

**ADMINISTRATIVE SERVICES AGREEMENT**

**BY**

**340B HOLDINGS, LLC (AKA SUNRx)**

**AND**

**SANTA BARBARA COUNTY PUBLIC HEALTH DEPARTMENT**

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This Administrative Services Agreement ("**Agreement**") is effective as of the date of last signature below ("**Effective Date**"), by 340B Holdings, LLC ("**SUNRx**"), a limited liability company organized under the laws of the State of Delaware, whose principal place of business is located at 3220 Tillman Drive, Suite 104, Bensalem, PA 19020, and Santa Barbara County Public Health Department ("**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**"). This Agreement replaces the terms of all prior agreements between the Parties.

### Recitals

A. SUNRx is a 340B Administrator 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. 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 ("**PPA**") with the United States Department of Health and Human Services ("**HHS**"). For the purposes of this Agreement and unless otherwise expressly stated herein, 340B Covered Drugs shall exclude drugs dispensed to Medicaid beneficiaries unless Contract Pharmacy, Eligible Entity and the applicable State Medicaid Agency have established an arrangement which will prevent duplicate discounts and/or rebates, or as otherwise permitted by law.

C. Section 340B permits Covered Entities, including those with on-site outpatient pharmacies, to establish Contract Pharmacy arrangements to provide pharmacy services to Eligible Patients of the Covered Entity. Section 340B further permits Covered Entities to engage the services of a third party for the purpose of managing a pharmacy program consistent with Section 340B requirements.

D. Eligible Entity desires to enter into this Agreement with SUNRx whereby SUNRx will assist Eligible Entity (i) by negotiating and managing Eligible Entity's Contract Pharmacy arrangements in accordance with pre-approved terms set forth in the 340B Addendum to the MedCare Pharmacy Network agreement between MedImpact Healthcare Systems, Inc. ("**MedImpact**"), SUNRx, and each Contract Pharmacy (Exhibit VI); and (ii) facilitate the signing of an Acknowledgment Agreement between Eligible Entity and such Contract Pharmacies; and, (iii) by managing Eligible Entity's 340B Covered Drug inventory and pricing.

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 receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Terms used in this Agreement, unless otherwise defined herein, shall have the meaning set forth in Exhibit I.

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. **Cash Drug Programs.** SUNRx will establish or enable access for Eligible Entity to three different drug pricing models for Eligible Patients that are cash (uninsured) patients at Point of Service ("**POS**"):

- 1.1.1. Usual and Customary (which is the price that Contract Pharmacy charges its uninsured patients) (“**U&C**”);
  - 1.1.2. 340B priced drugs (i.e. the 340B Drug Price); and
  - 1.1.3. The Network Rate. The Network Rate shall be the rate, as modified from time to time by the MedImpact and SUNRx based on prevailing market conditions, which SUNRx, in connection with MedImpact, 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. Network Rate, as defined in the Agreement, shall be excluded for non-340B claims adjudicated through CVS.
  - 1.1.4. SUNRx shall utilize its POS claims adjudication system to compare drug prices under each of the above drug pricing models at the time a prescription for an uninsured Eligible Patient is presented, including applicable 340B Dispensing Fees, SUNRx Administrative Fees, and Eligible Entity administration fees, if any. The POS claims adjudication system shall identify which of the three drug pricing models should be utilized in order to ensure the lowest cost to Eligible Entity for the uninsured Eligible Patient prescription.
- 1.2. Ordering 340B Drugs. SUNRx shall, on behalf of 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 directly to Contract Pharmacy and billed to Eligible Entity.
  - 1.2.1. Safeway 340B Direct. Eligible Entity can utilize the SUNRx virtual inventory tool to view orders, as reported to SUNRx by Safeway 340B Direct, that have been placed to drug Wholesalers in order to replenish stocks of 340B Covered Drugs dispensed to Contract Pharmacy.
- 1.3. 340B Drug Price Changes. The Parties acknowledge that, when virtual inventory is used to track 340B prescriptions for Eligible Patients, drugs are priced by the drug Wholesaler before they are purchased by 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 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. SUNRx will upload the 832 Price Files provided by the wholesaler(s) to update inventory, with the frequency of such uploads contingent upon when the files are received by SUNRx from the wholesalers. Eligible Entity acknowledges and agrees that this variance may have an impact upon the anticipated profit or loss for Eligible Entity for these claims and Eligible Entity shall hold SUNRx and MedImpact harmless for any change in anticipated profit or loss resulting from such variance.
- 1.4. 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 (the “**SUNRx System**”). Eligible Entity’s use of the SUNRx System shall be subject to the License Agreement, attached hereto and incorporated into this Agreement by this reference as Exhibit V (“**License Agreement**”).
- 1.5. Inventory Management. SUNRx shall perform ongoing maintenance and reporting of physical and virtual inventory of Eligible Entity’s 340B Covered Drugs using the SUNRx System.
  - 1.5.1. Safeway 340B Direct. SUNRx shall perform ongoing reporting of physical and virtual inventory of Eligible Entity’s 340B Covered Drugs using the SUNRx System based on information received by Safeway 340B Direct.

- 1.6. Pharmacy Plan/Formulary. SUNRx agrees to assist Eligible Entity in developing and loading Eligible Entity's Pharmacy Plan, including the applicable Wholesaler price files for the 340B Formulary into the SUNRx System. SUNRx shall implement changes in the Pharmacy Plan requested by Eligible Entity in writing within thirty (30) calendar days after receipt of such request.
- 1.7. Claims Processing.
  - 1.7.1. SUNRx shall contract with MedImpact to provide, electronic claims processing and claims reporting as required by this Agreement. Upon termination of this Agreement, only those claims which are for prescriptions dispensed by Contract Pharmacy prior to the termination date and which are received by MedImpact within thirty (30) days of the termination date shall be processed.
  - 1.7.2. SUNRx agrees to process claims accurately based on eligibility, formulary, sliding scale and provider files received from Eligible Entity.
- 1.8. 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.
- 1.9. 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 Eligible Entity at the then-current SUNRx custom programming hourly rate. SUNRx will provide standard utilization data to Eligible Entity at no additional cost.
- 1.10. Securing Contract Pharmacy Services. SUNRx shall negotiate with Contract Pharmacies at various average wholesale price ("AWP") discounts, dispensing fees and compensation terms throughout the term of this Agreement for Network Claims as described in Section 1.1.3. Eligible Entity and Eligible Patients shall be charged the fixed Network Rate set forth in Exhibit II. This rate represents the AWP discount payable by Eligible Entity and Eligible Patients on Network Claims, which may be greater or less than the actual rate negotiated with each Contract Pharmacy. Eligible Entity and Eligible Patient shall not be liable for any shortage and SUNRx shall retain any overage between the reimbursements paid to Contract Pharmacies for Network Claims and the negotiated pharmacy Network Rate.
  - 1.10.1. SUNRx shall take the following measures to establish and secure Contract Pharmacy arrangements on behalf of Eligible Entity.
    - 1.10.1.1. SUNRx agrees to use reasonable industry efforts to locate and provide Contract Pharmacy(ies) in areas as needed and requested by Eligible Entity.
    - 1.10.1.2. SUNRx agrees to use commercially reasonable efforts to secure an executed 340B Addendum to the MedCare Pharmacy Network agreement, a template of which is attached hereto and incorporated by reference as Exhibit VI ("**340B Addendum**"), between and among Contract Pharmacy, MedImpact, and SUNRx on behalf of Eligible Entity, which shall set forth the obligations and responsibilities of each of the parties to the 340B Addendum and those of Eligible Entity. SUNRx shall assist Eligible Entity and Contract Pharmacy in ensuring that the 340B Addendum comports with HRSA's contract pharmacy guidelines. SUNRx shall provide Eligible Entity with a list of material deviations from the 340B Addendum for each applicable Contract Pharmacy ("**Deviation**").

**Notice**). If a subsequent change is made to the 340B Addendum that materially changes an obligation of Eligible Entity (other than a change to 340B Dispensing Fee as outlined below), SUNRx shall provide Eligible Entity and Contract Pharmacy with an amendment to the Acknowledgement Agreement to the 340B Addendum for review and approval. The Parties acknowledge and agree that the registration period for registration of Contract Pharmacy with OPA shall be as follows: January 1 – January 15 for an effective start date of April 1; April 1- April 15 for an effective start date of July 1; July 1 – July 15 for an effective start date of October 1; October 1- October 15 for an effective start date of January 1. If the 15<sup>th</sup> falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day. The Contract Pharmacy registration process is not complete unless the registration form has been completed in its entirety and the original, signed copy is received by OPA. Signed Contract Pharmacy registration forms are due to OPA within 15 days from the time online registration was completed and incomplete packages will not be considered.

1.10.2. Safeway 340B Direct. Eligible Entity acknowledges that any obligations that SUNRx has under the Agreement to secure Contract Pharmacies on behalf of the Eligible Entity are not applicable for Contract Pharmacies using Safeway 340B Direct.

1.11. 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):

1.11.1. Contract Pharmacy will be entitled to fixed 340B Dispensing Fees on all 340B captured claims in the amounts agreed to with each Contract Pharmacy. SUNRx will use commercially reasonable efforts to negotiate a fair, commercially reasonable 340B Dispensing Fee as is possible with each Contract Pharmacy and Eligible Entity hereby grants SUNRx the authority to contract for 340B Dispensing Fees within the following ranges:

- Cash claims: \$10-\$20 per each 340B claim.
- Third Party captured claims: Varies in accordance with agreed upon rates as between Contract Pharmacy and Eligible Entity for each 340B Third Party captured claim.
- Specialty drugs: Varies in accordance with each Contract Pharmacy's Acknowledgement Agreement with Eligible Entity.

SUNRx shall obtain Eligible Entity's prior written consent for any 340B Dispensing Fees that exceed these limits and the Parties agree no consent is required for any 340B Dispensing Fee agreed to below such ranges.

1.11.2. Authorized 340B Dispensing Fee Structures. Eligible Entity acknowledges that 340B dispensing fees for Contract Pharmacies using Safeway 340B Direct are governed by the Safeway 340B Direct agreement.

1.12. Record Keeping.

1.12.1. SUNRx System will report to Eligible Entity on all drug claim and drug purchase transactions during the term of this Agreement.

1.12.2. SUNRx shall provide Eligible Entity with electronic access to portions of the SUNRx System necessary to enable Eligible Entity to comply with its obligations under this Agreement in accordance with the License Agreement.

- 1.12.3. Eligible Entity shall review such reports promptly upon receipt, and shall report any errors within ninety (90) calendar days of receipt. All such reports shall be deemed complete and accurate unless Eligible Entity notifies SUNRx otherwise within this ninety (90) day period unless dictated otherwise by a specific Contract Pharmacy's error reporting requirements.
  - 1.12.4. Upon termination of this Agreement, 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 unless otherwise agreed to herein.
  - 1.12.5. Eligible Entity agrees that the aggregate compilations of information contained in any and all databases developed by SUNRx or its designees, and any prior and future versions thereof, are the property of SUNRx and protected by copyright which shall be owned by SUNRx.
  - 1.12.6. SUNRx, its agents, employees, and contractors shall have the right to use, reproduce, and adapt all information obtained in connection with this Agreement, and any prior agreement with Eligible Entity, to render services to its clients and to develop new products and services which may be outside the scope of this Agreement. Any work, compilation, processes, or inventions developed by SUNRx or its agents, employees, or contractors pursuant to this Agreement shall be owned by SUNRx and although shall be deemed confidential information will, nonetheless, be subject to the California Public Records Act.
- 1.13. Collection and Payment.
- 1.13.1. Contract Pharmacy shall bill third party Payors on behalf of Eligible Entity for drugs dispensed to Eligible Patients.
  - 1.13.2. SUNRx shall provide, through MedImpact, financial reconciliation and funds distribution to all Parties. MedImpact shall collect from Contract Pharmacy Co-Payments and applicable Clinic Fees from Eligible Entity Patients and Third Party Payments made by Payors to the Contract Pharmacy less the 340B Dispensing Fee and any other applicable fees. MedImpact shall transfer these funds to the Eligible Entity, less the SUNRx Administrative Fee. MedImpact shall then distribute to SUNRx its Administrative Fee. Notwithstanding, MedImpact shall not be required to pay the Eligible Entity or SUNRx until MedImpact collects amounts owed from the Contract Pharmacy.
  - 1.13.3. As to Network Claims, MedImpact is not required to render payments to Contract Pharmacies for Network Claims unless and until MedImpact has received payment for the Claims from Eligible Entity. In the event that MedImpact renders Claims payments to Contract Pharmacies prior to receipt of Claims payment from Eligible Entity, such payments shall not constitute a waiver of any of MedImpact's remedies with respect to non-payment and shall not establish a course of dealing between MedImpact and Eligible Entity.
  - 1.13.4. Any Party owing money shall pay within thirty (30) days of receipt of invoice.
- 1.14. Third Party Claims.
- 1.14.1. SUNRx shall require each Contract Pharmacy to cause its network Switch or other pharmacy claims data provider to provide SUNRx with claims data to enable SUNRx to identify Third Party Claims.
  - 1.14.2. SUNRx shall utilize this Third Party Claims data to attempt to capture for Eligible Entity any differential in price between the amount the Contract Pharmacy received as a Third Party Claim and the 340B Drug Price, hereinafter referred to as the "**Price**

***Margin.***

- 1.14.3. On a regular basis, SUNRx shall aggregate this data and provide MedImpact with sufficient data relating to such Third Party Claims to enable MedImpact to perform the necessary billing adjustments. SUNRx shall aggregate Third Party Claim data in such a way as to prevent the disclosure to MedImpact of confidential Third Party Claims reimbursement information including without limitation the applicable Payor pharmacy rates. SUNRx or MedImpact shall then bill the appropriate amounts due to or received by the Contract Pharmacy in connection with captured Third Party Claims and reconcile all amounts due to the Parties under this Agreement based on the aggregated amounts determined by SUNRx as stated above.
- 1.14.4. Subject to the terms of the applicable 340B Addendum, SUNRx and/or Eligible Entity shall have the right to terminate any applicable Contract Pharmacy relationship in the event that the Third Party Claims data cost(s) exceeds the amounts due to Eligible Entity in connection with captured Third Party Claims during the applicable period for any three consecutive months.
- 1.14.5. Eligible Entity acknowledges, understands, and agrees that Third Party Claim payment amounts are the sole and absolute responsibility of the Contract Pharmacy. Eligible Entity acknowledges, understands, and agrees that if a Contract Pharmacy fails to provide MedImpact with sufficient funds for, or nonpayment of, Third Party Claims, then MedImpact is not obligated to pay Eligible Entity for such claims. Eligible Entity acknowledges, understands, and agrees MedImpact has no liability to Eligible Entity for any delay in payment from a Contract Pharmacy for Third Party Claims. Accordingly, unless otherwise notified by SUNRx as set forth in the immediate subsequent paragraph, Eligible Entity agrees to recover any unpaid balances of Third Party Claims only from Contract Pharmacies. For Third Party Claims, Eligible Entity shall not from MedImpact or SUNRx, make a claim or seek payment above or beyond the amount of payments made to MedImpact and SUNRx, by the applicable Contract Pharmacy, regardless of the cause of any non-payment or delay in payment by a Contract Pharmacy for Third Party Claims.

Notwithstanding, the immediately preceding paragraph, Eligible Entity hereby agrees that upon notification to Eligible Entity: (i) MedImpact may, at MedImpact's sole discretion and on behalf of Eligible Entity, undertake collection efforts against Contract Pharmacies that are delinquent in making payments; (ii) any recovered amounts in excess of the costs incurred by MedImpact shall be payable to Eligible Entity and Eligible Entity shall accept such amount(s) as payment in full of the applicable outstanding Price Margin balance(s) in conformance with this Agreement; and (iii) SUNRx Administrative Fees shall be invoiced to Eligible Entity in the event Contract Pharmacy does not pay or remits insufficient funds and such amounts shall be due and payable by Eligible Entity in accordance with Section 1.14.4. Eligible Entity acknowledges, understands, and agrees that MedImpact is not the Contract Pharmacy and that except as otherwise set forth in this Agreement, there are no third party beneficiaries under this Agreement.

- 1.14.6. In the event that a Contract Pharmacy makes an assignment for the benefit of creditors, files a voluntary or involuntary petition in bankruptcy, is adjudicated insolvent or bankrupt, or a receiver or trustee is appointed, MedImpact shall have the right, but not the obligation, to participate in such proceedings on behalf of Eligible Entity. MedImpact has the right to deduct from amounts otherwise payable to Eligible Entity the Eligible Entity's pro rata share of any reasonable costs and fees (including attorneys' fees) incurred by MedImpact in any such proceedings or any fees incurred by MedImpact (including attorneys' fees) when MedImpact or SUNRx undertakes collection efforts. All such amounts shall become immediately due and owing by Eligible Entity upon notification by MedImpact.

- 1.14.7. In the event Eligible Entity owes Contract Pharmacy for Third Party Claims, Eligible Entity shall remit payment to MedImpact in accordance with Section 1.15.4 of this Agreement and MedImpact, after receipt of such funds, shall remit payment to Contract Pharmacy on behalf of Eligible Entity.
- 1.14.8. CVS Pharmacy. 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.
- 1.14.9. Safeway 340B Direct. SUNRx's obligations for Third Party Claims under the Agreement will generally remain the same for Eligible Entity. The only difference for pharmacies using Safeway 340B Direct will be the that SUNRx will provide claims data to Safeway 340B Direct and Safeway 340B Direct will report back to SUNRx the data approved for billing.
- 1.15. Compliance and Compliance Support.
- 1.15.1. Subject to Eligible Entity's cooperation, direction and supervision, SUNRx shall perform SUNRx's services in accordance with the requirements of Section 340B.
- 1.15.2. From time to time upon the reasonable written request of Eligible Entity, SUNRx shall provide information and guidance to Eligible Entity to assist it to further design Eligible Entity's 340B program ("**340B Program**") and 340B Program related systems, policies, and processes in order to maintain compliance with Section 340B.
- 1.15.3. 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 Eligible Entity of changes and to revise the 340B Program accordingly.
- 1.15.4. Notwithstanding the above, the ultimate responsibility for the compliance with Section 340B and other laws and rules governing Eligible Entity and its 340B Program will remain the responsibility of Eligible Entity.
- 1.16. Persistence Program. In relation to all "**Monitored Claims**" as defined in accordance with this Section, SUNRx shall provide its "**Persistence Program**" services to Eligible Patients. Under SUNRx's "**Persistence Program**" SUNRx shall, on behalf of Eligible Entity: (i) monitor Eligible Patient adherence to medication therapies prescribed in connection with Monitored Claims; (ii) provide Eligible Patient outreach to alert the Eligible Patient and/or Authorized Provider in the event of non-compliance; and (iii) encourage Eligible Patients to comply with medication therapies or to seek the advice of the applicable Authorized Provider. 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) as mutually agreed to, any other claim type as may be requested by Eligible Entity.
- 1.17. True-Up Reporting. Safeway 340B Direct will periodically identify claims that need to be trued-up based the reconciliation of inventory owed to the Contract Pharmacy. After a claim has been identified to be trued-up, Safeway 340B Direct will determine the financial amount due from the Eligible Entity and will provide this information to SUNRx. SUNRx will make this information available in a report to the Eligible Entity.

## 2. Obligations of Eligible Entity

- 2.1. Covered Entity. Eligible Entity shall take reasonable steps to maintain its status as a Covered Entity as defined in Section 340B. In the event that Eligible Entity no longer qualifies as a 340B Covered Entity, Eligible Entity shall immediately notify SUNRx in writing. Eligible Entity acknowledges it has ultimate responsibility for its 340B Program, including



compliance with Section 340B and other laws and rules governing its 340B Program and Eligible Entity.

- 2.2. Eligible Patients. 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, Payor and enrollment status in a governmental program, including Medicaid and Medicare, as applicable. Eligible Entity shall provide prompt updates and changes to such information for Eligible Patients in 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 notify SUNRx in writing of any suspension, termination or revocation of any physician's license. SUNRx will enter such changes in the SUNRx System.
- 2.4. Payments for Services. Eligible Entity shall pay SUNRx Administrative Fees in accordance with the fee schedule attached as Exhibit II hereto and incorporated by reference. Eligible Entity shall also pay 340B Dispensing Fees to Contract Pharmacy in accordance with terms set forth in the 340B Addendum or Exhibits thereto.
  - 2.4.1. Third Party Claims. Eligible Entity shall be responsible for the Switch fee outlined in Exhibit II for each and every claim captured from the Switch attributable to: (i) a Contract Pharmacy for the purchase of Third Party Claims data from retail network switches, (ii) Contract Pharmacy, (iii) pharmacy billing company or other data provider, and (iv) SUNRx performing the storage, retrospective review, and data analytical services to maximize the capture of Third Party Claims.
- 2.5. Patient Choice. Eligible Entity shall recognize the right of an Eligible Patient to elect not to use Eligible Entity's 340B Program for pharmacy services and to 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 a Contract Pharmacy, by an Eligible Patient, or by unauthorized persons using an Eligible Patient's identification.
- 2.7. Contract Pharmacy. In addition to the obligations set forth herein, Eligible Entity agrees to comply with its respective obligations to the 340B Addendum (Exhibit VI). SUNRx shall provide Eligible Entity with a list of material deviations from the 340B Addendum for each applicable Contract Pharmacy ("**Deviation Notice**") and if agreeable, Eligible Entity and each Contract Pharmacy shall execute their respective Exhibit 6 ("**Acknowledgement Agreement**") to the 340B Addendum. If a subsequent change is made to the 340B Addendum that materially changes an obligation of Eligible Entity (other than a change to Dispensing Fee as outlined below), SUNRx shall provide Eligible Entity and Contract Pharmacy with an amendment to the Acknowledgement Agreement to the 340B Addendum for review and approval. Eligible Entity shall have 30 (30) business days to execute said amendment and return to SUNRx. Eligible Entity understands and agrees that failure to approve and execute said amendment may result in the Contract Pharmacy terminating services to Eligible Entity.
- 2.8. Ordering 340B Drugs. Eligible Entity shall execute the necessary purchasing agreements with each drug Wholesaler to enable the replenishment of drugs to the Contract Pharmacies in conformance with Section 1.3 of this Agreement.
- 2.9. GPO Exclusion. In compliance with Section 340B, Eligible Entity understands and agrees

that Eligible Entity may not purchase covered outpatient drugs through a GPO or other group purchasing arrangement (“**GPO Pricing**”) for network claims and in the event Eligible Entity submits pricing files and/or drug lists to SUNRx, Eligible Entity represents and warrants that such information shall not include, or consist of drugs purchased under GPO Pricing.

- 2.10. Additional VPN Set-Up Fee. Eligible Entity shall be responsible to SUNRx for the additional VPN set-up fee outlined in Exhibit II each time Eligible Entity requests SUNRx to add a new outpatient center or clinic, or switch Eligible Entity's EMR (electronic medical record) vendor, after implementation of Eligible Entity's 340B Program, and either a new data feed is required, or an existing data feed is required to be re-established. The fee SUNRx incurs from its VPN vendor as set forth in Exhibit II will be passed-through to Eligible Entity. Eligible Entity authorizes SUNRx to deduct any such additional VPN set-up fee(s) from the Price Margin payment owed to Eligible Entity until the balance is paid in full.

### **3. Audits**

- 3.1. Right to Audit Claims and Business Records. 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 PPA with HHS, which audits may pertain to Eligible Entity's compliance with the prohibition on drug resale or transfer (i.e. diversion) or the prohibition against duplicate discounts. The Parties further understand that HRSA has published guidelines pertaining to manufacturer audits. During the term of this Agreement and for four (4) years thereafter, Eligible Entity and representatives of HRSA or drug manufacturers (as defined above) may inspect and audit, once annually, SUNRx's (and to the extent required by law those of MedImpact), business records that directly relate to billings made to Eligible Entity for claims. During the term of this Agreement and for one (1) year thereafter SUNRx or its designee may inspect and audit, or cause to be inspected and audited, once annually, the books and records of Eligible Entity directly relating to this Agreement, including, without limitation, the existence and number of Eligible Patients. Eligible Entity and SUNRx shall fully cooperate with each other, with independent accountants hired by either Party or by drug manufacturers (as defined above) and with representatives of HRSA, to conduct any such inspection or audit. Such audits shall be at the auditing party's sole expense and shall only be made during normal business hours, following ninety (90) days written notice, without undue interference to the audited party's business activity, and in accordance with reasonable audit practices. An audit of SUNRx's or MedImpact's records shall be conducted at the respective headquarters of SUNRx or MedImpact and shall be limited to transactions over the twelve (12) month period immediately preceding such audit. In addition, at no time may any individual claim be subject to an audit more than once and the audited period may not be reaudited once the audit is completed. If a completed audit reveals a discrepancy in the results and the previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy. The Parties shall use reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the Parties. Upon a final and conclusive determination of a discrepancy revealed by an audit procedure under this Agreement, the affected claims will be appropriately adjusted and the Party that owes money shall pay such sums to the other Party within thirty (30) days of the delivery of the conclusive audit findings; provided that such audit findings are delivered no later than fifteen (15) months after the termination of this Agreement for any reason.

### **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 Effective Date and shall continue until June 30, 2021 ("Term"), unless otherwise terminated as indicated below.

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 ninety (90) days after the non-breaching Party provides written notice to the breaching Party specifying in detail the nature of the breach.

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 340B Addendum applicable to SUNRx;

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 340B Covered Entity in the Section 340B program;

5.2.3.2. If Eligible Entity is subject to an enforcement action for violating Section 340B program requirements.

5.2.3.3. If Eligible Entity fails to comply with its responsibilities outlined in the 340B Addendum applicable to Eligible Entity.

5.2.3.4. If for a full calendar quarter during the term, Eligible Entity's 340B Program fails to result in a minimum average of at least 500 340B priced claims per month.

5.2.4. Termination due to termination of Medicaid MCO. Both Parties agree that this Agreement can be terminated immediately by Eligible Entity upon written notice to SUNRx upon the termination of the contract between Santa Barbara County and its Medicaid Managed Care Organization (MCO).

5.2.5. Termination due to Inability to Secure Contract Pharmacy relationship. This Agreement can be terminated by either Party if no Contract Pharmacy relationship is secured within six months of the date of this Agreement.

5.2.6. Mutual Agreement. The Parties may terminate this Agreement by mutual written consent.

5.2.7. 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 rights, obligations, or anticipated benefits of a Party, (iii) results in a material decrease in 340B Program utilization, (iv) jeopardizes the tax-exempt status of a Party, or (v) creates a significant risk of civil penalties resulting from a change or interpretation in law, the Parties shall use their best efforts during the ninety (90) day period thereafter to mutually agree to such amendments to the Agreement as to permit its valid and legal continuation. If, after such ninety (90) day period, the Parties are unable to agree to amend the Agreement, either Party may terminate the Agreement effective immediately by giving written notice of such termination to the other Party.

- 5.2.8. Termination Due to Bankruptcy. Either Party may terminate this Agreement by written notice if the other Party applies for or consents to the appointment of a receiver, trustee, or liquidator, files a voluntary petition-in-bankruptcy, admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files 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 ninety (90) consecutive days.
- 5.2.9. Termination of Contract Pharmacy Due to Non-Payment. SUNRx may terminate a Contract Pharmacy due to non-payment by a Contract Pharmacy that is not cured to the satisfaction of SUNRx and/or MedImpact. SUNRx will coordinate with Eligible Entity to notify affected Eligible Patients utilizing the terminated Contract Pharmacy and when necessary, contracting with a replacement pharmacy.
- 5.2.10. Responsibilities upon Termination – Eligible Entity Data. Unless otherwise agreed to herein upon termination or expiration of this Agreement, SUNRx shall either return or destroy, in SUNRx's sole discretion, 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 or to the extent possible, that of its agents and subcontractors. However, if SUNRx determines that neither return nor destruction of such information is feasible and notifies Eligible Entity in writing of that determination, SUNRx may retain all copies of files or other materials related to Eligible Entity's patients provided that SUNRx: (a) continues to comply with the relevant provisions of this Agreement for as long as it has such information; and (b) further limits uses and disclosures of such information to those purposes that make its return or destruction infeasible. Notwithstanding, should such files or materials require retention in accordance with law, regulation or guidance, SUNRx shall retain the files and materials in accordance with its document retention policies.
- 5.2.11. Responsibilities upon Termination – Operations. Upon the termination of Services, SUNRx shall take the following actions:
- Notify all departments internal to SUNRx and MedImpact of Eligible Entity's termination.
  - Notify wholesalers of termination.
  - Notify Contract Pharmacies of termination and obtain a signed Termination Acknowledgement Agreement.
  - Work with Eligible Entity and Contract Pharmacies to ensure all inventory and payments have been reconciled appropriately.

In the event this Agreement is terminated with less than thirty (30) days' notice to SUNRx, both Parties agree that any monies owed to either Party will continue to be distributed accordingly after the termination date while SUNRx performs its

responsibilities upon termination as described in this Section 5.2.11, provided that such responsibilities shall not exceed thirty (30) days past the termination date.

- 5.2.12. 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 each Contract Pharmacy by Eligible Entity within thirty (30) calendar days after the date of termination.
- 5.2.13. 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 Eligible Entity, thus creating a liability on the part of Eligible Entity. Within thirty (30) days of termination, an inventory adjustment shall be completed as follows: (a) MedImpact, after receipt of funds from Eligible Entity, will reimburse the Contract Pharmacy for Contract Pharmacy's inventory of drugs dispensed as 340B Covered Drugs which have not and will not be replenished, based on the Network Rate for such affected prescriptions as if they were sold as non-Covered Drugs minus the 340B Dispensing Fee received by the Contract Pharmacy for such drugs, or the rate the Payor originally paid for such drugs as a Third Party Claim minus the 340B Dispensing Fee to the Contract Pharmacy for such drugs after receipt of those amounts (funds) from Eligible Entity, and (b) if Contract Pharmacy's inventory has been replenished by Eligible Entity in excess of the 340B Covered Drugs that were dispensed, at Eligible Entity's option and at MedImpact's and/or SUNRx's direction (acting on behalf of Eligible Entity), Contract Pharmacy shall return such drugs to Eligible Entity's in-house pharmacy (if applicable), the Wholesaler, or a destruction vendor for credit and, as applicable, proper destruction. The Parties acknowledge and agree this shall satisfy the liability referred to herein. SUNRx shall be entitled to retain all SUNRx Administrative Fees for those 340B Covered Drugs and Third Party Claims. 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, 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. Notwithstanding the foregoing or limitations herein, SUNRx warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. SUNRx at its own expense shall defend, indemnify, and hold harmless Eligible Entity against any claim that any Copyrightable Works or Inventions or other items provided by SUNRx hereunder infringe upon intellectual or other proprietary rights of a third party, and SUNRx shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by Eligible Entity in connection with any such claims.
- 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 representatives, from and against any and all such 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 ADMINISTRATIVE 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**" shall have the meaning set forth in subdivision (d) Section 3426.1 of the California Civil Code. The amount and type of Confidential Information to be disclosed is completely within the sole discretion of SUNRx. Confidential Information 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 Entity, (vi) is approved for disclosure by prior written permission of a corporate officer of SUNRx, or (vii) is subject to disclosure under court order or other lawful process. SUNRx acknowledges and understands that all information that is not Confidential Information as defined in this Section, including but not limited to, this Agreement, are subject to open records laws and regulations such as the California Brown Act and the Public Records Act, and therefore may be released, disclosed, and posted online, to and for the public.
- 8.2. Non-Disclosure/Non-Use. Eligible Entity acknowledges and agrees that Confidential Information is valuable, special and essential to the successful and effective conduct of the business of SUNRx or subcontractor, as applicable. Therefore, Eligible Entity agrees not to use, disclose or otherwise communicate to any person any Confidential Information of SUNRx or its subcontractors. 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 will take reasonable steps to obtain confidential treatment of such Confidential Information and will make reasonable efforts to give SUNRx prior written notice of such requirement together with a copy of the information to be disclosed and agrees to give SUNRx reasonable advance notice so if necessary, SUNRx or subcontractor, as applicable, may contest the disclosure or seek a protective order. The Confidential Information shall remain the property of SUNRx or subcontractor, as applicable. Eligible Entity further agrees not to use the Confidential Information provided to it by SUNRx or subcontractor, as applicable for any purposes other than the facilitation and use of SUNRx's services under this Agreement.

- 8.3. No Transfer Or Right Or Title. Eligible Entity acknowledges and agrees that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting Eligible Entity, either expressly, by implication, or otherwise, any license under any invention or patent now or hereafter owned by or controlled by SUNRx or subcontractor, as applicable. None of the information that may be submitted or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a Party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.
- 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. 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.

## **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 right to make any claim, demand or application to or for any right or privilege applicable to an officer or employee of 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 of 1996 and regulations promulgated thereunder, as amended from time to time ("**HIPAA**"). A Business Associate Agreement is attached as Exhibit III and incorporated herein by reference.

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: Dana B. Gamble, Assistant Deputy Director  
Santa Barbara County Public Health Department  
300 N. San Antonio Road  
Santa Barbara, CA 93110

If to SUNRx: Jill G. Simoes, General Manager  
SUNRx  
3220 Tillman Drive  
Suite 100  
Bensalem, PA 19020

|                 |  |  |
|-----------------|--|--|
| With copies to: | Contract Manager<br>10181 Scripps Gateway Court<br>San Diego, CA 92131 | Legal Department<br>10181 Scripps Gateway Court<br>San Diego, CA 92131 |
|-----------------|--|--|

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



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 hereby 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, Office of Inspector General and General Services Administration 'exclusion lists' 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. Precedence. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the numbered sections of this Agreement shall prevail over those in the Exhibits.
- 10.16. Database Limitation. SUNRx's subcontractor relies on First Data Bank, Medi-Span 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 drug manufacturers and 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 subcontractor by Eligible Entity, Contract Pharmacies, Eligible Patients, and Authorized Providers. 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 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.

10.17. As Related to CVS. 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 Section 10.16 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 10.16 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.

10.17.1. Schedule Drugs. Schedule II drugs are not eligible as a 340B Covered Drug.

10.17.2. 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.

10.17.3. 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.

10.17.4. 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

10.17.5. 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.

10.17.6. 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.

- 10.17.7. 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.

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:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

Steve Lavagnino

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

**RECOMMENDED FOR APPROVAL:**

Van Do-Reynoso, MPH, PhD  
Public Health Director

By: \_\_\_\_\_  
Department Head

**APPROVED AS TO ACCOUNTING FORM:**

Betsy Schaffer, CPA  
Auditor-Controller

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

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO FORM:**

Risk Management

By: \_\_\_\_\_  
Risk Management

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.

By: \_\_\_\_\_  
Name: Jill G. Simoes, General Manager

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

## EXHIBIT I DEFINITIONS

**340B Covered Drugs.** Those outpatient prescription drugs purchased by the Eligible Entity at 340B Drug Cost and dispensed by Contract Pharmacy to Eligible Patients of the Eligible Entity. 340B Covered Drugs shall exclude those drugs that are dispensed to Medicaid beneficiaries unless such dispensing is in compliance with applicable rules, laws, and regulations.

**340B Dispensing Fee.** The amount payable to Contract Pharmacy as set forth in the 340B Addendum entered into by the Eligible Entity, the Contract Pharmacy, MedImpact and SUNRx.

**340B Drug Cost.** The acquisition cost(s) incurred by the Eligible Entity to purchase the 340B Drugs from the Wholesaler or manufacturer.

**340B Drug Price.** The 340B Drug Cost plus the applicable 340B Dispensing Fee, and any applicable Administrative Fee(s) as agreed to between MedImpact, SUNRx, and Eligible Entity.

**340B Formulary.** The list of 340B Covered Drugs chosen by the Eligible Entity and made available to Eligible Patients of the Eligible Entity under the Pharmacy Plan.

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

**832 Price File.** The 832 Price File is a catalog price file and is used to request or provide prices and product information of goods electronically.

**Administrative Fee.** The fees payable to SUNRx for services provided by SUNRx or its subcontracted vendors in accordance with 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.

**Clinic Fee.** A fee imposed on Eligible Patients by an Eligible Entity to cover the Eligible Entity's 340B administrative services provided to Eligible Patients, which is provided to SUNRx for communication to the Contract Pharmacy via the POS adjudication system and collection from the Eligible Patient by the Contract Pharmacy on behalf of the Eligible Entity.

**Contract Pharmacy.** The term "***Contract Pharmacy(ies)***" shall mean those licensed pharmacies that are either owned and operated by an Eligible Entity or are pharmacies that have agreed to provide contracted pharmacy services to an Eligible Entity under a 340B Addendum to dispense 340B Covered Drugs to Eligible Patients in accordance with Section 340B and HRSA's requirements and guidance, including those at 75 Fed. Reg. 10272-10279, and may include, but shall not be limited to, retail, mail order and specialty pharmacies.

**Co-Payment.** Those deductibles, co-payments, coinsurance or other cost sharing amounts which may be charged to an Eligible Patient for 340B Covered Drugs or for drugs that adjudicate at the Network Rate or are paid to a Contract Pharmacy as a Third Party Claim.

**MAC.** The then current *maximum allowable cost* of certain prescription products, selected in accordance with criteria established by MedImpact, that are subject to MedImpact's MAC pricing formulas. Multi-source drugs are eligible for the MAC list if they are: (i) A-rated generics; (ii) thirty (30) days after they are readily available through more than two (2) generic vendors; and (iii) the products are not exclusive. Such criteria and pricing formulas are subject to change from time to time at MedImpact's sole discretion. Eligible Entity agrees to accept any of MedImpact's MAC lists as amended from time to time in MedImpact's sole discretion.

**Network Claim.** Claims that adjudicate at the applicable Network Rate.

**Network Rate.** The rate, as modified from time to time by MedImpact and SUNRx based on prevailing market conditions, which SUNRx, in connection with MedImpact, negotiates with each Contract Pharmacy for uninsured or cash Patients of the Eligible Entity to purchase non-340B Covered Drugs from participating Contract Pharmacies.

**Payor.** A managed care organizations, health insurers, etc., or its Pharmacy Benefit Manger (PBM), which may include MedImpact.

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

**Price Margin.** The net difference between the 340B Drug Price and the Third Party Claim amount received by the Contract Pharmacy.

**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 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 Entity's PBM) for payment outside and apart from this Agreement and originated from a legally qualified health care provider affiliated with Eligible Entity for a drug dispensed to an Eligible Patient.

**Third Party Payments.** Any payments made on behalf of an Eligible Patient to a Contract Pharmacy by a Payor.

**Wholesaler.** The wholesale distributor of drugs, including 340B Covered Drugs, from which the Eligible Entity purchases 340B Drugs for delivery to in-house or Contract Pharmacy(ies).

**EXHIBIT II  
FEE SCHEDULE**

| <b><u>Administrative Fees</u></b>       | <b><u>Switch Fee Pricing Model</u></b> | <b><u>All Claims Pricing Model</u></b> | <b><u>Net Earnings Pricing Model*</u></b> | <b><u>Specialty</u></b>            |
|---|--|--|---|------------------------------------|
| <b><u>Contract Pharmacy:</u></b>        |  |  |   | <i>Diplomat Specialty Pharmacy</i> |
| For Cash Claims Adjudicated at U&C      | \$0.00 per claim                       | \$0.00 per claim                       | \$0.00 per claim                          | \$0.00 per claim                   |
| For Cash Claims Adjudicated at Network  | \$0.99 per claim                       | \$0.99 per claim                       | \$0.99 per claim                          | \$0.99 per claim                   |
| For Cash Claims Adjudicated at 340B     | \$3.99 per claim                       | \$3.99 per claim                       | \$3.99 per claim                          | \$100.00 per claim                 |
| For Third Party Claims that become 340B | \$0.00 per claim                       | \$5.27 per claim                       | \$6.42 per claim                          | \$100.00 per claim                 |
| <b><u>Dispensing Fees</u></b>           | Per each Acknowledgement Agreement     | Per each Acknowledgement Agreement     | Per each Acknowledgement Agreement        | Per each Acknowledgement Agreement |
| <b><u>Network Price (Rate)</u></b>      | AWP-16%+\$2.50                         | AWP-16%+\$2.50                         | AWP-16%+\$2.50                            | AWP-16%+\$2.50                     |
| <b><u>Switch Fee(s)</u></b>             | \$0.20 per switch                      | \$0.07 per switch                      | \$0.07 per switch                         | \$0.00 per switch                  |

|  |                        |
|--|------------------------|
| Additional VPN Set-Up Fee (if connection to a new EMR is required) | <b>\$2,500.00</b> each |
|--|------------------------|

**Administrative fee includes:**

- 340B claims adjudication
- Retail network and U&C claims adjudication
- Financial reconciliation fees to include 3<sup>rd</sup> party and/or pharmacy billing, and hospital payment
- Persistence Program
- 340B pharmacy network contracting, management and customer service
- Eligibility interfaces
- Virtual Inventory and Pharmacy Replenishment
- Standard Reporting
- Hospital association partner fee

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



## EXHIBIT III

### HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA) Revised: May 1, 2013

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 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

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.
- 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 HITECH 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 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. Business Associate shall

mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.

- 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 or this BAA, including, but not limited to, administrative, physical and technical safeguards 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, as required by the Data Breach Notification Rule, 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 Subcontractors and Agents.** Business Associate shall ensure that any agents and 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 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 state law [Health and Safety Code Section 123110] and 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 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]. The provisions of this subparagraph shall survive the termination of this Agreement.

- 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. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible 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, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA 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. [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)]
- o. **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.

- p. **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.

### 4. Indemnification

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

finances 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.

#### **5. Disclaimer**

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### **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.

#### **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.

**Exhibit IV**

**[INTENTIONALLY BLANK]**



**Exhibit V**  
**LICENSE AGREEMENT**

WHEREAS, 340B Holdings, LLC, AKA SUNRx (“SUNRx”) has developed, acquired or has the right to license certain proprietary services and programs that it offers as part of the 340B services it provides to its Eligible Entities; and

WHEREAS, Eligible Entity, by executing the 340B Administrative Services Agreement with SUNRx demonstrates its desire to secure the license to use certain of SUNRx’s proprietary products and services as set forth herein; and

NOW, THEREFORE, the Parties, for good and valuable consideration the sufficiency of which is hereby stipulated by the parties hereto, agree as follows:

1. Definitions.

- a. “Affiliate(s)” shall mean any entity(ies) controlled by, controlling, or under common control with Eligible Entity and any entity(ies) over which Eligible Entity exercises managerial control of healthcare delivery services pursuant to a bona fide written contract, which entity(ies) comply with the provisions of Section 2.c of this License Agreement. The term "Affiliate" excludes any entity which competes with SUNRx.
- b. “Documentation” shall mean any instructions, procedures or other reference or marketing materials developed by SUNRx in relation to the service(s).
- c. “Equipment” shall mean any computer equipment, peripheral equipment and related items needed or required by Eligible Entity to utilize the Product(s).
- d. “Intellectual Property Rights” shall mean the patents, trademarks, service marks, trade secrets, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, know how, trade or business names and other similar rights or obligations whether registerable or not.
- e. “Product(s)” shall mean the SUNRx proprietary product, service or information, as specifically set forth in Attachment 1 to this Exhibit V, licensed for use by Eligible Entity under this Agreement.
- f. “Third Party Software” shall mean all computer software necessary for the operation of the Product(s), but not licensed or provided by SUNRx hereunder.

2. License Grant.

- a. SUNRx hereby grants to Eligible Entity a limited, non-exclusive, non-sublicenseable, non-transferable license to use those Products for the purposes of supporting Eligible Entity’s internal business for its 340B Program, solely in accordance with the terms of this Agreement.
- b. Copies of SUNRx’s copyright notice and other proprietary legends and labels must be included on and in all copies of any Documentation or other items related to the Products. No other copies may be made without SUNRx’s express written authorization.
- c. Eligible Entity may use the Products only for Eligible Entity’s operations. Eligible Entity may permit any of their consultants, independent contractors and Affiliates to access the Product(s) and Documentation provided: (i) the entity accessing shall, prior to such accessing, have executed a Non-Disclosure Agreement in a form reasonably acceptable to SUNRx; and (ii) such access is limited solely to performing services for Eligible Entity, and (iii) the consultant, independent contractor or Affiliate agrees not to access, use or disclose

- the Product(s) in connection with performing services for any other entity or client of such party.
- d. Access by any third party as described in Section 2.c above shall not increase SUNRx's obligations or enlarge SUNRx's liability beyond that which SUNRx has to Eligible Entity alone under the terms of this Agreement. No third party shall have any right in contract, warranty, tort, or otherwise against SUNRx. This Agreement is not intended to benefit any third party and no such third party shall have any claim or right under it.
  - e. Eligible Entity shall keep and make available to SUNRx, upon request, records of and account for the use of the Products made by Eligible Entity. SUNRx's authorized representatives shall have, upon reasonable notice to Eligible Entity, access to Eligible Entity's premises, equipment, and records specific to the Products, as well as Eligible Entity's employees, during normal business hours for the purpose of verifying compliance with this Agreement. SUNRx retains all license rights not expressly granted by this Agreement.
3. Third Party Software and Equipment. Eligible Entity is solely responsible for acquiring any and all Third-Party Software or Equipment necessary for Eligible Entity's use of the Product(s). SUNRx does not license or sublicense any right to use any Third-Party Software or Equipment utilized by SUNRx in its use or operation of the Product(s).
  4. Eligible Entity Responsibility. Eligible Entity agrees to accept full responsibility for the selection, and use of the Product(s) to achieve Eligible Entity's intended results.
  5. Warranty/Disclaimer of Warranties/Limitation of Liabilities.
    - a. SUNRx warrants that it is the owner of, or has the right to grant the licenses to use the Product(s) contained in this Agreement, free of all liens, claims, and encumbrances.
    - b. This limited warranty is valid only if Eligible Entity uses the Products in accordance with the terms of this Agreement. If Eligible Entity makes any modifications to the Products, this warranty shall be void ab initio.
    - c. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SUNRX MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE.
  6. Title. Eligible Entity acknowledges and agrees that SUNRx owns all right, title, and interest in and to the Products, except as otherwise stated herein. No title to or ownership of the Products or any Documentation, in any form, is hereby transferred to Eligible Entity, and Eligible Entity's rights shall at all times be subject to SUNRx's Intellectual Property Rights and the restrictions contained in this Agreement, except as stated herein.

**Attachment 1  
to  
Exhibit V**

The following SUNRx and its affiliates' proprietary products and services are licensed for use by Eligible Entity under this Agreement:

SUNRx System (virtual inventory tool)

# **340B Addendum to MedCare<sup>®</sup> Pharmacy Network Agreement**

**The enclosed is a template of the 340B Addendum to the MedCare Pharmacy Network Agreement. The agreements are between and among a Contract Pharmacy, MedImpact and SUNRx on behalf of a Client.**

**This document package is being provided to Client as reference only. In the event that any of the terms of the 340B Addendum documents, as shown in the enclosed template, have been materially changed by a Contract Pharmacy, then SUNRx will provide Client with a list of the material deviations through a Deviation Notice.**



## Addendum to MedCare® Pharmacy Network Agreement for 340B Program

This Addendum (the “**Addendum**”) is by and between (i) MedImpact Healthcare Systems, Inc. (“**MedImpact**”), a California corporation, (ii) 340B Holdings, LLC. (hereinafter referred to as “**SUNRx**”), and (iii) Member Pharmacy, and amends that certain MedCare Pharmacy Network Agreement (the “**MedCare Agreement**”) entered into by MedImpact and Member Pharmacy. This Addendum is effective as to Member Pharmacy, MedImpact, and SUNRx as of the date below when signed and executed by all the Parties (the “**Effective Date**”). MedImpact, SUNRx, and Member Pharmacy may hereinafter be referred to collectively as the “Parties” or individually as a “Party” to this Addendum.

This Addendum sets forth the terms and conditions under which Member Pharmacy shall provide pharmacy services to Eligible Persons (defined below) of Covered Entity(ies). In the event of any conflict between this Addendum and the MedCare Agreement, the terms and conditions of this Addendum shall govern when Member Pharmacy is providing pharmacy services to Eligible Persons of Covered Entity(ies). Capitalized terms not defined in this Addendum are defined by the MedCare Agreement.

### RECITALS

- A.** MedImpact and SUNRx contract with “Covered Entities,” as defined below, to assist Covered Entities in establishing and maintaining 340B programs, including 340B contract pharmacy arrangements that are compliant with the guidelines published by the Health Resources and Services Administration (“**HRSA**”) of the United States Department of Health and Human Services (“**DHHS**”), including HRSA’s Contract Pharmacy Services Guidelines at 75 Fed. Reg. 10272-10279 (“**340B Program(s)**”). For the purposes of this Addendum, “Covered Entities” means “Covered Entities” as defined in Section 340B of the Public Health Services Act (“**Section 340B**”). Further, MedImpact and SUNRx offer consulting, processes, and software to support the evaluation, planning, implementation, dispensing, inventory control, inventory replenishment, reporting and auditing for Covered Entities.
- B.** Member Pharmacy wishes to contract with MedImpact and SUNRx to become a contract pharmacy for Covered Entity(ies) in accordance with this Addendum and applicable Law to provide retail pharmacy services to Covered Entities’ patients who are eligible to purchase or receive 340B Covered Drugs (defined below) (“**Eligible Persons**”), under the terms and conditions set forth herein.
- C.** Covered Entity is eligible to purchase covered outpatient drugs (“**Covered Drugs**”) at reduced prices for use by Eligible Persons in connection with a 340B Program.
- D.** Each Covered Entity for which Member Pharmacy is a contract pharmacy is listed on Exhibit 3, which Exhibit 3 shall be updated and/or automatically amended from time to time in accordance with this Addendum.

In consideration of the mutual covenants and other good and sufficient consideration, Member Pharmacy, SUNRx, and MedImpact agree to the following terms and conditions:

### I. COVERED ENTITY

Each time a Covered Entity, in its discretion, elects to utilize Member Pharmacy as a contract pharmacy under this Addendum, MedImpact or SUNRx shall provide Member Pharmacy, for its review and signature an Acknowledgment Agreement, the template of which is attached hereto as Exhibit 4. MedImpact or SUNRx will identify Covered Entities who may be interested in establishing contract pharmacy arrangements with Member Pharmacy. For each Covered Entity wishing to utilize Member Pharmacy as a contract pharmacy, MedImpact or SUNRx will (i) consult with and educate the

Covered Entity regarding such arrangements, as needed and (ii) assist the Covered Entity in reviewing this Addendum and completing the Acknowledgment Agreement and completing the registration form. Upon receipt of any executed Acknowledgment Agreement, MedImpact or SUNRx shall provide a copy to Member Pharmacy. MedImpact or SUNRx will assist the Covered Entity in completing the requisite steps for contract pharmacy registration and filing the registration form. This Addendum shall become effective as to each Covered Entity, and Exhibit 3 shall be deemed amended to include each such Covered Entity, after the later of: (i) full execution of the Acknowledgment Agreement, and (ii) registration of the Member Pharmacy as a 340B contract pharmacy for such Covered Entity as shown on the Office of Pharmacy Affairs (“OPA”) web-based database (each a “**Program Effective Date**”). The Parties acknowledge and agree that the registration period for registration of Member Pharmacy with OPA shall be limited as follows: January 1 – January 15 for an effective start date of April 1; April 1 – April 15 for an effective start date of July 1; July 1 – July 15 for an effective start date of October 1; October 1 – October 15 for an effective start date of January 1. If the 15<sup>th</sup> falls on a Saturday, Sunday, or Federal holiday, the deadline will be the next business day.

## **II. COVERED DRUGS**

Any federal legend or over-the-counter (OTC) drug, when applicable, with 340B pricing may be included as a Covered Drug. This list may be modified at the discretion of the Covered Entity.

## **III. 340B PRICE**

The base price for each Covered Entity’s purchase/replenishment of Covered Drugs shall be determined pursuant to the terms of Section 340B, any applicable Law, and any agreement with a supplier, or arrangement established by such Covered Entity, (“**340B Drug Cost**”). Covered Entity, Member Pharmacy, SUNRx and MedImpact acknowledge that those Covered Entities that participate in the 340B program may not participate in a Group Purchasing Organization (“GPO”) program to purchase Covered Drugs through a GPO or other group purchasing arrangement for any outpatient care by the Covered Entity. For purposes of this Addendum, Member Pharmacy agrees that the “340B Price” shall mean the 340B Drug Cost plus the applicable dispensing fee, and any applicable administrative fee(s) agreed to between MedImpact, SUNRx, and Covered Entity. Member Pharmacy agrees that its compensation for Covered Drugs dispensed under this Addendum shall be in accordance with Section IV(C) below.

## **IV. UNINSURED CLAIMS**

### **A. Pharmacy Services to Eligible Persons**

1. Patient eligibility information shall be provided to MedImpact or SUNRx by the Covered Entity in accordance with the 340B Program administration agreement between Covered Entity and MedImpact or SUNRx and such information shall be entered into MedImpact’s Online Claim System. Member Pharmacy shall confirm whether a person is an Eligible Person through MedImpact’s Online Claim System in accordance with the MedCare Agreement.

2. Following such verification, Member Pharmacy shall dispense the prescribed drug to the Eligible Person in the following circumstances: (i) upon presentation of a prescription form bearing the Eligible Person’s name, a confirmation that the person is an Eligible Person, through the MedImpact Online Claim System and the signature of a legally qualified health care provider affiliated with Covered Entity or (ii) upon receipt of a prescription ordered by telephone or electronically on behalf of an Eligible Person by a legally qualified health care provider affiliated with Covered Entity who states that the prescription is for an Eligible Person. As used in this Addendum, the term “affiliated” refers to providers that are employed by, under contract with, or in referral arrangements with the Covered Entity. Prior to dispensing a Covered Drug to an Eligible Person, in accordance with the MedCare Agreement, Member Pharmacy will collect from each Eligible Person the applicable Copayment as communicated to Member Pharmacy via the Online Claim System or as otherwise notified in writing by MedImpact.

3. Member Pharmacy shall provide pharmacy services hereunder in accordance with the terms and conditions of the MedCare Agreement and all applicable federal, state and local Laws. For purposes of this

Addendum, pharmacy services include, but are not limited to, dispensing drugs to Eligible Persons, conducting drug utilization review, maintaining Eligible Person drug profiles, and counseling and advising Eligible Persons consistent with the rules, limitations, and privileges incident to the pharmacy-patient relationship.

4. Member Pharmacy shall have the right to refuse to serve any Eligible Person where such service would violate any Law or professional judgment of the dispensing pharmacist. In such cases, Member Pharmacy shall notify MedImpact and SUNRx of such refusal within twenty-four (24) hours of such refusal, including the name of the Eligible Person, the applicable Covered Entity, and the reason for the refusal.

## **B. Claim Submission and Adjudication**

1. **Claim Submission.** All Claims under this Addendum (excluding Third-Party Claims, as more fully addressed in Section VI below) shall be submitted by Member Pharmacy through MedImpact's On-line Claim System in accordance with this Addendum and the MedCare Agreement. Member Pharmacy shall include its usual and customary ("U&C") price with each Claim.

2. **Claim Adjudication.** MedImpact shall adjudicate each Claim in accordance with the MedCare Agreement and this Addendum. For approved Claims, MedImpact shall adjudicate such Claims based on the lower of: (1) the 340B Price, if the Claim is for a Covered Drug, (2) the network rate in accordance to Exhibit 1 of this Addendum; and (3) Member Pharmacy's U&C.

## **C. Compensation**

1. **Reimbursement for Covered Drugs.** When an Eligible Person receives a Covered Drug that adjudicates at the 340B Price ("**Program Price Claim**"), after deducting the Eligible Person Copayment and applicable fees and amounts owed to MedImpact and/or SUNRx by Member Pharmacy hereunder, Claims will be compensated pursuant to the terms and conditions of the MedCare Agreement, this Addendum, the applicable ATP attached as Exhibit 1 hereto, and as follows: Member Pharmacy shall accept as payment in full the applicable dispensing fee on the ATP attached as Exhibit 1 hereto, in addition to replenishment of the Covered Drug by the Covered Entity in accordance with Section V of this Addendum. Member Pharmacy, MedImpact, SUNRx, and Covered Entity agree that access to Covered Drugs at the 340B Price is restricted to applicable Eligible Persons.

2. **Reimbursement for Non-Covered Drugs.** If an Eligible Person receives a drug that adjudicates at the applicable network rate or the Member Pharmacy's U&C, the Claim will be reimbursed as a non-Covered Drug. After deducting the Eligible Person's Copayment and applicable fees and amounts owed to MedImpact and/or SUNRx by Member Pharmacy hereunder, such Claims will be compensated pursuant to the terms and conditions of the MedCare Agreement, this Addendum, and in accordance with the following:

a. For Claims that adjudicate at the applicable network rate ("**Network Price Claim**"), Member Pharmacy shall accept as payment in full the applicable "Network Price" as defined in the ATP attached as Exhibit 1 hereto.

b. For Claims that adjudicate at the Member Pharmacy's U&C ("**U&C Claim**"), Member Pharmacy shall accept the U&C as payment in full. In no case shall reimbursement to Member Pharmacy exceed Member Pharmacy's U&C.

3. **Overpayments/Fees.** Any overpayments made to or otherwise received by Member Pharmacy or amounts owed by Member Pharmacy to MedImpact or SUNRx (themselves or on behalf of Covered Entity), including but not limited to POS charges, administrative charges, claim overpayments and reversals, and amounts for Third-Party Claims as described in Section VI of this Addendum, may be deducted from amounts otherwise payable to Member Pharmacy. To the extent that Member Pharmacy still owes amounts hereunder and/or has received funds

in excess of amounts owed, Member Pharmacy shall pay any such amounts outstanding thereafter no later than thirty (30) days of receipt of an invoice from MedImpact or SUNRx.

4. **Other Fees.** Member Pharmacy shall be responsible for its own expenses, including but not limited to: bottle, lid, label, computer, and switching fees and any fees under the MedCare Agreement.

## V. TRACKING AND REPLENISHMENT OF COVERED DRUGS FOR PROGRAM PRICE CLAIMS

A. **SUNRx's Tracking System.** SUNRx shall include in its virtual inventory system Covered Drugs, pursuant to Section II of this Addendum, as may be updated by SUNRx from time to time with information from the wholesaler. In the case of Program Price Claims, MedImpact shall provide and/or make available to SUNRx a claims file report containing the 340B Program claims information and SUNRx shall update SUNRx's virtual inventory system with such information, which will allow the Covered Entity to track Program Price Claims at the NDC 11 level.

B. **Member Pharmacy's Tracking and Reporting System.** Member Pharmacy shall utilize the SUNRx virtual inventory system in conjunction with maintaining applicable state mandated pharmacy records to support 340B contract pharmacy requirements for reporting and tracking, including prevention of the diversion of Covered Drugs to individuals who are not Eligible Persons and prevention of duplicate discounts under Medicaid. Member Pharmacy shall cooperate in good faith to create, maintain, and/or review this system as necessary to comply with applicable Law. Notwithstanding the foregoing, the Parties acknowledge that the ultimate responsibility for the adequacy of the tracking system belongs with the Covered Entity.

C. **Inventory Replenishment.** Covered Drugs shall be dispensed by Member Pharmacy in a virtual inventory model as follows: Member Pharmacy shall dispense its inventory to Eligible Persons pursuant to a prescription for a Covered Drug in accordance with this Addendum. Upon dispensing, such inventory of Member Pharmacy shall be deemed a Covered Drug, which the Covered Entity shall purchase and replenish for Member Pharmacy in accordance with this Addendum. Member Pharmacy shall monitor its inventory of drugs and maintain sufficient supplies to meet the day-to-day needs of Eligible Persons. SUNRx and Covered Entity will monitor the sale of Covered Drugs to Eligible Persons, and as soon as 100% of the contents contained in the bottle size has been dispensed to fill Covered Drug prescriptions to Eligible Persons at the 340B Price, SUNRx shall work with the Covered Entity to electronically transmit a Covered Entity-approved purchase order to the drug manufacturer/distributor/wholesaler (the "**Supplier**") for immediate shipment to Member Pharmacy and billing to Covered Entity to replenish the Covered Drug prescriptions on an exact NDC 11 basis. Upon receipt of shipment from the Supplier, Member Pharmacy shall promptly review the shipment to confirm its accuracy. Member Pharmacy shall promptly acknowledge receipt of all shipments in its tracking system and, within three (3) calendar days of receipt of shipment, acknowledge receipt of all shipments in the SUNRx virtual inventory system and promptly provide SUNRx, in a manner and frequency acceptable to SUNRx with the shipping invoice(s) identifying Covered Drugs shipped to and received by Member Pharmacy. In all such cases, Covered Entity shall be responsible for purchasing Covered Drugs from the Supplier, who will bill the Covered Entity for the Covered Drugs.

1. **Discontinued NDCs.** If the Covered Drug is not available, such Covered Drug cannot therefore be replenished by the Covered Entity. MedImpact, on behalf of the Covered Entity, will reimburse the Member Pharmacy for all such drugs dispensed as Covered Drugs that cannot be replenished, based on the Network Price for such affected prescriptions as if they were sold as non-Covered Drugs minus the applicable 340B dispensing fee received by the Member Pharmacy for such drugs, or the rate the third-party Payor originally paid for such drugs as a Third Party Claim minus the 340B dispensing fee to the contract pharmacy for such drugs after receipt of those amounts (funds) from Covered Entity, all of which shall be in accordance with and subject to Section IV(C) of this Addendum.

2. **Slow Movers.** For the purposes of this Addendum, the term "Slow Mover" shall mean a Covered Drug dispensed by the Member Pharmacy for which no drug of the same NDC-11 Drug Code was dispensed by such Member Pharmacy under the applicable 340B Program during the three (3) months immediately preceding the date of the applicable inventory reconciliation. MedImpact, on behalf of the Covered Entity will reimburse the



Member Pharmacy for all drugs dispensed as Covered Drugs that are identified as Slow Movers and will not, therefore, be replenished by the Covered Entity, based on the Network Price for such affected prescriptions as if they were sold as non-Covered Drugs minus the applicable 340B dispensing fee received by the Member Pharmacy for such drugs, or the rate the third-party Payor originally paid for such drugs as a Third Party Claim minus the 340B dispensing fee to the contract pharmacy for such drugs after receipt of those amounts (funds) from Covered Entity, all of which shall be in accordance with and subject to Section IV(C) of this Addendum.

**3. Inventory Adjustment.** Within thirty (30) days of termination of this Addendum and/or an applicable Acknowledgement Agreement under Section XV, an inventory adjustment shall be completed as follows: (a) MedImpact, on behalf of the Covered Entity will reimburse the Member Pharmacy for the pharmacy's inventory of drugs dispensed as Covered Drugs which will have not and will not be replenished based on the Network Price for such affected prescriptions as if they were sold as non-Covered Drugs minus the applicable 340B dispensing fee received by the Member Pharmacy for such drugs, or the rate the third-party Payor originally paid for such drugs as a Third Party Claim minus the 340B dispensing fee to the contract pharmacy for such drugs after receipt of those amounts (funds) from Covered Entity, and (b) if Member Pharmacy's inventory has been replenished by Covered Entity in excess of the Covered Drugs that were dispensed, Member Pharmacy shall destroy the excess drugs through a pharmaceutical waste disposal vendor and provide proof of such destruction to MedImpact and/or SUNRx.

## **VI. THIRD-PARTY CLAIMS/PROGRAM RECONCILIATION**

**A. Definition of Third-Party Claims.** Covered Entities may implement one of the following two options for processing Third-Party Claims and as such, Third-Party Claims shall be processed in accordance with the option chosen by the respective Covered Entity.

Option 1:

A third-party claim is a claim that has been submitted to a third-party (i.e., managed care organizations, health insurers, etc., or its PBM, which may include MedImpact, collectively referred to herein as "**Payor**") for payment outside and apart from this Addendum, but which (i) originated from a legally qualified health care provider affiliated with Covered Entity for a Covered Drug dispensed to an Eligible Person and (ii) the 340B Price for the Covered Drug is lower than the adjudicated amount processed and paid by Payor ("**Third-Party Claims**").

**OR**

Option 2:

A third-party claim is a claim that has been submitted to a third-party (i.e., managed care organizations, health insurers, etc., or its PBM, which may include MedImpact, collectively referred to herein as "**Payor**") for payment outside and apart from this Addendum, but which originated from a legally qualified health care provider affiliated with Covered Entity for a Covered Drug dispensed to an Eligible Person ("**Third-Party Claims**").

**B. Identification and Reconciliation of Third-Party Claims.** Member Pharmacy shall provide any necessary approvals to the appropriate network switch (or such other data provider) to provide all Third Party Claim data to SUNRx for each applicable Member Pharmacy location to enable SUNRx to perform the retrospective review of all such Third Party Claims made at the Member Pharmacy to identify such claims that are Third-Party Claims (as defined above). SUNRx and Member Pharmacy shall enter into a business associate agreement related thereto, in the form of Exhibit 5, attached hereto. SUNRx will then calculate the aggregate total amount(s) due to the Covered Entity by Member Pharmacy for all such claims, and report such aggregate total dollar amount(s) to MedImpact ("**Price Margins**"); provided, however, SUNRx shall de-identify such claim information to the extent necessary to protect the confidentiality of Member Pharmacy's discounts with such Payors (i.e., the claim level detail shall not identify the original Payor and shall mask component values of the claim). Member Pharmacy agrees that the Price Margins is due to Covered Entity.

Therefore, Member Pharmacy agrees that MedImpact shall treat these Price Margins (i.e. Third-Party Claims) as Claims for Covered Drugs. Member Pharmacy agrees that if the Price Margin is greater than the then outstanding dispensing fees due to the Member Pharmacy for any Program Price Claims (Third-Party Claims or otherwise), Member Pharmacy shall owe the remainder of the Price Margins to Covered Entity.

C. **Reconciliation.** MedImpact shall invoice Member Pharmacy for any amounts due from Member Pharmacy in connection with this Addendum (including but not limited to Price Margin(s) which Member Pharmacy owes to Covered Entity). To the extent that Member Pharmacy still owes amounts hereunder and/or has received funds in excess of amounts owed, Member Pharmacy shall pay any such amounts outstanding thereafter no later than thirty (30) days of receipt of such invoice from MedImpact or SUNRx, provided, however, in no case shall Member Pharmacy have less than thirty (30) days from date of the original claim submission to make such payment. Additionally, MedImpact and SUNRx will work with Covered Entity to facilitate the replenishment of Member Pharmacy's inventory for the Covered Drugs in accordance with Section V(C) of this Addendum. In the event a Covered Entity has an outstanding balance owed to Member Pharmacy, MedImpact shall remit such payment to Member Pharmacy after receiving such funds from Covered Entity.

## VII. REPORTS

A. **SUNRx Reports.** SUNRx's virtual inventory system will provide Member Pharmacy and Covered Entity with access to dispensing reports that will identify all Program Price Claim prescriptions filled for Eligible Persons on and before the prior business day (including the Eligible Person's name, and the Covered Drug name, strength, manufacturer, and quantity dispensed). The virtual inventory system shall also include reports that contain a summary of the usage of Covered Drugs by product (including drug name, strength, manufacturer and quantity) for the preceding billing cycles. Member Pharmacy acknowledges that SUNRx will periodically provide a report to Covered Entity that contains a list of NDC 11s for which SUNRx has determined replenishment is due to Member Pharmacy, but has not been ordered by Covered Entity and/or fulfilled by Supplier, based on such reports and information. Member Pharmacy shall promptly review all reports hereunder and communicate to SUNRx any discrepancy it identifies within forty-eight (48) hours of becoming aware. Member Pharmacy shall designate assigned personnel with the authority to manage and work with SUNRx and/or MedImpact to resolve any such discrepancies.

B. **Member Pharmacy's Reports.** Member Pharmacy will provide MedImpact, SUNRx and Covered Entity with all reports consistent with customary business practices, which shall include at a minimum dispensing reports that will identify, by each Covered Entity, all prescriptions filled for Eligible Persons under this Addendum (including the Eligible Person's name, and the Covered Drug name, strength, manufacturer, and quantity dispensed), Member Pharmacy 835 files, and all such other information required by Law or reasonably requested by MedImpact, SUNRx, or Covered Entity.

C. **License Agreements.** MedImpact and SUNRx will provide Member Pharmacy with access to certain tools and services, which shall be subject to the License Agreements attached hereto and incorporated into the Agreement by this reference as Exhibit 6 and Exhibit 7 ("License Agreements").

## VIII. RECORD RETENTION AND AUDIT

A. **Records.** The Parties shall maintain all books, records, reports, and accounts of all transactions occurring as part of furnishing services under this Addendum (the "**Records**"), and as otherwise required by applicable federal, state, and local Laws and regulations (including but not limited to Section 340B with respect to the 340B Program) for not less than seven (7) years after the expiration of this Addendum (or such longer period required by Law). All Records shall be available for inspection and/or audit under this Addendum and as otherwise required by Law. Member Pharmacy shall ensure that all reimbursement accounts and dispensing records it maintains in accordance with this Addendum (including any Acknowledgement Agreement in connection herewith) and/or otherwise in connection with any 340B Program is accessible separately from Member Pharmacy's own operations and will be made available to the Covered Entity, MedImpact and/or SUNRx on behalf of Covered Entity, HRSA, and the manufacturer, as appropriate in the case of an audit, monitoring, or other examination.

**B. Examination of Member Pharmacy's Tracking System.** Member Pharmacy agrees that prior to the commencement of services under this Addendum, prior to the Program Effective Date under any Acknowledgement Agreement related hereto, and during the term of this Addendum and any Acknowledgement Agreement related hereto, Covered Entity shall have the opportunity to examine Member Pharmacy's tracking system to ensure its efficacy and accuracy. Member Pharmacy further agrees that Covered Entity, MedImpact, and SUNRx, shall also have reasonable access to Member Pharmacy's facilities and Eligible Persons' records during the term of this Addendum and any Acknowledgement Agreement related hereto, in order to, on behalf of the Covered Entity, make periodic checks regarding the effectiveness and accuracy of Member Pharmacy's tracking system in preventing diversion of Covered Drugs and the prevention of duplicate discounts under Medicaid. Member Pharmacy agrees to make any and all adjustments to the tracking system which SUNRx, MedImpact, and/or the Covered Entity advise are necessary to prevent the diversion of Covered Drugs to non-Eligible Persons. Notwithstanding the foregoing, the Parties acknowledge that the ultimate responsibility for the adequacy of the tracking system lies with the Covered Entity.

**C. Audit of Member Pharmacy.** Member Pharmacy shall permit Covered Entity, and/or MedImpact and/or SUNRx (or their designees) on the Covered Entity's behalf, and authorized government agency representatives access to inspect, evaluate, and audit the Records relating to Member Pharmacy's performance under this Addendum and/or any Acknowledgement Agreement related hereto both during the term of this Addendum and/or any Acknowledgement Agreement and for a period of seven (7) years after the termination of this Addendum or any applicable Acknowledgement Agreement or for such longer period of time as required to complete an ongoing audit or investigation or as required by Law. In connection with 340B Programs, Member Pharmacy understands and agrees that Covered Entity, or such independent auditor appointed thereby, shall conduct such an audit at least annually to ensure compliance with 340B program requirements. This provision shall not limit the audit rights of MedImpact as exist hereunder or under the MedCare Agreement. Information regarding the general functioning of the audits and minimum information to be made available to the auditor is described in the HRSA website ([programintegrity.gov](http://programintegrity.gov)). Covered Entity and Member Pharmacy will also identify any other necessary information for the Covered Entity to meet its ongoing responsibility of ensuring compliance with 340B requirements and will establish mechanisms to ensure availability of that information for periodic independent audits performed by the Covered Entity.

Without limiting the generality of the foregoing provision, Member Pharmacy, Covered Entity, SUNRx and MedImpact understand and agree that, in connection with the 340B Program, both Member Pharmacy and Covered Entity are subject to audit by HRSA, DHHS, and/or drug manufacturers that have signed a pharmaceutical purchasing agreement with DHHS, and such audits may pertain to the Member Pharmacy's and Covered Entity's compliance with the prohibition against drug resale or transfer and the prohibition against duplicate Medicaid rebates and discounts. The Parties and each Covered Entity under its Acknowledgment Agreement related hereto agree to cooperate with such audits and to comply with applicable rules and regulations (and government requirements, guidelines, and instructions) regarding such audits.

**D. Inspection by OPA.** Member Pharmacy, MedImpact, SUNRx, and Covered Entity understand and agree that, in connection with the 340B Program provided hereunder, a copy of this Addendum and the applicable Acknowledgement Agreement will be provided by Covered Entity, upon request, to OPA. If the known intent of the request is to provide the drug manufacturer with a copy, each Party shall then, unless otherwise prohibited, have the opportunity to redact any information in this Addendum and attachments which it considers to be proprietary and confidential, prior to submitting the Addendum to the requesting manufacturer.

## **IX. PHARMACY SITES**

Member Pharmacy agrees it will provide pharmacy services contracted for under this Addendum at only those Member Pharmacy's locations (s) listed on Exhibit 2, which shall identify such Member Pharmacy locations by 340B Program participation, NCPDP # and/or NPI (as designated by MedImpact), address, state pharmacy license number(s), and the Covered Entity(ies) that each Member Pharmacy location will serve.

## **X. COMPLIANCE WITH LAW**

Member Pharmacy, MedImpact, SUNRx, and Covered Entity agree to comply with all applicable federal, state, and local Laws with respect to this Addendum and the services provided by each under this Addendum and each is aware that there may be the potential for civil or criminal penalties for certain violations of the Law.

## **XI. PATIENT CHOICE**

Member Pharmacy understands and agrees that Eligible Persons may elect not to use Member Pharmacy for pharmacy services. In the event that an Eligible Person elects not to use Member Pharmacy for such services, the Eligible Person may obtain the prescription from the pharmacy provider of his or her choice. Covered Entity shall inform each Eligible Person of his or her freedom to choose a provider of pharmacy services and that he or she may be eligible for a discount on Covered Drugs but that such discount may be obtained only at pharmacies contracted with MedImpact, on behalf of Covered Entity, to provide pharmacy services to Eligible Persons.

## **XII. PROHIBITION ON RESALE OR TRANSFER**

Member Pharmacy, MedImpact, SUNRx, and the Covered Entity agree that they will not sell, resell or transfer a Covered Drug purchased by Covered Entity to an individual who is not an Eligible Person receiving care from such Covered Entity. Member Pharmacy further agrees that, in the event of a transfer, diversion, or resale of a Covered Drug in violation of this Addendum, it will pay MedImpact, on behalf of Covered Entity, an amount equal to: (i) the price discount Covered Entity received from the drug manufacturer or supplier in connection with such drug, so that Covered Entity can reimburse the manufacturer for that drug; and (ii) any costs incurred by the Covered Entity, SUNRx, or MedImpact in connection with correcting such transfer, diversion, or resale of a Covered Drug in violation of this Addendum. For purposes of this provision, Covered Entity's determination of the amount of the discount on a Covered Drug payable to the manufacturer or supplier shall be conclusive.

## **XIII. MEDICAID PRESCRIPTIONS**

Member Pharmacy, MedImpact, SUNRx, and Covered Entity agree not to use Covered Drugs to fill prescriptions paid for in whole or in part by Medicaid unless Member Pharmacy, Covered Entity and the applicable State Medicaid Agency have established an arrangement which will prevent duplicate discounts and/or rebates, or as otherwise permitted by Law. Under its Acknowledgment Agreement related hereto, any such arrangement, in connection with any 340B Program, shall be reported to the OPA by the Covered Entity.

## **XIV. COOPERATION**

In addition to the duties specifically stated herein, the Parties (and each Covered Entity by execution of the Acknowledgment Agreement) acknowledge that there may be additional duties to be performed and procedures to be followed by each Party and or the Covered Entity. The Parties shall cooperate in good faith with one another and the Covered Entity to clarify, modify, and/or develop any applicable duties, procedures, and/or systems necessary to comply with Law.

## **XV. TERM AND TERMINATION**

**A.** As to the Parties, this Addendum shall commence on the Effective Date and shall continue thereafter unless/until the MedCare Agreement is terminated or this Addendum is terminated in accordance with the terms hereof. As between each Covered Entity and the Member Pharmacy, the terms of the Addendum and the applicable Acknowledgment Agreement shall commence on the applicable Program Effective Date and shall continue thereafter unless/until this Addendum or the applicable Acknowledgment Agreement is terminated in accordance with the terms hereof. Additionally, this Addendum and/or any applicable Acknowledgment Agreement may be terminated as follows:

1. This Addendum may be terminated by MedImpact or SUNRx upon written notice of a material breach of this Addendum by Member Pharmacy to all Parties, which is not cured to the reasonable satisfaction of the noticing Party, within ten (10) business days. Without limiting MedImpact's or SUNRx's right to assert any other

act or failure to act as constituting a material breach by Member Pharmacy, Member Pharmacy's dispensing of a 340B Covered Drug to an individual who is not a 340B Eligible Person or any other diversion of a Covered Drug shall be deemed to be a material breach.

2. Any applicable Acknowledgement Agreement may be terminated by MedImpact, SUNRx, the applicable Covered Entity, or Member Pharmacy, upon written notice of a material breach of such Acknowledgement Agreement (incorporating the terms of this Addendum) to all Parties and the applicable Covered Entity, which is not cured to the reasonable satisfaction of the noticing Party or, the applicable Covered Entity, within ten (10) business days. Without limiting any Covered Entity's, MedImpact's, or SUNRx's right to assert any other act or failure to act as constituting a material breach by Member Pharmacy, Member Pharmacy's dispensing of a Covered Drug to an individual who is not an Eligible Person or any other diversion of a Covered Drug shall be deemed to be a material breach of the applicable Acknowledgement Agreement. The termination of any Acknowledgement Agreement, shall not, in itself, terminate, limit, or otherwise affect the terms of this Addendum or any other Acknowledgement Agreement. Notwithstanding the above, a material breach of any Acknowledgement Agreement, shall constitute a material breach of the Addendum, and may constitute a basis for termination of the Addendum under Section XV (A)(1), above.

3. This Addendum may be terminated by MedImpact and/or SUNRx, and/or any applicable Acknowledgement Agreement may be terminated by MedImpact, SUNRx, and/or any applicable Covered Entity immediately upon written notice to Member Pharmacy if Member Pharmacy is found guilty of fraud, or is the subject of an action taken, or proposed to be taken, against Member Pharmacy or any of its principals resulting in Member Pharmacy or its principal(s) being debarred, suspended, proposed for debarment or declared ineligible to participate in any federal or state healthcare program with termination effective on receipt of such notice.

4. This Addendum may be terminated by MedImpact and/or SUNRx, and/or any applicable Acknowledgement Agreement may be terminated by MedImpact, SUNRx, and/or any applicable Covered Entity immediately upon sending written notice to Member Pharmacy in the event MedImpact, SUNRx, or Covered Entity learns that Member Pharmacy made any false statements prior to or during the term of this Addendum or the applicable Acknowledgement Agreement.

5. Any applicable Acknowledgement Agreement shall be automatically and immediately terminated in the event the program administration agreement between MedImpact and/or SUNRx and the Covered Entity terminates.

6. This Addendum may be terminated by MedImpact, Member Pharmacy, and/or SUNRx, and/or any applicable Acknowledgement Agreement may be terminated by MedImpact, Member Pharmacy, SUNRx, and/or any applicable Covered Entity upon ninety (90) calendar days' prior written notice to the other Parties, or such longer time as required by Law.

**B.** Member Pharmacy acknowledges and agrees that each Covered Entity shall have the right to terminate the applicable Acknowledgement Agreement between such Covered Entity and Member Pharmacy as stated above, and such termination shall only terminate the applicable Acknowledgement Agreement as to the particular Covered Entity and shall not, in itself, terminate, limit, or otherwise affect the terms of this Addendum or any other Acknowledgement Agreement.

**C.** In the event of any changes in applicable federal or state Laws or regulations that would have a material adverse effect on the 340B Program or the legal responsibilities of Member Pharmacy, MedImpact, SUNRx, or Covered Entity hereunder, the Parties and Covered Entity (under the Acknowledgment Agreement) agree to negotiate any required changes to this Addendum and/or any applicable Acknowledgement Agreement in good faith. If the Parties are unable to reach a mutual agreement regarding any required amendment of this Addendum and/or any applicable Acknowledgement Agreement within thirty (30) days after such new law or regulation becomes effective, any Party (and as to any applicable Acknowledgement Agreement, the applicable Covered Entity) may terminate this Addendum and/or any applicable Acknowledgement Agreement upon written notice to the other Parties and the applicable Covered Entity.

**D.** In the event of a termination or expiration of this Addendum, the respective Parties and applicable Covered Entity(ies) under any Acknowledgement Agreement(s) related hereto shall continue to be obligated to conclude and terminate their affairs under this Addendum in an orderly fashion, to make and perform any accounting required hereunder, to undertake any audits permitted hereunder, to settle their mutual accounts, to resolve any disputes between themselves or with Eligible Persons, to commence, continue and complete any surveys and inspections permitted hereunder relating to the monitoring and reporting of the quality, utilization, and accessibility of pharmacy services hereunder, to maintain the confidentiality of information in accordance herewith, and to honor provisions hereunder regarding indemnification.

**E.** Upon termination of any applicable Acknowledgement Agreement and/or this Addendum, the Parties and each applicable Covered Entity shall conduct an inventory adjustment within a commercially reasonable time after termination, and in all cases, in accordance with Section V(C)(3) of this Addendum.

## **XVI. INDEMNIFICATION**

Member Pharmacy's indemnification obligations as provided for in the MedCare Agreement shall extend to SUNRx and Covered Entities under this Addendum.

## **XVII. INDEPENDENT CONTRACTORS; NON-ASSIGNABILITY**

Member Pharmacy, MedImpact, and SUNRx are independent entities. Member Pharmacy shall perform all services under the MedCare Agreement, including this Addendum, as an independent contractor, and shall exercise its own professional judgment in providing such services. The MedCare Agreement, including this Addendum, shall not be assigned, sub-contracted, delegated, or transferred by Member Pharmacy without the prior written consent of MedImpact and SUNRx.

## **XVIII. NOTICE**

Any notices required under this Addendum or the MedCare Agreement with respect to this Addendum shall be sent in accordance with the notice provision of the MedCare Agreement; provided, however, that SUNRx shall be added to such notice requirements as follows:

If to SUNRx: SUNRx  
10181 Scripps Gateway Court  
San Diego, CA 92131  
Attn: Jill Simoes, General Manager  
Phone: (800) 786-1791

## **XIX. COUNTERPARTS**

This Addendum may be executed in one or more counterparts, each of which will be considered an original, and all of which taken together will constitute one and the same instrument and will be effective as of the Effective Date. Signature execution by facsimile or other electronic means shall be considered binding.

## **XX. ENTIRE AGREEMENT**

This Addendum, along with the MedCare Agreement, including the Provider Manual, and the Exhibits hereto (all of which are incorporated herein), represents the entire understanding and agreement of the Parties as it relates to subject matter of this Addendum. There are no other agreements or understandings between the Parties, either oral or written, relating to the 340B Program and/or 340B pharmacy services. The Parties acknowledge and agree that any amendments to this Addendum are subject to the approval of Covered Entity as to any previously executed Acknowledgement Agreement. In the event a Covered Entity objects to any amendment hereto, such amendment shall not apply as to the

objecting Covered Entity; provided, however, the Parties shall have the right to terminate the Addendum or any applicable Acknowledgement Agreement in accordance with Section XV above.

**XXI. FURTHER ASSURANCES**

Each Party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated herein. Each Party agrees to execute and deliver to the other Parties any instruments and other documents, and to take such other actions as the other Parties may reasonably request at any time during the Term of this Agreement for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**AGREED AND ACCEPTED:**

|   |  |
|---|--|
| <b>Member Pharmacy Authorized Signature</b> |  |
| Printed Name and Title                      |  |
| Date  |  |
| NCPDP/Chain Code                            |  |

|                                       |  |
|---------------------------------------|--|
| <b>MedImpact Authorized Signature</b> |  |
| Printed Name and Title                | David Halter, SVP Strategic Finance Operations |
| Date                                  |  |

|   |                              |
|---|------------------------------|
| <b>340B Holdings, LLC. Authorized Signature</b> |                              |
| Printed Name and Title                          | Jill Simoes, General Manager |
| Date  |                              |

**Exhibit 1**  
**Authorization to Participate Form**  
**340B PHARMACY SERVICES**

**I. Reimbursement for Claims that Process as Program Price Claims (Brand and Generic):**

\$\_\_\_\_ dispensing fee plus replenishment of the Covered Drug by the Covered Entity in accordance with Section V of this Addendum.

**II. Third Party Claim Reimbursement Rate (Brand and Generic):**

\$\_\_\_\_ dispensing fee in accordance with Option \_\_ of Section VI of this Addendum, plus replenishment of the Covered Drug by the Covered Entity in accordance with Section V of this Addendum.

**III. Reimbursement for Claims that Process as a Non-Covered Drug:**

Pre-AWP Settlement Adjustment Reimbursement Rate for Claims that Process as Network Price Claims (“Network Price”) and U&C:

**Brand\*:** The lesser of AWP – 16% + \$2.00 or Member Pharmacy’s Usual and Customary

**Generic\*:** The lesser of AWP – 16% + \$2.00 or MAC + \$2.00 or Member Pharmacy’s Usual and Customary

Post-AWP Settlement Adjustment Reimbursement Rate for Claims that Process as Network Price Claims (“Network Price”) and U&C:

**Brand\*:** The lesser of AWP – 13.4% + \$2.00 or Member Pharmacy’s Usual and Customary

**Generic\*:** The lesser of AWP – 16% + \$2.00 or MAC + \$2.00 or Member Pharmacy’s Usual and Customary

\* For a Covered Entity or Payor in which Member Pharmacy participates (either directly or through a PSAO), Non-Covered Drugs shall be reimbursed at those rates applicable to Member Pharmacy for such Covered Entity or Payor.

**IV.** Member Pharmacy shall pay to MedImpact an administration fee (POS charge) as set forth in the MedCare Agreement, as applicable. Such fees may be deducted by MedImpact from amounts otherwise payable to Member Pharmacy.



**Exhibit 2**  
**List of Member Pharmacy Locations\***

**(\*Member Pharmacy to designate 340B Program participation by Member Pharmacy location)**

**Exhibit 3**  
**List of Covered Entities\***

(\*Covered Entities listed below inclusive of its applicable child sites, which such child sites are identified on the OPA web-based database: <https://340bopais.hrsa.gov/>)

**Exhibit 4**  
**Acknowledgement Agreement**  
**340B Program**

This Acknowledgement Agreement (“**Agreement**”), effective upon full execution of this Acknowledgment Agreement and registration of Member Pharmacy as a 340B contract pharmacy as shown on the OPA web-based database (the “**Program Effective Date**”), is by and between \_\_\_\_\_ with its principal office located at \_\_\_\_\_ (“**Member Pharmacy**”) and \_\_\_\_\_, located at \_\_\_\_\_ (“**Covered Entity**”) (each a “Party and collectively “the Parties”).

WHEREAS, Covered Entity is a party to a Covered Entity Service Agreement with MedImpact Healthcare Systems, Inc. (“**MedImpact**”) and/or 340B Holdings, LLC (hereinafter referred to as “**SUNRx**”), under which, among other things, MedImpact and SUNRx assist the Covered Entity in establishing and managing contract arrangements with pharmacies that desire to provide 340B pharmacy services and perform certain functions on behalf of Covered Entity;

WHEREAS, Member Pharmacy, SUNRx, and MedImpact are parties to an Addendum for 340B Program (the “**Addendum**”) to a MedCare® Pharmacy Network Agreement (the “**MedCare Agreement**”) that sets forth the terms under which Member Pharmacy will provide 340B pharmacy services to Covered Entities that contract with SUNRx and MedImpact under a Covered Entity Service Agreement.

NOW THEREFORE, in exchange for the mutual promises contained herein and for such additional consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Covered Entity hereby acknowledges that it has fully reviewed the Addendum as provided under the Administrative Services Agreement between SUNRx and Covered Entity (aka Eligible Entity) and the Deviation Notice and understands the effect and meaning of the terms contained therein.

2. Covered Entity hereby: (i) engages Member Pharmacy (aka Contract Pharmacy) to provide 340B pharmacy services in accordance with the terms of the Addendum; (ii) accepts and adopts the obligations of the Covered Entity as stated therein; and (iii) approves all delegations set forth in the Addendum and understands that such delegations do not relieve the Covered Entity of its obligations and ultimate responsibility for 340B compliance.

3. Member Pharmacy hereby: (i) agrees to act as a contract pharmacy for the Covered Entity in accordance with the terms of the Addendum and the MedCare Agreement; and (ii) accepts and adopts the obligations of the Member Pharmacy as stated therein.

4. 340B DISPENSING FEE: Covered Entity hereby acknowledges and agrees to the reimbursement rate per Program Price Claim, attached hereto and incorporated by reference.

**Reimbursement for Claims that Process as Program Price Claims (Brand and Generic):**

\$ \_\_\_\_\_ dispensing fee plus replenishment of the Covered Drug by the Covered Entity in accordance with Section V of the Addendum.

**Third Party Claim Reimbursement Rate (Brand and Generic):**

\$ \_\_\_\_\_ dispensing fee in accordance with Option \_\_ of Section VI of the Addendum, plus replenishment of the Covered Drug by the Covered Entity in accordance with Section V of the Addendum.

IN WITNESS WHEREOF, the Parties hereto have executed this Acknowledgement Agreement, intending to be legally bound hereby:

|   |   |
|---|---|
| Member Pharmacy:<br><br>By: _____<br><br>Date: _____<br><br>NCPDP/Chain Code: _____ | Covered Entity:<br><br>By: _____<br><br>Date: _____ |
|---|---|

**Exhibit 5**  
**Business Associate Agreement**  
**Between SUNRx and Member Pharmacy**

**BUSINESS ASSOCIATE PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT**  
**[OR ADDENDUM]**

This Business Associate Agreement (this “**Agreement**”) is effective \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), by and between 340B Holdings, LLC (“**SUNRx**”), a Delaware corporation, (“**BUSINESS ASSOCIATE**”), and \_\_\_\_\_, a \_\_\_\_\_ corporation (“**MEMBER PHARMACY**”).

**RECITALS**

**WHEREAS**, BUSINESS ASSOCIATE provides a service to, or performs a function on behalf of, MEMBER PHARMACY and, in connection therewith, receives, has access to or creates Protected Health Information (“**PHI**”), which includes Electronic Protected Health Information (“**EPHI**”), that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), certain privacy and security regulations found at Title 45 Code of Federal Regulations (“**CFR**”) Parts 160 through 164, and certain provisions of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (“**HIPAA Regulations**”);

**WHEREAS**, SUNRx creates and/or receives PHI and/or EPHI from or on behalf of MEMBER PHARMACY, it is therefore a BUSINESS ASSOCIATE, as defined in the HIPAA Regulations; and

**WHEREAS**, SUNRx must agree in writing to certain mandatory provisions regarding the safeguarding, use and disclosure of PHI and EPHI, the purpose of this Agreement is to satisfy the Business Associate contract requirements as set forth at § 164.314(a) and § 164.504(e) of the HIPAA Regulations as well as HITECH, as each may be amended from time-to-time.

**NOW, THEREFORE**, MEMBER PHARMACY and BUSINESS ASSOCIATE agree as follows:

**AGREEMENT**

1. **DEFINITIONS.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Unless otherwise defined in this Agreement, other capitalized terms used herein shall have the same meaning as those terms in the HIPAA Regulations.
  - a. “**Breach**” shall have the meaning found in 45 CFR 164.402.
  - b. “**Electronic Protected Health Information**” shall have the meaning found in 45 CFR 160.103.
  - c. “**HIPAA**” shall mean the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
  - d. “**HIPAA Regulations**” shall mean CFR at Title 45, Section 160 through 164.
  - e. “**Individual**” shall have the same meaning as the term “individual” in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
  - f. “**Parties**” shall mean BUSINESS ASSOCIATE and MEMBER PHARMACY.

g. “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

h. “**Protected Health Information**” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of MEMBER PHARMACY.

i. “**Required by Law**” shall have the same meaning as the term “required by law” in 45 CFR 164.103.

j. “**Secretary**” shall mean the Secretary of the United States Department of Health and Human Services or his designee.

k. “**Security Incident**” shall mean an attempted or successful unauthorized access, use, disclosure, modification, destruction of information, or interference with system operations in an information system, involving Electronic Protected Health Information that is created, received, maintained, or transmitted by or on behalf of MEMBER PHARMACY.

l. “**Security Rule**” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.

m. “**Unsecured PHI**” shall have the meaning found in 45 CFR 164.402.

2. **SCOPE AND USE AND DISCLOSURE OF PHI.** Except as otherwise limited in this Agreement:

a. BUSINESS ASSOCIATE shall use and disclose PHI to provide the services, or perform the functions, including ascertaining if MEMBER PHARMACY would or could be an appropriate member of a 340B pharmacy network, and as provided in any other applicable agreement (“**Pharmacy Agreement**”) between MEMBER PHARMACY and BUSINESS ASSOCIATE, provided that such use or disclosure would not violate the HIPAA Regulations if so used or disclosed by MEMBER PHARMACY except for the specific uses and disclosures set forth below:

i. BUSINESS ASSOCIATE may use or disclose PHI, if necessary, for the proper management and administration of BUSINESS ASSOCIATE or to carry out the legal responsibilities of BUSINESS ASSOCIATE if (i) the disclosure is Required by Law or (ii) BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

ii. BUSINESS ASSOCIATE may use or disclose PHI to provide data aggregation services relating to the health care operations of MEMBER PHARMACY.

3. **OBLIGATIONS OF BUSINESS ASSOCIATE.** BUSINESS ASSOCIATE shall:

a. Not use or disclose PHI other than as permitted or required by the Pharmacy Agreement, this Agreement, or as Required by Law.

b. Comply with applicable requirements of the Security Rule in compliance with § 164.314(a)(2)(i)(A) in order to prevent use or disclosure of the information other than as provided for by this Agreement.

c. Mitigate, to the extent practicable, any harmful effect that is known to BUSINESS

ASSOCIATE of a use or disclosure of PHI by BUSINESS ASSOCIATE in violation of the requirements of this Agreement.

d. Report to MEMBER PHARMACY any use or disclosure of the PHI not provided for by this Agreement of which BUSINESS ASSOCIATE becomes aware, or any Security Incident of which BUSINESS ASSOCIATE becomes aware.

e. Require contractors, subcontractors, and/or agents that create, receive, maintain, or transmit EPHI on behalf of BUSINESS ASSOCIATE and MEMBER PHARMACY to agree to comply with the applicable requirements of the Security Rule in accordance with § 164.314(a)(2)(i)(B).

f. Require contractors, subcontractors, and/or agents that create, receive, maintain, or transmit PHI or EPHI on behalf of BUSINESS ASSOCIATE and MEMBER PHARMACY to agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI and EPHI under this Agreement.

g. Provide access, at the request of MEMBER PHARMACY, and in the time and manner mutually agreed upon by the MEMBER PHARMACY and BUSINESS ASSOCIATE, to PHI in a Designated Record Set, to MEMBER PHARMACY in order to meet the requirements under § 164.524 of the HIPAA Regulations.

h. Make any Amendment(s) to PHI in a Designated Record Set that the MEMBER PHARMACY directs or agrees to pursuant to § 164.526 of the HIPAA Regulations at the request of MEMBER PHARMACY in the time and manner mutually agreed upon by the MEMBER PHARMACY and BUSINESS ASSOCIATE.

i. Make internal practices, books, and records, including, but not limited to, policies and procedures, relating to the use and disclosure of PHI created or received by BUSINESS ASSOCIATE on behalf of MEMBER PHARMACY available to the Secretary in a time and manner designated by the Secretary, for purposes of the Secretary determining MEMBER PHARMACY'S compliance with the HIPAA Regulations.

j. Maintain for a period of six (6) years an accounting of all disclosures of PHI that are required to be maintained under § 164.528 of the HIPAA Regulations. Such accounting will include the date of the disclosure, the name of the recipient and, if known, the address of the recipient, a description of PHI disclosed and the purpose of the disclosure.

k. Provide to MEMBER PHARMACY in time and manner mutually agreed upon by MEMBER PHARMACY and BUSINESS ASSOCIATE, information collected in accordance with Section 3.i. of this Agreement, to permit MEMBER PHARMACY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with § 164.528 of the HIPAA Regulations. If MEMBER PHARMACY and BUSINESS ASSOCIATE mutually agree, BUSINESS ASSOCIATE may provide such accounting directly to Individual, provided that such accounting is provided to the Individual in the time-frames set forth in § 164.528 of the HIPAA Regulations.

l. To the extent BUSINESS ASSOCIATE is to carry out MEMBER PHARMACY'S obligation(s) under Subpart E of the Privacy Rule, comply with the requirements of Subpart E that apply to the MEMBER PHARMACY in the performance of such obligation(s).

m. Make reasonable efforts to implement any restriction of the use or disclosure of PHI that MEMBER PHARMACY has agreed to under Section 4.c. of this Agreement.

n. Limit BUSINESS ASSOCIATE'S use and disclosure of PHI to be consistent with the MEMBER PHARMACY'S minimum necessary policies and procedures as provided to BUSINESS ASSOCIATE in writing.

o. Report to MEMBER PHARMACY a Breach of Unsecured PHI, following discovery of such Breach by BUSINESS ASSOCIATE. Such reporting shall be in compliance with 45 CFR 164.410.

4. **OBLIGATIONS OF MEMBER PHARMACY.** MEMBER PHARMACY shall:

a. Provide BUSINESS ASSOCIATE with the notice of privacy practices that MEMBER PHARMACY furnishes to Individuals in accordance with § 164.520 of the HIPAA Regulations.

b. Promptly notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.

c. Promptly notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of PHI that MEMBER PHARMACY has agreed to in accordance with § 164.522 of the HIPAA Regulations, to the extent that such restriction may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.

d. Not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if so used or disclosed by MEMBER PHARMACY, unless such use or disclosure is necessary for the purposes of Data Aggregation or management and administrative activities of BUSINESS ASSOCIATE under the Agreement.

e. Immediately notify BUSINESS ASSOCIATE if MEMBER PHARMACY determines that a use or disclosure reported by Business Associate pursuant to Section 3(d) of this Agreement is a Breach.

f. Be responsible for all Breach notification requirements pursuant to 45 CFR §§ 164.404, 164.406 and 164.408.

5. **TERM AND TERMINATION**

a. **Term.** This Agreement shall be effective as of the Effective Date stated above and shall terminate when the Pharmacy Agreement terminates.

b. **Termination for Cause.** Either party ("**Non-Breaching Party**") may terminate this Agreement if it determines, in its sole discretion, that the other party ("**Breaching Party**") has breached any provision hereof and fails to cure such breach within 30 days after written notice from the Non-Breaching Party of such breach. The Non-Breaching Party may exercise this right to terminate by providing written notice of termination to the Breaching Party, stating the failure to cure the breach of this Agreement that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in the notice of termination.

c. **Effect of Termination.**

i. Except as provided in paragraph (ii) of this section or in the Pharmacy Agreement or by other applicable law or agreements, upon termination of this Agreement and services provided by BUSINESS ASSOCIATE, for any reason, BUSINESS ASSOCIATE shall return or destroy all PHI or EPHI received from MEMBER PHARMACY, or created or received by BUSINESS ASSOCIATE on behalf of MEMBER PHARMACY.

ii. In the event that BUSINESS ASSOCIATE determines that returning or destroying the PHI is not feasible, BUSINESS ASSOCIATE shall provide to MEMBER PHARMACY notification of the conditions that make return or destruction not feasible. BUSINESS ASSOCIATE shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.

6. **FUTURE CONFIDENTIALITY OF PHI.** Upon the expiration or earlier termination of the Agreement, for any reason, BUSINESS ASSOCIATE shall return or destroy all PHI received from MEMBER PHARMACY, or created or received by BUSINESS ASSOCIATE on behalf of MEMBER PHARMACY that BUSINESS ASSOCIATE still maintains and retain no copies of such PHI; provided that if such return or destruction of PHI is infeasible, BUSINESS ASSOCIATE shall provide to MEMBER PHARMACY notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.
7. **INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be construed to create (a) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (b) a relationship of employer and employee between the parties. BUSINESS ASSOCIATE is an independent contractor, not an agent, to MEMBER PHARMACY, and MEMBER PHARMACY does not control the manner or means of BUSINESS ASSOCIATES' performance under this Agreement or the Pharmacy Agreement, and nothing contained in this Agreement shall be intended to expand the scope or nature of the relationship.
8. **AMENDMENT.** The Parties agree to take such action to amend this Agreement from time-to-time as is necessary for MEMBER PHARMACY and/or BUSINESS ASSOCIATE to comply with the requirements of HIPAA and the HIPAA Regulations. No amendment shall be effective unless in writing and signed and dated by the Parties hereto.
9. **SURVIVAL.** The respective rights and obligations of BUSINESS ASSOCIATE under Section 6 of this Agreement shall survive the termination of the Agreement.
10. **CONFLICT OF TERMS.** In the event of a conflict in terms between this Agreement and the Pharmacy Agreement, the interpretation that is in accordance with the HIPAA Regulations shall prevail. In the event that a conflict then remains, the Pharmacy Agreement terms shall prevail so long as they are in accordance with the HIPAA Regulations.
11. **OTHER TERMS.** Except as expressly modified by the terms of this Agreement, all of the terms and conditions set forth in the Agreement shall remain in full force and effect.
12. **NOTICES.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received (a) when personally delivered, (b) on the day specified for delivery deposited with a courier service such as Federal Express for delivery to the intended addressee, or (c) three (3) business days following the day deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, to the address as set forth below:

**If to SUNRx, LLC:**

Attn: SUNRx  
 10181 Scripps Gateway Court  
 San Diego, CA 92131  
 Attn: Jill Simoes, General Manager  
 Phone: (800) 786-1791

**If to MEMBER PHARMACY:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. **CHANGES IN LAW.** In the event that a change in an applicable law, rule, regulation or express public policy causes a provision of this Agreement to become invalid or requires additional safeguards for the protection of the PHI or EPHI, the Parties agree that they shall renegotiate this Agreement or



execute such additional agreements as may be required, in good faith, in order to comply with such change.

## Exhibit 6

### MEDIMPACT LICENSE AGREEMENT

WHEREAS, MedImpact Healthcare Systems, Inc. (“MedImpact”) has developed or acquired certain proprietary services and programs that it offers as part of the 340B services it provides to Member Pharmacy; and

WHEREAS, Member Pharmacy, by executing the Addendum to MedCare® Pharmacy Network Agreement for 340B Program with SUNRx and MedImpact demonstrates its desire to secure the license to use certain of MedImpact’s proprietary products and services as set forth herein; and

NOW, THEREFORE, the Parties, for good and valuable consideration the sufficiency of which is hereby stipulated by the parties hereto, agree as follows:

#### 1. Definitions.

- a. “Documentation” shall mean any instructions, procedures or other reference or marketing materials developed by MedImpact in relation to the service(s).
- b. “Equipment” shall mean any computer equipment, peripheral equipment and related items needed or required by Member Pharmacy to utilize the Product(s).
- c. “Intellectual Property Rights” shall mean the patents, trademarks, service marks, trade secrets, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, know how, trade or business names and other similar rights or obligations whether registerable or not.
- d. “Product(s)” shall mean the MedImpact proprietary product, service or information, as specifically set forth in Section 7, licensed for use by Member Pharmacy under this Agreement.
- e. “Third Party Software” shall mean all computer software necessary for the operation of the Product(s), but not licensed or provided by MedImpact hereunder.

#### 2. License Grant.

- a. MedImpact hereby grants to Member Pharmacy a limited, non-exclusive, nonsublicenseable, non-transferable license to use those Products for the purposes of supporting Member Pharmacy’s internal business for its 340B services, solely in accordance with the terms of this Agreement.
- b. Copies of MedImpact’s copyright notice and other proprietary legends and labels must be included on and in all copies of any Documentation or other items related to the Products. No other copies may be made without MedImpact’s express written authorization.
- c. Member Pharmacy may use the Products only for Member Pharmacy’s operations. Member Pharmacy may permit any of their consultants, independent contractors and Affiliates to access the Product(s) and Documentation provided: (i) the entity accessing shall, prior to such accessing, have executed a Non-Disclosure Agreement in a form reasonably acceptable to MedImpact; and (ii) such access is limited solely to performing services for Member Pharmacy,

and (iii) the consultant, independent contractor or Affiliate agrees not to access, use or disclose the Product(s) in connection with performing services for any other entity or client of such party.

- d. Access by any third party as described in Section 2.c above shall not increase MedImpact's obligations or enlarge MedImpact's liability beyond that which MedImpact has to Member Pharmacy alone under the terms of this Agreement. No third party shall have any right in contract, warranty, tort, or otherwise against MedImpact. This Agreement is not intended to benefit any third party and no such third party shall have any claim or right under it.
  - e. Member Pharmacy shall keep and make available to MedImpact, upon request, records of and account for the use of the Products made by Member Pharmacy. MedImpact's authorized representatives shall have, upon reasonable notice to Member Pharmacy, access to Member Pharmacy's premises, equipment, and records specific to the Products, as well as Member Pharmacy's employees, during normal business hours for the purpose of verifying compliance with this Agreement. MedImpact retains all license rights not expressly granted by this Agreement.
3. Third Party Software and Equipment. Member Pharmacy is solely responsible for acquiring any and all Third-Party Software or Equipment necessary for Member Pharmacy's use of the Product(s). MedImpact does not license or sublicense any right to use any Third-Party Software or Equipment utilized by MedImpact in its use or operation of the Product(s).
  4. Member Pharmacy Responsibility. Member Pharmacy agrees to accept full responsibility for the selection, implementation, and use of the Product(s) to achieve Member Pharmacy's intended results. Member Pharmacy agrees to indemnify and defend and hold harmless MedImpact and its directors, officers, employees and agents from and against any and all claims, liabilities, costs (including reasonable attorney's fees), and damages, other than those attributable to MedImpact's gross negligence or willful misconduct, arising, made, incurred, or suffered, directly or indirectly, by any person from or in connection with the use of any of the Product(s) by Member Pharmacy or any person acting with Member Pharmacy's permission under Section 2.c.
5. Warranty/Disclaimer of Warranties/Limitation of Liabilities.
    - a. MedImpact warrants that it is the owner of, or has the right to grant the licenses to use the Product(s) contained in this Agreement, free of all liens, claims, and encumbrances.
    - b. This limited warranty is valid only if Member Pharmacy uses the Products in accordance with the terms of this Agreement. If Member Pharmacy makes any modifications to the Products, this warranty shall be void ab initio.
    - c. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, MEDIMPACT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE.

- d. Except as otherwise provided in this Section 5, MedImpact's liability and that of its directors, officers, employees, agents, and representatives to Member Pharmacy for damages with respect to this Agreement, the Product(s), or other items or services shall not exceed in the aggregate the fee or price for the particular Product or other item or service giving rise to the claim. IN NO EVENT SHALL MEDIMPACT HAVE ANY LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR DAMAGE TO BUSINESS OR GOODWILL EVEN IF MEDIMPACT HAS BEEN ADVISED OF THE POSSIBILITY OF SAME OR HAS ACTUAL KNOWLEDGE THAT SUCH DAMAGES MAY BE INCURRED. The limitations and exclusions in this paragraph shall apply to all claims of every nature, kind and description whether arising from breach of contract, breach of warranty, negligence or other tort, or otherwise. Damages, as limited by this paragraph are Member Pharmacy's sole and exclusive independent remedy in the event that any other remedy provided in this Agreement fails of its essential purpose.
- e. Except with respect to the obligation to pay money, neither party will be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to acts of God, the other party, strikes, suppliers, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures or earthquakes.
6. Title. Member Pharmacy acknowledges and agrees that MedImpact owns all right, title, and interest in and to the Products, except as otherwise stated herein. No title to or ownership of the Products or any Documentation, in any form, is hereby transferred to Member Pharmacy, and Member Pharmacy's rights shall at all times be subject to MedImpact's Intellectual Property Rights and the restrictions contained in this Agreement, except as stated herein. Member Pharmacy shall promptly execute and deliver to MedImpact such additional documentation as may be reasonably required in order to accomplish and evidence such ownership.
7. MedImpact Proprietary Products. The following MedImpact proprietary products and services are licensed for use by Member Pharmacy under this Agreement:
- MedAccess®  
MedCare®

## Exhibit 7

### SUNRX LICENSE AGREEMENT

WHEREAS, 340B Holdings, LLC (hereinafter referred to as “SUNRx”) has developed or acquired certain proprietary services and programs that it offers as part of the 340B services it provides to Member Pharmacy; and

WHEREAS, Member Pharmacy, by executing the Addendum to MedCare® Pharmacy Network Agreement for 340B Program with SUNRx and MedImpact demonstrates its desire to secure the license to use certain of SUNRx’s proprietary products and services as set forth herein; and

NOW, THEREFORE, the Parties, for good and valuable consideration the sufficiency of which is hereby stipulated by the parties hereto, agree as follows:

#### 1. Definitions.

- a. “Documentation” shall mean any instructions, procedures or other reference or marketing materials developed by SUNRx in relation to the service(s).
- b. “Equipment” shall mean any computer equipment, peripheral equipment and related items needed or required by Member Pharmacy to utilize the Product(s).
- c. “Intellectual Property Rights” shall mean the patents, trademarks, service marks, trade secrets, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, know how, trade or business names and other similar rights or obligations whether registerable or not.
- d. “Product(s)” shall mean the SUNRx proprietary product, service or information, as specifically set forth in Section 7, licensed for use by Member Pharmacy under this Agreement.
- e. “Third Party Software” shall mean all computer software necessary for the operation of the Product(s), but not licensed or provided by SUNRx hereunder.

#### 2. License Grant.

- a. SUNRx hereby grants to Member Pharmacy a limited, non-exclusive, nonsublicenseable, non-transferable license to use those Products for the purposes of supporting Member Pharmacy’s internal business for its 340B Program, solely in accordance with the terms of this Agreement.
- b. Copies of SUNRx’s copyright notice and other proprietary legends and labels must be included on and in all copies of any Documentation or other items related to the Products. No other copies may be made without SUNRx’s express written authorization.
- c. Member Pharmacy may use the Products only for Member Pharmacy’s operations. Member Pharmacy may permit any of their consultants, independent contractors and Affiliates to access the Product(s) and Documentation provided: (i) the entity accessing shall, prior to such accessing, have executed a Non-Disclosure Agreement in a form reasonably acceptable to SUNRx; and (ii) such access is limited solely to performing services for Member Pharmacy, and

- (iii) the consultant, independent contractor or Affiliate agrees not to access, use or disclose the Product(s) in connection with performing services for any other entity or client of such party.
- d. Access by any third party as described in Section 2.c above shall not increase SUNRx's obligations or enlarge SUNRx's liability beyond that which SUNRx has to Member Pharmacy alone under the terms of this Agreement. No third party shall have any right in contract, warranty, tort, or otherwise against SUNRx. This Agreement is not intended to benefit any third party and no such third party shall have any claim or right under it.
- e. Member Pharmacy shall keep and make available to SUNRx, upon request, records of and account for the use of the Products made by Member Pharmacy. SUNRx's authorized representatives shall have, upon reasonable notice to Member Pharmacy, access to Member Pharmacy's premises, equipment, and records specific to the Products, as well as Member Pharmacy's employees, during normal business hours for the purpose of verifying compliance with this Agreement. SUNRx retains all license rights not expressly granted by this Agreement.
3. Third Party Software and Equipment. Member Pharmacy is solely responsible for acquiring any and all Third-Party Software or Equipment necessary for Member Pharmacy's use of the Product(s). SUNRx does not license or sublicense any right to use any Third-Party Software or Equipment utilized by SUNRx in its use or operation of the Product(s).
4. Member Pharmacy Responsibility. Member Pharmacy agrees to accept full responsibility for the selection, implementation, and use of the Product(s) to achieve Member Pharmacy's intended results. Member Pharmacy agrees to indemnify and defend and hold harmless SUNRx and its directors, officers, employees and agents from and against any and all claims, liabilities, costs (including reasonable attorney's fees), and damages, other than those attributable to SUNRx's gross negligence or willful misconduct, arising, made, incurred, or suffered, directly or indirectly, by any person from or in connection with the use of any of the Product(s) by Member Pharmacy or any person acting with Member Pharmacy's permission under Section 2.c.
5. Warranty/Disclaimer of Warranties/Limitation of Liabilities.
- a. SUNRx warrants that it is the owner of, or has the right to grant the licenses to use the Product(s) contained in this Agreement, free of all liens, claims, and encumbrances.
- b. This limited warranty is valid only if Member Pharmacy uses the Products in accordance with the terms of this Agreement. If Member Pharmacy makes any modifications to the Products, this warranty shall be void ab initio.
- c. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SUNRX MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE.
- d. Except as otherwise provided in this Section 5, SUNRx's liability and that of its directors, officers, employees, agents, and representatives to Member Pharmacy for damages with respect

to this Agreement, the Product(s), or other items or services shall not exceed in the aggregate the fee or price for the particular Product or other item or service giving rise to the claim. IN NO EVENT SHALL SUNRX HAVE ANY LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR DAMAGE TO BUSINESS OR GOODWILL EVEN IF SUNRX HAS BEEN ADVISED OF THE POSSIBILITY OF SAME OR HAS ACTUAL KNOWLEDGE THAT SUCH DAMAGES MAY BE INCURRED. The limitations and exclusions in this paragraph shall apply to all claims of every nature, kind and description whether arising from breach of contract, breach of warranty, negligence or other tort, or otherwise. Damages, as limited by this paragraph are Member Pharmacy's sole and exclusive independent remedy in the event that any other remedy provided in this Agreement fails of its essential purpose.

- e. Except with respect to the obligation to pay money, neither party will be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to acts of God, the other party, strikes, suppliers, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures or earthquakes.
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7. **SUNRx Proprietary Products.** The following SUNRx proprietary products and services are licensed for use by Member Pharmacy under this Agreement:
  - SUNRx Connect®
  - SUNRx System (virtual inventory tool)