'S LIABILITY TO ELIGIBLE ENTITY, ELIGIBLE PATIENTS, OR ANY AFFILIATE OF SUCH PARTY UNDER THIS AGREEMENT, IF ANY, SHALL NOT IN ANY EVENT EXCEED THE TOTAL CLAIMS PROCESSING FEES PAID TO SUNRX BY ELIGIBLE ENTITY FOR THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM IS ASSERTED.

Neither SUNRx, SUNRx's Subcontractor, nor any affiliate thereof will be liable for any claim asserted by Eligible Entity more than thirty (30) days after Eligible Entity is or reasonably should have been aware of such claim. Further, in no event will SUNRx, SUNRx's Subcontractor, or any affiliate of thereof be liable for any claim asserted by Eligible Entity more than twelve (12) months after the event giving rise to the claim.

8. Confidentiality/Non-Disclosure SUNRx's Information

- 8.1. Definition. "Confidential Information" means any technical, confidential and/or proprietary information, data, software, plans, designs, protocols, inventions, and other related information including without limitation product and systems specifications, of SUNRx that SUNRx considers and treats as confidential and proprietary, which is or was obtained directly or indirectly from SUNRx in any form, at any time prior to or after execution of this Agreement, including without limitation, documentary, tangible, oral, visual or electronic. The amount and type of Confidential Information to be disclosed is completely within the sole discretion of SUNRx. Confidential Information specifically includes all such protected information disclosed by SUNRx to the Eligible Entity at any time, but does not include technical information or data which (i) at the time of disclosure, is or was available to the general public, (ii) at a later date, becomes available to the general public through no fault of the Eligible Entity and then only after such later date, (iii) is received by Eligible Entity at any time from a third party without breach of a non-disclosure or confidentiality obligation to SUNRx, (iv) as shown by proper documentation, is known to Eligible Entity at the time of disclosure, (v) as shown by proper documentation, is developed independently by Eligible

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Entity, or (vi) is approved for disclosure by prior written permission of a corporate officer of SUNRx.

- 8.2. Non-Disclosure. Eligible Entity agrees not to disclose the Confidential Information to third parties or to any of Eligible Entity's employees except employees who are required to have the Confidential Information in order to further the purposes of this Agreement and have been apprised of the confidential nature of the Confidential Information. Eligible Entity agrees that it will follow the same internal security procedures and exercise the same degree of care regarding the secrecy and confidentiality of the Confidential Information as similar information of Eligible Entity is treated by Eligible Entity or within Eligible Entity's organization, but Eligible Entity agrees that it will take no less than all reasonable steps to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of unauthorized persons. Eligible Entity agrees to notify SUNRx in writing of any misuse or misappropriation of such Confidential Information which may come to its attention. If Eligible Entity is required by a government body or court of competent jurisdiction to disclose any Confidential Information, Eligible Entity agrees to give SUNRx reasonable advance notice so that SUNRx may contest the disclosure or seek a protective order. The Confidential Information shall remain the property of SUNRx.
- 8.3. Non-use. Eligible Entity further agrees not to use the Confidential Information provided to it by SUNRx for any purposes other than the facilitation and use of SUNRx's services under this Agreement.
- 8.4. Return of Materials. Any materials or documents which have been furnished to Eligible Entity by SUNRx shall be promptly returned, accompanied by all copies of such documentation, within five (5) days after receipt by Eligible Entity of a written notice from SUNRx requesting the return of the Confidential Information.
- 8.5. Continuing Nondisclosure and Confidentiality Obligation. The covenants pertaining to confidentiality, nondisclosure and non-use in this Agreement shall remain in full force following termination of this Agreement, unless and until SUNRx specifically agrees in writing to release all or part of the Confidential Information from the confidential restrictions imposed by this Agreement.

9. Exclusivity. 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.

10. Miscellaneous

- 10.1. Insurance. SUNRx shall secure and maintain, at its own expense, general and professional liability insurance or self-insurance in the amounts of \$1,000,000 per occurrence and \$2,000,000 in an annual aggregate to insure SUNRx against claims for damages arising from the activities of SUNRx, its subcontractors or their respective employees in performing any service in connection with this Agreement.
- 10.2. Worker Status. SUNRx and Eligible Entity agree that SUNRx is an independent contractor, and not an employee of Eligible Entity, and that in accordance with such status as an independent contractor, SUNRx's employees and agents shall not hold themselves out as, nor claim to be, officers or employees of Eligible Entity by reason hereof. SUNRx acknowledges that its employees and agents shall not, by virtue of this agreement, have any

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right to make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Eligible Entity, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.

- 10.3. HIPAA Compliance. Eligible Entity and SUNRx acknowledge and agree that this Agreement shall be subject to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and regulations promulgated thereunder, as amended from time to time. A Business Associate Agreement is Attached as Exhibit III.
- 10.4. Force Majeure. Except for payment obligations, neither Party shall be liable, nor deemed to be in default, for any delay or failure in performance under this Agreement or other interruption of service or employment deemed resulting, directly or indirectly, from Acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Party's employees, or any similar or dissimilar cause beyond the reasonable control of either Party.
- 10.5. Assignment. This Agreement may be assigned by either Party without the prior written consent of the other Party.
- 10.6. Notices. All notices and requests hereunder by either Party shall be in writing and, except as otherwise specified in this Agreement, directed to the address of the parties as follows, either in person or by certified mail, return receipt requested, and shall be effective upon delivery:

If to Eligible Entity:

Daniel Reid, Assistant Deputy Director
Santa Barbara County Public Health Department
300 N. San Antonio Road
Santa Barbara, CA 93110

If to SUNRx:

Timothy A. Liebmann
Chairman and Chief Executive Officer
SUNRx
3260 Tillman Drive, Suite 75
Bensalem, PA 19020

- 10.7. No Waiver. No delay or failure by any Party to exercise any right under this Agreement, nor any partial exercise of any such right, shall constitute a waiver of such right or any other right. The waiver by any Party of the breach of any terms and conditions of, or any right under, this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition or of any similar right. No waiver shall be binding or effective unless expressed in writing and signed by an authorized representative of the Party giving such waiver.
- 10.8. Governing Law. This Agreement and all disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of California, without regard to conflict of law rules.
- 10.9. Change in Law or Practice; Equitable Adjustments. In the event any applicable Law, drug industry practice, or any policy, underwriting or management practice of a regulatory body, or

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340B Eligible Entity, is modified through amendment, addition, deletion, interpretation or otherwise after the execution of this Agreement; or if 340B Eligible Entity becomes aware of any Law (regardless of whether it existed on the Effective Date) that materially alters the rights or obligations of SUNRx hereunder, 340B Eligible Entity will promptly notify SUNRx and the parties will attempt to equitably adjust the terms of this Agreement to take such modification(s) or applicable Law into account and preserve each party's anticipated benefits under this Agreement. If unable to agree upon an equitable adjustment within sixty (60) days after either party notifies the other of such change, this Agreement may be terminated immediately upon written notice by either party.

- 10.10. Compliance with Law. Each Party agrees to comply with all applicable Federal, State, and local laws in performing its obligations hereunder, including but not limited to the Federal and anti-kickback and self-referral laws and regulations at all times during the term of this Agreement.
- 10.11. Severability. If this Agreement contains any unlawful provision which is not an essential part of this Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either Party, be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event HRSA or another government agency issues guidance or requirements providing that the contracting model contemplated herein is not permitted, 340B Eligible Entity agrees to make such amendments to this Agreement as may be required to comply with the law or agency interpretation.
- 10.12. Counterparts/Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed by both Parties. This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the party.
- 10.13. Entire Agreement and Amendments. This Agreement, including all exhibits and attachments hereto, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, writings, agreements and understanding between the parties, whether oral or written. No amendment or modification of this Agreement shall be binding or effective unless expressed in writing and signed by an authorized representative of each Party.
- 10.14. Survival. Any provision of this Agreement which by its terms requires, given its context, that it survive the termination of this Agreement so as to effectuate the intended purposes and agreements of the parties, shall survive notwithstanding the termination of this Agreement.
- 10.15. Database Limitation. SUNRx's subcontractor relies on First Data Bank or other industry comparable databases in providing Eligible Entity and Eligible Patients with pricing, claims adjudication and drug utilization review services, SUNRx for virtual inventory and other related databases, and the 340B prime vendor, drug manufacturers, and 340B qualified wholesalers for 340B Covered Drug pricing information. SUNRx's subcontractor has utilized due diligence in collecting and reporting the information contained in its databases and has obtained such information from sources believed to be reliable. In addition, the data available from SUNRx's subcontractor through the databases and services identified in this Agreement is limited by the amount, type and accuracy of information made available to SUNRx's

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subcontractor by Eligible Entity, 340B Contract Pharmacies, Eligible Patients, and prescribers. SUNRx's subcontractor has no obligation to acquire information about an Eligible Patient beyond that provided as part of the Eligible Patient list provided by Eligible Entity and Claims information submitted by 340B Contract Pharmacies. SUNRx's subcontractor does not warrant the accuracy of reports, alerts, codes, prices or other data contained in such databases. The clinical information contained in these databases is not intended as a supplement to, or a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals involved in an Eligible Patients' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate or effective for any Eligible Patient. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, SUNRX'S SUBCONTRACTOR DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE SUNRX'S SUBCONTRACTOR'S SOFTWARE SYSTEM AND SUNRX'S VIRTUAL INVENTORY SYSTEM.

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Agreement for services of Independent Contractor between the **County of Santa Barbara** and **SUNRx, LLC**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County.

COUNTY OF SANTA BARBARA

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

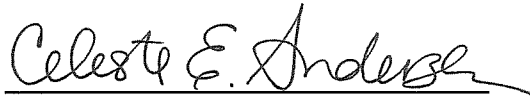


Chair, Board of Supervisors

By:  _____
Deputy Clerk

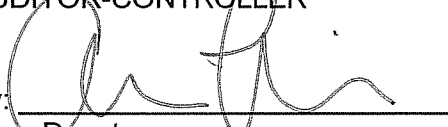
Date: 10-19-12

APPROVED AS TO FORM:
FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By:  _____
Deputy County Counsel

APPROVED AS TO ACCOUNTING

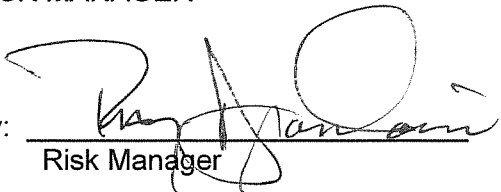
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By:  _____
Deputy Auditor-Controller
Gregory Eric Levin
Advanced and Specialty Accounting

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR/HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

By:  _____
Director

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGER


By:  _____
Risk Manager

dep.

Agreement for Services of Independent Contractor between the County of Santa Barbara and **SUNRx, LLC**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County.

CONTRACTOR
SUNRx, LLC.

By:  _____

Name: Tim Liebmann, Chief Executive Officer

Date: 5-31-12

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EXHIBIT I DEFINITIONS

340B Covered Drugs. Those outpatient prescription drugs purchased by the Eligible Entity at 340B prices and dispensed to Eligible Patients of the Eligible Entity.

Contract Pharmacy. A licensed retail pharmacy which enters into a Pharmacy Services Agreement with Eligible Entity and SUNRx to dispense 340B Covered Drugs to Eligible Patients in accordance with HRSA's Contract Pharmacy guidelines.

340B Prescription Drug Services. The prescription drug services to be rendered by SUNRx in accordance with this Agreement.

Administrative Fee. The fees payable to SUNRx pursuant to this Agreement.

Authorized Provider. A physician or other healthcare provider employed by, under contract with, or in a referral arrangement with Eligible Entity to provide healthcare services to an Eligible Patient.

Claims Processor. SUNRx or a pharmacy claims processor which serves as a subcontractor to SUNRx, which provides prescription claims processing, eligibility verification and other mutually agreed upon services to the Eligible Entity.

Co-Payment. Those deductibles, co-payments, coinsurance or other cost sharing amounts which may be charged to an Eligible Patient for 340B Covered Drugs.

340B Dispensing Fee. The amount payable to Contract Pharmacy as set forth in the Pharmacy Services Agreement which shall be entered into by the Eligible Entity, the Contract Pharmacy and SUNRx.

Pharmacy Plan. The 340B Formulary established by the Eligible Entity including varying co-payments, deductibles, maximum quantities, maximum days, benefit eligibility, and benefit limitations, and the corresponding accurate price calculations

Switch. A contractor engaged by Contract Pharmacy to provide the service of transmitting data between the Contract Pharmacy and other entities in connection with the processing of Claims, or a subcontractor engaged by SUNRx to provide the service of transmitting such data in connection with the processing of Claims.

Third Party Payments. Any payments made on behalf of an Eligible Patient or reimbursed to an Eligible Patient by a Third Party Insurer.

Third Party Claim. A Third Party Claim is a claim that has been submitted to a third party payor (i.e., managed care organizations, health insurers, etc., or PBM, which may include Eligible Entities PBM) for payment outside and apart from this Agreement, but which: (i) originated from a legally qualified health care provider affiliated with Eligible Entity for a drug dispensed to an Eligible Patient.

Wholesaler. The wholesale distributor of 340B Covered Drugs from which the Eligible Entity purchases 340B Covered Drugs.

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**EXHIBIT II
FEE SCHEDULE***

	<u>Standard Price</u>	<u>PVP Price</u>
<u>Contract Pharmacy:</u>		
For Cash Claims Adjudicated at U&C	\$0.00	\$0.00
For Cash Claims Adjudicated at Network	\$0.99 Per Claim	\$0.89 Per Claim
For Cash Claims Adjudicated at 340B	\$3.40 Per Claim	\$2.95 Per Claim
For Third Party Claims that become 340B	\$5.85 Per Claim	\$5.27 Per Claim
<u>Owned In-House Closed Door Pharmacy:</u>		
For Cash Claims Adjudicated at U&C	N/A	N/A
For Cash Claims Adjudicated at Network	N/A	N/A
For Cash Claims Adjudicated at 340B	\$0.99 Per Claim	\$0.89 Per Claim
For Third Party Claims that become 340B	\$0.99 Per Claim	\$0.89 Per Claim
<u>Specialty Pharmacy:</u>		
For Cash Claims Adjudicated at U&C	\$0.00	\$0.00
For Cash Claims Adjudicated at Network	\$0.99 Per Claim	\$0.89 Per Claim
For Cash Claims Adjudicated at 340B	\$6.40 Per Claim	\$5.76 Per Claim
For Third Party Claims that become 340B:		
\$50.99 or below	\$10.85 Per Claim	\$9.77 Per Claim
\$51.00 – \$98.99	\$19.85 Per Claim	\$17.87 Per Claim
\$99.00 or Higher	\$39.85 Per Claim	\$35.87 Per Claim
<u>Program Specific Claims</u>		
For Persistence Program Monitored Claims	\$1.15 Per Claim	N/A

***SUNRx shall, at its sole option, with or without advance notice to Eligible Entity, have the right to apply a reduced or discounted SUNRx administrative fee or Flex Fee to any Claim as SUNRx may see fit in order to enable SUNRx and the Eligible Entity to capture additional claims for the 340B processing.**

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EXHIBIT III
HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)
Revised May 19, 2010

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (PHI) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (HIPAA Regulations) and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

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- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information** or **PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation

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of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section

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164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs

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the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].

- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Notification of Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- m. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

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- n. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

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4. Certification

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

5. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

6. Assistance in Litigation of Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

7. No Third-Party Beneficiaries

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

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8. Effect on Agreement

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

9. Entire Agreement of the Parties

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

10. Interpretation

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

11. Costs Related to Inappropriate Use, Access or Disclosure of PHI

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

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Exhibit IV
PARTNERSHIP AGREEMENT OUTLINE

1. Savings Share

PBM will allocate any savings resulting from claim adjudication under 340B Drug Pricing as compared to PLAN network pricing as follows:

1.1 For (a) claims adjudicated during the six (6) month period following the Program Commencement Date, regardless of whether or not the Contract Pharmacy Minimum Participation Level is met; and (b) claims adjudicated thereafter, provided that the Contract Pharmacy Minimum Participation Level is met:

- ENTITY In-House Pharmacy non-Specialty Claims: 100% to ENTITY
- Contract Pharmacy non-Specialty Claims: 75% to PLAN, 25% to ENTITY
- All Specialty Claims: 75% to PLAN, 25% to ENTITY

Satisfaction of the Contract Pharmacy Minimum Participation Level shall be initially measured immediately after the first six month period following the Program Commencement Date. If, at that time, the Contract Pharmacy Minimum Participation Level has been met, the allocation of savings shall remain as indicated in Subsection 1.1 above. However, if, based on the same measurement period, the Contract Pharmacy Minimum Participation Level has not been met, the allocation of savings shall be as indicated Subsection 1.2 below.

1.2 For claims adjudicated more than six months after the Program Commencement Date, if the Contract Pharmacy Minimum Participation Level is not met:

- ENTITY In-House Pharmacy non-Specialty Claims: 50% to PLAN, 50% to ENTITY
- Contract Pharmacy non-Specialty Claims: 50% to PLAN, 50% to ENTITY
- All Specialty Claims: 75% to PLAN; 25% to ENTITY

In the event that Contract Pharmacy Minimum Participation Level has not been met, and savings are allocated in accordance with Subsection 1.2, above, then satisfaction of the Contract Pharmacy Minimum Participation Level shall be measured monthly following the end of each month, until such time as the Contract Pharmacy Minimum Participation Level is met. When the Contract Pharmacy Minimum Participation Level is met, the allocation of savings shall return to the allocations indicated in Subsection 1.1, above.

Thereafter, the Contract Pharmacy Minimum Participation Level shall be measured annually, with the initial annual measurement to take place on the first annual anniversary of the month in which the Contract Pharmacy Minimum Participation Level was first met.

For purposes of this section the following terms shall have the meanings set forth below.

“Contract Pharmacy” shall mean any pharmacy not owned and operated by ENTITY that enters into a contract with ENTITY (directly or indirectly through a pharmacy benefits manager) to dispense prescriptions to ENTITY’s Eligible Patients.

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“Contract Pharmacy Minimum Participation Level” shall mean that the aggregate amount of prescriptions dispensed under the 340B Program by non-Specialty Contract Pharmacies, measured at PLAN's network rate then in effect, is equal to:

- \$140,000 during the period between six (6) and twelve (12) months following the Program Commencement Date;
- annually thereafter, the twelve-month moving average of the price of non-Specialty prescriptions dispensed to the Target Patient Group by County In-House Pharmacies.

“ENTITY” is the County of Santa Barbara Public Health Department, an organization approved by the State Department of Health Services as a Federally Qualified Health Center (FQHC).

“In-House Pharmacy” shall mean a pharmacy owned by the County of Santa Barbara and operated by ENTITY.

“Program Commencement Date” shall mean the date on which claims are first adjudicated under the 340B Program described herein.

“PLAN” is the Santa Barbara San Luis Obispo Regional Health Authority, dba CenCal Health, a body corporate and politic.

“Specialty Claims” shall mean all claims for medications dispensed at CenCal Health contracted Specialty Pharmacies. Specialty Pharmacy contracts are the sole responsibility of CenCal Health.

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