

AGREEMENT
between
COUNTY OF SANTA BARBARA
and
SANTA BARBARA SAN LUIS OBISPO REGIONAL HEALTH AUTHORITY
for
SAVINGS SHARE
FIRST AMENDMENT
Effective June 17, 2014

THIS IS THE FIRST AMENDMENT (hereafter referred to as **First Amendment**) to the Agreement for Savings Share (hereafter **Agreement**), associated with the 340B Drug Pricing program by and between the County of Santa Barbara (ENTITY) and CenCal Health (PLAN).

WHEREAS, the Agreement is effective through June 18, 2015; and

WHEREAS, the parties desire to amend the Agreement to add Section 8 Sharing of Price File Information ; and

WHEREAS, this First Amendment incorporates the terms and conditions set forth in the Agreement approved by the County of Santa Barbara.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this First Amendment, to the extent not otherwise defined herein shall have the same meanings as in the Agreement.
2. **Amendments.**
 - a. The Agreement is amended as follows:

8. Sharing of Price File Information

ENTITY shall share with PLAN any 340B pricing file information that ENTITY receives from a wholesaler, to the extent not prohibited by regulations governing the protection of "confidential drug pricing information" as defined in 58 Fed. Reg. 68922 (Dec. 29, 1993). Data from a 340B pricing file may be submitted to PLAN in a format created by ENTITY's 340B Administrative Services Provider. PLAN may not share pricing file information with any third party and shall use the pricing information only for purposes related to the 340B Program with ENTITY.

89. Compliance with Anti-Kickback Statute

This Agreement does not amount to the offering of or acceptance by ENTITY of any kickback, bribe, rebate, or the transfer of anything of value as illegal remuneration. Nothing in this Agreement is intended as an attempt to refer patients in return for the provision of any services at no charge or at a reduced or below cost charge.

9 10. Compliance with Laws

This Agreement, and the other agreements and arrangements contemplated herein, shall be carried out in compliance with all applicable federal and state laws and regulations, and other governmental requirements or orders, whether or not explicitly referenced herein or in such other agreements and arrangements. Each party shall be solely responsible for compliance with its own legal obligations.

10 11. Contingencies

This Agreement is contingent upon execution of the Pharmacy Services Agreements, 340B Amendment and such other agreements and documentation as the parties may deem necessary or desirable to effectuate the purposes of this Agreement.

11 12. Term and Termination

11.1 12.1 Term. The term of this Agreement shall be three (3) years, commencing on the Program Commencement Date. The Agreement shall remain in effect for three years from the Program Commencement Date unless earlier terminated pursuant to the terms hereof. The parties agree to meet six months prior to the third anniversary of the Program Commencement Date for purposes of negotiating a new three-year term.

11.2 12.2 Termination for Breach. Upon the occurrence of a material breach of this Agreement by either party, the other party shall provide written notice to the defaulting party (the "Default Notice") specifying the nature of the breach. If such breach is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days after service of the Default Notice, this Agreement shall automatically terminate at the election of the non-defaulting party upon giving written notice of termination to the defaulting party not later than forty-five (45) days after service of the Default Notice.

11.3 12.3 Immediate Termination. Notwithstanding any other provision hereof, this Agreement may be terminated by either party for cause, upon one (1) day prior written notice to the other party, upon the occurrence of any of the following events:

(a) The termination or suspension of any license or permit of ENTITY or ENTITY's designee to carry out the necessary administrative functions to handle 340B claims;

(b) The attempted assignment or other unauthorized delegation of any of PLAN or ENTITY obligations under this Agreement;

(c) Any change in any law, regulation or rule, state or federal, or any change in the judicial or administrative interpretation of any such law, regulation or rule, which effectively terminates the 340B Drug Pricing Program or its applicability to the Medi-Cal program or otherwise automatically invalidates this Agreement.

(d) The termination of the PLAN's contract with the State, or the loss by ENTITY of its status as a 340B qualified entity.

11.4 12.4 Partial Termination. The termination of the Pharmacy Services Agreement between ENTITY and any Contract Pharmacy shall result in the termination

of this Agreement with respect only to claims submitted by such Contract Pharmacy. ENTITY will promptly notify PLAN of the termination of its agreement with any Contract Pharmacy and the timing of that termination.

12 13. Dispute Resolution

In the event any disagreement, dispute or claim (collectively "Dispute") arises among or between the parties arising out of or relating to this Agreement or any contemplated transaction, such Dispute shall be resolved as follows:

Meet and Confer. The parties agree to meet and confer on any issue that is the subject of a dispute under this Agreement ("Meet and Confer"), as a condition precedent to terminating the Agreement or taking any other formal steps to settle the dispute. The party seeking to initiate the Meet and Confer procedure (the "Initiating Party") shall give written notice to the other party, describing in general terms the nature of the dispute, the Initiating Party's position and a summary of the evidence and arguments supporting its position, and identifying one or more individuals with authority to settle the dispute on such party's behalf. The party receiving notice (the "Responding Party") shall have five (5) business days within which to respond. The response shall include the Responding Party's position and summary of the evidence and arguments supporting its position and shall identify one or more individual with authority to settle the dispute on such party's behalf (the individuals so designated shall be known as the "Authorized Individuals"). The Authorized Individuals shall meet at a mutually acceptable time and place within thirty (30) days after the Initiating Party's notice and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days after the Initiating Party's notice, or if the Responding Party will not meet within thirty (30) days, the parties may agree upon an alternative dispute resolution technique (e.g., mediation or early neutral evaluation). All deadlines specified in this Meet and Confer provision may be extended by mutual agreement.

13 14. General Provisions

~~13.1~~ **14.1** **Amendments.** No modification, amendment or addition to this Agreement shall be valid or enforceable unless in writing and signed by the parties.

~~13.2~~ **14.2** **Force Majeure.** Notwithstanding any provision contained herein to the contrary, ENTITY, and PLAN shall not be deemed to be in default hereunder for failing to perform or provide any of their obligations to be performed or provided by ENTITY, or PLAN pursuant to this Agreement if such failure is the result of any labor dispute, act of God, inability to obtain labor or materials, governmental restrictions or any other event which is beyond the reasonable control of the party from whom such performance is required.

~~13.3~~ **14.3** **Third Party Beneficiaries.** None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.

~~13.4~~ **14.4** **Waiver.** Any waiver of any provision hereof shall not be effective unless expressly made in writing executed by the party to be charged. The failure of

either party to insist on performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, and the obligations of the parties with respect thereto shall continue in full force and effect.

~~13.5~~ **14.5** Entire Agreement. This Agreement contains the entire agreement between the parties relating to the savings sharing associated with the adjudication of the 340B Drug Pricing Program for the Target Patient Group. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, under-takings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

~~13.6~~ **14.6** Continued Validity. If at any time either party reasonably believes in good faith that this Agreement or the performance by that party of any of its obligations under this Agreement violates any law or regulation, state or federal, or could result in the loss or restriction of that party's license or that party's right to participate in Medicare, Medicaid or any other governmental program, then that party may, upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this Agreement. If the parties are unable to reach an agreement concerning the modification of this Agreement within forty-five (45) days after the date of the notice seeking renegotiation then either party may terminate this Agreement by thirty days written notice to the other party.

~~13.7~~ **14.7** Additional Documents. Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement and to otherwise cooperate fully with such other party in connection with the performance of such party's obligations under this Agreement.

~~13.8~~ **14.8** Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be one and the same Agreement.

~~13.9~~ **14.9** Headings. The headings in this Agreement are for convenience only and shall not affect the construction thereof.

~~13.10~~ **14.10** Notices. Any notice or other communication required or permitted by this Agreement shall be in writing and shall be delivered personally, sent by any nationally recognized overnight courier that routinely issues receipts, or sent by United States first class mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

ENTITY: Name: Santa Barbara County Public Health Department
Address: 300 N. San Antonio Road, Santa Barbara, CA 93110
Fax: (805) 681-5200
Attn: Dan Reid, Deputy Assistant Director

PLAN: Name: Santa Barbara San Luis Obispo Regional Health Authority
Address: 4050 Calle Real, Santa Barbara, CA 93110
Fax: (805) 964-0367
Attn: Jeffrey Januska, Director of Pharmacy Services

The parties may, upon ten (10) days prior written notice given in accordance with this section, change its address for notices. Any notice or other communication sent as aforesaid shall be deemed served when actually received or refused.

~~13.11~~ **14.11** Audit Rights. Upon reasonable written request specifying the nature and cause of its concerns, either party may audit material issues related to the other party's compliance with the terms of this Agreement. Such audit(s) will be conducted in accordance with mutually agreed-upon procedures, including procedures designed to assure that those conducting the audit have access to the documents and systems related to performance under this Agreement and that such access shall be limited to only that necessary to perform the audit and shall be conducted in a manner so as to preserve the confidentiality of the audited party's business, financial and operations information.

~~13.12~~ **14.12** Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

~~13.13~~ **14.13** Exhibits. Any exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

3. **Counterparts**. This First Amendment may be executed in several counterparts, all of which taken together shall constitute a single agreement between the parties.

First Amendment to Agreement for Savings Share between the **County of Santa Barbara** and **CenCal Health**.

IN WITNESS WHEREOF, the parties have executed and ratified this First Amendment to be effective June 17, 2014.

COUNTY OF SANTA BARBARA

Chair, Board of Supervisors

Date: _____

ATTEST:
MONA MIYASATO
CLERK OF THE BOARD

By: _____
Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: _____
Deputy County Counsel

By: _____
Deputy

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

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

By: _____
Director

By: _____
Risk Manager

First Amendment to Agreement for Savings Share between the **County of Santa Barbara** and **CenCal Health**.

IN WITNESS WHEREOF, the parties have executed and ratified this First Amendment to be effective June 17, 2014.

CONTRACTOR

**SANTA BARBARA SAN LUIS OBISPO
REGIONAL HEALTH AUTHORITY
dba CENCAL HEALTH**

By: _____
Bob Freeman,
Chief Executive Officer

Date of Execution by CenCal Health