

340Basics
Services Agreement

This Services Agreement (the "Agreement") is entered into as of _____ (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 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"), (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 either (i) through an in-house pharmacy owned and operated by the Eligible Entity or (ii) through an off-site retail pharmacy ("Contract Pharmacy") in which the Eligible Entity contracts with a Contract Pharmacy to provide pharmacy services 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").

2. Fees and Payments. Eligible Entity shall pay the Company's fees in accordance with the fee schedule set forth on Schedule II attached hereto and incorporated herein. Eligible Entity shall pay Dispensing Fees (as defined in Schedule I) to Contract Pharmacy in accordance with terms set forth in the Pharmacy Services Agreement or Exhibits thereto. 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 payment of fees. The Company will provide semi-monthly invoices to the Contract Pharmacy and all monies owed under this Agreement 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. All such fees and expenses shall be paid in full by the Covered Entity to the Company within three (3) days following the receipt of invoice. Any payments not made within thirty (30) days shall accrue interest at the rate of 1.5% per month, or at the maximum legal rate if lower, until paid in full.

3. 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) Notice of Non-renewal. Either COMPANY or the Eligible Entity may terminate this Agreement without cause by providing the other party with at least one hundred eighty (180) calendar days advance written notice of termination prior to the expiration of the first calendar year of the Initial Term or the expiration of a Renewal Term. Any such termination shall be effective upon the expiration of the Initial Term or the applicable Renewal Term.

(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 erroneous 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. COMPANY may terminate this Agreement upon written notice to Eligible Entity in the event of any change in any governing state or federal law, statute, rule or regulation that imposes burdens on COMPANY not contemplated herein or that adversely affects COMPANY's profits or margins hereunder.



4. Terms of Use. This Agreement and all terms herein are subject to, and integrated with, the terms and conditions of the Services provided by the Company as set forth at the following website of the Company: www.340basics.com (the “Terms and Conditions”). Eligible Entity hereby undertakes that it is familiar with and agrees to all of the Terms and Conditions, which cover such matters which include, but are not limited to: (i) confidentiality obligations; (ii) limitations on liability; (iii) HIPAA compliance (as defined therein); and (iv) indemnification obligations. All capitalized terms not defined herein shall have the meaning as set forth in the Terms and Conditions. In the event of a conflict between this Agreement and the Terms and Conditions, the Terms and Conditions shall govern.

5. 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.

6. 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:
Monterey, County Of
1441 Constitution Blvd, Bldg. #200, Floor
STE 101
Salinas, California, 93906

7. No Waiver. No delay or failure by any Party to exercise any right under this Agreement, nor any partial exercise of any such right, shall constitute a waiver of such right or any other right. The waiver by any Party of the breach of any terms and conditions of, or any right under, this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition or of any similar right. No waiver shall be binding or effective unless expressed in writing and signed by an authorized representative of the Party giving such waiver.

8. 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 New Jersey, without regard to conflict of law rules.

9. 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 New Jersey County, in the State of New Jersey.

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

11. Severability. If this Agreement contains any unlawful provision which is not an essential part of this Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either Party, be deemed stricken from this Agreement without affecting the binding force of the remainder.

12. 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.

13. 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.

14. Survival. Any provision of this Agreement which by its terms requires, given its context, that it survive the termination of this Agreement so as to effectuate the intended purposes and agreements of the parties, shall survive notwithstanding the termination of this Agreement.

(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

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Legal Form:

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions:

By: _____
Auditor-Controller

Date: _____

340Basics, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

Scope of Services

The Company will endeavor to 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.

Service	Description
<i>Drug Programs</i>	<p>(a) The Company will establish and/or enable access to two different pricing models: (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 lowest cost 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>	<p>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. The Company shall arrange for such drugs to be shipped to Contract Pharmacy and billed to Eligible Entity.</p>
<i>Access to Software Application</i>	<p>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.</p>
<i>Inventory Management</i>	<p>The Company shall perform ongoing maintenance and reporting of physical and virtual inventory of Eligible Entity's Covered Drugs.</p>
<i>Pharmacy Plan/Formulary</i>	<p>The Company agrees to assist the Eligible Entity in developing and loading the formulary.</p>
<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 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 a pharmacy and negotiate 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 execute a reasonable 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 (“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 system 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	Varies by Gateway per month per pharmacy
ACH – Collections	1.5% Collected Revenue
Referral Program Software Access	\$500 per month (waived for initial 3 months)

340BASICS, INC.

TERMS AND CONDITIONS OF USE

Welcome to 340Basics, Inc. software services, which may be accessible at www.340basics.com (or such other method of delivery of these services), dedicated to the processing of claims under Section 340B of the Public Health Service Act (the “Act”).

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. IF YOU ELECTRONICALLY ACCEPT THESE TERMS AND CONDITIONS, OR OTHERWISE USE OR DOWNLOAD THE SERVICE, YOU AGREE TO BE BOUND BY ALL OF THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT ANY OF THESE TERMS AND CONDITIONS, YOU ARE NOT PERMITTED TO USE THE SERVICE.

The Service is owned and operated by the Company and these Terms and Conditions regard your use of the Service 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 Service 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 Service 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

1. Obligations of the Company.

- (a) *Limits on Use and Disclosure.* The Company agrees not to use or disclose (or knowingly permit the use or disclosure of) Information received from or created for or on behalf of Covered Entity in a manner other than as permitted or required by the Terms and Conditions or required by law that would violate the HHS Privacy Regulations if the Information were used or disclosed by Covered Entity in the same manner. (ref. 164.504(e)(2)(i) and (ii)(A)).
- (b) *Appropriate Safeguards.* The Company will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by the Terms and Conditions (ref. 164.504(e)(2)(ii)(B)). The Company acknowledges that the HITECH Act requires the Company to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as if the Company were a Covered Entity, and the Company agrees to comply with these provisions of the HHS Privacy Regulations including all additional security provisions of the HITECH Act. Furthermore, to the extent feasible, the Company will use commercially reasonable efforts to ensure that the technology safeguards used by the Company to secure Information will render such Information unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such Information in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (“NIST”) concerning the protection of identifiable data such as PHI.
- (c) *Reports of Improper Use or Disclosure.* The Company hereby agrees that it shall report to Covered Entity promptly upon discovery of any use or disclosure of Information not permitted by the Terms and Conditions (ref. 164.504(e)(2)(ii)(C)).
- (d) *Subcontractors and Agents.* The Company hereby agrees that anytime Information is provided or made available to any subcontractors or agents, the Company must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in the Terms and Conditions. (ref. 164.504(e)(2)(ii)(D)).
- (e) *Rights of Access to Information.* The Company hereby agrees to make available and provide a right of access to Information by an Individual where required by and in a manner that shall conform with and meet all of the requirements of 45 C.F.R. 164.524, including substitution of the words "Covered Entity" with the Company where appropriate, and any denial shall be in conformance with 45 C.F.R. 164.524. (ref. 164.504(e)(2)(ii)(E)).
- (f) *Amendment and Incorporate of Amendments.* The Company agrees to make Information available for amendment and to incorporate any amendments to Information where required by and in a manner that shall conform with 45 C.F.R. 164.526, including substitution of the words Covered Entity with the Company where appropriate, and any denial shall be in conformance with 45 C.F.R. 164.524 (ref. 164.504(e)(2)(ii)(F)).

- (g) *Providing Accounting.* The Company agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "Covered Entity" with the Company where appropriate, and Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. (ref. 164.504(e)(2)(ii)(G)).
 - (h) *Access to Books and Records.* The Company hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by the Company on behalf of the Covered Entity, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H)).
 - (i) *Return or Destruction of Information.* At termination of the Services Agreement, the Company hereby agrees to extend the protections of the Terms and Conditions for as long as necessary to protect the information and to limit any further use or disclosure of Information. If Covered Entity requests within fifteen (15) days of termination that the Company return its Information, the Company shall do so at Covered Entity's expense as soon as reasonably possible. Subject to the foregoing sentence, if the Company elects to destroy the Information, it shall certify to Covered Entity that the Information has been destroyed. (ref. 164.504(e)(2)(ii)(I)).
 - (j) *Mitigation of Procedures.* The Company agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to the Terms and Conditions or the HHS Privacy Regulations. (ref. 164.530(f)).
 - (k) *Sanction Procedures.* The Company agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates these Terms and Conditions or the HHS Privacy Regulations. (164.530(e)(1)).
2. The Company's Use and Disclosure of Information. The Parties hereby agree that the Company shall be permitted to use and/or disclose Information for the following purposes:
- (a) *Use of Information for Management, Administration and Legal Responsibilities.* The Company is permitted to use Information if necessary for the proper management and administration of the Company or to carry out legal responsibilities of the Company (ref.164.504(e)(4)(i)(A-B)) provided:
 - i. The disclosure is required by law; or
 - ii. The Company obtains reasonable assurances from the person to whom the Information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the Information, and the person immediately notifies the Company of any instance of which it is aware in which the confidentiality of the Information has been breached. (ref. 164.504(e)(4)(ii));
 - iii. Additionally, the Company shall ensure that all disclosures of Information by the company and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum Information that is necessary to accomplish the intended purpose may be disclosed; provided further, The Company shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets.

- (b) *Data Aggregation Services.* The Company is also permitted to use disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of Covered Entity (ref. 164.504(e))(2)(i)(B)).
3. Covered Entity's Obligations. Covered Entity hereby expressly acknowledges that applicable law and these Terms and Conditions impose privacy and security obligations on covered entities, and Covered Entity warrants that it shall fully comply with all such obligations. Without limiting the foregoing, Covered Entity agrees that it shall have the same obligations as the Company as set forth in sections 1 and 2 above, where applicable, including the following:
- (a) *Limits on Use and Disclosure.* Covered Entity agrees not to use or disclose (or knowingly permit the use or disclosure of) Information received from the Company or created for or on behalf of Covered Entity in a manner other than as permitted or required by the Terms and Conditions or required by law or that would violate the HHS Privacy Regulations.
 - (b) *Appropriate Safeguards.* Covered Entity will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by the Terms and Conditions.
 - (c) *Reports of Improper Use or Disclosure.* Covered Entity hereby agrees that it shall report to the Company promptly upon discovery of any use or disclosure of Information not permitted by the Terms and Conditions.
 - (d) *Subcontractors and Agents.* Covered Entity hereby agrees that anytime Information is provided or made available to any subcontractors or agents, Covered Entity must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in the Terms and Conditions.
 - (e) *Mitigation Procedures.* Covered Entity agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to the Terms and Conditions or the HHS Privacy Regulations
4. Grounds for Breach. Any non-compliance with the Terms and Conditions or the HHS Privacy Regulations by either Party in connection with the goods and services provided by the Company or Information in connection therewith (whether furnished or created by or on behalf of either Party) shall be deemed be a breach of the HIPAA Compliance Section of the Terms and Conditions if such breaching Party knew or reasonably should have known of such noncompliance and failed to undertake reasonable good faith steps to cure the non-compliance promptly.

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 of any misuse or misappropriation of such Proprietary Information which may come to its attention. If is required by a government body or court of competent jurisdiction to disclose any Proprietary Information, agrees to give the Company reasonable 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) 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 A THE COMPANY'S WILLFUL MISCONDUCT, THE COMPANY'S CUMULATIVE LIABILITY FOR ALL CLAIMS IN CONNECTION WITH THESE TERMS AND CONDITIONS AND THE SERVICES AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY THE ELIGIBLE PARTY IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. EXCEPT FOR CLAIMS BASED ON THE COMPANY'S WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER 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 COMPANY 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. Eligible Entity Indemnity. 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.

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. Termination for Material Breach. Either Party may terminate the Services Agreement upon a material breach that is not cured within 30 days after written notice specifying in detail the nature of the breach is provided. In the event that the Company becomes excluded from participation in any state or federal health care program or is subject to an enforcement action related to a violation of the Section 340B Program the Services Agreement may be terminated immediately.
2. Termination for Cause by the Company. The Company may terminate the Services Agreement immediately upon written notice to Eligible Entity upon the occurrence of any of the following events:
 - (a) If Eligible Entity ceases to be eligible to participate as a Eligible Entity in the Section 340B program;
 - (b) If Eligible Entity is subject to an enforcement action for violating 340B program requirements;
 - (c) If Eligible Entity is more than 30 days past due in payments;

- (d) If Eligible Entity fails to comply with the terms and conditions of the Pharmacy Services Agreement if such failure is not cured within thirty (30) days after written notice specifying such failure is given to the Eligible Entity by the Company.

3. 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.
4. The grounds for termination and rights and responsibilities upon termination set forth herein are 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.
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 Manufacturer. Upon receipt of a written request from a drug manufacturer that has signed a PPA with HHS, the Company and Eligible Entity may provide a copy of the Services Agreement to the requesting manufacturer. Any Party that receives such a request shall immediately inform the other Party of the request. Each Party shall have the right to delete any of its confidential or proprietary information prior to the 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 sublicensor, or any similar or dissimilar cause beyond the reasonable control of either Party.