



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical Center
1700 Mount Vernon Avenue
Conference Room 1058
Bakersfield, California 93306**

**Regular Meeting
Wednesday, January 16, 2019**

11:30 A.M.

BOARD TO RECONVENE

Board Members: Alsop, Berjis, Bigler, Brar, McLaughlin, Pelz, Sistrunk
Roll Call:

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY KERN COUNTY HOSPITAL AUTHORITY STAFF. THE "CA" REPRESENTS THE CONSENT AGENDA. CONSENT ITEMS WILL BE CONSIDERED FIRST AND MAY BE APPROVED BY ONE MOTION IF NO MEMBER OF THE BOARD OR AUDIENCE WISHES TO COMMENT OR ASK QUESTIONS. IF COMMENT OR DISCUSSION IS DESIRED BY ANYONE, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED IN LISTED SEQUENCE WITH AN OPPORTUNITY FOR ANY MEMBER OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING THE ITEM BEFORE ACTION IS TAKEN.

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

RECOGNITION

- 3) Presentation of service awards by the Chief Executive Officer to eleven Kern Medical Center employees with 25, 30, and 35 years of service –
MAKE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on December 12, 2018 –
APPROVE

CA

- 5) Proposed Change Order No. 8 to Agreement 056-2018 with Anderson Group International, an independent contractor, for construction management services related to the Pharmacy USP 797 Clean Room modifications, increasing the maximum payable by \$28,803, from \$705,941 to \$729,152, to cover the cost of additional services –
MAKE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVE; AUTHORIZE CHAIRMAN TO SIGN; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN CHANGE ORDER NO. 9 IN AN AMOUNT NOT TO EXCEED \$30,000

CA

- 6) Proposed Agreement with CIOX Health, LLC, an independent contractor, containing nonstandard terms and conditions, for medical records copying services from January 16, 2019 through January 15, 2022, in an amount not to exceed \$225,000 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 7) Proposed Amendment No. 4 to Agreement 620-2009 with Craneware, Inc., an independent contractor, containing nonstandard terms and conditions, for purchase of Trisus software licenses to maximize coding and billing processes, for the period June 30, 2009 through June 29, 2022, increasing the maximum payable by \$49,462, from \$2,556,151 to \$2,605,613, to cover the term, effective January 17, 2019 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Agreement with Patrick G. Pieper, M.D., a contract employee, for professional medical services in the Department of Surgery from February 1, 2019 through January 31, 2022, in an amount not to exceed \$1,791,000, plus applicable benefits – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Amendment No. 2 to Agreement 14818 with Healthcare Performance Group, Inc., an independent contractor, for consulting services related to the Cerner Millennium project, for the period June 11, 2018 through June 10, 2019, increasing the maximum payable by \$300,240, from \$450,000 to \$750,000, to cover the term, effective January 16, 2019 – APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed retroactive Resolution reaffirming the appointment of Russell V. Judd, Andrew J. Cantu, Alton Scott Thygerson, Jared W. Leavitt, Glenn E. Goldis, M.D., and Antoinette C. Smith, RN, MSN, to serve as officers of the Kern County Hospital Authority – APPROVE; ADOPT RESOLUTION

- 11) Kern County Hospital Authority Chief Financial Officer report – RECEIVE AND FILE

- 12) Kern County Hospital Authority Chief Executive Officer report – RECEIVE AND FILE

CA

- 13) Claims and Lawsuits Filed as of December 31, 2018 – RECEIVE AND FILE

- 14) Proposed retroactive Agreement with Meridian Healthcare Partners, Inc., an independent contractor, for Chief Executive Officer and healthcare management services from December 16, 2018 through December 15, 2025, in an amount not to exceed \$10,236,768 for the period December 16, 2018 through December 15, 2020 – APPROVE; AUTHORIZE VICE CHAIRMAN TO SIGN

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 15) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –
- 16) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) –
- 17) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Genovenva Robles, et al. v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-17-102395 TSC –
- 18) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –
- 19) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd and designated staff – Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6) –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, FEBRUARY 20, 2019, AT 11:30 A.M.

SUPPORTING DOCUMENTATION FOR AGENDA ITEMS

All agenda item supporting documentation is available for public review at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, 93306 during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Friday, following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

AMERICANS WITH DISABILITIES ACT (Government Code Section 54953.2)

The Kern Medical Center Conference Room is accessible to persons with disabilities. Disabled individuals who need special assistance to attend or participate in a meeting of the Kern County Hospital Authority Board of Governors may request assistance at Kern Medical Center in the Administration Department, 1700 Mount Vernon Avenue, Bakersfield, California, or by calling (661) 326-2102. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting material available in alternative formats. Requests for assistance should be made five (5) working days in advance of a meeting whenever possible.

13) CLAIMS AND LAWSUITS FILED AS OF DECEMBER 31, 2018 –
RECEIVE AND FILE

A) Claim in the matter of Dina Carrera



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Presentation by Chief Executive Officer recognizing Service Awardees for Kern County Hospital Authority employees with 25, 30, and 35 years of service

Recommended Action: Make presentation

Summary:

25 years of Service:

- Dianne McConnehey, Clinical Director, Quality Resource Center Department, August 1993
- Andre Esquivel, Building Services Worker III, Housekeeping Department, September 1993
- Irene Varela, Hospital Staff Nurse, OR Department, October 1993
- Shirley Clemente, Hospital Staff Nurse, Central Receiving Facility – Kern County Jail Department, October 1993
- Luz Domingo, Hospital Staff Nurse, Post-Partum Department, November 1993
- Martha Montemayor, Hospital Staff Nurse, Post-Partum Department, December 1993

30 years of Service:

- Manuel Acosta, PACS Administrator, Radiology Department, August 1988
- Antonio Garcia, Physician, Medstaff-OB/GYN Department, August 1988
- Roberto Dominguez, PeriOperative Associate, OR Department, October 1988
- Cynthia Aguilar, Patient Care Technician, Emergency Department, November 1988

35 years of Service:

- Roy Clark, Storekeeper, Nutrition Services Department, December 1983



SUMMARY OF PROCEEDINGS

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

**Kern Medical
1700 Mount Vernon Avenue
Conference Room 1058
Bakersfield, California 93306**

**Regular Meeting
Wednesday, December 12, 2018**

11:30 A.M.

BOARD RECONVENED

Directors Present: Berjis, Bigler, Brar, Lawson, McLaughlin, Pelz, Sistrunk
Directors Absent: None

NOTE: The vote is displayed in bold below each item. For example, Lawson-McLaughlin denotes Director Lawson made the motion and Vice Chair McLaughlin seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: ALL ITEMS LISTED WITH A "CA" WERE CONSIDERED TO BE ROUTINE AND APPROVED BY ONE MOTION.

BOARD ACTION SHOWN IN CAPS

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Also, the Board may take action to direct the staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE AND SPELL YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU!**

LARONDA DILLARD-SMITH, RN, HEARD REGARDING A NURSE PRACTITIONER WHO WAS RECENTLY TERMINATED DURING HER PROBATIONARY PERIOD

CARMEN MORALES-BOARD, RETIRED NP, HEARD REGARDING THE NURSING PRACTICE ACT

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

- 2) On their own initiative, Board members may make an announcement or a report on their own activities. They may ask a question for clarification, make a referral to staff or take action to have staff place a matter of business on a future agenda (Government Code section 54954.2(a)(2))

DIRECTOR BERJIS REPORTED ON THE UPCOMING MEETING AT KERN MEDICAL CENTER WITH THE DEAN AND VICE DEAN FOR EDUCATION OF DAVID GEFEN SCHOOL OF MEDICINE AT UCLA ON JANUARY 11, 2019

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing Assistant County Administrative Officer Nancy Lawson for her service on the Kern County Hospital Authority Board of Governors –
MADE PRESENTATION; DIRECTOR LAWSON AND RUSSELL V. JUDD, CHIEF EXECUTIVE OFFICER, HEARD
- 4) Presentation by the Chief Executive Officer recognizing Kern Medical Center nursing graduates from other countries –
MADE PRESENTATION; RUSSELL V. JUDD, CHIEF EXECUTIVE OFFICER, TONI SMITH, CHIEF NURSING OFFICER, PATRICK SEVEGNY, RN, AND LATOYA GRAHAM, RN, HEARD

ITEMS FOR CONSIDERATION

CA

- 5) Minutes for Kern County Hospital Authority Board of Governors regular meeting on November 14, 2018 –
APPROVED
Lawson-Pelz: 7 Ayes

CA

- 6) Proposed Resolution establishing regular meeting dates of the Kern County Hospital Authority Board of Governors for calendar year 2019 –
APPROVED; ADOPTED RESOLUTION 2018-017
Lawson-Pelz: 7 Ayes

CA

- 7) Proposed retroactive Amendment No. 2 to Agreement 04416 with F. Rolin Inspection, an independent contractor, for OSHPD inspection services for the period of July 1, 2016 through June 30, 2019, extending the term for one year from July 1, 2019 through June 30, 2020, increasing the hourly rate from \$96 to \$98 per hour, and increasing the maximum payable by \$200,000, from \$249,000 to \$449,000, to cover the term, effective November 14, 2018 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 083-2018
Lawson-Pelz: 7 Ayes

CA

- 8) Proposed Amendment No. 1 to Agreement 07816 with Paul Dhanens Architect, Inc., an independent contractor, for engineering and architectural services for the period July 1, 2016 through June 30, 2019, extending the term for two years from July 1, 2019 through June 30, 2021, and increasing the maximum payable by \$200,000, from \$250,000 to \$450,000, to cover the term, effective December 12, 2018 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 084-2018
Lawson-Pelz: 7 Ayes

CA

- 9) Proposed acceptance of donation from Federal Emergency Management Agency Center for Domestic Preparedness for travel and related expenses to cover all costs for ten Kern Medical Center employees to attend the “Healthcare Leadership for Mass Casualty Incidents and Integrated Capstone Event” training in Anniston, Alabama, from January 13 through January 19, 2019 –
APPROVED; ADOPTED RESOLUTION 2018-018
Lawson-Pelz: 7 Ayes

NOTE: DIRECTOR BERJIS ANNOUNCED THAT, DUE TO HIS EMPLOYMENT WITH THE KERN COUNTY HOSPITAL AUTHORITY, HE WOULD RECUSE HIMSELF FROM THE VOTE ON ITEM 10 AND LEFT THE DAIS AT 11:46 A.M.

- 10) Proposed Agreement with Amir Berjjs, M.D., a contract employee, for professional medical services in the Department of Surgery from January 4, 2019 through January 3, 2022, in an amount not to exceed \$1,905,000 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 085-2018
McLaughlin-Sistrunk: 6 Ayes; 1 Abstention - Berjjs

NOTE: DIRECTOR BERJIS RETURNED TO THE DAIS AT 11:48 A.M. AFTER THE VOTE ON ITEM 10

CA

- 11) Proposed Amendment No. 2 to Agreement 30917 with Fowrooz S. Joolhar, M.D., a contract employee, for professional medical services in the Department of Medicine for the period September 30, 2017 through September 29, 2020, amending the job description to include a provision of invasive cardiology services, increasing the annual salary from \$425,000 to \$520,000 per year, and increasing the maximum payable by \$239,025, from \$1,297,500 to \$1,536,525, to cover the term, effective December 13, 2018 –

APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT
086-2018

Lawson-Pelz: 7 Ayes

- 12) Kern County Hospital Authority Chief Financial Officer report –
RECEIVED AND FILED

Berjis-Brar: 7 Ayes

- 13) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED

Pelz-Berjis: 7Ayes

CA

- 14) Claims and Lawsuits Filed as of November 30, 2018 –
RECEIVED AND FILED

Lawson-Pelz: 7 Ayes

CA

- 15) Miscellaneous Correspondence
RECEIVED AND FILED

Lawson-Pelz: 7 Ayes

ADJOURNED TO CLOSED SESSION

Sistrunk-McLaughlin

CLOSED SESSION

- 16) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 17) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW

- 18) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(2).) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs – SEE RESULTS BELOW
- 19) Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – SEE RESULTS BELOW
- 20) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW
- 21) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Berjis-Pelz

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 16 concerning Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE (MOTION BY DIRECTOR LAWSON, SECOND BY DIRECTOR PELZ), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, RELEASE OF PROCTORING, VOLUNTARY RESIGNATION OF PRIVILEGES, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 17 concerning Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 18 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(2).) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the Authority and that are known to a potential plaintiff or plaintiffs – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 concerning Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 20 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 21 concerning CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY JANUARY 16, 2019, AT 11:30 A.M.

Sistrunk

/s/ Mona A. Allen
Authority Board Coordinator

/s/ Russell E. Bigler
Chairman, Board of Governors
Kern County Hospital Authority



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Propose Change Order No. 8 to the Construction Agreement with Anderson Group International for the Pharmacy USP 797 Clean Room Modification Project

Recommended Action: Approve; Authorize Chairman to sign and authorize Chief Executive Officer to sign Change Order No. 9

Summary:

Kern Medical requests your Board approve the proposed Change Order No. 8, with Anderson Group International to allow for further modifications in the Pharmacy USP 797 Clean Room Project.

During what was to be the final air balance test, the existing air handler servicing this space was found to need modifications to produce adequate air flow and to maintain the appropriate air balance within the new and existing space. This work was not identified in the original design, but use of force account for time and materials appears to be the most effective process to complete this additional scope of work.

This Change Order No. 8 requires an increase of \$28,803 in the agreement’s maximum payable exceed amount for a new maximum payable of \$729,152. This project will require one additional change order to replace the damaged ducting above the pharmacy and a final air balance test.

Previous Change Orders		
CO 1	Compensate contractor for unforeseen plumbing and framing issues at the D Wing Lobby Restroom.	\$16,771
CO 2	Project was designed for USP 797 State requirements. It was determined after construction started that the USP 800 requirements should be implemented into the project. This added additional scope and time to the project.	\$23,707
CO 3	Compensate contractor for additional plumbing needs at the D Lobby Restroom and to remove, modify, and reinstall the existing doors to accommodate the new wall and flooring materials.	\$6,539
CO 4	Existing fire sprinkler piping, previously installed under an approved OSHPD project, had to be changed out to meet new code requirements; original 1953 construction did not meet current 2 hour fire rating, requiring additional framing and drywall to be installed; and the cabinets as designed did not meet staffing needs and needed to be modified prior to installation.	\$45,887

CO 5	The existing hoods to be installed at the new clean rooms must have casters installed so the systems can be pulled out and cleaned as required by Board of Pharmacy.	\$8,067
CO 6	It was originally planned for Kern Medical Engineering staff to install and anchor the existing hoods in the new space. However, it was determined that this work should be completed by the Contractor; and properly cover exposed plumbing under the new sinks.	\$10,524
CO 7	For safety purposes contractor was directed to relocate an electrical switch from over a wet sink; OSHPD Fire Life Safety Officer required we install two speaker strobe fire alarm devices.	\$6,431

Therefore, Kern Medical recommends that your Board approve the Change Order No. 8 to the Construction Agreement with Anderson Group International for the Pharmacy USP 797 Clean Room Modification Project and direct the Chief Executive Officer to approve the final change order in an amount not to exceed \$30,000, for a total maximum payable amount of \$759,152.

Document Summary

Date:	1/02/2019
<input checked="" type="checkbox"/> Change Order: <input type="checkbox"/> Contract: <input type="checkbox"/> Application:	Pharmacy USP 797 Clean Room Modifications Change Order (8) Anderson Group International P.O. Box 80306 Bakersfield, CA 93380
Fiscal Impact:	\$28,802.17
Term of Agreement / Contract:	Upon Completion
Executive Owner / Dept.	Jared/Thad – Construction Division
Reason for Application:	1) Mechanical Engineering conducted a final air balance test and determined that the existing air handler is required modifications to produce adequate air flow and maintain air balance within the new and existing space.
Consequence of not entering into Agreement/Contract:	1) The adequate air flow is required to pass final air balance test to complete Pharmacy project and get signed off by OSHPD.
Contact:	Nanette Crawford
Reviewed by County Counsel (Name): 12/11/2018	

CHANGE ORDER

PROJECT:

Pharmacy USP 797 Clean Room Modifications
1700 Mt. Vernon Avenue
Bakersfield, CA 93306

PROJECT NO.: 1250.10946
PURCHASE ORDER NO.: 2016.074

CONTRACTOR:

Anderson Group International
P.O. Box 80306
Bakersfield, CA 93380

CHANGE ORDER NO.: Eight (8)

DATE: January 16, 2018

DESCRIPTION OF CHANGE	ADD	DEDUCT
-----------------------	-----	--------

- | | | |
|--|-------------|--|
| 1. Provide all labor, material, and equipment using force account process, to modify existing Air Handler as directed by Mechanical Engineer to achieve adequate air flow and balance as needed to occupy the space. | \$28,802.17 | |
|--|-------------|--|

4/15 CHANGE ORDER NO. 8	TOTAL (ADD)	\$28,802.17
CHANGE ORDER NO. 7	TOTAL (ADD)	\$840.00
CHANGE ORDER NO. 6	TOTAL (ADD)	\$10,523.71
CHANGE ORDER NO. 5	TOTAL (ADD)	\$8,066.03
CHANGE ORDER NO. 4	TOTAL (ADD)	\$45,886.24
CHANGE ORDER NO. 3	TOTAL (ADD)	\$6,538.40
CHANGE ORDER NO. 2	TOTAL (ADD)	\$23,706.58
CHANGE ORDER NO. 1	TOTAL (ADD)	\$16,770.54
ORIGINAL CONTRACT PRICE		\$588,018.07
NEW CONTRACT AMOUNT		\$729,151.74

REASON FOR CHANGE

1. After construction, a final air balance test was conducted as directed by the Mechanical Engineer, that the existing air handler required modifications to produce adequate air flow and to maintain adequate air balance within the new and existing space.

Funds are available in the contract budget to cover this increase in cost.

CONFORMANCE WITH SPECIFICATIONS:

All work shall be done in conformance with the specifications as applied to work of a similar nature.

If the contractor refuses to sign this document, the work listed herein shall be performed on a force account basis.

SUBMITTED BY:

Anderson Group International

BY:


Leigh Ann Anderson, Chief Executive Officer

KERN COUNTY HOSPITAL AUTHORITY

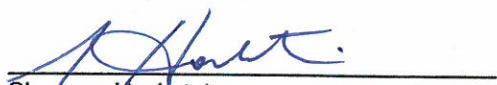
BY:

Board of Governors - Chairman
"KCHA"

APPROVED AS TO FORM:

Legal Services Department

BY:


Shannon Hochstein
Hospital Counsel

APPROVED AS TO CONTENT:

Kern Medical Center

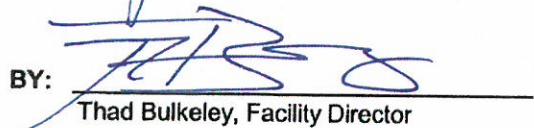
BY:

Russell Judd, Chief Executive Officer
"KCHA"

BY:


Jared Leavitt, Chief Executive Officer

BY:


Thad Bulkeley, Facility Director



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Proposed Master Services Agreement with CIOX Health, LLC

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed master services agreement with CIOX Health, LLC, to provide copying services for medical records. This agreement is for a term of 3 years with a not-to-exceed amount of \$225,000.

Kern Medical entered into the original agreement with CIOX, formerly Health Port, on January 1, 2009, to provide copies of medical records that are requested by patients, insurance companies, attorneys, law enforcement, state/federal agencies, and any other agencies that request the information. CIOX ensures that all of their staff, who process the protected health information, have training, from their internal education programs, to ensure that they are educated on all regulatory requirements for handling documents that require confidentiality and security.

The budgeted cost of this agreement is \$75,000 per year. The cost is based on an average of the past two years of pages copied at \$0.25 per page and using the services in-house for business purposes. The actual cost varies due to the variable amount of billable items that CIOX is able to bill for and the number of requests. In the past, unexpected audits have increased the cost beyond the budgeted not-to-exceed maximum and an urgent amendment had to be requested. The budgeted cost now includes the possibility of a large audit or print request.

Previous Agreement	Proposed New Agreement	Variance
2009 – 2016 - \$166,228 2017-2018 - \$100,000 Previous Not-To-Exceed \$266,228	2019 – 2021 - \$225,000	\$25,000 per year

Therefore, it is recommended that your Board approve the master services agreement with CIOX for medical record copying services for the period of January 16, 2019 through January 15, 2022 in an amount not to exceed \$225,000.

The Agreement contains non-standard terms and cannot be approved as to form by Counsel due to objectionable indemnification language, interest on late payments, no termination without cause, a monetary penalty for early termination not in accordance with the language of the agreement, auto-renewal of the term, and a limitation of liability.



**CIOX HEALTH, LLC
MASTER SERVICES AGREEMENT**

This Master Services Agreement (“Agreement”) is made and entered into this 16th day of January, 2019, by and between CIOX Health, LLC, a Georgia limited liability company (“CIOX”), and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (“Medical Facility”). CIOX and Medical Facility are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

WHEREAS, CIOX is in the business of providing medical records reproduction and health information management services for its clients, including hospitals, clinics and other facilities; and

WHEREAS, Medical Facility desires to contract with CIOX for its services as more fully described in any Service Order (as defined below) entered into between CIOX and Medical Facility; and

WHEREAS, this Agreement describes the general terms and conditions under which CIOX will provide services for Medical Facility pursuant to any Service Order.

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

1. DEFINITIONS. For the purposes of this Agreement:

- 1.1. **“Affiliate”** means any employee, officer, director or agent of Medical Facility or CIOX, as applicable.
- 1.2. **“Authorized User”** means any person authorized by Medical Facility to have direct access to Licensed Software or a Database and/or to receive a copy of a Medical Record from a Database for purposes of this Agreement. If an Authorized User designated by Medical Facility is not a Medical Facility Affiliate, Medical Facility is required to have such Authorized User enter into CIOX’s then-current form of System Access Agreement prior to granting such Authorized User access to the Licensed Software or Database.
- 1.3. **“Database”** means a collection of the Medical Records and related data stored on one or more Servers owned or controlled by CIOX, its Affiliates or by its third party licensors that contains certain full-text searchable fields, which are computer-accessible and retrievable by Authorized Users by use of such record-locator information.
- 1.4. **“Delegated Administrator”** means Medical Facility personnel who are appointed by Medical Facility to designate and manage Authorized Users and who have agreed to comply with the terms of this Agreement.
- 1.5. **“Documentation”** means the printed or electronic material relating to the description and operation of any Licensed Software or Database such as user manuals, training manuals, technical manuals, and product and service brochures, and any updated versions thereof provided to Medical Facility.
- 1.6. **“Equipment”** means any and all equipment and materials, including but not limited to, any hardware (and related software) provided or licensed by CIOX or its Affiliates as set forth in the applicable Service Order or this Agreement.
- 1.7. **“Licensed Software”** means any software or applications licensed or otherwise made available by CIOX or its Affiliates to Medical Facility incident to the provision by CIOX of any service for or on behalf of Medical Facility.
- 1.8. **“Medical Record(s)”** means an electronic or paper-based patient medical record possessed by Medical Facility and the data contained therein.
- 1.9. **“MPI”** means master patient index or Medical Facility’s equivalent indexing system.

Note: This document expires sixty (60) days after first transmission to customer unless fully-executed prior thereto.

- 1.10. **“Servers”** means those servers and other hardware and third party software that shall be used by CIOX or its Affiliates to provide services for or on behalf of Medical Facility.
- 1.11. **“Services”** means the services that are set forth in any applicable Service Order.
- 1.12. **“Service Order”** means any service order executed by the Parties at any time and incorporated herein by reference.

2. SERVICES AND EQUIPMENT

- 2.1. **Service Orders.** The Service Orders, each of which shall be effective upon full execution thereof by an authorized representative of each Party, will describe the services to be provided by CIOX (“Services”), list all sites of Medical Facility to be included in the Service Order, set forth the respective tasks and responsibilities of the Parties, and outline any special terms and conditions applicable to such Service Order. If any term or condition of a Service Order conflicts with the terms and conditions of this Agreement, the terms and conditions of the Service Order will govern with respect to the Services provided under such Service Order.
- 2.2. **Equipment.** At CIOX’s sole discretion, CIOX may make available to Medical Facility Equipment such as scanners, printers and computers to perform the Services under the terms of this Agreement and/or the applicable Service Order(s). CIOX shall retain ownership of the Equipment and shall be responsible for insurance, maintenance and repairs on the Equipment.

3. LICENSES

- 3.1. **Grant of License.** Subject to the terms and conditions of this Agreement and any applicable Service Order, CIOX grants to Medical Facility a limited, non-transferable, non-exclusive, terminable, worldwide license to access and use the Licensed Software (in object code form only) or Database referenced in the Service Order during the term of the Service Order.
- 3.2. **Scope of Rights.** Subject to the terms and conditions of this Agreement and any applicable Service Order, Medical Facility may:
 - (i) Use the Licensed Software and Database solely for Medical Facility’s business of providing health care and related administrative services;
 - (ii) Make a reasonable number of copies of the Documentation for Medical Facility’s internal use only, provided that CIOX’s copyright and other proprietary legends are reproduced on each copy.
- 3.3. **Restrictions.** In addition to other restrictions set forth in this Agreement or any Service Order, Medical Facility shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Licensed Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats, or programming interfaces of the Licensed Software by any means whatsoever (except and only to the extent that applicable law permits or as permitted pursuant to Section 3.10); (b) copy or duplicate, distribute, sell, sublicense, or lease the Licensed Software; (c) remove any product identification, proprietary mark, copyright, trademark, service mark, or other notices contained in the Licensed Software; (d) except and only to the extent as permitted in Section 3.10, modify any part of the Licensed Software, create a derivative work of any part of the Licensed Software; (e) except and only to the extent contemplated in the documentation accompanying the Licensed Software or as permitted in Section 3.10, incorporate the Licensed Software into or with other software; and/or (f) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Licensed Software.



3.4. **Access Procedures; Password Security.**

- 3.4.1. CIOX will provide passwords allowing the Delegated Administrator(s) to give Authorized Users access to the Licensed Software or Database referenced in the applicable Service Order. Medical Facility shall: (a) ensure that passwords are disclosed only to Authorized Users and not to any other individual; (b) be responsible for assigning roles and authority levels with respect to Medical Facility access to the Licensed Software or Database; and (c) be responsible for the conduct of individuals to whom it provides access to the Licensed Software or Database.
- 3.4.2. Medical Facility shall establish and maintain lists of Delegated Administrator(s) and Authorized Users and comply with CIOX procedures for verification of Authorized Users, revision of access rights to Licensed Software and Databases, maintenance of security, and assignment and use of passwords. Medical Facility shall notify CIOX immediately (within 24 hours) in writing if the security or integrity of a password or authority level is believed to have been compromised. Medical Facility shall be fully responsible for the unauthorized access or use of any Equipment or unauthorized disclosures of Medical Records occurring as a result of activity on the Medical Facility premises or access to the Medical Facility computer systems from outside the Medical Facility premises, to the extent such unauthorized disclosures of Medical Records are not due to the gross negligence or willful misconduct of CIOX.
- 3.4.3. In an attempt to protect Medical Records data, CIOX reserves the right to deny or revoke any right of access to any person who CIOX reasonably believes is violating, has violated, or may violate, any of CIOX's access procedures. CIOX reserves the right to change access procedures from time to time upon notice to Medical Facility (unless circumstances dictate that notice is not practicable).
- 3.5. **Medical Records Data.** Unless otherwise noted in a Service Order, Medical Facility acknowledges and agrees that Medical Records data generated by and through Medical Facility's use of Licensed Software or a Database shall be collected and reside on CIOX's Server. Medical Facility will continue to own all of its Medical Records and data. CIOX is authorized to use and disclose Medical Records and other data, including protected health information: (a) to the extent reasonable necessary to provide and improve its products and services; (b) for the proper management and administration of its business, including to carry out its legal responsibilities; and (c) as permitted by 45 C.F.R. § 164.504(e)(2) and 45 C.F.R. § 164.514.
- 3.6. **Additional Medical Facility Obligations.** Medical Facility shall be responsible for meeting the Medical Facility requirements, as set forth in any Service Order, for effectively installing, operating and maintaining access to any Licensed Software or Database. Medical Facility also will:
- (i) Maintain sole responsibility for all clinical and diagnostic activity at the Medical Facility and for the implementation and operation of all accounting, management and reporting systems and audit functions which are not expressly to be provided by CIOX as described in a Service Order. CIOX shall not be held responsible for any such functions as a result of providing any Services or Equipment to Medical Facility;
 - (ii) If a data communication interface is required between Medical Facility system(s) and a Database, provide local technical and systems support at Medical Facility to assist in establishing such interface; and



- (iii) If Medical Facility's MPI or similar data is required for CIOX to perform the Services, provide a timely data feed, as a comma separated text file or a real-time HL7 interface, of Medical Facility's MPI or similar data to populate, and to be linked with, the Database. Each data feed must contain, at least, the following elements: Medical Record Number, First Name, Middle Initial, Last Name, Gender, Social Security Number, Episode Number (Account Number), Patient Type, Discharge Service, and Date of Birth, Admission Date and Discharge Date in CCYYMMDD format. Medical Facility agrees to provide the initial MPI or similar data feed to CIOX within 30 days of the effective date of the relevant Service Order.
- 3.7. **Authorized User Support.** Support and hosting services will be provided to Medical Facility's Authorized Users as set forth in any applicable Service Order.
- 3.8. **Scheduling Maintenance.** CIOX may perform maintenance from time to time and will use commercially reasonable efforts to schedule any downtime for maintenance outside of Medical Facility's normal business hours and to notify the Delegated Administrator(s) of any such maintenance at least 48 hours in advance.
- 3.9. **On-Line Conduct.** Each Party hereto shall, in connection with any use of any Licensed Software or Database or Services provided under this Agreement and any Service Order, use reasonable efforts to not upload, store, post, e-mail, distribute, publish or otherwise disseminate any material that: (a) is harmful, threatening, obscene, vulgar, abusive, or unlawful, or which promotes or sponsors any activity of like nature, (b) violates any third-party privacy right, copyright or other intellectual property right or any contractual obligation or fiduciary obligation of Medical Facility, (c) contains any viruses or any other software designed to interrupt or damage the operations of any Equipment, or (d) contains any other harmful or damaging program which can, among other things, circumvent third-party proprietary rights or filters.
- 3.10. **Third Party Code.** The Licensed Software may contain, be provided with, or be aggregated with components which are owned by and licensed from third parties ("Third Party Code"), including components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). Open Source Software may be identified in documentation included with the Licensed Software, or in a list provided to Medical Facility upon Medical Facility's written request. To the extent required or permitted by the license that accompanies any of the Open Source Software, the terms of such license will apply in lieu of the terms of this Section 3 with respect to such Open Source Software, including, without limitation, any provisions governing access to the source code of such Open Source Software, modification of such Open Source Software, and/or redistribution of such Open Source Software. Under certain Open Source Software licenses, Medical Facility is entitled to obtain the corresponding source files of the applicable Open Source Software. CIOX shall provide such source files of the Open Source Software to Medical Facility upon written request.
- 3.11. **Title.** Medical Facility understands that CIOX reserves all rights not expressly granted hereunder and retains its right, title, and interest in and to, and that the license granted by CIOX hereunder transfers neither title nor proprietary or other intellectual property rights to, the Licensed Software and Database. The Licensed Software is protected by copyright and other proprietary rights of CIOX and/or third party software vendors. If the Licensed Software includes software licensed to CIOX by a third-party vendor, such vendor is a third party beneficiary hereof and Medical Facility may be held directly responsible by such vendor for acts relating to the Licensed Software that are not authorized by this Agreement.



4. PAYMENTS AND BILLING

- 4.1. **Compensation.** In consideration of the Services provided under the terms of a Service Order, CIOX shall be compensated in accordance with the Price Schedule set forth in such Service Order. CIOX may increase its fees to Medical Facility annually by the change in CPI.
- 4.2. **Payments.** Except as otherwise provided in the applicable Service Order, CIOX will invoice Medical Facility on a monthly basis for Services provided during the prior month and any applicable taxes and duties which are required to be collected or paid by CIOX, excluding taxes on CIOX's net income, and payment shall be due within 30 days of the invoice date. If Medical Facility fails to make any payment required under this Agreement within 30 days of the invoice date, then CIOX may, at its option and sole discretion in addition to any other remedies it may have at law or in equity, (i) assess a late fee in an amount equal to the lesser of 1.0% per month or the maximum rate permitted by law on the delinquent amount and/or (ii) terminate this Agreement pursuant to Section 5. CIOX will not accept credit card payment for invoices over \$10,000.00.
- 4.3. **Tax Exemption.** CIOX will not charge sales taxes in a state to an entity which has provided a current, valid sales tax exemption certificate issued by such state. Tax exemption certificates may be provided via email at accountspayable@CIOXHealth.com. Medical Facility agrees to keep current any tax exemption certificates provided to CIOX.

5. TERM AND TERMINATION

5.1. Term.

- 5.1.1. The initial term of this Agreement will be three years, unless earlier terminated pursuant to this Section 5. Thereafter, this Agreement may renew for successive one-year renewal terms by written amendment (the initial term and each renewal term shall be referred to herein collectively as the "Term").
- 5.1.2. Notwithstanding the foregoing, if a longer term is set forth in a Service Order, this Agreement will remain in effect for the purposes of such Service Order until the expiration or termination of such Service Order.

5.2. Termination.

Subject to Section 5.1.2, either Party may terminate this Agreement effective at the end of each year of the Agreement by providing written notice to the other Party of its intent to terminate this Agreement at least 90 days prior to the anniversary thereof. In the event Medical Facility desires to terminate this Agreement or any Service Order during the initial term other than as set forth in the preceding sentence or for an uncured material breach as set forth below, Medical Facility agrees to pay a sum equal to three times the average monthly billing during the most recent 12 months of the term of the Service Orders that are affected by the early termination for the reasonable approximation of damages incurred for the termination.

5.3. Termination for Cause.

In the event of any material breach of this Agreement or any Service Order, the non-breaching Party may terminate this Agreement by giving 30 days prior written notice to the breaching Party; provided this Agreement shall not terminate if the breaching Party has cured the breach prior to the expiration of such 30 day period or has used its best efforts to cure such breach within such 30 day period and can demonstrate to the reasonable satisfaction of the other Party that based on such efforts such breach will be promptly cured after the expiration of such 30 day period. Further, a Party may terminate this Agreement immediately upon notice of the insolvency, bankruptcy or institution of proceedings for dissolution, liquidation or appointment of a receiver of the other Party.



- 5.4. **Effects of Termination.** Upon termination of this Agreement and any Service Orders governed hereby for any reason, all obligations of the Parties shall cease, except for those obligations which expressly or by their nature survive termination of this Agreement. This Section shall not relieve any Party of any payment obligation under this Agreement that accrued prior to the date of such termination. Upon termination of this Agreement for any reason, the licenses and rights granted hereunder shall automatically terminate and CIOX has the right to remove any and all Equipment and Licensed Software (including further access thereto) from the Medical Facility's premises on the final date Services are provided by CIOX hereunder.

6. CONFIDENTIALITY

- 6.1. **Confidential Information Defined.** A Party's confidential information shall include all proprietary information and related materials of such Party, including Licensed Software and any Database as well as any Documentation, software, systems, source code, or technology (including, without limitation, infrastructure designs, data, analyses, compilations, studies, assumptions, characteristics and other materials) contained therein or related thereto; and any other business, financial, technical, marketing, strategic, development or similar information received from such Party that is not generally available in the public domain, or any other information or material that is designated as confidential, or that, because of the nature of the information being disclosed and/or the circumstances surrounding its disclosure, would be deemed, or the receiving Party should know is, confidential, whether or not communicated orally, electronically, in writing or any other medium of expression (all of the foregoing being collectively defined as "Confidential Information").
- 6.2. **Protection.** Each Party shall hold the other Party's Confidential Information in strict confidence and shall protect the other Party's Confidential Information using the same standard of care that it applies to its own Confidential Information, but not less than a reasonable degree of care. The foregoing obligation of Confidentiality shall not apply to any information of the disclosing Party that (i) the receiving Party can prove by clear and convincing evidence (a) is generally available in the public domain through no fault or breach on the part of the receiving Party or (b) was developed by employees or agents of such Party independently of and without reference to any information communicated to such Party by the other Party or (ii) is otherwise required to be disclosed by operation of law provided, however, such Party shall provide prompt prior written notice thereof to the other Party to enable the other Party to seek a protective order or otherwise prevent or minimize such disclosure. CIOX is aware that Medical Facility is a government entity and is subject to the California Public Records Act, *Cal.Govt.Code §6250 et seq.*, the Brown Act, *Cal.Govt.Code §54950 et seq.*, and other laws pertaining to government entities. Information required by law to be disclosed will not be considered Proprietary and Confidential by the Parties and will be disclosed only to the extent required to comply with that legal obligation.
- 6.3. **Business Associate Agreement.** CIOX and Medical Facility agree to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (PL 104-91) ("HIPAA") and regulations enacted by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 – 164 (the "Privacy and Security Standards") and the requirements of the federal Health Information Technology for Economic and Clinical Health Act enacted on February 17, 2009 (the "HITECH Act") in the performance of their respective obligations hereunder. CIOX and Medical Facility agree to comply with the terms of a mutually-agreed upon business associate agreement ("BAA").

7. WARRANTIES AND DISCLAIMERS



- 7.1. **Warranty of Medical Facility.** Medical Facility represents and warrants that it has the legal right and authority to perform its obligations hereunder and that it has all the necessary approvals and consents required to provide CIOX access to its EHR and to provide access to and disclose PHI to CIOX for purposes of CIOX's performance under this Agreement. CIOX agrees to execute such additional documents as may be reasonably necessary to obtain such access.
- 7.2. **Warranty as to Services.** CIOX shall perform the Services in a workmanlike manner consistent with industry standards and practices. EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR IN A SERVICE ORDER, THE SERVICES AND ANY EQUIPMENT TO BE PROVIDED HEREUNDER ARE PROVIDED WITHOUT ANY OTHER WARRANTY OR GUARANTY OF ANY KIND, AND CIOX DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 7.3. **Licensed Software and Database.** CIOX warrants that the Licensed Software or Database will perform substantially in accordance with the Documentation and that it will use commercially reasonable efforts to ensure a secure environment.
- 7.4. **Medical Records.** Medical Facility represents and warrants that: (a) it is the legal custodian of the Medical Records and it has the right and authority to provide CIOX with all Medical Records and other materials required hereunder; (b) it will use reasonable efforts to ensure that any Medical Records submitted to CIOX via electronic media will be free of viruses; and (c) anyone submitting Medical Records to CIOX for use in connection with the Services has legal authority to do so, either through ownership of the Medical Records or by obtaining appropriate authorizations therefore, and that submission of Medical Records does not violate any contracts, agreements, or any applicable law. Medical Facility is responsible for all Medical Records that are submitted to CIOX for use in connection with the Services. Any unauthorized posting or submitting of third party copyrighted, trademarked, or other legally protected materials is prohibited and may (at the discretion of CIOX) result in a termination or suspension of access.
- 7.5. **No Disqualification.** CIOX represents and will continue to warrant to Medical Facility that CIOX has not been excluded from participation in any Federal healthcare program as defined in 42 U.S.C. § 1320a-7b(f).
- 7.6. **No Violations.** Medical Facility hereby agrees that it will not request that CIOX take any personnel action that is in violation of public policy or any federal, state or local laws regarding employment and/or discrimination.
- 7.7. **Third Party Errors.** CIOX is not responsible and shall not be liable for Medical Facility's inability to use any software or Database due to errors in functionality of any third party hardware or software used by Medical Facility in conjunction with any Services as such errors are beyond CIOX's control.
- 7.8. **Unauthorized Access to Medical Records.** CIOX is not responsible and shall not be liable for any disclosure, misuse, modification, or loss of Medical Records or access to account information by anyone accessing such Medical Records or information using Medical Facility's user passwords or those of any of its Authorized Users.
- 7.9. **Accuracy of Medical Records.** Medical Facility understands and agrees that CIOX will rely solely upon Medical Facility to ensure the accuracy and completeness of Medical Records, as Medical Facility recognizes that it is impossible for CIOX to assure the accuracy, completeness and sufficiency of the Medical Records. CIOX shall not be liable for damage or deficiency with respect to Medical Records attributable to defects in, or damage to, original paper Medical Records imaged by CIOX, except to the extent such damage or deficiency is due to the negligent activities of CIOX.



8. INDEMNIFICATION.

8.1. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other Party (and such Party's shareholders, directors, officers, agents and employees) from and against damages actually and directly incurred by such Party due to claims, demands, losses, judgments, causes of action or liability, including its reasonable expenses and court costs, to the extent arising from the negligent operations, acts or omissions of the indemnifying Party, its employees, agents and representatives while engaged in activities within the scope of this Agreement. In addition, a Party providing directions or specifications to the other Party shall indemnify, defend and hold harmless such other Party from any liability to third parties arising out of compliance with the directions or specifications. Any Limitation of Liability provision contained in this Agreement shall not serve to limit a Party's indemnification responsibility for claims related to (i) infringement upon the intellectual property rights of a third party, or (ii) the gross negligence or willful misconduct of the indemnifying Party hereunder. The obligations of an indemnifying Party in this Section 8.1 are subject to the conditions that: (i) the indemnifying Party is notified promptly in writing by the indemnified Party of any matters in respect of which the indemnity may apply in order to allow the indemnifying Party to investigate and defend the matter; provided, however, the failure to give such notice will only relieve the indemnifying Party of its indemnity obligations hereunder to the extent the indemnifying Party is prejudiced thereby; (ii) the indemnifying Party has sole control of the defense and all negotiation for any settlement or compromise provided that it shall not make any admission of fault without the indemnified Party's consent; and provided, however that the indemnified Party shall have the right at its sole cost and expense to participate in any such legal proceeding with counsel of its own choosing; and (iii) the indemnified Party reasonably assists the indemnifying Party in the defense of the claim.

8.2. **Release.** A Party shall not have any liability to the other Party for any claim or liability arising out of its compliance with the directions or specifications provided by such other Party.

9. **LIMITATION OF LIABILITY.** CIOX'S ENTIRE LIABILITY, AND MEDICAL FACILITY'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM ARISING UNDER OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, SHALL BE LIMITED TO THE RECOVERY OF MEDICAL FACILITY'S ACTUAL DIRECT DAMAGES WHICH SHALL IN NO EVENT EXCEED TWO TIMES THE TOTAL AMOUNT PAID BY MEDICAL FACILITY OR ANY THIRD PARTY TO CIOX PURSUANT TO THIS AGREEMENT OR ANY SERVICE ORDER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. IN NO EVENT SHALL CIOX BE LIABLE TO MEDICAL FACILITY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR LOST PROFITS, REVENUES, DATA OR OPPORTUNITIES EVEN IF CIOX HAS BEEN ADVISED OF THE POSSIBILITY OF SAME OR EVEN IF SAME WERE REASONABLY FORESEEABLE.

9.1. **Liability of Medical Facility.** The liabilities or obligations of Medical Facility with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Medical Facility and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

10. GENERAL PROVISIONS

10.1. **Independent Contractor.** The Parties acknowledge and agree that: (i) each Party is at all times acting and performing as an independent contractor; (ii) this Agreement does not create a partnership, joint venture, employment or similar relationship between them; (iii) no Party (or any person performing services on behalf of such Party pursuant to this Agreement) shall have any right or claim against the other Party for social security benefits, workers' compensation benefits, disability benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave or any other employee

-8-

Note: This document expires sixty (60) days after first transmission to customer unless fully-executed prior thereto.

benefits of any kind. Neither Party shall have responsibility to the other Party with respect to withholding of taxes or payment due by employers to governmental authorities.

- 10.2. **Staffing.** CIOX will provide qualified staff with knowledge of applicable state and federal law, including HIPAA, as it pertains to confidential patient information. As it relates to release of information Services provided, CIOX will staff and provide coverage according to the volume of requests. CIOX will not provide Services on weekends or CIOX paid holidays. A current list of holidays will be provided to Medical Facility upon request, and an updated list will be available annually. CIOX represents that all personnel assigned to perform Services hereunder have signed CIOX's standard confidentiality agreement. CIOX acknowledges that it does not discriminate on the basis of race, creed, color, national origin, age, gender, disability, sexual orientation, or Vietnam Era Veterans, and expressly agrees to abide by all applicable federal and state equal opportunity laws.

Medical Facility hereby agrees that it will not request that CIOX take any personnel action that is in violation of public policy or any federal, state or local laws regarding employment and discrimination including, but not limited to, the Civil Rights Act of 1964, the Rehabilitation Act of 1973 the American with Disabilities Act of 1990, False Claims Act, ADEA, IRCA, Health Insurance Portability and Accountability Act, Federal Sentencing Guidelines, Balanced Budget Amendment and/or OIG Hospital Compliance Program Guidance.

- 10.3. **No Solicitation of Employees.** During the Term of this Agreement and for 60 days thereafter (or, if shorter, for 60 days after termination of employment), no Party shall knowingly employ, solicit to employ, either directly or indirectly, or offer employment to any current or former employee of the other Party without such other Party's prior written consent; provided this provision shall not prohibit a party from hiring an employee who applies in response to a general advertisement for employment which was not targeted at one or more employees of the other Party. Acknowledging the Parties' significant investment in recruiting and training personnel, each Party agrees that if it hires any current or former employee of the other Party in violation of this Section 10.3, to: (i) pay the other Party an amount equal to two months of such employee's last salary (or equivalent wage based on 170 hours per month) within 30 days of receipt of an invoice from the other Party; and (ii) give the other Party 90 days prior written notice to enable that Party to continue to fulfill its obligations hereunder.
- 10.4. **Insurance.** At all times, CIOX will insure its employees for errors and omissions, including professional liability and security/privacy claims from publication of material that violates a person's right of privacy, in the amount of Three Million Dollars and for general liability in the amount of One Million Dollars per occurrence and Two Million Dollars in the aggregate. Furthermore, CIOX maintains workers compensation insurance sufficient to cover its employees in accordance with the applicable state's requirements. Certificates of insurance evidencing coverage will be provided upon request.
- 10.5. **Notices.** Any notice required to be given hereunder shall be in writing and shall be deemed effective when delivered by hand or by facsimile transmission (with receipt acknowledged by the receiving Party) or upon receipt when sent by nationally reputable courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Party at its respective address as follows:

CIOX:
CIOX Health, LLC
925 North Point Parkway, Suite 350
Alpharetta, GA 30005
Attn: Legal Department
Fax No: 770-360-1702

Medical Facility:
Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Angelina Reyes
Fax No.: _____



A Party may change its designated address by giving notice pursuant to this Section.

- 10.6. **Force Majeure.** A Party shall not be in breach of its obligations under this Agreement or liable for damages due to delay or failure to perform to the extent such delay or failure is due to causes beyond its reasonable control, including but not limited to acts of God, fires, strikes, riots, floods, acts of civil or military authority or any similar cause.
- 10.7. **Publicity.** Medical Facility acknowledges and agrees that CIOX may name Medical Facility as a purchaser of its services and products in CIOX's marketing materials and press releases.
- 10.8. **Entire Agreement.** This Agreement, the Service Orders and the Business Associate Agreement and any addendums or amendments thereof set forth the entire agreement and understanding of the Parties, and supersede all prior agreements or understandings, whether written or oral, between the Parties, with respect to the subject matter hereof.
- 10.9. **Severability.** If any part of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalid or unenforceable provision shall be deemed to be stricken here from, and the remainder of this Agreement shall not be affected thereby, but shall remain in force and have the same effect as if such invalid or unenforceable provision had never been included herein.
- 10.10. **Amendment.** This Agreement may not be amended except by a written instrument signed by the duly authorized representative of each Party.
- 10.11. **Waiver.** A Party shall not be deemed to have waived a provision hereof unless, and then only to the extent, such waiver is in writing and signed by the Party to be charged therewith. A Party's waiver of any breach of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. A Party's delay or failure to exercise any right shall not be deemed to be a waiver of such right.
- 10.12. **Survival.** All rights and obligations of the Parties that expressly or by their nature extend beyond the Term of this Agreement shall survive the termination or expiration of this Agreement and continue to bind the Parties and their representative, successors and assigns until such rights and obligations are satisfied in full or by their nature expire.
- 10.13. **Subcontracting.** CIOX may, as it deems appropriate, engage employees, independent contractors, consultants, or other persons or entities (collectively referred to as "Assistants") to aid CIOX in performing CIOX's duties under this Agreement, so long as such Assistants abide by the terms of this Agreement, specifically Section 6 (Confidentiality) and, if required under HIPAA, the HITECH Act or any other state or federal regulation, enter into a Business Associate Agreement with CIOX and agree to the same restrictions and conditions that apply to CIOX with respect to protected health information. CIOX shall absorb any additional costs incurred as a result of its subcontracting the Services to be provided under this Agreement, except in those instances where the cost of such Assistants is to be reimbursed to CIOX under the terms of a Service Order. In this latter case, Medical Facility shall reimburse CIOX for costs incurred. For the avoidance of doubt, nothing in any service order, statement of work or agreement, including a business associate agreement, shall preclude CIOX and its Assistants from performing administrative tasks outside the United States.
- 10.14. **Assignment and Binding Effect.** Except as otherwise permitted herein, neither Party shall assign this Agreement to any third party without the prior written consent of the other Party (which consent shall not be unreasonably withheld); *provided, however*, the merger or consolidation of a Party into, or the sale of all or substantially all of the assets of such Party to, a third party shall not be deemed to be an assignment for the purposes of this Section. Subject to the foregoing, this Agreement shall be binding



upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

- 10.15. **Addenda and Exhibits.** Any Addenda or Exhibits attached hereto are incorporated by reference into this Agreement as if their contents were fully set out herein.
- 10.16. **Headings.** The section headings are intended for reference only and do not affect the meaning or interpretation of this Agreement.
- 10.17. **Counterparts.** This Agreement may be executed in two or more counterparts (via facsimile, electronic delivery or otherwise), each of which shall be deemed an original, but which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by duly authorized representatives as of the date written below.

CIOX Health, LLC

Kern County Hospital Authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

REVIEWED ONLY
NOT APPROVED AS TO FORM

By  _____
Legal Services Department





CIOX HEALTH, LLC
RELEASE OF INFORMATION

This Service Order (“Service Order”) is made and entered into this ____ day of _____, 2019 (the “Effective Date”), by and between CIOX Health, LLC (“CIOX”) and Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (“Medical Facility”), pursuant to the terms of that certain Master Services Agreement entered into between the Parties, dated January 1, 2019, or any successor or replacement Master Services Agreement entered into between the Parties (the “Master Agreement”). Capitalized terms not otherwise defined herein shall have the means ascribed to such terms in the Master Agreement.

1. MEDICAL FACILITY SITES INCLUDED

CIOX agrees to provide Release of Information (“ROI”) pursuant to this Service Order for the following Medical Facility locations (“Locations”) either from a mutually-agreed upon central location at Medical Facility (a “Central Location”) or from a remote facility controlled by CIOX (“Remote Location”), in each case subject to the additional terms set forth in Section 2.2:

LOCATION	PHYSICAL ADDRESS	BILLING ADDRESS	CONTACT
Kern Medical Center	1700 Mount Vernon Ave. Bakersfield, CA 93306	1700 Mount Vernon Ave. Bakersfield, CA 93306	Angelina Reyes (661) 326-2000 angelina.reyes@kernmedical.com

2. SERVICES

2.1 Specific ROI Task Allocation.

	Description	Medical Facility	CIOX
1.	Process all billable requests (“BR”). Billable requests are defined as those requests by a third party requestor, including but not limited to, attorneys, insurance companies, government agencies and patients who are billed as provided by state and/or federal laws.		X
2.	Process non-billable requests as mutually agreed by the Parties (“NBR”). A listing of such accounts will be maintained at the Medical Facility Site. NBR include: (a) requests by Medical Facility’s internal departments, including Business Office and Risk Management, (b) patient transfers and continuing care which are not historically billed, and (c) payment of claim, managed care organizations and/or health plan requests when Medical Facility is obligated or contractually agrees to provide copies at no charge. NBR does not include requests described in Section 5 (Health Plan Audits/Review) or requests for charts for transfer of a physician or physician group practice, which will be billed as set forth below.	X	X
3.	Copy Quality Improvement Organization (QIO) and/or Peer Review Organization (PRO) requests.	X	X
4.	Open and date stamp ROI requests received by mail.	X	
5.	Receive telephone calls for ROI requests. ¹	X	
6.	Answer departmental (receptionist) telephones. ¹	X	
7.	Respond to walk-in requestors. ¹	X	



	Description	Medical Facility	CIOX
8.	Respond to "STAT" / fax requests. ¹	X	
9.	Log request into Licensed Software.	X	
10.	Review request and verify authorizations in accordance with Medical Facility policy and all applicable state and federal laws.	X	X
11.	Determine the correct amount to charge third party requestors.		X
12.	Provide support for resolving specific ROI and authorization questions.	X	X
13.	Look up patient ID via Medical Facility's Master Patient Index.	X	
14.	Retrieve charts for pertinent information.	X	X
15.	Order charts from off-site storage location.	X	
16.	Provide follow-up as necessary regarding incomplete requests; send out status letters.	X	X
17.	Review the request and chart, then decide what to copy/scan.	X	X
18.	Copy/scan requested information.	X	X
19.	Certify requested records.	X	X
20.	Prepare/print medical record correspondence for disclosure to requesting party.	X	X
21.	Enter copying/disclosure data into Licensed Software.	X	X
22.	Return the records to original order.	X	X
23.	Perform quality reviews.	X	X
24.	Return the chart and/or microfilm/fiche to the chart room.	X	
25.	Mail and/or deliver records.	X	X
26.	Invoice and/or pre-bill all billable requests.		X
27.	Accounts receivable/collections on outstanding invoices.		X
28.	Customer Service support on all requests, including responding to telephone calls regarding status of records requested.	X	X
29.	Provide monthly reports and analysis of requests.		X
30.	Fulfill requests by third parties for the release of itemized billing statements, on behalf of Medical Facility's Patient Financial Services Department, if applicable	X	

*If CIOX box is chosen, Services shall be performed during CIOX's mutually agreed upon hours of on-site coverage.

2.2 Remote or Central Processing.

If Medical Records are available in electronic format, CIOX employees will perform assigned ROI services from either a mutually-agreed upon central location at Medical Facility (a "Central Location") or from a remote facility controlled by CIOX ("Remote Location"). Any Remote Location will be secured and limited to authorized CIOX personnel. CIOX will provide all equipment and supplies for ROI services performed at Remote Locations. Medical Facility will provide to CIOX, via secure electronic means, copies of request letters for Medical Records, along with patient authorizations and other documentation required to perform ROI from Central or Remote Locations. If ROI Services are performed remotely by CIOX, Medical Facility will provide those ROI duties that require on-site staffing, such as, but not limited to: assisting patient walk-ins, processing records for patient transfers, and on-site reviews.

Medical Facility will provide technical support, including software components when necessary, to establish connectivity to allow CIOX to access Medical Facility's Electronic Health Records ("EHR") and capture images. CIOX will access Medical Facility's EHR for the sole purpose of providing ROI Services.

Such access will be via encrypted virtual private network, or via another commercially supported remote access solution.

2.3 Medical Facility's Responsibilities.

- Medical Facility will ensure that CIOX is licensed or otherwise permitted to use any software made available for CIOX's use by Medical Facility.
- Medical Facility will provide CIOX with information reasonably requested by CIOX and necessary for CIOX to perform ROI Services pursuant to this Service Order.
- Medical Facility will ensure CIOX timely receives all communications received by Medical Facility relating to requests processed by CIOX, which are alleged to be incomplete, non-responsive or not timely.
- Fulfill its obligations as the Custodian of Record, including attending any depositions and court appearances.
- Medical Facility shall be responsible for proper system maintenance of Medical Facility's applications.
- Medical Facility will notify CIOX of any changes in Medical Facility's hardware or software that might affect the ROI Services provided by CIOX.
- Ownership of software provided by Medical Facility, including any modifications made to that software, shall remain with Medical Facility throughout the Term and thereafter.

2.4 Staffing.

CIOX will assign a sufficient number of employees to Medical Facility's account to perform the ROI Services allocated above to CIOX. Any additional clerical assignments will be mutually agreed to in writing. In the event Medical Facility requests additional services beyond those listed in the Specific Task ROI Allocation section above, CIOX will charge and Medical Facility will pay the then-applicable agreed-upon labor rate, currently \$35.00 per hour, per employee for the additional services or tasks. Overtime and holiday hours are charged at twice the regular labor rate. Overtime hours are all hours worked by an employee in excess of forty (40) hours in a week, except in California, where overtime hours are all hours worked by an employee in excess of eight (8) hours in a day. Holiday hours are hours worked during a holiday recognized by CIOX or the application Medical Facility when non-essential employees do not work.

2.5 Equipment and Supplies.

CIOX will provide scanner(s) and proprietary data capture software to fulfill ROI requests. Medical Facility will provide PC's, printers, fax machines and all supplies including paper and toner, as needed for ROI disclosures released on paper for ROI services performed at the Medical Facility, or its clinic or hospital locations. For health information that cannot be imaged using CIOX's proprietary software, such as health information stored on microfilm/microfiche or PACs, CIOX will use Medical Facility's equipment and supplies to fulfill such requests. Medical Facility shall provide all supplies pertaining to Radiology requests at Medical Facility's cost.

2.6 Vendor Reports/Monthly Data.

CIOX shall provide a monthly report with invoice level information upon request. CIOX may provide customized reporting formats at an additional rate of \$175 per hour for development of customized report, depending on availability and format of information maintained by CIOX. There is a \$500 minimum charge for each customer report format developed.

3. ELECTRONIC DELIVERY AND REQUESTS SUBJECT TO RETROSPECTIVE PAYMENT REVIEW

3.1 Electronic Delivery.

CIOX will utilize its technology to electronically deliver medical records in response to audit requests made by government-contracted entities and/or other auditors. Examples of these types of requests include: RACs, MACs, ZPICs, Kepros, CERTS, PERMS, OIGs, Tistas, and Edapatives/CDACs. CIOX electronic delivery method is the federal esMD delivery system or CIOX's direct eDelivery via its Licensed Software or other proprietary software ("CIOX Electronic Delivery"). When a requestor does not accept CIOX Electronic Delivery, CIOX shall have no liability for the timeliness of delivery of records to such requestor. Further, CIOX may be required to instead print the records and send them to the auditor via a commercial delivery or postal service, in which case, Medical Facility agrees to reimburse CIOX for the cost of such delivery.

3.2 **Requests Subject to Retrospective Payment Review.**

Medical Facility, as applicable, will provide to CIOX within three (3) days of receipt, but in no event, less than thirty (30) days prior to the applicable deadline, all requests for health information: (x) which are subject to a retrospective payment review, or (y) for which the failure to timely provide all requested records may subject any Medical Facility to suffer a disallowance of payment, recoupment of prior payment, denial of claim, reduced future reimbursement, or other adverse financial consequence, as well as any further or future correspondence relating to such matter ("RPR Requests"). In addition, Medical Facility agrees to provide reasonable assistance to CIOX in mitigating any potential harm relating to any such requests, including obtaining extensions of time for processing the request and/or appealing any adverse determinations related thereto. CIOX is processing RPR Requests as a courtesy to Medical Facility and shall have no liability arising from or related to any RPR Request.

4. FEES AND COLLECTION

4.1 **Charges to Patients and/or Third-Party Requestors.**

The parties acknowledge and agree that individual patient requests will be charged in accordance with Section 164.524(c)(4) of the Privacy Regulations. In addition, the parties agree that other requestors, including but not limited to attorneys and insurance requestors, will be charged in accordance with applicable state law; such other fees as may be negotiated from time to time with third-party requestors.

As compensation for rendering ROI Services and in addition to any amounts payable by Medical Facility hereunder, CIOX shall receive any and all fees, including retrieval fees where allowed by law, which are billed to third-party requestors in accordance with state and/or federal laws, including attorneys, insurance companies, governmental agencies, patients requesting reproduction for their own personal use, and other requestors permitted by applicable law. CIOX is solely responsible for the collection of fees due from requesting parties for the fulfillment of health information requests by CIOX. All cash and checks received at the Medical Facility will be given to Medical Facility and marked as "FKP" (facility kept payment) which amounts will be added to the Medical Facility billing at month end. Should Medical Facility request that CIOX release records to a third party prior to pre-payment or contrary to CIOX's then-current billing practice, Medical Facility will pay for such copies according to the terms of this Service Order, as applicable. Additionally, all billable third-party requests that are not paid within one-hundred eighty (180) days of the invoice date will be re-classified as courtesy requests the following month and billed to Medical Facility at the rate for courtesy pages, as applicable.

4.2 **Charges to Medical Facility.**

Medical Facility agrees to receive, on its computer equipment and software, and via its internet account, copies of health information that it requests from CIOX via CIOX's proprietary online delivery service with a print option.

4.2.1 (a) Medical Facility Requests. CIOX will reproduce health information requests by or in connection with Medical Facility's business office, utilization review, quality assurance, departing physicians' patients, and patient accounts ("Medical Facility Requests") at a rate of 25¢ per page, starting from page one.

(b) Courtesy Copies. CIOX will reproduce the following categories of health information requested by third parties from Medical Facility as "courtesy requests": (i) requests which are not typically billed to the requestor as a professional courtesy (e.g. requests from other healthcare providers for continuation of care), (ii) requests which cannot be billed to the requestor under applicable law, or (iii) requests from a health plan which does not currently have, and refuses to enter into an agreement with CIOX for the retrieval of medical records and such health plan has a current agreement with Medical Facility to provide such records at a rate below the otherwise applicable rate charged to third-party requestors. CIOX will reproduce one courtesy page for every one billable page, at no cost to Medical Facility; additional courtesy pages or pages exceeding this ratio, will be billed at the rate of 25¢ per page. For purposes of this Service Order, billable pages are defined as pages that are charged to a third-party requestor excluding requests billed as QIO/PRO, RAC, Medical Facility Requests, managed retrieval requests or patient requests (including attorney-directed requests billed at the patient rate).

4.2.2 RAC Requests.

Cost Per Copy for RAC Requests. CIOX will reproduce health information requested by a Recovery Audit Contractor ("RAC"). CIOX will reproduce records in response to requests from RACs at either: (a) the rate established in Sec. 42 CFR Part 476.78(c), as may be amended, current 12¢ per page, or (b) if applicable, the contracted reimbursement rate established between such RAC and CIOX. Subject to receiving the RAC request and responsive health information at least 30 days prior to the due date, CIOX will process and submit the responsive information to the applicable RAC not later than the audit due date. Medical Facility agrees to pay the per-page fees and the postage or delivery charges associated with a verifiable means of delivery for each RAC request. Currently, Medical RACs are subject to a maximum reimbursement per records of twenty-five dollars (\$25.00).

Billing and Collection. CIOX will perform all billing and collection services associated with requests from RACs that recognize CIOX as Medical Facility's agent for such requests, and will credit Medical Facility for amounts received from a RAC to the extent allocable to amounts otherwise payable by Medical Facility, provided that reimbursement shall be allocated first to delivery/postage charges.

RAC Appointment. CIOX has agreements with certain RACs which permit Medical Facilities in their regions to electronically fulfill RAC requests through CIOX. Accordingly, if applicable, Medical Facility may appoint CIOX as its RAC agent by executing a letter substantially similar to the attached Exhibit A. If appointed, and for so long as the RAC recognizes CIOX as Medical Facility's agent: (a) CIOX will timely deliver medical information to and receive delivery receipts from the RAC, and (b) CIOX will seek payment directly from the RAC for the delivery of such medical information and any agreed upon delivery fees.

4.2.3 QIO/PRO Requests. CIOX will reproduce health information requested by a Quality Improvement Organization (“QIO”) or Peer Review Organization (“PRO”) at the statutory rate of 12¢ per page, pursuant to Sec. 42 CFT Part 476.78(c). Medical Facility agrees to pay the per-page fees and cost of postage.

4.2.4 Cost for Postage. CIOX will bill Medical Facility for the cost of postage applied to non-billable requests, on a monthly basis. CIOX will be responsible for the cost of postage applied to all billable requests.

5. HEALTH PLAN AUDITS/REVIEWS

CIOX will fulfill all health information requests from health plans and their agents, including requests for Medicare/Medicaid/Commercial Risk Adjustment reviews, HEDIS reviews, Risk Adjustment Data Validation (RADV) audits, coding and medical necessity reviews. CIOX will charge the requestor for billable requests. Medical Facility will only utilize CIOX to fulfill all health plan audit requests and will not: (a) permit such requests to be processed through any shared services center, or (b) permit requesting health plans or their representative retrieval services access to Medical Facility’s records for the purpose of fulfilling such requests unless CIOX is unable or unwilling to fulfill such requests. In the event a requesting health plan both: (i) has or enters into an agreement with CIOX for the retrieval of medical records and (ii) has a current agreement with Medical Facility limiting the charges Medical Facility may charge for such records; the Parties agree such health plan requests will be fulfilled by CIOX pursuant to its agreement with the requesting health plan.

6. REQUESTS AND PAGE STATISTICS

In determining the fees to be charged hereunder, CIOX has relied to a significant extent upon historical information regarding the volume of requests for release of information received by Medical Facility and processed by CIOX over the past twelve (12) months (the “Historic Volume”). In the event the actual volume of such requests is 10% more or less than the Historic Volume, Medical Facility hereby agrees to renegotiate the pricing herein in good faith to reflect the actual volume. Medical Facility also agrees to renegotiate in good faith the pricing and the extent of the ROI Services to be performed if there are any other material variances in the business which are adverse to CIOX, such variances could include, but are not limited to, changes in states rates, federal rates or the composition of requestors.

7. TERM AND TERMINATION

The Service Order Start Date will be mutually agreed to by the Parties, but in any event, no earlier than thirty (30) days or no later than ninety (90) days from the Effective Date of this Service Order written above. It is agreed and understood that Medical Facility backlog will be defined as all requests dated more than five (5) business days prior to the Service Start Date set forth above (“Backlog Date”). Services required for all non-billable requests prior to the Backlog Date will be processed at the rate of 25¢ per page.

The term of this Service Order will be three (3) years from the Service Start Date above and may renew for successive one (1) year terms (the “Renewal Terms”) by written agreement unless earlier terminated pursuant to the terms of the Master Agreement. If a longer term is set forth in this Service Order than in the Master Agreement, then the Master Agreement will remain in effect until the expiration or termination hereof.

Within ninety (90) days after termination of this Service Order, CIOX shall supply Medical Facility with comma-delimited text files on a CD-ROM of all Medical Facility data which is maintained within the Licensed Software, excluding medical record images. CIOX will also provide a spreadsheet with all file names and record layout (names of fields) of those files, which will set forth requests, requestors, invoices, status history and records released. All medical record images and Medical Facility data maintained within the Licensed Software, except

such financial information necessary to bill and collect for requested release of information will be permanently deleted within ninety (90) days of termination of this Service Order.

ACCEPTED AND AGREED:

CIOX Health, LLC

Kern County Hospital Authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**REVIEWED ONLY
NOT APPROVED AS TO FORM**

By 
Legal Services Department

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center (“Covered Entity”) and CIOX Health, LLC (“Business Associate”) (each a “Party” and collectively the “Parties”), effective as of _____ (the “Effective Date”).

RECITALS

WHEREAS, Covered Entity is a “Covered Entity” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“HIPAA”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“Secretary”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“HIPAA Rules”);

WHEREAS, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information (“PHI”);

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the “HITECH Act”) and its implementing regulations and guidance issued by the Secretary; and

WHEREAS, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 “Breach” shall have the meaning given under [45 C.F.R. § 164.402](#).
- 1.2 “Breach Notification Rule” shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.
- 1.3 “Designated Record Set” shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.4 “**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 “**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

1.6 “**Protected Health Information**” and “**PHI**” mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or 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; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

1.7 “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

1.8 “**Security Rule**” shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

1.9 “**Services**” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the “**Underlying Agreement**”), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

1.10 “**SubContractor**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

1.11 “**Unsecured PHI**” shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

1.12 “**Use**” or “**Uses**” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.13 “**Workforce**” shall have the meaning given to such term under [45 C.F.R. § 160.103](#)

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity. Business Associate may also use or disclose de-identified data for the purposes of internal monitoring, product or services development, product or services improvements and for the reporting of information to governmental authorities.

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or SubContractors that is not specifically permitted by this BAA no later than two (2) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity 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 Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.3.3 Data Breach Notification and Mitigation Under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General; (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.5 Use of SubContractors. Business Associate shall require each of its SubContractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such SubContractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

2.6 Access to Protected Health Information. To the extent that Business Associate maintains PHI in a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business

Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains PHI in a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its SubContractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

2.8 Accounting. Within thirty (30) days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its SubContractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

2.9 Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

2.11 Minimum Necessary. Business Associate (and its SubContractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

**ARTICLE IV
TERM AND TERMINATION**

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

4.2.1 A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

4.3.1 Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon thirty (30) calendar days written notice to Business Associate; or

4.3.2 Upon thirty (30) calendar day written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information Upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) 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 set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

ARTICLE V MISCELLANEOUS

5.1 Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control.

Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

5.4 Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

5.5 Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

5.6 Insurance. Refer to the underlying agreement for insurance terms.

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any SubContractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify, defend and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses (excluding lost revenue or profits), direct damages, fines, penalties, third party claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements court costs and reasonable attorneys' fees) to the extent arising from the negligent operations, acts or omissions of Business Associate resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its SubContractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.9 Legal Actions. Promptly, but no later than five (5) business 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.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request

or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

5.11 Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, CA 93306
Attn: Chief Executive Officer

Business Associate's Notice Address:

CIOX Health, LLC
925 North Point Parkway, Suite 350
Alpharetta, GA 30005
Attn: Legal Department

5.12 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent Consultant 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.

5.14 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

5.15 Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

5.16 Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state.

5.17 Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

5.18 Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

5.19 Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

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

5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

The Parties hereto have executed this BAA as of the Effective Date.

COVERED ENTITY:
The Kern County Hospital Authority on
behalf of Kern Medical Center

BUSINESS ASSOCIATE:
CIOX Health, LLC

Title: Chief Executive Officer
Date: _____

Title: _____
Date: _____

REVIEWED ONLY
NOT APPROVED AS TO FORM

By 
Legal Services Department



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Proposed Amendment No. 4 to Agreement for Intellectual Property License and Service with Craneware, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 4 with Craneware, Inc., to provide additional software functionality with the addition of Trisus Supply solution, Chargemaster Toolkit, Online Reference Toolkit for CMT, Pricing Analyzer, Physician Revenue Toolkit, Pharmacy ChargeLink, Insight Audit, and Trisus Supply Early Adopter to review and assess current data, to maximize coding and billing opportunities, and assist in establishing ongoing monitoring process to sustain financial and process improvements.

The cost of adding the new Trisus Supply solution is being offset by the removal of the Bill Analyzer solution.

Previous Agreements	Proposed New Agreement	Variance
Original Agreement - \$463,197 Amendment No. 1 - \$1,363,933 Amendment No. 2 - \$792,021 Amendment No. 3 - \$0 Previous Not-To-Exceed \$2,556, 151	Amendment No. 4 Proposed Not-To-Exceed \$2,605,613	\$49,462 for the removal and addition of software

Therefore, it is recommended that your Board approve Amendment No. 4 with Craneware Inc. for the addition of the Trisus Supply solution for the period of January 17, 2019 through June 29, 2022 for an additional fee of \$49,462 with a maximum not to exceed of \$2,605,613, and authorize the Chairman to sign.

The Agreement contains non-standard terms and cannot be approved as to form by Counsel due to an additional third party beneficiary who is not a party to the Agreement, will not participate in the indemnification terms, including infringement, and a limitation of liability to the previous twelve months of fees.

**AMENDMENT NO. 4 TO
AGREEMENT FOR INTELLECTUAL PROPERTY LICENSE AND SERVICE
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Craneware, Inc.)**

This Amendment No. 4 to the Agreement for Intellectual Property License and Service Independent Contractor (“Amendment No.4”) is entered into this 16th day of January, 2019, by and between the Kern County Hospital Authority, a local unit of government, (“KCHA”), which owns and operates Kern Medical Center (“Kern Medical”) and Craneware, Plc., a public limited company organized under the laws of the United Kingdom with corporate headquarters located at 1 Tanfield, Edinburgh, EH3 5DA, United Kingdom, by and through its agent and wholly owned subsidiary, Craneware, Inc., a Florida corporation with corporate headquarters located at 3340 Peachtree Rd., N.E., Ste. 850, Atlanta, GA 30326, for the benefit of Craneware plc and all of its subsidiaries (“Licensor”).

RECITALS

- A. Licensor and KCHA have heretofore entered into an Agreement for Intellectual Property License and Service (Kern County Agt. #620-2009, dated June 30, 2009) (“Agreement”), Amendment No. 1 (Kern County Agt. # 659-2015, dated September 14, 2015) for the period of June 30, 2009 through June 29, 2022, to provide support, education, and workflow management to improve Kern Medical’s overall CDM maintenance business process; Amendment No. 2 (Kern County Agt. #561-2016, dated May 17, 2016) for the period of May 17, 2016 through June 29, 2022, for the license of Craneware’s Physician Revenue Toolkit and Pharmacy ChargeLink solutions; and Assignment of Agreement due to the change of ownership of Kern Medical from the County of Kern to KCHA (Kern County Agt.#379-2016, dated April 26, 2016; Amendment No. 3 (Kern County Agt. #26117, dated June 30, 2017) for the period of June 30, 2018 through June 29, 2022, for the license of Craneware’s InSight Audit solution; and
- B. KCHA and Licensor desire to add Craneware’s Trisus Supply solution to the Agreement, replacing the Bill Analyzer solution effective as of the start date of this Amendment No. 4; and
- C. Kern Medical requires additional services and the discontinuance of certain services; and
- D. Licensor has agreed to add its Trisus Supply solution to the agreement, remove its Bill Analyzer solution, and continue to provide all other current services; and
- E. It is the intent of the parties to have the terms of the Agreement provide for the payment of all reasonably projected costs and expenses related to the services provided by Licensor; and
- F. KCHA and Licensor agree to (i) increase the maximum payable under the Agreement by \$49,462, from \$2,556,151 to \$2,605,613, to cover the additional services and agree to (ii) amend the requested services currently provided by Licensor; and
- G. Licensor has made available to certain Customers an early release of its Trisus Supply solution prior to its General Availability, and as such Kern Medical agrees to:

- Implement the solution within a mutually agreed upon timeline
- Put forth a best effort to utilize the solution at least weekly during the initial six month term of the license
- Participate on regular calls with Licensor to provide feedback until the product status has been updated to Generally Available (“GA”)
- Participate in the Craneware GA test plan until the solution has achieved GA status
- Participate in a written case study, and provide minimum four (4) references annually, upon Licensor request, scheduled at a mutually agreed upon date and time; and

H. In consideration of mutually agreed upon incentives, Kern Medical desires to license Trisus Supply as an Early Adopter, understanding that during Early Adopter period there may be:

- Intermittent interruption in accessing the application or processing data
- Product bugs introduced
- New functionality and edits introduced
- Deviation from Product response time outside of normal variation as a SLA has not yet been established
- Product Management involvement in training and follow-up with the user community

I. The Agreement is Amended by this Amendment No. 4 effective January 17, 2019;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follows:

1. Section A. 2. Fees as restated in Amendment No. 3 shall be deleted in its entirety and replaced with the following:

“2. Fees

The total fees for the Services identified in Exhibit A, A-1, A-2, A-3, A-4, B, C-1, C-2, C-3 and C-4 are set forth in Exhibit D-1, D-2, D-3, D-4, E, E-1, E-2, and E-4 and shall not exceed two million six hundred and five thousand six hundred and thirteen dollars (\$2,605,613) and shall be paid consistent with the schedule set forth in Exhibits E, E-1, E-2, and E-4 which are incorporated herein by this reference.”

2. Exhibit F. Section II. AMA Disclaimer as stated in Amendment No. 1 shall be deleted in its entirety and replaced with the following:

“II. **AMA Disclaimer.**

a. U.S. Government Rights

This product includes CPT and/or CPT® Assistant and/or CPT® Changes and/or CPT® Friendly Data and/or CPT® Knowledge Base and/or SNOMED CT® Maps, and/or CPT® Consumer Friendly Data which are commercial technical data which were developed exclusively at private expenses by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois, 60611. The AMA does not agree to license CPT to the Federal Government based on the license in FAR 52.227-14 (Data Rights – General) and DFARS 252.227-7015 (Technical Data –

Commercial Items) or any other license provision. The AMA reserves all rights to approve any license with any Federal agency.

- b. CPT, CPT Assistant, CPT Changes, CPT Consumer Friendly Data, CPT® Knowledge Base, SNOMED CT® Maps and CPT® Consumer Friendly Data are copyrighted by the AMA. CPT is a registered trademark of the AMA.
- c. The license granted by the Agreement is a nontransferable, nonexclusive license, for the sole purpose of internal use by Kern Medical.
- d. Kern Medical is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available to any unauthorized party the Licensed Products and Services, or a copy or portion of the Licensed Products and Services.
- e. Provision of updated Editorial Content in the Licensed Products and Services is dependent on continuing contractual relationship between Licensor and the AMA. Kern Medical grants Licensor permission to provide the AMA with Kern Medical's name.
- f. Kern Medical must ensure that anyone with authorized access to the Licensed Products and Services will comply with this section of the Agreement. Kern Medical may only make copies of the Licensed Products and Services for back-up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back-up or archival copies made.
- g. "Users" of CPT Assistant, CPT Editorial Content, and CPT Consumer Friendly Data contained in the Licensed Product(s) and Services are defined as follows:
 - (i) accesses, uses, or manipulates CPT Editorial Content and/or SNOMED CT Maps, as applicable, contained in the Licensed Products and Services; or
 - (ii) accesses, uses, or manipulates the Licensed Products and Services to produce or enable an output (data, reports, or the like) that could not have been created without the CPT Editorial Content and/or SNOMED CT Maps, as applicable, embedded in the Electronic Licensed Product(s) and Services even though CPT Editorial Content and/or SNOMED CT Maps, as applicable, may not be visible or directly accessible; or
 - (iii) makes use of an output of the Licensed Product(s) and Services that relies on or could not have been created without the CPT Editorial Content and/or SNOMED CT Maps, as applicable embedded in the Licensed Product(s) and Services even though CPT Editorial Content and/or SNOMED CT Maps, as applicable, may not be visible or directly accessible.
 - (iv) for users of CPT Assistant, and/or CPT Changes Editorial Content and/or CPT Knowledge Base, and/or SNOMED CT Maps are defined by the AMA as an individual who accesses or has access to CPT Assistant, and/or CPT Changes Editorial Content, and/or CPT Knowledge Base, and/or SNOMED CT Maps respectively contained in the Licensed Products and Services.
 - (v) for Users of CPT Consumer Friendly Data are defined by the AMA as an individual User who is not a healthcare professional and who accesses, uses or manipulates CPT Consumer Friendly Data contained in the Licensed Products and Services for the purpose of understanding CPT data included on a bill, explanation of benefits or patient portal.
Kern Medical shall work with Licensor as needed to accurately count Users as defined above for CPT, and/or CPT Assistant Editorial Content, and/or SNOMED CT Maps, and/or CPT Changes and/or CPT Knowledge Base as contained in each Licensed Product and Service, as applicable. Kern Medical shall work with Licensor to report the accurately counted number of Users of CPT and/or CPT Assistant Editorial Content and/or SNOMED CT Maps, as contained in each Licensed Product and Service, as applicable (in order that Licensor may accurately report and pay royalties to the AMA).
- h. Editorial Content as contained in the Licensed Products and Services is provided "as is" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data or that it will meet the Kern Medical's requirements. The AMA sole responsibility is to make available to Licensor replacement copies of the Editorial Content if the data is not intact. The AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in Editorial Content.
- i. The AMA is a third-party beneficiary of the Agreement.
- j. Kern Medical is limited to printing or downloading CPT® Assistant and/or CPT® Changes and/or CPT® Consumer Friendly Data and/or CPT Knowledge Base and/or SNOMED CT® Maps Editorial Content and or CPT Consumer Friendly Data from the Licensed Products and Services solely for its own internal use, without any modification to the content, and in such a way that the appropriate citation to the AMA's rights is included.

- k. INFORMATION PROVIDED BY THE AMERICAN MEDICAL ASSOCIATION (AMA) IS FOR MEDICAL CODING PURPOSE ONLY, AND DOES NOT CONSTITUTE CLINICAL ADVICE, DOES NOT DICTATE PAYER REIMBURSEMENT POLICY, AND DOES NOT SUBSTITUTE FOR THE PROFESSIONAL JUDGEMENT OF THE PRACTITIONER PERFORMING A PROCEDURE, WHO REMAINS RESPONSIBLE FOR CORRECT CODING. INFORMATION OBTAINED FROM CPT® KNOWLEDGE BASE DOES NOT REPLACE THE AMA'S CURRENT PROCEDURAL TERMINOLOGY AND OTHER APPROPRIATE CODING AUTHORITY. THE INFORMATION CONTAINED IN THE CPT® KNOWLEDGE BASE SHOULD ONLY BE USED AS A GUIDE FOR YOUR OWN USE AND SHOULD NOT BE DISSEMINATED IN ANY WAY. IN NO EVENT IS THE AMA LIABLE TO YOU FOR ANY LOSS OR DAMAGE."

3. The incorporation by reference of Exhibit F-4, "Supplemental Additional Terms and Conditions", attached hereto.

4. Exhibit A-4 – "Supplemental Scope of Work", Exhibit C-4 – "Amended Licensed Products and Services Schedule", Exhibit D-4 – "Amended Fees and User Licenses", and Exhibit E-4 "Amended Payment Schedule", and Exhibit F-4 – "Supplemental Terms and Conditions" are added to the Agreement and incorporated herein by this reference.

5. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 4 have the meanings set forth in the Agreement.

6. This Amendment No. 4 shall be governed by and construed in accordance with the laws of the state of California.

7. This Amendment No. 4 may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

[Signatures follow on next page]

CRANEWARE REPRESENTATIVE : Todd Christensen
DATE OF PRESENTATION : December 4, 2018
DATE REVISED : January 7, 2019
RECIPIENT NAME : Andy Cantu
RECIPIENT TITLE : CFO

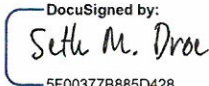
IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 4 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

LICENSOR


By _____

Russell Bigler
Chairman, Board of Governors

By  _____
5E00377B885D428

Printed Name: Seth Droe
Title/Position: Executive Vice President Sales
1/8/2019

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By  _____

Andrew Cantu
Chief Financial Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

REVIEWED ONLY
By NOT APPROVED AS TO FORM

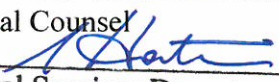
Hospital Counsel
By  _____
Legal Services Department

EXHIBIT A-4 – SUPPLEMENTAL SCOPE OF WORK

Trisus® Supply Implementation

Purpose: This document outlines the Scope of Work designed to assist Kern Medical in maximizing its immediate return on investment through the use of Licensor's Trisus Supply solution, and in establishing an effective business process in the ongoing use of Trisus Supply. Licensor will perform the initial data review and assessment, provide education on its methodology for evaluating and preventing Supply CDM Issues, and assist in establishing an ongoing monitoring process using Trisus Supply to sustain financial and process improvements. This Scope of Work shall be completed according to defined deliverables and budgeted hours. To the extent Kern Medical fails to timely meet its deliverables, or requests services not detailed in this Scope of Work, the parties will mutually agree upon additional hours at the then current professional services rate, in writing, prior to continuation of the remaining Scope of Work.

Hospitals Included: HCA193: Kern Medical

Kern Medical Roles:

Executive Sponsor:

Kern Medical shall designate an Executive Sponsor for the Trisus Supply project. The Executive Sponsor is typically the CEO, CFO, or Vice President of Revenue Integrity or Supply Chain. The Executive Sponsor will be kept apprised of all progress with the Trisus Supply project through completion. The Executive Sponsor may become involved in the project if necessary to address barriers to a timely implementation.

Project Manager:

The facility shall designate a Project Manager for Trisus Supply, which will have the authority, staff and other resources reasonably necessary to oversee implementation of Trisus Supply, the preparation of data files, and training. The Project Manager shall attend all scheduled calls throughout the course of the implementation. He or she will provide Licensor with an address, phone number and e-mail where he or she can be reached during normal business hours.

1. Project Kick-off

The purpose of the project kick-off is to ensure all stakeholders have a complete understanding of the implementation process and accountabilities.

Project kick-off calls include:

- Introductory call with Executive Sponsor to discuss high level project plan and identify senior leadership's objectives for implementation.
- Introductory call with Project Manager to determine project timeline and identify key stakeholders.
- Technical requirements gathering call with facility IT staff to determine required data extracts and software implementation requirements.
- Product review call with applicable facility stakeholders as identified by Kern Medical to discuss product functionality. (If applicable)

Discussion during the meetings will be based on materials provided to Kern Medical's Project Manager in the Starter Pack. Kern Medical's Project Manager is accountable for distribution and review of the appropriate Starter Pack materials by the project team. Kern Medical must also designate a Data Validation Representative. This person will be responsible for reviewing all data files for accuracy and completeness, as necessary.

Licensor Deliverables:

- Technical specifications provided in the Starter Pack URL sent by Licensor
- Creation and review of project plan
- Creation and verification of onsite training agenda

Kern Medical Deliverables:

- Distribute and review Starter Pack materials
- Ensure availability of required staff for all calls
- Confirm milestone dates in project plan
- Confirm data extract delivery date to Licensor Support
- Designate a Data Validation Representative
- Confirm onsite training dates for training completion within sixty (60) days of contract signature

2. Initial Review of Trisus Supply Data

Licensor will review the hospital item master, most current Chargemaster file, and Operating Room File [Order Entry System for the Operating Room (SurgiNet, OpTime, OR Manager, etc.)]. With the initial review, Licensor will assess the accuracy and completeness of the CDM for Supplies.

Licensor Deliverable:

- Report of preliminary opportunities sent prior to onsite visit

Kern Medical Deliverables:

- Assignment of a key contact and validation of documented report
- Delivery of required data as outlined in the software specifications within 30 calendar days of kick-off call

3. Validation of Trisus Supply Data

Licensor will complete initial validation of Kern Medical's coded data with the Data Validation Representative via WebEx. Goal is to review data against Kern Medical's systems to ensure accuracy and completeness. This meeting will occur approximately three (3) weeks prior to onsite implementation. Completion of the Trisus Supply Field Mappings document will also occur during this event.

Licensor Deliverable:

- Detailed review of data extracts in Trisus Supply via WebEx with Kern Medical's Data Validation Representative

Kern Medical Deliverables:

- Availability of key staff for WebEx meeting with access to key systems including but not limited to the materials management system, purchasing system, and financial system

4. Trisus Supply Onsite Training

Licensor will spend up to three (3) days* onsite providing training, and reviewing the results with the Charge Description Master (CDM) Manager and Supply departments. The purpose of onsite meeting will be to review the current issues, evaluate the improvement opportunities, and assist Licensor in identifying an action plan for resolution. Kern Medical is responsible for ensuring availability of staff to support project, attendance at all required meetings and identification of a primary user during site visit. This person, along with a designated back-up, will be trained on the supervisor functions within Trisus Supply.

Onsite training will include development of a process for utilizing Trisus Supply including assigning tasks, identifying user roles and responsibilities, and identifying ongoing reporting. Attendees should include the CDM Manager, Materials Management, Purchasing Manager, and Finance. Kern Medical must also provide department contacts and clarifications to Licensor in support of the final report creation.

Licensor Deliverables:

- Up to three (3) days onsite training
- Supervisor function training for the primary user and back up
- Onsite training and a documented process to include roles and responsibilities and a matrix facilitating the lifecycle for Trisus Supply Maintenance.

Kern Medical Deliverables:

- Ensure staff availability and participation in all training.
- Provide designated training space
- Participate in creation of customer-specific Trisus Supply Process

***Note: All three (3) onsite training days may not be required for every customer. Licensor will advise of the total number of days required for the onsite upon completion of step two (2).**

5. Delivery of Final Report:

After completion of the onsite training, Licensor will deliver a final report summarizing findings and providing recommendations. The report will include:

- An analysis of high risk areas
- Recommended process for achieving sustainable results utilizing Trisus Supply to include roles/responsibility matrix created in step four (4) of this Scope of Work.

Licensor Deliverable:

- Final report provided in a PDF and supporting detailed files, as appropriate

Kern Medical Deliverable:

- Kern Medical is responsible for identifying team to implement process and to create an action plan from information in final report.

EXHIBIT C-4 – AMENDED LICENSE PRODUCTS AND SERVICES SCHEDULE

		Products Purchased																														
		Trisus® Supply	Trisus® Claims Informatics	Insight Medical Necessity®	Insight Denials®	Insight Audit®	Pricing Analyzer™	Physician Revenue Toolkit®	Physician Revenue Toolkit®	Physician Revenue Toolkit®	Patent Charge Estimator®	Supplies Charge Link®	Pharmacy Charge Link®	Supplies Assistant®	Reference Plus®	CPT® Assistant	Online Reference Toolkit®	Epic Export Module	Interface Scripting Module PRT	Interface Scripting Module CMT	Bill Analyzer	Corporate Discovery Viewer	Chargemaster Toolkit®	Discovery Viewer	Chargemaster Toolkit®	Chargemaster Toolkit®	Patent Accounting System	Shares File	CAH Facility	Medicare Provider Number		
Licensed Entities (Name and address of all facilities possessing a Medicare Provider Number that are licensed to use the software installed locally)																																
Kern Medical previously dba Kern Medical Center 1700 Mount Vernon Ave Bakersfield, CA 93306 (HCA193) County: Kern										X										X												
Renewals only: Products removed from Licensed Products and Services Schedule (Identify by individual facility) Effective 1/17/2019																																
Kern Medical	050315																					X										

Abbreviations: **CMT**- Chargemaster Toolkit, **CAH** - Critical Access Hospital, **PRT** - Physician Revenue Toolkit, **PCL** - Pharmacy ChargeLink

EXHIBIT D-4 – AMENDED PAYMENT SCHEDULE

* Training and implementation plans are outlined in attached Supplemental Scope of Work, Exhibit A-4.

Licensed Products and Services	Number of Licensed Entities	Total User Licenses	First Year License Fee (invoiced year 1)	Implementation & Training Fees* (Invoiced year 1)
Chargemaster Toolkit	1	10 per licensed CMT entity	\$61,456	NA
Online Reference Toolkit for CMT	1	25 per licensed CMT entity	Included in above fee	
Interface Scripting Module – Scripts for CMT	1	1 per licensed CMT entity	\$3,991	
Pricing Analyzer	1		\$35,151	
Physician Revenue Toolkit	1	10 per licensed PRT entity	\$49,595	
Online Reference Toolkit for PRT	1	25 per licensed PRT entity	Included in above Fee	
Pharmacy ChargeLink	1	25 per licensed PCL entity	\$59,705	
Online Reference Toolkit for PCL	1	25 per licensed PCL entity	Included in above Fee	
Insight Audit	1		\$42,599	
Trisus® Supply Early Adopter <i>Newly Licensed 1/17/19</i>	1	1 per licensed TSUP entity	\$52,907	\$41,604
License and Implementation fee totals			\$305,404	\$41,604

EXHIBIT E-4 - AMENDED PAYMENT SCHEDULE

License Period	License Fee Annual Amount	Implementation & Training	Payment Due Date
January 17, 2019 – June 29, 2019 <i>Renewing Solutions</i>	*		Due upon contract signature
January 17, 2019 – June 29, 2019 - <i>Trisus Supply</i> <i>Less Bill Analyzer PrePaid Fees</i>	\$23,955** (18,605****) \$5,350	\$41,604	
June 30, 2019 – June 29, 2020	\$320,674		June 30, 2019
June 30, 2020 – June 29, 2021	\$336,708		June 30, 2020
June 30, 2021 – June 29, 2022	\$353,543		June 30, 2021
TOTALS****	\$1,016,275	\$41,604	

* The License Fee Annual Amount for the renewing solutions for the period from January 17, 2019 through June 29, 2019 was previously prepaid by Kern Medical in accordance with Invoice INVINC002200.

** The License Fee Annual Amount of \$52,907 for the newly added Trisus Supply solution for the period from January 17, 2019 through June 29, 2019 has been prorated to allow subsequent invoicing on the Anniversary Date of the Agreement.

*** The prorated value of the Bill Analyzer prepaid License Fees of \$41,091 for the unexpired period from January 17, 2019 through June 29, 2019 has been applied against the Trisus Supply initial License Fee Amount due hereunder.

**** Fees do not include out of pocket expenses associated with onsite trainings that shall be billed to Licensee at actual cost.

PART 3. SUPPLEMENTAL ADDITIONAL CONTACT INFORMATION

Main Contact	Name:	Margaret Hardman	Email:	Margaret.hardman@kernmedical.com
	Title:	Director of Patient Accounts	Phone:	661-326-2000
CDM Contact	Name:	Margaret Hardman	Email:	Margaret.hardman@kernmedical.com
	Title:	Director of Patient Accounts	Phone:	661-326-2000
IT Contact	Name:	Angelina Reyes	Email:	Angelina.reyes@kernmedical.com
	Title:	Director HIM	Phone:	661-326-2603
CFO/VP Finance	Name:	Andrew Cantu	Email:	Andy.cantu@kernmedical.com
	Title:	CFO	Phone:	661-326-6000
Accounts Payable Contact	Name:	John Mills	Email:	John.mills@kernmedical.com
	Title:	Director of Finance	Phone:	661-326-6000
Billing Address:	Kern Medical 1700 Mt Vernon Ave Bakersfield, CA 93306 County: Kern			

EXHIBIT F-4 – SUPPLEMENTAL TERMS AND CONDITIONS

- I. **AHA Disclaimer.** Except as set forth in this section, Health Forum provides the licensed content "as is", and expressly disclaims all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, or prior oral or written statements by Health Forum with respect to the licensed content (including, but not limited to any warranty of satisfactory quality, merchantability, fitness for particular purpose, title, and non-infringement, accuracy, timeliness, and completeness) to the maximum extent allowed by law. Health forum further disclaims, and shall have no liability for any errors, omissions or inaccuracies in the licensed content or any uses, misuses or interpretations of the information contained in or not contained in the licensed content. Health Forum also does not warrant that the licensed content will be accessible in any particular hardware/software environment. Kern Medical shall be solely responsible for the use, efficiency and suitability of the licensed content. Kern Medical acknowledges and agrees that Health Forum and its Affiliates are the sole owners of all right, title and interest, including all Intellectual Property Rights, in and to the Licensed Content and any modifications thereto provided by Health Forum and its Affiliates. Nothing in this Agreement constitutes any transfer of ownership of any patent, copyright, trademark, trade secret, trade dress, contractual rights protecting proprietary database compilations or other similar proprietary rights or claims available under the laws of the United States, any state thereof, or any foreign country ("Intellectual Property Rights"), and Health Forum or its Affiliates shall retain all ownership rights in the Intellectual Property Rights embodied by and incorporated in the Licensed Content. Kern Medical will not distort, misuse, diminish, infringe, dilute, contest or challenge (or assist others to so do) Health Forum's and its Affiliates' rights in, ownership of and registrations or applications for registration of the Intellectual Property Rights embodied by and incorporated in the Licensed Content. Kern Medical also agrees not to use any Intellectual Property Rights owned by Health Forum or its Affiliates except as expressly permitted by this Agreement. In no event shall Health Forum or its affiliates be liable for any indirect, special, or consequential (including lost profits), exemplary or punitive damages arising out of or related to this Agreement, or Health Forum's performance or breach of this Agreement, even if Health Forum has been advised of the possibility of such damages. Neither Health Forum's nor its Affiliates' liabilities under this Agreement, if any, shall exceed the fees received by Health Forum in the twelve (12) month period prior to the date Licensor gives Health Forum notice of any dispute. Extraction of Health Forum's content from the Licensed Products and Services is prohibited. *U.S. Government right to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer databases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.*



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Proposed Agreement with Patrick G. Pieper, M.D., for professional medical services in the Department of Surgery

Recommended Action: Approve; Authorize Chairman to sign

Summary: Kern Medical requests your Board approve an agreement with Patrick G. Pieper, M.D., for professional medical services in the Department of Surgery. Dr. Pieper will serve as a full-time otolaryngology, head and neck surgeon in the Department as well as Medical Director of the Laser and Aesthetics Center.

The proposed Agreement is for an initial term of three-years from February 1, 2019 through January 31, 2022.

Annual Salary	\$540,000 base salary for teaching and administrative duties and as payment for care of Kern Medical patients
Excess Call Coverage	\$500 per 24-hour day for call coverage that exceeds one in four (1:4) days
Medical Director Stipend	\$1,153.84 biweekly not to exceed \$30,000 annually for services as Medical Director of the Laser and Aesthetics Center
Starting bonus	Dr. Pieper will receive a starting bonus of \$45,000
Benefits	Dr. Pieper will receive the standard complement of physician benefits

The maximum payable will not to exceed \$1,791,000 over the three-year term of the Agreement.

Dr. Pieper’s annual salary is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey for specialty and represents the reasonable fair market value compensation for the services provided by Dr. Pieper.

Therefore, it is recommended that your Board approve the Agreement with Patrick G. Pieper, M.D., for professional medical services in the Department of Surgery from February 1, 2019 through January 31, 2022, in an amount not to exceed \$1,791,000 over the three-year term, and authorize the Chairman to sign.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Patrick G. Pieper, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2019, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Patrick G. Pieper, M.D. (“Physician”).

**I.
RECITALS**

(a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Authority requires the assistance of Physician to provide professional medical services in the Department of Surgery at KMC (the “Department”), as such services are unavailable from Authority resources, and Physician desires to accept employment on the terms and conditions set forth in this Agreement; and

(c) Physician has special training, knowledge and experience to provide such services; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree as follows:

**II.
TERMS AND CONDITIONS**

1. **Term.** The initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of February 1, 2019 (the “Commencement Date”). At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Agreement may be renewed for two (2) additional terms of two (2) years each (“Renewal Term”), but only upon mutual written agreement of the parties. As used herein, the “Term” of this Agreement shall mean the Initial Term and all Renewal Terms. As used herein, an “Employment Year” shall mean the annual period beginning on the Commencement Date and each annual period thereafter.

2. **Employment.** Authority hereby employs Physician for the practice of medicine in the care and treatment of patients at KMC, or at such other clinic sites as KMC may designate (collectively referred to as the “Practice Sites”). It is expressly understood and agreed that KMC shall have reasonable discretion to consolidate and relocate clinics operated by Authority and to re-designate Practice Sites served by Physician from time to time. Physician shall be subject to Authority’s employment policies, directives, rules and regulations as promulgated by Authority from time to time, including, but not limited to, those pertaining to employees.

3. **Representations and Warranties.** Physician represents and warrants to Authority and KMC, upon execution and throughout the Term of this Agreement, as follows: (i) Physician is not bound by any agreement or arrangement which would preclude Physician from entering into, or from fully performing the services required under this Agreement; (ii) Physician's license to practice medicine in the state of California or in any other jurisdiction has never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to the terms of probation or other restriction; (iii) Physician's medical staff privileges at any health care facility have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or made subject to terms of probation or any other restriction; (iv) Physician holds a valid Controlled Substance Registration Certificate issued by the Drug Enforcement Administration that has never been revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (v) Physician is not currently and has never been an Ineligible Person¹; (vi) Physician is not currently the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; and (vii) Physician has, and shall maintain throughout the term of this Agreement, an unrestricted license to practice medicine in the state of California and staff membership and privileges at KMC.

4. **Obligations of Physician.**

4.1 **Services.** Physician shall engage in the practice of medicine on a full-time basis exclusively as an exempt employee of Authority. Physician shall render those services set forth in Exhibit "A," attached hereto and incorporated herein by this reference.

4.2 **Use of Premises.** Physician shall use the Practice Sites as designated by Authority or KMC exclusively for the practice of medicine in the care and treatment of patients and shall comply with all applicable federal, state, and local laws, rules and regulations related thereto.

4.3 **Qualifications.**

4.3.1 **Licensure.** Physician shall maintain a current valid license to practice medicine in the state of California at all times during the Term of this Agreement.

4.3.2 **Board Certification.** Physician shall be board certified by the American Board of Otolaryngology in head and neck surgery-general and maintain such certification at all times during the Term of this Agreement.

4.3.3 **Medical Staff Status.** Physician shall at all times during the Term of this Agreement be a member in good standing of the KMC medical staff with "active" staff status and hold all clinical privileges on the active medical staff appropriate to the discharge of his obligations under this Agreement.

¹ An "Ineligible Person" is an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or in federal procurement or non-procurement programs; or (ii) has been convicted of a criminal offense that falls within the range of activities described in 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

4.3.4 TJC and ACGME Compliance. Physician shall observe and comply with all applicable standards and recommendations of The Joint Commission and Accreditation Council for Graduate Medical Education.

4.4 Loss or Limitation. Physician shall notify KMC in writing as soon as possible (but in any event within three (3) business days) after any of the following events occur: (i) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (ii) Physician's medical staff privileges at KMC or any other health care facility are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (iii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (iv) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (v) Physician becomes the subject of a disciplinary or other proceeding or action before any governmental, professional, medical staff or peer review body; or (vi) an event occurs that substantially interrupts all or a portion of Physician's professional practice or that materially adversely affects Physician's ability to perform Physician's obligations hereunder.

4.5 Standards of Medical Practice. The standards of medical practice and professional duties of Physician at designated Practice Sites shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for physicians established by the state Department of Public Health and all other state and federal laws and regulations relating to the licensure and practice of physicians, and The Joint Commission.

4.6 Managed Care Contracting. Physician shall cooperate in all reasonable respects necessary to facilitate KMC's entry into or maintenance of any third-party payer arrangements for the provision of services under any other public or private health and/or hospital care programs, including but not limited to insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations. To enable KMC to participate in any third-party payer arrangements, Physician shall, upon request: (i) enroll as a provider (if required by the third-party payer), separate from KMC, with any third-party payer or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by KMC for the provision of professional services to patients covered by such Managed Care Organization; (ii) enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization; and/or (iii) enter into a written agreement with KMC regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of professional services to patients covered by such Managed Care Organization.

4.7 Authorization to Release Information. Physician hereby authorizes Managed Care Organizations, government programs, hospitals and other third parties to release to KMC and its agents any information requested by KMC or its agents from time to time relating to Physician's professional qualifications or competency. Physician agrees to execute the

Authorization to Release Information in the form set forth in Exhibit “B,” attached hereto and incorporated herein by this reference, and to execute all other documents required by KMC from time to time and to otherwise fully cooperate with KMC to enable KMC and its agents to obtain such information from third parties.

4.8 Medical Records. Physician shall cause a complete medical record to be timely prepared and maintained for each patient seen by Physician. This record shall be prepared in compliance with all state and federal regulations, standards of The Joint Commission, and the KMC medical staff bylaws, rules, regulations, and policies. Documentation by Physician shall conform to the requirements for evaluation and management (E/M) services billed by teaching physicians set forth in the Medicare Carriers Manual, Part 3, sections 15016-15018, inclusive. All patient medical records of Practice Sites, including without limitation, patient medical records generated during the Term of this Agreement, shall be the property of KMC subject to the rights of the respective patients. Upon the expiration or termination of this Agreement by either party for any reason, KMC shall retain custody and control of such patient medical records.

4.9 Physician Private Practice. Physician understands and agrees that he shall not enter into any other physician employment contract or otherwise engage in the private practice of medicine or provide similar services to other organizations, directly or indirectly, during the Term of this Agreement or any extensions thereof.

4.10 Proprietary Information. Physician acknowledges that during the Term of this Agreement Physician will have contacts with and develop and service KMC patients and referring sources of business of KMC. In all of Physician’s activities, Physician, through the nature of his work, will have access to and will acquire confidential information related to the business and operations of KMC, including, without limiting the generality of the foregoing, patient lists and confidential information relating to processes, plans, methods of doing business and special needs of referring doctors and patients. Physician acknowledges that all such information is solely the property of KMC and constitutes proprietary and confidential information of KMC; and the disclosure thereof would cause substantial loss to the goodwill of KMC; and that disclosure to Physician is being made only because of the position of trust and confidence that Physician will occupy. Physician covenants that, except as required by law, Physician will not, at any time during the Term or any time thereafter, disclose to any person, hospital, firm, partnership, entity or organization (except when authorized in writing by KMC) any information whatsoever pertaining to the business or operations of KMC, any affiliate thereof or of any other physician employed by KMC, including without limitation, any of the kinds of information described in this paragraph.

4.11 Physician Covenants. Physician covenants that from the Commencement Date and continuing throughout the Term of this Agreement, Physician, unless otherwise permitted by the written consent of Authority shall not, on Physician’s own account or as an employee, landlord, lender, trustee, associate, consultant, partner, agent, principal, contractor, owner, officer, director, investor, member or stockholder of any other person, or in any other capacity, directly or indirectly, in whole or in part: (i) engage in any activities that are in competition with KMC, including the operation of any medical practice or offering of any medical services that

are similar to services offered at the Practice Sites; (ii) solicit or encourage the resignation of any employee of Authority or KMC with whom Physician had a working relationship during Physician's employment with Authority; (iii) solicit or divert patients with whom Physician had personal contact during such employment; or (iv) influence or attempt to influence any payer, provider or other person or entity to cease, reduce or alter any business relationship with Authority or KMC relating to the Practice Sites.

5. Compensation Package.

5.1 Annual Compensation. Physician shall work full time, which is a minimum of 80 hours per biweekly pay period, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").

5.1.1 Annual Salary. Authority shall pay Physician an Annual Salary comprised of (i) a base salary for teaching and administrative duties and (ii) payment for care of KMC patients in the amount of \$540,000 per year, to be paid as follows: Physician shall be paid \$20,769.23 biweekly not to exceed \$540,000 annually. Physician understands and agrees that (i) the Annual Salary set forth in this paragraph 5.1 is calculated based on the current Medical Group Management Association Physician Compensation and Production Survey ("MGMA Survey") for specialty and (ii) Physician will maintain a median level of worked relative value units ("Worked RVU") based on the current MGMA Survey and fulfill all the duties set forth in Exhibit "A" during the Term of this Agreement.

5.1.2 Biweekly Payment. Physician shall be paid biweekly on the same schedule as regular Authority employees. The exact date of said biweekly payments shall be at the sole discretion of Authority. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.1.3 Fair Market Value Compensation. The compensation provided under section 5.1 represents the parties' good faith determination of the reasonable fair market value compensation for the services to be provided by Physician under this Agreement.

5.2 Excess Call Coverage. Authority will pay Physician a fixed fee in the amount of \$500 per 24-hour day for call coverage that exceeds one in four (1:4) days. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.3 Medical Director Stipend. Authority shall pay Physician a stipend of \$1,153.84 biweekly not to exceed \$30,000 annually for services as Medical Director of the Laser and Aesthetics Center. If the conditions for Physician to receive the stipend are met, the stipend would become payable to Physician commencing February 1, 2019, and each biweekly pay period thereafter. Physician understands and agrees that he must remain in the position of Medical Director of the Laser and Aesthetics Center as of each biweekly payout date in order to earn and receive the stipend payment. All stipend payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.4 Signing Bonus.

5.4.1 Bonus. Physician shall receive a signing bonus in the amount of \$45,000, less all applicable federal and state taxes and withholdings, payable on or after January 16, 2019. Physician shall forfeit the signing bonus if he fails to report to work on the Commencement Date.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before the first anniversary of this Agreement, Physician will repay to Authority an amount equal to \$45,000 multiplied by the fraction, the numerator of which is 365 less the number of days during which Physician was employed by Authority, and the denominator of which is 365. Such repayment shall be made by Physician in full within 30 days of the effective date of his termination of employment with Authority.

5.4.3 Offset. Physician hereby authorizes Authority to offset against and reduce any amounts otherwise due to Physician for any amounts in respect of the obligation to repay the signing bonus.

5.5 Professional Fee Billing.

5.5.1 Assignment. KMC shall have the exclusive right and authority to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Physician during the Term of this Agreement. All professional fees generated by Physician during the Term of this Agreement, including without limitation, both cash collections and accounts receivable, capitated risk pool fees, professional retainer fees, honoraria, professional consulting and teaching fees, and fees for expert testimony (but excluding Physician's private investment and nonprofessional income), will be the sole and exclusive property of KMC, whether received by KMC or by Physician and whether received during the Term of this Agreement or anytime thereafter. Physician hereby assigns all rights to said fees and accounts to KMC and shall execute all documents required from time to time by KMC and otherwise fully cooperate with KMC to enable KMC to collect fees and accounts from patients and third-party payers.

5.5.2 Remittance of Professional Fee Charges. Physician shall remit all professional fee charges to KMC within 45 days of the date direct patient care services are provided by Physician. Any professional fee charges not remitted by Physician to KMC within 45 days of the date of such service, or any charges for which relevant documentation has not been provided, will not be credited to Physician as Worked RVU.

5.6 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,791,000 over the three-year Initial Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall participate in the Kern County Hospital Authority Defined Contribution Plan for Physician Employees (the “Plan”), a qualified defined contribution pension plan, pursuant to the terms of the instrument under which the Plan has been established, as from time to time amended. Physician is not eligible to participate in any other retirement plan established by Authority for its employees, including but not limited to the Kern County Employees’ Retirement Association, and this Agreement does not confer upon Physician any right to claim entitlement to benefits under any such retirement plan(s).

6.2 Health Care Coverage. Physician shall receive the same health benefits (medical, dental, prescription and vision coverage) as all eligible Authority employees. The employee share of cost is 20% of the current biweekly premium. Physician is eligible for coverage the first day of the biweekly payroll period coincident with or next following the day he completes one (1) month of continuous service. Physician’s initial hire date is the initial opportunity to enroll in the health plan. Physician must work at least 40 hours per biweekly pay period to be eligible for coverage.

6.3 Holidays. Physician shall be entitled to all paid holidays authorized as official holidays for Authority employees. A holiday occurring on a Sunday shall be observed on the following Monday and a holiday occurring on a Saturday shall be observed on the preceding Friday. In the event Physician is scheduled for and works on a holiday, he shall be entitled to an equivalent period of time off at a later date. Physician will not be paid for banked holidays upon termination of employment.

6.4 Vacation. Physician shall be credited with vacation leave of 6.15 hours for each pay period of service, for a maximum accrual of 160 hours per year. Vacation leave will accrue from the Commencement Date and may be taken at any time thereafter. Total unused vacation leave accumulated will not exceed a maximum of 320 hours. No further vacation leave will accrue as long as Physician has the maximum number of hours credited. The Department chair must approve all vacation leave in advance. Physician shall be paid for accrued and unused vacation leave, if any, upon termination or expiration of this Agreement calculated at Physician’s current hourly rate (i.e., current Annual Salary divided by 2080 hours = hourly rate). All payments made by Authority to Physician under this paragraph will be subject to all applicable federal and state taxes and withholding requirements.

6.5 Sick Leave. Physician shall accrue sick leave in accordance with Authority policy, as amended from time to time. Physician will not be paid for accrued and unused sick leave upon termination of employment.

6.6 Education Leave. Physician shall receive 80 hours paid education leave annually. The first 80 hours will accrue on the Commencement Date. On each successive Employment Year, if any, an additional 80 hours paid education leave will accrue. Education leave must be used within the year that it is accrued. Physician will not be paid for unused education leave upon termination of employment. The Department chair must approve education leave in advance of use. Physician’s participation in educational programs, services or other approved activities set forth herein shall be subordinate to Physician’s obligations and duties under this Agreement.

6.7 CME Expense Reimbursement. Authority shall reimburse Physician for all approved reasonable and necessary expenditures related to continuing medical education in an amount not to exceed \$2,500 per Employment Year, payable in arrears, in accordance with Authority policy, as amended from time to time. This amount may not be accumulated or accrued and does not continue to the following Employment Year.

6.8 Kern\$Flex. Physician shall be eligible to participate in flexible spending plans to pay for dependent care, non-reimbursed medical expenses, and certain insurance premiums on a pre-tax basis through payroll deduction. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.9 Attendance at Meetings. Physician shall be permitted to be absent from KMC during normal working days to attend professional meetings and to attend to such outside professional duties in the healthcare field as may be mutually agreed upon between Physician and the Department chair. Attendance at such approved meetings and accomplishment of approved professional duties shall be fully compensated service time and will not be considered vacation or education leave.

6.10 Unpaid Leave of Absence. Physician may take an unpaid leave of absence in accordance with Authority policies in effect at the time the leave is taken.

6.11 Social Security. Physician is exempt from payment of Social Security taxes as the Kern County Hospital Authority Defined Contribution Plan for Physician Employees is a qualified alternative to the insurance system established by the federal Social Security Act.

6.12 Deferred Compensation. Physician shall be eligible to participate in the Kern County Deferred Compensation Plan ("457 Plan") on a pre-tax basis. Physician shall make all contributions if he elects to participate in the 457 Plan.

6.13 Disability Insurance. Physician shall be eligible to purchase Long Term Disability or Short Term Disability insurance coverage through payroll deduction on a post-tax basis. This is a voluntary benefit that is paid by Physician if he elects to participate in the plan.

6.14 Employee Assistance/Wellness Programs. Physician shall be eligible to participate in any Authority-sponsored employee assistance and employee wellness programs.

6.15 Relocation Reimbursement. Authority shall reimburse Physician for actual relocation expenses (defined as the packing, moving and unpacking of household goods and vehicles) and travel expenses (defined as lodging, meals, mileage and incidental expenses) associated in moving to Bakersfield, California, in an amount not to exceed \$15,000, payable in arrears, in accordance with Authority policy. Reimbursement of travel expenses will include per mile reimbursement for one (1) personal vehicle at the current privately owned vehicle (POV) mileage reimbursement rate established by the U.S. General Services Administration, meals and incidental expenses for Physician only at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by

Authority. Physician shall be deemed vested in reimbursement of relocation expenses in the amount of \$416.67 per month beginning on the last day of the month in which the relocation expenses are reimbursed to Physician. In the event Physician's employment is terminated by either party, with or without cause, then, on the effective date of such termination, Physician shall repay to Authority all amounts received in which Physician has not yet become vested.¹

6.16 **Limitation on Benefits.** Except as expressly stated herein, Physician shall receive no other benefits from Authority.

7. **Assignment.** Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority.

8. **Assistance in Litigation.** Upon request, Physician shall support and assist Authority as a consultant or expert witness in litigation to which Authority is a party.

9. **Authority to Incur Financial Obligation.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no right, power or authority to bind Authority to any agreements or undertakings.

10. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

11. **Choice of Law/Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the state of California, with venue of any action relating to this Agreement in the County of Kern, state of California.

12. **Compliance with Law.** Physician shall observe and comply with all applicable Authority, local, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part hereof and incorporated herein by reference.

13. **Confidentiality.** Physician shall maintain confidentiality with respect to information that he receives in the course of his employment and not use or permit the use of or disclose any such information in connection with any activity or business to any person, firm or corporation whatsoever, unless such disclosure is required in response to a validly issued subpoena or other process of law or as required by Government Code section 6250 et seq. Upon completion of the Agreement, the provisions of this paragraph shall continue to survive.

¹ By way of example only, in the event Physician terminates his employment after 12-months then Physician will be vested to the extent of \$5,000 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$10,000. **In the event Physician fails to pay such amount to Authority, Physician expressly grants to Authority the right to offset any amounts owed to Authority against any payments made to Physician by Authority.**

14. **Conflict of Interest.** Physician covenants that he has no interest and that he will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law (Gov. Code, § 81000 et seq.) or that would otherwise conflict in any manner or degree with the performance of his services hereunder. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof.

15. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16. **Dispute Resolution.** In the event of any dispute involving the enforcement or interpretation of this Agreement or any of the rights or obligations arising hereunder, the parties shall first attempt to resolve their differences by mediation before a mediator of their mutual selection. If the parties are, after mutual good faith efforts, unable to resolve their differences by mediation, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court. All costs of any dispute resolution procedure shall be borne equally by the parties.

17. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

18. **Indemnification.** Authority shall assume liability for and indemnify and hold Physician harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys' fees and judgments incurred by Physician or for which Physician becomes liable, arising out of or related to services rendered or which a third party alleges should have been rendered by Physician pursuant to this Agreement. Authority's obligation under this paragraph shall extend from Physician's first date of service to Authority and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of services Physician rendered on behalf of Authority; provided, however, that the provisions of this paragraph shall not apply to any services rendered at any location other than Practice Sites without approval by the Kern County Hospital Authority Board of Governors and, provided further, that Authority shall have no duty or obligation to defend, indemnify, or hold Physician harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

19. **Invalidity of a Portion.** Should a portion, section, paragraph, or term of this Agreement be construed as invalid by a court of competent jurisdiction, or a competent state or federal agency, the balance of the Agreement shall remain in full force and effect. Further, to the extent any term or portion of this Agreement is found invalid, void or inoperative, the parties agree that a court may construe the Agreement in such a manner as will carry into force and effect the intent appearing herein.

20. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

21. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Physician, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Physician shall be given 30 days' prior written notice in the event that Authority requires such an action.

22. **Nondiscrimination.** No party to this Agreement shall discriminate on the basis of race, color, religion, sex, national origin, age, marital status or sexual orientation, ancestry, physical or mental disability, medical conditions, political affiliation, veteran's status, citizenship or marital or domestic partnership status or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics.

23. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Physician. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

24. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Physician:

Patrick G. Pieper, M.D.
8850 Mill Creek Road
Healdsburg, California 95448

Notice to Authority:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

25. **Relationship.** Authority and Physician recognize that Physician is rendering specialized, professional services. The parties recognize that each is possessed of legal knowledge and skill, and that this Agreement is fully understood by the parties, and is the result of bargaining between the parties. Each party acknowledges their opportunity to fully and independently review and consider this Agreement and affirm complete understanding of the effect and operation of its terms prior to entering into the same.

26. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the state of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions

shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

27. **Sole Agreement.** This Agreement contains the entire agreement between the parties relating to the services, rights, obligations, and covenants contained herein and assumed by the parties respectively. No inducements, representations, or promises have been made, other than those recited in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.

28. **Termination.**

28.1 **Termination without Cause.** Either party shall have the right to terminate this Agreement, without penalty or cause, by giving not less than 90 days' prior written notice to the other party.

28.2 **Immediate Termination.** Notwithstanding the foregoing, Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events: (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician's license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician's medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician's Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority's policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; or (xvi) Physician breaches any covenant set forth in paragraph 4.11.

29. **Effect of Termination.**

29.1 Payment Obligations. In the event of termination of this Agreement for any reason, Authority shall have no further obligation to pay for any services rendered or expenses incurred by Physician after the effective date of the termination, and Physician shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

29.2 Vacate Premises. Upon expiration or earlier termination of this Agreement, Physician shall immediately vacate KMC, removing at such time any and all personal property of Physician. KMC may remove and store, at the expense of Physician, any personal property that Physician has not so removed.

29.3 No Interference. Following the expiration or earlier termination of this Agreement, Physician shall not do anything or cause any person to do anything that might interfere with any efforts by Authority or KMC to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between KMC and any person who may replace Physician.

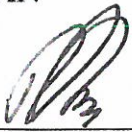
29.4 No Hearing Rights. Termination of this Agreement by Authority or KMC for any reason shall not provide Physician the right to a fair hearing or the other rights more particularly set forth in the KMC medical staff bylaws.

30. **Liability of Authority.** The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

PHYSICIAN

By: 
Patrick G. Pieper, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By: _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By: _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT

By: _____
VP & General Counsel
Kern County Hospital Authority

Agreement.Pieper.122618

EXHIBIT “A”
Job Description
Patrick G. Pieper, M.D.

Position Summary: Position Summary: Reports to Chair, Department of Surgery and Chief, Division of Otolaryngology; serves as a full-time otolaryngology, head and neck surgeon in the Department; serves as Medical Director, Laser and Aesthetics Center; work effort will be a minimum of 2,500 hours annually in teaching, administrative, and clinical activity; day-to-day activities and clinical workload will include call coverage for facial trauma and general otolaryngology; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of surgery, direct patient care, support of resident education; works collaboratively with clinic and surgery staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities and Assignments.

- Coordinate with current otolaryngology faculty schedules and activities to provide service and improve efficiency for otolaryngology clinical activities
- Serves as an attending physician in the Division of Otolaryngology
- Provide service and improve efficiency for otolaryngology surgery cases
- Provide faculty service for otolaryngology and facial trauma surgery call coverage
- Supervise surgery Physician Assistant/Nurse Practitioner activity and competence
- Inpatient rounds – five (5) days per week
- Otolaryngology Clinic – minimum of two (2) days per week at any KMC location (i.e., main hospital campus, Q Street Clinic, Stockdale, Laser and Aesthetics Center, etc.)
- Laser and Aesthetics Center – minimum of one (1) day per week
- Operating Room – minimum of two (2) half days per week at any KMC location (i.e., main hospital campus or Kern Medical Surgery Center, LLC)
- Call coverage for facial trauma and general otolaryngology – weekday coverage, Monday through Thursday, one (1) in four (4) weekdays up to a maximum of 52 weekday call shifts per year; weekend coverage, one (1) in four (4) weekends up to a maximum of 13 weekends per year

2. Administrative Responsibilities.

- Assist in clinical and administrative integration efforts across KMC as appropriate for otolaryngology surgery assisting with proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
- Gather data through best practices and collaborate with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
- Support the Department chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes for plastic and hand surgery services
- Attend and actively participate in assigned Medical Staff and hospital committees

- Participate in clinical and administrative integration efforts across the hospital as appropriate for the Department ensuring proper program planning, resource allocation, analysis, communication, and assessment
- Participate in the preparation, monitoring, review, and performance of clinical activity in the Department
- Participate in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department
- Provide didactic teaching and resident physician and medical student education as assigned and participate in setting goals and expectations for the surgery resident and medical student rotations
- Complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation
- Work collaboratively with other clinical departments to develop a cohesive and collaborative environment across departments with a focus of enhancing access to patient care for inpatient and outpatient services
- Follow and comply with the Medical Staff bylaws, rules, regulations, and policies and Authority and KMC policies and procedures

3. Teaching Responsibilities.

- Assist with didactic curriculum and teaching conference activity for otolaryngology surgery
- Assist in resident research and scholarly activity

4. Medical Director Responsibilities for Laser and Aesthetics Center (“Center”).

- Work collaboratively with hospital administration, Center management, and other medical and clinical staff at the Center to provide medical supervision
- Provide clinical oversight of the Center
- Oversee and support education and training of medical and clinical staff at the Center
- Support and oversee the development of written policies, procedures, and protocols as relates to patient care and obtain approval of such protocols as needed through appropriate hospital and medical staff committees
- Provide oversight to coordinate performance improvement activities
- Work to ensure excellent care through chart review, direct observation, and data analysis

Employment Standards:

Completion of an accredited residency program in otolaryngology; one (1) year of post-residency experience in otolaryngology and head and neck surgery desirable

AND

Possession of a current valid Physician’s and Surgeon’s Certificate issued by the state of California

AND

Certification by the by the American Board of Otolaryngology in head and neck surgery- general

Knowledge of: The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to otolaryngology; principles of effective supervision and program development.

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

[Attached]

AUTHORIZATION TO RELEASE INFORMATION

I, the undersigned physician, hereby authorize Kern Medical Center ("KMC") and its duly authorized representatives to obtain information from time to time about my professional education, training, licensure, credentials competence, ethics and character from any source having such information. This information may include, without limitation, peer review information, DRG and RVU analyses, ancillary usage information and other utilization and quality related data.

I hereby release the Kern County Hospital Authority and KMC, its authorized representatives and any third parties from any liability for actions, recommendations, statements, reports, records or disclosures, including privileged and confidential information, involving me that are made, requested, taken or received by KMC or its authorized representatives to, from or by any third parties in good faith and relating to or arising from my professional conduct, character and capabilities.

I agree that this authorization to release information shall remain effective until termination of my employment by the Kern County Hospital Authority and KMC. A duplicate of this authorization may be relied upon to the same degree as the original by any third party providing information pursuant to this request.



Physician Patrick G. Pieper, M.D.

11/9/19

Date _____



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Proposed Amendment No. 2 to Agreement 14818 with Healthcare Performance Group, Inc.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical requests your Board approve the proposed Amendment No. 2 with Healthcare Performance Group, LLC (HPG) to provide an Electronic Health Record Consultant specializing in the Physician Adoption and Informatics support requirements of the Cerner Millennium Project.

Previous Agreements	Purpose of Amendment	Increase
Original Agreement May 7, 2018	Schedule A-1, Jacqui Pada, EHR Consultant for Clinical and Nursing Support	\$232,576
Amendment No. 1 September 19, 2018	Schedule A-2, Kayla Smith, EHR Consultant for HIM and 3M Support	\$217,000
Amendment No. 2 January 16, 2019	Schedule A-3, Nicole Van Luchene, EHR Consultant role for the Physician Adoption and Informatics support requirements	\$300,240

Therefore, it is recommended that your Board approve the Agreement for Professional Consulting Services with HPG for the period January 22, 2019 through June 10, 2019, effective January 16, 2019, increasing the maximum payable by \$300,240, from \$450,000 to \$750,000 for the professional fees and travel expenses and authorize the Chairman to sign.

Amendment No. 2 To
Agreement for Professional Consulting Services
(Healthcare Performance Group, Inc. – Kern County Hospital Authority)

This Amendment No. 2 to the Agreement for Professional Consulting Services is entered into this ____ day of _____ 2019, by and between Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center (CUSTOMER) and Healthcare Performance Group, (HPG).

RECITALS

- A. Customer and HPG have heretofore entered into an Agreement for Professional Consulting Services (Customer Agt.#14818, dated May 11, 2018) and Amendment No. 1 (Customer Agt.#062-2018, dated September 19, 2018) (“Agreement”) for the period of January 22, 2019 through June 10, 2019, to provide professional consulting services; and
- B. Customer requires additional services of HPG and HPG has agreed to provide these services; and
- C. The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth; and
- D. The Agreement is amended effective January 16th, 2019:

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth and incorporating by this reference the foregoing recitals, the parties hereto agree to amend the Agreement as follow:

1. Schedule A-3

Schedule A-3, to Amendment No. 2 is added to the Agreement and incorporated herein by this reference.

2. Except as otherwise defined herein, all capitalized terms used in this Amendment No. 2 have the meaning set forth in the Agreement.

3. This Amendment No. 2 shall be governed by and construed in accordance with the laws of the state of California.

4. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original, but all which taken together shall constitute one and the same instrument.

5. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect.

IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 2 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY

HEALTHCARE PERFORMANCE GROUP, INC.

By _____
Russell Bigler
Chairman, Board of Governors

By **Chad Terstriep** _____
Digitally signed by Chad Terstriep
Date: 2019.01.09 08:57:37 -06'00'
Printed Name: Chad Terstriep
Title/Position: President

APPROVED AS TO CONTENT
Kern Medical Center

By _____
Reynaldo Lopez
Chief Information Officer

APPROVED AS TO FORM
Legal Services Department

By  _____
Hospital Counsel
Kern County Hospital Authority

Schedule "A-3"

Kern Medical (CUSTOMER) and Healthcare Performance Group, (HPG), wish to attach this Schedule as an addendum to the Agreement between the parties in order to define the services to be provided by HPG to CUSTOMER.

Project Background

CUSTOMER has licensed the Millennium clinical applications from Cerner Corporation and is in the process of implementing and supporting these applications. CUSTOMER requires additional support in the capacity of a Senior Millennium Consultant, Nicole Van Luchene. Key responsibilities of this project engagement are as follows:

PROJECT ROLE AND DETAILS TO BE APPROVED BY CUSTOMER:

- Provide best practice, workflows, education and knowledge transfer to the team members for Clinical Informatics as it relates to Cerner design and build
- Complete the build and design as delegated by the CUSTOMER
- Support and provide documentation on the maintenance for the build completed
- Nicole will work with CUSTOMER to facilitate meetings, tasks and project deliverables for this project
- Nicole will provide additional expertise to other Millennium applications as requested by Customer
- Nicole will also follow the Cerner EHR Consultant Job Description that will be attached to the Master Service Agreement.

Engagement Scope and Approach

HPG will provide the services of Nicole Van Luchene. Nicole will assist the CUSTOMER in the project as described above and will report to Mr. Reynaldo Lopez. Nicole will begin this engagement immediately following the January 2019 Board of Governors approval, starting Tuesday, January 22nd, 2019 and provide services on a continuous, ongoing and full-time basis. CUSTOMER agrees to provide HPG with a 45 day notice of termination for these services of termination for these services.

Fees, Timing & Payment

The professional service fee for these services is \$139 per hour. CUSTOMER commits to a total of 1800 hours for this project. Additional hours will require an addendum for extension. This Schedule A-3 has a not-to-exceed amount is \$300,240 including professional fees and estimated travel expenses, with 75% travel onsite.

Professional services fees and reasonable travel and out of pocket expenses in accordance with Schedule I, will be invoiced biweekly. Should this engagement extend beyond 12 consecutive months, HPG may adjust the rate based upon agreement by both parties, but no more than 5%. The Invoice will be sent to the attention of Brenda Reed, at Brenda.Reed@KernMedical.com.

Payment is expected by either () electronic payment* or by (X) check and is due within 30 days of the Invoice Date. Any unpaid balances still due 30 days from the Invoice Date will accrue a late charge at a rate of 1.0% per month. HPG does not accept credit card payments.

This Schedule A-3 is an addition to the Master Service Agreement and Schedule A-1 (Jacqui Pada) and Schedule A-2 (Kayla Smith).

All other terms and conditions of the original Agreement remain unchanged.

ACCEPTED by:

CUSTOMER:

SIGNATURE: _____ DATE: _____

HPG:

SIGNATURE: **Chad Terstriep** Digitally signed by
Chad Terstriep
Date: 2019.01.09
08:57:12 -06'00' DATE: 1/9/18

***ABA routing number: 101100045; *Account number: 005048626030; Address: Healthcare Performance Group, Inc., P.O. Box 588, Spring Hill, KS 66083**



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

SUBJECT: Proposed retroactive Resolution reaffirming the appointment of Officers of the Kern County Hospital Authority, effective December 16, 2018

Recommended Action: Approve; Adopt Resolution

Summary:

On April 16, 2016, your Board adopted Resolution No. 2016-004 appointing Russell Judd, Scott Thygerson, Andy Cantu, Dr. Glenn Goldis, Jared Leavitt, and Toni Smith, RN, MSN, to serve as initial officers of the Hospital Authority. The action by your Board complied with the state statute, county ordinance, and the hospital authority's Bylaws for Governance.

On January 16, 2019, your Board approved a new Agreement for Professional Services with Meridian Healthcare Partners, Inc., for Chief Executive Officer and healthcare management services to the hospital authority and Kern Medical. With approval of the new Meridian agreement, Kern Medical is recommending that your Board adopt the attached resolution reaffirming the appointment of the following individuals by name and title as officers of the hospital authority, effective December 16, 2018:

Chief Executive Officer:	Russell V. Judd
Chief Strategy Officer:	Alton Scott Thygerson
Chief Financial Officer:	Andrew J. Cantu
Chief Medical Officer:	Glenn E. Goldis, M.D.
Chief Operating Officer:	Jared W. Leavitt
Chief Nursing Officer:	Antoinette C. Smith, RN, MSN

Therefore, it is recommended that your Board approve the recommended action and adopt the attached Resolution.

**BEFORE THE BOARD OF GOVERNORS
OF THE KERN COUNTY HOSPITAL AUTHORITY**

In the matter of:

Resolution No. _____

**REAFFIRMING THE APPOINTMENT OF
RUSSELL V. JUDD, ALTON SCOTT THYGERSON,
ANDREW J. CANTU, GLENN E. GOLDIS, M.D.,
JARED W. LEAVITT, AND ANTOINETTE C.
SMITH, RN, MSN, TO SERVE AS OFFICERS OF
THE KERN COUNTY HOSPITAL AUTHORITY**

I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director _____, seconded by Director _____, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 16th day of January, 2019, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

MONA A. ALLEN
Authority Board Coordinator
Kern County Hospital Authority

Mona A. Allen

RESOLUTION

Section 1. WHEREAS:

(a) Health and Safety Code section 101855(a)(6) provides that the Kern County Hospital Authority shall have the power “*to appoint and employ or otherwise engage a chief executive officer and other officers and employees that may be necessary or appropriate, ...and to define the power and duties of officers and employees*”; and

(b) Section 2.170.070 of the Ordinance Code of the County of Kern (“Ordinance Code”) titled *Powers of Hospital Authority* provides that “*the Hospital Authority shall have the power to appoint and employ or otherwise engage a chief executive officer and other necessary officers and employees*”; and

(c) Section 2.170.080 of the Ordinance Code also provides that the “*Board of Supervisors shall approve the initial and any successive Chief Executive Officer of the Hospital Authority prior to his or her appointment by the Hospital Authority*”; and

(d) Section 5.01 of the Hospital Authority Bylaws for Governance provides that “*the Board of Governors shall appoint a competent and experienced Chief Executive Officer, subject to the prior approval by the Board of Supervisors, to have responsibility for the general management of the Hospital Authority...Subject to the rights of the Board of Supervisors, the Chief Executive Officer shall be employed, contracted with, or otherwise engaged by the Hospital Authority*”; and

(e) On March 16, 2016, by a unanimous vote of those Directors present, the Board of Governors recommended Russell V. Judd be appointed the Chief Executive Officer of the Hospital Authority and referred the matter to the Board of Supervisors for approval; and

(f) On April 5, 2016, the Board of Supervisors approved the initial appointment of Russell V. Judd as the Chief Executive Officer of the Hospital Authority; and

(g) Section 4.03 of the Hospital Authority Bylaws for Governance provides that “*the Chief Financial Officer shall be appointed by the Chief Executive Officer.... Prior to appointing the Chief Financial Officer, the Chief Executive Officer shall consult with and receive direction from the Board of Governors*”; and

(h) On March 16, 2016, Russell V. Judd consulted with and received direction from the Board of Governors regarding the appointment of a Chief Financial Officer of the Hospital Authority; and

(i) On March 16, 2016, by a unanimous vote of those Directors present, the Board of Governors approved the recommendation of Russell V. Judd to appoint Andrew J. Cantu as the Chief Financial Officer of the Hospital Authority; and

(j) On April 16, 2016, the Board of Governors adopted Resolution No. 2016-004 appointing Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., Jared W. Leavitt, and Antoinette C. Smith, RN, MSN, to serve as initial officers of the Hospital Authority; and

(k) The Board of Governors desires to reaffirm the appointment of Russell V. Judd, Alton Scott Thygerson, Andrew J. Cantu, Glenn E. Goldis, M.D., Jared W. Leavitt, and Antoinette C. Smith, RN, MSN, to serve as officers of the Hospital Authority, effective December 16, 2018.

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Governors of the Kern County Hospital Authority, as follows:

1. This Board finds the facts recited herein are true, and further finds that this Board has jurisdiction to consider, approve, and adopt the subject of this Resolution.

2. This Board hereby reaffirms the following individuals by name and title as officers of the Kern County Hospital Authority, effective December 16, 2018:

Chief Executive Officer:	Russell V. Judd
Chief Strategy Officer:	Alton Scott Thygerson
Chief Financial Officer:	Andrew J. Cantu
Chief Medical Officer:	Glenn E. Goldis, M.D.
Chief Operating Officer:	Jared W. Leavitt
Chief Nursing Officer:	Antoinette C. Smith, RN, MSN

3. The Authority Board Coordinator shall provide copies of this Resolution to the following:

Kern Medical Center
Legal Services Department
Office of Kern County Counsel
Kern County Administrative Office
Clerk of the Kern County Board of Supervisors



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Comments Regarding Budget Variances for Operating Expenses – November 2018

Recommended Action: Receive and File

Summary:

The following items have budget variances for the month of November 2018:

Indigent Funding:

Indigent funding revenue has a favorable budget variance for the month due in large part to a decision to reserve less revenue from the indigent programs in FY 2019 than was planned when the budget was prepared. Additional information received about these programs after the budget was prepared supports a high likelihood that these funds will be received. This will also more properly match revenue with the periods earned.

Registry Nurses:

Registry nurses expense has an unfavorable budget variance for the month. Kern Medical continues to rely on contracted nurse staffing to supplement the nursing departments while aggressively trying to recruit full time employed nurses.

Other Professional Fees:

Other professional fees have a favorable budget variance for November due in large part to the careful review by the Information Systems Department of all data processing contracts, software, and systems. The review has resulted in the elimination of some service contracts and other expenses that are no longer needed as Kern Medical implements its new Cerner EHR. Since many of these items are budgeted for in FY 2019, the budget may be erroneously high relative to the actual expenses incurred each month. In addition, legal expenses for the month are lower than average.

Supplies Expense:

Supplies expense has an unfavorable budget variance of \$519k for the month of November mainly due to above average expenses for pharmaceuticals, including \$195k for annual flu vaccination clinics.

Purchased Services:

Purchased services have an unfavorable budget variance for the month mainly due to higher than average ambulance fees.

Other Expenses:

Other expenses are over budget for the month of November due to various repairs and maintenance projects throughout the hospital and the clinics.

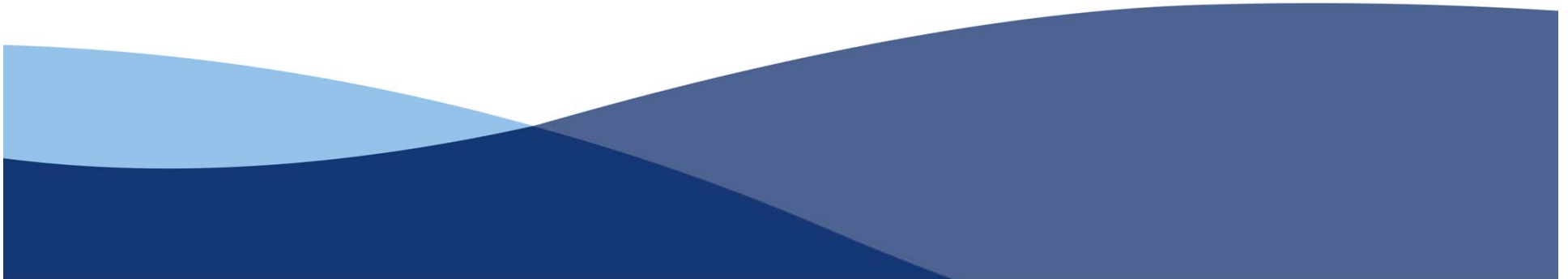
Interest Expense:

Interest expense has an unfavorable budget variance for the month. Interest expense was budgeted low for FY 2019 based on amortization schedules for the pension obligation bonds that do not accurately report the expense actually charged to Kern Medical. To avoid the need for a large true-up adjustment for interest expense at year-end, a decision was made to accrue additional interest expense each month throughout the fiscal year.



**BOARD OF GOVERNORS' FINANCIAL REPORT
KERN MEDICAL – NOVEMBER 2018**

JANUARY 2019



3-Month Trend Analysis: Revenue & Expense

November 30, 2018

	SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
Gross Patient Revenue	\$ 69,200,464	\$ 72,789,112	\$ 66,895,758	\$ 73,176,544	(9%)	\$ 68,111,189
Contractual Deductions	(52,162,665)	(55,643,261)	(49,644,291)	(54,317,574)	(8.6%)	(49,684,708)
Net Revenue	17,037,798	17,145,851	17,251,467	18,858,970	(9%)	18,426,481
Indigent Funding	13,602,078	12,709,470	12,435,621	9,577,936	30%	44,457,143
Correctional Medicine	2,817,855	2,552,068	2,552,068	2,419,175	5%	1,976,127
County Contribution	285,211	285,211	285,211	285,602	(0.1%)	285,211
Incentive Funding	250,000	3,314,060	250,000	250,000	0%	0
Net Patient Revenue	33,992,942	36,006,661	32,774,367	31,391,684	4%	65,144,962
Other Operating Revenue	1,341,681	824,957	1,032,193	1,077,592	(4%)	1,659,117
Other Non-Operating Revenue	37,790	146,760	73,399	43,067	70%	53,887
Total Operating Revenue	35,372,414	36,978,378	33,879,959	32,512,344	4%	66,857,965
Expenses						
Salaries	13,429,226	13,503,590	12,497,006	13,618,259	(8%)	11,754,757
Employee Benefits	5,813,406	6,220,842	5,880,096	5,928,526	(1%)	16,236,448
Contract Labor	1,492,747	1,527,270	1,571,622	1,071,096	47%	1,597,387
Medical Fees	2,406,056	1,096,315	1,566,767	1,571,463	(0.3%)	1,453,762
Other Professional Fees	1,721,910	1,923,942	1,713,564	1,869,739	(8%)	1,713,019
Supplies	4,661,001	5,240,560	4,994,017	4,474,517	12%	4,231,030
Purchased Services	1,806,031	1,765,979	2,052,132	1,862,473	10%	1,625,487
Other Expenses	1,420,482	2,004,905	1,475,268	1,349,464	9%	3,337,891
Operating Expenses	32,750,859	33,283,404	31,750,472	31,745,537	0.02%	41,949,780
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	2,621,555	3,694,974	2,129,487	766,807	178%	24,908,185
EBIDA Margin	7%	10%	6%	2%	166%	37%
Interest	170,846	1,669,381	170,641	50,504	238%	21,306
Depreciation	527,189	523,585	519,707	522,975	(1%)	521,952
Amortization	49,984	59,792	58,691	41,352	42%	29,345
Total Expenses	33,498,878	35,536,161	32,499,512	32,360,368	0.4%	42,522,383
Operating Gain (Loss)	1,873,536	1,442,217	1,380,447	151,975	808%	24,335,583
Operating Margin	5.3%	3.9%	4.1%	0.47%	772%	36.4%

Year-to-Date: Revenue & Expense						
November 30, 2018						
	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE	
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)	
Gross Patient Revenue	\$ 358,854,819	371,289,994	-3%	\$ 365,098,561	(1.7%)	
Contractual Deductions	(272,594,996)	(277,088,515)	-1.6%	(273,397,676)	(0.3%)	
Net Revenue	86,259,823	94,201,478	-8%	91,700,885		
Indigent Funding	64,446,060	47,889,682	35%	81,072,978	(21%)	
Correctional Medicine	12,760,340	12,095,873	5%	9,880,635	29%	
County Contribution	1,426,055	1,428,011	-0.1%	1,426,055	0%	
Incentive Funding	4,314,060	1,250,000	245%	0	0%	
Net Patient Revenue	169,206,338	156,865,045	8%	184,080,553	(8%)	
Other Operating Revenue	5,240,850	5,495,721	-5%	5,761,403	(9%)	
Other Non-Operating Revenue	278,971	219,643	27%	143,284	95%	
Total Operating Revenue	174,726,160	162,580,410	7%	189,985,240	(8%)	
Expenses						
Salaries	65,584,697	67,722,147	-3%	61,313,057	7%	
Employee Benefits	29,902,503	30,222,022	-1%	37,086,612	(19%)	
Contract Labor	7,641,543	5,456,827	40%	6,070,735	26%	
Medical Fees	9,163,093	7,930,660	16%	6,510,484	41%	
Other Professional Fees	8,663,851	8,402,648	3%	6,800,007	27%	
Supplies	25,366,995	22,657,570	12%	20,780,492	22%	
Purchased Services	9,977,610	9,498,611	5%	9,088,883	10%	
Other Expenses	8,114,128	6,900,988	18%	9,496,391	(15%)	
Operating Expenses	164,414,420	158,791,472	4%	157,146,661	5%	
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	10,311,740	3,788,937	172%	32,838,579	(69%)	
EBIDA Margin	6%	2%	153%	17%	(66%)	
Interest	2,369,974	252,520	839%	109,615	2,062%	
Depreciation	2,581,474	2,731,484	-5%	2,733,518	(6%)	
Amortization	280,229	206,760	36%	132,743	111%	
Total Expenses	169,646,097	161,982,235	5%	160,122,537	6%	
Operating Gain (Loss)	5,080,062	598,174	749%	29,862,703	(83%)	
Operating Margin	3%	0.4%	690%	16%	(82%)	

3-Month Trend Analysis: Cash Indicators

November 30, 2018

		SEPTEMBER	OCTOBER	NOVEMBER	GOALS NOVEMBER	PY NOVEMBER
Cash						
	Total Cash	37,473,020	63,772,426	19,329,540	56,279,140	73,821,664
	Days Cash On Hand	34	59	18	53	77
	Days In A/R - Gross	75.21	74.64	80.25	70.00	84.79
	Patient Cash Collections	\$ 15,949,460	\$ 18,420,777	\$ 13,527,677	\$ 16,935,994	\$ 18,693,217
Indigent Funding Liabilites Due to the State						
	FY 2007 Waiver Payable (County Responsibility)	\$ (745,824)	\$ (745,824)	\$ (745,824)	N/A	\$ (745,824)
	FY 2008 Waiver Payable (County Responsibility)	\$ (6,169,000)	\$ (6,169,000)	\$ (6,169,000)	N/A	\$ (6,169,000)
	FY 2009 Waiver Payable (County Responsibility)	\$ (2,384,000)	\$ (2,384,000)	\$ (2,384,000)	N/A	\$ (2,384,000)
	FY 2011 Waiver Payable (County Responsibility)	\$ (10,493,878)	\$ (10,493,878)	\$ (10,493,878)	N/A	\$ (10,493,878)
	Total County Responsibility	\$ (19,792,702)	\$ (19,792,702)	\$ (19,792,702)		\$ (19,792,702)
	FY 2015 Waiver Payable (Kern Medical Responsibility)	\$ (11,223,792)	\$ (11,223,792)	\$ (11,223,792)	N/A	\$ (11,223,792)
	FY 2016 Waiver Payable (Kern Medical Responsibility)	\$ (2,819,361)	\$ (2,819,361)	\$ (2,819,361)	N/A	\$ (2,819,361)
	Managed Care SPD IGT (Kern Medical Responsibility)	\$ (1,907,399)	\$ (1,907,399)	\$ (1,907,399)	N/A	\$ (7,953,923)
	FY 2014 DSH Payable (Kern Medical Responsibility)	\$ (26,851,210)	\$ (26,851,210)	\$ (26,851,210)	N/A	\$ (24,746,355)
	Total Kern Medical Responsibility	\$ (42,801,762)	\$ (42,801,762)	\$ (42,801,762)		\$ (46,743,432)
	Total Indigent Funding Liabilites Due to the State	\$ (62,594,464)	\$ (62,594,464)	\$ (62,594,464)	N/A	\$ (66,536,134)

3-Month Trend Analysis: Operating Metrics

November 30, 2018

	SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
Operating Metrics						
Total Expense per Adjusted Admission	22,134	22,793	22,113	21,062	5%	28,811
Total Expense per Adjusted Patient Day	4,331	4,358	4,379	4,191	4%	5,950
Supply Expense per Adjusted Admission	3,080	3,361	3,398	2,912	17%	2,867
Supply Expense per Surgery	1,991	1,659	1,611	1,470	10%	1,285
Supplies as % of Net Patient Revenue	14%	15%	15%	14%	7%	6%
Pharmaceutical Cost per Adjusted Admission	1,325	1,511	1,710	1,288	33%	1,132
Net Revenue Per Adjusted Admission	\$ 11,257	\$ 10,998	\$ 11,738	\$ 12,274	(4%)	\$ 12,485

Year-to-Date: Operating Metrics

November 30, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Operating Metrics						
	Total Expense per Adjusted Admission	21,456	20,663	4%	20,675	4%
	Total Expense per Adjusted Patient Day	4,294	4,111	4%	4,172	3%
	Supply Expense per Adjusted Admission	3,208	2,890	11%	2,683	20%
	Supply Expense per Surgery	1,924	1,448	33%	1,327	45%
	Supplies as % of Net Patient Revenue	15%	14%	4%	11%	32.8%
	Pharmaceutical Cost per Adjusted Admission	1,437	1,284	12%	1,115	29%
	Net Revenue Per Adjusted Admission	\$ 10,910	12,017	(9%)	\$ 11,840	(8%)

INDIGENT PATIENT CARE FUNDING - MTD & YTD

FOR THE MONTH NOVEMBER 30, 2018

MTD ACTUAL	MTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %	DESCRIPTION	YTD ACTUAL	YTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %
300,833	316,667	(15,833)	-5%	MEDI-CAL HOSPITAL QUALITY ASSURANCE FEE	2,528,230	1,583,333	944,897	60%
2,375,592	1,250,311	1,125,280	90%	MEDI-CAL RATE-RANGE REVENUE	12,204,044	6,251,557	5,952,487	95%
150,417	158,333	(7,917)	-5%	PHYSICIAN SPA REVENUE	752,083	791,667	(39,583)	-5%
278,271	292,917	(14,646)	-5%	AB 915 OUTPATIENT SUPPLEMENTAL PROGRAM	2,640,695	1,464,583	1,176,111	80%
2,259,417	2,259,417	0	0.0%	PRIME - NEW WAIVER	11,297,083	11,297,083	0	0.0%
2,452,341	2,369,458	82,883	3.5%	GPP - NEW WAIVER	11,930,175	11,847,292	82,883	0.7%
1,242,917	1,242,917	0	0.0%	WHOLE PERSON CARE	6,214,583	6,214,583	0	0.0%
2,129,167	1,064,583	1,064,583	100%	EPP REVENUE	10,645,833	5,322,917	5,322,917	100%
1,246,667	623,333	623,333	100%	QIP REVENUE	6,233,333	3,116,667	3,116,667	100%
12,435,621	9,577,936	2,857,684	30%	SUB-TOTAL - GOVERNMENTAL REVENUE	64,446,060	47,889,682	16,556,378	35%
2,552,068	2,419,175	132,894	5.5%	CORRECTIONAL MEDICINE	12,760,340	12,095,873	664,467	5.5%
285,211	285,602	(391)	-0.1%	COUNTY CONTRIBUTION	1,426,055	1,428,011	(1,956)	-0.1%
15,272,900	12,282,713	2,990,186	24%	TOTAL INDIGENT CARE & COUNTY FUNDING	78,632,456	61,413,567	17,218,889	28%

OTHER REVENUE

FOR THE MONTH NOVEMBER 30, 2018

OTHER OPERATING REVENUE

	<u>MTD ACTUAL</u>	<u>MTD BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>VARIANCE</u>
MEDICAL POSTGRAD EDUCATION TUITION	273,107	273,687	(581)	1,367,933	1,395,805	(27,871)
STAFF DEVELOPMENT EDUC FEES	2,020	1,195	825	3,135	6,097	(2,962)
CAFETERIA REVENUE	77,739	78,698	(959)	414,153	401,357	12,795
FINANCE CHARGES-PATIENT AR	11,010	19,263	(8,253)	58,915	98,239	(39,324)
REBATES AND REFUNDS	51,377	81,151	(29,774)	474,410	413,868	60,542
DRUG CO. CASH BACK	0	1,343	(1,343)	4,687	6,851	(2,164)
PHOTOCOPY FEES	2,205	1,881	324	9,995	9,595	400
JURY WITNESS FEES	0	56	(56)	0	287	(287)
MEDICAL RECORDS FEES	3,735	4,397	(662)	13,050	22,423	(9,373)
ADMINISTRATIVE FEES-PAYROLL	341	0	341	341	0	341
PHYSICIAN PRO FEE-ER LOCKBOX	160,024	2,572	157,452	27,411	13,117	14,293
OTHER REVENUE	2,744	37,080	(34,336)	13,324	189,106	(175,781)
LASER CENTER REVENUE	21,127	49,315	(28,189)	84,716	251,507	(166,791)
CANCELLED OUTLAWED WARRANTS	0	5,330	(5,330)	(15,112)	27,183	(42,296)
MADDY FUNDS-EMERGENCY MEDICAL SERVICES	0	33,360	(33,360)	108,977	170,134	(61,157)
PRIMARY CARE & OTHER INCENTIVE	0	1,988	(1,988)	24,160	10,141	14,019
VETERANS ADMINISTRATIVE REVENUE	4,898	2,963	1,935	15,812	15,110	702
JAMISON CENTER MOU	19,694	22,415	(2,721)	98,472	114,318	(15,845)
MENTAL HEALTH MOU	227,387	216,681	10,706	1,373,940	1,105,073	268,867
PATERNITY DECLARATION REVENUE	0	1,047	(1,047)	6,050	5,338	712
PEDIATRIC FORENSIC EXAMS	0	8,014	(8,014)	13,800	40,870	(27,070)
FOUNDATION CONTRIBUTIONS	18,289	3,421	14,868	29,342	17,445	11,897
DONATED EQUIPMENT	0	8,802	(8,802)	168,019	44,891	123,128
PAY FOR PERFORMANCE	0	10,509	(10,509)	99,991	53,594	46,397
PROPOSITION 56 DIRECTED PAYMENTS	0	0	0	432,490	0	432,490
WORKERS' COMPENSATION REFUNDS	0	14	(14)	0	69	(69)
TOTAL OTHER OPERATING REVENUE	1,032,193	1,077,592	(45,399)	5,240,850	5,495,721	(254,871)
OTHER NON-OPERATING REVENUE						
OTHER MISCELLANEOUS REVENUE	788	220	568	(29,527)	1,124	(30,651)
INTEREST ON FUND BALANCE	72,611	42,847	29,764	308,498	218,520	89,978
TOTAL OTHER NON-OPERATING REVENUE	73,399	43,067	30,332	278,971	219,643	59,328

KERN MEDICAL BALANCE SHEET		
	November 2018	November 2017
CURRENT ASSETS:		
CASH	\$19,329,540	\$73,821,664
CURRENT ACCOUNTS RECEIVABLE (incl. CLINIC CHARGES RECEIVABLE)	184,198,760	201,788,510
ALLOWANCE FOR UNCOLLECTIBLE RECEIVABLES - CURRENT	(140,316,080)	(165,525,707)
-NET OF CONTRACTUAL ALLOWANCES	43,882,680	36,262,803
CORRECTIONAL MEDICINE RECEIVABLE	2,188,295	0
MD SPA	5,952,673	4,327,179
HOSPITAL FEE RECEIVABLE	(761,844)	619,901
CPE - O/P DSH RECEIVABLE	3,101,305	5,862,684
BEHAVIORAL HEALTH MOU	2,244,690	968,584
MANAGED CARE IGT (RATE RANGE)	16,833,214	11,604,722
RECEIVABLE FROM LIHP	(6,547,536)	(6,547,536)
OTHER RECEIVABLES	2,444,167	3,526,337
PRIME RECEIVABLE	36,205,787	9,430,123
AB85/75% DEFAULT PCP RECEIVABLE	(9,146,436)	5,118,433
GPP (Global Payment Program)	(5,654,262)	3,994,806
WPC (Whole Person Care)	6,673,084	4,939,679
EPP (Enhanced Payment Program)	10,645,833	0
QIP (Quality Incentive Program)	6,233,333	0
INTEREST ON FUND BALANCE RECEIVABLE	268,595	59,574
MANAGED CARE IGT (SPD)	(1,907,399)	(7,953,923)
WAIVER RECEIVABLE FY07	(745,824)	(745,824)
WAIVER RECEIVABLE FY08	(6,169,000)	(6,169,000)
WAIVER RECEIVABLE FY09	(2,384,000)	(2,384,000)
WAIVER RECEIVABLE FY10	579,696	579,696
WAIVER RECEIVABLE FY11	(10,493,878)	(10,493,878)
WAIVER RECEIVABLE FY12	679,308	679,308
WAIVER RECEIVABLE FY15	(11,223,792)	(11,223,792)
WAIVER RECEIVABLE FY16	(2,819,361)	(2,819,361)
PREPAID EXPENSES	3,411,847	3,846,163
PREPAID MORRISON DEPOSIT	813,320	799,706
INVENTORY AT COST	5,398,327	4,204,244
TOTAL CURRENT ASSETS	109,032,363	122,308,291
PROPERTY, PLANT & EQUIPMENT:		
LAND	542,961	170,395
EQUIPMENT	51,513,798	48,546,864
BUILDINGS	87,486,989	82,462,922
CONSTRUCTION IN PROGRESS	27,357,984	7,541,591
LESS: ACCUMULATED DEPRECIATION	(91,896,210)	(86,345,457)
NET PROPERTY, PLANT & EQUIPMENT	75,005,522	52,376,316
NET INTANGIBLE ASSETS		
INTANGIBLE ASSETS	14,688,166	12,638,783
ACCUMULATED AMORTIZATION INTANGIBLES	(11,287,465)	(10,683,111)
NET INTANGIBLE ASSETS	3,400,701	1,955,672
LONG-TERM ASSETS:		
LONG-TERM PATIENT ACCOUNTS RECEIVABLE		
DEFERRED OUTFLOWS - PENSIONS	71,752,645	71,902,645
INVESTMENT IN SURGERY CENTER	3,143,659	0
CASH HELD BY COP IV TRUSTEE	922,330	912,973
TOTAL LONG-TERM ASSETS	75,818,634	72,815,618
TOTAL ASSETS	\$263,257,221	\$249,455,896

KERN MEDICAL BALANCE SHEET		
	November 2018	November 2017
CURRENT LIABILITIES:		
ACCOUNTS PAYABLE	\$21,626,962	\$18,548,727
ACCRUED SALARIES & EMPLOYEE BENEFITS	23,783,343	24,373,718
INTEREST PAYABLE	4,856,676	456,342
OTHER ACCRUALS	3,669,631	4,834,941
ACCRUED CWCAP LIABILITY	0	131,998
CURRENT PORTION - CAPITALIZED LEASES	1,931,455	337,560
CURR LIAB - COP 2011 PAYABLE	1,131,693	1,085,718
CURR LIAB - P.O.B.	1,684,945	1,560,318
MEDICARE COST REPORT LIABILITY PAYABLE	3,094,510	3,794,129
MEDI-CAL COST REPORT LIABILITY	1,070,179	1,430,435
INDIGENT FUNDING PAYABLE	15,436,349	14,754,295
DSH PAYABLE FY14	26,851,210	24,746,355
CREDIT BALANCES PAYABLES	3,517,760	3,737,529
DEFERRED REVENUE - COUNTY CONTRIBUTION	4,652,736	4,715,828
TOTAL CURRENT LIABILITIES	113,307,449	104,507,895
LONG-TERM LIABILITIES:		
LONG-TERM LIABILITY-COP 2011	0	1,131,693
NET UNAMORTIZED DISCOUNT COP	39,985	59,978
LONG-TERM LIABILITY - CAPITAL LEASES	6,267,636	1,387,154
NET OPEB (OTHER POST EMPLOYMENT BENEFITS)	4,201,203	4,201,203
NET PENSION LIABILITY	329,935,445	329,935,445
L.T. LIAB. - P.O.B. INTEREST PAYABLE 08	14,842,004	14,722,232
L.T. LIAB. - P.O.B. INTEREST PAYABLE 03	4,329,041	3,917,723
L.T. P.O.B. PAYABLE 95	11,590,866	16,695,541
L.T. P.O.B. PAYABLE 08	5,392,893	5,392,893
ACCRUED PROFESSIONAL LIABILITY	5,060,041	3,474,640
ACCRUED WORKERS' COMPENSATION PAYABLE	6,773,000	6,773,000
DEFERRED INFLOWS - PENSIONS	22,238,926	22,238,926
PENSION OBLIGATION BOND PAYABLE	2,643,205	3,678,145
ACCRUED COMPENSATED ABSENCES	3,830,085	3,830,085
TOTAL LONG-TERM LIABILITIES	417,144,330	417,438,658
NET POSITION		
RETAINED EARNINGS - CURRENT YEAR	39,814,215	39,814,215
RETAINED EARNINGS - PRIOR YEAR	(307,008,774)	(312,304,871)
TOTAL NET POSITION	(267,194,559)	(272,490,656)
TOTAL LIABILITIES & NET POSITION	\$263,257,221	\$249,455,896



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Kern County Hospital Authority, Chief Executive Officer Report

Recommended Action: Receive and File

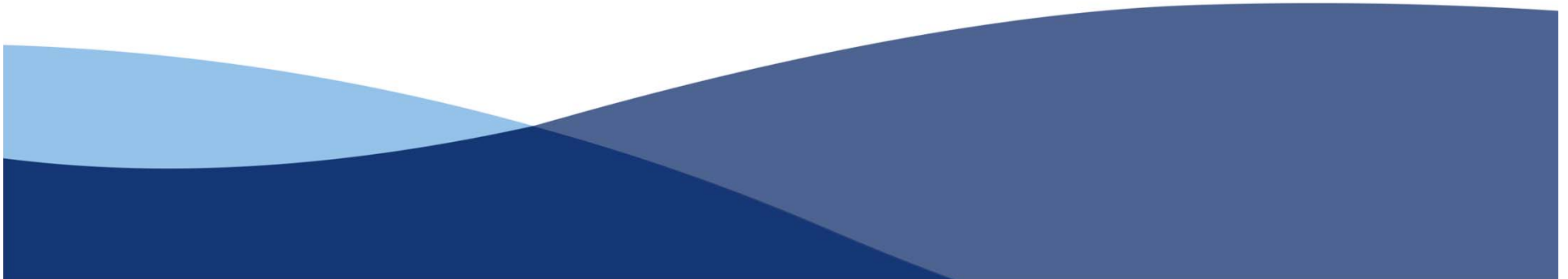
Summary:

The Chief Executive Officer has provided the attached 3-month trend Analysis: Volume and Strategic Indicators for Kern Medical



**BOARD OF GOVERNORS' VOLUMES REPORT
KERN MEDICAL – NOVEMBER 2018**

JANUARY 2019



3-Month Trend Analysis: Volume and Strategic Indicators

November 30, 2018

		SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
VOLUME							
	Adjusted Admissions (AA)	1,513	1,559	1,470	1,536	(4%)	1,476
	Adjusted Patient Days	7,736	8,154	7,422	7,722	(3.9%)	7,146
	Admissions	783	770	743	834	(11%)	790
	Average Daily Census	133	130	125	140	(10%)	128
	Patient Days	4,002	4,027	3,752	4,190	(10%)	3,825
	Available Occupancy %	62.3%	60.7%	58.4%	65.3%	(10%)	59.6%
	Average LOS	5.1	5.2	5.0	5.0	0.5%	4.8
	Surgeries						
	Inpatient Surgeries (Main Campus)	196	219	185	225	(18%)	225
	Outpatient Surgeries (Main Campus)	232	286	253	257	(2%)	257
	Total Surgeries	428	505	438	482	(9%)	482
	Births	236	227	223	215	4%	203
	ER Visits						
	Admissions	406	384	375	423	(11%)	424
	Treated & Released	3,854	3,756	3,618	4,028	(10%)	3,518
	Total ER Visits	4,260	4,140	3,993	4,451	(10%)	3,942
	Trauma Activations	226	230	223	234	(5%)	233
	Outpatient Clinic Visits						
	Total Clinic Visits	11,518	14,571	12,726	12,334	3%	11,936
	Total Unique Patient Clinic Visits	8,763	10,650	9,578	9,470	1%	9,165
	New Unique Patient Clinic Visits	1,695	2,173	1,858	1,901	(2%)	1,840

Year-to-Date: Volume and Strategic Indicators

November 30, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
VOLUME						
	Adjusted Admissions (AA)	7,907	7,839	1%	7,745	2%
	Adjusted Patient Days	39,512	39,398	0.3%	38,382	3%
	Admissions	3,992	4,288	(7%)	4,184	(5%)
	Average Daily Census	130	141	(7%)	137	(5%)
	Patient Days	19,949	21,552	(7%)	20,939	(5%)
	Available Occupancy %	60.9%	66%	(7%)	64.0%	(5%)
	Average LOS	5.0	5.0	(1%)	5.0	(0.1%)
	Surgeries					
	Inpatient Surgeries (Main Campus)	1,074	1,208	(11%)	1,201	(11%)
	Outpatient Surgeries (Main Campus)	1,260	1,267	(1%)	1,260	0%
	Total Surgeries	2,334	2,475	(6%)	2,461	(5%)
	Births	1,178	1,104	7%	1,099	7%
	ER Visits					
	Admissions	2,006	2,098	(4.4%)	2,190	(8%)
	Treated & Released	18,874	19,985	(6%)	18,266	3%
	Total ER Visits	20,880	22,083	(5%)	20,456	2%
	Trauma Activations	1,170	1,162	1%	1,305	(10%)
	Outpatient Clinic Visits					
	Total Clinic Visits	64,595	61,216	6%	58,439	11%
	Total Unique Patient Clinic Visits	48,152	47,309	2%	45,133	7%
	New Unique Patient Clinic Visits	9,541	10,126	(6%)	9,657	(1%)

3-Month Trend Analysis: Payor Mix

November 30, 2018

					BUDGET	VARIANCE	PY
		SEPTEMBER	OCTOBER	NOVEMBER	NOVEMBER	POS (NEG)	NOVEMBER
PAYOR MIX - Charges							
	Commercial FFS/HMO/PPO	8.7%	7.4%	8.3%	10.3%	(19%)	9.2%
	Medi-Cal	29.2%	31.2%	29.4%	30.0%	(2%)	31.2%
	Medi-Cal HMO - Kern Health Systems	30.0%	32.0%	30.2%	30.9%	(2%)	32.0%
	Medi-Cal HMO - Health Net	8.8%	9.4%	8.9%	9.1%	(2%)	9.4%
	Medi-Cal HMO - Other	1.0%	1.1%	1.0%	0.4%	153%	1.1%
	Medicare	9.7%	9.5%	12.1%	10.2%	20%	9.9%
	Medicare - HMO	3.5%	2.7%	2.6%	2.1%	24%	1.5%
	County Programs	0.3%	0.3%	0.3%	0.3%	17%	0.3%
	Workers' Compensation	0.31%	0.48%	0.43%	0.5%	(9%)	0.6%
	Self Pay	8.4%	5.8%	6.7%	6.4%	4%	4.9%
	Total	100.0%	100.0%	100.0%	100.0%		100.0%

Year-to-Date: Payor Mix

November 30, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
PAYOR MIX - Charges						
	Commercial FFS/HMO/PPO	8.5%	10.4%	(19%)	11.4%	(26%)
	Medi-Cal	30.0%	30%	0.1%	29.4%	2%
	Medi-Cal HMO - Kern Health Systems	30.8%	31%	0.1%	30.2%	1.9%
	Medi-Cal HMO - Health Net	9.0%	9%	0.1%	8.9%	2%
	Medi-Cal HMO - Other	1.1%	0%	159%	1.0%	2%
	Medicare	10.0%	10%	(3%)	9.7%	3%
	Medicare - HMO	2.7%	2%	29%	2.0%	32%
	County Programs	0.3%	0.3%	19%	0.5%	(43%)
	Workers' Compensation	0.4%	0.5%	(20%)	1.2%	(69%)
	Self Pay	7.4%	6%	17%	5.6%	31%
	Total	100.0%	100%		100.0%	

3-Month Trend Analysis: Labor and Productivity Metrics

November 30, 2018

	SEPTEMBER	OCTOBER	NOVEMBER	BUDGET NOVEMBER	VARIANCE POS (NEG)	PY NOVEMBER
Labor Metrics						
Productive FTEs	1,429.00	1,459.93	1,388.41	1,483.28	(6%)	1,347.61
Non-Productive FTEs	222.17	191.80	264.31	215.06	23%	238.44
Contract Labor FTEs	97.03	94.17	96.68	77.02	26%	91.69
Total FTEs	1,651.17	1,651.73	1,652.72	1,698.34	(3%)	1,586.05
FTE's Per AOB Paid	6.40	6.28	6.68	6.60	1%	6.66
FTE's Per AOB Worked	5.54	5.55	5.61	5.76	(3%)	5.66
Labor Cost/FTE (Annualized)	135,786.42	139,036.33	130,389.50	130,912.03	(0.4%)	200,156.21
Benefits Expense as a % of Benefitted Labor Expense	61%	64%	63%	58%	9%	56%
Salaries & Benefits as % of Net Patient Revenue	61%	59%	61%	66%	(7%)	45%

Year-to-Date: Labor and Productivity Metrics

November 30, 2018

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
Labor Metrics						
	Productive FTEs	1,427.16	1,474.48	(3%)	1,368.07	4%
	Non-Productive FTEs	225.66	213.81	6%	203.21	11%
	Contract Labor FTEs	97.67	76.94	27%	89.26	9%
	Total FTEs	1,652.82	1,688.29	(2%)	1,571.28	5%
	FTE's Per AOB Paid	6.32	6.55	(4%)	6.20	2%
	FTE's Per AOB Worked	5.46	5.72	(5%)	5.40	1%
	Labor Cost/FTE (Annualized)	134,833.78	132,327.87	2%	142,717.51	(6%)
	Benefits Expense as a % of Benefitted Labor Expense	62%	60%	4%	57%	9%
	Salaries & Benefits as % of Net Patient Revenue	61%	66%	(8%)	57%	7%



**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

January 16, 2019

Subject: Proposed retroactive Agreement with Meridian Healthcare Partners, Inc.

Recommended Action: Approve; Authorize the Vice Chairman to sign

Summary:

Kern Medical requests your Board retroactively approve the attached proposed new Agreement for Professional Services with Meridian Healthcare Partners, Inc., for Chief Executive Officer and healthcare management services to the hospital authority and Kern Medical. Meridian has provided such services since December 16, 2013.

The proposed Agreement, which supersedes the existing agreement, is for a term of seven years from December 16, 2018 through December 15, 2025, and contains an option to extend the term for three additional terms of two-years each. The financial terms remain the same: As previously negotiated and reflected in Amendment No. 9, approved by your Board on October 17, 2018, Meridian will be paid a monthly management fee of \$420,207 for the period December 16, 2018 through December 15, 2019, and \$432,814, for the period December 16, 2019 through December 15, 2020 (a 3% increase over the prior year). In the 90-day period prior to December 16, 2020, and each subsequent December 16, the parties have agreed to meet and confer in good faith regarding the management fee paid to Meridian. If the parties are unable to reach an agreement concerning the management fee before the applicable anniversary date, the then-current management fee will remain in effect until an agreement is reached, subject to possible retroactive adjustment if agreed. The compensation paid to Meridian covers all costs and expenses to provide the services. The maximum payable will not exceed \$10,236,768 for the period December 16, 2018 through December 15, 2020.

The proposed Agreement also reflects a change in the process for appointing the Chief Executive Officer. Instead of Meridian providing a specified individual by name, Meridian's obligation now is to engage or employ a "competent and experienced individual" to serve as Chief Executive Officer. Such individual remains subject to appointment by your Board and the prior approval of the Kern County Board of Supervisors, pursuant to the Authority's enabling ordinance. This change eliminates any contractual obstacle to succession planning should the need arise and facilitates the preservation of the culture, relationships, systems, experience and goodwill Meridian has cultivated over the past five years within the county, Kern Medical, the community and healthcare industry. The responsibilities of the Chief Executive Officer and Meridian remain unchanged.

Therefore, it is recommended that your Board retroactively approve the Agreement with Meridian Healthcare Partners, Inc., and authorize the Vice Chairman to sign.

Owned and Operated by the Kern County Hospital Authority
A Designated Public Hospital

1700 Mount Vernon Avenue | Bakersfield, CA 93306 | (661) 326-2000 | KernMedical.com

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Meridian Healthcare Partners, Inc.)**

This Agreement is made and entered into this ____ day of _____, 2019, between the Kern County Hospital Authority, a local unit of government (“Authority”), and Meridian Healthcare Partners, Inc., a California corporation (“Contractor”), with its principal place of business located at 3511 Union Avenue, Bakersfield, California 93306.

**I.
RECITALS**

(a) Authority is authorized, pursuant to section 101852 of Part 4 of Division 101 of the Health and Safety Code, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(b) Authority owns and operates Kern Medical Center, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California 93306, and its affiliated clinics (collectively “KMC”); and

(c) Authority requires the assistance of Contractor to supervise and manage the day-to-day operations of KMC, as such services are unavailable from Authority resources; and

(d) Authority currently contracts with Contractor as an independent contractor to provide healthcare consulting and executive management services including supervision and management of the day-to-day operations of KMC (Kern County Agt. #911-2013, dated December 3, 2013, as amended and assigned), for the period December 16, 2013 through December 15, 2020; and

(e) Authority has determined that the goal of improved quality of services can only be achieved by contracting with a single entity for the provision of management services, and that Authority should continue to retain Contractor to be the exclusive provider of executive management services for Authority and KMC, and Contractor desires to provide such services on the terms and conditions set forth in this Agreement; and

(f) Each party expressly understands and agrees that Kern County Agt. #911-2013 is superseded by this Agreement as of the Commencement Date;

**II.
TERMS AND CONDITIONS**

1. **Term.** The term of this Agreement shall be for a period of seven (7) years, commencing as of December 16, 2018 (the “Commencement Date”), and shall end December 15, 2025, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

Authority reserves the right to extend the term of this Agreement for three (3) additional terms of two (2) years each, provided that Authority notifies Contractor in writing of its intention to renew at least 18 months prior to the expiration of the then current term. Any renewal shall be in writing and signed by both parties through a formal amendment to this Agreement.

2. **Appointment of Chief Executive Officer.** Contractor shall engage or employ a competent and experienced individual, subject to appointment by the Board of Governors and the prior approval of the Kern County Board of Supervisors, to serve as Chief Executive Officer of Authority ("CEO"). CEO shall have responsibility for the general management of Authority in all its activities and departments and shall be responsible for the administration of Authority and KMC, subject to the Kern County Hospital Authority Bylaws for Governance ("Bylaws"), and to the direction, policies, or orders of the Board of Governors or by any of the committees to which the Board of Governors has lawfully delegated authority for such action. CEO shall be the Chief Executive Officer of KMC and all other facilities and operations of Authority. CEO shall be the general manager of Authority, and shall have the authority to exercise executive supervision over the general business and affairs of Authority in accordance with the statement of duties and responsibilities adopted by the Board of Governors and set forth in the Bylaws. Subject to the control of the Board of Governors and the scope of his or her lawful authority, as it may be defined from time to time by the Board of Governors, CEO shall act as the duly authorized representative of Authority in all matters in which the Board of Governors has not formally designated some other person to so act.

3. **Exclusive Rights.** During the term of this Agreement and any extensions thereof, Contractor will have exclusive authority and responsibility, as specifically set forth in this Agreement, to supervise and manage the day-to-day operations of KMC, to the extent permitted by applicable law, effective with the Commencement Date. To accomplish all of this, neither Authority nor KMC will cause or permit any other persons or entities to provide any such services, except as expressly permitted by this Agreement or other written agreement between Authority and Contractor. Contractor recognizes, acknowledges and understands that it is accepting benefits under this exclusive provider arrangement and that therefore if, for any reason, this Agreement is terminated or expires and is not renewed by the Parties, the benefits of this exclusive provider arrangement may be conveyed by Authority and KMC to another contracting party.

4. **Obligations of Contractor.**

4.1 **Specified Services.** Contractor shall perform the services set forth in Exhibit "A," attached hereto and incorporated herein by this reference. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

4.2 **Representations.** Contractor makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement: (i) Contractor has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Contractor does not have any actual or potential interests adverse to

Authority nor does Contractor represent a person or firm with an interest adverse to Authority with reference to the subject of this Agreement; and (iii) Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

4.3 Standard of Care. Authority has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all of its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Authority shall not operate as a waiver or release.

4.4 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If Authority determines that any of Contractor's work is not in accordance with such level of competency and standard of care, Authority, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with Authority to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of section 40; or (c) pursue any and all other remedies at law or in equity.

4.5 Contractor Staff. Contractor shall engage or employ such qualified personnel as are necessary for the proper and efficient management of KMC, including without limitation, the following positions: one (1) Chief Executive Officer; one (1) Chief Strategy Officer; one (1) Chief Operating Officer; one (1) Vice President, Ambulatory Services; one (1) Vice President, Administrative Services; one (1) Vice President, Human Resources; one (1) Chief Medical Officer; one (1) Director, Performance Analysis; one (1) Director, Change Management; one (1) Director, Communications; one (1) Director, Physician Recruitment; one (1) Director, Outpatient Integration; one (1) Director, Care Coordination; and two (2) Administrative Assistants. All personnel provided by Contractor shall be compensated by Contractor and shall be employees or independent contractors of Contractor. Contractor shall be responsible for compensating all such engaged or employed persons, including, as applicable, payroll taxes, benefits, and workers' compensation insurance. Contractor shall be responsible for supervision of activities performed by all employees and independent contractors.

4.6 Compliance with Standards. All services performed by Contractor shall be performed in accordance with applicable state and federal laws and regulations, accreditation standards, and Authority and KMC policies and procedures.

4.7 Cooperation with Authority. Contractor shall cooperate with Authority and Authority staff in the performance of all work hereunder.

4.8 Assigned Personnel.

4.8.1 Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time Authority, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority.

4.8.2 CEO is deemed by Authority to be a key individual whose services were a material inducement to Authority to enter into this Agreement, and without whose services Authority would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change CEO without the prior written approval of Authority.

4.8.3 In the event that any of Contractor's personnel assigned to perform services under this Agreement becomes unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

4.8.4 Contractor understands and agrees that Contractor's assigned personnel will perform the services required of Contractor under this Agreement on a full-time basis, which is defined as a minimum of 80 hours per biweekly period, and includes any other hours in excess thereof that are necessary for Contractor's assigned personnel to perform the services as set forth in this Agreement.

4.9 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold Authority harmless from any liability which it may incur to the United States or to the state of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case Authority is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish Authority with proof of payment of taxes on these earnings.

4.10 Authorized Absences. Notwithstanding any provision in this Agreement to the contrary, CEO shall be permitted to be absent from KMC during normal business hours for vacation or sick leave, or to attend professional meetings and outside professional duties in the healthcare field. CEO shall notify the Chairman, Board of Governors, or designee, in advance of taking any vacation leave or other planned absence that exceeds three (3) business days.

5. Obligations of Authority.

5.1 Authority Designee. Authority will designate a primary contact, who will arrange for Authority and KMC staff assistance, as may be required.

5.2 Space. Authority shall furnish for the use of Contractor such space and facilities at KMC as may be deemed necessary by Authority for the proper operation and conduct of KMC ("Premises"). Authority will, in its sole discretion, determine the amount and type of space and facilities to be provided herein. Contractor shall use the space and equipment solely for the performance of the services required under this Agreement. Contractor shall not use such space or equipment for other business or personal use.

5.3 Use Limitations on Space. Contractor shall not use any part of KMC for the provision of any services to any person or entity other than the provision of the services in accordance with this Agreement. This Agreement shall not be construed to be a lease to Contractor of any portion of the premises, and insofar as Contractor may use a portion of said premises, Contractor does so as a licensee only, and Authority and KMC shall, at all times, have full and free access to the same.

5.4 Equipment. Authority shall furnish for the use of Contractor such equipment as is deemed necessary by Authority for the proper operation and conduct of KMC consistent with community standards. Authority shall keep and maintain this equipment in good order and repair and replace such equipment, as is reasonably necessary and subject to the usual purchasing practices of Authority and KMC and budget constraints.

5.5 Services and Supplies. Authority shall provide or arrange for the provision of janitorial services, housekeeping services, utilities, together with such other hospital services, including medical records, administrative and engineering services, and expendable supplies, as Authority deems necessary for the proper operation and conduct of KMC.

5.6 Control Retained in KMC. In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise Authority and KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports, which shall be retained by Authority and KMC for follow-up action and evaluation of performance.

6. Payment for Services. As consideration for the services provided by Contractor hereunder, Authority will pay Contractor a monthly management fee ("Management Fee") in accordance with the schedule set forth in paragraph 6.1. All services are payable in arrears.

6.1 Management Fee.

6.1.1 Effective December 16, 2018. Authority shall pay Contractor a Management Fee monthly in the amount of \$420,207, as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$210,103, payable on or before the 1st day, but no later than the 5th day, and the 15th day, but no later than the 20th day, of each month for the period December 16, 2018 through December 15, 2019.

6.1.2 Effective December 16, 2019. Authority shall pay Contractor a Management Fee monthly in the amount of \$432,814, as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$216,406.50, payable on or before the 1st day, but no later than the 5th day, and the 15th day, but no later than the 20th day, for the period December 16, 2019 through December 15, 2020.

6.1.3 Meet and Confer. In the 90-day period prior to December 16, 2020, and each subsequent December 16, the parties shall meet and confer in good faith regarding the Management Fee paid to Contractor hereunder. If the parties are unable to reach an agreement concerning the Management Fee before the applicable anniversary date, the Management Fee currently in effect will remain in effect until an agreement is reached, subject to possible retroactive adjustment as may be mutually agreed. Any adjustment in the Management Fee shall be in writing and signed by both parties through a formal amendment to this Agreement.

6.1.4 Fair Market Value. The parties hereby acknowledge that the Management Fee set forth herein was negotiated at arm's length without taking into account the value or volume or referrals between the parties, represents the parties' best estimate of fair market value, and covers Contractor's actual cost to provide the services on a fully loaded basis.

6.2 Invoices; Direct Deposit Account. Invoices for payment shall be submitted in a form approved by Authority. Invoices shall be sent to Authority for review and processing on or before the 1st day and 16th day of each month. Contractor shall establish and maintain a direct deposit account with Authority. Authority shall direct deposit the amount of each approved invoice on or before the 5th day and 20th day of each month.

6.3 Taxpayer Identification. To ensure proper tax reporting of the compensation paid under this Agreement, Contractor shall complete, execute and deliver to Authority an IRS Form W-9, attached hereto and incorporated herein as Exhibit "B," which sets forth the correct taxpayer identification number for Contractor. To the extent required by law, Authority shall report all payments to Contractor on IRS Form 1099 and its state law counterpart.

6.4 Maximum Payable. The maximum payable under this Agreement shall not exceed \$10,236,768 for the period December 16, 2018 through December 15, 2020.

7. Access to Books and Records. Contractor shall make available, upon written request from Authority or KMC, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement, and Contractor's books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of seven (7) years after the termination or expiration of this Agreement. If Contractor is requested to disclose books, documents or records pursuant to this section for any purpose, Contractor shall notify KMC of the nature and

scope of the request, and Contractor shall make available, upon written request of KMC, all such books, documents or records.

8. **Anti-referral Laws.** Nothing in this Agreement, nor any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between Contractor or Authority and KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).

9. **Assignment.** Contractor shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement. Contractor shall not assign any money due or which becomes due to Contractor under this Agreement without the prior written approval of Authority.

10. **Authority to Incur Financial Obligation.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no right, power or authority to bind Authority or KMC to any agreements or undertakings, except as may be lawfully directed or delegated by the Board of Governors.

11. **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

12. **Change in Law.** In the event that a change in state or federal law or regulatory requirement (or the application thereof), any of which renders this Agreement illegal, impossible to perform, or commercially impracticable, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendments(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within 30 days of such negotiation period, this Agreement shall automatically terminate.

13. **Compliance with Rules and Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, rules, regulations and standards of any governmental authority having either mandatory or voluntary jurisdiction over Authority or KMC, including but not limited to The Joint Commission, and with the Bylaws, rules, regulations and policies of Authority and KMC now in effect or hereafter enacted, each of which is made a part of this Agreement and incorporated herein by this reference.

14. **Confidentiality.**

14.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate confidential information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. The foregoing obligations will not restrict either party

from disclosing confidential information of the other party: (i) pursuant to applicable law; (ii) pursuant to the order or requirement of a court, administrative agency, or other governmental body, on condition that the party required to make such a disclosure gives reasonable written notice to the other party to contest such order or requirement; and (iii) on a confidential basis to its legal or financial advisors.

14.2 Trade Secrets. The parties acknowledge that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information, which is confidential and proprietary to the party and that constitute its trade secrets. The parties shall not use any name, symbol, mark, or other proprietary information of the other party except as expressly permitted.

14.3 Patient Information. Contractor shall not disclose, and shall ensure that its employees will not disclose, to any third party, except where permitted or required by law or where such disclosure is expressly approved by Authority in writing, any patient or medical record information regarding KMC patients, and Contractor shall comply, and shall ensure that its employees will comply, with all federal and state laws and regulations, all rules, regulations and policies of Authority and KMC, regarding the confidentiality of such information, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), Subtitle D of the federal HITECH Act ("HITECH Act," 42 U.S.C. § 17921 et seq.), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations," 45 C.F.R. Part 160, et seq.), the Confidentiality of Medical Information Act (Civ. Code, § 56 et seq.), and the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2), as amended from time to time.

14.4 Medical Staff and Committee Records. All records, files, proceedings and related information of Contractor, KMC and the medical staff and its committees pertaining to the evaluation and improvements of the quality of patient care at KMC shall be kept strictly confidential by Contractor. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by Authority, which may be given or withheld in its sole discretion.

14.5 Business Associate Agreement. By signing this Agreement, the parties hereby agree to comply with the HIPAA security and privacy regulations (in current or amended form) regarding the use or disclosure of Protected Health Information ("PHI"). The parties further agree to comply with and execute the Business Associate Agreement set forth in Exhibit "C," attached hereto and incorporated herein by this reference.

14.6 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind ("Documents"), in whatever form or format, assembled, prepared or utilized by Contractor during and in connection with this Agreement shall remain the property of Authority at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to Authority all such

Documents, which have not already been provided to Authority in such form or format, as Authority deems appropriate. Such Documents shall be and will remain the property of Authority without restriction or limitation. Contractor may retain copies of the above-described Documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Authority.

14.7 **Non-disparagement.** Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any email, internet postings, remarks or statements) or verbal assertions, statements or other communications regarding the other party's business or each other which may be in any manner whatsoever defamatory, detrimental or unfavorable to such other party.

15. **Conflict of Interest.** Contractor covenants that it has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. It is understood and agreed that if such a financial interest does exist at the inception of this Agreement, Authority may immediately terminate this Agreement by giving written notice thereof. Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with Authority disclosing Contractor's or such other person's financial interests.

16. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

17. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and Authority acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and Authority acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **Corporate Compliance Program.** Contractor shall comply with Authority's corporate compliance program. Contractor shall cooperate with any corporate compliance audits, reviews and investigations that relate to Contractor and/or any of the services provided by Contractor under this Agreement. Subject to request by Authority, such cooperation shall

include, without limitation, the provision of any and all documents and/or information related to the services provided by Contractor under this Agreement. Contractor and its employees shall participate in compliance training and education as reasonably requested by Authority.

19. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20. **Dispute Resolution.** In the event of any dispute between Contractor and Authority arising out of or related to the validity, interpretation, enforcement or performance of this Agreement, or otherwise arising out of the relationship between the parties or the termination of that relationship, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, such officers shall attempt in good faith to resolve the dispute. If the dispute cannot be resolved within 45 days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be submitted for trial before a privately compensated temporary judge appointed by the Kern County Superior Court pursuant to Article VI, Section 21 of the California Constitution and Rules 3.810 through 3.830 of the California Rules of Court.

21. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the "Federal health care programs") and/or present on the exclusion database of the Office of the Inspector General ("OIG") or the Government Services Administration ("GSA"); (ii) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately upon written notice.

22. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to Authority is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

23. **Governing Law; Venue.** This Agreement, and all transactions contemplated by this Agreement, shall in all respects be governed by, and construed and interpreted in accordance

with, the laws of the state of California without giving effect to any conflicts of law principles of such state that might refer the governance, construction or interpretation of this Agreement to the laws of another jurisdiction. Any dispute between the parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

24. **Litigation Cooperation.** Each party shall reasonably cooperate with the other party in furnishing information, testimony and other assistance in connection with any litigation, audits, proceedings or disputes relating to this Agreement or the services, other than proceedings or disputes between the parties to this Agreement. Such cooperation between the parties shall not operate as a waiver of the attorney-client privilege or the attorney work-product doctrine.

25. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KMC with a copy of such verification (8 U.S.C. § 1324). Contractor agrees to indemnify, defend, and hold harmless Authority, its officers, directors, employees and agents, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

26. **Indemnification and Hold Harmless.** Each party (the "Indemnifying Party") agrees to defend, indemnify, and hold harmless the other party (the "Indemnified Party") and its directors, officers, members, shareholders, partners, employees and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense or claim for injury or damages is caused by or results from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, members, shareholders, partners, employees or agents.

27. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be in fact and law an independent contractor and not an agent or employee of Authority. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Authority under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.

28. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit "D," attached hereto and incorporated herein by this reference.

29. **Liability of Authority.** The liabilities or obligations of Authority with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Authority and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

30. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

31. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Authority and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of Authority and Contractor that any such person or entity, other than Authority or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

32. **Non-appropriation.** Authority reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year. Upon such termination, Authority will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Contractor will be given 30 days' prior written notice in the event that Authority requires such an action.

33. **Non-collusion Covenant.** Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the letting of this Agreement with Authority. Contractor has received from Authority no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

34. **Nondiscrimination.** Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, ancestry, national origin, religion, sex, actual or perceived sexual orientation, marital status, age, pregnancy, medical condition, handicap or other prohibited basis, either directly, indirectly or through contractual or other arrangements.

35. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of Authority. Forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. Authority shall be entitled to invoke any remedy available to Authority under this Agreement or by law or in equity despite said forbearance or indulgence.

36. **Notices.** Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed

received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to Contractor:

Meridian Healthcare Partners, Inc.
3511 Union Avenue
Bakersfield, California 93306
Attn: Its President

Notice to Authority:

Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chairman, Board of Governors

37. **Signature Authority.** Each party represents that they have full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

38. **Sole Agreement.** This Agreement, including all exhibits hereto, contains the entire agreement between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

39. **Survival.** The provisions of sections 7 (Access to Books and Records), 10 (Authority to Incur Financial Obligation), 14 (Confidentiality), 18 (Corporate Compliance Program), 20 (Dispute Resolution), 23 (Governing Law; Venue), 24 (Litigation Cooperation), 26 (Indemnification and Hold Harmless), 27 (Independent Contractor), 28 (Insurance), 29 (Liability of Authority), 36 (Notices), and 41 (Effect of Termination) shall survive termination or expiration of this Agreement.

40. **Termination.**

40.1 **Termination with Mutual Agreement.** The parties may terminate this Agreement upon mutual written consent with notice of not less than 18 months.

40.2 **Termination with Cause.** Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement shall not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of 15 days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within 15 days, then the party allegedly in default will have an additional 30 days in which to remedy the breach as long as such party is

acting in good faith and using diligent efforts to remedy such breach throughout the cure period.

40.3 Immediate Termination. Notwithstanding the foregoing, Authority shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor for any of the following reasons: (i) the failure of Contractor to cure a default within the time allowed in paragraph 40.2; (ii) the unwillingness of CEO to perform all, or substantially all, of the duties of Chief Executive Officer, which failure persists for five (5) business days after written notice to CEO (excluding authorized absences); (iii) the filing for bankruptcy or other creditor protection by Contractor or Contractor ceases to function as an ongoing business; (iv) failure or neglect of CEO to properly and timely perform the duties of Chief Executive Officer as set forth in this Agreement; (v) Contractor engages in acts which confer improper personal benefit upon any employee of Contractor; (vi) Contractor advises Authority or KMC in a manner that is contrary to the public interest or Contractor engages in conduct that is not in the best interest of Authority or KMC; (vii) attempts on the part of Contractor to secure personally any profit in connection with any transaction entered into on behalf of Authority or KMC; (viii) violation by Contractor of any federal, state, or local laws or regulations to which Authority or KMC is subject; (ix) insubordination of CEO or disloyalty by CEO or Contractor, including without limitation, aiding an Authority or KMC competitor; (x) failure of Contractor to cooperate fully in any Authority investigation; (xi) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (xii) negligence or misconduct in the performance of a duty by Contractor, including failure to follow the reasonable directions of the Board of Governors; (xiii) commission of any unlawful or intentional act by CEO or Contractor which would be detrimental to the reputation, character or standing of Authority or KMC; (xiv) conviction of CEO of a felony offense or crime, or plea of "guilty" or "no contest" to a felony offense; (xv) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (xvi) the issuance of a final order of any governmental agency or court that has competent jurisdiction over the parties, which order requires the termination of this Agreement; or (xvii) the loss or threatened loss of KMC's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of Contractor.

40.4 Authority to Terminate. Any action by Authority to terminate this Agreement shall require a simple majority vote of the Board of Governors.

41. Effect of Termination.

41.1 Obligations. Except as otherwise provided in this section, upon expiration or other termination of this Agreement, the parties shall be relieved and released from any further duties and obligations under this Agreement. Notwithstanding the foregoing, each party understands and agrees that termination of this Agreement shall not release or discharge the parties from any obligation, debt or liability, which shall have previously accrued and remains to be performed upon the date of termination.

41.2 Vacate Premises. Upon expiration or earlier termination of this Agreement, Contractor shall immediately vacate KMC, removing at such time any and all personal property of Contractor. Authority may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

41.3 No Interference. Following the expiration or earlier termination of this Agreement, Contractor shall not do anything or cause any person to do anything that might interfere with any efforts by Authority to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between Authority and any provider that may replace Contractor.

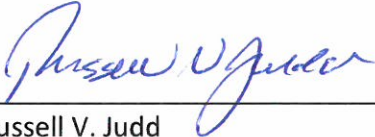
41.4 No Hearing Rights. In the event Authority exercises its right to terminate this Agreement pursuant to section 40, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to Authority or KMC employees.

42. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

[Signatures follow on next page]

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

MERIDIAN HEALTHCARE PARTNERS, INC.

By 
Russell V. Judd
Its President

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Governors

APPROVED AS TO FORM:
LEGAL SERVICES DEPARTMENT


By 
Vice President & General Counsel
Kern County Hospital Authority

EXHIBIT "A"
DESCRIPTION OF SERVICES
Meridian Healthcare Partner, Inc.

CEO will be accountable to the Board of Governors. The general duties and expectations of CEO and the position are as follows:

- Plan, direct and manage the current operations, future growth and program development of KMC while ensuring responsible use of fiscal, human and physical resources
- Provide leadership in the day-to-day operations and administration of KMC, as well as planning and developing policies and programs for the administration and management of KMC
- Represent the interests of KMC and the Authority in the development of public hospital funding for indigent care. Maintain communications with appropriate governmental agencies and hospital industry groups. Keep the Board of Governors apprised of administrative and political landscape regarding public hospital financing. Help develop political strategies that can be supported by the Board of Governors and hospital administration
- Maintain a cooperative and productive relationship with the KMC Medical Staff
- Provide leadership to the Chief Financial Officer in development of financial reporting and controls necessary to meet new public hospital funding policies
- Improve billing, accounting and internal control systems to assure efficient management of hospital funds
- Maintain active involvement in and oversight of the administration of all departments at KMC, including personnel management and internal controls for each of the clinical departments
- Continue to supervise medical quality control to minimize risk and maximize patient outcomes
- Facilitate communication between the Board of Governors, KMC administration, KMC Medical Staff and all other stakeholders
- Develop goals and objectives for KMC, in conjunction with the Board of Governors
- Perform those duties set forth in the Bylaws and in policy statements of the Board of Governors
- Ensure KMC delivers high quality, cost effective care and coordinate the development of services and facilities to fulfill KMC's mission
- Undertake the following based on (i) the financial stability of Authority, (ii) market conditions, or (iii) the request of the Board of Governors:
 - Determine what services are being provided by KMC that are not required to meet legal obligations
 - Prepare a pro forma financial analysis for each department, including profitability by sources of revenue, function and patient source
 - Perform an analysis of functional areas taking into consideration all competitive factors in the market, market growth projections, and sources of reimbursement

- Conduct strategic planning sessions within each department, allowing management and staff the opportunity for input
- Perform population based analysis of health care needs and compare availability of services to those needs
- Identify opportunities for KMC to fulfill the unmet needs both for new services and to increase access to care; this includes the expected reimbursement/profitability of the recommended opportunities
- Evaluate KMC's existing capability and capacity, and project or approximate resource requirements necessary to expand scope of services
- Evaluate impact of expanded services on reimbursement from Medi-Cal and other payers
- Review KMC's sources of funding and identify strategies for coping with the changing market place

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EXHIBIT "B"

IRS FORM W-9

EXHIBIT "C"
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is entered into by and between the Kern County Hospital Authority on behalf of Kern Medical Center ("**Covered Entity**") and Meridian Healthcare Partners, Inc. ("**Business Associate**") (each a "**Party**" and collectively the "**Parties**"), effective as of December 16, 2018 (the "**Effective Date**").

RECITALS

WHEREAS, Covered Entity is a "**Covered Entity**" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, ("**HIPAA**"), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**"), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("**HIPAA Rules**"); and

WHEREAS, Business Associate performs Services for or on behalf of Covered Entity, and in performing said Services, Business Associate creates, receives, maintains, or transmits Protected Health Information ("**PHI**"); and

WHEREAS, the Parties intend to protect the privacy and provide for the security of PHI Disclosed by Covered Entity to Business Associate, or received or created by Business Associate, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (the "**HITECH Act**") and its implementing regulations and guidance issued by the Secretary; and

WHEREAS, the Privacy and Security Rules (defined below) require Covered Entity and Business Associate to enter into a BAA that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 "**Breach**" shall have the meaning given under [45 C.F.R. § 164.402](#).

1.2 **“Breach Notification Rule”** shall mean the Breach Notification for Unsecured Protected Health Information interim final rule at 45 C.F.R. Parts 160 and 164, Subpart D, as may be amended from time to time.

1.3 **“Designated Record Set”** shall have the meaning given such term under [45 C.F.R. § 164.501](#).

1.4 **“Disclose”** and **“Disclosure”** mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other than members of its Workforce, as set forth in [45 C.F.R. § 160.103](#).

1.5 **“Electronic PHI”** or **“e-PHI”** means PHI that is transmitted or maintained in electronic media, as set forth in [45 C.F.R. § 160.103](#).

1.6 **“Protected Health Information”** and **“PHI”** mean any information created, received or maintained by Business Associate on behalf of Covered Entity, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or 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; (b) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (c) shall have the meaning given to such term under the Privacy Rule at [45 C.F.R. § 160.103](#). Protected Health Information includes e-PHI.

1.7 **“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

1.8 **“Security Rule”** shall mean the Security Standards at 45 C.F.R. Parts 160 and 164, Subparts A and C, as may be amended from time to time.

1.9 **“Services”** shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to any service agreement(s) between Covered Entity and Business Associate which may be in effect now or from time to time (the **“Underlying Agreement”**), or, if no such agreements are in effect, then the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in [45 C.F.R. § 160.103](#).

1.10 **“Subcontractor”** shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

1.11 **“Unsecured PHI”** shall have the meaning given to such term under [42 U.S.C. § 17932\(h\)](#), [45 C.F.R. § 164.402](#), and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

1.12 “Use” or “Uses” mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate’s internal operations, as set forth in [45 C.F.R. § 160.103](#).

1.13 “Workforce” shall have the meaning given to such term under [45 C.F.R. § 160.103](#).

Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in HIPAA or the HITECH Act, as applicable.

ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate shall not Use or Disclose PHI other than as permitted or required by any Underlying Agreement, this BAA, or as Required by Law. Business Associate shall not Use or Disclose PHI in any manner that would constitute a violation of the Privacy Rule if so Used or Disclosed by Covered Entity, except that Business Associate may Use or Disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may perform Services, including Data Aggregation for the Health Care Operations purposes of Covered Entity and de-identification of PHI in accordance with 45 C.F.R. § 164.514, if required by any Underlying Agreement or with the advance written permission of Covered Entity.

2.2 Adequate Safeguards of PHI. Business Associate shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than 24 hours days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice

provisions set forth herein. Notwithstanding the foregoing, Business Associate and Covered Entity 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 Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, Use or Disclosure of PHI. Business Associate shall investigate each Security Incident or non-permitted Use or Disclosure of Covered Entity's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI and shall provide a summary of its investigation and risk assessment to Covered Entity. Business Associate shall document and retain records of its investigation of any suspected Breach, including its reports to Covered Entity under this Section 2.3.1. Business Associate shall take prompt corrective action and any action required by applicable state or federal laws and regulations relating to such Security Incident or non-permitted disclosure. If Business Associate or Covered Entity, in its review of this initial report, determines that such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.3.2 below.

2.3.2 Breach of Unsecured PHI. If Business Associate or Covered Entity determines that a reportable Breach of Unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than five (5) calendar days after discovery of the Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under the HIPAA Rules with respect to such Breach. Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall reimburse Covered Entity for its reasonable and actual costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.3.3 Data Breach Notification and Mitigation under Other Laws. In addition to the requirements of Sections 2.3.1 and 2.3.2, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under applicable state security breach notification laws ("State Breach") to notify the individuals who are the subject of the information. Business Associate agrees to: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by a state agency or Attorney General;

(iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency to notify individuals impacted or potentially impacted by a State Breach.

2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this BAA.

2.5 Use of Subcontractors. Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors substantially the same restrictions, conditions, and requirements that apply to Business Associate under this BAA with respect to PHI.

2.6 Access to Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within 15 days of a request by Covered Entity, Business Associate shall make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an Individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524. If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within five (5) days of receipt of a request for access to PHI from an Individual.

2.7 Amendment of Protected Health Information. To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within 15 days of a request by Covered Entity, Business Associate shall amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within five (5) days of receipt of a request for amendment of PHI from an Individual.

2.8 Accounting. Within 30 days of receipt of a request from Covered Entity or an Individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within five (5) days of receipt of a request by an Individual or other requesting party for an accounting of disclosures of PHI from an Individual.

2.9 Delegated Responsibilities. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

2.10 Availability of Internal Practices, Books, and Records to Government. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity promptly available for inspection and copying to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Rules. In addition, Business Associate agrees that Covered Entity shall have the right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

2.11 Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

2.12 Acknowledgement. Business Associate acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, the HITECH Act, and the HIPAA Rules. Business Associate shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

ARTICLE III OBLIGATIONS OF COVERED ENTITY

3.1 Covered Entity's Obligations.

3.1.1 Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

3.1.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

3.1.3 In the event Covered Entity agrees with an Individual to any restrictions on Use or Disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or if Covered Entity determines that it is obligated to accommodate a reasonable request of an Individual to receive

communications of PHI pursuant to 45 C.F.R. § 164.522(b), Covered Entity promptly shall notify Business Associate of the same, as well as any revocation or modification of the same, and Business Associate thereupon shall observe such restriction or accommodation (or revocation or modification, if any, thereof) to the extent applicable to its Use or Disclosure of PHI hereunder, notwithstanding any other provision hereof, except as otherwise required by law.

3.1.4 Covered Entity agrees to obtain any consent or authorization that may be required under HIPAA or any other applicable law and/or regulation prior to furnishing Business Associate with PHI.

3.1.5 Covered Entity shall not request Business Associate to make any Use or Disclosure of PHI that would not be permitted under HIPAA if made by Covered Entity. Covered Entity agrees to fulfill its obligations under this BAA in a timely manner.

ARTICLE IV TERM AND TERMINATION

4.1 Term. Subject to the provisions of Section 4.1, the term of this BAA shall be the term of any Underlying Agreement.

4.2 Termination of Underlying Agreement.

4.2.1 A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Underlying Agreement and shall provide grounds for immediate termination of the Underlying Agreement, any provision in the Underlying Agreement to the contrary notwithstanding.

4.2.2 Covered Entity may terminate the Underlying Agreement, effective immediately, if: (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

4.3 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in any Underlying Agreement, upon Covered Entity's knowledge of a material breach or violation of this BAA by Business Associate, Covered Entity shall either:

4.3.1 Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within 10 business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may terminate this BAA and any Underlying Agreement upon 30 calendar days written notice to Business Associate; or

4.3.2 Upon 30-calendar days' written notice to Business Associate, immediately terminate this BAA and any Underlying Agreement if Covered Entity determines that such breach cannot be cured.

4.4 Disposition of Protected Health Information upon Termination or Expiration.

4.4.1 Upon termination or expiration of this BAA, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe.

4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) 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 set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

**ARTICLE V
MISCELLANEOUS**

5.1 Regulatory References. A reference in this BAA to a section or other part of HIPAA, the HIPAA Rules, or the HITECH Act means, as of any point in time, the section or part as it may be amended or in effect at such time.

5.2 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Rules, or the HITECH Act.

5.3 Relationship to Underlying Agreement Provisions. In the event that a provision of this BAA is contrary to a provision of an Underlying Agreement, the provision of this BAA shall control. Otherwise, this BAA shall be construed under, and in accordance with, the terms of such Underlying Agreement, and shall be considered an amendment of and supplement to such Underlying Agreement.

5.4 Headings. The headings of the paragraphs and sections of this BAA are inserted solely for convenience of reference and are not a part or intended to govern, limit or aid in the construction of any term or provision hereof.

5.5 Equitable Relief. Business Associate understands and acknowledges that any Disclosure or misappropriation of any PHI in violation of this BAA will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further Disclosure or Breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, 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 and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. 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.

5.7 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors or members of its Workforce assisting Business Associate in the performance of its obligations under this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claim of violation of the HIPAA or other applicable laws relating to privacy or security.

5.8 Indemnification. Notwithstanding anything to the contrary which may be contained in any Underlying Agreement, including but not limited to any limitations on liability contained therein, Business Associate hereby agrees to indemnify and hold harmless Covered Entity and its respective officers, directors, managers, members, employees and agents from and against any and all losses, damages, fines, penalties, claims or causes of action and associated expenses (including, without limitation, costs of judgments, settlements, court costs and attorney's fees) resulting from Business Associate's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI or violation of the terms of this BAA, including but not limited to failure of Business Associate to perform its obligations under this BAA, or to comply with HIPAA or applicable state privacy or security law.

5.9 Legal Actions. Promptly, but no later than five (5) business 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.

5.10 Notice of Request or Subpoena for Data. Business Associate agrees to notify Covered Entity promptly, but no later than five (5) business days after Business Associate's receipt of any request or subpoena for PHI or an accounting thereof. Business Associate shall promptly comply with Covered Entity's instructions for responding to any such request or subpoena, unless such Covered Entity instructions would prejudice Business Associate. To the extent that Covered Entity decides to assume responsibility for challenging the validity of such request, Business Associate agrees to reasonably cooperate with Covered Entity in such challenge. The provisions of this Section shall survive the termination of this BAA.

5.11 Requests from Secretary. Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any inquiry by the Secretary concerning any actual or alleged violation of the Privacy Rule or the Security Rule.

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; 24 hours following deposit with a bonded courier or overnight delivery service; or 72 hours following deposit in the U.S. mail as required herein.

Covered Entity's Notice Address:

Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn: Chairman, Board of Governors

Business Associate's Notice Address:

Meridian Healthcare Partners, Inc.
3511 Union Avenue
Bakersfield, California 93306
Attn: Its President

5.13 Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent Consultant 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.

5.14 Survival. To the extent that Business Associate retains PHI, the respective rights and obligations of the Parties set forth in Sections 2.3, 4.4, 5.8, and 5.10 of this BAA shall

survive the termination, expiration, cancellation, or other conclusion of the BAA or any Underlying Agreement.

5.15 Interpretation. Any ambiguity in this BAA shall be interpreted to permit the Parties to comply with HIPAA, the HITECH Act, and the HIPAA Rules.

5.16 Governing Law; Applicable Law and Venue. This BAA shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state. Any dispute between the Parties shall be brought before the Superior Court, County of Kern, California, which shall have jurisdiction over all such claims.

5.17 Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and signed by the Parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other term or condition hereof.

5.18 Assignment and Delegation. Neither this BAA nor any of the rights or duties under this BAA may be assigned or delegated by either Party hereto.

5.19 Disclaimer. Neither Party represents or warrants that compliance by the other Party with this BAA, HIPAA, the HIPAA Rules, or the HITECH Act will be adequate or satisfactory for the other Party's own purposes. Each Party is solely responsible for its own decisions regarding the safeguarding of PHI.

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

5.21 Counterparts. This BAA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on both Parties hereto.

[Signatures follow on next page]

The Parties hereto have executed this BAA as of the Effective Date.

COVERED ENTITY:

The Kern County Hospital Authority on
behalf of Kern Medical Center

BUSINESS ASSOCIATE:

Meridian Healthcare Partners, Inc.

Title: Chairman, Board of Governors

Date: _____

Title: Its President

Date: _____

EXHIBIT "D"

INSURANCE

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless Authority has expressly waived such insurance in writing. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

Authority reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers' Compensation and Employers Liability Insurance:

- (a) Required if Contractor has employees. If Contractor currently has no employees, Contractor's written confirmation of such will be required before execution of this Agreement. If Contractor engages any employees during the term of this Agreement or any extensions thereof, Contractor agrees to obtain the specified Workers' Compensation and Employers Liability insurance.
- (b) Workers' Compensation insurance with statutory limits as required by the California Labor Code.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) Waiver of Subrogation: The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Authority for all work performed by Contractor, its employees, agents and subcontractors.
- (e) Required Evidence of Insurance: Certificate of Insurance.

2. General Liability Insurance:

- (a) Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- (b) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.

- (c) If Contractor has no Owned automobiles, the General Liability policy shall include Non-Owned and Hired Automobile Liability in the amount of \$1,000,000 combined single limit per accident.
- (d) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
- (e) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 6 below for full Additional Insured wording.
- (f) The insurance provided to Authority as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by Authority.
- (g) The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- (h) The policy shall cover inter-insured suits between Authority and Contractor and include a "separation of insureds" or "severability" clause, which treats each insured separately.
- (i) Required Evidence of Insurance: (i) Copy of the additional insured endorsement or policy language granting additional insured status; and (ii) Certificate of Insurance.

3. Automobile Liability Insurance:

- (a) Minimum Limits: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (b) Insurance shall apply to all Owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions thereof.
- (c) Insurance shall include coverage for Non-Owned and Hired autos. (See requirements in section 1(c) above if there is no separate Automobile Liability coverage.)
- (d) Authority shall be named as an additional insured for liability arising out of operations by or on behalf of Contractor in the performance of this Agreement. See section 6 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance (Errors and Omissions):

- (a) Professional Liability Insurance (Errors and Omissions) appropriate to Contractor's profession.

- (b) Minimum Limits: \$1,000,000 per Occurrence or Claim; \$3,000,000 Annual Aggregate. If Contractor maintains higher limits than the specified minimum limits, Authority requires and shall be entitled to coverage for the higher limits maintained by Contractor.
 - (c) Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000, it must be approved in advance by Authority. Contractor is responsible for any deductible or self-insured retention and shall fund it upon Authority's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving Authority.
 - (d) Required Evidence of Coverage: Certificate of Insurance.
5. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.
6. Additional Insured Wording: "**Kern County Hospital Authority, its officers, officials, employees and volunteers**" are to be named as Additional Insureds as per each section where noted above.
7. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
- (a) The Retroactive Date must be shown and must be before the Effective Date of the Agreement or the beginning of contract work.
 - (b) Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract work*.
 - (c) If coverage is canceled or non-renewed, and *not replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of the contract work.
8. Documentation:
- (a) The Certificate of Insurance must include the following reference: "**Agreement for Professional Services.**"
 - (b) All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with Authority for the entire term of this Agreement and any additional periods if specified in sections 1, 2, 3 or 4 above.
 - (c) The name and address for the Certificates of Insurance and Additional Insured endorsements is Kern County Hospital Authority, c/o Kern Medical Center, 1700 Mount Vernon Avenue, Bakersfield, California 93306.

- (d) Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least 10 days before expiration or other termination of the existing policy.
 - (e) Contractor shall provide immediate written notice if: (i) any of the required insurance policies is terminated; (ii) the limits of any of the required policies are reduced; or (iii) the deductible or self-insured retention is increased.
 - (f) Upon written request, certified copies of required insurance policies must be provided to Authority within 30 days.
9. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
10. Primary Coverage: For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Authority, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by Authority, its officers, directors, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
11. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. Authority, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Authority may purchase the required insurance, and without further notice to Contractor, Authority may deduct from sums due to Contractor any premium costs advanced by Authority for such insurance. These remedies shall be in addition to any other remedies available to Authority.

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**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on January 16, 2019, to consider:

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on January 16, 2019, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Vice President & General Counsel Karen S. Barnes and designated staff – Unrepresented Employee: Chief Executive Officer (Government Code Section 54957.6)

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on January 16, 2019, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

- X CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Government Code Section 54956.9(d)(1)) Name of case: Genovenva Robles, et al. v. Kern Medical Center, et al., Kern County Superior Court Case No. BCV-17-102395 TSC –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

Health and Safety Code Section 101855(e)(1)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on January 16, 2019, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

 X Request for Closed Session for the purpose of discussion or taking action on authority trade secrets (Health and Safety Code Section 101855(e)(1)) –

**KERN COUNTY HOSPITAL AUTHORITY
BOARD OF GOVERNORS
PUBLIC STATEMENT REGARDING CLOSED SESSION**

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on January 16, 2019, to consider:

- X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organizations: Committee of Interns and Residents/Service Employees International Union, Local 1957 (Government Code Section 54957.6)