



## 340Basics Services Agreement

This Services Agreement (the "Agreement") is entered into as of August 1, 2021 (the "Effective Date") by and between 340B Technologies (DBA 340Basics) Inc., a Delaware corporation, having its principal place of business located at 161 Gaither Drive, Suite 201, Mount Laurel, NJ 08054 (the "Company"), and the County of Monterey ("County"), a political subdivision of the State of California, on behalf of the Monterey County Health Department, with its principal place of business located at 1441 Constitution Blvd, Bldg. #200, Floor STE 101, Salinas, California, 93906 (the "Eligible Entity"), (the Company and Eligible Entity are each individually referred to herein as a "Party" and collectively the "Parties").

WHEREAS, the Company is in the business of assisting eligible health care organizations in providing outpatient drugs at reduced prices to Eligible Patients (defined below) in accordance with Section 340(B) of the Public Health Service Act (hereinafter the "Act"), and Eligible Entity is a Covered Entity as defined in Section (a)(4) of the Act and has duly registered and is enrolled as a Covered Entity in accordance with the Act; and

WHEREAS, pursuant to the Act, Eligible Entity is authorized to purchase Covered Drugs (as defined in the Act) at reduced rates for distribution on an outpatient basis to Eligible Patients (as that term is defined by the Health Resources and Services Administration) and implement a program under the Act (a "340B Program") pursuant to which the Eligible Entity may provide Covered Drugs to Eligible Patients;

WHEREAS, Eligible Entity's 340B Program utilizes one or more off- site retail pharmacies (each, a "Contract Pharmacy") in which the Eligible Entity contracts with a Contract Pharmacy to provide pharmacy services and dispense Covered Drugs in accordance with the Act for Eligible Patients;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. Scope of Services. During the Term (as hereinafter defined) of this Agreement, the Company will perform those services for the Eligible Entity set forth in Schedule I attached hereto (the "Services"). In providing the Services, the Company shall comply with all contracts, and comply with all federal and state statutes, laws, rules and regulations, including, but not limited to, the 340B rules and regulations.

2. Certain Responsibilities of Covered Entity.

(a) Maintenance of Status. Eligible Entity shall take reasonable steps to maintain its status as a 340B Covered Entity as defined in the Preliminary Statement of this Agreement. In the event that Eligible Entity no longer qualifies as a Covered Entity, Eligible Entity shall notify Company within three (3) business days after it receives notice that it no longer qualifies.

(b) Eligible Patients. Eligible Entity shall provide to Company all necessary information for Company's management of a patient eligibility system in accordance with the format as determined by the Company. Such information shall include, but not be limited to, Eligible Patients' unique identification number, gender, complete name, date of birth, patient code, Authorized Provider's DEA number, license number, National Provider Identification (NPI) Number, Third Party insurance and enrollment status in a Governmental Program, including Medicaid and Medicare, if any. Eligible Entity shall provide prompt updates and changes to such information for Eligible Patients to the Company system, and shall enter such information for new Eligible Patients on an ongoing basis. The Company will offer a secure HIPAA compliant interface for real time eligibility exchange and to assure only Eligible Patients' receive 340B Program medications.



(c) DEA/NPI Licensure. (i) Eligible Entity shall assure that all of its physicians who prescribe medications must maintain a current and valid DEA/NPI license and shall immediately, within 72 business hours, enter in the Company system any suspension, termination or revocation of any physician's license. (ii) Eligible Entity shall provide Company an initial physicians panel listing all physicians servicing Eligible Patients and shall provide continuous updates of any part-time physicians who work outside the Eligible Entity's facility as well as notifications of any changes to the initial panel.

(d) Patient Choice. Eligible Entity shall recognize the right of an Eligible Patient to elect not to use Eligible Entity's program for pharmacy services and obtain the prescription from the pharmacy provider of his or her choice.

### 3. Fees and Payments.

(a) Eligible Entity shall pay the Company's fees in accordance with the fee schedule set forth on Schedule II attached hereto and incorporated herein.

(b) Eligible Entity shall pay Dispensing Fees (as defined in Schedule I) to Contract Pharmacies, and Contract Pharmacies shall remit payments to Eligible Entity, in accordance with terms set forth in the applicable Pharmacy Services Agreement or Exhibits thereto. Company shall provide semi-monthly invoices to Contract Pharmacies and shall facilitate timely payments between Covered Entity and Contract Pharmacies. Eligible Entity will pay directly through electronic transfer according to the payment schedule, shall establish and maintain a bank account for such payments and shall execute any ACH Authorization reasonably required to enable Company to initiate ACH debits, credits and adjustments for purposes of facilitating the payments.

(c) All monies owed under this Agreement, including payments to Covered Entity that are facilitated by the Company, shall be paid on a semi-monthly basis. Specifically, all of the Company's administrative fees and expenses shall be invoiced to the Covered Entity on or about the 15th and the last day of each month, along with an accounting of funds received from or due to Contract Pharmacies. The invoice shall set forth the amounts claimed by the Company for the previous period, together with an itemized basis for the amount claimed, and such other information pertinent to the invoice. Eligible Entity shall certify the invoice, either in the requested amount or in such other amount as the Eligible Entity approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. The total amount payable by Eligible Entity to the Company under this Agreement shall not exceed the sum of \$244,000 per each contract year.

4. Term and Termination. This Agreement shall become effective upon execution below by both Parties hereto and shall continue for a period of 3 years thereafter, unless earlier terminated as set forth below ("Initial Term"). At the end of the Initial Term, this Agreement shall renew for an additional one (1) year period and shall continue to renew for additional one (1) year periods thereafter unless otherwise terminated as indicated below ("Renewal Term").

(a) Termination with Cause. In the event that a Party materially breaches the terms of this Agreement, the non-breaching Party may terminate this Agreement if the other Party has failed to cure such breach within thirty (30) calendar days after the non-breaching Party gives written notice of such breach. For the purposes of this Agreement, termination by Eligible Entity for cause shall include the breach of any representation or warranty by COMPANY when made or occurring at any time during the term of this Agreement, the non-compliance by COMPANY with this Agreement or any agreement entered into by COMPANY pursuant to this Agreement or the failure by COMPANY to perform or provide services as required hereunder or thereunder.

(b) Termination without Cause. Either Party may elect to terminate this Agreement by written notice



to the other party of such election delivered with a 90 day notice. In the event of termination without cause, the Eligible Entity shall pay COMPANY, in addition to the fees described in the schedules hereto, an implementation fee in the amount of One Thousand Dollars (\$1,000) if COMPANY has successfully completed the full processing of at least one Payment Batch prior to receipt of notice of such termination and COMPANY is not in default or breach of any of the provisions of this Agreement.

(c) Termination for Lack of Government Funding. Eligible Entity's payments to COMPANY under this Agreement are funded by local, state and federal governments. Financial obligations of COMPANY are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available on an ongoing basis. If such funds from local, state and federal sources are not appropriated and continued during the term of this Agreement at a level sufficient to allow for Eligible Entity's purchase of any Services under this Agreement, then Eligible Entity may give written notice of this fact to COMPANY.,

(d) Insolvency. Either the Eligible Entity or COMPANY may terminate this Agreement immediately upon delivering written notice to the other party in the event the other party makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to all or a substantial part of a party's property, or a proceeding is commenced against it which will substantially impair its ability to perform hereunder (collectively, an "Insolvency"). The other party (to the extent it may lawfully do so) shall not at any time insist upon, plead, or in any manner claim, or take advantage of any stay or extension law that may affect the performance of this Agreement, and hereby expressly waives all benefit or advantage of any such law.

(e) Fraud; Debarment/Suspension; Change in Law. Either the Eligible Entity or COMPANY may terminate this Agreement by notice to the other party if the other party is found guilty of fraud, or is the subject of a Debarment/Suspension with termination effective on receipt of such notice. The Eligible Entity may terminate this Agreement immediately in the event the Eligible Entity learns the Certification from COMPANY was erroneous when submitted or has become erroneously by reason of changed circumstances. In the event the Eligible Entity or COMPANY learns that the Certification from any Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances, such party shall provide to the other party written notice, setting forth such error(s) in reasonable detail. COMPANY shall have thirty (30) days from the date of such notice to provide to the Eligible Entity evidence reasonably sufficient to the Eligible Entity that no Debarment/Suspension has occurred with respect to such Subcontractor and that the Subcontractor Certification was not or has not become erroneous and/ or to terminate the applicable Subcontract. In the event that COMPANY does not do so on or before the thirtieth (30th) day after the date of such notice, the Eligible Entity may terminate this Agreement effective on the thirty-first (31st) day after the date of such notice.

5. Terms of Use. The Parties agree to the Terms and Conditions attached hereto as SCHEDULE III. In the event of a conflict between this Agreement and the Terms and Conditions, the Agreement shall govern.

6. Assignment. The Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld.

7. Notice. Any notice or document required or permitted to be delivered pursuant to must be in writing and shall be deemed to be effective upon transmittal and/or upon mailing and deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, or sent by recognized overnight delivery service, in either case properly addressed to the other party as follows:



*If to 340Basics, Inc.:*

Attn: Collen DiClaudio  
161 Gaither Drive,  
Suite 201  
Mt. Laurel, NJ 08054

*If to Eligible Entity:*

Attn: Elsa Jimenez, Director of Health  
County of Monterey  
1270 Natividad Road  
Salinas, California, 93906

8. 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.

9. Governing Law. The Agreement, and all disputes arising out of the aforementioned and under the Terms of Conditions, shall be interpreted and decided in accordance with the laws of the State of California, without regard to conflict of law rules.

10. Venue. Any controversy, claim, or suit arising out of or relating to this Agreement, if not resolved between the parties, shall be submitted to any court of competent jurisdiction in Monterey County, in the State of California.

11. Compliance with Law. Each Party agrees to comply with all applicable Federal, State, and local laws in performing its obligations hereunder, including but not limited to the Federal and anti-kickback and self-referral laws and regulations at all times during the term of this Agreement.

12. 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.

13. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the



same Agreement. This Agreement shall become effective upon the execution and delivery of a counterpart hereof by each of the parties hereto. Delivery by telecopies or by electronic or digital transmission in PDF format of an executed counterpart of a signature page to this Agreement or any notice, communication, agreement, certificate, document, or other instrument in connection herewith shall be effective as delivery of an executed original counterpart thereof.

14. Entire Agreement and Amendments. This Agreement, including the Terms and Conditions and 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.

15. 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.

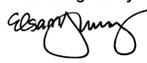
16. Insurance. The Company shall comply with the requirements set forth in Addendum A related to evidence of insurance coverage.

*(signature page to follow)*



IN WITNESS WHEREOF, the Parties here executed this Agreement, which shall be deemed effective as of the date first set forth above.

**Eligible Entity: County of Monterey, on behalf of Monterey County Health Department**

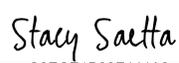
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By: \_\_\_\_\_  
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Name: Elsa Jimenez

Title: Director of Health

Date: 8/3/2021 | 2:37 PM PDT

Approved as to Legal Form:

DocuSigned by:  
  
By: \_\_\_\_\_  
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County Counsel – County of Monterey

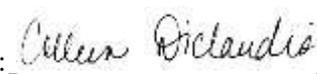
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Approved as to Fiscal Provisions:

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By: \_\_\_\_\_  
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Auditor-Controller – County of Monterey

Date: 8/2/2021 | 2:30 PM PDT

**340Basics, Inc.:**

By: 

Name: Colleen DiClaudio

Title: President

Date: 7/29/2021



## **SCHEDULE 1**

### **Scope of Services**

The Company will perform the following services for the Eligible Entity in support of the 340B Program to be implemented by the Eligible Entity pursuant to this Agreement.

<b>Service</b>	<b>Description</b>
<i>Qualification of Eligible Patients</i>	The Company shall assist Eligible Entity in the development and management of a system to verify that prescriptions are written for Eligible Patients prior to being filled with Eligible Entity's Covered Drugs. The Company shall qualify claims for Covered Drugs based on Eligible Entity's policies and procedures and based on prescriber files and other information provided by Eligible Entity.
<i>Evaluation of Drug Pricing</i>	<p>(a) The Company will establish and/or enable access to drug pricing models for qualified claims, including but not limited to: (i) Usual and Customary (which is the price that Contract Pharmacy charges its uninsured patients); and (ii) Covered Drugs priced pursuant to the Act.</p> <p>(b) The Company's software system shall compare each of the above prices at the time an Eligible Patient prescription is presented, including applicable dispensing fees charged by the Contract Pharmacy ("<u>Dispensing Fees</u>"), and the Company's administration fees. The Company's system shall identify which pricing model should be utilized in order to ensure the most favorable pricing for the Covered Entity for the eligible prescription of Covered Drugs.</p> <p>(c) The Company shall have a period of ninety (90) days to capture or reverse for any differential in price between third party insurance payments to the Contract Pharmacy on claims for Eligible Patients and the 340B cost of the prescription, hereinafter referred to as the "Price Margin." The actual cost of acquiring data from the Contract Pharmacy or contractor hired by the Company to provide the service of transmitting data between the Contract Pharmacy and the parties hereto or their agents will be the responsibility of the Company.</p>
<i>Ordering Covered Drugs</i>	The Company shall, on behalf of the Eligible Entity, order Covered Drugs directly from the drug wholesaler to replenish inventory of Covered Drugs dispensed by Contract Pharmacy to Eligible Patients. The Company shall arrange for such drugs to be shipped to Contract Pharmacy and billed to Eligible Entity.
<i>Access to Software Application</i>	During the term, the Company shall provide a limited, non-exclusive, non-transferable license 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 license shall terminate on termination of the Agreement, and Company shall retain all right, title and interest in and to any intellectual property associated with the software application and any other property associated with Company's business. The license shall be subject to the Terms and Conditions.
<i>Inventory Management</i>	The Company shall perform ongoing maintenance and reporting of virtual inventory of Eligible Entity's Covered Drugs.
<i>Pharmacy Plan/Formulary</i>	The Company agrees to assist the Eligible Entity in developing and loading the formulary.



<i>Claims Processing</i>	<p>(a) The Company shall provide or shall contract with a claims processor at no additional cost to Covered Entity, to provide, electronic claims processing and claims reporting as required by this Agreement. Upon termination of this Agreement, the Company shall be responsible to process only those claims which are for prescriptions of Covered Drugs dispensed by Contract Pharmacy to Eligible Patients prior to the termination date and which are received by the Company within sixty (60) days of the termination date.</p> <p>(b) The Company agrees to process claims accurately based on eligibility, formulary, sliding scale and provider files received from Eligible Entity.</p>
<i>Reporting</i>	<p>The Company shall provide a comprehensive selection of reports that cover claims, profitability, inventory control and audit tools based upon the rates to be paid by Eligible Entity as described below. These reports may be customized in accordance with the instructions of the Eligible Entity at the rate of \$150/hour.</p>

<i>Establishing Contract Pharmacy Services</i>	<p>The Company shall take the following measures to establish and secure Contract Pharmacy arrangements on behalf of the Eligible Entity:</p> <p>(a) The Company, on behalf of the Eligible Entity, will locate one or more pharmacies and assist in negotiating agreement to establish a valuable partnership in areas determined necessary for patient access to low cost medications.</p> <p>(b) The Company agrees to act on behalf of the Eligible Entity to negotiate favorable terms for a Pharmacy Services Agreement between and among Contract Pharmacy, and the Company, which shall set forth the obligations and responsibilities of each of the Parties to the pharmacy services agreement (each agreement a "Pharmacy Services Agreement"). The Company shall present the terms of each Pharmacy Services Agreement to Eligible Entity for review prior to Eligible Entity's execution of any Pharmacy Services Agreement. The Company shall assist Eligible Entity and Contract Pharmacy in ensuring that the Pharmacy Services Agreement complies with HRSA's contract pharmacy guidelines. In addition to the obligations set forth herein, Eligible Entity agrees to comply with all of the terms of the Pharmacy Services Agreement. The Contract Pharmacy shall bill third party payors on behalf of the Eligible Entity for drugs dispensed to Eligible Patients.</p>
<i>Record Keeping</i>	<p>The Company will report on all Covered Drug claims and Covered Drug purchase transactions during the Term. Upon termination, an electronic copy of all transactions shall be delivered to Eligible Entity in Microsoft Excel format. Upon delivery, the Company's record keeping responsibility is completed except as otherwise required under applicable laws.</p>



**SCHEDULE II**

**Fee Schedule**

Contract pharmacy rate	\$4.30 per eligible transaction
Minimum fee for the Services	\$2,000.00 per month
Switch Fees	\$0.03 for each claim contained in the data feed
Gateway fees for chain pharmacies	MacroHelix (Walmart) \$200/store/month CaptureRx (Rite Aid) \$300/store/month
ACH – Collections	1.5% Collected Revenue (waived)
Referral Program Software Access	\$500 per month (waived for initial 3 months)



## SCHEDULE III

340BASICS, INC.

### TERMS AND CONDITIONS OF USE

THESE TERMS AND CONDITIONS OF USE (THE “TERMS AND CONDITIONS”) REGARD YOUR (“YOU”, “YOUR”, “ELIGIBLE ENTITY”) USE OF THE SOFTWARE SERVICES OF 340BASICS, INC. (THE “COMPANY”, “WE”, “US” OR “OUR”) AS DETAILED IN THE SERVICES AGREEMENT EXECUTED WITH THE COMPANY (THE “SERVICES”). PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY, AS THEY FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND THE COMPANY AND GOVERNS YOUR USE OF THE COMPANY’S SERVICE, AND ARE TO BE READ ALONGSIDE AND INTEGRATED WITH THE SERVICES AGREEMENT.

The software used to perform the Services is owned and operated by the Company and these Terms and Conditions regard your use of the Services and the arrangements related therewith, and are integrated with the Services Agreement executed by you, the Eligible Entity (the “Services Agreement”). Please note that these terms apply to the use of the Services and any content included therein by every computer or other communication means (like cellular phones, tablets, etc.), as well as to the use of the Services via the Internet or any other communication networks.

#### A. DEFINITIONS

The following terms shall have the meaning ascribed to them in this Section. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Services Agreement.

- (a) “Covered Entity” shall have the same meaning set forth in the Services Agreement.
- (b) “Eligible Entity” shall have the same meaning set forth in the Services Agreement.
- (c) “HHS Privacy Regulations” shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 165 of the Federal Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”).
- (d) “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.
- (e) “Information” or “PHI” shall mean any “protected health information” provided and/or made available by Covered Entity to the Company, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.103. All references to Information or PHI herein shall be construed to include electronic protected health information (“EPHI”).
- (f) “Parties” shall mean the Covered Entity and the Company.
- (g) “Secretary” shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

#### B. HIPAA COMPLIANCE

The Parties agree to the terms of a HIPAA Business Associate Agreement, which is hereby incorporated by reference into this Agreement as ADDENDUM B

#### C. CONFIDENTIALITY AND NON-DISCLOSURE OF THE COMPANY’S INFORMATION



1. Definition. "Proprietary Information" means any technical, confidential and/or proprietary information, data, software, plans, designs, protocols, inventions, and other related information including without limitation product and systems specifications, of the Company that the Company considers and treats as confidential and proprietary, which is or was obtained directly or indirectly from the Company in any form, at any time prior to or after execution of the Services Agreement, including without limitation, documentary, tangible, oral, visual or electronic. The amount and type of Proprietary Information to be disclosed is completely within the sole discretion of the Company. Proprietary Information specifically includes all such protected information disclosed by the Company to the Eligible Entity at any time, but does not include technical information or data which (I) at the time of disclosure, is or was available to the general public, (ii) at a later date, becomes available to the general public through no fault of the Eligible Entity and then only after such later date, (iii) is received by Covered Entity at any time from a third party without breach of a non-disclosure or confidentiality obligation to the Company, (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, or (vi) is approved for disclosure by prior written permission of a corporate officer of the Company.
2. Non-Disclosure. Eligible Entity agrees not to disclose the Proprietary Information to third parties or to any of Eligible Entity's employees except employees who are required to have the Proprietary Information and have been apprised of the confidential nature of the Proprietary 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 Proprietary Information as similar information of Eligible Entity is treated by Eligible Entity or within Eligible Entity's organization, but agrees that it will take no less than all reasonable steps to protect the secrecy of and avoid disclosure or use of Proprietary Information in order to prevent it from falling into the public domain or the possession of unauthorized persons, Eligible Entity agrees to notify the Company in writing within five (5) business days of any misuse or misappropriation of such Proprietary Information which may come to its attention. If it is required by a government body or court of competent jurisdiction to disclose any Proprietary Information, Eligible Entity agrees to give the Company fifteen (15) business days advance notice so that the Company may contest the disclosure or seek a protective order. The Proprietary Information shall remain the property of the Company.
3. Non-use. Eligible Entity further agrees not to use the Proprietary Information provided to it by Company for any purposes other than the facilitation and use of the Company's services under the Terms and Conditions.
4. Return of Materials. Any materials or documents which have been furnished to Eligible Entity by the Company shall be promptly returned, accompanied by all copies of such documentation, within five (5) business days after receipt by Eligible Entity of a written notice from the Company requesting the return of the Proprietary information.
5. Continuing Nondisclosure and Confidentiality Obligation. The covenants pertaining to confidentiality, nondisclosure and non-use in the Terms and Conditions shall remain in full force following termination of the Services Agreement, unless and until the Company specifically agrees in writing to release all or part of the Proprietary Information from the confidential restrictions imposed by the Terms and Conditions.

#### D. INTELLECTUAL PROPERTY

1. All rights, title and interest in and to the Service (except – as provided below with respect to users' and third parties' content), including, without limitation, patents, copyrights, trademarks, trade names, service marks, trade secrets and other intellectual property rights, and any goodwill associated therewith, are owned by, or licensed to the Company, as well as all related concepts, technical know-how, and all modifications, customizations, revisions, bug fixes, enhancements, improvements and derivative works.



To the extent it shall be determined that you have any right in connection with the Services other than the limited specific license hereunder, you hereby irrevocably: (i) assign to the Company, whenever and in perpetuity, any right, title and interest, whether now existing or later arising, that you may have in or to the Services and/or related intellectual property rights; and (ii) agree to take any lawful action, which we reasonably request to vest or protect our right, title and interest in the foregoing (at your sole cost). All right, title and interest, including but not limited to possession and intellectual property rights, in and to any products, documentation, customizations, software, programs, content materials, and all other property associated with Company's business, including without limitation intellectual property, that Company owned prior to the effective date of the Services Agreement or that it created, developed or used in connection with the performance of the Agreement or any contracts executed pursuant the Services Agreement, as well as any improvements, enhancements and developments with respect thereto, shall at all times remain exclusively owned by the Company.

2. Unless otherwise expressly permitted in the Terms or the relevant section of the Service, you may not copy, distribute, display or perform publicly, sublicense, decompile, disassemble, reduce to human readable form, execute publicly, make available to the public, adapt, make commercial use, process, compile, translate, sell, lend, rent, reverse engineer, combine with other software, modify or create derivative works of any of the content on the Service, which is subject to intellectual property rights or other proprietary rights, either by yourself or by a third party on your behalf, in any way or by any means, including, but not limited to electronic, mechanical or optical means, without prior written authorization from the Company.
3. You may not adapt or use otherwise any name, mark or logo that is identical, or confusingly similar to the trademarks, services marks and logos of the Company and other providers of the Service. You must refrain from any action or omission which may dilute, or tarnish our goodwill.

#### E. LIABILITY MATTERS

4. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR CLAIMS BASED ON ELIGIBLE ENTITY'S OR THE COMPANY'S WILLFUL MISCONDUCT, THE CUMULATIVE LIABILITY OF A PARTY FOR ALL CLAIMS IN CONNECTION WITH THESE TERMS AND CONDITIONS AND THE SERVICES AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY THE PARTY IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. EXCEPT FOR CLAIMS BASED ON THE PARTY'S WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER ELIGIBLE ENTITY, THE COMPANY, OR COMPANY'S SUPPLIERS OR LICENSORS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF INTEREST, LOSS OF GOOD WILL OR BUSINESS INTERRUPTION), ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION UNDER WHICH SUCH DAMAGES ARE SOUGHT.
5. THE COMPANY PROVIDES THE SERVICE AND CONTENT INCLUDED THEREIN FOR USE ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, COMPATIBILITY, PERFORMANCE, SECURITY OR ACCURACY. WE DO NOT WARRANT THAT THE SERVICE WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER, OR THAT IT WILL ALWAYS BE AVAILABLE OR FREE FROM ALL HARMFUL COMPONENTS. YOU AGREE AND ACKNOWLEDGE THAT THE USE OF THE SERVICE IS



TO THE MAXIMUM PERMITTED BY THE APPLICABLE LAW, AT YOUR KNOWLEDGE AND RISK.

6. Indemnity. (a) Eligible Entity shall indemnify, defend and hold harmless Company, 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 or any of Eligible Entity's representations, warranties, covenants or agreements in the Terms and Conditions and Services Agreement, or (ii) any negligent or wrongful acts or omissions of Eligible Entity in connection with the performance of the Services Agreement or these Terms and Conditions.

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

#### F. CERTAIN RESPONSIBILITIES OF ELIGIBLE ENTITY

1. Maintenance of Status. Eligible Entity shall take reasonable steps to maintain its status as a 340B Covered Entity as defined in the Preliminary Statement of this Agreement. In the event that Eligible Entity no longer qualifies as a Covered Entity, Eligible Entity shall notify Company within three (3) business days after it receives notice that it no longer qualifies.
2. Eligible Patients. Eligible Entity shall provide to Company all necessary information for Company's management of a patient eligibility system in accordance with the format as determined by the Company. Such information shall include, but not be limited to, Eligible Patients' unique identification number, gender, complete name, date of birth, patient code, Authorized Provider's DEA number, license number, National Provider Identification (NPI) Number, Third Party insurance and enrollment status in a Governmental Program, including Medicaid and Medicare, if any. Eligible Entity shall provide prompt updates and changes to such information for Eligible Patients to the Company system, and shall enter such information for new Eligible Patients on an ongoing basis. The Company will offer a secure HIPAA compliant interface for real time eligibility exchange and to assure only Eligible Patients' receive 340B Program medications.
3. DEA/NPI Licensure.
  - (a) Eligible Entity shall assure that all of its physicians who prescribe medications must maintain a current and valid DEA/NPI license and shall immediately, within 72 business hours, enter in the Company system any suspension, termination or revocation of any physician's license.
  - (b) Eligible Entity shall provide Company an initial physicians panel listing all physicians servicing Eligible Patients and shall provide continuous updates of any part-time physicians who work outside the Eligible Entity's facility as well as notifications of any changes to the initial panel.
4. Patient Choice. Eligible Entity shall recognize the right of an Eligible Patient to elect not to use Eligible Entity's program for pharmacy services and obtain the prescription from the pharmacy provider of his or her choice.



## G. TERMINATION OF SERVICES AGREEMENT.

### 1. Responsibilities Upon Termination.

- (a) *Responsibilities Upon Termination.* The Company shall have the right to retain for a period of seven (7) years copies of all files or materials related to Eligible Patients or the Services Agreement. Upon expiration of such seven (7) year period, the Company shall return to any and all copies of files or other materials related to Eligible Entity's patients which may be in the Company' possession or under the Company' control, Eligible Entity shall also return to the Company any materials related to operations, procedures, or policies, or any other such information upon termination or expiration of the Services Agreement.
  - (b) *Accounting and Inventories.* In the event the Services Agreement is terminated in whole or in part, the Company shall make an accounting of Covered Drugs owed to Pharmacy by Eligible Entity within thirty (30) calendar days after the date of termination.
  - (c) *Covered Drugs Owed to Pharmacy by Eligible Entity.* Upon termination of the Services Agreement, the Contract Pharmacy may still have outstanding Covered Drugs in the virtual inventory for which the replenishment threshold has not been reached. In such event, the following formula will be used to reconcile all outstanding monies and national drug code(s) for Covered Drugs ("NDC(s)") owed to the Contract Pharmacy to 0. If the NDC of the Covered Drug has a usage at time of termination of less than 50% of the pack size, then the Contract Pharmacy will be paid the lesser of (i) the current price of the Covered Drug under the Act or (ii) the wholesale acquisition cost. If the usage of the pack size of that Covered Drug is equal to or greater than 51 percent and less than or equal to 79 percent, then a whole unit of that Covered Drug shall be replenished to the Contract Pharmacy. This shall satisfy the liability referred to herein.
2. The rights and responsibilities upon termination set forth herein re in addition to any grounds, rights and responsibilities set forth in the Services Agreement.

## H. UPDATES AND CHANGES IN THE SERVICE

1. We may maintain the Service with periodic releases of bug fixes, code updates or upgrades. We will determine, at our sole discretion, the frequency and scope of such releases and you will have no plea, claim or demand against us or our staff, for any of these releases or the lack thereof.

We may also, at any time and without prior notice, change the layout, design, scope, features or availability of the Service. Such changes, by their nature, may cause some inconvenience or temporary malfunctions.

## I. MISCELLANEOUS

2. 340B Drug Prices Changes. The Parties acknowledge that, when virtual inventory is used to fill prescriptions of Covered Drugs for Eligible Patients, drugs are priced by drug wholesaler before they are purchased by the Eligible Entity for the purpose of replenishing inventory that has been dispensed to Eligible Patients at 340B prices. There may therefore be a variance between the cost of these drugs at the time the drugs are dispensed and the claims are initially adjudicated, and the time at which an order is placed to replenish the inventory dispensed. This variance may impact upon the anticipated profit or loss for the Eligible Entity for these claims.



3. Use of Subcontractors. The Company reserves the right in its sole discretion to utilize the services of subcontractor(s) in the performance and execution of its duties under this Agreement. The Company acknowledges and agrees that it will not utilize subcontractors that are, to their knowledge, debarred, suspended or otherwise excluded from participating in any federal or state health care benefit program. The Company agrees and acknowledges that it regularly screens its subcontractors to ensure that they are not debarred, suspended or otherwise excluded from participating in any federal or state health care benefit program. The Company shall be fully responsible for the performance, or nonperformance, of any subcontractor.
  4. Audits. The Parties understand that Eligible Entity and Contract Pharmacy may be subject to audits in accordance with the requirements of the Act, by the Federal government and drug manufacturers who have signed a Pharmacy Pricing Agreement (PPA) with United States Department of Health and Human Services (“HHS”), which audits may pertain to Eligible Entity's compliance with the prohibition on drug resale or transfer or the prohibition against duplicate discounts. The Parties further understand that HRSA has published guidelines pertaining to manufacturer audits. In the event of such audit, the Company agrees to provide records, data, and information necessary to assist Eligible Entity and Contract Pharmacy in complying with the audit.
  5. Inspection by HHS or Manufacturer. Upon receipt of a written request from a drug manufacturer that has signed a PPA with HHS, any Party that receives such a request shall immediately inform the other Party of the request. Covered Entity shall determine, in its sole discretion, whether to comply with the request. Each Party shall have the right to delete any of its confidential or proprietary information prior to the Services Agreement being submitted to the requesting manufacturer.
  6. Independent Contractor. The Company and Eligible Entity agree that the Company is an independent contractor, and not an employee of Eligible Entity, and that in accordance with such status as an independent contractor, the Company’ employees and agents shall not hold themselves out as, nor claim to be, officers or employees of Eligible Entity by reason hereof. the Company acknowledges that its employees and agents shall not, by virtue of the Terms and Conditions or the Services 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 the Eligible Entity, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.
  7. Force Majeure. Neither Party shall be liable, nor deemed to be in default, for any delay or failure in performance or other interruption of service deemed resulting, directly or indirectly, from Acts of God, civil or military authority, acts of public enemy, war, terrorism, material changes in the Act or any rules or regulations related thereto, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either Party's employees, any delay, interruption, outage, or malfunction with the internet or any server that is or may be sublicensed by the Company, breach, default, action or omission by any sub licensor, or any similar or dissimilar cause beyond the reasonable control of either Party.
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## ADDENDUM A

to Services Agreement

by and between

340B Technologies (DBA 340Basics) Inc., (the “Company”), and  
 County of Monterey, a political subdivision of the State of California, on behalf of the 340B covered  
 entities operated by the  
 Monterey County Health department (the “Eligible Entity” or “County”)

This Addendum, dated as of the date of execution of the Agreement by both parties, amends, modifies, and supplements the Services Agreement (“Agreement”) by and between (“Company”) and County of Monterey, on behalf of its Health Department (“Eligible Entity” and/or “County”). This Addendum has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, Company and County agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

1. Insurance Requirements,

1.1 Evidence of Coverage. Prior to commencement of this Agreement, COMPANY shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, COMPANY upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County’s Contracts/Purchasing Office, unless otherwise directed. COMPANY shall not receive approval for services for work under this Agreement until all insurance has been obtained as required and approved by the County. This approval of insurance shall neither relieve nor decrease the liability of COMPANY.

1.2 Qualifying Insurers. All coverage, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to the current Best’s Key Rating Guide or a Company of equal financial stability that is approved by the County’s Contracts/Purchasing Officer.

1.3 Insurance Coverage Requirements. Without limiting COMPANY’s duty to indemnify, COMPANY shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers Compensation Insurance, if COMPANY employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer’s liability limits not less than



\$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

**1.4 Other Insurance Requirements.** All insurance required by this Agreement shall be with a Company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date COMPANY completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) calendar days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for COMPANY and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

**Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insured with respect to liability arising out of COMPANY's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by COMPANY's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.**

Prior to the execution of this Agreement by the County, COMPANY shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that COMPANY has in effect the insurance required by this Agreement. COMPANY shall file a new or amended certificate of insurance within five (5) calendar days after any adverse change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

COMPANY shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Office. If the certificate is not received by the expiration date, COMPANY shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by COMPANY to maintain such insurance coverage is a breach of this Agreement, which entitles County, at its sole and absolute discretion, to terminate this Agreement immediately.



COUNTY OF MONTEREY

340BASICS

DocuSigned by:  
Authorized Signature:

By: *[Signature]*  
C7A30BA59CA8423...

Date: 8/3/2021 | 2:37 PM PDT

Authorized Signature:

*[Signature]*

07/29/2021

(Title of Signer)

PRESIDENT

Approved as to Legal Form:

DocuSigned by:  
By: *Stacy Satta*  
C0FCE1B99F444A9

Date: 8/2/2021 | 2:27 PM PDT

Client Counsel

Approved as to Fiscal Provisions:

DocuSigned by:  
By: *Gary Giboney*  
D3834BFECTD8449...  
Auditor-Controller

Date: 8/2/2021 | 2:30 PM PDT



## ADDENDUM B

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective July 29, 2021 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and 340Basics (“Business Associate”) (each a “Party” and collectively the “Parties”).

### RECITALS

A. WHEREAS, Business Associate provides certain services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, the Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, subparts A and C (the “Security Rule”) (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, the Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, to the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”).

E. WHEREAS, the Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirements.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in HIPAA.

(a) “Breach” shall have the same meaning as “breach” as defined in 45 C.F.R. § 164.402; however, the term “Breach” as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient’s “medical information” as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a “breach of the security of the system” under Cal. Civil Code § 1798.29.

(b) “California Confidentiality Laws” shall mean the applicable laws of the State of California governing the confidentiality, privacy, or security of PHI or other personally identifiable information (PII), including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code § 56 *et seq.*), the patient access law (Cal. Health & Safety Code § 123100 *et seq.*), the HIV test result confidentiality law (Cal. Health & Safety Code § 120975 *et seq.*), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code § 5328 *et seq.*), and California’s data breach law (Cal. Civil Code § 1798.29).



(c) “Protected Health Information” or “PHI” shall mean 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; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individual, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity’s behalf. PHI, when used in this BAA, includes EPHI.

(d) “Services” shall mean the services for or functions performed by Business Associate on behalf of Covered Entity pursuant to an underlying services agreement (“Services Agreement”) between Covered Entity and Business Associate to which this BAA applies.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws if done by Covered Entity;

(b) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(c) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(d) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached; and

(e) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

## **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1. Responsibilities of Business Associate.** Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate’s discovery of such unauthorized access, acquisition, Use and/or Disclosure, Security Incident, or suspected Breach. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in unauthorized access, acquisition, Use or Disclosure of PHI. For the avoidance of doubt, a ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request.



- (i) If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;
- (ii) In consultation with Covered Entity, Business Associate shall promptly mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach;
- (iii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and other persons required by law to be notified. Business Associate shall assist with any notifications, as requested by Covered Entity. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing notification to affected individuals, appropriate government agencies, and any other persons required by law to be notified (e.g., without limitation, the media or consumer reporting agencies), including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one (1) year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or other PII has or may have been compromised as a result of the Breach;
- (b) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule and industry best practices to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;
- (c) Obtain and maintain a written agreement with each of its Subcontractors that creates, receives, maintains, or transmits PHI that requires each such Subcontractor to adhere to restrictions and conditions that are at least as restrictive as those that apply to Business Associate pursuant to this BAA. Upon request, Business Associate shall provide Covered Entity with copies of its written agreements with such Subcontractors;
- (d) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services (“Secretary”) in a time and manner designated by the Secretary for purposes of determining Covered Entity’s or Business Associate’s compliance with HIPAA. Business Associate shall immediately notify Covered Entity of any such requests by the Secretary and, upon Covered Entity’s request, provide Covered Entity with any copies of documents Business Associate provided to the Secretary. In addition, Business Associate shall promptly make available to Covered Entity such practices, records, books, agreements, policies and procedures relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity. The fact that Covered Entity has the right to inspect, inspect, or fails to inspect Business Associate’s internal practices, records, books, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, regardless of whether Covered Entity detects or fails to detect a violation by Business Associate, nor does it constitute Covered Entity’s acceptance of such practices or waiver of Covered Entity’s rights under this BAA;
- (e) Document Disclosures of PHI and information related to such Disclosure and, within twenty (20) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual’s PHI in accordance with 45 C.F.R. § 164.528 and the HITECH Act. At a minimum, the Business Associate shall provide Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the



Business Associate, the Business Associate shall, within ten (10) days, forward such request to Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

- (f) Subject to Section 4.4 below, return to Covered Entity in a mutually agreeable format and medium, or destroy, within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;
- (g) Use, Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;
- (h) If all or any portion of the PHI is maintained in a Designated Record Set:
  - (i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity, or to the individual, if so directed by Covered Entity, to meet a request by an individual under 45 C.F.R. § 164.524 or California Confidentiality Laws. Business Associate shall notify Covered Entity within five (5) days of its receipt of a request for access to PHI from an individual; and
  - (ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of its receipt of a request for amendment of PHI from an individual;
- (i) If applicable, maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;
- (j) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;
- (k) Unless prohibited by law, notify Covered Entity as soon as possible and in no case later than five (5) days after the Business Associate's receipt of any request or subpoena for PHI. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with Covered Entity in such challenge; and
- (l) Maintain policies and procedures materially in accordance with HIPAA and California Confidentiality Laws and industry standards designed to ensure the confidentiality, availability, and integrity of Covered Entity's data and protect against threats or vulnerabilities to such data.

### **3.2 Business Associate Acknowledgment.**

- (a) Business Associate acknowledges that, as between the Business Associate and Covered Entity, all PHI shall be and remain the sole property of Covered Entity.
- (b) Business Associate is not permitted to Use PHI to create de-identified information except as approved in writing by Covered Entity.
- (c) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA.
- (d) Business Associate further acknowledges that Uses and Disclosures of PHI must be consistent with Covered Entity's privacy practices, as stated in Covered Entity's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online from the Covered Entity's webpage. Business Associate agrees to review the Notice of Privacy Practices at this URL at least once annually while doing business with Covered Entity to ensure it remains updated on any changes to the Notice of Privacy Practices Covered Entity may make.

### **3.3 Responsibilities of Covered Entity.** Covered Entity shall notify Business Associate of any (i) changes in, or withdrawal of, the authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; or (ii) restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use



or Disclosure of PHI.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect until all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with the termination provisions in Section 4.4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement without penalty; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of all Services Agreements between Covered Entity and Business Associate that would necessitate having this BAA in place.

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning or destroying the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. Business Associate shall certify in writing that all PHI has been returned or securely destroyed, and no copies retained, upon Covered Entity's request. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall notify Covered Entity in writing of the condition that makes return or destruction infeasible. If Covered Entity agrees that return or destruction of the PHI is infeasible, as determined in its sole discretion, Business Associate shall: (i) retain only that PHI which is infeasible to return or destroy; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Sections 2 and 3 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when such return is no longer infeasible.

#### **5. MISCELLANEOUS**

**5.1 Survival.** The obligations of Business Associate under the provisions of Sections 3.1, 3.2, and 4.4 and Article 5 shall survive termination of this BAA until such time as all PHI is returned to Covered Entity or destroyed.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.



**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile or email to the facsimile telephone numbers or email addresses listed below.

If to Business Associate, to:

340Basics  
Attn: Colleen DiClaudio  
161 Gaither Dr. Suite 201  
Mt. Laurel, NJ 08054  
Phone: 856-7233758  
Email: [cdiclaudio@340basics.com](mailto:cdiclaudio@340basics.com)

If to Covered Entity, to:

County of Monterey Health Department  
Attn: Compliance/Privacy Officer  
1270 Natividad Road  
Salinas, CA 93906  
Phone: 831-755-4018  
Email: [sumeshwarsd@co.monterey.ca.us](mailto:sumeshwarsd@co.monterey.ca.us)

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with HIPAA and the California Confidentiality Laws.

**5.8 Indemnification.** Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA, HIPAA or California Confidentiality Laws, or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to provide the broadest possible indemnification for the County. This provision is in addition to, and independent of, any indemnification provision in any Services Agreement between the Parties.

**5.9 Applicability of Terms.** This BAA applies to all present and future Services Agreements and business associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate



and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate under the Services Agreement, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs expenses, fines, and compliance costs arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Without limiting the foregoing, at a minimum, Business Associate's required insurance under this Section shall include cyber liability insurance covering breach notification expenses, network security and privacy liability, with limits of not less than \$10,000,000 per claim and in the aggregate. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

**5.11 Legal Actions.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law. This includes, without limitation, any allegation that Business Associate has violated HIPAA or other federal or state privacy or security laws.

**5.12 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliance review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA or the California Confidentiality Laws.

**5.13 Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself, and any Subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under any Services Agreements, available to Covered Entity, at no cost to Covered Entity, to testify in any claim commenced against Covered Entity, its directors, officers, employees, successors, and assigns based upon claimed violation by Business Associate or its agents or subcontractors of HIPAA or other applicable law, except where Business Associate or its Subcontractor, employee, or agent is a named adverse party.

**5.14 No Offshore Work.** In performing the Services for, or on behalf of, Covered Entity, Business Associate shall not, and shall not permit any of its Subcontractors, to transmit or make available any PHI to any entity or individual outside the United States without the prior written consent of Covered Entity.

**5.15 Information Blocking Rules.** Business Associate shall not take any action, or refuse to take any action, with regard to Covered Entity's electronic health information that would result in "information blocking" as prohibited by 42 U.S.C. § 300jj-52 and 45 C.F.R. Part 171 (collectively, "Information Blocking Rules"). Business Associate and Covered Entity shall cooperate in good faith to ensure Covered Entity's electronic health information is accessed, exchanged, and used in compliance with the Information Blocking Rules.

