



AGENDA

KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS

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

Regular Meeting
Wednesday, June 22, 2016

11:30 A.M.

BOARD TO RECONVENE

Board Members: Berjis, Bigler, McGauley, McLaughlin, Nilon, 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))

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on May 18, 2016 –
APPROVE

CA

- 4) Proposed approval of Administrative policies for correctional medicine, tumor registry, and information technology services –
APPROVE POLICIES
- 5) Proposed presentation by the Kern Medical Chief Strategy Officer regarding areas of responsibility –
HEAR PRESENTATION; RECEIVE AND FILE
- 6) Proposed approval of media relations and marketing policies –
APPROVE POLICIES

CA

- 7) Proposed Agreement with Hammel, Green and Abrahamson, Inc., an independent contractor, for the development of a master facility plan from July 1, 2016 through June 30, 2017, in an amount not to exceed \$504,120 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 8) Proposed Agreement with Valley Neurosurgery and Neurorestoration Center, a Medical Corporation, an independent contractor, for professional medical services in the Department of Surgery from July 1, 2016 through June 30, 2021, in an annual amount not to exceed \$1,824,085 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 9) Proposed Agreement with S. Sara Yegiyants, M.D., a contract employee, for professional medical services in the Department of Surgery from July 1, 2016 through June 30, 2019, in an annual amount not to exceed \$538,012, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Proposed Agreement with Andrew P. Cassidenti, M.D., a contract employee, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2016 through August 31, 2021, in an annual amount not to exceed \$500,000, plus applicable benefits –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 11) Proposed Agreement with CSS Staffing, LLC dba CSS Consulting Group, an independent contractor, for healthcare supply chain consulting services from July 1, 2016 through June 30, 2017, in an amount not to exceed \$534,320 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 12) Request to establish an interest-bearing fund and budget unit in the County of Kern financial management system for the Kern County Hospital Authority specific to the Kern Health Systems Excess Reserves/Capital –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN CORRESPONDENCE REQUESTING ESTABLISHMENT OF FUND

CA

- 13) Proposed Agreement with the County of Kern for the provision of healthcare services, finance and support, effective July 1, 2016, in the amount of \$22,950,493 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 14) Proposed Agreement Cerner Corporation, an independent contractor, for purchase of the PeopleSoft core financial system from July 1, 2016 through June 30, 2021, in an amount not to exceed \$1,469,289 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

- 15) Proposed presentation by the Kern Medical Vice President of Human Resources regarding areas of responsibility –
HEAR PRESENTATION; RECEIVE AND FILE
- 16) Proposed approval of Human Resources policies –
APPROVE POLICIES
- CA
17) Proposed acceptance of assigned contracts from the County of Kern –
ACCEPT ASSIGNMENT
- CA
18) Proposed Agreement with the County of Kern, as represented by the Administrative Office, Human Resources Division, for the provision of health benefits to Kern County Hospital Authority employees and retirees, effective July 1, 2016 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
19) Proposed application with state of California, Department of Industrial Relations and certification of consent to self-insure for workers' compensation liabilities –
APPROVE; ADOPT RESOLUTION; AUTHORIZE CHAIRMAN TO SIGN
- CA
20) Proposed Resolution providing for authorized volunteers to be employees of Kern County Hospital Authority for purposes of workers' compensation coverage –
APPROVE; ADOPT RESOLUTION
- CA
21) Proposed Agreement with the County of Kern, as represented by the Department of Human Services, for the provision of Medi-Cal eligibility services from July 1, 2016 through October 31, 2018 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN
- CA
22) Proposed Agreement with County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Department of Human Services for the provision of forensic pediatric services from July 1, 2016 through June 30, 2017, in an amount not to exceed \$165,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 23) Proposed Agreement with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department for the provision of correctional medicine services to in-custody inmates and juvenile wards from July 1, 2016 through June 30, 2018, in the amount of \$23,112,537 for Fiscal Year 2016-2017 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 24) Proposed Agreement with Trans-West Security Services, Inc., an independent contractor, for the provision of security services from July 1, 2016 through June 30, 2018, in an amount not to exceed \$2,412,834 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 25) Proposed Agreement with the County of Kern for the provision of a mutual, nonexclusive easement in support of the access, ingress and egress rights granted under the Joint Use Agreement, effective July 1, 2016 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 26) Proposed renewal and binding of insurance coverages for hospital professional liability, general liability and umbrella/excess liability, workers' compensation and employers liability, automobile liability, helipad liability, directors and officers liability, employment practices liability, crime, cyber liability, premises pollution liability, underground storage tank liability, and property from July 1, 2016 through June 30, 2017, in an amount not to exceed \$2,364,822 –
APPROVE

CA

- 27) Proposed Resolution providing for the extension of excess medical professional liability coverage for Kern Medical employed and independent contractor physicians, effective July 1, 2016 –
APPROVE; ADOPT RESOLUTION

CA

- 28) Proposed Resolution providing for the assumption and adoption of the Kern County Pension Plan for Physician Employees –
APPROVE; ADOPT RESOLUTION

CA

- 29) Proposed rescission of Agreement with the County of Kern, as represented by the Office of County Counsel, Risk Management Division, for workers' compensation claims administration services (from May 4, 2016) –
APPROVE

CA

- 30) Proposed Agreement with Tristar Risk Management, an independent contractor, for the provision of claims administration under the Kern County Hospital Authority self-insured retention program, effective July 1, 2016 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

CA

- 31) Proposed Agreement with Script Care, Ltd., an independent contractor, for the provision of third party administrative services related to the 340B drug pricing program from July 1, 2016 through June 30, 2019, with an annual user fee of \$11,000 and projected annual net revenue of \$901,000 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 32) Proposed Agreement with the County of Kern, as represented by Kern County Mental Health, for involuntary care under section 5150 of the Welfare and Institutions Code, inpatient psychiatric services, and reimbursement for Chair of Psychiatry and resident physicians from July 1, 2016 through June 30, 2021, in the amount of \$4,350,000 for Fiscal Year 2016-2017 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 33) Proposed Agreement with the County of Kern, as represented by the Office of County Counsel for the provision of legal services to the Kern County Hospital Authority, effective July 1, 2016 –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 34) Proposed Amendment No. 8 to Agreement (Kern County Agt. #185-2011) with Weatherby Locums, Inc., for temporary physician staffing services, increasing the maximum payable by \$750,000, from \$2,950,000 to \$3,700,000, to cover the term –
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

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

ADJOURN TO CLOSED SESSION

CLOSED SESSION

- 36) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital Authority Chief Executive Officer (Government Code Section 54957) –
- 37) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –
- 38) CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives: Chief Executive Officer Russell V. Judd, and designated staff - Employee organization: Service Employees International Union, Local 521 (Government Code Section 54957.6)
- 39) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Service Employees International Union, Local 521 v. Kern County Hospital Authority, et al., PERB Case No. LA-CE-1084-M –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, JULY 20, 2016, 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.



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, May 18, 2016

11:30 A.M.

BOARD RECONVENED

Directors present: Berjis, Bigler, McGauley, McLaughlin, Nilon

Directors absent: Sistrunk

NOTE: The vote is displayed in bold below each item. For example, Nilon-McLaughlin denotes Director Nilon 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!**

EAST BAKERSFIELD HIGH SCHOOL PRESENTED KERN MEDICAL WITH A PLAQUE AS A SHOW OF APPRECIATION FOR YEARS OF SERVICE TO STUDENT ATHLETES

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))
NO ONE HEARD

ITEMS FOR CONSIDERATION

CA

- 3) Minutes for Kern County Hospital Authority Board of Governors regular meeting on May 04, 2016 –
APPROVED
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk
- 4) Proposed presentation by the Kern Medical Chief Financial Officer regarding areas of responsibility -
HEARD PRESENTATION; RECEIVED AND FILED
Berjis-McGauley: 5 Ayes; 1 Absent - Sistrunk
- 5) Proposed approval of finance, patient financial services, medical records, patient registration and purchasing policies –
APPROVED POLICIES
McLaughlin-McGauley: 5 Ayes; 1 Absent - Sistrunk
- 6) Proposed Kern County Hospital Authority operating and capital budget for Fiscal Year 2016-2017 –
APPROVED; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPROVAL
Nilon-Berjis: 5 Ayes; 1 Absent - Sistrunk

CA

- 7) Response to referral for opinion on the proposed delegation of authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services (from March 30, 2016) –
RECEIVED AND FILED
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 8) Proposed Resolution delegating authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services and proposed appointment of Chief Executive Officer as Purchasing Agent and Agency Designated Representative for labor negotiations –
APPROVED; APPOINTED CHIEF EXECUTIVE OFFICER AS PURCHASING AGENT OF KERN COUNTY HOSPITAL AUTHORITY; APPOINTED CHIEF EXECUTIVE OFFICER AS AGENCY DESIGNATED REPRESENTATIVE FOR LABOR NEGOTIATIONS WITH EMPLOYE ORGANIZATIONS SUBJECT TO DIRECTION FROM THE BOARD OF GOVERNORS; ADOPTED RESOLUTION 2016-009
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk
- 9) Proposed presentation by the Kern Medical Chief Operating Officer regarding areas of responsibility –
HEARD PRESENTATION; RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 1 Absent - Sistrunk
- 10) Proposed approval of ancillary and support services policies –
APPROVED POLICIES
McLaughlin-Nilon: 5 Ayes; 1 Absent - Sistrunk
- 11) Proposed presentation by the Kern Medical Vice President of Administrative Services regarding areas of responsibility –
HEARD PRESENTATION; RECEIVED AND FILED
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 12) Proposed Agreement with County of Kern, AS REPRESENTED BY THE Kern County Sheriff's Office-Coroner Section, for storage and transportation services from July 1, 2016 through June 30, 2018–
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 13) Proposed Transition Services Agreement with the County of Kern for purchase of certain specified transition administrative services from July 1, 2016 through June 30, 2017, and proposed designation of Chief Executive Officer or designee as Authority Contracting Officer –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN; DESIGNATED CHIEF EXECUTIVE OFFICER OR DESIGNEE AS AUTHORITY CONTRACTING OFFICER
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 14) Proposed Agreement with the County of Kern and Kern County Treasurer-Tax Collector for adoption of the County of Kern Deferred Compensation Plan (Plan 1) and the County of Kern Deferred Compensation Plan – Part-time, Seasonal, Temporary Employees (Plan 2), effective July 1, 2016 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 15) Proposed Agreement with the County of Kern, as represented by the Department of Child Support Services, for paternity-related services from July 1, 2016 through June 30, 2021 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 16) Proposed Agreement with the County of Kern, as represented by the Department of Human Services, for professional medical services for children at A. Mariam Jamison Children Center from July 1, 2016 through June 30, 2018 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 17) Proposed Agreement with the County of Kern, as represented by the Kern County Public Health Services Department-Emergency Medical Services Division, for EMS Base Hospital services from July 1, 2016 through June 30, 2019 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 18) Proposed Agreement with the County of Kern, as represented by the Kern County Public Health Services Department and Kern County Sheriff's Department-Probation, for public health and related services from July 1, 2016 through June 30, 2019 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 19) Proposed Interfacility Transfer Agreement with the County of Kern, as represented by the Kern County Public Health Services Department, effective July 1, 2016 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk

CA

- 20) Proposed Agreement with the County of Kern and Civil Service Commission, County of Kern regarding the resolution of appeals pending before the Civil Service Commission, effective July 1, 2016 –
APPROVED; AUTHORIZED CHAIRMAN TO SIGN
Nilon-McGauley: 5 Ayes; 1 Absent - Sistrunk
- 21) Proposed recommendation of nominees to fill one open Director position –
MADE RECOMMENDATION; REFERRED TO KERN COUNTY BOARD OF SUPERVISORS FOR APPOINTMENT
Berjis-McLaughlin: 5 Ayes; 1 Absent - Sistrunk
- 22) Kern County Hospital Authority Chief Executive Officer report –
RECEIVED AND FILED
Berjis-McLaughlin: 5 Ayes; 1 Absent - Sistrunk

ADJOURNED TO CLOSED SESSION

Nilon-McGauley

CLOSED SESSION

- 23) 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
- 24) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital Authority Chief Executive Officer (Government Code Section 54957) –
SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION

Nilon-McGauley

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 23 concerning a 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. 24 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital Authority Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, JUNE 22, 2016 AT 11:30 A.M.

Berjis

/s/ Raquel D. Fore
Authority Board Coordinator

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



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

June 22, 2016

SUBJECT: Proposed approval of Administrative policies for correctional medicine, tumor registry, and information technology services.

Recommended Action: Approve Policies

Summary:

The Chief Executive Officer oversees the areas of Administrative services. Submitted for your approval are policies for these areas:

Administrative – 100 policies
Communication – 57 policies
Correctional Medicine – 52 policies
Information Technology – 32 policies
Juvenile Corrections – 44 policies
Patient Care Services – 11 policies
Tumor Registry – 51 policies



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

June 22, 2016

SUBJECT: Proposed presentation by the Kern Medical Chief Strategy Officer regarding areas of responsibility.

Recommended Action: Hear Presentation; Receive and File

Summary:

The Chief Strategy Officer (CSO) will introduce the roles and responsibilities of the Chief Strategy Officer.



Chief Strategy Officer
&
Master Facilities Plan
Board of Governors
June 22, 2016

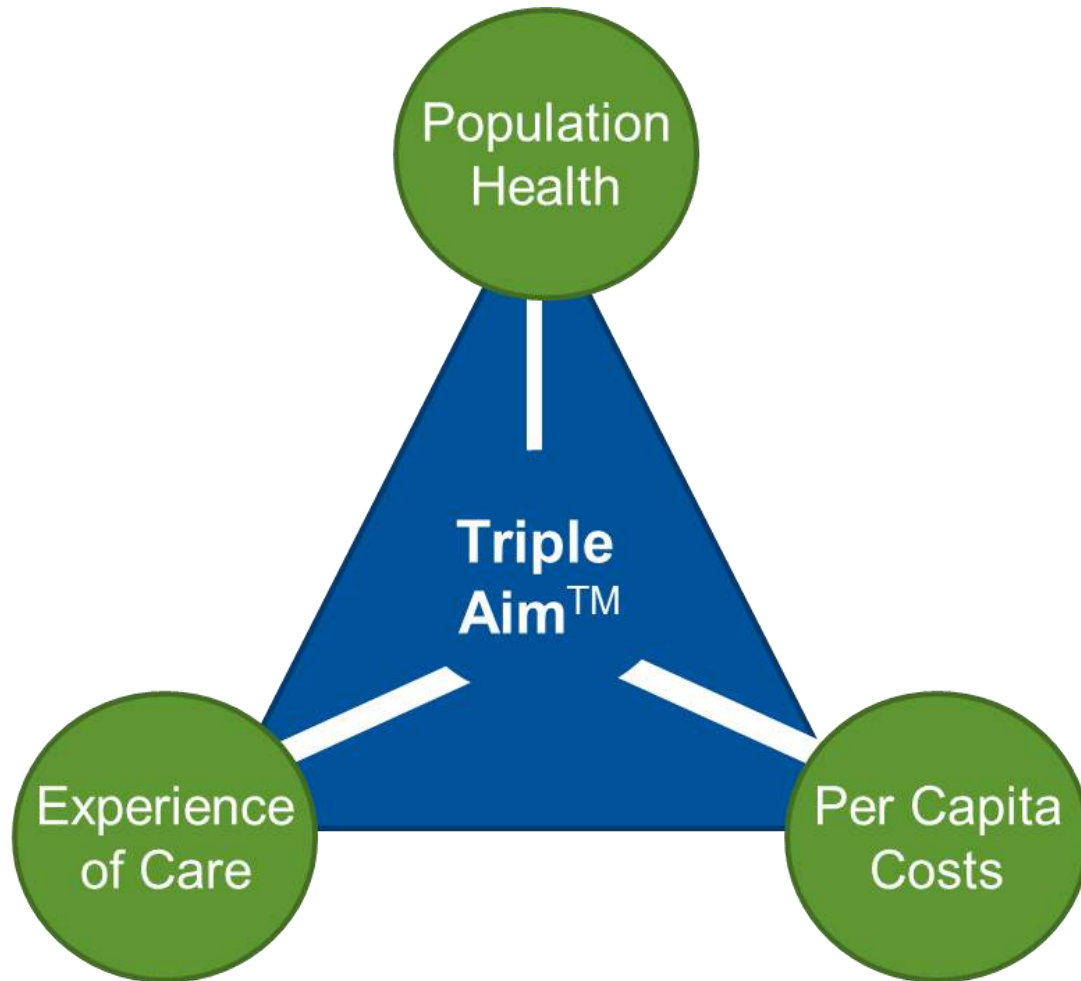
Overview

- Strategic Initiatives
 - Development
 - Implementation
- Physician Enterprise, Contracting, and Recruitment
- Marketing and Communications
 - Request Approval of 2 policies
 - Media Policy
 - Marketing/Fundraising
- Request Approval to Contract with Firm for Master Facilities Plan

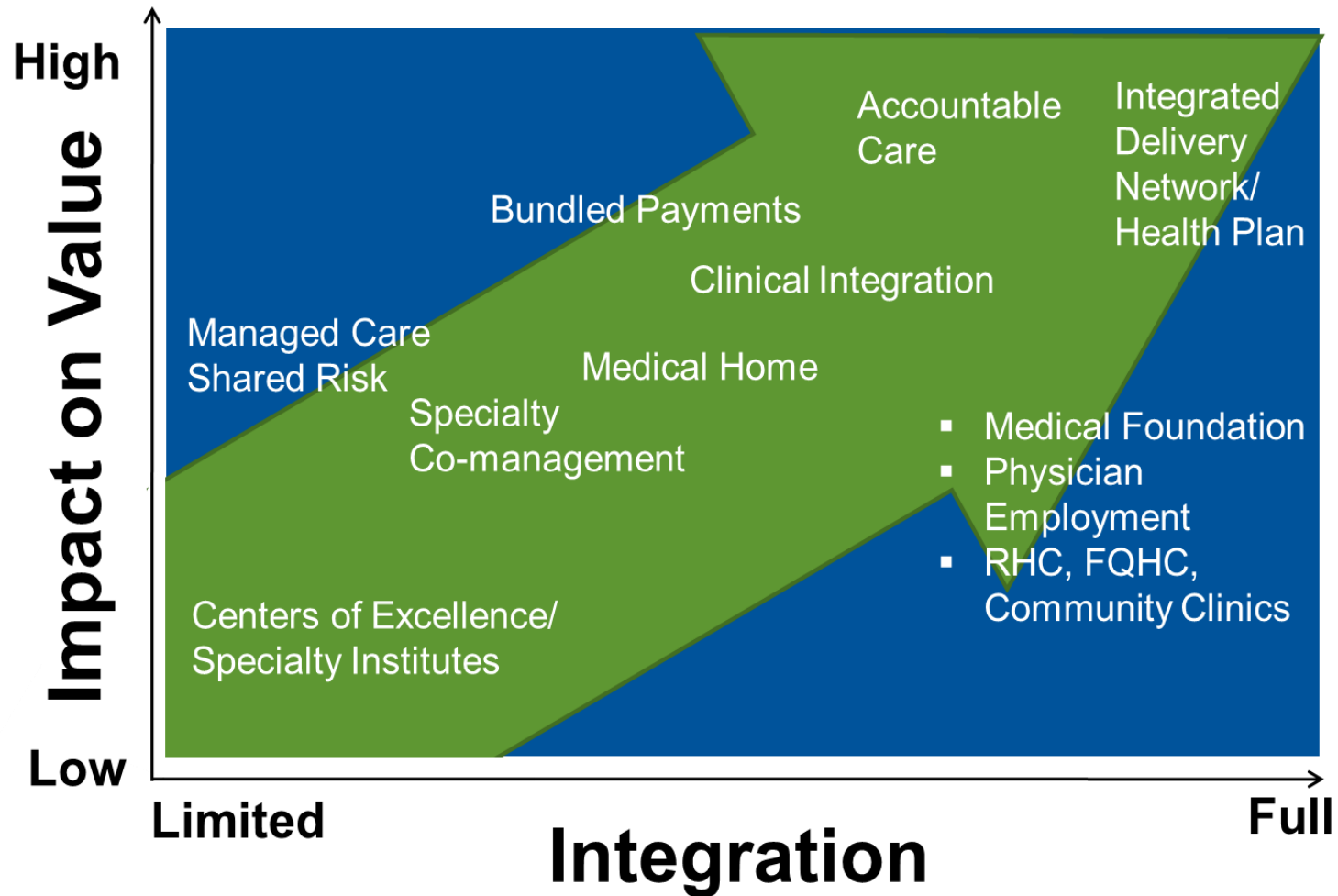
Strategic Planning - What's To Come

- Strategic Plan Development
 - Components
 - Data, Data, Data
 - Process, including Stakeholder Involvement
 - Outcomes
 - Possible Strategic Pillars
 - Continue Positioning for Post Affordable Care Act
 - Academic Medical Center
 - Trauma and Specialty Services
 - Physician Enterprise
 - Infrastructure Development (Finance, IT, Technology)
 - Staff/Employees
 - Quality and Service Excellence

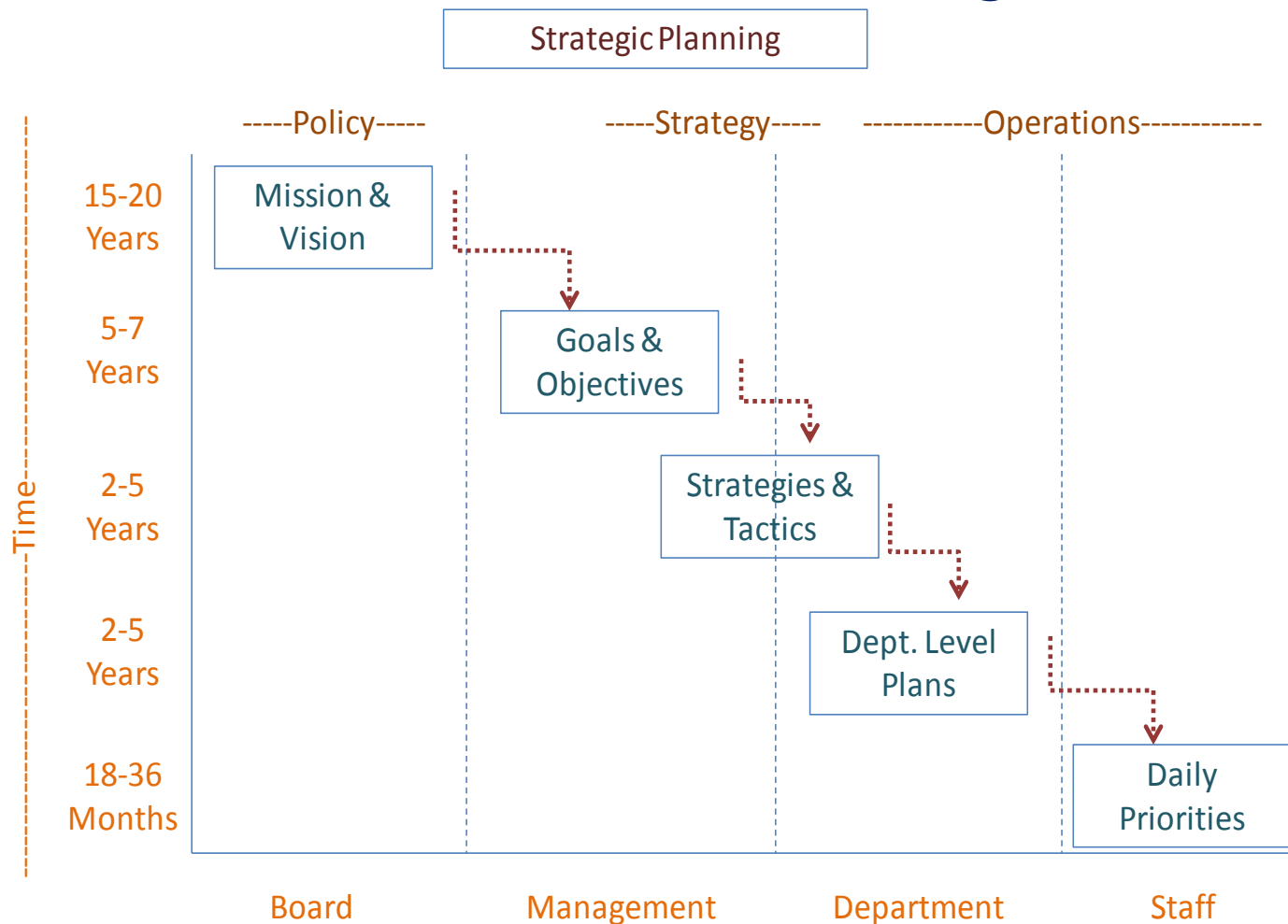
Continue Positioning for Affordable Care Act



Continue Positioning for Affordable Care Act



Aligning Policy, Strategy, and Operations thru Governance and Strategic Planning



Master Facilities Plan

Overview

- Need for a facilities master plan
 - ✓ S.B. 1953 and allowable life of existing hospital (2030)
 - ✓ Length of time to build hospitals in California
 - ✓ Poor condition of Kern Medical buildings
- No discernible master plan exists
- Followed County process and issued RFP
- Strong response from large, national firms
- Presented recommendation to Board of Governors on April 20, 2016
- Seeking authorization to Board of Governors to contract with recommended firm

Master Planning Process

Requires significant staff, physician, and leadership involvement

1. Assessment
 - a. Market and Internal Assessment
 - b. Capacity and Utilization
2. Projecting the Future
 - a. Volume projections
 - b. Key rooms/space by service modality
 - c. Space program (square footage estimates)
 - d. Design options (see Deliverables)
3. Scenario Analysis and Options
4. Final Determinations

Deliverables

- Determine (a) optimize current campus or (b) greenfield site
- Evaluate other outpatient sites
- Market assessment and volume projections
- Space program
- Block diagrams of floor plans
- Site master plan
- Circulation plans
- Stacking diagrams
- Three dimensional views
- Parking analysis
- Re-purposing matrix
- Infrastructure upgrades
- Phased construction schedule
- Cost estimate by phase

Selected RFP Requirements

- California experience in public and academic hospitals
- Analytically driven: market assessment, bed demand, and inpatient/outpatient volume projections
- Five and 15-year planning/phasing scenarios
- Chronological implementation plan
- Cost projections
- Determine strategy to either optimize existing campus or pursue greenfield location plus potential outpatient sites

Respondents

- Nine national firms
- No local firms
- Each firm partnered with a major strategy consultant
- Range of fees from \$500,000 to \$1.1 million
- Proposed project timelines ranged from 5 to 9 months

Recommended Firm

- Hammel, Green and Abrahamson, Inc. (HGA)
- Partnering with strategy consultant ECG
- Six national offices, including three in California
- 690 design professionals on staff
- Over 60 healthcare master planning projects in the last five years. California master planning clients: Lucile Packard Children's Hospital, Kaiser (Baldwin Park, Bellflower, and San Diego), Riverside County, Sutter Roseville, Tenet Garfield, Tri-City Medical Center, UC Davis, Universal Health-Temecula, VA Medical Center San Francisco
- Total proposed fees and reimbursables before negotiation: \$593,620 – through negotiation obtained a 15.1% reduction to \$504,120.

Rationale for Recommended Firm

- California experience in public and academic hospitals
- Strong strategy group involved in volume and financial projections to determine size, location, space programming
- Experienced architects building California healthcare projects
- Pricing

Thank You!!



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

June 22, 2016

SUBJECT: Proposed approval of media relations and marketing policies

Recommended Action: Approve Policies

Summary:

The Chief Strategy Officer oversees the areas of Media and Marketing services. Submitted for your approval are 2 policies for these areas.



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

June 22, 2016

SUBJECT: Proposed Agreement with Hammel, Green, and Abrahamson, Inc. (HGA) to Conduct Master Facilities Planning.

Recommended Action: Approve; Authorize Chairman to sign.

Summary:

The medical center's administration requests the approval from the Board of Governors for the Kern County Hospital Authority to enter into an agreement with HGA to prepare a master facilities plan. The project will commence during the summer and have a duration of approximately six to eight months with a contract term of one (1) year to determine options and plans to optimize the existing campus and facilities for future growth as well as study a potential greenfield site.

The medical center conducted a rigorous selection process following the County of Kern's Request for Proposal process. Selection requirements included:

- California experience in public and academic hospitals
- Analytically driven process conducting a market assessment, bed demand, and inpatient/outpatient volume projections
- Five and 15-year planning/phasing scenarios
- Chronological implementation plan
- Cost projections

Nine national firms submitted proposals. Each responding firm partnered with a major strategy consultant with total fees including reimbursable expenses ranging from \$500,000 to \$1.1 million and project timelines requiring five to nine months.

The recommended firm, HGA, is partnering with the national health care strategy consulting firm, ECG. HGA has 690 design staff across six national offices, including three in California. HGA has conducted over 60 health care master planning projects in the last five years. The firm's master planning clients in California over the last five years are: Lucile Packard Children's Hospital, Kaiser (Baldwin Park, Bellflower, and San Diego), Riverside County, Sutter Roseville, Tenet Garfield, Tri-City Medical Center, UC Davis, Universal Health-Temecula, and the VA Medical Center San Francisco.

HGA has significant California experience in public and academic hospitals and has partnered with a strong, nationally recognized strategy consulting group that will provide volume and financial projections to determine the size, location, and space programming for the master facilities plan.

Kern Medical administration requests the Board of Governors approve the agreement with HGA to prepare a master facilities plan for the medical center. Total proposed fees and reimbursable expenses shall not exceed \$504,120, effective July 1, 2016 through June 30, 2017.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Hammel, Green and Abrahamson, Inc.)**

This Agreement is made and entered into this ____ day of _____, 2016, between the Kern County Hospital Authority, a county hospital authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Hammel, Green and Abrahamson, Inc., a Minnesota corporation (“Contractor”), with offices located at 1918 Main Street, 3rd Floor, Santa Monica, California 90405.

**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) KMC caused to be issued a Request for Proposals for the provision of a KMC master facility plan and Contractor submitted a response thereto, each of which is incorporated herein by this reference; and

(c) Authority requires the assistance of Contractor to develop a comprehensive master facility plan for KMC, as such services are unavailable from Authority resources, and Contractor, by reason of its qualifications and experience for doing the type of work herein contemplated, has agreed to provide such services on the terms and conditions set forth in this Agreement;

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 term of this Agreement shall commence July 1, 2016 (the “Commencement Date”), and shall end June 30, 2017, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **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.

2.2 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.

2.3 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.

2.4 Performance Standard. Contractor shall perform all services 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) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the services 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 the services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority.

2.6 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.

2.7 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of Authority.**

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

3.2 **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 KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 **Fees and Charges.** As consideration for the services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 **Reimbursable Expenses.** Contractor shall be reimbursed for those expenses which are incurred by Contractor in the rendering or performance of services and not incorporated in the fee schedule set forth in Exhibit "B" ("Reimbursable Expenses") in an amount not to exceed \$46,000 over the one-year term of this Agreement. Reimbursable Expenses include, but are not limited to, any data processing or telecommunications charges, photocopying, postage, hotel, travel, living and out-of-pocket expenses related to the provision of services pursuant to this Agreement. Reimbursement of travel expenses will include actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses 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. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within 30 days of receipt and approval of each invoice by KMC.

4.3 **Invoices.** Invoices for payment shall be submitted in a form approved by Authority and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 **Maximum Payable.** The maximum payable under this Agreement including fees and charges and reimbursable expenses shall not exceed \$504,120 over the one-year term of this Agreement.

4.5 **Taxpayer Identification.** To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "C," attached hereto and

incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office (“Comptroller General”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Contractor provided under this Agreement. Contractor further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **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.

7. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all its activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.

8. **Authority to Bind Authority.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no authority to bind Authority to any agreements or undertakings.

9. **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.

10. **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 amendment(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 at the end of such 30-day period.

11. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

12. **Compliance with Law.** Contractor shall observe and comply with all applicable Authority, 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.**

13.1 **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.

13.2 **Trade Secrets.** The parties acknowledges 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 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.

13.3 **Medical Records.** The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 required in 8 USCA section 1324a. Without limiting the generality of the indemnification in section 21, Contractor agrees to indemnify, defend, and hold harmless

Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section 20.

21. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless Authority and Authority's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of the Office of Kern County Counsel and counsel retained by Authority, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives, but only to the extent the same is attributable in whole or in part to Contractor's acts or omissions. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of Authority; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

22. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is 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.

23. **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.

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

25. **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.

26. **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.

27. **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 obtaining 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.

28. **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.

29. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

30. **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.

31. **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:

Hammel, Green and Abrahamson, Inc.
1918 Main Street, 3rd Floor
Santa Monica, California 90405
Attn.: Joey Kragelund

Notice to Authority:

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

32. **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.

33. **Sole Agreement.** This Agreement, including all attachments 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.

34. **Termination.**

34.1 **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 will 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 30 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 30 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.

34.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

34.3 **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) Authority determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (vi) 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; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 34.1.

35. **Effect of Termination.**

35.1 **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 Contractor after the effective date of the termination, and Contractor shall be entitled

to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

35.2 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.

35.3 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.

36. 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.

KERN COUNTY HOSPITAL
AUTHORITY

CONTRACTOR

By _____
Chairman
Board of Governors

By _____
Joey Kragelund
Associate Vice President

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

Agreement.HGA.061516

EXHIBIT “A” Scope of Work

Contractor shall provide Authority with a comprehensive master facility plan based on the following scope of work:

- 1.1 Determine the optimal mix, allocation, and/or preservation and modification of hospital, medical, and outpatient facility resources and amenities, including presenting the most effective layout, configuration, and utilization of facilities and amenities for:
 - a) The preservation and/or modification of existing buildings and internal roadways, inclusive of vehicular and pedestrian circulation systems;
 - b) The incorporation of transportation and roadway needs and alternatives, inclusive of:
 - Automobile, pedestrian, and public transit systems;
 - Roadway connections;
 - Design standards that align with existing and proposed city and county master roadway planning.
 - c) The comprehensive configuration, capacity, and connectivity of operational and central plant/utility needs as they pertain to respective services (water, sewer, power, etc.);
 - d) LEED certification, incorporating the concepts that would enhance the ability of the project to meet respective requirements;
 - e) Alternative approaches or contingencies relative to the creation of an off-campus, principal place of business for the medical center, commensurate with the collective needs of both the physical plant and corresponding patient populations (i.e., considerations for a complete relocation of the primary hospital/hospital authority site);
 - Considerations should include property and land valuation analyses relative to the existing, on-site location, as well as potential off-site locations/developments.
 - Considerations should include growth options, including opportunities for on-site specialty programs such as but not limited to medical education buildings, medical arts buildings, etc.
 - f) The collective impact of seismic regulations as they pertain to Senate Bill (SB) 1953 – Seismic Compliance Program.
- 1.2 The master plan must include, and cohesively integrate, both mid- (5-year) and long-term (15-year) phasing plans/scenarios, as they collectively pertain to:

- a) Phasing strategies and cost estimates, based on preferred phasing, for the development of the master plan;
 - Strategies/estimates must have flexibility to allow portions of the collective scope of phasing to either intermingle, or be completed independently from one another.
 - Respective phasing strategies must be defined and prepared so as to progressively transition into preliminary schematic design, based on available funding.
 - Strategies/estimates must address commensurate options, alternatives, and contingencies relative to overall plan logistics, financing, and state/federal regulatory compliance.
- b) The provision of necessary schematics (maps, charts, graphs, renderings and/or design standards) to be used toward the development of prospective planning and design.
- c) The development of a detailed, chronological work plan and/or timeline to facilitate the successful implementation of the master plan.

1.3 Provide a comprehensive breadth of detailed analyses and informatics relative to market research, correlated assessments (needs, facility/site, operational), feasibility studies, public surveys, and business/cost analyses; at a minimum, these should include, but not be limited to, the following:

- a) A county-wide hospital/health care inventory assessment in order to determine the availability/capacity of existing facilities, that is, an inventory assessment that is comprehensive of spread analyses and/or current/prospective bed needs;
- b) The identification and representation of optimal operational workflow patterns as they collectively correspond with patient, staff, and departmental adjacencies, with a focus on comprehensive implementation within the master plan;
- c) A market study of similarly unique medical facilities (e.g., trauma, NICU, medical education). As the only residency-based/academic Level II Trauma Center within the Kern County region, marketing studies and requirements must collectively consider both the South Central Valley and surrounding regions, where appropriate.
- d) Case studies of comparable facilities, inclusive of corresponding schematic compilations (e.g., illustrations, plans) designed to assist in identifying trends and modern concepts in hospital/hospital authority development;
- e) Business analyses and/or financial assessments relative to:
 - Bed Demand and Other Volume Analyses for all Inpatient and Outpatient Services;
 - Market Analyses;
 - Operation and Management Structures;

- Marketing/Branding Strategies;
- Visioning/Strategic Planning;
- Funding Scenarios;
- Prospective Financial Data.

1.4 Provide a process, mechanism, and/or methodology for ensuring the promotion of transparency, awareness, and/or active participation/involvement of hospital authority stakeholders, which may include, but not be limited to, the following approaches:

- a) On-site, public/private interviews;
- b) Promotional awareness campaigns;
- c) Public forums/symposiums designed to collectively present respective master plan analyses and informatics to various/disparate stakeholder representatives (e.g., medical, legal, public, private, etc.).

**EXHIBIT “B”
Fee Schedule**

Service	Professional Fee
Architectural and Engineering Master Plan	\$ 157,000
Mechanical, Electrical, and Plumbing	\$ 22,500
Strategy and Planning	\$ 231,120
Cost Modeling	\$ 12,500
Civil Engineering/Surveying	\$ 15,000
Real Estate Appraisal	\$ 10,000
Structural Engineering	<u>\$ 10,000</u>
Total Professional Fees	\$458,120

EXHIBIT “C”

IRS FORM W-9

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 such insurance has been expressly waived in writing by Authority. 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 – Master Facility Plan.**"
 - (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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**BOARD OF GOVERNORS
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

June 22, 2016

SUBJECT: Proposed Agreement with Valley Neurosurgery and Neurorestoration Center, a Medical Corporation.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical operates the area's only Trauma Center in the area and requires appropriate neurosurgery coverage for trauma, inpatient ward coverage, and outpatient clinical services. Kern Medical seeks approval from the Board of Governors to contract with Valley Neurosurgery and Neurorestoration Center, a Medical Corporation ("Valley Neurosurgery") to provide neurosurgical services at the hospital.

Valley Neurosurgery consists of five neurosurgeons that are USC faculty. The principal, Joseph Chen, MD, shall relocate to Bakersfield and serve as Chief, Division of Neurosurgery within the Department of Surgery. Valley Neurosurgery provides considerable skill and expertise not readily available in the community.

Compensation consists of weekday coverage, weekend coverage, and back-up call and telemedicine coverage. The proposed agreement shall have a term of five (5) years and effective July 1, 2016 through June 30, 2021. Maximum payable under this Agreement will not exceed \$1,824,085.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Hospital Authority – Valley Neurosurgery)**

This Agreement is made and entered into this ____ day of _____, 2016, between the Kern County Hospital Authority, a county hospital authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Valley Neurosurgery and Neurorestoration Center, A Medical Corporation, a California professional medical corporation (“Contractor”), with its principal place of business located at 309 Grand Avenue, South Pasadena, California 91030.

**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 KMC, a general acute care hospital located at 1700 Mount Vernon Avenue, Bakersfield, California, and affiliated clinics (collectively, the “Premises”), in which is located the Department of Surgery, Division of Neurosurgery (the “Department”); and

(c) Contractor is a California professional medical corporation with medical doctors (collectively, “Group Physicians” or individually, “Group Physician”) who provide services on behalf of Contractor; and

(d) Authority requires the assistance of Contractor to provide professional medical services to patients of KMC and teaching services to resident physicians employed by Authority, as such services are unavailable from Authority resources, and Contractor desires to provide such services on the terms and conditions set forth in this Agreement; and

(e) Contractor has special knowledge, training and experience, and is qualified to render such services;

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 term of this Agreement shall commence July 1, 2016 (the “Effective Date”), and shall end June 30, 2021, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **Specified Services.** Contractor agrees to provide neurological surgery services through Group Physicians at KMC, including but not limited to the services set forth below. Such services may be changed from time to time by agreement of the parties in accordance with the provisions of this Agreement.

2.1.1 **Division Chief.** Contractor shall appoint one or more Group Physicians to serve as Chief, Division of Neurosurgery at KMC. The Division chief shall report to the Chair, Department of Surgery.

2.1.2 **Clinical Responsibilities:** Contractor shall: (i) provide daily coverage for the neurological surgery service; (ii) perform elective neurological surgery procedures a minimum of two (2) full days per week and one (1) half day per weekend; (iii) provide coverage for the neurosurgery clinic two (2) half days per week and one (1) half day per weekend; (iv) provide 24/7 call coverage for the neurological surgery service; (v) provide on-site backup coverage if called to come to the Premises; (vi) provide 24/7 telemedicine coverage for the neurological surgery service; (vii) perform all emergency neurological surgery procedures; (viii) supervise residents and medical students assigned to the neurological surgery service; (ix) supervise procedures performed by residents and mid-level providers; (x) perform therapeutic and diagnostic procedures within the scope of practice for a neurosurgeon; and (xi) assist in the development of and co-direct a skull-based tumor program.

2.1.3 **Teaching.** Contractor and Group Physicians shall provide didactic and Department lectures as mutually agreed upon between Contractor and the Department chair or program director.

2.1.4 **Medical Education; Academic Responsibilities.** Contractor shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) maintain board certification in neurological surgery; and (iii) maintain academic appointment at David Geffen School of Medicine at University of California, Los Angeles, or one or more approved California-based medical schools.

2.1.5 **Committee Assignments.** Contractor and Group Physicians shall: (i) attend Department staff meetings and the annual medical staff meeting; and (ii) participate in medical staff committees as assigned by the president of the medical staff.

2.2 **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.

2.3 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.

2.4 Performance Standard. Contractor shall perform all services 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) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 36; or (d) pursue any and all other remedies at law or in equity.

2.5 Assigned Personnel. Contractor shall assign only competent personnel to perform the Services 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 the services hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from Authority. Group Physicians providing services under this Agreement include, without limitation, Joseph C. Chen, M.D., Charles Y. Liu, M.D., Thomas C. Chen, M.D., Jonathan J. Russin, M.D., and Brian Lee, M.D.

2.6 Qualifications of Group Physicians.

2.6.1 Licensure/Board Certification. Group Physicians shall at all times during the term of this Agreement be either duly licensed physicians and surgeons in the state of California, practicing in the medical specialty of neurosurgery, and certified by or eligible for certification by the American Board of Neurological Surgery.

2.6.2 Medical Staff Status. Each Group Physician shall at all times during the term of this Agreement be a member in good standing of the KMC medical staff with "active" or "courtesy" staff status and hold all clinical privileges on the active or courtesy medical staff appropriate to the discharge of his or her obligations under this Agreement.

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

2.6.4 Training/Experience. Each Group Physician shall have (i) major trauma experience at a level I or II trauma center within the two (2) years prior to the Effective Date, (ii) general neurological surgery experience in spine, neuro-oncology, and trauma, (iii) recent experience with severe trauma cases, (iv) an academic background to include teaching and working in an academic medical center, experience working with other

clinical departments, teaching residents and medical students, participating in hospital committees, and working on pathways and evidence-based guidelines, and (v) ongoing acute care hospital experience.

2.7 Training and Education. Contractor shall provide adequate in-service training and education to appropriate personnel and the KMC medical staff with regard to the use of equipment and the provision of quality anesthesia services to patients of KMC.

2.8 Rights and Duties. The Division chief shall act as the authorized agent for Contractor in all matters relating to the performance of Group Physicians under this Agreement. Contractor shall require Group Physicians to participate in the educational and committee activities of the KMC medical staff. Contractor shall, by contract, obligate Group Physicians to comply fully with all duties, obligations and restrictions imposed upon Contractor under this Agreement.

2.9 Loss or Limitation. Contractor shall notify KMC promptly of any loss, sanction, suspension or material limitations of any Group Physician's license to practice in the state of California, Controlled Substance Registration Certificate issued by the Drug Enforcement Administration, right to participate in the Medicare or Medicaid programs, or specialty qualifications for medical staff membership or clinical privileges.

2.10 Standards of Medical Practice. The standards of medical practice and professional duties of all Group Physicians providing services under this Agreement shall be in accordance with the KMC medical staff bylaws, rules, regulations, and policies, the standards for practice 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.

2.11 Medical Record Documentation. Contractor shall cause a complete medical record to be timely prepared and maintained for each patient seen by a Group Physician providing services under this Agreement. 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 Group Physicians will 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.

2.12 Quality Improvement and Risk Management. Contractor agrees that all Group Physicians shall participate in (i) the quality improvement and risk management programs of KMC and serve on such committees as may be required; (ii) ongoing quality improvement activities, such as audits, which will be conducted annually in the Department in order to evaluate and enhance the quality of patient care; and (iii) risk management activities designed to identify, evaluate and reduce the risk of patient injury associated with care. At a minimum, Contractor shall ensure that the quality improvement program consists of the following integrated components: (i) professional development that provides continuous performance feedback that is benchmarked, evaluated, and rated individually and collectively; (ii) clinical standards that are evidence-based and grounded in industry best practices; (iii) performance improvement that is outcomes-focused and based on quality indicators/metrics with quarterly

reporting of same; and (iv) customer satisfaction that is feedback/survey-driven and objectively and comparatively measured, tracked/trended, and analyzed. The appropriate review mechanism will be applied in accordance with the provisions of the KMC medical staff bylaws, The Joint Commission, and applicable law.

2.13 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.

2.14 Nonexclusive Services. Contractor understands and agrees that Authority will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that Authority shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. **Obligations of Authority.**

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

3.2 Space. KMC shall furnish for the use of Contractor such space and facilities as may be deemed necessary by KMC for the proper operation and conduct of the Department. KMC shall, 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. Neither Contractor nor Group Physicians shall use such space or equipment for other business or personal use.

3.3 Use Limitations on Space. The use of any part of the space occupied by the Department for the general or private practice of medicine is prohibited. Contractor shall use the items furnished under this Agreement only for the performance of services required by this Agreement. This Agreement shall not be construed to be a lease to Contractor or any Group Physician of any portion of the Premises, and insofar as Contractor or Group Physicians may use a portion of said Premises, Contractor and Group Physicians do so as licensees only, and Authority and KMC shall, at all times, have full and free access to the same.

3.4 Equipment. KMC shall furnish for the use of the Department such equipment as is deemed necessary by KMC for the proper operation and conduct of the Department consistent with community standards. KMC 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.

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

3.6 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 KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. Payment for Services.

4.1 Compensation. As consideration for the services provided by Contractor hereunder, Authority will pay Contractor in accordance with the fee schedule set forth in this paragraph 4.1. All services are payable in arrears.

4.1.1 Weekday Coverage.¹ Authority will pay Contractor a per diem rate of \$4,785 per 24-hour day for weekday coverage.

4.1.2 Weekend Coverage.² Authority will pay Contractor a per diem rate of \$4,000 per 24-hour day for weekend coverage.

4.1.3 Backup Call and Telemedicine Coverage. Authority will pay Contractor a per diem rate of \$548 per 24-hour day for backup call and telemedicine coverage.

4.2 Compensation All-inclusive. The compensation paid to Contractor is inclusive of all expenses, including without limitation, lodging, mileage reimbursement, car rental, meals, and incidental expenses.

4.3 Limitations on Compensation. Except as expressly stated herein, neither Contractor nor Group Physicians shall receive any benefits from Authority, including without limitation, health benefits, sick leave, vacation, holidays, deferred compensation or retirement.

4.4 Invoices. Invoices for payment shall be submitted in a form approved by KMC and list each service performed. Invoices and receipts shall be sent to KMC for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.5 Maximum Payable. The maximum payable under this Agreement will not exceed \$1,824,085 per year, with total compensation not to exceed \$9,120,425 over the five-year term of this Agreement.

¹ Weekday coverage is defined as Monday, 7:00 a.m. through Friday, 7:00 a.m.

² Weekend coverage is defined as Friday, 7:00 a.m. through Monday, 7:00 a.m.

4.6 **Taxpayer Identification.** To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit “A,” attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

4.7 **Professional Fee Billing.** KMC shall have the exclusive right to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by Contractor to KMC patients during the term of this Agreement. All professional fees generated by Contractor for services rendered to KMC patients at KMC or a KMC location during the term of this Agreement, including both cash collections and accounts receivable, will be the sole and exclusive property of KMC, whether received by KMC or by Contractor and whether received during the term of this Agreement or anytime thereafter. Contractor 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.

4.8 **Managed Care Organizations.** For and on behalf of Contractor, including Group Physicians, Authority shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations (collectively “Managed Care Organizations”). Contractor shall provide the same quality of care to patients from Managed Care Organizations as is provided to other KMC patients. Upon request from Authority or KMC, Contractor shall execute Managed Care Organization documents as “provider” if deemed necessary or advisable by Authority. Contractor shall not contract with any Managed Care Organization without Authority’s prior written consent in each instance.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services (“Secretary”) or the Comptroller General of the United States General Accounting Office (“Comptroller General”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Contractor provided under this Agreement. Contractor further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Anti-referral Laws.** Contractor acknowledges that it is subject to certain federal and state laws governing the referral of patients, which are in effect during the term of this Agreement. These laws include (i) prohibitions on payments for referral or to induce the referral of patients, and (ii) the referral of patients by a physician for certain designated health care services to an entity with which the physician (or his or her immediate family) has a financial

relationship (Cal. Business and Professions Code sections 650 et seq.; Cal. Labor Code sections 139.3 and 139.31; section 1128B (b) of the Social Security Act; and section 1877 of the Social Security Act). The parties expressly agree that nothing contained in this Agreement shall require either the referral of any patients to, or order of any goods or services from Contractor or KMC. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party shall 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).

7. **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.

8. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to Authority accurate books and records relative to all its activities under this Agreement. Contractor shall permit Authority to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Authority herein.

9. **Authority to Bind Authority.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no authority to bind Authority to any agreements or undertakings.

10. **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.

11. **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 amendment(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 at the end of such 30-day period.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

13. **Compliance with Law.** Contractor 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.

14. **Compliance Program.** Contractor acknowledges that KMC has implemented a compliance program for the purpose of ensuring adherence to applicable federal and state laws, regulations and other standards. Contractor agrees that in the course of performance of its duties described herein that it shall act, and cause its employees to act, in conformance with the policies set forth therein. KMC shall make available such information relating to its compliance program as is appropriate to assist Contractor in adhering to the policies set forth in the compliance program. Contractor and its employees shall participate in compliance training and education as reasonably requested by KMC.

15. **Confidentiality.**

15.1 **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.

15.2 **Trade Secrets.** The parties acknowledges 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 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.

15.3 **Medical Records.** The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

15.4 **Medical Staff and Committee Records.** All records, files, proceedings and related information of Group Physicians, 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 and Group Physicians. Neither Contractor nor Group Physicians shall

voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by KMC, which may be given or withheld in the sole discretion of KMC.

15.5 **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 or Group Physicians 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.

15.6 **Non-disparagement.** Each party agrees that it shall not make or cause to be made, any written (including, but not limited to, any emails, 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. Each party agrees that these non-disparagement covenants shall survive the termination of this Agreement.

16. **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.

17. **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.

18. **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.

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. **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.

21. **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.

22. **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 required in 8 USCA section 1324a. Contractor agrees to indemnify, defend, and hold harmless Authority, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor’s failure to comply with this section 22.

23. **Indemnification and Hold Harmless.** Authority shall assume liability for and indemnify and hold Contractor and Group Physicians harmless from any and all claims, losses, expenses, costs, actions, settlements, attorneys’ fees and judgments incurred by Contractor or Group Physicians or for which Contractor or Group Physicians becomes liable, arising out of or related to professional services rendered or which a third party alleges should have been rendered by Contractor or Group Physicians pursuant to this Agreement. Authority’s obligation under this paragraph shall extend from the Effective Date and shall survive termination or expiration of this Agreement to include all claims that allegedly arise out of professional services Contractor or Group Physicians 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 KMC 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 Contractor or Group Physicians harmless for any conduct or misconduct found to be intentional, willful, grossly negligent, or criminal.

24. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is 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.
25. **Informal Dispute Resolution.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.
26. **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 "B," attached hereto and incorporated herein by this reference.
27. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.
28. **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.
29. **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.
30. **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 obtaining 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.
31. **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.

32. **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.

33. **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:

Valley Neurosurgery and Neurorestoration
Center, A Medical Corporation
309 Grand Avenue
South Pasadena, California 91030
Attn.: Its President

Notice to Authority:

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

34. **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.

35. **Sole Agreement.** This Agreement, including all attachments 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.

36. **Termination.**

36.1 **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 will 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 30 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 30 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.

36.2 Termination without Cause. Either party may terminate this Agreement, without cause, upon 120 days' prior written notice to the other party.

36.3 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) Authority determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to Authority or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against Authority or KMC; (vi) 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; or (vii) the failure of Contractor to cure a default within the time allowed in paragraph 37.1.

37. **Effect of Termination.**

37.1 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 Contractor after the effective date of the termination, and Contractor shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

37.2 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.

37.3 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.

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

38. **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.

39. **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.

KERN COUNTY HOSPITAL
AUTHORITY

Valley Neurosurgery and Neurorestoration
Center, A Medical Corporation

By _____
Chairman
Board of Governors

By _____
Joseph Chen, M.D.
Its President

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

Agreement.Chen.060816

EXHIBIT "A"
IRS FORM W-9

EXHIBIT “B” 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 such insurance has been expressly waived in writing by Authority. 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 5 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 5 for full Additional Insured wording.
- (e) Required Evidence of Insurance: Certificate of Insurance.

4. Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A;VII.

5. 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.

6. 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.

7. 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 or 3 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.

8. Policy Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. 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.

[Intentionally left blank]



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

June 22, 2016

SUBJECT: Proposed Agreement with Sara Yegiants, MD.

Recommended Action: Approve; Authorize Chairman to sign.

Summary:

Kern Medical requests approval to contract with Sara Yegiants, MD to provide plastic, reconstructive, and hand surgical services in the Department of Surgery. Dr. Yegiants has been a full-time employed faculty member at Kern Medical since 2013. The three-year term of the agreement shall be effective July 1, 2016 through June 30, 2019.

Fiscal Impact is \$538,012, plus applicable benefits, maximum payable will not exceed \$1,614,036 over the three (3) year term of this Agreement.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – S. Sara Yegiyants, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2016, between the Kern County Hospital Authority, a county hospital authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and S. Sara Yegiyants, 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;

(d) Physician is currently employed by the County of Kern in the position of “Faculty Physician,” with an initial hire date of September 9, 2013; and

(e) Pursuant to the Kern County Hospital Authority Act (Health & Saf. Code, § 101852 et seq.), the California Legislature authorized the County of Kern to establish Authority and to transfer the ownership, control, management, and operation of KMC to Authority; and

(f) On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that adds Chapter 2.170 to Title 2 of the Ordinance Code of the County of Kern (“Ordinance”) concerning the creation of Authority. The Ordinance was effective on November 6, 2015; and

(g) Health and Safety Code section 101853.1(d)(2) requires Authority to provide the same level of employee benefits to its employees for a period of 24 months after the effective date of the transfer of control of KMC to Authority, which is currently expected to be July 1, 2016; and

(h) Each party expressly understands and agrees that Resolution No. 2012-125 dated May 29, 2012, which heretofore constitutes the complete agreement concerning Physician’s employment with the County of Kern, is superseded by this Agreement as of the Commencement Date;

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 July 1, 2016 (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 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.

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. **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 Surgery in surgery-general with subspecialty certification by the American Board of Plastic Surgery in plastic surgery-general and surgery of the hand-subspecialty, and maintain such certifications 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 her obligations under this Agreement.

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 Organizations. For and on behalf of Physician, Authority shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations (collectively “Managed Care Organizations”). Physician shall provide the same quality of care to patients from Managed Care Organizations as is provided to other KMC patients. Upon request from Authority or KMC, Physician shall execute Managed Care Organization documents as “provider” if deemed necessary or advisable by Authority. Physician shall not contract with any Managed Care Organization without Authority’s prior written consent in each instance.

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 she shall not enter into any other physician employment contract 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 her 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 40 hours per week, and will be compensated with cash and other value as described below in this paragraph 5.1 ("Annual Salary").

5.1.1 Base Salary. Authority shall pay Physician an Annual Salary comprised of the following: (i) a base salary for teaching and administrative services based on the actual number of documented hours for assigned teaching and administrative duties multiplied by the current Medical Group Management Association ("MGMA") Physician Compensation and Production Survey academic compensation rate of pay per hour; and (ii) payment for care of KMC patients using the current MGMA Physician Compensation and Production Survey. KMC has chosen to use the full time physician compensation with more than one year in the specialty for all physicians section. This section is divided into four categories: 25th percentile, median, 75th percentile and 90th percentile. A conversion factor will be established by taking each category and dividing the physician compensation in that category by the worked relative value unit ("Worked RVU") in that category. Physician will be compensated for each Worked RVU by multiplying the Worked RVU by the lowest conversion factor for each KMC patient ("RVU Effort").

5.1.2 Salary Adjustment. KMC will establish an estimate ("Estimate") of Physician's RVU Effort using Physician's RVU Effort for the immediately preceding 12-

month period annualized. The Estimate will be divided by the number of Authority payroll periods in a calendar year in order to calculate the amount of RVU Effort to be paid to Physician each payroll period (the "Paycheck Amount"). Within 30 days after the end of each quarter, KMC will calculate the RVU Effort for such immediately preceding quarter, and adjust the payment for RVU Effort accordingly (the "Actual Amount"). If the Estimate is lower than the Actual Amount, then such difference shall be paid to Physician within 30 days after such calculation has been completed, or as of the effective date of any termination of this Agreement, whichever occurs sooner. If the Estimate exceeds the Actual Amount, then Physician shall pay such difference to KMC: (i) in a lump sum within 30 days after such calculation has been completed; or (ii) through a reduction in the Paycheck Amount during the next quarter; or (iii) in a lump sum as of the effective date of any termination of this Agreement, whichever occurs sooner. The Estimate shall be reestablished as of each Employment Year. **Physician hereby expressly grants to KMC the right to offset any amounts owed to KMC against any payment to be made to Physician by KMC pursuant to this paragraph if Physician fails to pay such excess to KMC.**

5.1.3 Time Logs. Physician shall, on a monthly basis on or before the fifth (5th) day of each calendar month during the Term of this Agreement, submit to KMC a written time log in the form attached hereto and incorporated herein as Exhibit "C," detailing to KMC's satisfaction the date, time, actual number of hours, and description of activities related to assigned teaching and administrative duties during the immediately preceding calendar month.

5.1.4 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.

5.2 Call Coverage. Authority shall pay Physician for call coverage as follows: (i) Physician shall be paid a fixed fee amount of \$750 per 24-hour day for weekend call coverage that exceeds one in four weekends; and (ii) Physician shall be paid a fixed fee amount of \$750 per 24-hour day for weekday call coverage that exceeds one in four weekdays.

5.3 Limitations on Compensation. Authority shall exclude from payment for care of KMC patients any Worked RVU that is not reimbursed by Medicare or Medi-Cal, unless authorized in advance by KMC.

5.4 Exception to RVU Compensation. Authority will exclude from payment for care of KMC patients all elective cosmetic procedures, as such procedures are excluded from third party payer reimbursement. Physician shall be paid a percentage of the cash collections for these procedures as follows: (i) Physician shall receive 80% of cash collections for office-/clinic-based cosmetic procedures; (ii) Physician shall receive 90% of cash collections for office/clinic injectables; and (iii) Physician shall receive 80% of cash collections for elective cosmetic procedures performed in the outpatient surgery center. All payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

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 \$1,614,036 over the three-year Initial Term of this Agreement.

6. Benefits Package.

6.1 Retirement. Physician shall continue to participate in the Kern County Hospital Authority Pension 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 continue to 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'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, she shall be entitled to an equivalent period of time off at a later date.

6.4 Vacation. Physician shall retain her vacation leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, 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 retain her sick leave credit balance, if any, as of the Commencement Date. Effective with the Commencement Date, 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 she 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 Pension 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 she 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 she 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 **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 her 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 Bind Authority.** It is understood that Physician, in her performance of any and all duties under this Agreement, has no authority to bind Authority or KMC 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 she receives in the course of her 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.

14. **Conflict of Interest.** Physician covenants that she has no interest and that she 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 her 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: S. Sara Yegiyants, M.D.
1836 Kent Drive
Bakersfield, California 93306

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 120 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; or (xv) 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.

KERN COUNTY HOSPITAL
AUTHORITY

PHYSICIAN

By _____
Chairman
Board of Governors

By _____
S. Sara Yegiyants, M.D.

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

Agreement.Yegiyants.061616

EXHIBIT “A”
Job Description
S. Sara Yegiyants, M.D.

Position Description: Reports to Chair, Department of Surgery and Chief, Division of Plastic Surgery; serves as full-time faculty member in the Department; provides no fewer than 80 hours per pay period of service; works collaboratively with clinic and surgery staff as well as hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

Essential Functions:

1. Clinical Responsibilities and Assignments:
 - Provide service and improve efficiency for plastic, reconstructive, and hand surgical cases
 - Provide faculty service for hand, plastic, and maxillofacial trauma; round and follow-up as appropriate on patients admitted to KMC
 - Supervise Physician Assistant activity and competence
 - Operating Room – minimum of one (1) day per week
 - KMC, Stockdale Highway, Truxtun Avenue, or other designated clinic sites – minimum of two (2) half-day clinics per week
 - Call coverage – one (1) day per week and one (1) weekend per month

2. Administrative Responsibilities:
 - Participate in clinical and administrative integration efforts across KMC as appropriate for plastic, reconstructive, and hand surgery ensuring proper program planning, resource allocation, analysis, communication and assessment
 - Gather data through best practices and collaborate with other members of the Department and Division 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 and Division chief in developing monitoring tools to measure financial, access, quality, and satisfaction outcomes
 - Attend and actively participate in assigned Medical Staff and hospital committees
 - 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 plastic surgery 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

Employment Standards:

One (1) year of post-residency experience in plastic surgery

AND

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

AND

Certification by the American Board of Surgery in surgery-general with subspecialty certification by the American Board of Plastic Surgery in plastic surgery-general and surgery of the hand-subspecialty

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

[Intentionally left blank]

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

| [See 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

Date

EXHIBIT "C"
TIME LOG FORM

[See attached]

TIME LOG FORM

Physician Name

Signature / Date

Department

Month / Year of Service

Total Hours / Month

Services Provided (please list specific activity performed)

Date

Hours

1. Medical Staff CME Activities

2. Hospital Staff Education and Training

3. Clinical Supervision

4. Quality Improvement Activities (committees, case review, etc.)

5. Administration Activities

6. Community Education

7. Medical Management Activities

8. Compliance Activities

9. Other Services



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

June 22, 2016

SUBJECT: Proposed Agreement with Andrew P. Cassidenti, MD.

Recommended Action: Approve; Authorize Chairman to sign.

Summary:

Kern Medical requests approval to contract with Andrew P. Cassidenti, MD. Dr. Cassidenti joined the medical staff at Kern Medical two years ago as an independent contractor and has provided professional urogynecological services in the Department of Obstetrics and Gynecology. Dr. Cassidenti is the area's only fellowship trained urogynecologist and is currently on the faculty at USC Keck School of Medicine. Dr. Cassidenti currently practices in Orange County but will relocate to Bakersfield and join the faculty at Kern Medical on a full-time basis effective September 1, 2016 through August 31, 2021.

Dr. Cassidenti has made considerable contributions to date in the Department of Obstetrics and Gynecology in academic teaching and as the area's only fellowship trained urogynecologist solely dedicated to urogynecology.

Fiscal Impact is \$500,000, plus applicable benefits, with the maximum payable over the five (5) year term of this Agreement \$2,500,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
CONTRACT EMPLOYEE
(Kern County Hospital Authority – Andrew P. Cassidenti, M.D.)**

This Agreement is made and entered into this ____ day of _____, 2016, between the Kern County Hospital Authority, a county hospital authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Andrew P. Cassidenti, 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 Obstetrics and Gynecology 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;

(d) Authority currently contracts with Physician as an independent contractor for the provision of professional medical services in the Department and teaching services to resident physicians employed by Authority (Kern County Agt. #778-2014, dated October 13, 2014, as amended and assigned), for the period November 1, 2014 through October 31, 2016; and

(e) Each party expressly understands and agrees that Kern County Agt. #778-2014 is superseded by this Agreement as of the Commencement Date;

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 five (5) years, commencing as of September 1, 2016 (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 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.

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.

4.3.2 Board Certification. Physician shall be board certified by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general with subspecialty certification by the American Board of Obstetrics and Gynecology in female pelvic medicine and reconstructive surgery, 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.

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 Organizations. For and on behalf of Physician, Authority shall have the sole and exclusive right and authority to enter into contractual relationships with HMOs, IPAs, PPOs, PHOs, employer groups, provider networks and other managed care organizations (collectively “Managed Care Organizations”). Physician shall provide the same quality of care to patients from Managed Care Organizations as is provided to other KMC patients. Upon request from Authority or KMC, Physician shall execute Managed Care Organization documents as “provider” if deemed necessary or advisable by Authority. Physician shall not contract with any Managed Care Organization without Authority’s prior written consent in each instance.

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 40 hours per week, 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 \$411,000 per year, to be paid as follows: Physician shall be paid \$15,753.76 biweekly not to exceed \$411,000 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 75th percentile 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.

5.2 **Incentive Compensation.** Within 30 days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the Worked RVU for all professional services provided by Physician. Physician shall receive \$53.32 per Worked RVU for each Worked RVU in excess of the MGMA 75th percentile level, less all applicable federal and state taxes and withholdings, per Employment Year.

5.3 **Starting Bonus.**

5.3.1 **Bonus.** Physician shall receive a starting bonus in the amount of \$15,000, less all applicable federal and state taxes and withholdings, payable within 10 business days of the Commencement Date. Physician shall forfeit the starting bonus if he fails to report to work on the Commencement Date.

5.3.2 **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 \$15,000 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.

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

5.4 Retention Bonus.

5.4.1 Bonus. Physician shall be paid an annual retention bonus in the amount of \$15,000, less all applicable federal and state taxes and withholdings, payable within 30 days of the end of each Employment Year. If the conditions for Physician to receive the retention bonus are met, the retention bonus would become payable to Physician on October 1, 2017, and each October 1 thereafter.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever during an Employment Year in which a retention bonus is paid, Physician will repay to Authority an amount equal to \$15,000 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 him for any amounts in respect of the obligation to repay the retention 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, intellectual property developed or work on similar development projects prior to the Commencement Date, and industry consulting, which includes honoraria, cadaver labs, and professional speaking, expert witness, and teaching fees), 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 Quality Bonus. Upon satisfaction of the relevant criteria set forth below and subject to the other terms and conditions set forth in this Agreement, in addition to the Annual Salary set forth in paragraph 5.1, Physician shall be eligible to receive a quality bonus based on the following measures:

5.6.1 Quality/Safety Measure(s). Physician shall be eligible to receive a quality bonus an amount not to \$12,500 each Employment Year if Physician achieves certain quality/safety measure(s). Measures shall be determined annually. Measures shall be calculated within 60 days of the end of each fiscal year ending June 30. The first quality bonus, if any, shall be paid for the 12 months ending June 30, 2017. If multiple measures are used (i.e., more than one measure annually), the annual bonus amount of \$12,500 shall be divided by the total number of measures and the prorated amount paid if the target metric is achieved.

5.6.2 Patient Satisfaction Measure. Within 45 days following June 30, 2017, KMC will calculate the composite "Communication with Doctors" patient satisfaction measure for the quarterly period ending June 30, 2017. Authority shall pay Physician a fixed fee in the amount of \$12,500, less all applicable federal and state taxes and withholdings, if a composite score of at least 87.8% is achieved for the quarterly period ending June 30, 2017.

5.6.3 Criteria for Payment. Physician understands and agrees that he must remain actively employed by Authority and in compliance with Authority policies and directives concerning job performance and conduct as of each payout date in order to earn and receive the quality bonus payment. All quality bonus payments made by Authority to Physician shall be subject to all applicable federal and state taxes and withholding requirements.

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$2,500,000 over the five-year Initial Term of this Agreement.

6. **Benefits Package.**

6.1 Retirement. Physician shall participate in the Kern County Hospital Authority Pension 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.

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 of \$197.59 per hour. 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 Pension 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 \$7,500, 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 \$125 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.

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 \$1,500 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$6,000. **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.**

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 Bind Authority.** It is understood that Physician, in his performance of any and all duties under this Agreement, has no authority to bind Authority or KMC 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.
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:	Andrew P. Cassidenti, M.D. 43 Laguna Woods Drive Laguna Niguel, California 92677
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Notice to Authority:	Kern Medical Center 1700 Mount Vernon Avenue Bakersfield, California 93306 Attn.: Chief Executive Officer
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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 120 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; or (xv) 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.

KERN COUNTY HOSPITAL
AUTHORITY

PHYSICIAN

By _____
Chairman
Board of Governors

By _____
Andrew P. Cassidenti, M.D.

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Chief Deputy

Agreement.Cassidenti.060616

EXHIBIT “A”
Job Description
Andrew P. Cassidenti, M.D.

The Department provides professional, comprehensive and safe clinical coverage for day-to-day operations, timely completion of therapeutic and diagnostic procedures, direct patient care, scholarly research and resident education. Key duties center upon providing high quality, timely, and cost effective patient care. Physician will provide services, as assigned by the Department chair, as follows:

Position Description: Reports to Chair, Department of Obstetrics and Gynecology; serves as a full-time faculty member in the Department; provides no fewer than 80 hours per pay period of service.

Essential Functions:

1. **Clinical Responsibilities.** Physician shall: (i) supervise residents while on service; (ii) provide services in the outpatient clinics; (iii) provide medical, surgical and gynecological services; (iv) supervise procedures performed by residents and mid-levels while on service; (v) perform therapeutic and diagnostic procedures within the scope of practice for an urogynecologist while on service; (vi) coordinate with faculty schedules and activities to provide service and improve efficiency for clinical activities in the Department; and (vii) conduct inpatient urogynecologic rounds.
2. **Medical Education; Academic Responsibilities.** Physician shall: (i) provide clinical mentoring to and evaluation of residents and medical students; (ii) establish and maintain academic appointment at David Geffen School of Medicine at University of California, Los Angeles or other approved academic medical center; and (iii) serve as a mentor to OB/GYN residents who desire to conduct research or other scholarly activity; (iv) demonstrate active involvement in continuing OB/GYN education; (v) demonstrate active involvement in presentations, publications, and other scholarly activity at local, regional and national scientific societies in accordance with RRC program requirements; (vi) participate in development of Department curriculum; (vii) attend and participate in the Department didactic sessions as assigned; (viii) deliver assigned lectures to the OB/GYN residents; (ix) participate in morning report, morbidity and mortality conference, board review, and Journal Club; (x) participate in bedside and clinic teaching of residents and medical students; and (xi) participate in bedside and clinic teaching of residents and medical students.
3. **Administrative Responsibilities.** Physician shall: (i) assist in clinical and administrative integration efforts across KMC as appropriate for the Department assisting with proper program planning, physician recruitment and faculty development, resource allocation, analysis, communication and assessment; (ii) 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; (iii) support the Department chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes for the Department; (iv) participate in the preparation, monitoring, review, and performance of

clinical activity in the Department; (v) participate in the quality improvement and risk management activities, including peer review and quality control functions as assigned to services in the Department; (vi) complete medical records in a timely fashion and work to improve the quality, accuracy, and completeness of documentation; (vii) 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; (viii) follow and comply with the Medical Staff bylaws, rules, regulations, and policies and Authority and KMC policies and procedures; (ix) attend department staff meetings and the annual medical staff meeting; (x) attend and actively participate in assigned Medical Staff and hospital committees; (xi) participate in medical staff committees as assigned by the president of the medical staff; and (xii) participate in other clinical, academic, and administrative activities as assigned by the Department chair.

Employment Standards:

Completion of an accredited residency program in obstetrics and gynecology; three (3) years of post-residency fellowship in urogynecology; one (1) year of post-residency experience in obstetrics and gynecology

AND

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

AND

Certification by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general with subspecialty certification by the American Board of Obstetrics and Gynecology in female pelvic medicine and reconstructive surgery

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

[Intentionally left blank]

EXHIBIT "B"
AUTHORIZATION TO RELEASE INFORMATION

| [See 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

Date



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

June 22, 2016

SUBJECT: Proposed Agreement with CSS Staffing, LLC dba CSS Consulting Group

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern County Hospital Authority requires the assistance of CSS Staffing LLC to provide healthcare supply chain consulting services. KCHA has a need to implement programs for procurement automation, supply cost management, and revenue improvement (supply charging) commensurate with its conversion to the Hospital Authority status. A full description of Services can be found in Exhibit "A" of the Agreement.

The term of this Agreement shall commence July 1, 2016 through June 30, 2017. The maximum payable under this Agreement will not exceed \$534,320 over the one (1) year term of this Agreement.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – CSS Staffing LLC)**

This Agreement is made and entered into this ____ day of _____ 2016, between the Kern County Hospital Authority, a county hospital authority (“KCHA”), which owns and operates Kern Medical Center (“KMC”), and CCS Staffing, LLC doing business as CSS Consulting Group, (“Contractor”), with its principle place of business located at 320 Arden Avenue, #108, Glendale, CA 91203.

**I.
RECITALS**

(a) KCHA 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) KCHA requires the assistance of Contractor to provide healthcare supply chain consulting services to KMC, as such services are unavailable from KCHA resources; and

(d) Contractor, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement;

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 term of this Agreement shall commence July 1, 2016 (the “Effective Date”), and shall end June 30, 2017, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **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.

2.2 **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 KCHA nor does Contractor represent a person or firm with an interest adverse to KCHA 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.

2.3 Standard of Care. KCHA 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 KCHA shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services 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 KCHA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KCHA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KCHA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) pursue any and all other remedies at law or in equity.

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

2.6 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 KCHA 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 KCHA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish KCHA with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that KCHA will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that KCHA shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of KCHA.

3.1 KCHA Designee. KCHA will designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 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 KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 **Fees and Charges.** As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 **Travel Reimbursement.** Contractor will be reimbursed for all approved travel expenses, which approval will not be unreasonably withheld, incurred by Contractor on behalf of KCHA in an amount not to exceed \$49,250 over the one (1) year term of this Agreement. Reimbursement of travel expenses will include actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses 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 KCHA. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within 30 days of receipt and approval of each invoice by KMC.

4.3 **Invoices.** Invoices for payment shall be submitted in a form approved by KCHA and list each service performed. Invoices and receipts shall be sent to KCHA for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.4 **Maximum Payable.** The maximum payable under this Agreement will not exceed \$534,320 over the one (1) year term of this Agreement.

4.5 **Taxpayer Identification.** To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "C," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Contractor provided under this Agreement. Contractor further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **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 KCHA.

7. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to KCHA accurate books and records relative to all its activities under this Agreement. Contractor shall permit KCHA to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon KCHA herein.
8. **Authority to Bind KCHA.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no authority to bind KCHA to any agreements or undertakings.
9. **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.
10. **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 at the end of such 30-day period.
11. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.
12. **Compliance with Law.** Contractor shall observe and comply with all applicable county, 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. **Compliance Program.** During the term of this Agreement, Contractor shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for Contractor's assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Contractor's assigned personnel who violate Contractor's policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with Contractor.

Contractor's assigned personnel shall demonstrate the existence of an internal compliance program or plan.

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 acknowledges 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 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 Medical Records. If applicable, the parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14.4 Protected Health Information. Contractor and KCHA recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of KCHA or KMC (as defined by the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum, attached as Exhibit "D" and incorporated herein by this reference. In the event of a conflict between Exhibit "D" and any other confidentiality provision of this Agreement, Exhibit "D" shall control.

14.5 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 or Contractor's assigned personnel during and in connection with this Agreement shall remain the property of KCHA at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KCHA all such Documents, which have not already been provided to KCHA in such form or format as KCHA deems appropriate. Such Documents shall be and will remain the property of KCHA 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 KCHA.

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, KCHA may immediately terminate this Agreement by giving written notice thereof.

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 KCHA 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 KCHA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **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.

19. **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.

20. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to KCHA 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.

21. **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 required in 8 USCA section 1324a, if requested by KCHA. Without limiting the generality of the indemnification

in section 21, Contractor agrees to indemnify, defend, and hold harmless KCHA, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

22. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by KCHA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

23. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of KCHA. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to KCHA 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.

24. **Insurance.** Contractor, in order to protect KCHA and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Contractor shall not perform any work under this Agreement until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Insurance Tracking Services, Inc. ("ITS"). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Contractor shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Contractor shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Contractor shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Contractor or KCHA, as an additional insured.

a. Workers' Compensation and Employers Liability Insurance Requirement: In the event Contractor has employees who may perform any services pursuant to this Agreement, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Contractor shall require any subcontractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered by the insurance afforded by Contractor. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Contractor shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered. Contractor shall maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. Liability Insurance Requirements:

(1) Contractor shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Agreement. The Commercial General Liability Insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Contractor shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement, with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence.

(c) Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

(2) The Commercial General Liability and Automobile Liability Insurance required in this subparagraph b. shall include an endorsement naming KCHA and KCHA's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms that provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to KCHA and must be approved by the KCHA Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, Contractor, at Contractor's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the Effective Date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. The above stated insurance coverages required to be maintained by Contractor shall be maintained until the completion of all of Contractor's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Contractor must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after 10 days' prior written notice in the case of non-payment of premiums, or 30 days' prior written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the KCHA Risk Manager.

e. If Contractor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Contractor shall provide coverage equivalent to the insurance coverages and endorsements required above. KCHA will not accept such coverage unless KCHA determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Contractor is equivalent to the above-required coverages.

f. All insurance afforded by Contractor pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by KCHA. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against KCHA.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Contractor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude KCHA from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by Contractor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Contractor, and KCHA, at its sole option, may terminate this Agreement immediately.

25. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the

parties in interest at the time of the modification.

26. **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 KCHA 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 KCHA and Contractor that any such person or entity, other than KCHA or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

27. **Non-appropriation.** KCHA 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, KCHA 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 KCHA requires such an action.

28. **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 obtaining of this Agreement with KCHA. Contractor has received from KCHA no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

29. **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.

30. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

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

32. **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: CSS Consulting Group
320 Arden Avenue, #108
Glendale, CA 91203
Attn: Principal

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

33. **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.

34. **Sole Agreement.** This Agreement, including all attachments 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.

35. **Termination.**

35.1 **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 will 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 30 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 30 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.

35.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

35.3 **Immediate Termination.** Notwithstanding the foregoing, KCHA shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) KCHA determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against KCHA or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which KCHA or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to KCHA or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against KCHA or KMC; (vi) 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; or (vii) the failure of Contractor to cure a default within the time allowed in section 35.1.

36. **Effect of Termination.**

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

36.2 **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. KCHA may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

36.3 **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 KCHA to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between KCHA and any provider that may replace Contractor.

37. **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 to Follow]

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

KERN COUNTY HOSPITAL AUTHORITY

CSS STAFFING, LLC dba
CSS CONSULTING GROUP

By _____
Chairman
Board of Governors

By  _____
Scott A. Frost
Principal

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Andrew Cantu
Chief Financial Officer

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By  _____
Deputy

EXHIBIT “A”
Description of Services

Improvement Programs

KCHA has need to implement programs for procurement automation, supply cost management, and revenue improvement (supply charging) commensurate with its conversion to Hospital Authority status.

- **Procurement Automation:** Presently the hospital uses the HBOC STAR system for financial management and some (limited) purchasing activities. Most purchasing activity occurs in a manual fashion or is provided by the County Purchasing department.

The goal is to activate the HBOC STAR Purchasing system for all Procurement activities, for use for the intervening period, a year or more, until migration to a more current Enterprise Resource Planning (ERP) system can be accomplished. This will require remediation and testing of primary data bases (Item, Vendor, Cost and other codes), cycle testing, financial report validation, and end user training. It is a complex task and will require a number of changes to existing processes and methods. For example, current expense reporting occurs at the time of invoice processing; once STAR is activated, expense recognition will occur at the time of receipt of goods. Significant testing will be required to assure timing of reporting and costing are accurate for financial management purposes.

The benefits of this move are multi-faceted, and include greatly improved productivity for both Purchasing and Accounts Payable departments, improved data and effectiveness for price and product contracting, and a performance focus shift from transactions to cost and vendor management. The work that will be required for activation of the STAR system will be preparatory for the migration to any subsequent ERP and therefore shall not be wasted for a short term improvement.

HBOC-STAR is a stable but “dated” system that is presently owned by KCHA. For the most part it has never been used for transaction processing, as the hospital has been required to utilize County Purchasing for most transactions. With the transition to ownership by KCHA, the support of County Purchasing will be removed and so it is necessary to activate the STAR system.

Commensurate with this effort will be software upgrade(s) to currently maintained versions as well as some hardware improvements associated with the software updates. These updates and upgrades will be addressed as capital projects separately.

- **Supply Cost Management:** Supply Spending has been assessed at the medical center and a total cost reduction opportunity of \$4 million (annually) has been identified. This will be achieved via a combination of better contract alignment via the Group Purchasing Organization (GPO), improved contracting for products not addressed via the GPO (such as implants, office supplies, etc.), and improved utilization of products by end users (right product for right use).

KCHA spends over \$45 million annually on supplies, with additional spending on purchased services and minor equipment. Supply spending includes pharmaceuticals, medical and surgical supplies, non-medical supplies, and miscellaneous items. Managing pricing for the tens of thousands of items obtained from hundreds of vendors requires diligent contract administration for the products “covered” by GPO agreements. In addition to a re-enrollment effort with the current GPO, alternative contracting groups will be evaluated. Preliminary reviews suggest as much as a 15% reduction is available for most of the products covered by GPO contracts via these techniques.

Quite a few products are not well addressed by GPO contracts, including surgical implants, office supplies, and other items. Initial benchmarking for these products suggests savings of as much as 30% can be achieved via improved contracting for these items.

Product utilization is presently addressed when new products are requested by an end user. As part of this work supply utilization across broad swaths of products will be evaluated for least cost solutions, with review and approval by key clinical and user personnel and managers.

This work will include the following.

- Review of GPO relationship including bidding and contract negotiation or renegotiation as deemed most appropriate for KCHA
 - Enrollment or enrollment management in new or incumbent GPO for best price tier and product for intended use
 - End user enfranchisement and bidding/contract negotiation for products of significance not well addressed by GPO agreements
 - New agreement negotiation and implementation where appropriate
 - Coordination of new product and product conversion introductions as necessary
- Patient Supply Charging: Supplies are currently charged to patient bills in selected circumstances only, such as in areas like Surgery. Systems for gathering and billing supplies will be implemented with a high degree of automation, both to avoid excessive labor costs and also to assure compliance with the multiple regulations that govern this area.

Key pieces of this effort shall include the following.

- Identification of charge systems that are compatible with current, and to the extent possible, legacy data systems
- Categorization of supply items that are suitable for patient charging
- Development of charging procedures that are consistent with State and Federal regulations regarding supply and procedure charging
- Quality measure development such as lost charge reconciliation
- Assistance with charge description master modification for new and additional charges

EXHIBIT "B" Fee Schedule

Fees for improvement services post transition.

STAR Activation

	Rate	Finalize Current Practice Review	Existing Database Evaluation	Current Reporting and Interface Documentation	Activation Plan	Total Hours	Total Fees
Principal	\$425	16	16	16	16	64	\$27,200
Manager	\$285	80	40	80	80	280	\$79,800
Consultant	\$225	40	40	24		104	\$23,400
Analyst	\$125	24	40	60		124	\$15,500
							<u>\$145,900</u>

Supply Cost Reduction

	Rate	Additional Data Gathering	Expanded Constituent Interviews	Competitive Bidding	Preliminary Analysis	Contract Negotiation	Analysis	Final Contracting	Contract Implementation	Total Hours	Total Fees
Principal	\$425	16	40	40	24	80	24	40	16	280	\$119,000
Manager	\$285	40	40	40				40	40	200	\$57,000
Consultant	\$225		40	60	40	40	40	16		236	\$53,100
Analyst	\$125	80		60	40	40	40	40	80	380	\$47,500
											<u>\$276,600</u>

Patient Charging

	Rate	Current System Requirements	Chargeable Item Identification	Data Entry and Operational Definitions	Cart Labeling and Design	Procedure Finalization and Staff Training	Charge Reconciliation and Quality Measures	Total Hours	Total Fees
Principal	\$425	16	8	8	8	8	8	56	\$23,800
Manager	\$285	40	20	40	40	8	24	172	\$49,020
Consultant	\$225			20		40		60	\$13,500
Analyst	\$125	80	20	24	40		40	204	\$25,500
									<u>\$111,820</u>

EXHIBIT "C"

IRS FORM W-9

EXHIBIT "D"
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 CSS Staffing, LLC dba CSS Consulting Group ("**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:

DEFINITIONS

"**Breach**" shall have the meaning given under 45 C.F.R. § 164.402.

"**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.

"**Designated Record Set**" shall have the meaning given such term under 45 C.F.R. § 164.501.

"**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.

“**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.

“**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.

“**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.

“**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.

“**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.

“**Subcontractor**” shall have the meaning given to such term under 45 C.F.R. § 160.103.

“**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.

“**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.

“**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.

OBLIGATIONS OF BUSINESS ASSOCIATE

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.

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.

Reporting Non-Permitted Use or Disclosure.

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 twenty-four (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.

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.

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.

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.

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.

Access to Protected Health Information. To the extent that Business Associate maintains 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.

Amendment of Protected Health Information. To the extent that Business Associate maintains 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.

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.

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.

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.

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.

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.

OBLIGATIONS OF COVERED ENTITY

Covered Entity's Obligations.

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.

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.

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.

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.

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.

TERM AND TERMINATION

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

Termination of Underlying Agreement.

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.

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.

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:

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

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.

Disposition of Protected Health Information Upon Termination or Expiration.

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.

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.

MISCELLANEOUS

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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:

CCS Consulting Group
320 Arden Avenue, #108
Glendale, CA 91203
Attn: Principal

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

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.

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

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 of Kern County, California, which shall have jurisdiction over all such claims.

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.

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.

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.

Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures, and records, as may be necessary

for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA.

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:

Kern County Hospital Authority on behalf of
Kern Medical Center

BUSINESS ASSOCIATE:

CSS Staffing, LLC dba CSS Consulting Group

Title: _____
Date: _____

Title: _____
Date: _____

[Handwritten Signature]
Principal
6/2/16



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

June 22, 2016

SUBJECT: Request to establish an interest-bearing Fund and budget unit in the County of Kern financial management system for the Kern County Hospital Authority specific to the Kern Health Systems Excess Reserves/Capital

Recommended Action: Approve; Authorize Chairman to sign correspondence requesting establishment of fund.

Summary:

Proposed approval to establish an interest-bearing fund in the County Financial Management System.

The financial activity of Kern Medical is currently recorded in the County's Financial Management System (FMS) under an enterprise fund as well as in the Hospital's financial system. It is anticipated that the Hospital Authority will continue to use FMS or a transition period in order to facilitate the processing of payroll, payment of vendor claims and banking services through the Treasury pool. In order to ensure that the Kern County Hospital Authority financial activity after the transfer is properly recorded in FMS, it is necessary to maintain an interest-bearing fund specific to KHS Excess Reserves/Capital - Kern County Hospital Authority. The County Auditor-Controller-County Clerk requires this Board authorization prior to establishing the fund.



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern for the provision of healthcare services, finance and support.

Recommended Action: Approve; Authorize Chairman to sign.

Proposed Agreement with the County of Kern for the provision of healthcare services, finance and support, effective July 1, 2016, in the amount of \$22,950,493.

This Agreement includes:

- Maintenance and Provision of Health Care Services
- Access to County General Purpose Funds and Local Revenue Funds
- Approval Rights of the County
- Financial Reporting; Financial Covenants
- Participation in County Treasury
- Financial Support
- Additional Indebtedness
- Assumed Liabilities
- Allocation of Debt Service
- Jeopardy to Tax Exempt Status
- Assumption of Additional Liability
- Annual Contributions to Fund KCERA and OPEB Liabilities
- County Guarantee
- Deed of Trust
- Nonliability of County
- Indemnification
- Dispute Resolution
- Insurance
- Term and Termination
- General Information

AGREEMENT FOR HEALTH CARE SERVICES, FINANCE AND SUPPORT

**BY AND BETWEEN
THE COUNTY OF KERN
AND
KERN COUNTY HOSPITAL AUTHORITY**

July 1, 2016

TABLE OF CONTENTS

	Page
1. Maintenance and Provision of Health Care Services.....	1
2. Access to County General Purpose Funds and Local Revenue Funds	4
3. Approval Rights of the County	6
4. Financial Reporting; Financial Covenants.....	7
5. Participation in County Treasury	8
6. Financial Support	11
7. Additional Indebtedness.....	11
8. Assumed Liabilities	12
9. Allocation of Debt Service.....	13
10. Jeopardy to Tax Exempt Status.....	14
11. Assumption of Additional Liability.....	15
12. Annual Contributions to Fund KCERA and OPEB Liabilities.....	15
13. County Guarantee	16
14. Deed of Trust	16
15. Nonliability of County	16
16. Indemnification	16
17. Dispute Resolution.....	19
18. Insurance	20
19. [Reserved.]	24
20. Term and Termination	24
21. General	24

This AGREEMENT FOR HEALTHCARE SERVICES, FINANCE AND SUPPORT is entered into by and between the County of Kern (the "County") and the Kern County Hospital Authority (the "Authority") as of July 1, 2016.

WHEREAS, the County enacted Ordinance A-356 on October 6, 2015 which established the Authority and authorized the transfer of certain health facilities and services from the County to the Authority subject to certain terms and conditions (the "Enabling Ordinance");

WHEREAS, the County and the Authority are parties to a certain Master Contract for the Transfer of Health Facilities dated June 8, 2016 (the "Master Contract"), providing, among other things, for the transfer of the Kern Medical Center (the "Medical Center") to the Authority;

WHEREAS, the Master Contract contemplates certain financial relationships between the parties, including: (i) the County's financial support of the Authority in the form of loans and/or grants; (ii) the Authority's assumption of certain liabilities of the County, which liabilities the County incurred in connection with prior operations of the Medical Center; (iii) the continued provision of certain health care services to residents of the County; (iv) the Authority's participation in the County Treasury; and (v) the County's consent for the Authority to participate in and receive, and otherwise access, certain County general purpose funds and local revenue fund amounts identified or earmarked for health care services to the indigent, including Medi-Cal beneficiaries and uninsured patients, of the type to be provided by the Authority, all as shall be set forth in a separate agreement between them;

WHEREAS, the County and the Authority now wish to enter into this Agreement for the purpose above set forth;

WHEREAS, capitalized terms used in this Agreement but not defined herein shall have the meaning ascribed to them in the Master Contract;

NOW, THEREFORE, in consideration of the covenants and agreements of the parties in the Master Contract and pursuant thereto, and in further consideration of the covenants and agreements of the parties in this Agreement, the County and the Authority hereby agree as follows:

1. Maintenance and Provision of Health Care Services.

a. The Authority shall provide medical care services to all residents of the County to the extent of its service capability in a manner that ensures that the transfer of ownership, maintenance, control, management, and operation of the Health Facilities to the Authority will constitute an ongoing material benefit to the County and its residents. In doing so, the Authority shall, at a minimum:

- i. operate and maintain the Health Facilities consistent with the mission and purpose set forth in Section 2.170.040 of the Enabling Ordinance;
- ii. maintain and follow policies and procedures in accordance with the then-current policies and standards of the Board of Supervisors for medical

services rendered through Kern Medical Center, including the standards and procedures for determining the ability of persons to pay and collection of payments for such medical services (collectively, the "County Medical Care Services Policies"). The current County Medical Care Services Policies are attached as Schedule 1a. The Authority acknowledges that the County may, by resolution of the Board of Supervisors, amend its policies and standards for medical services, *provided* that prior to publication of any proposal to amend such policies and standards, the County shall provide notice to the Authority of the amendments being considered and, if requested by the Authority, the County shall meet and confer with the Authority to consider any input the Authority may have, including whether, and the extent to which, the Authority's ability to satisfy its obligations under this Agreement would be adversely affected. In the event of any such amendments, the Authority shall revise its policies and procedures to be consistent with the amended County policies and standards; and

iii. not take any action to completely eliminate the graduate medical education program, or the provision of trauma services, obstetrical services or inpatient psychiatric services at the Medical Center, without the approval of the Board of Supervisors.

b. In the event the Authority does not have through its operations the capacity or scope of services required to provide directly services sufficient to meet the requirements established by of the Board of Supervisors, the Authority may contract with one or more other providers to provide such services. The Authority may contract with other providers to provide such services if it determines doing so is more cost-effective than providing such services directly.

c. The Authority shall maintain administrative, service, and financial records regarding the medical services it provides to residents of the County under the County Medical Care Services Policies, including, without limitation, the costs of providing such services and the records of ability to pay determinations. The County shall have the right to audit any such records, and the Authority will be given sufficient time to make any such records available to County for its inspection.

d. The Authority shall timely prepare all interim and final Cost Reports and amended Cost Reports, as necessary, including any updates and revisions thereto, for all outstanding reporting periods not finalized by the applicable Governmental Authorities as of the closing date and all subsequent reporting periods, and shall maintain all supporting documents and data thereto for the applicable retention periods. The County shall pay and satisfy any and all repayment obligations ultimately determined to be owing with respect to any such Cost Reports for the reporting years ending in 2012 or before, but not in an amount that exceeds, in the aggregate for all years, \$19 million. In the event any such repayment obligation exceeds \$19 million, the County shall, if requested by the Authority, meet and confer with the Authority regarding the payment of the excess amount, but, in the absence of agreement by the County to pay more, the Authority shall pay and satisfy any and all repayment obligations in excess of \$19 million. Except as otherwise provided herein and in Section 2 below, the Authority shall pay and satisfy any

and all repayment obligations ultimately determined to be owing and shall be entitled to retain any additional payments with respect to any such Cost Reports.

e. The parties acknowledge that, on or about May 28, 2004, a Medi-Cal program overpayment liability in connection with certain neonatal intensive care unit services was assessed against Kern Medical Center by the California Department of Health Care Services (formally the California Department of Health Services) with respect to the fiscal year ending June 30, 2001, which has been repaid in monthly installments of \$15,587.00 by way of offsets to amounts otherwise payable to Kern Medical Center by the Medi-Cal Program ("NICU Medi-Cal Liability"). As of January 4, 2016, the remaining balance of the NICU Medi-Cal Liability owed by Kern Medical Center was \$527,962.41. With respect to the NICU Medi-Cal Liability, upon the Closing date:

i. County shall provide funding to the Authority in an amount equal to the repayment balance remaining on the NICU Medi-Cal Liability as of the Closing date; and

ii. Authority shall be responsible for repaying the outstanding balance owed to DHCS as of the Closing, whether by offset or cash payment.

f. The Authority shall file a written report with the County at least annually, or more frequently if requested by the Board of Supervisors, describing its operations and financial status. The report shall also include detailed data concerning services rendered to residents determined to have zero or partial ability-to pay under the County Medical Care Services Policies, a summary of the costs of providing such services, and any recommendations for improving the provision of services to this population.

g. The Authority, in its maintenance, operation, management and control of the Hospital and other Health Facilities and services, shall comply with any applicable requirements of Section 1442.5 of the Health & Safety Code. The Authority shall serve as the designated agency to provide a 24-hour information service that can provide immediate information of available services and access to them, and to receive and respond to complaints as required under Section 1442.5(b)(3) of the Health & Safety Code. In the event the Authority, through its operation of the Health Facilities and services, eliminates, reduces, or modifies a program or service that would have required the County to conduct a public hearing under the provisions of Section 1442.5(a) of the Health & Safety Code if the County had operated the program or service and taken the same action, the Authority shall conduct a public hearing which meets the same notice and procedural requirements applicable to the County for taking such action.

h. Subject to completion of the reconciliation process pursuant to Section 2.1.4 of the Master Contract and applicable increases or decreases resulting therefrom, the County shall: (i) remit to the Authority any and all payments received by the County after the Closing on account of services rendered to patients of the Medical Center prior

to the Closing, including all Government Reimbursement Program payments; and (ii) transfer the remaining balances in each of the funds referenced in Section 2.1.4 of the Master Contract to the Authority.

2. Access to County General Purpose Funds and Local Revenue Funds.

a.

i. For each fiscal year under this Agreement commencing with the 2016-17 fiscal year, the Authority shall have access to and receive an allocation of County general purpose funds to be available in support of services to the indigent, including Medi-Cal beneficiaries and uninsured patients. The allocated amount shall be equal to the predetermined annual imputed county low-income health amount calculated and established pursuant to subdivision (f) of section 17612.2 of the California Welfare and Institutions Code, currently determined to be \$3,422,531.

ii. Notwithstanding Section 2.a.i, the Authority may request an increase to the allocation of County general purpose funds to address funding shortfalls with respect to the provision of health care for indigent individuals determined to have zero or partial ability-to-pay for their services under the County Medical Services Policies. The County will consider such request and its necessity relative to maintaining support for services provided to indigent patients, including Medi-Cal beneficiaries. Such requests may be made with respect to fiscal years following the final determination of redirected realignment amounts for the 2016-17 fiscal year pursuant to subdivision (d) of section 17612.3 of the California Welfare and Institutions Code.

b. For each fiscal year under this Agreement commencing with the 2016-17 fiscal year, the Authority shall have access to and receive an allocation of local revenue fund amounts deposited by the California State Controller into the Local Health and Welfare Trust Fund Health Account of the County. The allocated amount shall be equal to the county indigent care health realignment amount determined pursuant to subdivisions (e), (h) and (i) of section 17612.2 of the California Welfare and Institutions Code as that portion of the County's health realignment amount used to provide health services to the indigent, including Medi-Cal beneficiaries and uninsured patients, less the redirected realignment amounts determined for that fiscal year pursuant to section 17612.3 of the California Welfare and Institutions Code. The allocated amount shall be subject to all final determinations made pursuant to subdivision (d) of section 17612.3 of the California Welfare and Institutions Code, and in no event shall exceed the amount of local revenue fund deposited by the California State Controller into the Local Health and Welfare Trust Fund Health Account of the County for the subject fiscal year.

i. An interim determination of the allocated local revenue fund amounts shall be made at the start of each fiscal year based on and in conjunction

with the calculations made pursuant to subdivision (b) of section 17612.3 of the California Welfare and Institutions Code. The Authority may access funds up to the interim determination amount during the fiscal year, subject to any adjustments described in ii.

ii. The amount of allocated local revenue fund amounts to which the Authority may access shall be adjusted based on and commensurate with the final determinations made pursuant to subdivision (d) of section 17612.3 of the California Welfare and Institutions Code for the fiscal year and all prior fiscal years, up to and including the 2013-14 fiscal year.

(1) In event the final determination of the allocated local revenue fund amount is higher than the interim amount for the fiscal year, or any prior fiscal year up to and including the 2013-14 fiscal year, the Authority shall have access to the additional amounts deposited into the county's Local Health and Welfare Trust Fund Health Account pursuant to subdivision (d) of section 17610 of the California Welfare and Institutions Code.

(2) In event the final determination of the allocated local revenue fund amount is lower than the interim amount for the fiscal year, or any prior fiscal year up to and including the 2013-14 fiscal year, the County shall offset the amounts assessed against it pursuant to subdivision (e) of section 17610 of the California Welfare and Institutions Code against amounts otherwise allocable or due to the Authority.

iii. The Authority shall timely prepare all interim and final data and reports required under Article 12 of Chapter 6 of Part 5 of Division 9 of the California Welfare and Institutions Code (commencing with section 17612.1) ("Realignment Statute"), including any updates and revisions thereto, for all outstanding reporting periods not finalized by the California Department of Health Care Services ("Department") as of the closing date and all subsequent reporting periods ("Realignment Reporting"). The Authority shall maintain all supporting documents and data thereto for all periods commencing with the 2013-2014 state fiscal year. Unless otherwise required by the Department, the Authority shall provide to the County the necessary certification, attesting to the accuracy of the reports pursuant to section 17612.4(e) of the Welfare and Institutions Code.

iv. The County shall make available to the Authority all County data and reports necessary for the Realignment Reporting, including County data and reports necessary for the calculations described in section 17612.2(d) of the California Welfare and Institutions Code. The County and Authority shall consult with one another as necessary to assure the completeness and accuracy of the Realignment Reporting. The County shall also consult with the Authority regarding the finalization of calculations and determinations by the Department

under the Realignment Statute, and the Authority shall participate in any discussion with the Department as permitted by the Department.

v. Following a final determination of the Department pursuant to section 17612.3(d)(1) of the California Welfare and Institutions Code, the County and the Authority shall promptly consult regarding the determination and to assess the impact, of any, upon funding for the Authority. After consulting with the Authority, the County shall make a decision as to whether to contest the final determination of the Department pursuant to section 17612.3(d)(2) of the California Welfare and Institutions Code. If the County determines that an appeal of the final determination has merit, the County shall timely appeal.

vi. The Parties shall renegotiate and modify the provisions of this section 2 to the extent amendments to the Realignment Statute substantially alter the calculation and availability of local revenue fund amounts deposited by the California State Controller into the Local Health and Welfare Trust Fund Health Account of the County.

c. The Auditor-Controller shall transfer the revenues described in sections 2a. and 2b. on a monthly basis to an account in the County Treasury to the credit of the Authority and to which the Authority has access if at such time the Authority is participating in the County Treasury and, if not, then to such account that the Authority shall specify.

3. Approval Rights of the County.

a. The Authority, in its operations, is required to maintain certain services and is subject to certain prior approval by the County, all as set forth in Section 2.170.080 of the Enabling Ordinance. The Authority shall provide the Board of Supervisors with written notice of and a formal request for, including a narrative justification, along with any other information required by the County, any item for which it seeks the required approval by the Board of Supervisors under the Enabling Ordinance, or any successor ordinance or amended version of the Enabling Ordinance.

b. The Authority shall prepare and, after approval by the Authority Board of Governors, provide its proposed annual budget, along with such other information that the County may request, at least sixty (60) days in advance of the fiscal year to which the proposed budget relates. Each such budget shall, at a minimum:

i. specify for each budget unit: (1) the total number of compensated positions included in the budget, together with the salary rate or range, as applicable, of each included position; (2) with respect to any capital investment, (A) land acquisitions shall be separately reflected in total amounts; (B) structure acquisitions or constructions, and improvements thereto, shall each be reported separately for each project, except that minor improvements may be stated in total amounts; (C) equipment acquisitions shall be reported in total amounts by budget unit; (D) infrastructure construction or improvements shall be reported in

total amounts by budget unit; and (E) intangible asset acquisitions or developments may be reported in total amounts by budget unit; (3) other financing uses; and (4) intrafund transfers;

ii. specify, by fund: transfers-out, and appropriations for contingencies;

iii. specify any changes in net assets, by fund and purpose, including any provision for reserves; and

iv. specify the means of financing the budget requirements.

If the County raises questions or requests clarification of any item in the proposed budget, the Authority shall promptly respond thereto. The Board of Supervisors shall approve or reject the Authority's proposed budget in its entirety, and it shall have no authority to approve or reject individual line items in a proposed budget. If the Authority does not provide a budget for the Board of Supervisors' approval in accordance with this Section 3, the Board of Supervisors shall prepare and adopt an annual budget for the Authority.

4. Financial Reporting; Financial Covenants.

a. The Authority shall prepare financial statements consisting at least of a balance sheet and income statement on a monthly basis and deliver the same to the County not later forty-five (45) days after the end of the month to which they relate. The Authority shall arrange for an independent audit of its annual financial statements by an audit firm approved by the Board of Supervisors. The Authority shall deliver a copy of its audited annual financial statements to the County promptly upon completion of the audit but not, in any event, more than 120 days after the end of the year to which they relate. If the auditor makes any findings requiring corrective actions, the Authority, upon the request of the Board of Supervisors, shall adopt and deliver to the County, within forty-five (45) days of the request, a plan to make such corrective actions, and the Authority shall deliver a report of corrective action taken within the times specified in the corrective action plan.

b. Prior to June 30 of any fiscal year in which the Authority is indebted to the County for borrowed money (whether pursuant to Section 6.b herein or otherwise), the Authority shall provide to the County its then current fiscal year cash flow statements and projected cash flow statements for the subsequent fiscal year, including a statement of all assumptions used for the projected statements. If the Authority's projected cash flow statements reflect a need to borrow money from the County (whether pursuant to Section 6.b herein or otherwise) that would, when added to existing indebtedness for borrowed money owed to the County, exceed \$40 million at any time, the Authority shall prepare and deliver to the County a plan to reduce such indebtedness in the subsequent twelve (12) months.

c. Prior to December 31 of any fiscal year in which the Authority is indebted to the County for borrowed money (whether pursuant to Section 6.b herein otherwise),

the Authority shall prepare and deliver to the County a cash flow statement that includes the actual results for the first six months of the fiscal year and projected results for the remainder of the fiscal year. If the updated cash flow statements reflect a need to borrow money from the County (whether pursuant to Section 6.b herein or otherwise) that would, when added to existing indebtedness for borrowed money owed to the County, exceed \$40 million at any time, the Authority shall: (i) prepare an updated plan to reduce the indebtedness in the next six months; and (ii) provide monthly updated cash flow statements. If at June 30 the Authority remains indebted to the County in an amount greater than \$40 million:

i. Upon the first occurrence, the Authority shall (A) prepare an updated plan to reduce the indebtedness in the next six months; and (B) provide monthly updated cash flow statements; and

ii. Upon any subsequent occurrence, the Authority shall (A) prepare an updated plan to reduce the indebtedness in the next six months; and (B) provide monthly updated cash flow statements, and if so requested by the Board of Supervisors, the County will engage a management consultant acceptable to the Authority, and the Authority shall implement any recommendations made by the consultant unless the Board of Supervisors, upon request of the Authority, waives such requirement.

d. Consistent with Section 2.170.070 of the Ordinance, for so long as the Authority participates in the County Treasury, the Authority shall deposit all receipts when received in the County Treasury, and the Auditor-Controller shall apply all such deposits, when received, in satisfaction of any outstanding advances from the County Treasury, as contemplated by Section 5.b. Thereafter, the Authority shall reserve and set aside on its books sufficient collected and anticipated revenue to satisfy the Specified Annual Obligations (as defined below) expected to come due in the current year. For this purpose, the Authority shall subtract from current assets then appearing on its books prepaid expenses and inventory, and the balance of current assets remaining after such subtractions in excess of: (i) all obligations then owed to the County; (ii) the Specified Annual Obligations; and (iii) all other then current liabilities shall qualify as "Surplus Revenues" not subject to the obligation to reserve and shall be available for use by the Authority consistent with its purposes, in its discretion subject to net income for the period being positive, but only from and after such time that the Authority provides its calculation of "Surplus Revenue" by notice to the County. The Specified Annual Obligations for the 2016-2017 year are set out in Schedule 4 hereto. Within 120 days prior to the commencement of each subsequent year, the County shall provide a schedule of Specified Annual Obligations for each such year.

5. Participation in County Treasury. The Authority shall participate in the County Treasury (the "Treasury") in accordance with this Section 5, and any additional policies and procedures that the County Treasurer-Tax Collector (the "Treasurer") may promulgate from time to time, unless and until the Board of Supervisors authorizes the Authority to establish its own treasury. For so long as it participates in the Treasury:

a. Fiscal Year. The Authority shall adopt and maintain a fiscal year beginning July 1 and ending June 30.

b. All Deposits to and Payments from Treasury. The Authority shall deposit all cash receipts, when and as it receives the same, in the Treasury, and the Authority, except as otherwise set forth in this Section 5, shall have authority to direct the Auditor-Controller (the "Auditor") to issue warrants or other payment orders in satisfaction of debts, liabilities and other obligations owed by the Authority, all in accordance with such policies and procedures that the Auditor may promulgate from time to time. All warrants and other payment orders issued by the Auditor from the Treasury in satisfaction of the Authority's debts and obligations shall appropriately designate the fund from which it is being paid. Notwithstanding the foregoing, the Authority may, with the consent of the Treasurer, establish in its own name and tax identification number one or more accounts with one or more depository institutions to the extent that reimbursement under any governmental or other payment program may be paid only to an account in the name and under the tax identification number of the Authority, *provided* that any such account or accounts are subject to a daily sweep (or other periodic sweep as the County and the Authority may agree) that transfers all amounts on deposit to an account in the Treasury.

c. Treasury Advances. By resolution of the Board of Governors so requesting, and upon an approving resolution of the Board of Supervisors, the Authority may obtain advances from the Treasury ("Treasury Advances") during a fiscal year as contemplated by Article XVI, Section 6 of the California Constitution, Enabling Ordinance Section 2.170.030 and this Section 5.c. Any such approving resolution of the Board of Supervisors shall be effective only for the fiscal year to which it relates, and shall include, a commitment by the County to make a loan to the Authority as contemplated by Section 5.c.v, to the extent of any outstanding Debit Balance (as defined below) that remains outstanding as of June 25 of any fiscal year. The resolution shall state that the amount of any Treasury Advance shall be set by the Treasurer, pursuant to Enabling Ordinance Section 2.170.030. The Treasurer, at his or her sole discretion, shall determine "anticipated revenues" (as that term is used in Article XVI, Section 6 of the California Constitution) pursuant to Section 5.c.i for the purpose of establishing the amount of any Treasury Advance. After the Treasury Advance has been authorized and the amount of the Treasury Advance has been established by the Treasurer for any fiscal year, it will be at the discretion of the Treasurer and Auditor as to the timing and amounts of the actual cash transfers. For example, the Treasurer and Auditor could transfer the entire authorized amount up front or incrementally as the Authority needs to make cash expenditures that would otherwise cause the Authority fund to go negative as discussed below at Section 5.c.ii below.

i. Anticipated Revenues. In any fiscal year for which the Board of Supervisors has authorized the Treasurer to make advances from the Treasury pursuant to this Section 5.c, and before the Treasurer may make any advances from the Treasury to the Authority, the Treasurer shall make a determination of the amount of a Treasury Advance for such fiscal year, if any, based on his or her determination of the Authority's anticipated revenues in such fiscal year, all in the reasonable discretion of the Treasurer. Such determination shall be based on

an analysis of the Authority's budget for the fiscal year, when and as approved by the Board of Supervisors pursuant to Section 3 hereof, together with any additional information that the Authority may provide, whether pursuant to request of the Treasurer or otherwise. The Treasurer shall make a determination of the amount of a Treasury Advance for a fiscal year, if any, and advise the Authority or the same as soon as practicable after the approval of the Authority's budget for such fiscal year.

ii. Permitted Advances. To the extent that the Authority directs the Auditor to issue a warrant or other payment order in satisfaction of a debt, liability or other obligation owed by the Authority, and the amount thereof exceeds the balance of funds then held in the Treasury to the credit of the Authority, the Treasurer shall advance funds from the Treasury to pay the same, and make a record of the amount and other appropriate details of the advance, *provided*: (A) there are then other available funds on deposit in the Treasury in amounts sufficient to cover such payment; (B) the amount of such advance, when added to the sum of all other advances made pursuant to this Section 5.c in such fiscal year that have not been repaid to the Treasury pursuant to this Section 5.c (the "Debit Balance") does not exceed the amount the amount authorized by the Treasurer under Section 5.c.i; and (C) the payment directive from the Authority is received on or before the last Monday in April of the then current fiscal year. The Auditor shall not honor any payment directive of the Authority to the extent the foregoing conditions cannot be satisfied.

iii. Repayment of Advances. To the extent of any Debit Balance, the Treasurer and Auditor shall first credit any and all cash receipts of the Authority for deposit in the Treasury to the repayment and satisfaction, in whole or in part, of the Debit Balance.

iv. Periodic Statements. The Treasurer shall prepare and issue periodic statements of activity and balance of the Authority's Treasury account in the same manner as prepared for other Treasury participants, consistent with then current policies and procedures.

v. Debit Balance Loans. To the extent a Debit Balance remains as of June 25 of any fiscal year, or, if earlier, when funds in the amount of the Debit Balance are otherwise required for other Treasury uses as determined by the Treasurer, the County shall make a loan to the Authority in the amount of such Debit Balance and the Treasurer shall apply the proceeds of such loan to the repayment and satisfaction of the Treasury Advance. Unless otherwise specified by the County, any such loan shall be repayable and secured in accordance with Section 6.b. The County expressly guarantees repayment of any Treasury Advances under Article XVI, Section 6 of the California Constitution and Enabling Ordinance Section 2.170.030 and in accordance with this Section 5.c herein still outstanding on or after June 25 of any fiscal year. Notwithstanding any other terms in this agreement, the Treasurer and the Auditor are authorized to make any necessary transfers from any fund under the jurisdiction of the

Board of Supervisors to the Treasury Pool to satisfy any outstanding Treasury Advance.

6. Financial Support.

a. Grants for Capital Expenditures. The Authority anticipates that it will require financial support in excess of anticipated operating revenues to fund ongoing capital renewal and replacements. The Board of Supervisors may review and consider periodic requests from the Authority for such financial support, taking into account, among other things, whether the provision of such financial support would adversely affect any obligation or responsibility of the County, whether existing or contemplated. Provided that it finds the provision of any requested financial support to serve a public purpose and is otherwise appropriate, the Board of Supervisors may, in its discretion, approve any such request for financial support, in the form of a non-repayable grant, and, if so approved, the Board of Supervisors shall direct the Auditor-Controller to make the grant from any available source.

b. Cash Flow Loans. The Authority also anticipates that for an initial period of approximately three (3) years, the Authority may rely on the County to make periodic loans to cover cash flow shortfalls ("Cash Flow Loans"). The Board of Supervisors shall review and consider any such requests from the Authority for such periodic Cash Flow Loans, taking into account, among other things, whether the provision of such financial support would adversely affect any obligation or responsibility of the County, whether existing or contemplated. Provided that it finds the provision of any requested Cash Flow Loan to serve a public purpose and is otherwise appropriate, the Board of Supervisors may, in its discretion, approve any such request and direct the Auditor to make an interfund transfer in the amount so approved from funds under the jurisdiction of the Board of Supervisors. If the Board of Supervisors determines to make a loan to the Authority and it does not otherwise specify the terms and conditions thereof, such loan shall: (i) accrue interest at the then applicable Treasury pool rate, as revised quarterly, in accordance with the County's policies and procedures; (ii) be repayable as to the outstanding principal balance and accrued interest at such time or times that the County establishes in its discretion; (iii) be evidenced by a promissory note and other documentation in form and substance acceptable to the County, provided by the Authority and approved by the County Administrative Office, including amortization schedule; and (iv) be secured by a security interest in the personal property of the Authority, and a pledge and assignment of the Authority's accounts receivable, all in form and substance satisfactory to the County. The requirements of this Section 6.b do not apply to Treasury Advances pursuant to Section 5.c.

7. Additional Indebtedness. During all times that the Authority is indebted to the County on account of loans of money, whether with respect to Sections 5.c.v, 6.b or 11 or otherwise (but not on account of any indebtedness with respect to any of the Assumed Liabilities), the Authority shall not incur any indebtedness except with the prior written consent of the Board of Supervisors, which consent the Board of Supervisors may give or not give in its discretion. At all other times, the Authority shall obtain the approval of the Board of Supervisors

for any additional indebtedness, other than: (i) indebtedness with a term of less than 12 months; or (ii) debt that is secured, at most, only by personal property.

8. **Assumed Liabilities.** In connection with and pursuant to the Master Contract, the Authority hereby assumes and shall pay, satisfy, and discharge the following debts, obligations, and liabilities (the “Assumed Liabilities”), except to the extent of any and all insurance coverage (other than any County self-insurance program) that is available to reduce or offset any Assumed Liability :

a. All liabilities and obligations arising out of or in connection with claims, litigation or proceedings (whether instituted prior to, on or after the Closing Date) related to the Assets or to the Hospital Businesses for acts or omissions which allegedly occurred on or prior to the Closing Date;

b. All liabilities and obligations of the County under the Assumed Contracts, regardless of whether arising from events occurring before, on or after the Closing Date, related to the Assets, to the Hospital Business or the Assumed Liabilities;

c. Claims by any present or former employee of the Hospital for (i) overtime pay, (ii) wages, salary, bonuses or amount due under any Employee Benefit Plan or Other Plan; or (iii) severance pay or claim for unlawful discharge, all for any period, whether ending before, on or after the Closing;

d. Liabilities and obligations of the County for Taxes for periods ending on or prior to the Closing Date or resulting from the consummation of the transactions contemplated by this Agreement;

e. Liabilities and obligations associated with any Excluded Assets or resulting from any breach or default under any Assumed Contracts on or prior to the Closing Date or related to Assumed Liabilities on or prior to the Closing Date;

f. Liabilities and obligations arising out of or in connection with claims, litigation or proceedings (whether instituted prior to or after Closing) brought by a private party as a result of any alleged violation by the County of any Legal Requirement related to the Hospital Businesses;

g. Liabilities and obligations under and pursuant to the Physician Employee Retirement Plan (Fund A and Fund B);

h. To the extent legally permitted, any and all penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the County of any Legal Requirement in connection with the Hospital Businesses brought by a public body or relator;

i. To the extent not included in any of the foregoing, all liabilities and obligations that, consistent with past practices, would be reflected in the following accounts in the County’s Comprehensive Annual Financial Report, Statement of Net Position, Proprietary Funds, Business-Type Activities – Enterprise Funds, in the column

captioned "Kern Medical Center," if the same was prepared as of the Closing Date, at the amounts that would be reflected as of the Closing Date:

- i. Accounts Payable;
 - ii. Salaries and Benefits Payable;
 - iii. Due to Other Agencies;
 - iv. Due to Other Funds;
 - v. Current Portion of Compensated Absences;
 - vi. Advances to Other Funds;
 - vii. Estimate for Professional Liability Claims; and
 - viii. Compensated Absences Payable.
- j. To the extent not included in any of the foregoing, all liabilities and obligations related to the following:
- i. Liabilities that the Authority assumes pursuant to the Employee Benefits Services Agreement;
 - ii. Unused sick leave, vacation, catastrophic leave, banked holiday and comp time attributable to Transferred Employees not included as of the Closing Date in the Compensated Absences Payable account assumed by the Authority pursuant to Section 8.h.viii; and
 - iii. Worker's compensation benefits liability attributable to Legacy Employees hired before July 1, 2016 incurred as of the Closing, regardless of whether reported.

Within one hundred twenty (120) days following the Closing Date, the County shall prepare a schedule reflecting the amounts, in dollars, of the foregoing liabilities and obligations set forth in Section 8.i or 8.j (or, in the case of Compensated Absences, an estimate thereof) and deliver the same to the Authority. In the event the Authority disputes the amount of any such liability, the dispute shall be definitively resolved by a certified public accounting firm mutually acceptable to County and Authority. With respect to any such Assumed Liabilities that are owed to the County and that have no definite time for payment, whether scheduled or upon the occurrence of an event, the same shall be due and payable to the County only to the extent of the Authority's "surplus revenues," as that term is defined in the Enabling Ordinance.

9. Allocation of Debt Service. In addition to the above assumed liabilities, the Authority shall pay (or reimburse the County for) debt service owing with respect to the portion of the following debts and obligations that, consistent with past practices, would be reflected in

the following accounts in the County's Comprehensive Annual Financial Report, Statement of Net Position, Proprietary Funds, Business-Type Activities – Enterprise Funds, in the column captioned "Kern Medical Center," if the same was prepared as of the Closing Date, at the amounts that would be reflected as of the Closing Date:

- i. Current Portion of Long-Term Debt;
- ii. Current Portion of Capital Leases;
- iii. Interest Payable – Current;
- iv. Long-Term Debt – Certificates of Participation;
- v. Unamortized Bond Premium/Discount;
- vi. Long-Term Debt – Pension Obligation Bonds; and
- vii. Long-Term Debt – Interest Payable – Pension Obligation Bonds.

The amount of debt service allocable to the portion of the above debts and obligations so allocated to the Authority shall be determined in accordance with the Enabling Ordinance and government accounting standards. Within one hundred twenty (120) days following the Closing Date, the County shall prepare a schedule reflecting the amounts, in dollars, of the foregoing liabilities and obligations set forth in Sections 9.i through 9.v allocable to the Authority and deliver the same to the Authority. The County also shall annually determine the portion, expressed as a percentage, of the liabilities set forth in Sections 9.vi and 9.vii that are allocable to the Authority and deliver a copy of the same to the Authority, which shall be taken into account in establishing the Specified Annual Obligations for purposes of Section 4.d hereof, and reflected therein. In addition, to the extent not included in any of the foregoing, the Authority also shall pay (or reimburse the County for) that portion of all payments coming due under those certain Master Equipment Lease/Purchase Agreements (Agreement No's 014-2016 and 235-2015) attributable to the Excluded Equipment, to which rights of use were transferred to the Authority pursuant to the Master Contract.

10. Jeopardy to Tax Exempt Status. If the Authority intends to transfer that certain Da Vinci XI System and/or any of the component parts thereof, all identified as "Item 1" on Disclosure Schedule 2.1.2 to the Master Contract (the "Da Vinci System"), to a non-governmental person, or to enter into a management or service agreement involving all or any portion of the Da Vinci System with a non-governmental person, which agreement either has a term exceeding five (5) years or provides for compensation based on net profits or any combination of income and expense, the Authority shall give the County at least 180 days' notice prior to making any such transfer, or entering into a binding commitment to do the same, or entering into any such management or service agreement. For this purpose, a "non-governmental person" is any entity or person other than: (i) a state or political subdivision thereof; or (ii) an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code that intends to use the Da Vinci System in an activity that is not an unrelated trade or business as defined in Section 513 of the Internal Revenue Code.

11. Assumption of Additional Liability. The Authority hereby also assumes and shall pay, satisfy, and discharge, without interest, to the extent not included in the debts, obligations, and liabilities referred to in Sections 8 and 9, any and all amounts heretofore advanced from the County General Fund to cover cash flow deficits of the Kern Medical Center, and that remain outstanding and not repaid as of June 30, 2016. Within ninety (90) days following the Closing Date, the County shall prepare a schedule reflecting the amount, in dollars, of any outstanding General Fund cash flow advances and deliver the same to the Authority. In the event the Authority disputes the amount of any such liability, the dispute shall be definitively resolved by the certified public accounting firm that the County has engaged to audit the County's financial statements. The Authority shall be obligated to repay the outstanding General Fund advances annually in accordance with a schedule of payments that the County shall deliver to the Authority. The Authority may repay outstanding General Fund advances in excess of such scheduled payments to the extent of the Authority's "surplus revenues" as that term is defined in Section 2.170.070.B of the Enabling Ordinance.

12. Annual Contributions to Fund KCERA and OPEB Liabilities. In connection with the annual actuarial determination of liability to fund KCERA liabilities, the County shall forward to the Authority the actuarial report obtained by KCERA and the County and the Authority shall determine, based on such report, the portion of such annual actuarial liability determination attributable to Legacy Employees. The County shall cause an actuarial report to be prepared not less frequently every other year in accordance with past practice (at the expense of the County) of the Authority's portion of the OPEB liability. Promptly when such annual liabilities are determined and the actuary advises the County of the same, the County shall advise the Authority of the same and the identity of the person or persons to whom payable, and the Authority shall either pay the same to the person or persons to whom payable, or reimburse the County for the same, within the time permitted by the County to make such payments. Notwithstanding the foregoing, in accordance with Section 101853.1(g)(7) of the Health and Safety Code, Legacy Employees shall be deemed to be County employees for purposes of participation in a benefit plan administered by KCERA, but only for that purpose. The County shall include Legacy Employees in a special County employee group for which the County has primary financial responsibility to fund all employer contributions that, together with contributions by employees and earnings thereon, are necessary to fund all benefits for Legacy Employees administered by KCERA, notwithstanding the fact that, from the effective date hereof, the Authority shall commence making periodic employer contributions for Legacy Employee as above provided. In the event the Authority fails to make required employer contributions for Legacy Employees, when due and after demand from KCERA, the County, after receipt of notice and demand from KCERA, shall make those contributions in place of the Authority. The Authority shall be primarily responsible for any employer contributions that, together with contributions by employees and earnings thereon, are necessary to fund all benefits for new employees. In the event the Authority fails to make required contributions for new employees, the County shall make the required contributions after receipt of notice and demand from KCERA. The County shall maintain this obligation for new employees until the Authority demonstrates, and KCERA determines, that the Authority is sufficiently capable financially to fully assume the obligation to make all employer contributions for new employees, based upon the standard of financial capability approved by KCERA and the County in the plan of participation. In the event the Authority fails to make required contributions for any new employees due to the Authority's dissolution or bankruptcy, the County shall be obligated to

make the required contributions after receipt of notice and demand from KCERA. Any amount paid by the County in satisfaction of its obligations under this Section 12 shall be deemed a loan repayable by the Authority in accordance with the provisions of Section 6.b hereof.

13. County Guarantee. In accordance with Section 2.170.020(c)(3) and (4) of the Enabling Ordinance, the County hereby irrevocably and unconditionally guarantees the Authority's due and prompt payment of all liabilities and obligations assumed or undertaken by the Authority pursuant to Sections 8, 9 and 12 hereof, and each person to whom such liability or obligation is owing shall be deemed an intended third party beneficiary of the County's guarantee given hereby. The County's guarantee pursuant to this Section 13 constitutes a guaranty of payment and performance and not of collection. Any amount paid by the County in satisfaction of its obligations under this Section 13 shall be deemed a loan repayable by the Authority in accordance with the provisions of Section 6.b hereof.

14. Deed of Trust. In accordance with Enabling Ordinance Section 2.170.020.C.5, the Authority shall, as of the Closing, execute and deliver to the County a deed of trust, in form and substance satisfactory to the County, conveying a first priority lien on all the real property constituting the Medical Center, that secures all obligations of the Authority to the County hereunder, direct or indirect.

15. Nonliability of County. In accordance with Section 2.170.070(F) of the Enabling Ordinance, except as otherwise provided in Section 13 hereof, all liabilities and obligations of the Authority hereunder shall be and remain the sole liabilities and obligations of the Authority and shall not be or become the liabilities or obligations of the County. The County shall assure that each contract it enters into with any other person or entity shall contain language substantially to the same extent as the first sentence of this Section 15, whereby the counterparty to such contract agrees that the liabilities and obligations of the Authority under such contract shall be and remain the liabilities and obligations of the Authority and shall not be or become liabilities and obligations of the County.

16. Indemnification.

a. The Authority, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse and hold harmless the County and its supervisors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person a "County Indemnified Person") from and against any claim or demand by a third party asserted against a County Indemnified Person, and any loss, cost, or expense incurred or suffered by a County Indemnified Person on account thereof, directly or indirectly, as a result of or arising from the following, except to the extent the same is attributable solely to the County's negligent acts taken subsequent to the Closing Date:

i. the ownership or operation of the Medical Center by the Authority after the date hereof, or the performance by the Authority, its agents, contractors, or assigns in performing the Authority's obligations under this Agreement;

ii. any breach or the nonfulfillment of any covenant, agreement or other obligation of the Authority set forth in this Agreement;

iii. the Assumed Liabilities;

iv. any liabilities or obligations for taxes imposed with respect to periods of time or operations occurring after the Closing Date and related to the Medical Center or the Authority's operation thereof ;

v. any liabilities or obligations arising out of or in connection with any claims, litigation or proceedings related to the Medical Center or the Authority's operation thereof for acts or omissions which allegedly occurred after the date hereof;

vi. any and all liabilities of the Authority of any kind or nature, whenever arising, whether known or unknown, fixed or contingent, recorded or unrecorded, arising out of or in any manner related to the ownership, use or operation of the Medical Center;

vii. penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the Authority of any legal requirement, but only to the extent that such violation is directly caused by a condition that is subject to indemnification under this Agreement; or

viii. any and all liabilities related to a release of Materials of Environmental Concern (as that term is defined in the Master Contract).

b. The County, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse and hold harmless the Authority and its governors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person an "Authority Indemnified Person") from and against any claim by a third party asserted against an Authority Indemnified Person, and any loss, cost, or expense incurred or suffered by an Authority Indemnified Person on account thereof, directly or indirectly, as a result of or arising from any breach or the nonfulfillment of any covenant, agreement or other obligation of the County set forth in this Agreement.

c. All claims for indemnification by a party seeking indemnification hereunder (the "Indemnified Party") against another party (the "Indemnifying Party") shall be asserted and resolved in accordance with this Section 16.c. If any claim or demand ("Claim") is alleged or asserted by a third person against a party who believes he/she or it is entitled to indemnification hereunder with respect to such claim or demand (the "Indemnified Party"), the Indemnified Party shall deliver a notice (the "Claim Notice") with reasonable promptness to the party whom the Indemnified Party believes owes the indemnification obligation (the "Indemnifying Party"), together with a copy of all papers served, if any, and specifying the nature of and alleged basis for the Claim and, to the extent then feasible, the alleged amount or the estimated amount of the Claim. If the Indemnified Party fails to deliver the Claim Notice to the Indemnifying Party within 30 days after the Indemnified Party receives notice of such Claim, the Indemnifying Party shall not be obligated to indemnify the Indemnified Party with respect to such Claim to the extent that the Indemnifying Party's ability to defend the Claim has been irreparably

prejudiced by such failure. The Indemnifying Party shall notify the Indemnified Party within 10 days after receipt of the Claim Notice (the "Notice Period") whether the Indemnifying Party intends, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against the Claim.

i. If the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party intends to defend the Indemnified Party against the Claim, then the Indemnifying Party shall have the right to defend, at its sole cost and expense, the Claim with counsel acceptable to County by all appropriate proceedings, which proceedings shall be diligently prosecuted by the Indemnifying Party to a final conclusion or settled at the discretion of the Indemnifying Party (with the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed if the settlement includes a full release of all claims against the Indemnified Party and does not require any ongoing activity by the Indemnified Party). The Indemnifying Party shall have full control of such defense and proceedings; provided that the Indemnified Party may file during the Notice Period, at the sole cost and expense of the Indemnified Party, any motion, answer or other pleading that the Indemnified Party may deem necessary or appropriate to protect its interests and is not irrevocably prejudicial to the Indemnifying Party (it being understood and agreed that, except as provided in this Section 16.c, if an Indemnified Party takes any such action that is irrevocably prejudicial and conclusively causes a final adjudication that is materially adverse to the Indemnifying Party, the Indemnifying Party shall be relieved of its obligations hereunder with respect to that portion of the Claim prejudiced by the Indemnified Party's action); and provided further that, if requested by the Indemnifying Party, the Indemnified Party shall cooperate, at the sole cost and expense of the Indemnifying Party, with the Indemnifying Party and its counsel in contesting any Claim that the Indemnifying Party elects to contest or, if appropriate in the judgment of the Indemnified Party and related to the Third Party Claim, in making any counterclaim or cross-claim against any Person (other than the Indemnified Party). The Indemnified Party may participate in, but not control, any defense or settlement of any Claim assumed by the Indemnifying Party pursuant to this Section 16.c and, except as provided in the preceding sentence, the Indemnified Party shall bear its own costs and expenses with respect to such participation. Notwithstanding the foregoing, the Indemnifying Party may not assume the defense of the Claim if (1) the persons against whom the claim is made, or any impleaded persons, include both the Indemnifying Party and any Indemnified Party, and (2) representation of both such persons by the same counsel would be inappropriate due to actual or potential differing interests between them, in which case any Indemnified Party shall have the right to defend the Claim and to employ counsel at the expense of the Indemnifying Party.

ii. If the Indemnifying Party fails to notify the Indemnified Party within the Notice Period that the Indemnifying Party intends to defend the Indemnified Party against the Claim, or if the Indemnifying Party gives such notice but fails to diligently prosecute or settle the Claim, or if the Indemnifying

Party fails to give any notice whatsoever within the Notice Period, then the Indemnified Party shall have the right (but not the obligation) to defend, at the sole cost and expense of the Indemnifying Party, the Claim by all appropriate proceedings, which proceedings shall be diligently prosecuted by the Indemnified Party to a final conclusion or settled at the discretion of the Indemnified Party. The Indemnified Party shall have full control of such defense and proceedings, including any compromise or settlement thereof, provided that, if requested by the Indemnified Party, the Indemnifying Party shall cooperate, at the sole cost and expense of the Indemnifying Party, with the Indemnified Party and its counsel in contesting the Claim which the Indemnified Party is contesting, or, if appropriate and related to the Claim in question, in making any counterclaim or cross claim against any person (other than the Indemnifying Party).

iii. Notwithstanding the foregoing provisions of Section 16.c, if the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party disputes its obligation to indemnify the Indemnified Party against the Claim, and if such dispute is resolved pursuant to Section 16.c in favor of the Indemnifying Party, the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 16.c or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party shall reimburse the Indemnifying Party in full for all such costs and expenses. The Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to Section 16.c, but the Indemnifying Party shall bear its own costs and expenses with respect thereto if such participation is not at the request of the Indemnified Party.

d. The foregoing indemnification obligations shall survive the expiration or termination of this Agreement.

e. The foregoing indemnification obligations shall have no force or effect where precluded by law, but shall be enforceable to the extent not precluded by law.

f. Nothing in this Section 16 or elsewhere in this Agreement shall be construed as imposing any personal liability on any elected or appointed officials, managers, directors, officers, employees, agents, successors and assigns of the County or the Authority for the acts or omissions of the County or the Authority, respectively, under this Agreement.

17. **Dispute Resolution.** Any dispute, claim or controversy in any way arising out of or relating to this Agreement, including the scope, interpretation, breach or validity thereof, shall be resolved in accordance with the provisions of this Section 17.

a. As a first step, the parties shall engage in non-binding mediation. The parties shall split the fees and costs of the mediation equally. If the parties cannot agree on a mediator within fourteen (14) calendar days of requesting mediation, the mediator

shall be selected in the same manner in which an arbitrator is selected (Judicate West Commercial Arbitration Rule 5, et seq.). The mediation shall be completed within sixty (60) days following the selection of the mediator unless the parties otherwise agree in writing. The mediation shall be conducted pursuant to, and governed by, California Evidence Code Sections 1115-1128.

b. Should the mediation process fail to resolve any issue(s), the parties may agree to submit any remaining dispute(s) to binding arbitration. If the parties agree upon binding arbitration, the arbitration shall be administered in Kern County, California, under Judicate West's Commercial Arbitration Rules in effect at the time of the arbitration. Each party shall bear the expense of the arbitral proceedings equally unless otherwise agreed upon. Any award of the arbitrator(s) may be entered as a judgment in any court having jurisdiction.

c. If the parties do not agree on binding arbitration, the dispute may be resolved in court. Any such dispute shall be brought before the Superior Court of Kern County, California, which shall have jurisdiction over all such claims.

18. Insurance. Not later than the Closing Date, Authority shall have procured and obtained all insurance required under this Section 18, and provided certificates of insurance and all required endorsements to the County's authorized insurance representative, Insurance Tracking Services Inc. ("ITS"). Receipt by ITS of evidence of insurance that does not comply with all applicable insurance requirements of this Section 18 shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Authority shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Throughout the term of this Agreement, Authority shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term hereof. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any required policy and bear a notation evidencing payment of the premium thereof if so requested. Authority shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Authority or by County as an additional insured.

a. Workers' Compensation and Employers Liability Insurance Requirement – Authority shall obtain and maintain workers' compensation and employers liability insurance in compliance with the provisions of section 3700 of the California Labor Code. Authority shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the sub-contractors' employees are covered by the insurance provided by Authority. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Authority shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered. Authority shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. **Liability Insurance Requirements:**

i. Authority shall obtain and maintain the following types of liability insurance:

(1) Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Authority's performance under this Agreement. Such Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Authority shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate. Additional liability insurance shall include:

(2) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any and all vehicles owned, leased or hired by Authority and non-owned vehicles used in the performance of services pursuant to this Agreement, with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

(3) Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

ii. The Commercial General Liability and Automobile liability Insurance required pursuant to this Section 18.b shall include an endorsement naming County and members of County's Board of Supervisors, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or

CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

iii. Any self-insured retentions in excess of \$1,000,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.

iv. If any of the insurance coverages required under this Agreement is written on a claims-made basis, Authority, at Authority's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. **Property Insurance.**

Authority shall obtain and maintain the following types of property insurance:

i. **Buildings and structures insurance** covering all buildings and structures constituting part of the Medical Center, with coverage, at a minimum, at least as broad as the most recent revision of the Property Special Form coverage adopted by the Insurance Services Office (ISO), subject to a reasonable deductible per occurrence, and in an amount equal to the full replacement value thereof. The replacement value of the Medical Center shall be determined from time to time at the request of County (but not less frequently than once every twenty-four months) by a risk management consultant or an architect, contractor, appraiser or appraisal company acceptable to County.

ii. **Business personal property insurance** covering all personal property, including computers and electronic data processing equipment, at any location forming part of the Medical Center shall be insured using a form at least as broad as the most recent revision of the Property Special Form coverage adopted by the ISO, subject to a reasonable deductible per occurrence and in an amount equal to at least the full replacement value of the property insured.

iii. **Builders Risk.** During the course of any substantial addition, extension, alteration, or improvement to the Medical Center, the Authority shall maintain or cause to be maintained builders risk insurance in the amount of the full completed value of such construction work, subject to reasonable deductibles per occurrence, covering all risk of physical loss or damage with such exclusions as are acceptable to the County.

iv. **Boiler and Machinery or Equipment Breakdown Insurance.** The Authority shall maintain boiler and machinery or equipment breakdown insurance providing coverage against loss to, and liability for damage to persons or property from, equipment that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or equipment which, during normal usage, operates un vacuum or pressure, other than the weight of its contents. Coverage shall be in an amount not less than \$1,000,000, subject to deductibles not exceeding \$100,000 per occurrence. The policy form shall also include Joint Loss Endorsement.

v. **Earthquake and Flood.** The Authority shall maintain earthquake and flood insurance consistent with coverage for such risks that the County maintained immediately prior to the Closing.

d. **Cancellation of Insurance --** The above stated insurance coverages required to be maintained by Authority shall be maintained until the termination of this Agreement except as otherwise indicated herein. Each insurance policy supplied by Authority shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Authority in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Authority shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

e. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.

f. If Authority is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Authority shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Authority is equivalent to the above-required coverages.

g. All insurance afforded by Authority pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against

County. A waiver of right of recovery (waiver of subrogation) is only required on Workers' Compensation policies when Authority personnel deliver or perform services for County while on County property (not including any property transferred to Authority pursuant to the Master Agreement).

h. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Authority for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

i. If Authority fails to obtain and maintain all such insurance in effect at all times required by this Agreement, County may, but shall not be obligated to, purchase such required insurance coverage, and the premiums incurred by County shall be deemed to be a Cash Flow Loan, repayable by Authority to County in accordance with the provisions hereof for Cash Flow Loans. Any failure by County to take this alternative action shall not relieve Authority of its obligation to obtain and maintain the insurance coverages required by this Agreement.

19. **[Reserved.]**

20. **Term and Termination.**

a. **Term.** The term of this Agreement will expire when all Assumed Liabilities and all other obligations of the Authority under this Agreement to the County have been paid, satisfied or otherwise discharged.

b. **Termination by County.** The County may terminate this Agreement at any time without cause by giving 180 days advance written notice to the Authority. Notwithstanding any such termination by the County, the obligation of the Authority to pay, satisfy or otherwise discharge the Assumed Liabilities shall survive the termination.

c. **Termination for Cause.** In the event of a material breach by the Authority of the terms of this Agreement, or in the event of a material breach of the terms of the Enabling Ordinance, which breach is not cured within thirty (30) days after notice of the same from the County to the Authority, the County shall have the right to terminate this Agreement by providing written notice to the Authority. Within not less than 90 days of providing such written notice, the County shall notify the Authority whether it has elected to accelerate any indebtedness of the Authority to the County to become due and payable immediately, or at a time certain which is sooner than the time payment would otherwise be due.

21. **General.**

a. Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to such state's conflicts of laws rules. Any dispute between the Parties under this Agreement shall, subject to the provisions of Section 17 hereof, be brought before the Superior Court of Kern County, California, which shall have jurisdiction over any such dispute.

b. Benefit; Assignment. Except as expressly provided in this Agreement to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and assigns. Neither Party may assign this Agreement without the prior written consent of the other Party.

c. No Third Party Beneficiary. The terms and provisions of this Agreement (including provisions regarding employee and employee benefit matters) are intended solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and are not intended to confer third-party beneficiary rights upon any other person.

d. Waiver of Breach, Right or Remedy. The waiver by either party of any breach or violation by the other party of any provision this Agreement or of any right or remedy permitted the waiving Party in this Agreement (a) shall not waive or be construed to waive any subsequent breach or violation of the same provision, (b) shall not waive or be construed to waive a breach or violation of any other provision, and (c) shall be in writing and may not be presumed or inferred from any party's conduct. All remedies, either under this Agreement, or by law or otherwise afforded, will be cumulative and not alternative.

e. Notices. All notices or communications to a party required or permitted under this Agreement shall be given in writing and shall be delivered to such party either (a) by personal delivery (in which cases such notice shall be deemed given on the date of delivery), (b) by next business day courier service (e.g., Federal Express, UPS or other similar service) (in which case such notice shall be deemed given on the business day following date of deposit with the courier service), (c) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed given on the date indicated on the return receipt), or (d) by telecopy or facsimile transmission (in which case such notice shall be deemed given 12 hours after being sent with confirmed answer back), and addressed to the party at the address for notice appearing in the Master Contract. Either party may change its address or telecopy or facsimile number by giving a written notice to the other party in conformity with this Section.

f. Severability. If any provision of this Agreement is held or determined to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of either party under this Agreement will not be materially and adversely affected: (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable

provision or by its severance from this Agreement; and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

g. Entire Agreement. This Agreement supersedes all previous contracts, agreements and understandings and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties representing the within subject matter and no party shall be entitled to benefits other than those specified in this Agreement.

h. Amendment. As between or among the parties, any oral or written representation, agreement or statement not expressly incorporated in this Agreement, whether given prior to or on the date hereof, shall be of no force and effect unless and until made in writing and signed by the parties on or after the date hereof.

i. Drafting. No provision of this Agreement shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

j. Counterparts. This Agreement may be executed in counterpart, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

COUNTY OF KERN

**KERN COUNTY HOSPITAL
AUTHORITY**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**THE OFFICE OF THE TREASURER-
TAX COLLECTOR COUNTY OF
KERN**

**THE OFFICE OF THE AUDITOR-
CONTROLLER-COUNTY CLERK
COUNTY OF KERN**

By: _____
Jordan Kaufman
Treasurer-Tax Collector

By: _____
Mary B. Bedard
Auditor-Controller-County Clerk

APPROVED AS TO CONTENT:
County Administrative Office

APPROVED AS TO CONTENT:
Kern County Hospital Authority

By _____
Assistant County Administrative Officer

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
Office of County Counsel

APPROVED AS TO FORM:
Office of County Counsel

By _____
Theresa A. Goldner
Kern County Counsel
Counsel for County of Kern

By _____
Karen S. Barnes
Chief Deputy County Counsel
Counsel for Kern County Hospital
Authority

Schedule 1a -County Medical Care Services Policies

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF KERN, STATE OF CALIFORNIA**

In the matter of:

Resolution No. 2013-367

**REVISED STANDARDS AND PROCEDURES
FOR DETERMINATION OF ABILITY TO
PAY AND COLLECTION OF PAYMENTS
FOR MEDICAL SERVICES RENDERED
THROUGH KERN MEDICAL CENTER**

I, Kathleen Krause, Clerk of the Board of Supervisors of the County of Kern, state of California, hereby certify that the following resolution, on motion of Supervisor Scrivner, seconded by Supervisor Perez, was duly and regularly adopted by the Board of Supervisors of the County of Kern at an official meeting thereof on the 3rd day of December, 2013, by the following vote and that a copy of the resolution has been delivered to the Chairman of the Board of Supervisors.

AYES: Gleason, Scrivner, Maggard, Couch, Perez
NOES: None
ABSENT: None



Kathleen Krause
Clerk of the Board of Supervisors
County of Kern, State of California


Deputy Clerk

RESOLUTION

Section 1. WHEREAS:

(a) Section 17001 of the Welfare and Institutions Code authorizes the Board of Supervisors to adopt standards and procedures relating to the determination of the ability of persons receiving medical services through Kern Medical Center to pay for such services; and

(b) By Resolution No. 73-297, adopted April 24, 1973, the Board of Supervisors initially established uniform standards for determining the ability of persons to pay for medical services rendered through Kern County General Hospital System; and

(c) By Resolution No. 83-54, adopted February 1, 1983, the Board of Supervisors revised the uniform standards for determining the ability of persons to pay for medical services rendered through Kern County General Hospital System; and

(d) By Resolution No. 88-217, adopted March 8, 1988, the Board of Supervisors again revised the uniform standards for determining the ability of persons to pay for medical

services rendered through Kern Medical Center; and

(e) By Resolution No. 2005-241, adopted June 13, 2005, the Board of Supervisors again revised the uniform standards for determining the ability of persons to pay for medical services rendered through Kern Medical Center; and

(f) The Board of Supervisors desires to revise standards and procedures for determining the ability of persons to pay for medical services rendered through Kern Medical Center and the collection of payments for such services;

Section 2. NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Supervisors of the County of Kern, state of California, that Kern Medical Center shall be governed by the following revised standards and procedures for determining the ability of persons receiving services through Kern Medical Center to pay and the collection of payments for such services:

1. GENERAL POLICY. It shall be the policy of the County of Kern ("County") to proceed diligently to collect as promptly and fully as possible within the provisions of the law, all money owed to the County by reason of charges for services rendered to patients at or through Kern Medical Center ("KMC"), except to the extent that such collections would result in undue financial hardship or indigence for the patient, the patient's dependents, or any party that is legally responsible for payment of the patient's medical bills ("legally responsible party"). Any party who is responsible for payment of any account to the County for medical services shall be required to establish his or her ability to pay in accordance with the standards and procedures set forth herein, and to make such payments to the County as may be determined by application of these standards and procedures until the debt has been discharged. In the absence of appropriate arrangements for the discharge of said debt, any party responsible for payment shall be required to make a deposit with KMC for an initial primary care visit, in an amount to be determined by KMC prior to receiving medical services. Any party who is responsible for payment shall make satisfactory arrangements with KMC for the payment of medical services in advance of such services being provided if the patient receives physician-ordered multiple primary care clinic services, specialty care clinic services, or inpatient medical services. Emergency medical services provided in the KMC emergency department are not subject to this general policy.

Each patient or legally responsible party to whom these procedures apply shall be required to:

- (a) Assign all applicable medical and health insurance benefits to KMC; or
- (b) Provide evidence of entitlement to benefits under any federal or state health care program sufficient to enable KMC to secure payment from such program(s); or
- (c) Take all actions required to qualify for benefits under any federal or state health care program or from any other third-party payer or payment source.

Each patient or legally responsible party may be held liable for payment for charges, which are not fully covered by the aforementioned programs. In the event a patient or legally responsibility party fails or refuses to take any of the aforementioned actions, he or she shall be

held fully liable for payment of all charges for services rendered or ineligible for further services at or through KMC, except as otherwise provided by law.

2. DETERMINATION OF ABILITY TO PAY – PROCEDURES. The purpose of the procedures set forth herein is to provide uniform, equitable, and manageable guidance for determining the amount which a patient or legally responsible party may be reasonably expected to pay toward the discharge of a debt for medical services. Such determination shall be made through consideration of assets and/or income to the extent allowed by law of the patient or persons legally dependent upon those assets and/or income. These procedures shall also be applied to the balance of an account, which may remain after payment by any health or medical insurance carrier or other third-party payer, with the exception of a health or medical insurance carrier that has a current provider agreement with the County for medical services provided at KMC, the Medi-Cal program, and the Medicare program.

In each case, information obtained regarding assets, income, and family members shall be documented on suitable forms(s) and, wherever possible, attested to and signed by the patient or legally responsible party providing the information. Independent verification of any information may be made and such verification shall be sought in those instances in which the information obtained appears to be erroneous or incomplete.

3. DETERMINATION OF ABILITY TO PAY – ASSETS. The assets to be considered in determining ability to pay shall include personal and real property owned wholly by the patient or legally responsible party, or to the extent of his or her interest in such personal and real property, and which may be available for payment of services. Property to be considered shall include, without limitation, the following:

(a) Personal Property:

- (1) Cash on hand or deposit;
- (2) Current market value of stocks, bonds, mutual funds, and similar negotiable instruments;
- (3) Current market value of notes and deeds of trust;
- (4) Current net market value of vehicles including automobiles, recreational vehicles, trucks, boats, etc., except that one vehicle of reasonable value used as transportation for employment shall be exempt; and
- (5) Cash value of that portion of all life insurance with a face value in excess of \$5,000.

Trailer houses, mobile homes or similar vehicles used as the regular home for the family and not assessed as real property shall be exempt from consideration as personal property.

The total value of personal property shall be computed, and the value in excess of the personal property limitation shall be deemed available for payment of medical services. The personal property limitations shall be based on the personal property limitations established by the Medi-Cal program (Cal. Code Regs., tit. 22, § 50420), as amended from time to time.

(b) Real Property: As permitted by law, real property shall be considered as available for security for amounts owed to the County. Liens shall be placed on such real property as deemed appropriate by KMC, and in accordance with sections 17108 and 17109 of the Welfare and Institutions Code, as amended from time to time.

4. DETERMINATION OF ABILITY TO PAY – INCOME. The income to be considered in determining the ability to pay shall include all monetary income to the patient or legally responsible party. Such income shall include, without limitation, the following:

- (a) Salaries and wages;
- (b) Rental income;
- (c) Pensions and retirement;
- (d) Social security and railroad retirement;
- (e) Unemployment and disability insurance benefits;
- (f) Spousal and child support;
- (g) Dividends and interest; and
- (h) Income from business enterprises.

Where applicable the amount of income in excess of the average income required for family maintenance needs shall be considered available for payment for medical services. The average income necessary for maintenance needs of a family shall be based upon the current schedule of maintenance needs as promulgated by the state Department of Health Care Services for the Medi-Cal program (Cal. Code Regs., tit. 22, §§ 50601 et seq.), as amended from time to time.

5. DETERMINATION OF ABILITY TO PAY – LIABILITY. The maximum liability that may be incurred by a patient or legally responsible party shall be an amount equal to the sum of all charges for medical or hospital services rendered to the patient. The liability of the patient or legally responsible party for such charges shall be determined in the following manner:

- (a) Except as otherwise provided herein, a patient or legally responsible party, after assignment of all applicable health or medical insurance benefits to KMC, shall be responsible for payment of the balance of charges not paid by such health or medical

insurance. If the patient or legally responsibility party alleges an inability to pay the balance within 60 days, the patient or legally responsible party shall be required to establish the ability to pay in the manner set forth in section 4 and, if determined able to pay, to pay the balance in accordance with such determination. The patient or legally responsible party shall be deemed able to pay the balance if the patient or legally responsible party has income in excess of 200% of the federal poverty level, as may be adjusted from time to time. The patient or legally responsible party shall be deemed able to pay a portion of the balance if the patient or legally responsible party has income that ranges between 138% to 200% of the federal poverty level, as may be adjusted from time to time. Refusal or failure to assign applicable medical or health insurance benefits to KMC shall render the patient or legally responsible party liable for all charges for services rendered or to be rendered.

(b) A patient who is a Medi-Cal beneficiary or the legally responsible party shall be liable for payment of any "share of cost," if any, as established by the County Department of Human Services, which is responsible to make such determinations, for those medical services or benefits. The patient or legally responsible party shall be liable for payment of all charges for medical or hospital services received which are not recognized or authorized under the Medi-Cal program as covered services or benefits.

(c) A patient or legally responsible party who is eligible for any program, public or private, which provides payment to KMC for medical or hospital services, shall be required to take all necessary actions to enable KMC to obtain payment for medical or hospital services rendered or to be rendered to the patient. Failure to take such actions shall render the patient or legally responsible party liable for all services rendered.

(d) The liability of all other patients or their legally responsible party shall be based upon the value of personal property set forth in section 3 and/or the income set forth in section 4, as applicable. Any patient or legally responsible party who has demonstrated financial need in accordance with the KMC charity care and discount policies may receive discounts. This includes a full write-off, partial write-off, or percentage discounts. The full requirements of the charity care and discount policies must be followed. Prompt payment discounts may be offered to patients who have substantial personal responsibility balances, at the discretion of KMC.

(e) Any patient or legally responsible party who refuses or fails to provide sufficient information, who provides false information, or who otherwise refuses or fails to cooperate in the determination of ability to pay, resulting in the inability of KMC to properly determine the ability to pay or to receive maximum available reimbursement from payer sources, shall be liable for payment of all charges or balances for services rendered, and may be ineligible to receive further medical or hospital services from or through KMC, except as otherwise provided by law.

6. PRE-SERVICE PAYMENT. To the extent allowed by law, any individual seeking medical services or the legally responsible party may be required to make a cash deposit prior to receiving non-emergent medical services from or through KMC.

7. INSTALLMENT PAYMENTS. In the event the patient or legally responsible party is unable to pay the total amount of charges for services as set forth in section 1, the patient or legally responsible party shall be required to pay the debt in periodic installments and execute a written agreement showing the installment payment arrangements agreed upon. Such installment payments, in general, shall not exceed a period of 12 months.

In the event the patient or legally responsible party alleges an inability to make the installment payments because of unusual circumstances or expenses, the amount of payment may be reevaluated and the patient or legally responsible party shall be required to submit a detailed analysis of his or her financial status. Such analysis shall be suitably documented and signed by the patient or legally responsible party providing the information.

8. REVIEW PROCEDURES. The periodic payments which are established by application of the standards and procedures set forth herein are applicable to the 12-month period beginning with the month in which the determination is made. KMC may evaluate the payment schedule of any patient or legally responsible party at any time during the 12-month period in order to determine if there has been a significant change in the family or financial circumstances, and, if so, KMC may determine installment payments in accordance with procedures set forth herein. In such circumstances the procedures for determination of ability to pay shall be those applicable to the initial determination. KMC shall review each payment schedule not less than once each quarter.

Section 3. IT IS FURTHER RESOLVED that the provisions of this Resolution shall be effective, in force and operative as of the 1st day of January, 2014.

Section 4. IT IS FURTHER RESOLVED that the revised and updated uniform standards and procedures for determining the ability to pay for medical services rendered by or through KMC adopted by the Board of Supervisors by Resolution No. 2005-241, dated June 13, 2005, are hereby repealed and superseded by this Resolution.

Section 5. IT IS FURTHER RESOLVED that the Clerk of the Board of Supervisors shall send copies of this Resolution to:

County Administrative Office
Kern Medical Center
Office of County Counsel

COPIES FURNISHED:
<i>See Above</i>
<i>12-5-13 CP</i>

Schedule 4 - Specified Annual Obligations for the 2016-2017 Fiscal Year

Category	Description	Amount/Percentage
Annual Obligations	2011 Refunding Certificates of Participation (Capital Improvement Projects)	\$1,150,926
	2015 US Bancorp Da Vinci XI Lease	\$426,990
	2015 US Bancorp Care Fusion Lease	\$143,220
	Workers Compensation ⁽¹⁾	TBD
	General Liability ⁽¹⁾	TBD
	Unemployment for claims of County Service prior to transfer	\$281,257
	Professional Liability ⁽¹⁾	TBD
	Countywide Cost Allocation Plan- Carryforward	\$316,797
Retirement/Employment Obligations	1995 POB as % of payroll ⁽²⁾	7.44%
	2003 POB as % of payroll ⁽²⁾	3.36%
	KCERA Retirement as % of payroll ⁽²⁾	38.77%
	Health and Retiree Health Benefits ⁽²⁾	\$15,001.18/\$756.58 Annual per employee

⁽¹⁾ Amounts to be determined at the time Surplus revenues are calculated by the Authority. Amounts Shall include only current liabilities.

⁽²⁾ Amount to be considered specified annual obligation to the extend of estimated remaining payroll.



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

June 22, 2016

SUBJECT: Proposed Agreement Cerner Corporation, for the purchase of the PeopleSoft core financial system.

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical is in need of substantial infrastructure upgrades. The application search team reviewed multiple options that would most easily interface to a future billing and Electronic Health Record system. Features considered included, hospital size and structure, interface with future systems, customization options and cost (immediate and long-term cash requirements).

The proposed solution replaces outdated McKesson financial solutions in the following departments that are approaching end-of-support:

- Materials Management
- Accounts Payable
- General Ledger

The proposed solution is hosted remotely, which allows:

- Use without additional infrastructure investments or implementation labor
- Reduction of long-term infrastructure burden

End-user hardware at Kern Medical's current locations meet the minimum requirements for this immediate solution.

Additional benefits include efficiencies such as:

- Streamlining Financial Reporting
- Improved Security around Purchasing and requisitioning

The application search team recommends approval of People Soft as the most capable of the vendors reviewed.

The term of the Agreement is five (5) years, effective July 1, 2016 through June 30, 2021 in an amount not to exceed \$1,469,289 over the term of the Agreement.



CERNER SYSTEM SCHEDULE NO. 1

This Cerner System Schedule is made on July 1, 2016 ("Effective Date"), between

Kern County Hospital Authority ("Client")

and

Cerner Corporation ("Cerner")

a county hospital authority, which owns and operates Kern Medical Center with its principal place of business at:

a Delaware corporation with its principal place of business at:

1830 Flower St
Bakersfield, CA 93305-4144, USA
Telephone: (661) 326-2000

2800 Rockcreek Parkway
Kansas City, MO 64117, U.S.A.
Telephone: (816) 221-1024

This Cerner System Schedule includes the sections noted below. Client agrees to purchase the products and services set forth herein, and Cerner agrees to furnish such products and services, upon the terms and conditions of this Cerner System Schedule and the Cerner Business Agreement, dated July 1, 2016, between Client and Cerner (the "Agreement").

- Facilities
- Payment Terms
- Term and Termination
- Pass-Through Provisions
- Assignment of Payments
- Financial Overview
- Solutions and Services
- Additional Terms and Provisions
- Scope of Services

KERN COUNTY HOSPITAL AUTHORITY

CERNER CORPORATION

By: _____
(signature)

(type or print)

By: _____
Marc G. Naughton
Executive Vice President
and Chief Financial Officer

Title: _____

Title: _____

Purchase Order #: _____
(if applicable)

Project Kick-off requested the week of: _____

Client will complete the following upon execution of this Cerner System Schedule:

Client Invoice Contact: _____

Contact Phone #: _____

Contact E-mail Address: _____

Client's account can be managed online at cerner.com by registering for Cerner eBill. To gain access to eBill, contact the Cerner Client Care Contact Center at 866-221-8877 or e-mail ClientCareCenter@cerner.com.

FACILITIES

Designated Facility. Facility where the solutions will reside:

Name	Address	City	State/ Province	Zip/Postal Code	Country
Cerner data center					

Permitted Facilities. For use and access by these facilities:

Name	Address	City	State/ Province	Zip/Postal Code	Country
Kern Medical Center	1830 Flower St	Bakersfield	CA	93305-4144	USA

The parties may add or substitute Permitted Facilities by amending this section, provided Client pays any relevant scope of use expansion fees set forth in the Scope section.

PAYMENT TERMS

FIXED TECHNOLOGY FEE

All of the fees set forth in this Cerner System Schedule shall collectively be referred to as the “Fixed Technology Fee” or “FTF”. The FTF shall be payable as set forth in the table below. Cerner will invoice Client for such fees on a quarterly basis on the first day of each quarter, and payment for invoices shall be made within 45 days following Client’s receipt of invoice.

Payment Date	Payment Amount
Execution	\$1,346,345
10/1/2016	\$51,328
1/1/2017	\$51,328
4/1/2017	\$51,328
7/1/2017	\$67,800
10/1/2017	\$67,800
1/1/2018	\$67,800
4/1/2018	\$67,800
7/1/2018	\$67,800
10/1/2018	\$67,800
1/1/2019	\$67,800
4/1/2019	\$67,800
7/1/2019	\$67,800
10/1/2019	\$67,800
1/1/2020	\$67,800
4/1/2020	\$67,800
7/1/2020	\$67,800
10/1/2020	\$67,800
1/1/2021	\$67,800
4/1/2021	\$67,800
7/1/2021	\$67,800
10/1/2021	\$67,800
1/1/2022	\$67,800
4/1/2022	\$67,800
7/1/2022	\$67,800

10/1/2022	\$67,800
1/1/2023	\$67,800
4/1/2023	\$67,800
Total	\$3,127,529

Maximum Payable. The maximum payable under this Cerner System Schedule will not exceed \$3,400,000 over the seven (7) year term of this Cerner System Schedule.

Managed Services. The remote hosting (“RHO”) services shall begin upon the Effective Date of this Cerner System Schedule, and will continue thereafter in full force and effect for the term set forth in the “Solutions and Services” section.

One-Time Fees. A one-time managed services configuration/setup fee is included in the FTF. The RHO services one-time configuration/setup fee covers the initial configuration/setup by Cerner necessary to provide RHO services and covers all license fees for the packaged operational software tools set forth in the “Scope of Services” section of this Cerner System Schedule.

Monthly Fees. RHO services monthly fees are included in the FTF. (All fees for any applicable service delivery month are non-refundable.)

Application Management Services. Application management services (“AMS”) shall begin upon the earlier of First Productive Use or 12 months following the Effective Date of this Cerner System Schedule, and will continue thereafter in full force and effect for the AMS term set forth in the “Solutions and Services” section.

Renewal. If the managed services (RHO) or AMS are renewed in month 85, Client shall pay the amounts listed in the table below, or as adjusted, on an annual basis upon the anniversary of the Effective Date of this Cerner System Schedule. The fees may increase on an annual basis for scope of use increases and by the change in the All Items Consumer Price Index for All Urban Consumers; United States City Average (“CPI”). Cerner will invoice Client for fees on the first day of each month, and payment for such fees shall be due upon receipt of an invoice.

Contract Element	Monthly Payment Amount
Managed Services (RHO)	\$11,350
Application Management Services	\$11,250

Annual Increases. Cerner may revise the monthly fees for managed services (RHO) and AMS any time following the initial 12 month period after such fees begin (but no more frequently than once in any 12 month period) by giving Client 60 days’ prior written notice. The amount of any increase in the fees shall not exceed the previous calendar year’s percentage increase in CPI, plus 5% per annum. Cerner may also increase the fees at any time during the term if a Cerner third party supplier increases the fees to be paid by Cerner, with such increase being limited to the amount of increase in Cerner’s fee to the third party supplier.

TERM AND TERMINATION

Equipment and Sublicensed Software Maintenance. Maintenance warranties, if any, begin on the earlier of installation, or 30 days after shipment of the equipment and/or sublicensed software. Maintenance services will continue for an initial term of twelve (12) months, or such longer period as set forth in the "Solutions and Services" section of this Cerner System Schedule. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance. Client will pay all applicable penalties or fees if maintenance services are terminated, then later reinstated.

Managed Services. Managed services begin on the Effective Date, and continue for the term set forth in the "Solutions and Services" section. At the end of the applicable term, each service may renew for additional 12 month periods at the rate charged in the final period of the then-current term if either party provides the other party with written notification of its intent to renew the relevant service no less than 60 days prior to the expiration of the applicable then-current term.

Application Management Services. Application management services begin on the earlier of First Productive Use or 12 months following the Effective Date, and continue for the term set forth in the "Solutions and Services" section. At the end of the applicable term, each service may renew for additional 12 month periods at the rate charged in the final period of the then-

current term if either party provides the other party with written notification of its intent to renew the relevant service no less than 60 days prior to the expiration of the applicable then-current term.

PASS-THROUGH PROVISIONS

Where pass-through provisions are applicable to third party products and services, these provisions are referenced by a pass-through code in the "Solutions and Services" section of this Cerner System Schedule, and that code can be entered at <https://passthroughprovisions.cerner.com/> to view the pass-through provisions. These pass-through provisions are incorporated into this Cerner System Schedule by reference.

ASSIGNMENT OF PAYMENTS

Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner System Schedule in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a security interest. Cerner will continue to perform its obligations under the Agreement following such assignment or granting of a security interest.

SOLUTIONS AND SERVICES

APPLICATION MANAGEMENT SERVICES

Solution Code	Description	Monthly Range	Term (Mo)	Solution Description Code	Pass-Through Code
Quote: KERN_CA PeopleSoft AMS (1-11094233261-R-1)					
ERP-10001-AMS	ERP Application Services Set-Up Fee				
ERP-00001-AMS	ERP Application Services		72		

MANAGED SERVICES

Solution Code	Description	Monthly Range	Term (Mo)	Solution Description Code	Pass-Through Code
Quote: Technology - RHO (Standalone PeopleSoft) (1-11099357547-R-2)					
CW-RHO-NC-1TIME	RHO One Time Fee-Non Cerner Solutions				10400_MSR
CW-RHO-NC-RECUR	RHO Recurring Fee-Non Cerner Solutions	1 to 84	84		10400_MSR

PROFESSIONAL SERVICES

Phase	Project	**Bill Type	Solution	Rate	Metric	Qty	Pass-Through Code
Quote: Professional Services (1-11095110592-R-1)							
1	ERP	FF	ERP Financials				
1	ERP	FF	ERP Project Management				
1	ERP	FF	ERP Supply Chain				

**FF = Fixed Fee / FFS = Fee For Service

Professional services pricing is valid until July 22, 2016. If a Cerner System Schedule is not executed on or before such date, this pricing is considered null and void and will be subject to revision. Cerner will not schedule resources for implementation services until this Cerner System Schedule has been executed by both parties and processed by Cerner.

SUBLICENSSED SOFTWARE

Line #	Solution Code	Description	Qty	Scope	Solution Description Code	Pass-Through Code
Quote: Technology - PeopleSoft (1-11098839335-R-2)						
1	CFG_PEOPLESOFT_APP	PeopleSoft Configuration Software	1	Each		
2	QC-ORPS-CFIN	PS Component Financials Appl User	25	Each		6006_ORA
4	QC-ORPS-CINV	PS Component Inventory Appl User	25	Each		6006_ORA
6	QC-ORPS-CPUR	PS Component Purchasing Appl User	25	Each		6006_ORA
8	QC-ORPS-CEPROC	PS Component eProcurement Appl User	1,000	Each		6006_ORA
10	QC-ORPS-MINVM	PS Mobile Inventory Mgmt Component Appl user	14	Each		6006_ORA

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE

Line #	Manufacturer Part #	Description	Level of Service	Qty	Initial Maint Term (Mo)	Extended Initial Maintenance Fees	On-going Maint Term (Mo)	Extended Ongoing Maintenance Fees
Quote: Technology - PeopleSoft (1-11098839335-R-2)								
2	QC-ORPS-CFIN-MNT	Suppt 1yr-PS Component Financials Appl User	24x7 M-Su Phone Support	25	12	17,690.76	0	0.00
4	QC-ORPS-CINV-MNT	Suppt 1yr-PS Component Inventory Appl User	24x7 M-Su Phone Support	25	12	17,690.76	0	0.00
6	QC-ORPS-CPUR-MNT	Suppt 1yr- PS Component Purchasing Appl User	24x7 M-Su Phone Support	25	12	17,690.76	0	0.00
8	QC-ORPS-CEPROC-MNT	Suppt 1 yr-PS Component eProcurement Appl User	24x7 M-Su Phone Support	1,000	12	12,320.28	0	0.00
10	QC-ORPS-MINVM-MNT	Supt1yr PS Mobile Inventory Mgmt Component Appl user	24x7 M-Su Phone Support	14	12	3,719.10	0	0.00

At the time of the actual order, Cerner may substitute individual technology solutions based on availability and/or technological advancements. In the event of a substitution, the corresponding Maintenance services and fees are subject to change for the substituted items. If the substitution Maintenance services result in an increase in fees, Cerner and Client will discuss the fee increase prior to ordering such Maintenance services.

ADDITIONAL TERMS AND PROVISIONS

EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE TERMS

Maintenance Services for Equipment. Maintenance services for Equipment are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) dispatching and coordinating the activities of the third party maintenance supplier; (c) communicating with the third party maintenance supplier throughout the resolution of the issue; (d) field change orders; and (e) inclusion of Equipment issues in a tracking database. Maintenance services for Equipment do not include consumables.

Maintenance Services for Sublicensed Software. Maintenance services for Sublicensed Software are: (a) initial determination of the source of the problem, problem management, critical situation escalation and recovery services; (b) providing all new versions, modifications, and patches of Sublicensed Software that Cerner is authorized to distribute; (c) communicating with third party maintenance providers throughout the resolution of the issue, (d) inclusion of Sublicensed Software issues in a tracking database.

Maintenance Renewals. The initial term for maintenance is set forth in the "Solutions and Services" section of this Cerner System Schedule, and automatically renews for additional periods of the same duration, unless Client provides written notification of termination no less than 60 days prior to the expiration of the then-current period. Client will also notify Cerner of any Equipment items that are no longer being used by Client, and therefore no longer require maintenance. Cerner may terminate maintenance services if Client fails to pay invoices for maintenance.

Equipment Coverage Levels.

24x7 M-Su 4 HR. Monday through Sunday, 24 hours per day, 365 days per year, on-site coverage. Service effort is continuous until problem is resolved. 24x7 4 HR service does not guarantee that service will be completed same day due to part availability.

9x5 M-F 4 HR. Monday through Friday, 8 AM to 5 PM CST, on-site coverage. Service effort is continuous until problem is resolved, excluding country holidays. On-site coverage does not guarantee that service will be completed same day due to part availability.

9x5 M-F Next Business Day. Monday through Friday, 8 AM to 5 PM CST with the objective of completion the next business day.

9x5 M-F Depot. Monday through Friday, 8 AM to 5 PM CST for service calls. Equipment is shipped to the manufacturer where it is repaired and returned to Client's facility.

9x5 M-F Advanced Exchange. Monday through Friday, 8 AM to 5 PM CST for service calls. A replacement will be shipped the next business day and requires return of the replaced equipment within 15 days of receiving the replaced device. Service

EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE TERMS

requests placed after 1 PM CST cannot be guaranteed next business day delivery. If more than one device is being requested for replacement, one will be Advance Exchange and the remaining will be returned on a best effort basis depending upon availability of replacements.

Sublicensed Software Coverage Levels. Service effort is continuous until the problem is resolved.

24x7 M-Su Phone Support. Monday through Sunday, 24 hours per day, 365 days per year.

Changes to Maintenance Services. Changes to maintenance services must be requested in writing by Client, and will take effect within 60 days after receipt of a signed change order.

Technology components can be added to maintenance coverage if they are in good working order. If a component is not in good working order, Cerner can arrange for it to be repaired on a time and materials basis prior to being placed on maintenance. Serial numbers must be provided.

Inventory. Client must review all Cerner Renewal Letters to ensure accuracy, and to avoid costly time and materials charges for uncovered items. Client should provide Cerner with any missing or incorrect serial numbers as soon as possible to keep records current. Client should also notify Cerner when technology components are replaced as the result of a service call in order to avoid coverage issues.

Upgrades. Maintenance services do not include hardware/technology updates. Maintenance services include software updates once they become available and have been certified for use by Cerner.

Pricing and Allowances. Equipment and/or Sublicensed Software maintenance pricing and allowances granted by Cerner are confidential and are not to be discussed outside the context of this arrangement. Allowances are available for multi-year maintenance and prepaid terms of one year or greater. Prices do not include any applicable taxes.

Multi-Year Commitments. Fees associated with the initial term are deemed prepaid and are non-refundable.

SCOPE OF SERVICES

This section defines the service deliverables ("**Scope**") for the services set forth in this Cerner System Schedule.

APPLICATION MANAGEMENT SERVICES

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT

(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

Scope of Use Limits

The AMS fees set forth in the "Solutions and Services" section of this Ordering Document are based on the following scope of use limits:

Scope of Use Metric	Scope of Use Limit
Sublicensed Software to be Managed (" Managed Software ")	<ul style="list-style-type: none"> • PeopleSoft Enterprise Financials <ul style="list-style-type: none"> o PeopleSoft General Ledger o PeopleSoft Payables o PeopleSoft Asset Management o PeopleSoft Cash Management • PeopleSoft Enterprise Supply Chain <ul style="list-style-type: none"> o PeopleSoft Purchasing o PeopleSoft Inventory o PeopleSoft eProcurement o PeopleSoft Mobile Inventory

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

Interface architecture Included in Scope	<ul style="list-style-type: none"> Unidirectional asynchronous Patient Billing to General Ledger Bidirectional asynchronous Patient Refunds to Accounts Payable Unidirectional asynchronous Item Master to Procure Synchronization Unidirectional asynchronous UltiPro Payroll to General Ledger
Production Domains	<ul style="list-style-type: none"> 1 production domain commencing on First Productive Use of the Managed Software and continuing for the AMS Term
Non-Production Domains	<ul style="list-style-type: none"> 1 certification domain commencing on First Productive Use of the Managed Software and continuing for the AMS Term
Facilities	Kern Medical Center
Financial Tax Updates	<ul style="list-style-type: none"> 1 per year
Application Maintenance Packs	<ul style="list-style-type: none"> 1 application maintenance pack project per production domain per calendar year for the Managed Software set forth herein, upon Client request Shall not exceed 4 maintenance packs per calendar year Bundle application is not included or recommended, but could be traded in lieu of the application maintenance pack project
Reporting Updates	<ul style="list-style-type: none"> 5 report customizations or alterations per calendar year beginning upon the Effective Date of this Cerner System Schedule
New Custom Reports	<ul style="list-style-type: none"> 5 new reports per calendar year beginning upon the Effective Date of this Cerner System Schedule

Note. Client must purchase licenses to all content set forth in the table above. Implementation of such content is not included as part of AMS.

Scope of Use Limit Exclusions	<ul style="list-style-type: none"> The following items are not included in this project. <ul style="list-style-type: none"> Technical infrastructure required to run the Managed Software, including, but not limited to, operating system and database patching Non-PeopleSoft applications Professional services for the design and/or build of additional Licensed Software and/or Sublicensed Software not included in this Cerner System Schedule Implementation of the Managed Software Modifications to source code or the addition of custom tables (Cerner will implement Oracle one-off fixes for “immediate” and “high” issues) Development and/or delivery of end user training for any of the Managed Software Design and/or build of new functionality delivered in patches/bundles/maintenance packs/feature packs <ul style="list-style-type: none"> Cerner will help determine a plan to restore functionality; however, Client is responsible for the additional development required Cerner may perform development services for an additional fee, which shall be set forth in a new Cerner System Schedule or Cerner Sales Order Upgrade and/or delivery of Managed Software minor and major releases Application monitoring services (do not apply to non-production domains) Facility or clinic professional services roll-outs Any database administration activities for Managed Software
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APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

Scope of Use Expansion

In the event Client requests application management services for additional PeopleSoft solutions, additional fees will apply and will be determined on a case-by-case basis. Any such additional services and/or fees shall be set forth in a new Cerner System Schedule or Cerner Sales Order.

Growth. In the event a scope of use limit set forth in Section I is exceeded, Client agrees to pay the following additional AMS fees for the applicable scope of use limit that has been exceeded:

Scope of Use Metric	Extending Scope of Use Limit by	Additional AMS Monthly Fees
Production Domains	1 Production Domain	\$10,000
Non-Production Domains	1 Non-Production Domain	\$10,000
Facilities	1 Facility	\$1,000

Client's scope of use will be measured periodically by Cerner's system tools. Client agrees that if an event occurs that will materially affect Client's scope of use (such as acquisition of a new hospital or other new facility), Client will promptly notify Cerner in writing of such event (no later than 30 days following the effective date of such event) so that Client's scope of use can be reviewed. Any additional fees due under the "Scope of Use Expansion" section shall be payable within 30 days following Client's receipt of an invoice for such fees.

Configuration, Setup, and Engagement Description

The scope of services set forth herein includes the development of the initial processes and setup of tools required for the engagement. These tasks include report setup, engagement meeting setup, change management setup, standard operating procedure documentation, service request backlog transition, maintenance and monitoring tools setup, and service record interface implementation. A description of each of the processes is set forth below:

Change Management	<ul style="list-style-type: none"> In the first month of engagement, Cerner will work with Client to set up and maintain a change control process, or will engage in Client's current change management structure and process. Cerner will draft a document that outlines process and polices specific to AMS.
Client Governance Structure	<ul style="list-style-type: none"> Client agrees to create a governance committee including primary and secondary contacts per module to administer Client's responsibilities under this Cerner System Schedule. The governance structure will include a series of subcommittees that will be comprised of those Client employees responsible for setting priorities, providing general decision-making, overall organizational road mapping, definition of organizational policies and procedures, communication strategy development and definition and communication of key strategies and tactics to meet organizational goals. During the transition stage, Cerner will provide suggestions for Client's governance structure. However, it is Client's responsibility to identify departmental representatives, technical stakeholders, and executive oversight to participate in Client governance.
Change Control Group	<ul style="list-style-type: none"> The governance structure will also contain a group responsible for approving or rejecting changes to reference data proposed by end-users (a "Change Control Group"). The Change Control Group will be responsible for setting priorities as they relate to end-user requests, approving system changes and change schedules, engage with Cerner to provide change request design, and manage communication and education strategies related to the change requests. The Cerner engagement leader will serve as the AMS representative on the Change Control Group. During the transition stage, Cerner will provide suggestions for the structure of Client's Change Control Group. However, it is Client's responsibility to identify departmental representatives, technical and clinical stakeholders, and executive oversight to participate in this Change Control Group.
Standard Operation Procedure Documentation	<ul style="list-style-type: none"> Cerner will provide the following documentation of AMS procedures to Client for reference: <ul style="list-style-type: none"> Work instructions outline the process for service request logging, tracking, and the various issue statuses that Cerner and Client will use Standard Configuration Request Document PeopleSoft regression test scripts

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

Kick-off and Transition Event	<ul style="list-style-type: none"> Cerner will conduct a kick-off and transition event at Client’s primary facility within 30 days prior to the scheduled service start date. Prior to this visit, Cerner will identify the Client personnel needed during the visit. Objectives of the meeting include, but are not limited to: <ul style="list-style-type: none"> Conduct a formal kick-off event with the appropriate Client and Cerner resources Create visibility/rapport and begin building relationships and commitment to the partnership Establish a change management process Establish a maintenance request process Establish Client contacts Establish periodic departmental meeting communications/call Help Client understand how they can maximize Cerner support services
Travel Expenses	<ul style="list-style-type: none"> The AMS fees set forth in this Cerner System Schedule do not include travel, lodging, per diem, or other out-of-pocket expenses incurred by Cerner personnel during the initial AMS transition period, or subsequent visits. Such expenses must be pre-approved by Client and will be billed to Client monthly, as incurred. Any estimate of expenses can change based on variables such as airfare and location of Client’s facility(s)
Optimization Analysis	<ul style="list-style-type: none"> Cerner will conduct quarterly analysis of the Managed Software to determine preferences, purging, and other settings that may impact the optimal use of the system. All settings found not to be aligned with recommendations will be documented and presented to Client to determine priorities and next steps. If Client chooses not to pursue specific recommendations, Cerner will note the recommendation as "overridden", and provide a report of all "overridden" recommendations in the next quarterly analysis.
Role Descriptions	<ul style="list-style-type: none"> <u>Engagement Leader</u>. Manages and directs Client relationships with broad scope and prolonged duration, and manages the engagement milestones and scope of services. Responsibilities include appropriate executive relationship management, status review of assigned accounts, and appropriate escalation of Client concerns. <u>Delivery Consultant/Solution Architect</u>. Responsible for progress on module-specific issue resolution and configuration changes. A delivery consultant/solution architect has extensive contact with appropriate counterparts as needed to guide the solution design and supporting processes to ensure the successful use of PeopleSoft’s software solutions.

Scope of Work

Application Management

Application management is the set of services and updates required to ensure the Managed Software is available for end users (“Application Management”). Maintenance includes changes to the Managed Software that does not require the addition of new functionality (i.e. adding meds integration) or new solutions. Each party agrees to perform its respective Application Management responsibilities as set forth in Table 1 below. All Cerner tasks outlined in Table 1 below apply only to the solutions defined as “Managed Software” in the “Scope of Use Limits” of this Scope

Client and Cerner will use service requests (SRs) in the Cerner service tracking tool to track Managed Software issues and requests. End users must access the Client help desk to enter issue requests which will transmit across the SR interface into the Cerner service tracking tool. Examples of issue requests (examples below may not be representative of the Managed Software):

- Modification to existing account tree, item properties, preferences, user’s security addition, etc.
- Addition of accounts and departments
- Build Elements or Par Locations

Table 1:

No.	Application Management Responsibility Matrix	Cerner	Client
1.1	User accounts		
1.1.1	Designate security representative and provide definition of required roles, positions and application specific security profiles; notify Cerner of any changes to user security		X

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

	(termination, role changed, etc.)		
1.1.2	Provide and maintain user database for application-specific security such as task access, positions, and role setup	X	
1.1.3	Add new users' accounts		X
1.1.4	Cerner will create and manage user accounts for Cerner associates	X	
1.2	Maintenance Activities		
1.2.1	Develop and update workflow documentation based on feedback from the Cerner support team		X
1.2.2	Conduct end user training		X
1.2.3	Identify and provide printer and printer location(s)		X
1.2.4	Maintain application-specific security based on Client supplied guidelines	X	
1.2.5	Maintain departmental tasks		X
1.3	Second Level Application Support		
1.3.1	Answer questions regarding Managed Software usage	X	
1.3.2	Provide troubleshooting expertise and problem resolution	X	
1.3.3	Recommend short-term and long-term alternative resolutions to problems	X	
1.3.4	Provide Client with quarterly service reports	X	
1.3.5	Provide accurate problem description and expel. Provide point of contact that can verify request is complete		X
1.3.6	Perform Daylight Savings Time management activities	X	
1.3.7	Provide internal Client help desk that serves as the initial point of contact for end users		X
1.3.8	Troubleshoot and resolve foreign system and device interface errors on the PeopleSoft side of Managed Software interfaces	X	
1.3.9	Troubleshoot and resolve foreign system and device interface errors on Client side of interface		X

Custom Report Management

Custom report management is the maintenance of Client custom reports and schedule reports. This includes an inventory of all reports and schedules that are used in Client's production system. Cerner will make modifications to existing production reports or schedules to address changes requested by Client, as well as those required for release upgrades and content updates. Each party agrees to perform its respective custom report management responsibilities as set forth in Table 2 below. Client is entitled to the number of new custom reports set forth in the "Scope of Use Limits" section of this Scope. **All Cerner tasks outlined in Table 2 below apply only to the solutions defined as "Managed Software" in the "Scope of Use Limits" section of this Scope.**

Table 2:			
No.	Custom Report Management	Cerner	Client
2.1	Custom Report Request		
2.1.1	Request modification to PeopleSoft queries, XML/crystal reports, and Nvision reports; provide requirement and mock up of change		X
2.1.2	Troubleshoot issues with PeopleSoft queries, XML/crystal reports, and Nvision in production	X	
2.1.3	Manage requests using tracking tool and report to Client on status	X	
2.1.4	Modify and test PeopleSoft queries, XML/crystal reports, and Nvision reports	X	
2.1.5	Validate and sign off on PeopleSoft, XML/crystal reports, and Nvision reports within 30 days of project start, and assure the integrity of the resulting data		X
2.1.6	Request new PeopleSoft queries, XML/crystal reports, and Nvision reports development; provide requirement and mockup for new request		X

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

Content Management

Cerner will provide to Client updates of content packages, which include fixes, patches, bundles and maintenance packs delivered through Oracle licensed software support. Examples of this content include payroll tax, W2 format, 1099 formats and taxes. Each party agrees to perform its respective content management responsibilities as set forth in Table 3 below. **All Cerner tasks outlined in Table 3 below apply only to the solutions defined as “Managed Software” in the “Scope of Use Limits” section of this Scope.**

No.	Table 3:	Cerner	Client
	Content Management		
3.1	Package Management		
3.1.1	Maintain standard content updates subject to “Scope of Use Limits”	X	
3.1.2	Install content and service packages and perform technical special instructions (if not remote-hosted by Cerner)		X
3.1.3	Perform front-end special instructions for service package loads	X	
3.1.4	Provide regression test scripts	X	
3.1.5	Monitor sublicensed software notifications (i.e., flashes, patches, bundles, etc.) and take necessary action	X	
3.1.6	Perform service package certification guidelines as needed	X	
3.1.7	Confirm basic application and domain functionality after content load	X	
3.1.8	Test service packages and fixes in non-production domain		X
3.1.9	Validate service packages/application enhancements and fixes and assure the integrity of the resulting data; Client is responsible for final signoff		X
3.1.10	Perform and manage the process for local installations (fat client) of the Managed Software on Client personal computers		X

Change Management

Client and Cerner will follow a formal process for changes made to the Managed Software. Cerner will provide a copy of the change management procedure to Client. This process (i) ensures that changes occur in a controlled environment so that all parties understand the potential impact of an impending change and (ii) identifies potentially affected systems and processes prior to implementation of the change(s). Client will authorize all changes that affect production domains as specified in the standard change management procedure. Client agrees to cooperate with Cerner in connection with providing reasonable and appropriate maintenance windows and participating in the testing as reasonably required. Each party agrees to perform its respective change management responsibilities as set forth in Table 4 below. All Cerner tasks outlined in Table 4 below apply only to the solutions defined as “Managed Software” in the “Scope of Use Limits” section of this Scope.

No.	Table 4:	Cerner	Client
	Change Management		
4.1	Change Management		
4.1.1	Provide recommendations for Client’s Change Control Group	X	
4.1.2	Identify representatives to comprise Client’s Change Control Group and perform Client responsibilities as set forth in the structure		X
4.1.3	Provide and maintain an automated change management system for the centralized reporting and tracking of changes made by Cerner personnel	X	
4.1.4	Establish mutually agreed-upon change control process	X	X
4.1.5	Perform project management	X	X
4.1.6	Provide reporting to Client executive management	X	
4.1.7	Lead recurring change management meetings	X	X
4.1.8	Attend recurring change management meetings	X	X
4.1.9	Agree to production change schedule	X	X

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT
(ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

4.1.10	Communicate planned outages to end users		X
4.1.11	Designate at least 2 individuals responsible for signing PECA forms		X
4.1.12	Communicate system changes on non-Managed Software to the Cerner support team as necessary		X
4.1.13	Test and validate all changes to the Managed Software prior to moving them to production		X
4.1.14	Test application enhancements, fixes, and upgrades and assure the integrity of the resulting data		X
4.1.15	Provide 6 month notice to Cerner of material changes to Client growth of use of the Managed Software (e.g., employees, users)		X
4.1.16	Provide recommendations for governance structure to support change management activities and meetings	X	
4.1.17	Identify representatives to fill and execute on the agreed upon governance structure		X
4.1.18	Train end users on all changes made to Managed Software		X
4.1.19	Approve and return PECA forms per agreed-upon process		X
4.1.20	Make changes to operation job schedules and set up schedules based on change management documentation	X	
4.2	Service Management		
4.2.1	Provide quarterly statistics and management reports to Client	X	

Problem Management

Problem management is the identification, assessment of impact, reporting, tracking, escalation, notification, and resolution of problems that occur in the Managed Software. Client is responsible for maintaining a staffed help desk that will provide the first line of support of users and data coordination calls. This line of support will distinguish issues with the Managed Software versus connectivity or infrastructure issues. In addition, Client agrees to designate "super users" at the Client site to address application-specific issues. Each party agrees to perform its respective problem management responsibilities as set forth in Table 5 below. **All Cerner tasks outlined in Table 5 below apply only to the solutions defined as "Managed Software" in the "Scope of Use Limits" section of this Scope.**

Table 5:		Cerner AMS	Client
No.	Problem Management		
5.1	Problem Management		
5.1.1	Provide single point of contact for proper escalation of problems	X	X
5.1.2	Log all incidents and problems in accordance with documented processes set forth in this Cerner System Schedule		X
5.1.3	Maintain ownership of all problems related to PeopleSoft application support through closure or until the parties agree that the problem is not within Cerner's scope of responsibility	X	
5.1.4	Perform root cause analysis on problems that affect service level standards	X	
5.1.5	Notify Client help desk of issues found that affect service	X	
5.1.6	Staff operations 12 x 5 (Monday – Friday, 7 AM to 7 PM Central Standard Time)	X	
5.1.7	Provide on-call application staff after hours for immediate issues	X	X
5.1.8	Ensure proper notification and escalation of issues in accordance with standard operating procedures	X	
5.1.9	Differentiate between solution and connectivity issues, manage non-Managed Software issues with appropriate Cerner support		X
5.1.10	Provide escalation process within Client organization		X
5.1.11	Assign IT coordinator as primary contact in accordance with Cerner standard escalation processes		X

APPLICATION MANAGEMENT SERVICES FOR ORACLE PEOPLESFT (ERP-10001-AMS, ERP-00001-AMS, ERP-00002-AMS)

5.2	Level 1 Help Desk		
5.2.1	Maintain Client help desk to provide first line of support to end users		X
5.2.2	Answer basic system questions		X
5.2.3	Route user service requests to the appropriate party		X
5.2.4	Gather relevant contact information and log all problems and service requests		X
5.2.5	Maintain a library of electronic and printed system reference materials for use in answering user questions and resolving basic problems		X
5.2.6	Perform password resets	X	X
5.3	Super Users		
5.3.1	Remain engaged on high/critical issue calls as needed		X
5.3.2	Assist in validation of the resolution of an issue as well as provide additional details for issue investigation as needed		X
5.3.3	Assist with end user communication (downtimes, code changes, process changes, etc.)		X
5.3.4	Provide for first-line training questions		X

MANAGED SERVICES

REMOTE HOSTING OPTION (RHO)

DEFINITIONS

As used in this Ordering Document, the following terms have the meanings set forth below. Terms not otherwise defined herein have the meanings set forth in the Agreement.

CernerWorks means Cerner's managed services division, which provides RHO services to Client.

Computing System consists of the Cerner-owned server(s) and Data storage required to provide the RHO services scope set forth herein.

CTC means Cerner Technology Center, the CernerWorks Data Center(s), where the hosting services are provided.

Data Center means the portion of the CTC that houses hosted Computing Systems.

LAN means local area network.

Major System Change means a material change to the system, including a server upgrade, operating system upgrade, New Release upgrade, SAN upgrade, database upgrade.

Service Package (i.e. patch) means a fix or enhancement made to a specific hosted application or associated non-Cerner component.

Service Request means the complete record of a request for service, from inception to resolution.

Steady State means the period of time following a System Stabilization Period and ending at the next Major System Change.

System Stabilization Period means the 72 hour window following First Productive Use and following a Major System Change

Layered Software means foundation software or technology necessary to provide the defined RHO services and enable the hosted solutions to run (e.g., database, MQ, Websphere, Citrix, etc.).

WAN means wide area network

REMOTE HOSTING OPTION (RHO)

SCOPE OF USE LIMITS

Cerner Solutions. The managed services fees set forth in the “Solutions and Services” section of this Ordering Document are based on the following scope of use limits for Cerner solutions

Scope of Use Metric	Scope of Use Limit
Cerner Solutions to be Remote Hosted	Cerner Millennium and associated Solutions Hosting Not Included. In the event that Cerner Millennium and associated Solutions Hosting is added, additional RHO Scope and RHO Services fees would apply.

Non-Cerner Applications. The managed services fees set forth in the “Solutions and Services” section of this Ordering Document are based on the following scope of use limits, and apply only to RHO services for the non-Cerner application(s) set forth below:

Scope of Use Metric	Scope of Use Limit
Non-Cerner Applications to be Remote Hosted	PeopleSoft FSCM (FIN & SCM): Financials, Purchasing, Inventory, eProcurement, Mobile Inventory PeopleSoft HR: Not Included

OTHER SCOPE LIMITS

Scope Limits and Assumptions:

- (1,500) Employees (Estimated 100 FSCM Users)

Capacity/Configuration Servers:

- (2) DB Servers (1 prod and 1 non-prod)
- (2) App Servers (1 prod and 1 non-prod)
- (8) Other Servers (3 prod and 5 non-prod)

Storage:

- (1.8) Terabyte total storage (Combined Production and Non-Production)

Production and Non-Production Environments:

- (1) Production
- (3) Non-Production environments
- (1) Multi-Tenant Cloud PUM Demo Image

Other Assumptions:

- RHO services fees include Oracle Database licensing

General Assumptions

- Cerner provides the Layered Software needed to deliver core RHO services (e.g., OS, middleware etc.).
- Managed services fees do not include Licensed Software, Sublicensed Software, Licensed Software Support, or Maintenance related to the non-Cerner applications.
- Client will perform application maintenance duties as recommended by non-Cerner application provider (e.g. application access, create/maintain batch queues, data/file purging, custom forms/menus, custom tables/objects, refresh/replication items, etc.), if applicable. Cerner will assist with system level items if required.
- Client is responsible for purchasing or providing application related services for implementation, system/data migrations, release upgrades or updates, consulting services or support. Cerner will provide basic assistance with initial installation or migration of the application to Cerner (e.g., load media, etc.).
- RHO services fees include installation and technical support for up to 1 major application release upgrade every 3 years during the Term of the agreement, unless otherwise noted.

REMOTE HOSTING OPTION (RHO)

- Future modifications to the technical requirements from the non-Cerner application provider (e.g., hardware platform, storage, network, database, tools, etc.), may result in additional hosting fees.
- Client will manage and monitor interfaces between application and other systems; including cycling systems (as needed), modifications of interfaces and connectivity to and from non-Cerner hosted applications (as needed). Interfaces shall connect between Client network (LAN/WAN) into the Cerner provisioned WAN circuit(s) or via a secured internet connection.
- Client will transfer non-Cerner application provider technical support entitlements to Cerner, if possible. Client will also engage application provider to assist with application/database management activities and issue resolution if support entitlements cannot be transferred and application provider does not permit Cerner to perform such activities.
- Client will allow Cerner to perform a security risk audit on non-Cerner applications hosted in the CTC. Client will also work with application provider to address and resolve any security vulnerabilities pertaining to non-Cerner applications hosted in the CTC. In the event Cerner identifies that a non-Cerner application poses a security risk to Cerner's data center, Cerner may suspend or limit use of such application. If security vulnerability is unable to be mitigated within a reasonable timeframe, Cerner will work with Client to identify an alternative hosting arrangement and RHO fees will be adjusted if applicable.
- Client will obtain necessary consent from third party suppliers for Cerner to provide hosting services for non-Cerner applications.

Telco-Connectivity (CTC to Client Site)

- 2 WAN circuits (1 primary and 1 secondary communications circuit).
- Both communications circuits assumed to terminate to a single point of demarcation defined by Client.
- Additional fees apply for additional circuits, routers, demarcations or demarcation changes.
- Client is responsible for connecting Client network to the commercially available point of demarcation, including extending Client network to demarcation point as necessary. Client is responsible for the cost of any additional circuit requirements, extended demarcations, or circuit relocations.
- Circuits are sized to support the solutions and concurrent Users including printing, interface traffic, and Cerner-owned on-site Equipment set forth in the scope of use limits table in this Ordering Document. Additional fees may apply if circuits are utilized for other purposes (e.g. maintain external database(s) or Data warehouse(s) at Client site).

SCOPE OF USE EXPANSION

Non-Cerner Applications. In the event a scope of use limit set forth in the "Scope of Use Limits" section of this Scope is exceeded, Client agrees to expand the scope of use and pay the additional managed services fees set forth below for the applicable scope limit that has been exceeded.

Scope of Use Metric	Extending Scope of Use Limit By	Additional One-Time Fees	Additional Monthly Fees
PeopleSoft (Employee Count)	(200) Employees	\$1,000	\$500
PeopleSoft Storage	(500) Gigabytes	\$500	\$250
PeopleSoft Non-Production Environments	(1) Non-Production Environment	\$4,000	\$2,000
Peoplesoft FSCM Major Release Upgrade (Technical Admin work only)	(1) Upgrade	\$60,000	\$0

All Prices are in US Dollar (USD)

Client's scope of use will be measured periodically by Cerner's system tools. Client agrees that if an event occurs that will materially affect Client's scope of use (such as acquisition of a new facility, change in number of Users, change in demarcation, change in number of thick Client workstations, etc.), Client will promptly notify Cerner in writing no more than 60 days following the effective date of such event so that Client's scope of use can be reviewed.

CONFIGURATION/SETUP DESCRIPTION

RHO services include the configuration and setup of the initial infrastructure required for work to begin on Client's project. These tasks include, but are not limited to:

- Project review and planning
- Configuration and scope review

REMOTE HOSTING OPTION (RHO)

- Ordering, receiving, and setup of equipment
- Installation of certain Sublicensed Software
- Testing and validation of the System

RHO SCOPE OF SERVICES

RHO services include the servers, Layered Software, monitoring and management, hardware infrastructure, network infrastructure, Cerner-provided WAN components, storage and backups, and Data Center infrastructure required by Cerner to host the System as set forth in this Ordering Document.

The following tables set forth the responsibilities of Cerner and Client regarding the RHO scope of services. Each party agrees to perform their respective responsibilities, as set forth in the tables below.

Cerner Technology Center

CTC. The CTCs are Data Center facilities intended to provide uninterrupted power and service for Cerner hosted clients. Each CTC is designed to significantly reduce downtime and operate under supervision 24 hours per day, 7 days per week ("24 x 7"), every day of the year.

NO.	TABLE 1: Facility Responsibility Description	Cerner RHO	Client
1.1	Provide the CTC facility space, cooling, power, and management required to provide the defined hosting services	X	
1.2	Provide and manage the CTC shared infrastructure components required to provide hosting services (e.g. CTC Network Infrastructure, Antivirus Management, etc.)	X	
1.3	Provide CTC facilities management, environmental monitoring, and two-factor physical access security	X	
1.4	Host facility physical security measures and controls	X	
1.5	Provide appropriate rack space, UPS/temperature-controlled environment, and physical security for Cerner-owned Equipment that is located at Client site(s). Note: Two separate power circuits are required for Cerner provided Equipment.		X

Network Operations

Network Operations. As part of the RHO services, Cerner will be responsible to provide and manage the network connectivity between the hosted services in the CTC and Client network (up to the Internet if applicable) as defined in the scope assumptions set forth in this Ordering Document. The Cerner and Client networks below work in unison to complete the application delivery to Users.

CTC Network. The CTC network includes the Equipment, support, and monitoring of connectivity within the CTC up to the Cerner-provided WAN or Internet connection.

Cerner Provided WAN Communications. WAN communications includes circuits, termination Equipment, and operating support between the CTC network and Client site. Provisioning of the Cerner-provided circuit(s) will follow best practice to maximize existing commercially available physical circuit diversity at the time of implementation to the Client premise point of demarcation, without material additional costs to Cerner. This practice does not provide a guarantee for complete physical diversity. Client shall provide address of demarcation to Cerner as soon as can be identified (it is recommended this not exceed 10 days after the Effective Date of this Ordering Document). The Cerner-provided circuit(s) will be sized for the solutions to be hosted in accordance with Cerner best practices for appropriate bandwidth, quality of service, and responsiveness. All circuit provisioning and management will be the responsibility of Cerner in conjunction with Cerner's communications partners. Responsibility related to any applications utilizing Internet connectivity end at Cerner's Internet Service Provider (ISP).

Client Provided LAN/WAN. Client LAN/WAN will consist of any communications circuits, WAN termination Equipment, and LAN Equipment not provided by Cerner, including connection from the Cerner-provided WAN circuits to the Users at all locations. Responsibility for applications utilizing Internet connectivity includes Client ISP.

REMOTE HOSTING OPTION (RHO)

No.	Table 2: Network Operations Responsibility Description	Cerner RHO	Client
2.1	CTC Network Operations		
2.1.1	Provide, monitor, and manage all required network Equipment within the CTC, such as routers, switches, load balancers, and consoles	X	
2.1.2	24 x 7 x 365 CTC network connectivity support	X	
2.2	Cerner-provided WAN Communications Network Operations		
2.2.1	Provide, monitor, and manage communications circuit(s) (TCP/IP protocol only) from the CTC to Client point of demarcation	X	
2.2.2	Provide and manage Equipment to terminate and secure the Cerner-provided WAN connection between the CTC and Client demarcation (e.g. routers, switches, out-of-band management, and firewall Equipment)	X	
2.2.3	Analog (POTS) line for out-of-band management of WAN termination Equipment by a means other than the provisioned WAN circuits. This grants access to the Cerner-provided Equipment only and not to Client LAN or Equipment.		X
2.2.4	Connect Client network to the point of demarcation, (e.g. additional circuit requirements, demarcation extensions, or circuit relocations.)		X
2.3	Client LAN/WAN Operations		
2.3.1	Provide, install, configure, manage, and support the Client LAN/WAN circuits, Equipment (e.g. routers, switches firewalls, etc.), and supporting infrastructure that connects from Cerner-provided circuit(s) to all end users, printers, foreign systems, medical devices, and other Client owned and Cerner-provided Equipment		X
2.3.2	Identification and resolution of all issues within the Client LAN/WAN and related Equipment. (Upon request by Client, Cerner will assist in the identification of network issues affecting delivery of RHO services to Users, regardless of the origin. With prior Client approval, Cerner may charge for time, materials, travel, and related expenses involved in resolving problems found to be in the Client network.)		X
2.3.3	Provide VPN access to off-site remote Users.		X
2.4	Internet access to CTC		
2.4.1	Provide access to the CTC external web interface via the Internet for occasional access by Client Users. Cerner does not warrant issues related to Internet availability or performance. These issues will not be considered in the system availability calculations.	X	
2.4.2	Provide access instructions and password to external web interface (if requested)	X	

Equipment and Layered Software Provisioning and Acquisition. As part of the RHO services, Cerner will provide servers, storage, and Layered Software required to Support the Remote Hosting Services defined in this Scope.

No.	Table 3: Equipment and Layered Software Acquisition and Provisioning	Cerner RHO	Client
3.1	Equipment		
3.1.1	Computing Systems consisting of CPU, memory, and Data storage required to provide the defined RHO services. (Note: Cerner-owned Equipment to be located at Client site will be shipped to Client.)	X	
3.1.2	Systems and tools required to manage, monitor, and secure Computing Systems	X	
3.1.3	Systems required for end user access (e.g. network authentication), local printing, and workstation software installation (e.g. "thick" Client installations, desktop links, etc.)		X
3.1.4	Selection, procurement, and deployment of peripheral technologies certified by Application Provider (e.g. PCs, thin Client devices, hand-held devices, printers, document scanners, and barcode scanners, etc.).		X

REMOTE HOSTING OPTION (RHO)

3.2	Layered Software		
3.2.1	Operating system (OS), layered (Citrix, etc.) software, and database software licenses/sublicenses required to provide defined RHO services	X	
3.2.2	Layered Software licenses/sublicenses required to provide defined RHO services for Cerner solutions and non-Cerner applications. (e.g. Citrix, remote desktop access, etc.)	X	
3.2.3	Adequate OS and software licenses for non-Cerner products hosted at Client location for Client front end systems, desktops/laptops, and other devices being used to augment hosted solutions. (e.g., Microsoft Word, Excel® spreadsheet software, Access™ database software, and Microsoft Client Access Licenses (CALs) for Client's devices and others may be among those used to display or analyze Data at the user desktop)		X

Computing Systems Management. As part of the RHO services, Cerner will provide Systems management services for the management, security, and performance of the Computing Systems required to operate the Licensed Software.

No.	Table 4: Computing Systems Management Responsibility Description	Cerner RHO	Client
4.1	Management and Monitoring		
4.1.1	Monitor and maintain Computing Systems as required to maintain System health, security, availability, and capacity	X	
4.1.2	Reboot servers on a recurring schedule to optimize performance and maintain security fixes	X	
4.1.3	Build, monitor, maintain, resubmit, and/or reroute any failed operations and print jobs		X
4.1.4	Create, monitor, maintain, and tune any custom scripts developed by Client or Client agent		X
4.1.5	Provide, monitor, and maintain printers and fax stations		X
4.2	Database Administration		
4.2.1	Proactively monitor database health, availability, and performance	X	
4.2.2	Manage database (size, disk layout, performance, and upgrades)	X	
4.2.3	Implement and monitor purge job activity to ensure purges are completing successfully for temporary files, if applicable		X
4.2.4	Create database and database user accounts	X	
4.2.5	Perform technical work on database required to support patch installs and minor release updates, if applicable (e.g., support and testing of patches and updates, etc.)	X	
4.2.6	Perform database maintenance activities (e.g., write maintenance scripts, perform integrity checks, rebuild and defragment indexes, transaction logs and system partitions, perform refreshes, perform patch installs, etc.)	X	
4.2.7	Perform technical troubleshooting and support of database, as needed	X	
4.2.8	Perform database upgrades	X	
4.2.9	Refresh non-production environments as mutually agreed, if applicable	X	
4.3	Layered Software Management and Monitoring		
4.3.1	Provide maintenance and monitoring of Layered Software (e.g., IBM Websphere MQ®, Citrix, etc.) required to perform the remote hosted services	X	
4.3.2	Perform the technical work for Layered Software required to Support patch installs, minor release updates and major release upgrades for the non-Cerner application(s)	X	
4.3.3	Perform technical troubleshooting and Support of Layered Software, as needed	X	
4.3.4	Perform Citrix administration tasks including deploying and publishing the solution to end users	X	
4.4	Security Administration		

REMOTE HOSTING OPTION (RHO)

4.4.1	Monitor System security errors, exceptions, and attempted violations	X	
4.4.2	Store Client's backup media in a manner that will protect the confidentiality of the Data stored on them and ensure that such Data remain Client's property	X	
4.4.3	Implement and monitor network intrusion and virus detection systems throughout the CTC network and Computing Systems as required	X	
4.4.4	Provide corporate IT security manager to enforce security procedures and resolve issues	X	
4.4.5	Provide logical security using lockdown procedures post production	X	
4.4.6	Provide and manage URL access to Internet sites approved for appropriate business purposes	X	
4.4.7	Assign and manage end user accounts for access to applications or other peripherals as needed to ensure personnel have appropriate access. Perform access control audits as required by Client policy or regulatory requirements.		X
4.5	Miscellaneous Technologies Selection, Deployment, and Management		
4.5.1	Provide adequate licenses, application maintenance, and support (e.g. ongoing upgrade fees, troubleshooting, etc.) for non-Cerner solutions not listed in the scope of use table above. Cerner may limit use and support for same if access impacts the performance of the System, introduces undue security risks, or causes extraordinary support requirements and cost to Cerner as a result.		X
4.5.2	Peripheral devices compatibility, configuration, management, and maintenance (web browser configuration, connectivity, rebooting, paper, toner, paper jam, device offline, etc.)		X
4.6	Cerner-owned Equipment located at Client site		
4.6.1	Manage the Cerner-owned Equipment located at Client site remotely from the CTC	X	
4.6.2	Provide physical assistance for installing and supporting the Cerner-owned Equipment (e.g., receiving, unpacking, racking, network connection, loading a CD, asset tracking)		X
4.6.3	Grant network access to enable Cerner to remotely manage the Equipment		X
4.6.4	Provide Client contact and physical access to facilities for field service personnel		X

Applications Management. As part of the RHO services, Cerner will provide technical support for the management of the application.

No.	Table 5: Applications Management Responsibility Description	Cerner RHO	Client
5.1	Application Service Package Management		
5.1.1	Request installation of Service Packages (software updates/fixes) and New Releases. Monitor software notifications (e.g. flashes, advisories, bulletins, etc.) for critical issues to keep System at a supportable level.		X
5.1.2	Upon Client request, installation of Service Packages (software updates/fixes) and New Releases; perform technical special instructions	X	
5.1.3	Perform Service Package application special instructions and testing as required		X
5.1.4	Perform, monitor, and manage local installations of the application(s) on Client devices as applicable (e.g. "thick" Client installation)		X
5.2	Application Maintenance and Operations		
5.2.1	Cycle application services as required	X	
5.2.2	Configure, monitor, and manage application purges, operation jobs, audit reports, and logfiles in accordance with solution provider recommendations		X
5.2.3	Train end users on application(s)		X
5.2.4	Perform Computing System daylight savings time management activities	X	
5.2.5	Perform application level daylight savings time management and test activities as required		X
5.2.6	Application testing and validation, customization, etc.		X

REMOTE HOSTING OPTION (RHO)

Service Management

No.	Table 6: Administration Responsibility Description	Cerner RHO	Client
6.1	Change Management		
6.1.1	Provide and maintain an automated change management system for the centralized reporting and tracking of changes made by Cerner personnel	X	
6.1.2	Attend scheduled change management meetings to be facilitated by Cerner		X
6.1.3	Provide a weekly maintenance window		X
6.1.4	Allow for weekly maintenance window		X
6.1.5	Notify CernerWorks of planned outages on Client side and any changes to Client environment that affect RHO service		X
6.1.6	Designate at least two individuals responsible for signing PECA forms		X
6.1.7	Certify changes prior to moving them to production		X
6.2	Incident Management		
6.2.1	Provide and maintain a method for proper notification and escalation of incidents and problems in accordance with standard operating procedures	X	
6.2.2	Log all incidents and problems in accordance with standard operating procedures. Notify Client help desk of issues found that affect service.	X	
6.2.3	Maintain ownership of all problems related to CernerWorks services through closure or until parties mutually agree that the problem is not within CernerWorks's scope of responsibility	X	
6.2.4	Maintain first line of support for end users (e.g., workstation devices, LAN, training issues, etc.)		X
6.2.5	Provide and maintain a method for proper communication and escalation of problems within Client organization. Assign IT Coordinator for primary contact by Cerner technology group as per Cerner standard escalation procedures		X
6.2.6	Maintain "superuser" account(s) at Client site to address application-specific issues		X
6.2.7	Provide statistics and management reports to Client on a regular basis (e.g. system availability reports, incident reports, etc.)	X	

Disaster Recovery (DR) Services. The CTC consists of multiple Data Centers. Each of these Data Centers has core infrastructure services, including telecommunications, power, and security infrastructure in place. In the event of a disaster, an alternate Data Center will be invoked, with production Computing Systems being recovered first, followed by non-production Computing Systems. In a disaster situation, Cerner will use reasonable efforts to recover Client systems as quickly as possible. Cerner offers defined recovery commitments for an additional fee.

In the event of a disaster, an emergency response team will be mobilized. The system backups will be used to recover the production system in an alternate Data Center. Equipment (e.g., servers, storage) will be provisioned as quickly as possible, and recovery of Client's production system will begin. As Client's recovery processes complete, Client will be notified to begin testing the recovered Computing System in preparation to return the system to the end users.

COMPLIANCE REVIEWS AND AUDITS

Compliance Reviews. The scope of the RHO services set forth in this Scope is based on applicable federal laws and regulations in effect on the Effective Date of this Ordering Document. New federal laws and regulations, including, but not limited to, U.S. Food and Drug Administration regulations and U.S. Centers for Medicare & Medicaid Services regulations may arise during the Term of the RHO services that require compliance by Cerner and/or Client. As a result of compliance, Cerner and/or Client may require changes to existing technology or the implementation of new technology (e.g., hardware, storage, network, database, tools, etc.). Cerner and Client will periodically review and evaluate new federal laws and regulations to determine the overall impact to Cerner's providing of the RHO services. Compliance method(s) for any changes to the RHO services to comply with the new federal laws and regulations shall be implemented at Cerner's sole discretion and cost (subject to the roles and responsibilities outlined in this Ordering Document). In the event such changes will result in Cerner incurring additional material costs, Cerner will work with Client to identify commercially reasonable options for Cerner to continue to provide the RHO services, including any resulting changes to the managed services fees. If the

REMOTE HOSTING OPTION (RHO)

parties are unable to mutually agree within 60 days, Cerner and Client will discuss the risk and/or impact to Cerner and Client in non-compliance. If Cerner determines that it is not feasible to continue with the remote hosting relationship, Cerner will work with Client to identify an alternative hosting solution for Client. Upon transition to an alternative hosting solution, Cerner's obligations under this Ordering Document shall terminate and Cerner shall have no further liability to Client.

Audits. Upon written notice from Client to Cerner's Director of Regulatory Affairs, Cerner will permit access to the CTC and processing environment for Client's auditors and/or an independent auditor retained by Client. Client will provide Cerner's Director of Regulatory Affairs an audit agenda two 2 weeks prior to audit date. Any such audit conducted by Client auditors and/or an independent auditor retained by Client shall be limited to 1 audit per calendar year. Cerner shall provide reasonable support and assistance during any such audit(s) to include preparation, pre-audit events, and 1 business day of physical CTC access. Cerner will conduct a periodic independent audit (using an internal or external agent) of the CTC operating environment in accordance with applicable standards. Questions regarding CTC audits should be directed to Cerner's Director of Regulatory Affairs.

RHO SERVICES COMMITMENT

System Availability Commitment

If the monthly system availability (as calculated below) for the RHO services falls below the targets defined in the tables below, and Client is current in paying all managed services fees and operating within the scope of use limits set forth in this Scope, Cerner will provide a credit toward Client's next monthly managed services fees to account for the downtime. The appropriate credit percentage will be determined based on the following table. The parties agree that this Section provides Client's sole and exclusive remedy for Cerner's failure to meet the System Availability commitment

System Availability % for Non-Cerner Applications	% of Monthly RHO Services Fees for Non-Cerner Applications Credited
Less than 99.0% and greater than or equal to 98.0%	5%
Less than 98.0% and greater than or equal to 95.0%	10%
Less than 95.0%	20%

System Availability Calculation Formula

System availability will be calculated monthly during the Term using the following formula (and will be rounded to the nearest one-tenth of a percentage point):

- System availability = $[(\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time})] \times 100$
 - **"Base Time"** equals the product of the number of days in the applicable month multiplied by 24 hours multiplied by 60 minutes.
 - **"Unscheduled Downtime"** equals the time (in minutes) during which the production Computing System is not operational during a Steady State (excluding "Scheduled Downtime" and time where the failure is caused by Client's improper action, omission, or failure with regard to an area for which Client is responsible) from the CTC up to the WAN point of demarcation (e.g. Cerner supplied router/firewall) based on the measuring methodology documented below. Declaration of Unscheduled Downtime will be a mutual decision between Client and Cerner.
 - **"Scheduled Downtime"** equals the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, OS, network, database, application software maintenance, repair, upgrades, and updates. Cerner will work with Client to determine and use commercially reasonable efforts to schedule downtime after regular business hours, during times that minimize the disruption to operations. The amount of scheduled downtime may vary from month to month depending on the level of change to the System such as the project implementation phase, adding new products, upgrading products, etc.
- Cerner shall not be liable for any Scheduled or Unscheduled Downtime related to the following and all such downtime will not be included in the System availability calculation: (i) downtime related to alpha software (i.e., code that has not been made generally available), (ii) downtime related to failures of non-Cerner hosted solutions, and (iii) downtime caused by Client action or in-action.

Audits of Unscheduled Downtime. Client is permitted to audit the Unscheduled Downtime based on the methodology established below. Cerner agrees to cooperate with Client in connection with any audit of the Unscheduled Downtime. This audit must take place within 30 days of the applicable month end

Effect of Service Packages. Cerner recommends that Client implement, in a timely manner, the Service Packages (including

REMOTE HOSTING OPTION (RHO)

New Releases) provided to Client by Cerner on a periodic basis. Cerner will advise Client regarding Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implications of electing not to implement the Service Packages. Cerner will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement as part of the managed services fees. Client and Cerner will work together to establish an implementation schedule for the Service Packages. If, after Cerner has provided notice to Client that the System's performance and/or availability will be adversely affected if Client elects not to implement the required Service Package(s) within 90 days, Client waives its right to any credits set forth above until Client implements the required Service Packages.

Effect of Layered Software and System Settings. Client must allow Cerner to implement the latest Cerner-Supported Layered Software version (e.g., DBMS, OS, etc.), patches, and recommended system settings within 6 months of the communication from Cerner. Cerner will advise Client regarding Layered Software configuration (e.g., database, OS, etc.) and System setting enhancements and will advise Client of the advantages of implementing the configuration and enhancements as well as the implications of electing not to implement the configuration and enhancements. Cerner will perform the technical requirements needed for Client to use the enhancements that Client elects to implement as part of the managed services fees. Client and Cerner will work together to establish an implementation schedule for the enhancements. If, after Cerner has provided notice to Client that the Computing System's performance and/or availability will be adversely affected if Client elects not to implement the required configuration and enhancements noted above, Client waives its right to any credits set forth above until Client implements the required configuration and enhancements.

Effect of Scope Use. Client agrees that Cerner will not guarantee performance or availability while Client is operating beyond scope of use limits, and waives any credits set forth above until Client is in compliance. When an increase to Computing System capacity is required (e.g., Peak Concurrent Logons, solutions, hardware, etc.), Cerner will begin the work to effect the changes once Client executes a new Ordering Document to expand the scope of use limits, and penalty credits will resume upon completion of such work.

Effect of System Stabilization Period. The System will be considered in a System stabilization period during the 72 hour window following the First Productive Use and following a Major System Change (the "System Stabilization Period"). During a System Stabilization Period, changes to the System may be required to achieve optimal performance; Unscheduled Downtime or Scheduled Downtime minutes do not apply

Effect of Solution Provider Action or Inaction. If Cerner encounters a system issue related to a hosted non-Cerner solution outside of solution provider's contracted support hours, and solution provider's assistance is required to address the issue, Cerner will begin steps to address the issue when solution provider is available to assist. This time will be excluded from downtime calculations. If solution provider's assistance is required to address an issue occurring within solution provider's contracted support hours and solution provider declines to engage directly with Cerner, any resulting delay will be excluded from downtime calculation. Issues primarily caused by solution provider will be excluded from penalty credit calculations.

Measuring System Availability. Equipment, network routers, switches, circuits, OS, and Layered Software provided by Cerner will be monitored using automated monitoring tools. In addition, call center logs will be checked that show a resolution relating to System Availability issues. For purposes of tracking downtime duration, the Unscheduled Downtime will begin at the time at which the impact is clearly identified by Client and communicated to *CernerWorks* via a live telephone conversation. Unscheduled downtime ends at the point in time when Users have the ability to access and use the production system.

TRADEMARKS

The following registered trademarks are referenced in this Ordering Document.

- **Millennium**® is a registered trademark of Cerner, and/or one or more of its subsidiaries.
- **Oracle**® is a registered trademark of Oracle and/or one or more of its subsidiaries.
- **Citrix**® is a registered trademark of Citrix Systems, Inc. and/or one or more of its subsidiaries.
- **Microsoft, Excel**®, and **Access**™ are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

PROFESSIONAL SERVICES

IMPLEMENTATION SERVICES	
Project Duration	<p>The following project start date is an estimate and subject to adjustment based upon the Effective Date of this Ordering Document. Cerner requires a minimum of 90 days following the Effective Date to accommodate pre-project activities such as planning, staffing, and technology activities. The overall duration of this project (from the “project kick-off” event to the “go-live” event), based on the scope of services detailed in this Ordering Document, is expected to be 12 month(s).</p> <ul style="list-style-type: none"> Estimated project start date: 07/01/2016
Facility Implementation Strategy	<p>This Scope assumes the design, build, and conversion of 1 facility utilizing a centralized database environment and a single go-live event per phase, converting all solutions in that phase concurrently.</p> <p>Go-live will occur at the following facility:</p> <ul style="list-style-type: none"> Kern Medical Center
Fixed Fee Implementation	<p>Cerner will provide the implementation services on a fixed fee basis. The scope of the implementation is based upon the specific assumptions set forth in this Scope. Each party (or its designee) will fulfill project responsibilities assigned to such party in this Scope. This Scope describes the solutions to be implemented, duration of the implementation, and the Services to be performed. Either party may identify a change in assumptions, tasks, duration, Services, or resources required from Cerner or Client. Such change may result in additional fees. No change will become effective without the written approval by both parties.</p>
Implementation Travel Expenses	<p>The travel expenses for this implementation are estimated to total no more than \$135,500. Such travel expenses up to that amount shall be reimbursed in accordance with the terms of the Agreement; however, in the event that more than the estimated amount of travel is needed and/or the expenses for the travel are more than estimated, such that the estimated total might be exceeded, Cerner and Client will discuss the situation and whether the travel and/or the estimated total should be changed. Any agreed increase in the estimated total of the travel expenses for this implementation will be documented through a written amendment executed by both parties.</p>
Cerner Delivery Project Team Work Space Assumptions	<p>As needed and at Client’s expense, Client will provide to the Cerner project team: a secure Cerner-assigned office (with door locks); work areas with network connectivity to Client network; and access to a network laser printer via a desktop computer with fat client (configured to Cerner’s minimum recommended configuration) access to appropriate Client domains and Clients using Citrix access. Client agrees to provide this access to each Cerner project team member while on Client site. Further, Client will provide a high-speed DSL line or network port through Client firewall for each Cerner associate on site to access the Internet/Cerner network using Aventail software, and a phone line for each Cerner project team member that is assigned to be on site for more than 16 hours per week for at least 10 consecutive weeks.</p>
Client Project Team	<p>Client will identify and make available its project team members within 90 days following the Effective Date of this Ordering Document or, if not identified and available within that timeframe, such delay will be considered a change in scope, and will require the execution of an Ordering Document setting forth the additional work effort and additional professional services fees.</p>
Special Project Assumptions	<p>Modifications to the design and build of the proposed solutions to meet specifications for individual facilities will result in additional professional services fees.</p>
Scope of Services	<p>The solution implementation scope of services documents the services provided by Cerner during the project. This Scope is based on the latest generally available <i>Cerner Millennium</i> software release, project timeline, and use of Consulting Framework, Bedrock, STANDARD content and recommendations. It is also assumed that Client will provide data required to configure the system in a Cerner defined format.</p>
Scope Control	<ul style="list-style-type: none"> There are controls on scope for the total number of a particular item within certain solution sections. Controls are present for the following reasons: <ul style="list-style-type: none"> In order to achieve the project timeline with estimated Client project resources Recommended use of the system and ease of maintenance long term

IMPLEMENTATION SERVICES

- o Maintain standard consulting fees
- Please note that controls on items are not functional limits of the *Cerner Millennium System*
- All requested modifications to this Scope must be evaluated for potential impact to the project plan and may result in a longer project timeline, additional Cerner/Client resources, and/or additional fees. Cerner has a scope management process that will be utilized throughout the implementation to help keep the project on track.

ENTERPRISE RESOURCE PLANNING
Oracle PeopleSoft Suite
Financial Management

- General Ledger
 - o Chart of Accounts setup and maintenance
 - o Setup of up to 5 legal entities
 - o Consolidation
 - o Elimination
 - o Year End and Period Close Process
- Accounts Payable
 - o Supplier Master (one shared file)
 - o Supplier1099 Set Up
 - Delivered 1099 Copy-B form
 - o Matching (three way) for Items Purchased Through PeopleSoft Supply Chain
 - o Asset Management Integration
 - o Pay-Cycles Processing
 - Checks
 - ACH
 - Positive Pay
- Cash Management
 - o Establish Banking
 - o Reconcile AP Checks
 - Requires BAI2 File from Bank
- Asset Management
 - o Business Unit Asset Depreciation
 - o Asset Location Tracking
 - o Asset Depreciation Schedules
 - o Configure Capital Acquisition Planning
 - o Journal Creation in PeopleSoft GL

Supply Chain Management

- **Purchasing**
 - o Purchase Order
 - o Change Orders
 - o Receipts Entry
 - o Receipt Accrual
 - o Return to Vendor
 - o Sourcing – Requisitions into Purchase Orders
 - o Asset Receipt Integration (with PeopleSoft Asset Management)
 - o Requests for Quotes
 - o Procurement Contracts
 - o Supplier Master (Concurrent with PeopleSoft Accounts Payable)
 - o Acknowledgements Back Orders Enable Capital Acquisition Planning Tracking

IMPLEMENTATION SERVICES

	<ul style="list-style-type: none"> • Inventory <ul style="list-style-type: none"> o Setup of 1 perpetual supply locations o Item Master o Inventory Tracking (Structure, QOH) o Inventory Replenishment o Par Location Configuration and Par Replenishment o Inventory Fulfillment o Inventory Counts (Physical and Cycle) o Cost accounting/Location Accounting o Interunit Transfers o Intraunit Transfers • eProcurement <ul style="list-style-type: none"> o Manage Requisitions o Online Requisitions o Capital Requisitions o Requisition Approval Workflow • Mobile Inventory Management <ul style="list-style-type: none"> o Mobile Inventory Counts o Mobile Par Counts o Mobile Item Stock Inquiry o Mobile Receiving o Mobile Inventory Putaway o Mobile Delivery o Mobile Inventory Adjustments o Mobile Bin to Bin Transfers
Integration Architecture	<ul style="list-style-type: none"> • Interfaces: <ul style="list-style-type: none"> o Unidirectional asynchronous Patient Billing to General Ledger o Bidirectional asynchronous Patient Refunds to Accounts Payable o Unidirectional Item Master Synchronization to Clinical Supply Chain o EDI – To One Vendor or Hub <ul style="list-style-type: none"> ▪ 850 ▪ 855 ▪ 856 ▪ 810 o Utilize Delivered Pivot Grids
Security	<ul style="list-style-type: none"> • NVision Reports <ul style="list-style-type: none"> o Actuals Balance Sheet o Actuals Income Statement (consolidated and departmental) o Budget Income Statement (consolidated and departmental) • Relevant Delivered Reports • Cerner's set of START queries for Healthcare Clients • Cerner Custom Trial Balance • Enable Pivot Grids
Customizations	<ul style="list-style-type: none"> • Alternate Item Lookup Capability on all Mobile Transactions <ul style="list-style-type: none"> o This function allows for single field entry/scan finds item based on what value was scanned

IMPLEMENTATION SERVICES

	<p>(GTIN, Item ID, Vendor Item Number, and Manufacturer's Item Number).</p> <ul style="list-style-type: none"> • Accounts Payable Check 1 formats customized to clients specifications • Purchase Order 1 formats customized to clients specifications • ACH file for Accounts Payable • Positive Pay File • Inventory Area shelf label format customization • PAR Location labels • Custom Label page • Usage label format customization • Custom Material Pick Plan (INS6000) • Business Unit Purchase Order auto-number • Inventory item auto-numbering • Custom chargeable and surgery flag • Custom Inventory View Table • MSL app engine • PAR app engine • Quantity-on-Hand app engine • Custom Component Interfaces: <ul style="list-style-type: none"> ○ MANUFACTURER ○ INV_PRO_FAMILIES ○ INV_ITEM_UOM_CI ○ C_CART_TEMPLATE_INV ○ IN_MST_ITM_XLS ○ ITEM_ATTRIBUTES ○ EX_PERSONAL_DATA2 ○ C_VNDR_ID_EXCEL ○ C_CM_ACCTG_DIST • Par location label format customization • Budget Page Customization
Scope Project Activities	<ul style="list-style-type: none"> • Project Management and Quality Assurance Leadership - Cerner is proposing project and quality assurance management to assist with the day-to-day task management, planning and formal milestone review process • Functional and Technical Subject Matter Expertise for Configuration – Execution of the design documentation and configuration of the modules listed in scope will be provided by the Cerner team • Knowledge Transfer - Our Cerner Consulting Framework Methodology includes a collaborative approach for working with the team to prepare them for end-user training, documentation of standard operating procedures, and post-production support. • Interface Design - Cerner will lead the team through the design of the interfaces, for the interfaces included in scope. Technical and Functional design documents will be turned over to the client upon completion of the project. • Data Conversion Design and Development - Design documentation and mapping templates will be provided by Cerner. This arrangement includes the following scope for historical data conversion. It is the responsibility of the Client to map legacy source system data to the provided PeopleSoft mapping templates. Any data conversion above and beyond the scope listed below will be the responsibility of the client and must not impact the project timeline. <ul style="list-style-type: none"> ○ Financials <ul style="list-style-type: none"> ▪ Two (2) fiscal years of monthly summarized General Ledger balances

IMPLEMENTATION SERVICES

	<ul style="list-style-type: none"> ▪ All non-paid invoices at time of conversion ▪ Current year fiscal budget ▪ Current assets with YTD and accumulated depreciation at time of conversion ▪ YTD 1099 balances ▪ Vendor Master o Supply Chain Management <ul style="list-style-type: none"> ▪ Open non-received purchase orders, partial PO will be recreated in PeopleSoft. ▪ Inventory on-hand quantities • Testing - Cerner will define a test schedule and approach. Cerner will provide high-level core work flows and scenarios for system and integration testing. The Client team will develop localized scenarios and test scripts as well as run test scripts and validate results. • Training Materials and Execution - Cerner will utilize a “train the trainer” approach. Cerner will provide job aids to be used by the client project team to enable the client project team to deliver SME training. It is the responsibility of the client project team or SME to localize the job aids and deliver end-user training. • Report Design and Development –Reporting Design and Development above and beyond the list from reporting section or delivered in start content is considered out of scope, including Crystal, NVision, and Query and XML reports. Cerner has experience in this area and can provide these services for an additional fee. • Post-Production Support - Included in project scope is 60 days of post-implementation support by Cerner. This will include the first month end close at the client site (travel expense will continue to be reimbursed by Client). It is standard practice for the First Productive Use (conversion) event to begin early in the week (Monday or Tuesday) If Client requests a First Productive Use (conversion) on a Saturday, Sunday or Cerner Holiday, Client will be charged a \$15,000 premium for that First Productive Use (conversion) event, per the Cerner Standard Agreement (Basic Terms and Conditions). As a standard Cerner provides 4 days for First Productive Use (conversion) support per solution as identified in the Cerner Project Agreement. Additional support requirements will be mutually validated between Cerner and Client 60 days prior to First Productive Use (conversion). The Cerner support team will typically provide "control center" expert support. Client will support the end users on the floor. Cerner and Client will mutually determine the extent of Cerner coverage outside the control center during First Productive Use (conversion), any additional coverage required will be sold on a time and materials basis. Additional application support beyond the 60 days can be provided by the ERP Application Support team, at an additional monthly cost. • Soft-Copy Project Management and Delivery Documentation - Both project management and delivery exercises will be delivered as soft copy documentation. These documents are described in the deliverables section of this document. • Customizations - Cerner strongly recommends against the use of customizations. If customizations are identified as a result of the Fit-Gap Analysis, the development and unit testing of these customizations will be the responsibility of Cerner and the Client development team; however, are not in the scope of this estimate (except for what is listed above).
Deliverables	<ul style="list-style-type: none"> • The following represents the major Cerner deliverables that will be completed during the lifecycle of this project. Cerner estimates that these deliverables can be completed in the timeframe associated with the Timing and Fees section to follow. The deliverables include the following: <ul style="list-style-type: none"> o Project Schedule/Milestone Plan - This Scope will include tasks, resources assigned, dependencies, and task level estimates. The project plan will be managed jointly between Client and Cerner o Issues Log - An Excel database used in tracking project issues and their corresponding resolutions. This database provides reporting for periodic issue meetings and other miscellaneous management reporting o Detailed Project Plan - This plan outlines all of the activities, resources, and investment required to complete the project. This plan is necessary to successfully manage the project o Process Analysis and Current/Future Process Flows - Visio documents depicting the Current

IMPLEMENTATION SERVICES

	<p>State and Future State flow for the major business processes</p> <ul style="list-style-type: none"> o Configuration of PeopleSoft modules (as detailed in Scope) and associated documentation – the process of setting up and testing the system parameters and codes for each module in scope includes the creation of a DCW (Data Collection Workbook) and DDM (Design Decision Matrix) for each module, documenting Client’s system configuration o Test Plan and Execution - The process of planning and documenting the system test approach, (User Acceptance and Performance Testing). After the test plans are developed, by Client, Cerner will lead the execution of the testing activities, both offsite and onsite. Client will provide detailed list of test users before Integration Testing 1 o Training Plan, Materials, and Delivery - Cerner will utilize a “train the trainer” approach Cerner will assist in development of end user training materials and deliver end user training to a maximum of 5 people per module. Client is responsible for replicating the training process as many times as necessary. Client is responsible for developing the user manuals for the system and the procedures manuals. Client is responsible for all elements necessary to provide training o Go-live - An operational PeopleSoft system that includes the modules detailed above o Post-Production Support – 30 days of post-production support for the team has been included in this timing estimate. Upon completion of the support period, a summary document will be produced to document any outstanding tasks and provide recommendations for resolution <p>• NOTE: All project documentation will be provided electronically through Consulting Framework. Contract includes 1 year of Oracle support. Client is responsible for working directly with Oracle support after year 1. An Oracle License Software Agreement will be required for signature by Client before application software can be installed. All proposed solutions in Scope are based on the standard functionality of the application; if customization is required Client is responsible for all hardware, software, and professional service costs</p>
Assumptions	<ul style="list-style-type: none"> • Our approach, and subsequent effort and time estimates, are based upon the following assumptions: <ul style="list-style-type: none"> o Employee Size - Client has 222 beds with 1,500 employees o Location - Project work will be performed offsite and onsite with all internal and consulting resources co-located at 1 of the facilities. Travel and expense is not included in this contract. As needed and at Client’s expense, Client will provide to the Cerner project team; a secure Cerner-assigned office (with door locks); work areas with network connectivity to Client network; and access to a network laser printer via a desktop computer with fat Client (configured to Cerner’s minimum recommended configuration) access to appropriate Client domains and Client using Citrix access. Further, Client will provide a high-speed DSL line or network port through Client firewall for each Cerner associate on site to access the internet/Cerner network using Aventail software, and a phone line for each Cerner project team member that is assigned to be on site for more than 16 hours per week for at least 10 consecutive weeks o Architecture - Technical architecture / infrastructure planning will be the responsibility of Client. Cerner has extensive experience in this area and can provide support for additional professional services and fees o Education - Pre-implementation education is not included in this Scope. Cerner has experience in this area and can provide support for additional professional services and fees o Change Management - All change management activities (including but not limited to policy review and planning, organization review and capability assessment, strategic planning and risk analysis/assessment) will be Client’s responsibility. If Client desires assistance with the preparation and implementation of a formal change management program, Cerner has experience in this area and can provide support for additional professional services and fees o SMEs - Client will assign functional Subject Matter Experts (SMEs) for each business process in scope for the upgrade on a reasonable basis. These SMEs will provide expertise and knowledge of existing Client’s business processes and current utilization of PeopleSoft

IMPLEMENTATION SERVICES

to their Cerner counterparts and will be responsible for insuring that decisions are made on a timely basis

- o Technical Work - All estimates have been made assuming that Client will provide significant technical resources for database administration, system and security administration and development/retrofitting of existing interfaces, customizations, patches and reports. Printer configuration and validation will be Client's responsibility
- o Timeline - Cerner's PeopleSoft timeline cannot be responsible for timeline changes for which we cannot control (i.e. dependencies upon other non-Cerner PeopleSoft projects or third-parties). Timeline changes can be requested through the formal Change Request process for review and impact analysis. Changes in timeline may result in additional professional services and fees
- o Response Time - Requests from the project team concerning technology support items such as hardware, database, software, business processes or other information will be responded to by Client in a timely manner (mutually agreed upon) as not to impact the project timeline
- o Change Requests - Change requests will be handled via the Cerner formal process as outlined on the following pages. All Project Change Requests, requiring time or price variance, must be approved and signed off by Client's Project Steering Committee
- o Availability - Client Project Sponsor(s) for each functional area will be readily available to the project team and Client Steering Committee will meet and review project status and related information at a minimum of a monthly basis or as needed
- o Deliverable Sign-off - Client will review all documentation submitted and provide feedback within 3 business days, unless otherwise mutually agreed upon. In the event that feedback is not received in the agreed upon timeframe, Cerner will assume documentation is acceptable and/or suspend work on additional deliverables contingent upon feedback
- o Software - Client is responsible to ensure all related software is on a supported version

EQUIPMENT/SUBLICENSSED SOFTWARE DELIVERY

Delivery Information. The following delivery information is required to process the equipment/sublicensed software in this Cerner System Schedule.

Delivery Address	Delivery Contact Information
_____	_____
<i>(Name of Facility)</i>	<i>(Name – Printed)</i>
_____	_____
<i>(Address Line 1)</i>	<i>(E-mail Address)</i>
_____	_____
<i>(Address Line 2)</i>	<i>(Phone Number)</i>
_____	_____
<i>(City, State/Province, Zip/Postal Code, Country)</i>	<i>(Fax Number)</i>

Delivery Requirements. Please check the applicable box for each question below to help ensure a successful delivery.

Does the facility accommodate a 48 foot trailer?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the facility have a loading dock?		Yes <input type="checkbox"/>	No <input type="checkbox"/>
What are the receiving days and hours of operation? <i>(Please enter days and times available)</i>	Days: _____	Time (From): _____	Time (To): _____
Will a lift gate and/or ramp be required?	No <input type="checkbox"/>	Lift Gate <input type="checkbox"/>	Ramp <input type="checkbox"/>
To what floor will the equipment be delivered?	Basement <input type="checkbox"/>	Ground <input type="checkbox"/>	Floor: _____
Does the facility have an elevator, or will a stair crawler be required?	Elevator <input type="checkbox"/>	Stair Crawler <input type="checkbox"/>	N/A <input type="checkbox"/>
Does the facility require floor covering?		Yes <input type="checkbox"/>	No <input type="checkbox"/>



CERNER BUSINESS AGREEMENT

This Cerner Business Agreement (the "Agreement") is made on July 1, 2016 ("Effective Date"), between

Kern County Hospital Authority ("Client")

and

Cerner Corporation ("Cerner")

a county hospital authority , which owns and operates Kern Medical Center with its principal place of business at:

a Delaware corporation with its principal place of business at:

1830 Flower St
Bakersfield, CA 93305-4144, USA
Telephone: (661) 326-2000

2800 Rockcreek Parkway
Kansas City, MO 64117, U.S.A.
Telephone: (816) 221-1024

Client wishes to implement a System pursuant to the terms and conditions of this Agreement. Cerner agrees to provide and assist in implementing certain Licensed Software, Sublicensed Software and Equipment. This Agreement will cover all of the licenses, solutions, hardware and services provided by Cerner to Client, and consists of the following documents:

Basic Terms and Conditions

Exhibit A – Support Services

Exhibit B – Business Associate Provisions

Cerner and Client may execute additional Ordering Documents for any additional licenses, solutions, hardware, and services in the future, which will be subject to the terms and conditions of this Agreement. Each capitalized term used in the Agreement has the meaning set forth in Section 7 of the Basic Terms and Conditions.

KERN COUNTY HOSPITAL AUTHORITY

By: _____

Russell Bigler

Title: _____
Chairman, Board of Governors

CERNER CORPORATION

By: _____

Marc G. Naughton

Title: _____
Executive Vice President
and Chief Financial Officer

APPROVED AS TO CONTENT

By: _____

Andy Cantu

Title: _____
Chief Financial Officer



Kern Medical Center
1-3H7XXBV
June 15, 2016

BASIC TERMS AND CONDITIONS**1. LICENSED SOFTWARE**

- 1.1 Cerner grants to Client a non-exclusive, non-transferable license to use the Licensed Software, subject to the terms of this Agreement and the applicable Ordering Document. Client represents that it has the authority to bind each User and Permitted Facility to the confidentiality and use restrictions set forth in this Agreement. The Licensed Software is proprietary to Cerner, is based upon and contains trade secrets and other Confidential Information. No right to use, print, copy, modify, create derivative works of, adapt, translate, distribute, disclose, decompile or reverse engineer the Licensed Software is granted, except as expressly set forth in this Agreement. Cerner reserves title to the Licensed Software and all rights not expressly granted hereunder. Client will not outsource its operation of the Licensed Software to any third party without Cerner's prior written consent.

2. SERVICES

- 2.1 **Services.** Cerner agrees to provide the Services set forth in each Ordering Document. Cerner uses a shared computing utility to deliver certain Services.
- 2.2 **Support.** Cerner will provide the Support services set forth in Exhibit A. Client agrees to provide a single, centralized help desk for Support requests to Cerner. Unless Cerner is providing the applicable hosting services, Client will purchase any hardware and third party software required to run New Releases. Upon request, Cerner will assist with the installation of New Releases at Cerner's then-current rates. Cerner is not obligated to provide Support for Licensed Software that is not the most current or next to most current New Release.
- 2.3 **Data Security.** Cerner has implemented reasonable security measures, systems, and procedures designed to protect against anticipated threats or hazards to the security or integrity of Client's Confidential Information. Cerner agrees to undergo an annual SSAE-16 review (or industry equivalent) of its data center operations. Upon request by Client, Cerner will provide a copy of the most recent service auditor's report.
- 2.4 **Client Responsibilities.** Client will use reasonable efforts to ensure that its Users do not: (i) sell, resell, lease, lend, or otherwise make available the Services in whole or in part to a third party; (ii) modify, adapt, translate, or make derivative works of the Services; (iii) transmit any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data, or personal information; or (iv) sublicense or operate the Services for timesharing, rental, outsourcing, or service bureau operations, or to train persons other than its Users. Client will manage and maintain communications, connections, and devices for its Users at all locations. Client will also: (a) credential all Users and determine the correct privileges for each User, (b) use reasonable efforts to ensure that all Users use the Services in accordance with the Documentation and for no other purpose, and (c) be responsible for any activities that occur under the Client's or Users' accounts or passwords. Client will use reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Client will promptly notify Cerner of any unauthorized use of, or access to, the Services of which it becomes aware. Client agrees to provide information requested by Cerner to verify Client's compliance with this Agreement. Client is also responsible for its security and privacy compliance, including obtaining consents and authorizations where necessary, and implementing reasonable security capabilities and policies and procedures to minimize or prevent unlawful access by Client or its Users, and access by unauthorized persons.
- 2.5 **Suspension of Services.** If (i) there is any threat to the security of Cerner's systems or the Services, or (ii) Client's undisputed invoices are 60 days or more overdue, in addition to any other rights and remedies (including termination rights), Cerner may, upon notice to Client, suspend the Services without liability to Client until all issues are resolved to Cerner's reasonable satisfaction.

3. THIRD PARTY SOFTWARE, SERVICES, AND EQUIPMENT

- 3.1 **Pass-Through Provisions.** Sublicensed Software, Third Party Services and Equipment will be provided under the applicable terms of the third party supplier. The Ordering Document will identify applicable pass-through terms which will be available on Cerner's website (<https://passthroughprovisions.cerner.com/>). Unless otherwise set forth in the applicable pass-through provisions, Cerner grants to Client a non-exclusive, non-transferable sublicense to use the

Sublicensed Software on the terms for end users in the license granted to Cerner by the applicable Sublicensed Software supplier.

- 3.2 **Equipment.** The Equipment is priced FOB the supplier's point of origin. Cerner will arrange, pre-pay, and invoice Client for shipping and in-transit insurance for the Equipment. If Client has agreed in writing to a shipment date, Client agrees to pay all cancellation, re-stocking, storage and additional transportation fees due to the return or re-routing of Equipment. Cerner retains a security interest in each item of Equipment until Client pays for the Equipment.

4. PAYMENTS

- 4.1 **Payment.** Client will pay all invoices within sixty (60) days after receipt. Cerner shall be entitled to charge Client a late payment fee on all undisputed amounts that are more than forty-five (45) days past due (i.e. 105 days after receipt); that late payment fee shall be calculated at the rate that is equal to the lesser of 1.5% per month or the maximum permissible legal rate. Client will reimburse Cerner for reasonable collection costs, including attorneys' fees, for past due amounts.
- 4.2 **Taxes.** Client will pay all taxes imposed in conjunction with this Agreement, including, but not limited to, sales, use, excise, and similar taxes based on or measured by charges payable under this Agreement and imposed under authority of federal, state, or local taxing jurisdictions, but excluding foreign, federal, state, and local taxes on Cerner's net income or corporate existence. If tax exempt, Client will provide Cerner a copy of its sales tax exemption certificate.
- 4.3 **Reimbursable Expenses.** Any applicable travel expense estimate or cap and any applicable travel approval requirements shall be set forth in the relevant Ordering Document. Subject to those requirements, Client agrees to reimburse Cerner for travel expenses incurred by Cerner in its performance of Services. Reimbursement of travel expenses will include actual cost for lowest refundable coach round-trip airfare, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), hotel accommodations and meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears in accordance with Section 4.1 (Payment) above.
- 4.4 **Assignment of Payments.** Client agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Agreement in whole or in part to an assignee. Client will promptly acknowledge each assignment or granting of a security interest. Cerner will continue to perform its obligations under this Agreement following an assignment of payments or granting of a security interest.

5. WARRANTY, INDEMNITY, AND LIABILITY LIMITATION

- 5.1 **Functionality Warranty.** Cerner warrants that, as long as Client (a) remains continuously on Support and (b) is operating the most current or next to most current New Release, the Licensed Software will, without Material Error, perform the functions implemented by Client set forth in the Solution Descriptions when operated in accordance with the Documentation. In the event of a breach of this warranty, Cerner will repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty. If, after repeated efforts (not to exceed 6 months from the date Cerner receives written notice of the warranty breach), Cerner is unable to repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty, Client may, at Cerner's expense, return the failing item of Licensed Software and receive a refund of the item's license fee (calculated on a 5-year straight line depreciated basis), as well as the item's Support fees paid since the failure was first reported to Cerner. CLIENT'S RIGHTS UNDER THIS SECTION CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND CERNER'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY BREACH OF THIS WARRANTY.
- 5.2 **Services Warranty.** Cerner warrants that it will perform the Cerner Services in a professional manner in accordance with the applicable Solution Description.
- 5.3 **Disclaimer of All Other Warranties.** Cerner makes no representations or warranties concerning the Equipment, Sublicensed Software or Third Party Services. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND CERNER DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE AND ANY IMPLIED

WARRANTY OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. CERNER DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT ALL DEFECTS WILL BE CORRECTED, OR WILL MEET CLIENT'S REQUIREMENTS. CERNER DOES NOT WARRANT THAT ANY ALERTS OR OTHER INFORMATION PROVIDED THROUGH THE SERVICES HAVE THE ABILITY TO IMPROVE THE HEALTH STATUS OF A PATIENT OR SAVE PATIENT LIVES. THE SERVICES AND CONTENT ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS AND ARE SUBJECT TO TIME DELAYS.

- 5.4 Cerner Indemnity.** Cerner will defend, indemnify, and hold Client and its officers, directors, employees, and agents harmless from and against third party claims, liabilities, obligations, judgments, and causes of actions ("Third Party Claims") and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of (a) Cerner's negligence or willful misconduct (which, the parties acknowledge, could include a willful failure to act) in providing the Cerner Services, or (b) an allegation that the Licensed Software or Cerner Services infringe a third party's U.S. patent, trademark, or copyright. Cerner's indemnification obligation will not apply to the extent that the Third Party Claim is based upon: (i) the use of any item of Licensed Software or Cerner Services in combination with any product, service or activity (or any part thereof) not furnished, performed or recommended in writing by Cerner; or (ii) the use of Licensed Software or Cerner Services in violation of this Agreement; (iii) the use of Licensed Software not updated to the latest version offered by Cerner, where the latest version incorporates modifications that, in Cerner's opinion, avoid the infringement claim; or (iv) third party content supplied or transmitted by Client or Users. If there is a Third Party Claim relating to Client's use of the Licensed Software or Cerner Services due to an infringement, or if, in Cerner's opinion, any of the Licensed Software or Cerner Services are likely to become the subject of a Third Party Claim of infringement, Cerner will at its option and expense, and as Client's sole and exclusive remedy, use reasonable efforts to procure the right for Client to use the Licensed Software or Cerner Services that are the subject of the infringement Third Party Claim, replace or modify the Licensed Software or Cerner Services so that they become non-infringing, or terminate the Licensed Software or Cerner Services and provide Client with a refund of the item's license fee (calculated on a 5-year straight line depreciated basis) and any prepaid amounts for Cerner Services not yet performed.
- 5.5 Client Indemnity.** Client will defend, indemnify, and hold Cerner and its officers, directors, employees, and agents harmless from and against Third Party Claims and associated costs and expenses (including reasonable attorneys' fees) arising out of the use of the System or Services by Client; provided however, that the foregoing indemnity will not apply to the extent Client has used the System and Services in accordance with the Documentation and applicable standards of good clinical practice and the proximate and direct cause of the Third Party Claim is Cerner's negligence or willful misconduct (which, the parties acknowledge, could include a willful failure to act) in providing the Licensed Software or Cerner Services.
- 5.6 Indemnification Process.** To be indemnified, the party seeking indemnification must: (i) give the other party timely written notice of the Third Party Claim (unless the other party already has notice of the Third Party Claim); (ii) give the indemnifying party authority, information, and assistance for the Third Party Claim's defense and settlement; and (iii) not materially prejudice the indemnifying party's ability to satisfactorily defend or settle the Third Party Claim. The indemnifying party has the right, at its option, to defend the Third Party Claim at its own expense and with its own counsel. The indemnifying party has the right to settle the claim without the indemnified party's consent so long as the settlement does not require the indemnified party to pay any money or admit fault. The indemnified party will have the right, at its option, to participate in the defense of the Third Party Claim, with its own counsel and at its own expense, but the indemnifying party will retain control of the Third Party Claim's defense.
- 5.7 Limitation of Liability.** EXCEPT FOR INDEMNIFICATION OBLIGATIONS, PAYMENT OF FEES DUE UNDER THIS AGREEMENT, AND FOR CLIENT'S BREACH OF SECTION 1.1, NEITHER PARTY IS LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. THE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS; LOSS OF SAVINGS OR REVENUE; LOSS OF USE OF THE EQUIPMENT, SUBLICENSSED SOFTWARE, LICENSED SOFTWARE, SERVICES, OR DATA; COST OF CAPITAL; COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES; THIRD PARTY CONSEQUENTIAL DAMAGES; AND INJURY TO PROPERTY. Cerner is not liable for any damages of any kind or nature related to or arising from the Sublicensed Software, Equipment, or Third Party Services. Any liability limitations set forth in the third party pass-through provisions state the maximum liability of the applicable supplier with respect to that product or service. Notwithstanding any other provision herein besides the next two sentences, Cerner's maximum liability for any claim or series of related claims arising under this Agreement is limited to the amount paid by Client to Cerner for the affected solution or Cerner Services during the 12 months preceding the event giving rise to the claim. Notwithstanding anything to the contrary, Cerner's limitations of liability shall not apply, affect, or limit any of Cerner's

duties to indemnify Client in accordance with this Agreement. To avoid any doubt, the parties agree that the limits in this Section 5.7 shall not affect (i) Cerner's liability to a third party under a claim brought by that third party directly against Cerner, whether or not that third party also brings a claim against Client, or (ii) Client's liability to a third party under a claim brought by that third party directly against Client, whether or not that third party also brings a claim against Cerner.

- 5.8 **Force Majeure.** Except for obligations to pay for Services performed and products delivered, neither party will be responsible for failing to perform due to causes beyond its reasonable control, including, but not limited to, failures by Cerner's suppliers or subcontractors, war, sabotage, riots, civil disobedience, acts of governments and government agencies, labor disputes, accidents, fires, acts of terrorism, or natural disasters. The delayed party will perform its obligations within a reasonable time after the cause of the failure has been remedied, and the other party will accept the delayed performance.
- 5.9 **Limitation on Actions.** Neither party may bring any action arising out of any transaction (other than failures to pay) under this Agreement more than one year after the cause of action accrues.

6. GENERAL PROVISIONS

- 6.1 **Termination of Services.** Client may not terminate Support before the end of twelve (12) months after First Productive Use of the applicable Licensed Software, after which time it may terminate Support for an item of Licensed Software upon 365 days' prior written notice to Cerner. If Client terminates Support and later elects to re-start Support, Client will pay a catch-up payment equal to the amount of Support fees that would have been due during the suspension period. Cerner may not terminate Support for an item of Licensed Software for a period of 2 years after First Productive Use of such item; however, Cerner may suspend Support or other services if Client (a) fails to pay invoices, (b) attempts to modify the Licensed Software, or (c) creates and uses programs that write to Cerner databases.
- 6.2 **Termination of the Agreement.** This Agreement remains effective until all Services expire or are terminated in accordance with this Agreement.
- A. **Termination of Agreement.** Either party may terminate this Agreement if the other party materially breaches this Agreement by sending a notice specifying each breach with reasonable detail and this Agreement will be terminated, unless (i) the breaching party cures the breach within 30 days following receipt of the notice, or (ii) with respect to a breach which may not reasonably be cured within a 30-day period, the breaching party commences, is diligently pursuing cure of, and cures the breach as soon as practical.
- B. **Termination of Ordering Documents.** Either party may terminate an Ordering Document if the other party materially breaches any provision of the Ordering Document (including any terms of this Agreement applicable to the Ordering Document) so long as the terminating party sends a notice of termination to the other party specifying each breach. The applicable Ordering Document (and any associated Services) will be terminated 30 days following delivery of the notice unless the breach is cured within the 30-day period.
- C. **Transition and Termination.** If this Agreement expires or either party has a right to terminate this Agreement, Cerner will, upon request by Client, provide reasonable assistance on a time-and-materials basis for up to 24 months after notice of termination to allow Client to transfer to another vendor. Upon termination, Client will pay for all Services provided up to the date of termination and all other amounts owed under this Agreement including, but not limited to, fees due for the remaining contracted term (or renewal term) for the applicable Services. In addition, Client will immediately cease all use of the Licensed Software, Sublicensed Software and Services, and each party will promptly destroy all copies of the other party's Confidential Information.
- D. **Non-appropriation.** The continuation of this Agreement and the Ordering Documents is contingent upon the appropriation of funds by the Client under *Cal.Const. Art. 16 section 18(a)* to fulfill the requirements of the contract. If the Client fails to appropriate sufficient monies to provide for the continuation of the contract, Client shall notify Cerner in writing of the failure on or before thirty (30) days prior to the beginning of the first fiscal year for which funds have not been appropriated, and this Agreement and the Ordering Documents shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. There shall be no refund of amounts previously paid or payable. Client shall remain responsible for paying for services that were performed through the effectiveness of the termination.

- 6.3 Arbitration and Injunctive Relief.** Cerner and Client will work cooperatively to resolve any dispute arising out of or relating to this Agreement (including claims relating to the negotiations and the inducement to enter into the Agreement) (“Dispute”) amicably at appropriate management levels. If a Dispute remains unresolved and a party wishes to escalate to a formal dispute resolution forum, the party may submit the Dispute to binding arbitration, which shall be conducted in accordance with the JAMS Arbitration Rules in effect at the time of the arbitration (see www.jamsadr.com), and judgment on the award rendered by the mediator may be entered in any court having jurisdiction with respect thereto. The site of the arbitration shall be in the Bakersfield, California metropolitan area if the party that submits the dispute to arbitration is Cerner and the Kansas City, Missouri metropolitan area if the party that submits the dispute to arbitration is Client. The arbitrator(s) will follow the Federal Rules of Evidence. The provisions of this Agreement will control over both the rules and procedures of JAMS and the Federal Rules of Evidence. No arbitration proceeding will include class action arbitration. The parties will share equally in the fees and expenses of the arbitrator(s) and the cost of the facilities used for the arbitration hearing, but will otherwise bear their respective fees, expenses, and costs incurred in connection with the arbitration. Each party acknowledges that any breach of its obligations with respect to the other party’s intellectual property rights will result in an irreparable injury for which money damages will not be an adequate remedy and that the non-breaching party is entitled to injunctive relief in addition to any other relief a court may deem proper.
- 6.4 Insurance.** Cerner shall maintain in full force and effect, at all times during the term of this Agreement, insurance and provide proof thereof to Client upon request, as follows: (i) commercial general liability insurance (including insurance for bodily injury, property damage, and contractual liability) with a combined limit of one million dollars (\$1,000,000); (ii) professional liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate; and (iii) workers’ compensation insurance in accordance with the provisions of section 3700 of the California Labor Code. The above stated insurance coverage shall not be reduced, modified, or canceled without thirty (30) days’ prior written notice to Client. Cerner shall not perform any work under this Agreement until Cerner has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with Client’s authorized insurance representative, Insurance Tracking Services, Inc. (“ITS”). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Cerner shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS within ten (10) days of the expiration date of any policy. Cerner shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Cerner or Client as an additional insured.
- A. If any of the insurance coverages required under this Agreement is written on a claims-made basis, Cerner, at Cerner’s option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the Effective Date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
 - B. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current “Best’s Key Rating Guide” publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the Client’s Risk Manager.
 - C. If Cerner is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Cerner shall provide coverage equivalent to the insurance coverages and endorsements required above. Client will not accept such coverage unless Client determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Cerner is equivalent to the above-required coverages.
 - D. All insurance afforded by Cerner pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by Client. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against Client.
 - E. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Cerner for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude Client from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

- F. Failure by Cerner to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Cerner, and Client, at its sole option, may terminate this Agreement immediately.
- 6.5 **Availability of Records.** Until 4 years after the furnishing of services hereunder, Cerner will make available to the Secretary of the Department of Health and Human Services and the U.S. Comptroller General, or their representatives, its books, documents, and records necessary to verify the nature and extent of the costs of those services, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980.
- 6.6 **FDA.** Client and Cerner agree to promptly notify the other party of, and cooperate fully in responding to, inquiries and inspections by the U.S. Food and Drug Administration (the "FDA") and other regulatory bodies with respect to the System. Client agrees that prior to First Productive Use of the System, it will perform whatever tests it deems necessary to verify that the System, as used by Client, complies with all FDA and other governmental, accrediting, and professional regulatory requirements applicable to Client's use of the System in Client's environment.
- 6.7 **Information Management Tools.** Client acknowledges and agrees that the Licensed Software and Services are information management tools, many of which contemplate and require the involvement of professional medical personnel, and because medical information changes rapidly, some of the medical information and formulas may be out of date. Information provided is not intended to be a substitute for the advice and professional judgment of a physician or other professional medical personnel. Client acknowledges and agrees that physicians and other medical personnel should never delay treatment or make a treatment decision based solely upon information provided through the Licensed Software or Services. Client further acknowledges and agrees that the Licensed Software and Services are not intended to diagnose disease, prescribe treatment, or perform any other tasks that constitute or may constitute the practice of medicine or of other professional or academic disciplines.
- 6.8 **Intellectual Property.** Cerner retains all right, title, and interest, including intellectual property rights and all other rights, in the Licensed Software, Services, and Work Product. Cerner grants to Client a non-exclusive, non-transferable license to use Work Product for Client's own internal purposes in conjunction with the Services and for no other purpose.
- 6.9 **Confidentiality.** Except as permitted under this Agreement, Cerner and Client will not, nor will they permit their respective employees, agents, attorneys, or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information of the other party. Cerner and Client will each (a) secure and protect the other party's Confidential Information using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but no less than a reasonable degree of care, and (b) require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Client will use Cerner Confidential Information accessed on restricted portions of Cerner.com only for the purpose of supporting its permitted use of the System or Services. Either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, including without limitation any applicable Freedom of Information Act or sunshine law, or by order of a court or other governmental entity, in which case the disclosing party will notify the other party as soon as practicable prior to such disclosure and no later than 5 business days after receipt of the order or request. Cerner is aware that Client 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.
- 6.10 **HIPAA.** For Services requiring Cerner's use or disclosure of "protected health information" as defined under HIPAA, the parties agree to comply with the Business Associate Agreement attached as Exhibit B, which is incorporated herein by reference.
- 6.11 **Access to Data.** Cerner may use and disclose the Data for purposes permitted by HIPAA, and as necessary to perform and improve the Services or as agreed upon in an Ordering Document. Client agrees that Cerner may use and disclose performance and usage data for any purpose permitted by law so long as the data does not contain protected health information (as defined under HIPAA) or Client-specific identifiable information.
- 6.12 **Notices.** All notices, requests, demands, or other communications relating to the other party's failure to perform or which otherwise affect either party's rights under this Agreement will be deemed properly given when furnished by receipted hand-delivery to the other party, deposited with an express courier, or deposited with the U.S. Postal Service (postage prepaid, certified mail, return receipt requested). The sender will address all notices, requests, demands, or

other communications to the recipient's address as set forth on the signature page, and in the case of Cerner, to the attention of President; in the case of Client, to the attention of Chief Executive Officer.

- 6.13 Change of Product Line.** Cerner may add, delete, or change the specifications with respect to products comprising Cerner's product line (but in no case reduce the overall functionality of same), and neither Client nor any third party will have a claim against Cerner regarding such modification.
- 6.14 Governing Law.** This Agreement will be governed by, interpreted, and enforced in accordance with the laws of the State of California, excluding California's conflict of laws rules that would apply the substantive law of another jurisdiction.
- 6.15 Severability.** This Agreement obligates the parties only to the extent that its provisions are lawful. Any provision prohibited by law will be ineffective (but only to the extent that, and in the locations where, the prohibition is applicable). The remainder of the Agreement will remain in full force and effect if the Agreement can continue to be performed in furtherance of the Agreement's objectives.
- 6.16 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, except to an affiliate or pursuant to a merger, acquisition or the purchase of all or substantially all of the party's assets; provided, however, any assignment to a competitor of the other party will be void unless the other party provides its prior written consent. Any assignment of this Agreement in violation of this section is void.
- 6.17 Entire Agreement.** This Agreement constitutes the entire agreement of the parties for the subject matter of the Agreement. This Agreement supersedes and terminates any prior and contemporaneous agreements, understandings, representations, claims, statements, or negotiations with respect to the subject matter of this Agreement. This Agreement may not be amended or qualified except by a writing executed by authorized officers of each party.
- 6.18 Survival.** The following sections survive termination of this Agreement: 1 (Licensed Software), with respect to Cerner proprietary rights; 3.1 (Pass Through Provisions); 5.4 (Cerner Indemnity) with respect to any Third Party Claims arising prior to termination; 5.5 (Client Indemnity); with respect to any Claims arising prior to termination and any use of the Licensed Software or Services following termination; 5.7 (Limitation of Liability); 5.9 (Limitation on Actions); 6.3 (Arbitration and Injunctive Relief); 6.6 (Information Management Tools); 6.7 (Intellectual Property); 6.8 (Confidentiality); 6.11 (Notices); 6.13 (Governing Law); and 6.18 (No Hire).
- 6.19 No Hire.** Cerner and Client agree that, without the prior consent of the other party, neither will knowingly offer employment to or discuss employment with any of the other party's employees until one year after this Agreement is terminated; provided, the foregoing does not prohibit a general non-targeted solicitation of employment in the ordinary course of business or prohibit a party from hiring a person who contacts the hiring party at his or her own initiative without any direct or indirect solicitation by or encouragement from the hiring party.
- 6.20 Waiver.** Waivers of and consents to any term, condition, right or remedy under this Agreement must be in writing to be effective. No waiver or consent granted for one matter or incident will be a waiver or consent for any different or subsequent matter or incident.
- 6.21 Purchase Orders.** If Client submits its own form of purchase order to request products or Services from Cerner, any terms and conditions on the purchase order are of no force or effect and are superseded by this Agreement.
- 6.22 Independent Contractor.** Cerner is an independent contractor, and none of Cerner's employees or agents will be deemed employees or agents of Client. None of the terms in this Agreement will be construed as creating a partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between Client and Cerner or any of their employees.
- 6.23 Allocation of Risk.** The parties are both sophisticated entities. The prices paid, the warranties, warranty disclaimers, limitations of liability, remedy limitations, and all other provisions of this Agreement, were negotiated to reflect and support an informed and voluntary allocation of risks between Client and Cerner, and both parties waive all protections of any trade practices statutes.
- 6.24 Compliance with Laws.** Each party agrees to comply with all applicable laws, rules, and regulations.

7. DEFINITIONS

- 7.1 **Cerner Services** means the services provided by Cerner and set forth in an Ordering Document.
- 7.2 **Confidential Information** means all technical, business, financial, and other information that is disclosed by either party to the other, whether orally or in writing, any disputes between the parties, Services, Work Product, Data, Documentation, all information and materials accessible on Cerner.com "Client-only" access, and all non-public information related to Cerner products, services and/or methodologies. "Confidential Information" does not include information (a) publicly available through no breach of this Agreement, (b) independently developed or previously known by Client or Cerner, (c) rightfully acquired from a third party not under an obligation of confidentiality, or (d) required to be disclosed to the public by law (although information that is required to be disclosed but is disclosed under a protective order or otherwise subject to protections enabling it to remain confidential except for such disclosure shall not be excluded from being "Confidential Information" by this clause (d)).
- 7.3 **Data** means data that is collected, stored, processed or generated through Client's use of the System or Services.
- 7.4 **Documentation** means the printed and on-line materials that assist Users, as updated from time to time.
- 7.5 **Equipment** means all equipment components provided by Cerner under an Ordering Document.
- 7.6 **First Productive Use** means Client's first use of an item of Licensed Software or a service to send patient, health plan, or materials information for clinical, financial, or operational use.
- 7.7 **Licensed Software** means the machine-readable form of software programs developed by Cerner and identified in an Ordering Document and all items of applicable Documentation. It also includes New Releases, as well as any Cerner-developed content. "Licensed Software" does not include source code, Sublicensed Software, or any third party program.
- 7.8 **Material Error** means either an error that materially, adversely affects operation of the entire System or that creates a serious loss of functionality important in the daily operation of a single module and for which a work around is not available.
- 7.9 **New Release** means the distinctly identified (e.g. Release HNAM.20XX.01), comprehensive collection of updates and enhancements to the Licensed Software that Cerner makes generally commercially available.
- 7.10 **Ordering Document** means the document (such as a schedule or sales order) setting forth the items being purchased by Client, scope of use, pricing, payment terms, and any other relevant terms, which will be a part of and be governed by the terms and conditions of this Agreement.
- 7.11 **Permitted Facility** means an entity identified as such in an Ordering Document and for whom Client (a) owns at least 50%, or (b) has the right to determine management direction.
- 7.12 **Services** mean the Cerner Services and Third Party Services, as modified and enhanced from time to time.
- 7.13 **Solution Description** means the document provided by Cerner describing the applicable Licensed Software or Service.
- 7.14 **Sublicensed Software** means all third party software and content listed on an Ordering Document.
- 7.15 **Support** means Cerner's ongoing effort to keep the Licensed Software in working order and to sustain the useful life of the Licensed Software, including New Releases.
- 7.16 **System** means the Equipment, Sublicensed Software, and Licensed Software listed on an Ordering Document.
- 7.17 **Third Party Services** means the services provided by a third party and described in an Ordering Document.
- 7.18 **User** means an individual person to whom Client provides a unique password and sign-on ID for access to the Licensed Software or Services.
- 7.19 **Work Product** means any documentation, techniques, methodologies, inventions, analysis frameworks, software, or procedures developed, conceived, or introduced by Cerner in the course of Cerner performing Services, whether acting

alone or in conjunction with Client or its employees, Users, affiliates or others. Work Product does not include any Confidential Information of Client.

EXHIBIT A
SUPPORT SERVICES

Following is a high level description of the benefits received through the payment of Support fees:

- | | | |
|-----|---|--|
| 1) | Immediate Response Center ("IRC") | Cerner's support center that is staffed 24 hours per day, 7 days per week to resolve client mission-critical issues |
| 2) | Call Center | Cerner's support center that is available for non-mission critical problem determination, resolution, or identification of alternatives through consultative assistance on solution functionality. |
| 3) | Client Care Team | Cerner's support center that is available for training, Cerner events, financial and quote information. |
| 4) | Secured Communication | A data communications mechanism that facilitates problem resolution at the client site (secure and efficient method for service and support). |
| 5) | New Releases | Licensed Software updates that deliver increased functionality over time and allow the software to remain current with various technologies. |
| 6) | Knowledge transfer during service events | Education provided to Client's personnel during problem resolution leading to greater Client self-sufficiency. |
| 7) | Service Escalation Process | Defined process for any client to escalate an issue (whenever the client feels a service or support issue is not being addressed) to receive executive management focus. |
| 8) | Complete Service Record | Complete client service record identifying service issues, history, trends, and patterns. |
| 9) | On-Line Demographic Profile (Solution/technical attributes) | Knowledge of client technical environment, supporting an efficient and effective problem resolution process (assumes hardware and Sublicensed Software Maintenance through Cerner). |
| 10) | Catalog of Services | On-line access via Cerner.com to Cerner's Catalog of Services referencing and describing all of Cerner's services. |
| 11) | Telephone, e-mail, Internet | For the convenience of Client, Cerner offers multiple avenues of communication for support requests and for support services. |
| 12) | Cerner.com | Internet access to solution documentation, communities of interest, announcements, on-line service request entry and the ability to review service activity. |
| 13) | Proactive Solution and Service Flashes | Advance information concerning new solutions, upcoming corrections, patches, etc. |
| 14) | Access To Cerner Direct | Access to a direct channel for ordering technology with 24-hour turnaround with discounted or competitive pricing through Cerner.com or the Cerner Direct Order Desk. |

Cerner periodically improves and revises the content and delivery of its Support services to better meet the needs of clients, therefore, more specific details concerning the above services are set forth in Cerner's Catalog of Services available on Cerner.com.

EXHIBIT B
BUSINESS ASSOCIATE PROVISIONS

1. **Definitions.** Capitalized terms used in this Exhibit, but not otherwise defined, shall have the same meanings set forth in the Privacy Rule, the Security Rule, and the HIPAA Omnibus Final Rule (the "Final Rule"), which definitions are incorporated into this Exhibit by reference.

Electronic PHI has the same meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that Cerner creates, receives, maintains or transmits from or on behalf of Covered Entity.

PHI has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by Cerner from or on behalf of Covered Entity.

Individual has the same meaning as the term "Individual" in 45 C.F.R. § 164.501 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

Security Incident has the same meaning given to such term in 45 C.F.R. § 164.304.

Security Rule means the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
2. **Term.** This Exhibit commences on the Effective Date and will terminate when all of the PHI provided by Covered Entity to Cerner, or created or received by Cerner on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 19(b) below.
3. **Uses and Disclosures of PHI Pursuant to Cerner Business Agreement.** Cerner may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Cerner Business Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Except as expressly provided in the Cerner Business Agreement or this Exhibit, Cerner will not assume any obligations of Covered Entity under the Final Rule. To the extent that Cerner is to carry out any of Covered Entity's obligations under the Privacy Rule pursuant to the terms of the Cerner Business Agreement or this Exhibit, Cerner will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s). Cerner 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.
4. **Use of PHI for Management, Administration, and Legal Responsibilities.** Cerner may use PHI as necessary for the proper management and administration of Cerner or to carry out legal responsibilities of Cerner.
5. **Disclosure of PHI for Management, Administration, and Legal Responsibilities.** Cerner may disclose PHI received from Covered Entity for the proper management and administration of Cerner or to carry out legal responsibilities of Cerner, provided: (i) the disclosure is Required by Law; or (ii) Cerner obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the PHI, and the person notifies Cerner of any instance of which it is aware in which the confidentiality of the PHI has been breached.
6. **Data Aggregation.** Cerner may use or disclose PHI to provide data aggregation services for the Health Care Operations of the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law.
7. **De-Identified Data.** Cerner may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such data for any purpose. The Parties agree that any PHI provided to Cerner hereunder which is later de-identified and therefore no longer identifies an Individual (i.e., is no longer "protected health information" as defined by 45 C.F.R. § 160.103) will no longer be subject to the provisions set forth in this Exhibit.

8. **Appropriate Safeguards.** Cerner will establish and maintain appropriate safeguards and will, after the compliance date of the Final Rule, comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such Electronic PHI other than as provided for by the Cerner Business Agreement and this Exhibit.
9. **Reports of Improper Use or Disclosure, Security Incident or Breach.** Cerner will report to Covered Entity any use or disclosure of PHI not permitted under this Exhibit, Breach of Unsecured PHI or Security Incident, without unreasonable delay, and in any event no more than five (5) business days following discovery; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Cerner to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). “Unsuccessful Security Incidents” include, but are not limited to, pings and other broadcast attacks on Cerner’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Cerner’s notification to Covered Entity of a Breach include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Cerner to have been, accessed, acquired or disclosed during the Breach; and (ii) any particulars regarding the Breach that Covered Entity would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404 and California Health and Safety Code §1280.15.
10. **Subcontractors and Agents.** In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), as applicable, Cerner will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of Cerner for services provided to Covered Entity, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Exhibit to Cerner with respect to such PHI.
11. **Designated Record Set.** To the extent Cerner maintains PHI in a Designated Record Set, Cerner shall:
 - A. To the extent applicable, make available PHI in accordance with 45 C.F.R. § 164.524. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Cerner, or inquires about his or her right to access, Cerner will either forward such request to Covered Entity or direct the Individual to Covered Entity.
 - B. To the extent applicable, make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526. The evaluation of and requests for amendment of PHI maintained by Cerner will be the responsibility of Covered Entity. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Cerner, or inquires about his or her right to amendment, Cerner will either forward such request to Covered Entity or direct the Individual to Covered Entity.
12. **Documentation of Disclosures.** Cerner agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Cerner will document, at a minimum, the following information (“Disclosure Information”): (i) the date of the disclosure, (ii) the name and, if known, the address of the recipient of the PHI, (iii) a brief description of the PHI disclosed, (iv) the purpose of the disclosure that includes an explanation of the basis for such disclosure, and (v) any additional information required under the HITECH Act and any implementing regulations.
13. **Provide Accounting of Disclosures.** Cerner agrees to provide to Covered Entity, information collected in accordance with Section 12 of this Exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual makes a request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to Cerner, or inquires about his or her right to an accounting of disclosures of PHI, Cerner will either forward such request to Covered Entity or direct the Individual to Covered Entity.
14. **Mitigation.** To the extent practicable, Cerner will reasonably cooperate with Covered Entity’s efforts to mitigate a harmful effect that is known to Cerner of a use or disclosure of PHI that is not permitted by this Exhibit.
15. **Minimum Necessary.** Cerner may use and disclose PHI provided or made available from Covered Entity to the minimum extent necessary to accomplish the intended purpose of the use, disclosure, or request, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.
16. **Access to Books and Records.** Cerner agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Cerner on behalf of, Covered Entity available to the

Secretary of the Department of Health and Human Services or the Secretary's designee for purposes of determining Covered Entity's compliance with the Privacy Rule.

17. **HIPAA Final Rule Applicability.** Cerner acknowledges that enactment of the HITECH Act, as implemented by the Final Rule, amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Cerner under the Privacy Rule and the Security Rule. Cerner agrees, as of the compliance date of the Final Rule, to comply with applicable requirements imposed under the Final Rule.
18. **Responsibilities of Covered Entity.** Covered Entity will:
- A. Promptly notify Cerner of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notice no later than fifteen (15) days prior to the effective date of the limitation;
 - B. Promptly notify Cerner of any changes in, or revocation of, permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notice no later than fifteen (15) days prior to the effective date of the change. Covered Entity will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing Cerner with PHI;
 - C. Promptly notify Cerner of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Cerner's use or disclosure of PHI. Covered Entity will provide such notification no later than fifteen (15) days prior to the effective date of the restriction. If Cerner reasonably believes that any restriction agreed to by Covered Entity pursuant to this Section may materially impair Cerner's ability to perform its obligations under the Cerner Business Agreement or this Exhibit, the Parties will mutually agree upon any necessary modification of Cerner's obligations under such agreements; and
 - D. Not request Cerner to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the Final Rule if done by Covered Entity, except as permitted pursuant to the provisions of Sections 4- 7 of this Exhibit.
19. **Effect of Termination.**
- A. Except as provided in Paragraph B of this Section 19, upon termination of the Cerner Business Agreement or this Exhibit for any reason, Cerner will return or destroy all PHI received from Covered Entity, or created or received by Cerner on behalf of Covered Entity, and will retain no copies of the PHI.
 - B. If it is infeasible for Cerner to return or destroy the PHI upon termination of the Cerner Business Agreement or this Exhibit, Cerner will: (i) extend the protections of this Exhibit to such PHI; and (ii) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Cerner maintains such PHI.
20. **Termination for Cause.** Upon either Party's knowledge of a material breach by the other Party of this Exhibit, such Party will provide written notice to the breaching Party stating the nature of the breach and providing an opportunity to cure the breach within sixty (60) days. Upon the expiration of such 60-day cure period, the non-breaching Party may terminate this Exhibit and, at its election, the Cerner Business Agreement, if cure is not possible.
21. **Cooperation in Investigations.** The Parties acknowledge that certain breaches or violations of this Exhibit may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.
22. **No Third Party Beneficiaries.** Nothing herein, express or implied, is intended to or confers upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Exhibit.
23. **Effect of Contract.** In the event of inconsistency between the provisions of this Exhibit and mandatory provisions of the Privacy Rule, the Security Rule or the Final Rule, or their interpretation by any court or regulatory agency with

authority over Cerner or Covered Entity, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the Final Rule is amended in a manner that changes the obligations of Cerner or Covered Entity that are embodied in terms of this Exhibit, then the Parties agree to negotiate in good faith appropriate non-financial terms or amendments to this Exhibit to give effect to such revised obligations. Where provisions of this Exhibit are different from those mandated in the Privacy Rule, the Security Rule or the Final Rule, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of this Exhibit will control.

24. **Insurance.** In addition to any general and/or professional liability insurance required of Cerner, Cerner 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 Cerner, its officers, employees, and agents under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.
25. **Assistance in Litigation or Administrative Proceedings.** Cerner shall make itself and any Subcontractors or members of its Workforce assisting Cerner 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 due to a breach by Cerner. If the breach is not related to the act or omission of Cerner, Cerner shall be entitled to reimbursement for the travel and living expenses of personnel who need to travel in connection with the assistance described in this section.
26. **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, Cerner 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) arising from third party claims or enforcement actions resulting from Cerner's (including its employees, directors, officers, agents, or other members of its Workforce, and its Subcontractors) breach of PHI to the extent such third party claims or enforcement actions are caused by the negligence or willful misconduct (which, the parties acknowledge, could include a willful failure to act) of Cerner.
27. **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.
28. **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.
29. **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, upon reasonable written notice to Cerner's Director of Regulatory Affairs, Covered Entity or its authorized agents or contractors may, at Covered Entity's expense, examine Cerner's facilities, systems, procedures, and records, as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Cerner's security safeguards comply with HIPAA, the HIPAA Rules, the HITECH Act, or this BAA. Covered Entity shall provide Cerner with an agenda at least two (2) weeks prior to any such audit. Cerner may impose reasonable restrictions upon Covered Entity's access to Cerner's premises information systems, including but not limited to limiting access only to those information systems which contain Covered Entity's PHI and limiting access to ensure Cerner's compliance with existing confidentiality obligations to its other customers. Such audits shall occur no more often than once per year or after any Breach or Security Incident and only upon a good faith belief by Covered Entity that Cerner is not in compliance with its obligations under this Agreement. All audits shall be conducted with the least interruption to Cerner's normal business operations as feasible.



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

June 22, 2016

SUBJECT: Proposed presentation by the Kern Medical Vice President of Human Resources regarding areas of responsibility.

Recommended Action: Hear Presentation; Receive and File

Summary:

The Vice President of Human Resources will introduce the Human Resource department and the roles and responsibilities to oversee the department.



Lisa Hockersmith, CCP PHR
Vice President, Human Resources
Department Overview

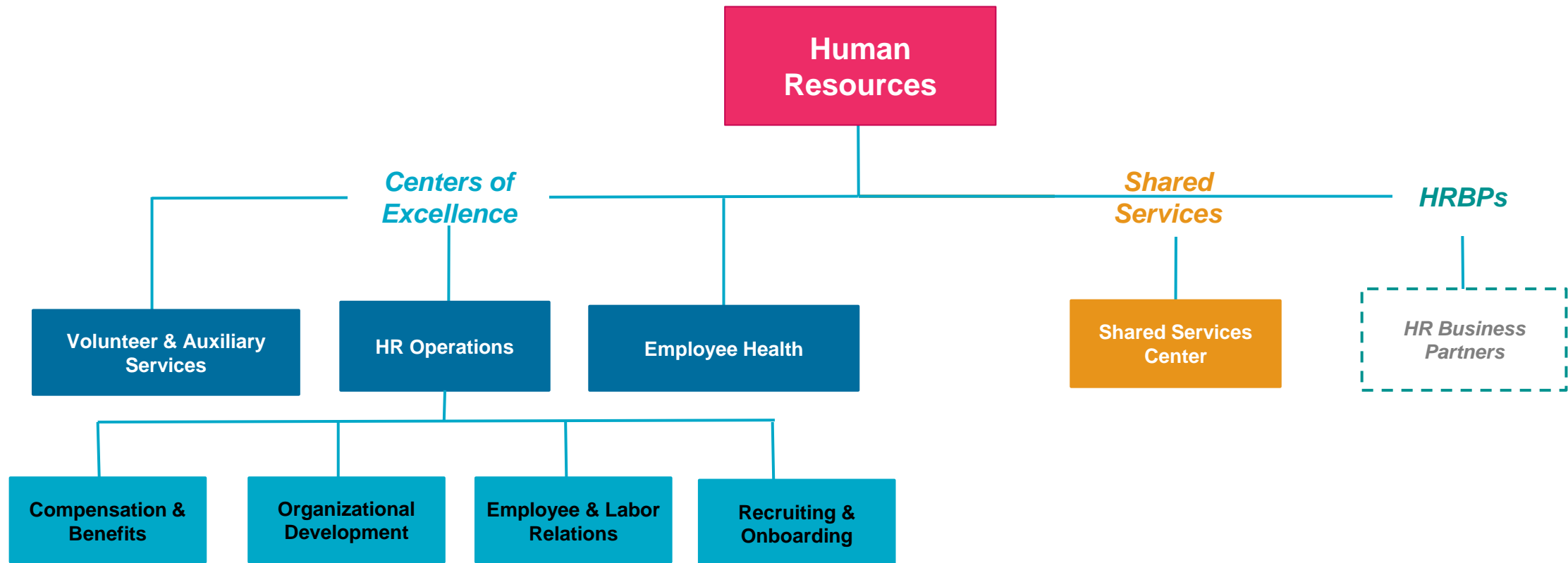
Kern Medical Board of Governors
June 22, 2016

HR - Overview

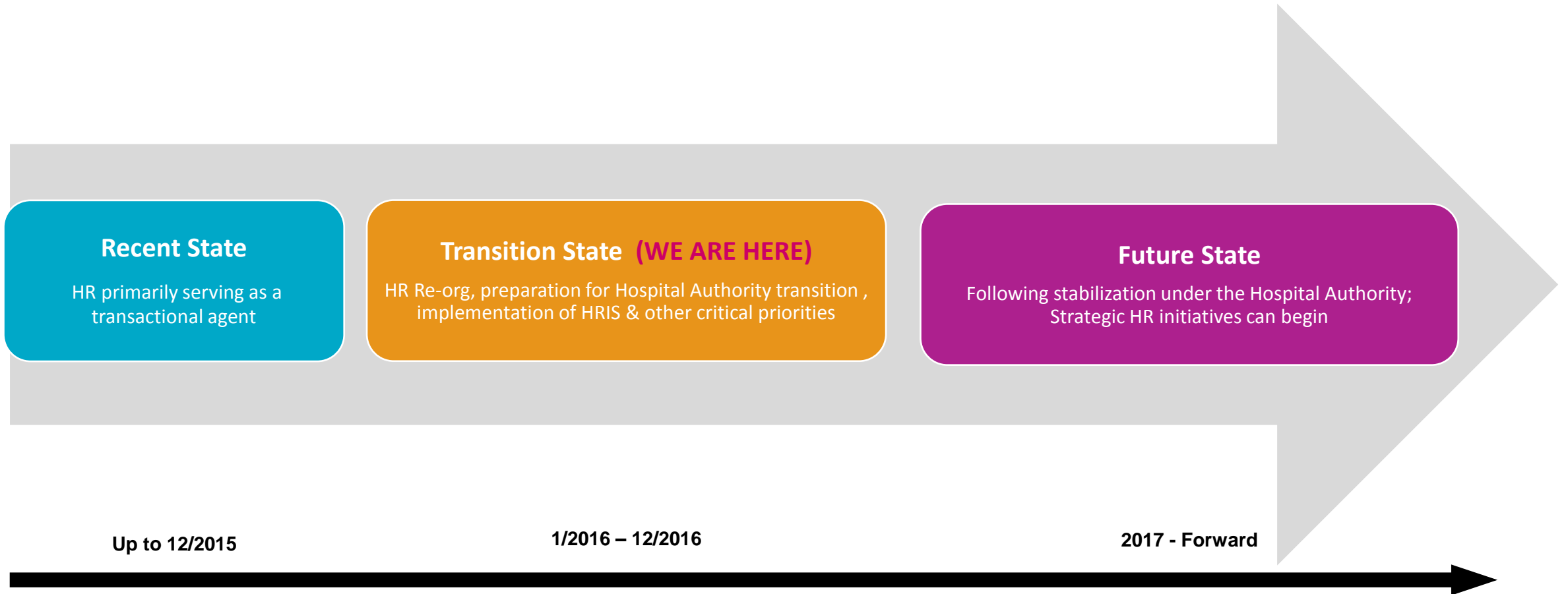
Role of Human Resources:

- Strategic partner to management
- Align human capital with business strategies
- Manage workforce risk
- Maximize workforce productivity

HR Organization Structure



HR Transition Overview



HR Transition Strategy

- Execute new HR operating model
- Transition HR services from County to Hospital Authority
- HRIS implementation
- HR staff development
- Establish foundation for strategic HR going forward

HR Future Strategy



ATTRACT EMPLOYEES USING:
Talent Management Strategies



DEVELOP EMPLOYEES THROUGH:
Organizational Development Activities



RETAIN EMPLOYEES WITH:
Employee Engagement Philosophies

HR Strategy – Focus Areas

Talent Management (ATTRACT)	Organizational Development (DEVELOP)	Employee Engagement (RETAIN)
Workforce Planning	Competency Assessment	Total Rewards <i>Compensation & Benefits</i>
Employment Branding	Training & Development	Performance Management
Internal/External Recruiting	Leadership Development	Employee & Labor Relations
Specialty Recruiting	Succession Planning	Health & Wellness
Onboarding	Knowledge Transfer	Organizational Culture

Questions?



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

June 22, 2016

SUBJECT: Proposed approval of Human Resources policies

Recommended Action: Approve Policies

Summary:

The Vice President of Human Resources oversees the areas of Human Resources. Submitted for your approval are policies and procedures for the following areas overseen by the Vice President of Human Resources.

- 100 - HR Operations
- 200 - Recruiting & Onboarding
- 300 - Terminations
- 400 - Performance & Work Expectations
- 500 – Pay & Pay Procedures
- 600 – Time Off & Leaves of Absence
- 700 – Staff Development & Education
- 800 - Miscellaneous



Lisa Hockersmith, CCP PHR
Vice President, Human Resources
Policy Overview

Kern Medical Board of Governors
June 22, 2016

HR Department Policies

8 Categories – 97 Policies

- 100 - HR Operations
- 200 - Recruiting & Onboarding
- 300 - Terminations
- 400 - Performance & Work Expectations
- 500 – Pay & Pay Procedures
- 600 – Time Off & Leaves of Absence
- 700 – Staff Development & Education
- 800 – Miscellaneous Policies

Pending Policies

Please note, the following policies are currently being negotiated and/or are still pending final approval:

- Hiring Policy #201
- Internal Transfer Policy #207
- Reduction in Workforce #304
- Disciplinary Policy #401
- Pregnancy Disability Policy #608
- Other Leaves of Absence #610
- Employee Recognition Award program #802
- Employee Suggestion Award Program #803
- Drug & Alcohol Policy #806



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

June 22, 2016

SUBJECT: Proposed Acceptance of Assigned County Contracts

Recommended Action: Accept Assignment

Summary:

Kern Medical requests your Board approve the assignment of the attached list of agreements, entered into by the County of Kern on behalf of Kern Medical, to the Kern County Hospital Authority (Authority).

On October 6, 2015, the Kern County Board of Supervisors enacted Ordinance No. A-356 that adds Chapter 2.170 to Title 2 of the Ordinance Code of the County of Kern (Ordinance) concerning the creation of the Authority.

Section 2.170.090 (I) of the Ordinance states that, "The Hospital Authority shall accept the assignment and delegation of any contract assigned to it by the County in which the County is a party on behalf of the Kern Medical Center. Once assigned, the Hospital Authority shall possess those rights and perform the duties previously attributed to the County, pursuant to the contract terms, subject to any applicable terms of assignment."

Kern Medical administration and the Office of County Counsel have reviewed all of the listed assignments and are confident that all necessary assignments have been made to allow Kern Medical to operate in its current capacity through the transition to the Authority.

Kern Medical requests that your Board accept the assignment of agreements as listed.

All County Agreements Assigned to KCHA

	Contract Name	Kern County Agreement Number
1.	3M Company	180-99, 407-2000, 733-2004, 243-2005, 116-2008, 087-2009, 1107-2009, 083-2014, 623-2014, 063-2015, and 107-2016
2.	Acacio Fertility Center, Inc.	640-2013 and 629-2015
3.	Achilles Prosthetics & Orthotics, Inc.	491-2012, 379-2014, and 355-2015
4.	Adam R. Klang, M.D.	017-2016
5.	Adam G. Lang, M.D.	00815
6.	Adria O. Winter	137-2016
7.	Advanced Informatics, LLC	993-2008, 886-2011, 932-2014
8.	Advanced Signs	PO 1675137
9.	Alaleh Bazmi, M.D.	359-2015
10.	Alicare Medical Management	07615
11.	Allergan USA, Inc.	896-2012, 683-2013, 684-2014, 396-2015, and 657-2015
12.	Alta One	PA 1432
13.	Al-Tar Services	PO 1673678
14.	American College of Surgeons	788-2015
15.	American Messaging	Addendum 13 to PA 595
16.	American University of the Caribbean	03712
17.	Amir Berjis, M.D.	907-2015
18.	Andrea Marie Pakula, MD	686-2014
19.	Anthem Blue Cross	197-2012 and 227-2015
20.	Armanino LLP	392-2015 and 787-2015
21.	Ashli Healthcare, Inc.	LOA 02716
22.	Apnecare, Inc.	00314
23.	Arturo Gomez, M.D.	138-2011, 752-2011, 321-2012, 117-2014, 117-2015, and 105-2016
24.	Ashok Parmar, M.D., Inc.	729-2014
25.	A.T. Still University, Arizona School of Health Sciences	08315
26.	Ayham Aboeed, M.D.	212-2015
27.	Bakersfield Association for Retarded Citizens (B.A.R.C.)	151-2010, 750-2012, 375-2015, and 134-2016
28.	Bakersfield Behavioral Healthcare Hospital	00816
29.	Bakersfield Crisis Pregnancy Center, Inc.	08615
30.	Bakersfield Eye Institute	03414
31.	Bakersfield Heart Hospital	02910, 02513, and 04815
32.	Bakersfield Memorial Hospital	00810, 03913, 03813, and 00415
33.	Bao Quynh N. Huynh, MD	390-2015
34.	Baxter Healthcare Corporation	14974
35.	Bayer Healthcare, LLC	732-2015
36.	Benjamin Andersen	016-2016
37.	B.E. Smith Interim Services, Inc.	027-2016
38.	BioMerieux, Inc.	685-2013
39.	Blue Shield of California	349-2001, 815-2002, 379-2013, and 933-2014
40.	Bottomline Technologies, Inc.	630-2004, 633-2009, and 382-2011
41.	Bracco Diagnostics Inc.	PO 1672860
42.	Brandman University	07315
43.	Brian Jean	08115

44.	Bright House Networks Enterprise Solutions	PA 1527
45.	California Cardiac Surgeons	00414
46.	California Nursing Outcomes Coalition (CalNOC)	117-2007 and 404-2010
47.	California State Polytechnic University	04813
48.	California State University, Bakersfield	05315
49.	California State University, Northridge	04216
50.	Cantu Management Group, Inc.	042-2015, 106-2015, 241-2015, 778-2015, and 855-2015
51.	Cardinal Drug Distribution	329-99, 1004-2002, 052-2003, 099-2005, 00213, 037-2012, and 229-2015
52.	Cardon Healthcare Network	207-2007 and 377-2013
53.	CareFusion Solutions, LLC	324-2010, 023-2011, 02812, 894-2012, and 380-2013
54.	Carole A. Casteen, M.D.	00814
55.	Carson Kolb Healthcare Group, Inc.	865-2013
56.	Cassidenti & Associates, Inc.	778-2014 and 813-2015
57.	Cedars-Sinai Medical Center	14004, 09914, and 07215
58.	Cejka Search, Inc.	07414
59.	Central Nephrology Medical Group, Inc.	104-2009, 085-2011, 160-2013, and 091-2015
60.	Central Oregon Community College	04715
61.	Centurion Service Group	06413
62.	Challenger Corporation	580-2011 and 627-2015
63.	Children's Hospital Central California	00214 and 13004 Now Valley Childrens
64.	Children's Hospital Los Angeles Medical Group, Inc.	677-2014 and 754-2015
65.	Christopher Meyers, Ph.D.	160-2016
66.	Orange Health Solutions, Inc., dba Citra Health Solutions, Inc.	682-2011, 825-2014, 351-2015, and 546-2015
67.	Clariant Inc.	235-2011 and 300-2014
68.	Clinica Sierra Vista	10304, 306-2004, 113-2014, 114-2014, 01814, 523-2014, 626-2014, 676-2014, 257-2015, and 771-2015
69.	Clinica Sierra Vista	LOA 02316
70.	Clinica Sierra Vista dba North of the River Community Health Center	562-2016
71.	Cochlear Americas	874-2011, 152-2014, and 490-2016
72.	Comforce	1049-2008, 411-2009, 604-2011, 860-2014, and 535-2015
73.	Community Health Networks	017-2012
74.	Compliant Healthcare Technologies	PO 1673813
75.	Comprehensive Blood and Cancer Center, Inc.	01409, 194-2012, 261-2013, 132-2014, 157-2015, and 587-2015
76.	Comprehensive Blood and Cancer Center, Inc.	Leases – 193-2012, 260-2013, and 147-2014
77.	Comprehensive Cardiovascular Medical Group, Inc.	453-2015 t
78.	County of Kern Health Care Network Trust	747-2013
79.	Craneware, Inc.	620-2009 659-2015
80.	CrossChx, Inc.	2515 and PO#1674694
81.	Crothall - formerly Medi-Dyn, Inc. (Crothall)	519-2009, 1052-2009, 026-2013, 900-2013, 804-2014, and 305-2015
82.	CSS Staffing, LLC dba CSS Consulting Group	19-24
83.	Curare Group, Inc.	9214 and 260-2015
84.	Curlin Medical	19-66
85.	Daniel O. Quesada, M.D. - 393-2015	144-2016
86.	DATABASE SOLUTIONS, INC. "DSI"	197-2014 Terminated

87.	Datarithm, LLC	792-2015
88.	David L. Riggs, Jr., M.D.	01016
89.	Delano Regional Medical Center	159-95
90.	Department of Veteran Affairs	04610
91.	Diagnostica Stago, Inc.	PO 1429782 and 1672960
92.	Di Giacomo-Geffers and Associates	098-2014
93.	Dignity Health dba Mercy Hospitals	04809, 06311, 05513, and 05115
94.	Diversified Data Processing & Consulting, Inc.	PA 1432
95.	Donald Cornforth, M.D., Inc.	581-2015
96.	Elsevier Master Agreement	901-2015
97.	Elva Lopez, M.D.	00716
98.	Emcor Services	PA 1545
99.	Esoterix Genetic Laboratories, LLC	077-2012
100.	Ethicon US, LLC	755-2015
101.	Eugene Roos, D.O.	909-2015
102.	Everardo Cobos, M.D.	518-2016
103.	Fakhruddin Hasta, M.D.	843-2015
104.	Family Circle Skilled Nursing Facility	07015
105.	Family Planning Associates Medical Group, Inc.	729-2015
106.	Fenster-Martens Holding Co.	07514
107.	FormFast, Inc.	159-2015
108.	Foundation for Medical Care of Kern County	165-2012 and 074-2013
109.	Fresno Community Hospital and Medical Center	04414
110.	FTI Capital Advisors, LLC	276-2015 623-2015
111.	Fujifilm Medical Systems USA, Inc.	760-2009 562-2014
112.	Garth J. Olango, M.D.	833-2015
113.	G.E. Healthcare	413-2008, 345-2008, 635-2008, 767-2008, 1101-2008, 948-2010, 379-2011, 431-2011, 432-2011, 748-2011, 749-2011, 030-2013, 158-2015, 048-2016, 074-2016, and 089-2016
114.	GEM Physicians Medical Group, Inc.	593-2014
115.	Genetics Center, Inc.	08914
116.	Geoffrey M. Miller, M.D., APC	699-2015
117.	Gian A. Yakoub, D.O.	069-2014
118.	Gohar Gevorgyan, M.D.	676-2012, 681-2013, 682-2014, and 628-2015
119.	Golden Empire Managed Care (GEMCare)	589-2014
120.	Good Samaritan Hospital (L.A.)	02709
121.	Hansa M. Patel, M.D.	05815
122.	Hao D. Bui, M.D. Inc. a	00514
123.	Harbor General Hospital	13504
124.	Harshit R. Shah, M.D.	303-2015 483-2015
125.	Health Care Interpretation Network (HCIN)	682-2016
126.	Health Net of California Inc.	663-2006, 429-2010, 245-2012, 198-2013, 199-2013, 630-2013, 901-2013, 200-2014, and 799-2014
127.	Healthport Technologies, LLC	896-2010, 050-2012, 868-2013, 929-2014, and 908-2015
128.	Healthsmart Preferred Network, II, Inc.	677-2012
129.	HealthStream, Inc.	PA 1562
130.	Heart Hospital of BK, LLC	06813
131.	Heidelberg Engineering	535-2016
132.	Hill Rom Company, Inc.	PO 1672588 and 492-2016
133.	himagine Solutions Inc.	09014, 484-2015, and 834-2015

134.	Hospira MedNet	323-2012
135.	Hospital Council of Northern and Central California	187-2011
136.	i2i Systems, Inc.	800-2011, 637-2013, 685-2014, and 798-2014
137.	Idea Consulting Group, Inc.	1815 and 01216
138.	Independence IPA	662-2006, 486-2007, 1038-2007, and 632-2008
139.	Innovation Associates, Inc.	740-2009, 027-2013, 483-2013, and 620-2015
140.	Integrated Care Systems	02616
141.	Integrated Infomatics, Inc.	05515
142.	Interactivation Health Networks	141-2016
143.	Intuitive Surgical, Inc.	912-2015
144.	Ishaan S. Kalha, M.D.	679-2012, 924-2013, 153-2014, and 626-2015
145.	Itani Design Concepts (IDC)	01315
146.	ITW Food Equipment Group, LLC dba Hobart Service	625-2016
147.	Jackson Pharmacy Professionals, LLC	01416
148.	Jacobo Physical Therapy	04714
149.	Jagdipak S. Heer, M.D.	135-2016
150.	James M. Sverchek, M.D.	142-2016
151.	James W. Rosbrugh Jr., M.D.	136-2016
152.	James Yiu-Tin Ching, M.D.	560-2016
153.	Janardhan-Rao Grandhe	01109
154.	Jana A. Thor, D.O.	548-2015
155.	Jasleen Duggal, M.D., Inc.	00916
156.	J. Chandrasekhar, Inc.	00313, 929-2013, 765-2014, and 753-2015
157.	JB Developers, Inc.	1050-2009, 119-2013, 258-2015, and 814-2015
158.	Jeffrey G. Nalesnik, M.D.	873-2015
159.	Jim C. Kim, M.D., Inc.	547-2013 211-2015
160.	J. Noble Binns Plumbing	PO 1675246
161.	John L. Digges, M.D., Ph.D.	06815
162.	Johnny L. Ngoi	08814, 213-2015, and 621-2015
163.	Jong Sool Lee, M.D.	451-2015
164.	Juan J. Bermejo, Ph.D.	03515
165.	Kaiser Foundation Hospitals	1083-2000, 742-2004, 127-2008, 796-2008, 338-2010, and 934-2014
166.	Katayoun Sabetian, M.D., Inc.	675-2014
167.	Kent Kwan, M.D.	01516
168.	Kern Allergy Medical Clinic, Inc.	550-2015
169.	Kern Community College District	04914
170.	Kern Health Systems	374-2013, 180-2014, 624-2014, 489-2015
171.	Kern Health Systems Group Health Plan	749-2010, 747-2011, 134-2012, 899-2012, and 019-2014
172.	Kern Health Systems, Physician Services	010-2001, 868-2001, 055-2002, 014-2003, 1012-2003, 086-2004, 096-2005, 650-2005, 993-2007, 723-2010, 083-2011, 258-2011, 632-2013, 376-2014, 681-2014, and 727-2015
173.	Kern Health Systems, Provider Services	012-2001, 867-2001, 057-202, 016-2003, 088-2004, 098-2005, 649-2005, 994-2007, 1019-2010, 082-2011, and 534-2011
174.	Kern Medical Center Auxiliary	171-2001

175.	Kern Medical Center Foundation	996-2008
176.	Kern Neurosurgical Institute, Inc.	641-2013, 683-2013, and 549-2015
177.	Kern Radiology Medical Group, Inc.	04915
178.	Kern Regional Center	10504 and 10604
179.	Kern Schools Federal Credit Union	01507
180.	Kern Valley Healthcare District	00916
181.	Kevork A Bouldoukian, MD, Inc.	1615 087-2016
182.	Kieron K. Barkataki, D.O.	143-2016
183.	Kiron Thomas, M.D.	05215 -Now United Neuroscience, Inc.
184.	KMC Management Company	911-2013, 115-2014, 759-2014, 105-2015, 598-2015, and 743-2015
185.	Lagniappe Pharmacy Services, LLC	1035-2004, 704-2006, 906-2009, 818-2011, and 474-2014
186.	Language Line Services, Inc.	1119-2009, 025-2013, and 921-2013
187.	Law Offices of Stephenson, Acquisto & Coleman, Inc.	275-2015
188.	Lisa J. Dabanian, D.O.	06515
189.	Los Angeles County/Olive View - UCLA Medical Center	01715
190.	M. Brandon Freeman, M.D.	561-2012 and 487-2015
191.	M2ComSys	357-2015
192.	Managed Care Systems, LP (MCS)	300-2010, 835-2012, 375-2014, 591-2014, and 053-2015
193.	Manish N. Amin, D.O.	138-2016
194.	Marsha Granese, M.D., Inc.	03616
195.	Martin L. Goldman, M.D.	487-2012
196.	Maxor National Pharmacy Services Corporation dba PickPoint	791-2015
197.	MCG Health, LLC	772-2015 810-2015
198.	McKesson	276-99, 485-2007, 179-2008, 344-2008, 934-2008, 1029-2008, 1103-2008, 232-2009, 639-2009, 640-2009, 641-2009, 741-2009, 249-2010, 250-2010, 204-2011, 303-2010, 725-2010, 893-2010, 639-2011, 745-2011, 882-2011, 887-2011, 116-2012, 131-2012, 335-2012, 795-2012, 834-2012, 895-2012, 031-2013, 157-2013, 265-2013, 684-2013, 867-2013, 947-2013, 926-2013, 017-2014, 034-2014, 051-2014, 271-2014, 890-2014, 016-2015, 486-2015
199.	Medical Consultants, Inc.	1086-2010, 817-2011, and 008-2016
200.	Medical Electronic Attachment	PO 1673781
201.	Medical Imaging Consultants, Inc.	09814
202.	MedSphere Systems Corporation	1038-2009, 339-2010, 1020-2010, 888-2011, 749-2012, 266-2013, 546-2013, and 744-2014
203.	Mercer (US) Inc.	358-2015
204.	Midasplus, Inc.	348-2001, 430-2002, 963-2002, 524-2004, 02210, 624-2015, 006-2016
205.	Midwestern University	07815
206.	Mission Linen Supply	1049-2010, 866-2013, 808-2014, and 870-2015
207.	Mobile Med, Inc.	751-2007, 185-2009, 247-2010, 500-2011, and 471-2014
208.	Mobile Medical Services, Inc.	709-2007, 1039-2007, 680-2008, 184-2009, 433-2011, and 473-2014
209.	Modern Technology College	04604
210.	Mohammed A.S. Molla, M.D.	485-2015

211.	Morrison Management Specialists, Inc. d/b/a Morrison Health Care, Inc.	472-2009, 1104-2010, 836-2012, 479-2013, and 450-2015
212.	Moss Adams LLP	584-2015
213.	MZI Healthcare, LLC – 07513	682-2011, 825-2014, 351-2015, and 546-2015 under Citra
214.	Nabil A. Yassa, M.D.	228-2015
215.	Naheedy & Zarandy Medical Group, Inc.	927-2013 809-2015
216.	National Radiologic Physics, Inc.	9414 06315
217.	Neil Patel, M.D.	00416
218.	Network Providers, LLC	383-2011
219.	Nightshift Radiology	582-2015
220.	Nina Samsami, Ph.D.	08414
221.	Nirog Medical, Inc.	07115
222.	Novadaq Corp.	PO 1674623
223.	Novation, LLC and Cardinal Health 110, LLC	37-2012 – 229-2015 Under Cardinal
224.	Nuance Communications, Inc. - 683-2011	683-2011, 035-2014, 036-2014, and 796-2014
225.	Omni Family Health	08614
226.	OneLegacy	01211
227.	Optimal Pharmacies, Inc. dba Komoto Healthcare	02414
228.	Orestes A. Alvarez-Jacinto, M.D.	623-2016
229.	Ortho-Clinical Diagnostics, Inc.	PO 1672964
230.	Outcome Sciences, Inc.	02015
231.	Owens & Minor Distribution, Inc.	51-2012 795-2014
232.	Pacific EDI, Inc.	207-2007 Same as Cardon
233.	Pacific Gynecologic Specialists	928-2013 and 589-2015
234.	Parameswaran S. Aiylam, M.D.	584-2016
235.	Pediatric Heart Center (PHC)	05609
236.	PeriGen, Inc.	913-2015 and 521-2016
237.	Petre P. Motiu, M.D.	559-2015
238.	Philips Healthcare	PO 1674368
239.	Piramel Critical Care, Inc.	911-2015
240.	Praxair	PA316
241.	Precyse Solutions, LLC	925-2002, 040-2003, 1068-2003, 933-2004, 921-2005, 591-2006, 664-2006, 979-2008, 681-2009, 788-2010, 496-2011, 813-2011, 664-2013, 377-2014, and 448-2015
242.	Premier Lock	PO 1674609
243.	Press Ganey Associates, Inc.	166-2012 d 906-2015
244.	Quest Diagnostics Clinical Laboratories, Inc.	883-2010, 263-2013, 156-2014, and 013-2015
245.	Rachel Mendez, M.D.	145-2016
246.	Rajesh S. Dhillon, M.D.	728-2014
247.	Rajinder P. Singh, M.D.	8114 702-2015
248.	Ralph Garcia-Pacheco Suarez, M.D.	155-2015
249.	Randolph Fok, M.D.	068-2014, 931-2014, 075-2016, and 140-2016
250.	Ranjit K. Padhy, M.D.	769-2015
251.	Ravi Patel, M.D., Inc. dba Comprehensive Blood and Cancer Center	016-2012, 014-2014, 015-2015, and 026-2016
252.	RBC Wealth Management	875-2011
253.	Regents of the University of California - UCLA	06404, 302-2002, 898-2012, 889-2014, and 153-2015
254.	Regents of the University of California – Davis	05511
255.	Registry of Physician Specialists, A Medical Corporation	05615

256.	Resource Anesthesiology Associates of California	661-2010, 588-2014, 561-2015, and 050-2016
257.	Rich Environmental	05714
258.	Rick A. McPheeters, D.O.	139-2016
259.	Ridgecrest Regional Hospital	06115
260.	Rose Garden Assisted Living of Bakersfield	00116
261.	Ross University School of Medicine	379-2012 625-2015
262.	RR Donnelly	Price Agreement No. 1519
263.	Ruby A. Skinner, M.D., APC	336-2012, 381-2014, 304-2015, 658-2015, and 869-2015
264.	R.W. Bakersfield, Ltd.	143-2015
265.	Sally W. Nalesnik, M.D.	586-2015
266.	Sandra J. Sofinski, M.D.	580-2015
267.	San Francisco State University	811 07712
268.	Sangeeta Chandramahanti, M.D.	449-2015
269.	San Joaquin Community Hospital	05712
270.	San Joaquin Interiors	PO 1674544 and 1674560
271.	Sandu Sleep Center	02309
272.	Sara Abdijadid, D.O.	104-2016
273.	Selwyn Kay, M.D.	730-2015
274.	Sequoia Concepts, Inc.	PA 1082A
275.	Servi-Tech Controls, Inc.	04415
276.	Shahab Hillyer, M.D.	871-2015
277.	Siemens Medical Solutions USA, Inc.	1093-2007, 456-2008, 598-2008, 1106-2009, 1120-2009, 341-2010, 786-2010, 136-2011, 928-2014, 109-2016, 110-2016, and 111-2016
278.	Signature Performance	PO 1673124
279.	Singlesource Communications	PA 1475
280.	SmileCare	06415
281.	Spectralink	PA 01614 / PO 1673678
282.	STERIS Corporation	090-2016
283.	Steve Balalian	100-2014 047-2016
284.	Stryker Neurovascular	131-2016
285.	Sudha Challa, M.D.	700-2015
286.	Sudhir Patel, M.D., Inc.	52-2014 049-2016
287.	SunGard iWorks, LLC	636-2013
288.	Susan Luu, M.D.	01514
289.	Svetozar Stefan Stukovsky, M.D.	00516
290.	Tehachapi Valley Healthcare District	06215
291.	Telemanager Technologies, Inc.	790-2015
292.	Telemed Management, LLC	937-2014
293.	Terrio Physical Therapy-Fitness, Inc.	681-2011 and 764-2014
294.	Thanh C. Trieu, M.D.	07715
295.	Thomas W. Moxley, M.D.	547-2015
296.	TIAA-CREF Financial Services	876-2011
297.	Patient Pathways, LLC and Total Renal Care, Inc. subsidiaries of DaVita HealthCare Partners, Inc.	1048-2010 and 157-2014
298.	Toyon Associates, Inc.	947-2008, 789-2010, 159-2013, 748-2013, 777-2014 and 007-2016
299.	Trane	PO 1672468
300.	Transaction Data Systems, Inc.	789-2015
301.	Trustees of the California State University,	610-2012

	Bakersfield	
302.	Tung Thanh Trang, M.D., Kern Medical Center	837-2012 and 844-2015
303.	United Neuroscience, Inc.	808-2015
304.	University of California, Berkeley	832-2012 and 812-2015
305.	University of Delaware	07314
306.	University HealthSystem Consortium	289-2011 and 301-2014
307.	University of Southern California	711-98
308.	University of the Pacific – 01813	01115
309.	Valley Medical Transport	03815
310.	Vantage	201-2016
311.	Vasindas Around the Clock Care, Inc.	05114
312.	Vinh Quoc Trang, M.D.	872-2015
313.	Walden University	05715
314.	Warren J. Wisnoff, D.O.	683-2014 622-2015
315.	Weatherby Locums, Inc.	185-2011, 816-2011, 133-2012, 259-2013, 743-2014, 094-2015, and 842-2015
316.	William Stull, M.D.	221-2014
317.	Women’s Care Center	14904



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern, as represented by the Administrative Office, Human Resources Division, for the provision of health benefits to Kern County Hospital Authority employees and retirees

Required Action: Approve; Authorize Chairman to Sign

Summary:

Requesting Board approve this Agreement between the County of Kern and the Kern County Hospital Authority (“Authority”), outlining the terms and conditions for continued participation in the health benefit plans currently provided by the County.

The Agreement specifies the County policies that the Authority, as a special district, must adhere to when determining eligibility of Authority employees, dependents and retirees for medical, dental and vision plan benefits.

It also specifies the Authority’s responsibility to:

- provide timely information with regard to eligibility,
- maintain confidentiality of records, and
- meet all regulatory compliance requirements.

**MEMORANDUM OF UNDERSTANDING
COUNTY OF KERN
AND
KERN COUNTY HOSPITAL AUTHORITY
FOR HEALTH BENEFITS PARTICIPATION
(Kern County Hospital Authority – County of Kern)**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this ____ day of _____, 2016, by and between the COUNTY OF KERN, a political subdivision of the state of California (“County”), as represented by the COUNTY ADMINISTRATIVE OFFICE, HUMAN RESOURCES DIVISION (“Responsible County Department”) and KERN COUNTY HOSPITAL AUTHORITY (“District”), a Hospital Authority pursuant to Section 101853 of the Health and Safety Code.

RECITALS

- (a) County funds, operates, and administers employer-sponsored medical, dental, and vision programs (“Health Benefits”) for the benefit of employees and retirees of the County and their dependents; and
- (b) County maintains certain policies and administrative guidelines for the purpose of governing enrollment and participation in Health Benefits; and
- (c) District desires to participate in Health Benefits offered by County for the benefit of employees and retirees of District and their dependents; and
- (d) County and District agree to participation in Health Benefits on the terms set forth in this MOU;

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

**II.
TERMS AND CONDITIONS**

1. **Responsibilities of County.**

1.1 **Specified Services.** County will sponsor and provide Health Benefits to District and its employees and retirees as provided for in applicable County policies. Policies govern which employees and dependents will be eligible for coverage, the timeframes in which offers of coverage must be made, when coverage will no longer be available or may be terminated, and other pertinent information. County policies applicable to District employees and retirees participating in Health Benefits include the following, incorporated herein by reference:

- a. County of Kern Health Benefits Eligibility Policy for Active Employees

- b. County of Kern Health Benefits Eligibility Policy for Participants without Active Employee Medical Coverage
- c. Health Benefits Eligibility Policy for Extra-Help and Temporary Employees Not Otherwise Eligible for Health Benefits
- d. Retiree Health Benefits Administration Policy

County shall notify District of any amendments or revisions to the policies listed above and will provide District an opportunity for comment prior to enacting any changes.

1.2. **Representations.** County makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement: (a) County has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and (b) County will diligently provide all required services in a timely and professional manner in accordance with the terms and conditions of this Agreement.

1.3 **Reporting.** County agrees to maintain books and records and make available to District, reports relative to all of its activities under this MOU. County shall maintain such books, records, and reports in an accessible location and condition for a period of not less than four (4) years from the date of termination of this MOU or until after the conclusion of any audit, whichever occurs last.

2. **Responsibilities of District.** District shall comply with applicable County policies listed in Paragraph 1 of this MOU. District will furnish information timely to County and to eligible employees, per requirements of County policies, and comply with information requests by County regarding determinations of eligibility and compliance with applicable County policies. District will maintain accurate books and records relative to all its activities under this MOU. District shall permit County to audit, examine, and make excerpts and transcripts from such records (unless prohibited by law). District shall maintain such books and records in an accessible location and condition for a period of not less than four (4) years from the date of termination of this MOU, or until after the conclusion of any audit, whichever occurs last.

3. **Compensation to County.** District shall compensate County for administration and provision of Health Benefits through payment of fees in the form 1) of a biweekly composite rate, as determined by County on a fiscal year basis, or 2) biweekly plan premium for active employees or monthly plan premium for retirees, as determined by County on a calendar year (plan year) basis. Fees shall be inclusive of all administrative expenses incurred by County and all premium or claims payments made by County on behalf of Health Benefits participants. Payments shall be paid either in advance on a quarterly basis or on a biweekly basis, concurrent with payroll processing.

4. **Term.** The term of this MOU shall commence on the transfer of Kern Medical Center to the District, which is scheduled to occur on or about July 1, 2016 and shall remain in effect, until terminated as provided herein.

5. **Termination.** Either party shall have the right to terminate this MOU, without penalty or cause, by giving 45 days' prior written notice to the other party of its intent to terminate.

5.1 **Payment Obligations.** In the event of termination of this MOU for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, mutually agreed Parties, and the other Party shall be entitled to receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

5.2 **No Interference.** Following the expiration or earlier termination of this MOU, the terminated Party shall not do anything or cause any person to do anything that might interfere with any efforts by the terminating Party to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between the Party and any provider that may replace the terminated Party. This Section 5.2 shall not be construed to contradict or supersede any provisions contained in Paragraph 1.A or Exhibit A of the Employee Benefit Services Agreement By and Between the County of Kern and Kern County Hospital Authority, attached and incorporated herein by reference.

6. **Ownership of Documents.** Except as provided herein, all reports, documents and other items generated or gathered in the course of providing services to District under this MOU are and shall remain the property of County.

7. **Notices.** All notices required or provided for in this MOU shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A party may change the address to which notice is to be given by first providing notice in accordance with procedure set forth in this section.

To County: County Administrative Office
Human Resources Division
1115 Truxtun Avenue, 1st Floor
Bakersfield, CA 93301
Attn.: Health Benefits

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

Nothing in this MOU shall be construed to prevent or render ineffective delivery of notices required or permitted under this MOU by personal service.

8. **Modification.** This MOU may be modified in writing only, signed by the parties in interest at the time of the modification.

9. **Assignment and Subcontracts.** District shall not assign any interest in this MOU without the prior written consent of County.

10. **Counterparts.** This MOU 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.

11. **Non-waiver.** No covenant or condition of this MOU can be waived except by the written agreement of District and County.

12. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no authority to bind the other Party to any agreements or undertakings.

13. **Confidentiality.**

13.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other party, communicate confidential information, designated in writing or identified in this MOU as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process or requirement of law. Upon completion of this MOU, the provisions of this paragraph shall continue to survive.

13.2 **Medical Records.** The parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this MOU in accordance with applicable federal and state laws and regulations.

13.3 **Protected Health Information.** Both parties agree to safeguard and protect patient privacy as required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws. Both parties agree to: (i) implement appropriate safeguards and maintain individually identifiable patient health information ("Protected Health Information" or "PHI", including electronic PHI); (ii) use and disclose only the minimum necessary PHI; (iii) use and disclose PHI only as permitted under HIPAA for legal, management and administrative purposes in connection with treatment, payment and healthcare operations or as required by law; (iv) require third parties to whom it may disclose PHI to agree in writing to similar restrictions and to comply with HIPAA; (v) track disclosures of PHI as required under HIPAA, to include the nature of the information disclosed, the date of the disclosure, to whom the information was disclosed, address of the recipient, if known, and the purpose of the disclosure and provide an accounting of such disclosures promptly upon request; (vi) promptly notify the non-disclosing party of disclosures of PHI in violation of HIPAA and this Agreement and take steps to mitigate, to the extent practicable, deleterious effects of improper use of PHI; (vii) promptly make PHI available to patients upon request; and (viii) permit patients to request amendment to or

correction of PHI, amend and/or correct PHI as appropriate when so requested, both parties agree to notify the other of requests for correction and amendments to PHI by patients and incorporate into PHI amendments and/or corrections made to PHI. Both parties acknowledge that PHI received from the other shall remain the property of the disclosing party and that within ten (10) business days of request or upon termination of this Agreement, said PHI shall be returned to the disclosing party or be destroyed. Both parties acknowledge that they have each established internal policies and procedures regarding HIPAA compliance and privacy and agree to make such policies and procedures available to each other upon request.

14. **Mutual Indemnification.** Each Party shall defend, indemnify, and hold harmless, the other party, and their respective officers, directors, employees, agents, members, shareholders, partners, joint ventures, affiliates, successors, and assigns from and against any and all liabilities, obligations, claims, demands, suits, losses, expenses, damages, fines, judgments, settlements, and penalties, including, without limitation, costs, expenses, and attorneys' fees incident thereto, arising out of or based upon contract damages, property damage, or bodily injury (including death at any time resulting there from) to any person, including the indemnifying party's employees, affiliates, or agents, occasioned by or in connection with (1) the indemnifying party's negligent performance of (or failure to perform) the contract duties hereunder; (2) a violation of any laws or any negligent act or omission by the indemnifying party's or its affiliates, subcontractors, agents or employees during the performance of the contract duties hereunder; or (3) a breach of this Agreement by the indemnifying party or any of its affiliates, subcontractors, agents, or employees. The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified (including reasonable attorneys fees), from and after the time at which the party indemnified received written notification that a claim or demand is to be made or may be made. Both parties' obligations under this Section do not extend to any liability caused by the sole negligence of the other party. This Section shall survive the termination or expiration of this Agreement.

15. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

16. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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.

17. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance;

(2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for the Parties' assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline the Parties' assigned personnel who violate the Parties' policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

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

19. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

21. **Disqualified Persons.** The Parties mutually represent and warrant to one another that they and their respective representatives are not knowingly: (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.

22. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

24. **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.

25. **Sole Agreement.** This Agreement, including all attachments 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.

[Signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this MOU as of the Effective Date.

Kern County Hospital Authority
"District"

County of Kern
"COUNTY"

By _____
Chairman
Board of Governors

By _____
Chairman
Board of Supervisors

APPROVED AS TO CONTENT:
Kern Medical Center

APPROVED AS TO CONTENT:
County Administrative Office
Human Resources Division

By _____
Lisa Hockersmith
Vice President of Human Resources

By _____
Devin W. Brown
Employee Relations Officer

APPROVED AS TO FORM:
Office of County Counsel

APPROVED AS TO FORM:
Office of County Counsel

By _____
Shannon Hochstein
Deputy

By _____
Gurujodha Khalsa
Chief Deputy



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

June 22, 2016

SUBJECT: Proposed Application with state of California, Department of Industrial Relations and Certification of Consent to Self-insure for Workers' Compensation Liabilities

Required Action: Approve; Adopt Resolution; Authorize Chairman to Sign

Summary:

In order to self-insure workers' compensation liabilities in the state of California, the Authority needs to be approved by the Department of Industrial Relations/Office of Self Insurance Programs through submission of the attached application and resolution authorizing application for a certificate of consent to self-insure. Employers choose to self-insure their workers' compensation liabilities to cover their employees for reasons of cost effectiveness, greater control over their claims programs, and increased safety and loss control management. The Authority will be self-insuring the first \$500,000 of each occurrence and is purchasing excess statutory workers' compensation coverage excess of the self-insured retention.



Our File: _____

APPLICATION FOR A PUBLIC ENTITY CERTIFICATE OF CONSENT TO SELF INSURE

NOTE: All questions must be answered. If not applicable, enter "N/A".
Workers' compensation insurance must be maintained until certificate is effective.

APPLICANT INFORMATION

Legal Name of Applicant (show exactly as on Charter or other official documents):

Kern County Hospital Authority

Street Address of Main Headquarters:

1700 Mount Vernon Avenue

Mailing Address (if different from above):

Federal Tax ID No.:

47-5618278

City, State, Zip Code

Bakersfield, CA 93306-4018

TO WHOM DO YOU WANT CORRESPONDENCE REGARDING THIS APPLICATION ADDRESSED?

Name: Benjamin Andersen

Title: Associate Hospital Administrator

Company Name: Kern County Hospital Authority

Mailing Address: 1700 Mount Vernon Avenue

City: Bakersfield

State: CA

Zip + 4: 93306-4018

Telephone Number: (661) 204-3763

Email: andersenb1@kernmedctr.com

Type of Public Entity (check one):

City and/or County School District Police and/or Fire District Hospital District Joint Powers Authority

Other (describe): _____

Type of Application (check one):

New Application Reapplication due to Merger or Unification Reapplication due to Name Change

Other (describe) _____

Date Self Insurance Program will begin: July 1, 2016

CURRENT PROGRAM FOR WORKERS' COMPENSATION LIABILITIES

Currently Insured with State Compensation Insurance Fund, Policy Number:

Policy Expiration Date: Yearly Premium: \$

Current Yearly Incurred (paid & unpaid) Losses: \$ (FY or CY)

Currently Self Insured, Certificate Number: 7020-00

Name of Current Certificate Holder: County of Kern

Other (describe): County currently purchases specific excess statutory workers compensation excess of SIR

JOINT POWERS AUTHORITY

Will the applicant be a member of a workers' compensation Joint Powers Authority for the purpose of pooling workers' compensation liabilities?

Yes No If yes, then complete the following:

Effective date of JPA Membership: November 23, 2015 JPA Certificate No.: 5021-110

Name and Title of JPA Executive Officer:

Michael Fleming, CEO

Name of Joint Powers Authority Agency:

CSAC Excess Insurance Authority

Mailing Address of JPA:

75 Iron Point Circle, Suite 200

City: State: Zip + 4:

Folsom, CA 95630

Telephone Number: 916-850-7300

PROPOSED CLAIMS ADMINISTRATOR

Who will be administering your agency's workers' compensation claims? (check one)

JPA will administer, JPA Certificate No.:

Third party agency will administer, TPA Certificate No.: 195

Public entity will self administer

Insurance carrier will self administer

Name of Individual Claims Administrator:

Sharon Castillo, Claims Manager

Name of Administrative Agency:

TRISTAR Risk Management

Claims Handling Office:

Mailing Address:

4969 E. McKinley Avenue, Suite 204

P. O. Box 2805

Fresno, CA 93727

City: State: Zip + 4:

Clinton, IA 52733-2805

Telephone Number: 559-432-1260

FAX Number: 559-432-1267

Number of claims reporting locations to be used to handle the agency's claims: One (Fresno Claims Office)

Will all agency claims be handled by the administrator listed on previous page? Yes No

AGENCY EMPLOYMENT

Current Number of Agency Employees: 1,644 (Applicant's)

Number of Public Safety Officers (law enforcement, police or fire): 0

If a school district, number of certificated employees: 0

Will all agency employees be included in this self insurance program? Yes No

If no, explain who is not included and how workers' compensation coverage is to be provided to the excluded agency employees:

INJURY AND ILLNESS PREVENTION PROGRAM

Does the agency have a written Injury and Illness Prevention Program? Yes No

Individual responsible for agency Injury and Illness Prevention Program:

Name and Title:

David Kalish

Company or Agency Name:

Kern County Hospital Authority

Mailing Address:

1700 Mount Vernon Avenue

City:

State:

Zip + 4:

Bakersfield, CA 93306-4018

Telephone Number: 661-326-2625

SUPPLEMENTAL COVERAGE

Will your self insurance program be supplemented by any insurance or pooled coverage under a standard workers' compensation insurance policy? Yes No

If yes, then complete the following:

Name of Carrier or Excess Pool: _____

Policy Number: _____

Effective Date of Coverage: _____

Will your self insurance program be supplemented by any insurance or pooled coverage under a specific excess workers' compensation insurance policy? Yes No

If yes, then complete the following:

Name of Carrier or Excess Pool: CSAC Excess Insurance Authority Excess Workers' Compensation Program

Policy Number: Pending

Effective Date of Coverage: July 1, 2016

Retention Limits: \$500,000

Will your self insurance program be supplemented by any insurance or pooled coverage under an aggregate excess (stop loss) workers' compensation insurance policy? Yes No

If yes, then complete the following:

Name of Carrier or Excess Pool: _____

Policy Number: _____

Effective Date of Coverage: _____

Retention Limits: _____

RESOLUTION OF GOVERNING BOARD

See Attached Resolution-Page 5

CERTIFICATION

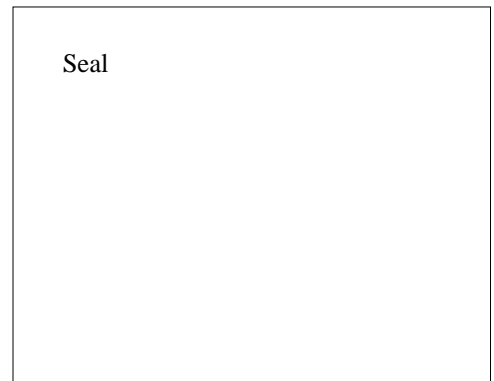
The undersigned on behalf of the applicant hereby applies for a Certificate of Consent to Self Insure the payment of workers' compensation liabilities pursuant to Labor Code Section 3700. The above information is submitted for the purpose of procuring said Certificate from the Director of Industrial Relations, State of California. If the Certificate is issued, the applicant agrees to comply with applicable California statutes and regulations pertaining to the payment of compensation that may become due to the applicant's employees covered by the Certificate.

Signature of Authorized Official:

Date:

Typed Name:

Title:



Agency Name:

(Emboss seal above or Notarize signature)

RESOLUTION NO.: _____ DATED: _____

A RESOLUTION AUTHORIZING APPLICATION
TO THE DIRECTOR OF INDUSTRIAL RELATIONS, STATE OF CALIFORNIA
FOR A CERTIFICATE OF CONSENT TO SELF INSURE
WORKERS' COMPENSATION LIABILITIES

At a meeting of the Board of _____
(enter title)

of the _____
(enter name of public agency, district)

a _____ organized and existing under the laws of
(enter type of agency)
the State of California, held on the _____ day of _____, 20_____, the
following resolution was adopted:

RESOLVED, that the _____
(enter position titles)

be and they are hereby severally authorized and empowered to make application to the Director of Industrial Relations, State of California, for a Certificate of Consent to Self Insure workers' compensation liabilities on behalf of the

_____ (enter name of district)

and to execute any and all documents required for such application.

I, _____, the undersigned _____
(enter name) (enter title)

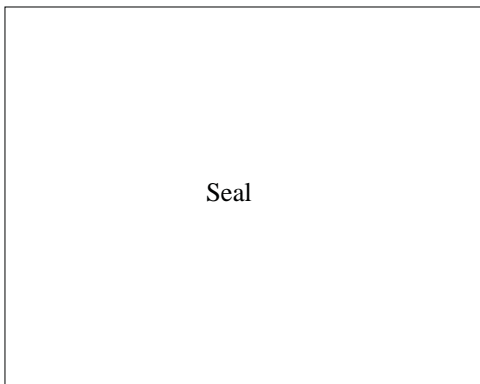
of the Board of the said _____
(enter name of agency)

a _____, hereby certify that I am the _____
(enter type of agency) (enter title)

of said _____, that the foregoing is a full, true and correct copy of the resolution duly
(enter type of agency)

passed by the Board at the meeting of said Board held on the day and at the place herein specified and that said resolution has never been revoked, rescinded, or set aside and is now in full force and effect.

IN WITNESS WHEREOF: I HAVE SIGNED MY NAME AND AFFIXED THE SEAL OF THIS



_____ (enter type of agency)

THIS _____ DAY OF _____, _____

(Signature)



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

June 22, 2016

SUBJECT: Proposed Resolution Declaring Authorized Volunteers of the Kern County Hospital Authority to be Employees for Purposes of Workers' Compensation Coverage

Recommended Action: Approve; Adopt Resolution

Summary:

The Hospital Authority has long benefited from a variety of vital volunteer programs. During their course of service, some of these volunteers may be injured. The California Labor Code permits the Hospital Authority to declare by adoption of a resolution that a person who performs voluntary service(s) for the Hospital Authority be deemed an employee of the Hospital Authority for purposes of Division 4 of the California Labor Code while performing such service.

California Labor Code Section 3363.5 states: *(a) ... a person who performs voluntary service without pay for a public agency, as designated and authorized by the governing body of the agency or its designee, shall, upon adoption of a resolution by the governing body of the agency so declaring, be deemed to be an employee of the agency for purposes of this division while performing such service. (b) For purposes of this section, "voluntary service without pay" shall include services performed by any person, who receives no remuneration other than meals, transportation, lodging, or reimbursement for incidental expenses.*

Adoption of such a resolution limits coverage of volunteers to benefits provided through the workers' compensation program and precludes other potential claims under the California Tort Claims Act.

The Authority will be self-insuring the first \$500,000 of each occurrence and is purchasing excess statutory workers' compensation coverage excess of the self-insured retention.

Therefore, it is recommended that your Board approve and adopt the attached resolution declaring authorized volunteers of the Kern County Hospital Authority to be employees for purposes of workers' compensation coverage.

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

In the matter of:

Resolution No. _____

**DECLARING AUTHORIZED VOLUNTEERS
OF KERN COUNTY HOSPITAL AUTHORITY
TO BE EMPLOYEES FOR PURPOSES OF
WORKERS' COMPENSATION COVERAGE**

I, RAQUEL D. FORE, 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 the Kern County Hospital Authority at an official meeting thereof on the 22nd day of June, 2016, 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:

RAQUEL D. FORE
Authority Board Coordinator
Kern County Hospital Authority

Raquel D. Fore

RESOLUTION

Section 1. WHEREAS:

- (a) The Kern County Hospital Authority ("Hospital Authority") benefits from a variety of vital volunteer programs; and
- (b) Such volunteers may be injured in their course of service; and

(c) Labor Code section 3363.5 permits the Hospital Authority to declare by adoption of a resolution that a person who performs voluntary service(s) without pay for a public agency (other than remuneration in the form of meals, transportation, lodging, or reimbursement for incidental expenses), as designated and authorized by the Hospital Authority be deemed an employee of the Hospital Authority for purposes of Division 4 of the California Labor Code while performing such service; and

(d) Adoption of this resolution limits coverage of volunteers to benefits provided through the workers' compensation program and precludes other potential claims under the California Tort Claims Act; and

(e) Adoption of this resolution is deemed a best risk management practice; and

(f) The Hospital Authority desires to provide workers' compensation coverage for any Hospital Authority volunteers pursuant to the provision of section 3363.5 of the Labor Code;

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 finds the best interests of the Hospital Authority will be served by utilizing volunteers in the provision as follows:

(a) That the public interest is best served by providing workers' compensation coverage to any person performing volunteer services for the Hospital Authority; and

(b) That the volunteers described above shall be deemed to be employees for the purposes of Division 4 of the California Labor Code while the person(s) actually performs volunteer services, provided that the rights of volunteers shall be limited to those benefits set forth in the Labor Code.

3. Kern Medical Center shall furnish to the third party claims administrator for the Hospital Authority workers' compensation program a list of all such persons designated and authorized by the Hospital Authority to perform voluntary services, and thereafter from time to time shall furnish current lists of such persons. Inadvertent exclusion of an individual from any such list shall not exclude from coverage a person otherwise authorized and designated to perform such volunteer services.

4. The provisions of this Resolution shall be effective, in force and operative as of the 1st day of July, 2016.

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

Office of County Counsel
Kern Medical Center
Tristar Risk Management
Alliant Insurance Services, Inc.



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern, as represented by the Department of Human Services, for the provision of Medi-Cal eligibility services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern Medical's robust team of Patient Financial Services regularly screens and assists patients in enrolling in Medi-Cal, and has partnered with the Kern County Department of Human Services to provide specialized services to these Medi-Cal applicants, in order streamline and monitor these applications. This agreement provides for one DHS eligibility staff stationed at Kern Medical during agreed upon days. This Agreement is effective July 1, 2016 through October 31, 2018.

**AGREEMENT
FOR OUTSTATION
FOR SPECIALIZED MEDI-CAL APPLICATION SERVICES**

**INDEPENDENT CONTRACTOR
(Kern County Hospital Authority - County of Kern)**

THIS AGREEMENT ("**Agreement**") is made and entered into on JUN 14 2016, between the **Kern County Hospital Authority**, a county hospital authority which owns and operates Kern Medical Center ("**Authority**") and the **County of Kern**, a political subdivision of the state of California, ("**County**") as represented by the Department of Human Services ("**DHS**"). Authority and DHS are referred to individually as a "**Party**" and collectively as the "**Parties**".

**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) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and

(c) Welfare and Institutions Code Section 11320 et. seq. requires each county to offer a range of services adequate to ensure that California Work Opportunity and Responsibility to Kids (CalWORKs) participants have access to needed activities and services to assist them in seeking unsubsidized employment and other supportive services activities and programs; and

(d) Authority desires to liaison with DHS to provide positive outcomes and specialized Medi-Cal application services to certain patients of Authority; and

(e) DHS represents it is qualified, experienced and willing to provide such services pursuant to the terms and conditions set forth herein; and

(f) Both Authority and County requires the assistance of the other Party to provide services, as such services are unavailable from Authority and County resources, and the Parties agrees to provide such services on the terms and conditions set forth in this Agreement;

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 term of this Agreement shall commence on the transfer of Kern Medical Center ("**KMC**") to the Authority, which is scheduled to occur on or about July 1, 2016 ("**Effective Date**"), and shall end October 31, 2018, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. Obligations of Authority.

2.1 Specified Services. Authority shall assume responsibility for providing the following services:

1. Authority shall screen potential Medi-Cal applicants prior to referral to DHS staff to eliminate those who have no possibility of eligibility; and

2. Authority shall provide DHS staff with adequate workspace that will allow DHS staff to complete their assignments in a private environment to ensure protection of client Personally Identifiable Information (PII). DHS staff workspace will include a workstation with locking cabinets for PII protection purposes, a desk or cubicle and access to telephones and the internet, sufficient to carry out the tasks described in this Agreement.

2.2 Representations. Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority has the facilities necessary to provide the services described in this Agreement; and (iii) Authority does not have any actual or potential interests adverse to County; and (iv) Authority shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

3. Obligations of County.

3.1 Specified Services. DHS shall assume responsibility for providing the following services:

1. Provide, at a minimum, one eligibility staff during days and business hours as mutually agreed upon by DHS and Authority. Changes in number of staff by DHS will require a 30 day notice; and

2. DHS will ensure coverage is provided as needed at clinical settings as mutually agreed upon by DHS and Authority; and

3. DHS staff will complete tasks as outlined in Exhibit "A" attached and herein incorporated by this reference.

3.2 Representations. County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) County has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) County does not have any actual or potential interests adverse to Authority; and (iii) County shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

3.3 **Standard of Care.** Authority has relied upon the professional ability and training of County as a material inducement to enter into this Agreement. County 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 County's work by Authority shall not operate as a waiver or release.

3.4 **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. County shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 The services conducted pursuant to the terms and conditions of this Agreement shall be performed without the payment of any monetary consideration by either Party to the other Party.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services the Parties provided under this Agreement. The Parties further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

7. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

8. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has no authority to bind the other Party to any agreements or undertakings.

9. **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.

10. **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 at the end of such 30-day period.

11. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

12. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for Contractor's assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Contractor's assigned personnel who violate Contractor's policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

14. **Confidentiality.**

14.1 Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other Party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each Party acknowledges their mutual confidential relationship and each Party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the Parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a Party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by

the non-disclosing party; or (iv) that was learned by the non-disclosing party from a third party who did not impose a confidentiality obligation on such Party. Each Party hereto acknowledges and agrees that the receiving Party may be provided access to Confidential Information solely to enable the Parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each Party agrees to hold the other Party's Confidential Information in strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient Party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof) without the other Party's prior written consent.

14.2 **Medical Records.** If applicable, the Parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14.3 **Protected Health Information.** The Parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "HITECH Act"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The Parties agree and to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit B** and made a part hereof.

15. **Conflict of Interest.** The Parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Contractor agrees that they are unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice thereof. Contractor shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.

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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **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.

19. **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.

20. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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.

21. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

22. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party's employees, if any, the Party 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.

23. **Insurance.** Each party shall maintain, at its own expense, worker's compensation with statutory limits, commercial, general and professional liability insurance or self-insurance for bodily injury, death

and property loss and damage (including coverage for product liability, completed operations, contract liability and personal injury liability) for claims, lawsuits or damages arising out of its performance under this Agreement or the negligent or otherwise wrongful acts or omissions by such party or any of its employees or agents. With the exception of worker's compensation insurance, all such policies of insurance shall provide minimum limits of liability in the amount of one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) annual aggregate. If such coverage is provided on a claims-made basis, such insurance shall continue through the later of the expiration or cancellation of such policy or the termination, expiration or completion of this Agreement and upon the termination, expiration or completion thereof, or the expiration or cancellation of the insurance, such party shall purchase or arrange for the purchase of either an unlimited reporting endorsement "Tail Coverage" or "Prior Acts" coverage with a retroactive date on or prior to the Effective Date of this Agreement, whichever is earlier, for a period of not less than five (5) years following the termination, expiration or completion thereof. Upon request of a party, a certificate of insurance evidencing the existence of all coverage required hereunder shall be provided.

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

25. **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 County 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

26. **Non-appropriation.** The Parties 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

27. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

28. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

29. **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 County: Kern County Department of Human Services
P.O. Box 511
Bakersfield, California 93302
Attn: Director
Kern Medical Center

Notice to Authority: 1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

30. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of DHS providing services to its clients at Authority under this Agreement are and shall remain the property of DHS, and shall be maintained by DHS upon full completion of all services under this Agreement or termination of this Agreement, whichever first occurs.

31. **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.

32. **Sole Agreement.** This Agreement, including all attachments 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.

33. **Termination.**

33.1 **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 will 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 30 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 30 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.

33.2 **Termination without Cause.** Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

33.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a

material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 33.1.

34. Effect of Termination.

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

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

35. 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.

COUNTY OF KERN

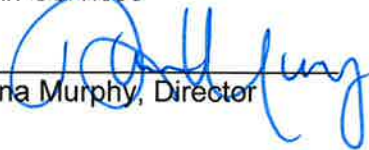
KERN COUNTY HOSPITAL AUTHORITY

By 
MICK GLEASON Chairman
Board of Supervisors

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
Kern County Department of
Human Services

APPROVED AS TO CONTENT:
Kern Medical Center

By 
Dena Murphy, Director

By 
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
Office of County Counsel

APPROVED AS TO FORM:
Office of County Counsel

By 
Gurujodha Khalsa *Bryon C. Walters*
Chief Deputy County Counsel

By 
Shannon Hochstein
Deputy County Counsel

EXHIBIT "A"

EXHIBIT "A"

DHS Staff Job Duties - Site Dependent

- Screen or accept MC applications
- Complete bed side interviews as necessary
- Monitor disposition of MC applications
- Provide status of MC applications upon request
- Follow up on Authority More than 45 Day Report
- Receive client walk-ins with MC questions
- Explain NOAs
- Assist with form completion
- Accept, photocopy, route and/or fax client provided documentation
- Answer phone calls from client, Authority Staff and clinics
- Process KCDHS 110s
- Document via journal entries

EXHIBIT "B"

EXHIBIT "B" 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 Kern County Department of Human Services ("**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:

DEFINITIONS

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

"**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.

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

EXHIBIT "B"

"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](#).

"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](#).

"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.

"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.

"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.

"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](#).

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

"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.

"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](#).

"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.

OBLIGATIONS OF BUSINESS ASSOCIATE

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

EXHIBIT "B"

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.

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.

Reporting Non-Permitted Use or Disclosure.

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 twenty-four (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.

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

EXHIBIT "B"

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.

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.

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.

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.

Access to Protected Health Information. To the extent that Business Associate maintains 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.

Amendment of Protected Health Information. To the extent that Business Associate maintains 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.

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.

EXHIBIT "B"

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.

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.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits 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.

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.

OBLIGATIONS OF COVERED ENTITY

Covered Entity's Obligations.

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.

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.

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.

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.

EXHIBIT "B"

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.

TERM AND TERMINATION

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

Termination of Underlying Agreement.

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.

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.

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:

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

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.

Disposition of Protected Health Information Upon Termination or Expiration.

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.

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

EXHIBIT "B"

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.

MISCELLANEOUS

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.

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.

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.

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.

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.

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.

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.

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,

EXHIBIT "B"

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.

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.

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.

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.

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:

Kern County Department of Human Services
P.O. Box 511
Bakersfield, California 93302-0511
Attn: Director

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

EXHIBIT "B"

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.

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

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 of Kern County, California, which shall have jurisdiction over all such claims.

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.

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.

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.

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

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.

EXHIBIT "B"

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



Russell V. Judd, Chief Executive Officer

Date: 5/23/16

BUSINESS ASSOCIATE:

Kern County Department of Human Services



Dena Murphy, Director

Date: 5-18-16

**APPROVED AS TO FORM
Office of County Counsel**

By: 

Shannon Hochstein
Deputy County Counsel

Date: 5/20/16

**APPROVED AS TO FORM:
Office of County Counsel**

By: 

Gurujodha Khalsa, *Bryan C. Walters*
Chief Deputy County Counsel

Date: 5/17/2016



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

June 22, 2016

SUBJECT: Proposed Agreement with County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Department of Human Services for the provision of forensic pediatric services

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Authority will provide a qualified physician to provide special medical services as a forensic pediatrician to conduct examinations and prepare reports as required in cases involving alleged child physical abuse, alleged child sexual abuse (only if needed), and/or neglect. These services will be provided at Kern Medical Center and the Jamison Center. These services may be changed from time to time by agreement of the Parties in accordance with the provisions of this Agreement. This Agreement is effective July 1, 2016 through June 30, 2017, in an amount not to exceed \$165,000.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority - County of Kern)**

This Agreement is made and entered into this _____ day of _____ 2016, between the KERN COUNTY HOSPITAL AUTHORITY, a county hospital authority which owns and operates Kern Medical Center (“**Authority**”) and the COUNTY OF KERN, a political subdivision of the state of California, (“**County**”) which contains the constituent department of the Kern County Sheriff’s Office (“**Sheriff**”), Department of Human Services (“**DHS**”), and the County Administrative Office (“**CAO**”) (each a “**Party**” and collectively the “**Parties**”).

**I.
RECITALS**

- (a) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- (b) County requires the assistance of the Authority to provide services, as such services are unavailable from County resources; and
- (c) Authority, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement;

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 shall commence on the transfer of Kern Medical Center to the Authority, which is scheduled to occur on or about July 1, 2016 (the “**Effective Date**”), and shall end June 30, 2017, unless earlier terminated pursuant to other provisions of this Agreement as herein stated. This Agreement may be renewed for additional one year terms if requested, by written agreement of the parties, 120 days prior to the end of the current term.

2. **Obligations of Authority.**

2.1 **Specified Services.** Authority will provide a qualified physician to provide special medical services as a forensic pediatrician to conduct examinations and prepare reports as required in cases involving alleged child physical abuse, alleged child sexual abuse (only if needed), and/or neglect. These services will be provided at Kern Medical Center and the Jamison Center. These services may be changed from time to time by agreement of the Parties in accordance with the provisions of this Agreement.

2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not have any actual or potential interests adverse to County; and (iii) Authority shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 **Standard of Care.** County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

3. **Obligations of County.**

3.1 **County Designee.** County will designate a primary contact from DHS and the Sheriff for issues regarding the use of Authority services and a contact at the CAO for issues regarding payment.

3.2 **Control Retained in Kern Medical Center ("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. County shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. **Payment for Services.**

4.1 **Fees and Charges.** As consideration for the services provided by Authority hereunder, the County, through the CAO, will pay in accordance with the fee schedule set forth in **Exhibit "A,"** attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 **Taxes.** Authority 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.

4.3 **Invoices.** Invoices for payment shall be submitted in a form approved by County and list each service performed. Invoices and receipts shall be sent by Authority to the County for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made by County to the Authority within 30 days of receipt and approval of each invoice by the County.

4.4 **Maximum Payable.** The maximum payable under this Agreement will not exceed \$165,000 over the one (1) year term of this Agreement.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("**Secretary**") or the

Comptroller General of the United States General Accounting Office (“**Comptroller General**”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either Party as are necessary to certify the nature and extent of costs of the services the Parties provided under this Agreement. The Parties further agree that if either of them carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

7. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel (unless prohibited by law) or other data related to all other matters covered by this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

8. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has any authority to bind the other Party to any agreements or undertakings.

9. **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.

10. **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 at the end of such 30-day period.

11. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

12. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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. **Compliance Program.** During the term of this Agreement, Authority and County shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations, which all Parties shall abide. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for the Parties' assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline the Parties' assigned personnel who violate the Parties' policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

14. **Confidentiality.**

14.1 Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other Party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each Party acknowledges their mutual confidential relationship and each Party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the Parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a Party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by the non-disclosing Party; or (iv) that was learned by the non-disclosing Party from a third party who did not impose a confidentiality obligation on such Party. Each Party hereto acknowledges and agrees that the receiving Party may be provided access to Confidential Information solely to enable the Parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by applicable law, each Party agrees to hold the other Party's Confidential Information in strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient Party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof) without the other Party's prior written consent.

14.2 **Medical Records.** If applicable, the Parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with

applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, commencing at section 56 of the California Civil Code, California Evidence Code sections 1156 and 1157, Welfare and Institutions Code section 5328 et seq., and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14.3 **Protected Health Information.** The Parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the “HITECH Act”), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The Parties agree to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit “B,”** attached hereto and incorporated herein by this reference.

15. **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.

16. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

17. **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.

18. **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.

19. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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.

20. **Indemnification and Hold Harmless.** The Parties agree to indemnify, defend and hold harmless the other Party and its agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by the Party, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of the other Party or its officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of the Party by any person or entity.

21. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party's employees, if any, the Party 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.

22. **Insurance.** County and Authority self-insure as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Any self-insuring Party, upon request of the other Party, shall forward documentation to the requesting Party that demonstrates to the requesting Party's satisfaction that the Party self-insures as a matter of normal business practice before commencing the Work. Either Party will accept reasonable proof of self-insurance comparable to the above requirements.

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

24. **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 County

and Authority. 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

25. **Non-appropriation.** The Parties reserve 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

26. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

27. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither Party nor any of their affiliates shall, without the prior written approval of the other, knowingly (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting Party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting Party who is or was employed by or under contract with the non-soliciting Party during the term of this Agreement.

29. **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 County:

Kern County Sheriff's Office
1350 Norris Road
Bakersfield, California 93308
Attn: Sheriff

Department of Human Services
P.O. Box 511
Bakersfield, California 93302
Attn: Director

County Administrative Office
1115 Truxtun Avenue, 5th Floor
Bakersfield, California 93301
Attn: Assistant County Administrative Officer

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

30. **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.

31. **Sole Agreement.** This Agreement, including all attachments 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.

32. **Termination.**

32.1 **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 will 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 30 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 30 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.

32.3 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 32.1.

33. **Effect of Termination.**

33.1 **Payment Obligations.** In the event of termination of this Agreement for any reason, the terminating Party shall have no further obligation to pay for any services rendered or expenses incurred by the other Party after the effective date of the termination, and the other Party shall be entitled to

receive compensation for services satisfactorily rendered, calculated on a prorated basis up to the effective date of termination.

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

34. **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.


35. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into 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.

COUNTY OF KERN

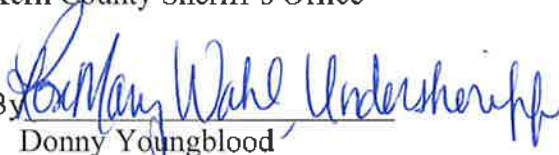
KERN COUNTY HOSPITAL AUTHORITY

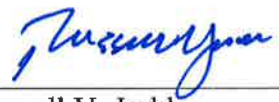
By 
Chairman
Board of Supervisors **JUN 14 2016**
MICK GLEASON

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
Kern County Sheriff's Office


APPROVED AS TO CONTENT:
Kern Medical Center

By 
Donny Youngblood
Sheriff

By 
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
Office of the County Counsel

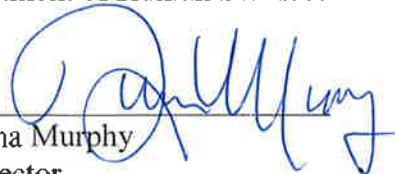
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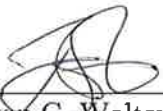
By 
Kendra L. Graham
Deputy County Counsel

By 
Shannon Hochstein
Deputy County Counsel

APPROVED AS TO CONTENT:
Department of Human Services

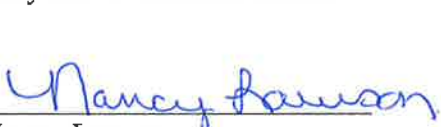
APPROVED AS TO FORM:
Office of the County Counsel

By 
Dena Murphy
Director

By 
Bryan C. Walters
Deputy County Counsel

APPROVED AS TO CONTENT:
County Administrative Office

APPROVED AS TO FORM:
Office of the County Counsel

By 
Nancy Lawson
Assistant County Administrative Officer


By 
Mark L. Nations
Assistant County Counsel

EXHIBIT "A"
FEE SCHEDULE

<u>Title:</u>	<u>Rate:</u>
1. Forensic Examination and Report	\$400 per hour
2. Expert Testimony	\$400 per hour*
3. Consultations	\$400 per hour

***Any expert testimony or consultation will be paid outside this Agreement by the requesting agency or County Department, except if the requesting agency is the Department of Human Services, the County Administrative Office will be invoiced.**

EXHIBIT "B"
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 Kern County Sheriff's Department ("**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:

DEFINITIONS

"**Breach**" shall have the meaning given under 45 C.F.R. § 164.402.

"**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.

"**Designated Record Set**" shall have the meaning given such term under 45 C.F.R. § 164.501.

“**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.

“**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.

“**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.

“**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.

“**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.

“**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.

“**Subcontractor**” shall have the meaning given to such term under 45 C.F.R. § 160.103.

“**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.

“**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.

“**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.

OBLIGATIONS OF BUSINESS ASSOCIATE

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.

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.

Reporting Non-Permitted Use or Disclosure.

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 twenty-four (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.

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.

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 PIII, 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.

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.

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.

Access to Protected Health Information. To the extent that Business Associate maintains 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.

Amendment of Protected Health Information. To the extent that Business Associate maintains 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.

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.

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.

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.

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.

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.

OBLIGATIONS OF COVERED ENTITY

Covered Entity's Obligations.

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.

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.

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.

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.

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.

TERM AND TERMINATION

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

Termination of Underlying Agreement.

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.

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.

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:

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

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.

Disposition of Protected Health Information Upon Termination or Expiration.

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.

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.

MISCELLANEOUS

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.

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.

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.

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.

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.

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. Business Associate self-insures as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Business Associate, upon request of Covered Entity, shall forward documentation that demonstrates that Business Associate self-insures as a matter of normal business practice before commencing the Work.

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.

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.

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.

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.

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.

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:

Kern County Sheriff's Office
1350 Norris Road
Bakersfield, California 93308
Attn: Sheriff

Department of Human Services
P.O. Box 511
Bakersfield, California 93302
Attn: Director

County Administrative Office
1115 Truxtun Avenue, 5th Floor
Bakersfield, California 93301
Attn: Assistant County Administrative
Officer

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

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.

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

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 of Kern County, California, which shall have jurisdiction over all such claims.

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.

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.

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.

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

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:

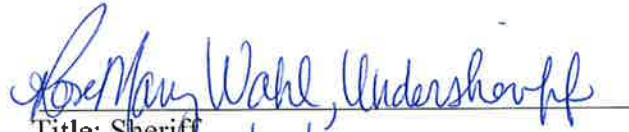
The Kern County Hospital Authority on behalf
of Kern Medical Center

Title: Chief Executive Officer

Date: _____

BUSINESS ASSOCIATE:

Kern County Sheriff's Department

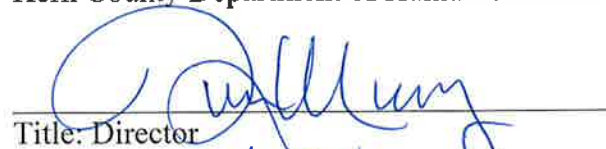


Title: Sheriff

Date: 6/14/16

BUSINESS ASSOCIATE:

Kern County Department of Human Services



Title: Director

Date: 6-7-16

BUSINESS ASSOCIATE:

County Administrative Office



Title: Assistant County Administrative Officer

Date: 6/6/16



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern, as represented by the Administrative Office, Kern County Sheriff's Office, and Kern County Probation Department for the provision of correctional medicine services to in-custody inmates and juvenile wards

Recommended Action: Approve; Authorize Chairman to sign subject to Approval as to form by Counsel

Summary:

Kern Medical will provide Correctional Medical Care to the Kern County Sheriff's Department and the Kern County Probation Department. Kern Medical will appoint a single onsite health authority who will be responsible for correctional healthcare.

Kern Medical will provide within the facilities as many services as possible and will delineate in writing those services that will be available at Kern Medical or through community providers. Healthcare services will meet the minimum requirements of Title 15 and 24. Healthcare services will be available at a level to address acute symptoms and/or conditions and avoid pre-deterioration of health while in correctional confinement. This Agreement is effective July 1, 2016 through June 30, 2018, in the amount of \$23,112,537 for Fiscal year 2016-2017.



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

June 22, 2016

SUBJECT: Proposed Agreement with Trans-West Security Services, Inc., for the provision of security services.

Required Action: Approve; Authorize Chairman to sign

Kern Medical requires utilization of certain services provided by Trans-West, including provision of site security manager, post supervisor, security officers, supplies, expertise, and oversight over security matters. Kern Medical proposes a 2-year agreement, effective July 1, 2016 through June 30, 2018, in an amount not to exceed \$2,412,834.

**AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Trans-West Security Services, Inc.)**

This Agreement is made and entered into this _____ day of _____ 2016, between the Kern County Hospital Authority, a county hospital authority (“KCHA”), which owns and operates Kern Medical Center (“KMC”), and Trans-West Security Services, Inc., a California corporation (“Contractor”), with its principle place of business located at 8503 Crippen Street, Bakersfield, CA 93311.

**I.
RECITALS**

(a) KCHA 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) KCHA requires the assistance of Contractor to provide security services to KMC, as such services are unavailable from KCHA resources; and

(c) Contractor, by reason of its qualifications and experience for doing the type of work herein contemplated, agrees to provide such services on the terms and conditions set forth in this Agreement;

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 term of this Agreement shall commence on the transfer of KMC to KCHA, which is scheduled to occur on or about July 1, 2016 (the “Effective Date”), and shall end June 30, 2018, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Contractor.**

2.1 **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.

2.2 **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 KCHA nor does Contractor represent a person or firm with an interest adverse to KCHA 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.

2.3 Standard of Care. KCHA 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 KCHA shall not operate as a waiver or release.

2.4 Performance Standard. Contractor shall perform all services 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 KCHA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KCHA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KCHA to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of section 35; or (d) pursue any and all other remedies at law or in equity.

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

2.6 Investment.

2.6.1 Contractor desires to work with KCHA to improve the security and surveillance supplies and equipment (hereinafter "Improvements") at KMC and agrees to make available \$50,000 (hereinafter "Investment") for these Improvements at KMC. Improvements shall be purchased and installed and/or used by mutually agreement of the Parties.

2.6.2 Contractor will select the Vendor(s) who will provide the Improvements, subject to KCHA's approval, which will not be unreasonably withheld. All such Improvements may be removed or replaced with the Parties' mutual approval.

2.6.3 Contractor may amortize/depreciate the Investment monthly by straight-line method from the date(s) such Investment funds are used up to June 30, 2018. The monthly amount of the amortization/depreciation will be based on Contractor's then current accounting period. Contractor has agreed to bear the cost of the Investment. However, KCHA agrees to pay Contractor immediately the full

unamortized/undepreciated amount of the Investment calculated from July 1, 2016, if this Agreement is terminated for any reason prior to the full amortization/depreciation of the Investment.

2.6.4 Title to the Improvements shall pass to KCHA after full amortization/depreciation of the Investment, or if this Agreement is terminated prior to full amortization/depreciation, but after payment to Contractor of all amounts owed under this section 2.6.

2.6 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 KCHA 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 KCHA is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish KCHA with proof of payment of taxes on these earnings.

2.7 Nonexclusive Services. Contractor understands and agrees that KCHA will utilize the services of Contractor pursuant to the terms of this Agreement on a non-exclusive basis. Contractor further agrees that KCHA shall retain the option to enter into agreements with other organizations for purposes of securing the services, in its sole discretion.

3. Obligations of KCHA.

3.1 KCHA Designee. KCHA will designate a primary contact, who will arrange for KMC staff assistance as may be required.

3.2 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 KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.

4. Payment for Services.

4.1 Fees and Charges. As consideration for the services provided by Contractor hereunder, KCHA will pay Contractor in accordance with the fee schedule set forth in Exhibit "B," attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 Invoices. Invoices for payment shall be submitted in a form approved by KCHA and list each service performed. Invoices and receipts shall be sent to KCHA for review and processing within 60 days of the date of service or payment will not be made. Payment shall be made to Contractor within 30 days of receipt and approval of each invoice by KMC.

4.3 **Maximum Payable.** The maximum payable under this Agreement will not exceed \$2,412,833.28 over the two (2) year term of this Agreement.

4.4 **Taxpayer Identification.** To ensure compensation is reported as paid to the proper party, Contractor will complete and execute IRS Form W-9 (Exhibit "C," attached hereto and incorporated herein by this reference), which identifies the taxpayer identification number for Contractor.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, KMC and Contractor shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services ("Secretary") or the Comptroller General of the United States General Accounting Office ("Comptroller General"), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Contractor provided under this Agreement. Contractor further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **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 KCHA.

7. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to KCHA accurate books and records relative to all its activities under this Agreement. Contractor shall permit KCHA to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon KCHA herein.

8. **Authority to Bind KCHA.** It is understood that Contractor, in its performance of any and all duties under this Agreement, has no authority to bind KCHA to any agreements or undertakings.

9. **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.

10. **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 amendment(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 at the end of such 30-day period.

11. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

12. **Compliance with Law.** Contractor shall observe and comply with all applicable county, 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. **Compliance Program.** During the term of this Agreement Contractor shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for companies providing third-party billing and coding services. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for Contractor's assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline Contractor's assigned personnel who violate Contractor's policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with Contractor. Contractor's assigned personnel shall demonstrate the existence of an internal compliance program or plan.

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 acknowledges 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 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 **Medical Records.** If applicable, the parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14.4 **Protected Health Information.** Contractor and KCHA recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of KCHA or KMC (as defined by the privacy, security, breach notification, and enforcement rules at 45 C.F.R. Part 160 and Part 164). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum, attached as Exhibit "D" and incorporated herein by this reference. In the event of a conflict between Exhibit "D" and any other confidentiality provision of this Agreement, Exhibit "D" shall control.

14.5 **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 or Contractor's assigned personnel during and in connection with this Agreement shall remain the property of KCHA at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KCHA all such Documents, which have not already been provided to KCHA in such form or format as KCHA deems appropriate. Such Documents shall be and will remain the property of KCHA 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 KCHA.

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, KCHA may immediately terminate this Agreement by giving written notice thereof.

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 KCHA 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 KCHA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

18. **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.

19. **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.

20. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to KCHA 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.

21. **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 required in 8 USCA section 1324a, if requested by KCHA. Without limiting the generality of the indemnification in section 21, Contractor agrees to indemnify, defend, and hold harmless KCHA, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this section.

22. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KCHA and KCHA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by County Counsel, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of KCHA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

23. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of KCHA. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to KCHA 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.

24. **Insurance.** Contractor, in order to protect KCHA and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Contractor shall not perform any work under this Agreement until Contractor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with KCHA's authorized insurance representative, Insurance Tracking Services, Inc. ("ITS"). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Contractor shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. Contractor shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Contractor shall

immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Contractor or KCHA as an additional insured.

a. Workers' Compensation and Employers Liability Insurance Requirement: In the event Contractor has employees who may perform any services pursuant to this Agreement, Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Contractor shall require any subcontractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered by the insurance afforded by Contractor. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Contractor shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered. Contractor shall maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. Liability Insurance Requirements:

(1) Contractor shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Agreement. The Commercial General Liability Insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Contractor shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement, with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence.

(c) Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

(2) The Commercial General Liability and Automobile Liability Insurance

required in this subparagraph b. shall include an endorsement naming KCHA and KCHA's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms that provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to KCHA and must be approved by the KCHA Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, Contractor, at Contractor's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the Effective Date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. The above stated insurance coverages required to be maintained by Contractor shall be maintained until the completion of all of Contractor's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Contractor must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after 10 days' prior written notice in the case of non-payment of premiums, or 30 days' prior written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the KCHA Risk Manager.

e. If Contractor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Contractor shall provide coverage equivalent to the insurance coverages and endorsements required above. KCHA will not accept such coverage unless KCHA determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Contractor is equivalent to the above-required coverages.

f. All insurance afforded by Contractor pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by KCHA. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against KCHA.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Contractor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude KCHA from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by Contractor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Contractor, and KCHA, at its sole option, may terminate this Agreement immediately.

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

26. **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 KCHA 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 KCHA and Contractor that any such person or entity, other than KCHA or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

27. **Non-appropriation.** KCHA 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, KCHA 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 KCHA requires such an action.

28. **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 obtaining of this Agreement with KCHA. Contractor has received from KCHA no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

29. **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.

30. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party nor any of their affiliates shall, without the prior written approval of the other (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or

independent contractor of the non-soliciting party who is or was employed by or under contract with the non-soliciting party during the term of this Agreement.

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

32. **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: Trans-West Security Services, Inc.
8503 Crippen Street
Bakersfield, California 93313
Attn.: Brooke or Brad Antonioni

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

33. **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.

34. **Sole Agreement.** This Agreement, including all attachments 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.

35. **Termination.**

35.1 **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 will 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 30 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 30 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.

35.2 Termination without Cause. Either party may terminate this Agreement, without cause, upon 30 days' prior written notice to the other party.

35.3 Immediate Termination. Notwithstanding the foregoing, KCHA shall have the right to terminate this Agreement effective immediately after giving written notice to Contractor, for any of the following reasons: (i) KCHA determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by Contractor in the providing of services may result in civil, criminal, or monetary penalties against KCHA or KMC; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which KCHA or KMC is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by Contractor which causes material harm to KCHA or KMC; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by Contractor against KCHA or KMC; (vi) 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; or (vii) the failure of Contractor to cure a default within the time allowed in section 35.1.

36. **Effect of Termination.**

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

36.2 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. KCHA may remove and store, at Contractor's expense, any personal property that Contractor has not so removed.

36.3 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 KCHA to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between KCHA and any provider that may replace Contractor.

37. **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.

KERN COUNTY
HOSPITAL AUTHORITY

By _____
Russell Bigler, Chairman
Board of Governors

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By 
Deputy

TRANS-WEST SECURITY SERVICES, INC.


By 
Name: Brooke Antonioni
Title: PRESIDENT / CEO

EXHIBIT “A”
Description of Services
Kern Medical Center Security Requirements

Facilities: Kern Medical Center – Main Campus
1700 Mt. Vernon Street
Bakersfield, CA 93306

Kern Medical Outpatient Clinics - Sagebrush
1111 Columbus Street
Bakersfield, CA 93305

Kern Medical Center (KMC) is a facility that operates 24 hours per day, 7 days per week including all holidays. KMC has approximately 26 security officers: 1 post supervisor and 1 site manager. KMC requires 7 officers to cover day shift, 7 officers to cover swing shift, 5 officers to cover Graveyard shift and one part time “extra coverage” officer to cover KMC 24 hours per day/7 days per week. The 7 sites are: Shift Leader; Psychiatric unit; Patrol; Triage Emergency Department; Pediatrics unit; Main Lobby (D-Wing Lobby), and Sagebrush*.

*Sagebrush officers are assigned to two different shifts: the 1st is from 6:00 a.m. to 2:00 p.m. and the 2nd is from 2:00 p.m. to 6:00 p.m. at Sagebrush and from 6:00 p.m. to 10:00 p.m. at the Main Campus.

To meet the requirements of KMC, the Contractor must provide the following:

- Documentation that substantiates a minimum of two (2) years’ experience in the Healthcare industry
- Officers are to be professionally dressed in uniforms and issued equipment glove pouch, handcuff case, handcuffs, radio holder, duty belt, and keepers.
 - Special requirements
 - Only long sleeve shirts may be worn while on duty at KMC.
 - Card validating proper handcuff training by a P.O.S.T. (Police Officer Standards of Training) qualified trainer.
 - Officers shall be required to have a “guard card.”
 - Officers shall be a minimum of 21 years of age.
 - Officers shall have no felonies to include theft or drug related convictions of any type.
 - Officers shall have no visible tattoos, facial or faddish piercings.
- Use of an automated Daily Activity Reporting (DAR) System.
 - Provide real-time electronic software reporting system for purposes of documentation, reporting and managing data and statistics.
 - Must provide categorical summary reports.
- Drug and Alcohol Program to include Safety Sensitive Compliance
 - Include copy of the overall program

- Employee acknowledgement requirements
 - Pre-employment testing
 - Post-accident/ incident testing
 - For cause testing
 - Random Testing (to be administered by a 3rd party)
 - KMC non-expanded panel criteria for drug screening shall be used.
- Provide On Site Project Manager and Post Supervisor

KMC Security Manager Requirements

- Required Certification or equivalent certification that demonstrates professionalism and competence in the Healthcare Security field.
- Minimum of 5 years of experience in Corporate Security, Law Enforcement or Military with at least 3 years of experience in Healthcare Security field.
- Minimum of 5 years of supervisory experience with 15 to 20 employees, 3 of which should be in healthcare.
- Security Manager Certifications (to be provided by or paid for by vendor) :
 - IAHSS-Certified Healthcare Protection Administrator (CHPA) certification
 - Certified Protection Professional (CPP) through ASIS International
 - Professional Assault Crisis Training (ProACT)
 - CPR/First Aid Trained
 - Personal Safety Training
 - Healthcare Defensive Tactics System (HDTs)
 - AVADE (workplace violence prevention training program)

Job Description for KMC Security Manager

1. Oversee and direct Security Officers.
2. Design, recommend, and draft appropriate Hospital safety and security policies and procedures.
3. Actively participate on the Safety and Environment of Care (EOC) Committee in the development and maintenance of the security plan.
4. Actively participate on the Emergency Preparedness Committee in the development and maintenance of the Emergency Maintenance Operation plan.
5. Ensure training and compliance of Security Officers on adopted KMC safety and security policies and procedures.
6. Assist KMC management staff in the identification and resolution of safety and security issues. Attend and report to the hospitals safety committee monthly.
7. Assist KMC management staff in meeting regulatory requirements for the environment.
8. Perform Hazard Surveillance Rounds as required by the KMC safety plan.
9. Assist KMC management in the coordination of PROACT training for KMC employees.

10. Assist in the management and maintenance of the badge and lock access system for the hospital.
11. Daily briefings from Post or Site Manager
12. Attendance at monthly planned meetings.
13. Attendance of quarterly meetings with Contract Stakeholders (Company Corporate Officers); Business Associates Review.
14. Participate in all Hospital audits, evaluations and drills.
15. Participate in any identification of opportunities and improvements of processes and procedures.
16. Oversee ongoing training and meeting of security employees.

KMC Post Supervisor Requirements

- Completion of all Security Officer training.
Minimum of 3 years Healthcare Security experience with progressive supervisory experience in the following areas
 - Supervisor Training
 - HR Training, including but not limited to documentation, discipline and, counseling
 - Proficient Computer Skills
- Security Post Supervisor Certifications (to be provided by or paid for by Contractor):
 - IAHSS- Certified Supervisor Training
 - Physical Security Professional (PSP) certification through ASIS International
 - Professional Assault Crisis Training (ProACT)
 - CPR/First Aid Trained
 - Personal Safety Training
 - Healthcare Defensive Tactics System (HDTS)
 - AVADE (workplace violence prevention training program)

Kern Medical/ Security Levels- Progression Plan

Kern Medical Level 1	Kern Medical Level 2	Kern Medical Level 3	Kern medical Level 4	Requirements
\$19.48	\$19.96	\$20.44	\$20.91	BILL RATES
KMC Orientation	KMC Orientation	KMC Orientation	KMC Orientation	Required prior to assignment
Guard Card	Guard Card	Guard Card	Guard Card	Required prior to assignment
21 Years or Older	21 Years or Older	21 Years or Older	21 Years or Older	Required prior to assignment
Annual TB testing	Annual TB testing	Annual TB testing	Annual TB testing	Required prior to assignment
	PRO-ACT and HDTS training completed	PRO-ACT and HDTS training completed	PRO-ACT and HDTS training completed	Once achieved, certification must be maintained.
Participation in Kern Medical Site training to include: Infant and child abduction, heliport training, communication and report writing, forensic/ safety officer training, emergency/ triage training	All KMC Site training completed e.g., Infant and child abduction, heliport training, communication and report writing, forensic/ safety officer training, emergency/ triage training	All KMC Site training completed e.g., Infant and child abduction, heliport training, communication and report writing, forensic/ safety officer training, emergency/ triage training	All KMC Site training completed e.g., Infant and child abduction, heliport training, communication and report writing, forensic/ safety officer training, emergency/ triage training	Once achieved, certification must be maintained.
	CPR training Completed	CPR training certification maintained	CPR training certification maintained	Once achieved, certification must be maintained.
		IAHSS Certification achieved (Certified Healthcare security Officer)	IAHSS Certification achieved (Certified Healthcare security Officer)	Once achieved, certification must be maintained.
Officer is a candidate for Level 2 once training activities are completed; and a successful three month Employee Performance review.	Officer is a candidate for Level 3 once training and certification is achieved; and a successful Annual Employee Performance review.	Officer is a candidate for Level 4 once training and certification is achieved; candidate has a minimum of two year's hospital experience; and a successful Annual Employee Performance review.	Officer may achieve level 4 once training and certification is achieved; and maintains successful performance.	Successful employee performance rating must be maintained.

New security officer candidates may be considered for accelerated advancement through the levels of the progression plan immediately dependent upon experience and/or background and at the discretion of KMC or Mental Health Administration.

Cost of the above training shall be incurred by Contractor

Note: ALL of the above training must fall within the JCAHO Guidelines and all regulatory agencies that govern our health care practices.

Security Officers Duties

1. Maintain a professional customer service oriented presence at all times.
2. Patrol appropriate premises at directed intervals.
3. Patrol of parking areas on a regular basis and as determined by KMC Administration.
4. Provide escort services for night shift employees to the parking lot.
5. Respond to calls for assistance and administer the appropriate assistance to other related control problems.
6. Door checks with prompt reporting to the KMC Security Manager.
7. Ensure best efforts to prevent acts of vandalism, theft, assault, and similar acts against personnel and property.
8. Assist in the management of employee and vendor badges and the access control system.
9. Assist in the enforcement of campus parking and designated smoking areas.
10. Apprehension, detention, and disposition of persons and/or property involved or engaged in any activity contrary to hospital policy or any unlawful act on the premises.
11. Assist staff on a routine basis, in the completion of specific life safety requirements, i.e. fire extinguishers, lights or signage.
12. After hours visitor registration and access control.
13. Employee badge and access control.
14. Cross train to work all posts associated with KMC and KMC Out Patient Clinics.
15. All available officers must respond to "STAT CALLS".
16. Conduct morning money runs to appropriate sites.
17. Assist with security and deliver of patient valuables.
18. Assist in detention and security of any psychiatric hold patients.

Security Officer Basic Training and Certification

Security Officers are required to have annual TB Test when working on KMC sites. Security Officers must provide primary source verification (website) of valid guard card to KMC- HR prior to first day of assignment at KMC. Additionally must provide valid primary source verification (Proof of guard card maintenance) prior to expiration date. Security Officers shall participate in applicable hospital- wide continuing education.

Trans-West will maintain team members that are certified to train in the following non-exclusive training systems:

- Healthcare Defensive Tactics System (HDTS)
- Professional Assault Crisis Training (ProACT)
- International Association of Healthcare Security training (IAHSS)

- SMITH Defensive Driver Training (Defensive Driving, Fatigued Driving and Foul Weather Driving)
- CPR First Aid
- AVADE
- Handcuff Training

Staffing Guarantee:

Trans-West agrees to maintain staffing levels at those shown in Exhibit B a minimum of 97% of the time. KMC will not be charged OT rates associated with this requirement.

EXHIBIT "B"
Fee Schedule

LOCATION	LEVEL	Rate	Overtime	Hours per week	Totals	
Kern Medical	1	19.48	26.28	160	\$3,116.80	
Kern Medical	2	19.96	26.93	360	\$7,185.60	
Kern Medical	3	20.44	27.59	176	\$3,597.44	
Kern Medical	4	20.91	28.24	200	\$4,182.00	
Kern Medical	Post Sup	23.92	32.37	40	\$956.80	
			Total Hours	936	\$19,038.64	Weekly
					\$82,500.77	Monthly
					\$990,009.28	Annual
LOCATION	LEVEL	Rate	Overtime	hours per week		
Kern Medical 3B	1	19.48	26.28	80	\$1,558.40	
Kern Medical 3B	2	19.96	26.93	64	\$1,277.44	
Kern Medical 3B	3	20.44	27.59	0	\$0.00	
Kern Medical 3B	4	20.91	28.24	0	\$0.00	
			Total Hours	144	\$2,835.84	Weekly
					\$12,288.64	Monthly
					\$147,463.68	Annual
Kern Medical	Manager	2651.68			\$1,325.84	Weekly
			Total amount	2651.68	\$5,745.31	Monthly
					\$68,943.68	Annual
					\$23,200.32	Weekly
					\$100,534.72	Monthly
					\$1,206,416.64	Annual
					\$2,412,833.28	total - 2 yrs.

EXHIBIT "C"

IRS FORM W-9

EXHIBIT "D"

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 Trans-West Security Services, Inc. ("**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:

DEFINITIONS

"**Breach**" shall have the meaning given under 45 C.F.R. § 164.402.

"**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.

"**Designated Record Set**" shall have the meaning given such term under 45 C.F.R. § 164.501.

“**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.

“**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.

“**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.

“**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.

“**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.

“**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.

“**Subcontractor**” shall have the meaning given to such term under 45 C.F.R. § 160.103.

“**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.

“**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.

“**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.

OBLIGATIONS OF BUSINESS ASSOCIATE

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.

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.

Reporting Non-Permitted Use or Disclosure.

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 twenty-four (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.

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.

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.

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.

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.

Access to Protected Health Information. To the extent that Business Associate maintains 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.

Amendment of Protected Health Information. To the extent that Business Associate maintains 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.

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.

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.

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.

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.

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.

OBLIGATIONS OF COVERED ENTITY

Covered Entity's Obligations.

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.

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.

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.

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.

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.

TERM AND TERMINATION

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

Termination of Underlying Agreement.

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.

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.

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:

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

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.

Disposition of Protected Health Information Upon Termination or Expiration.

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.

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.

MISCELLANEOUS

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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:

Trans-West Security Services, Inc.
8503 Crippen Street
Bakersfield, California 93313
Attn.: Brooke or Brad Antonioni

Relationship of Parties. Notwithstanding anything to the contrary in any Underlying Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage,

contract, direct, procure, perform or cause to be performed all Business Associate obligations under this BAA.

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.

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

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 of Kern County, California, which shall have jurisdiction over all such claims.

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.

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.

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.

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

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:

Trans-West Security Services, Inc.



PRESIDENT / CEO

Title: Chairman, Board of Governors

Date: _____

Title:

Date: 6/13/16



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern for the provision of a mutual, nonexclusive easement in support of the access, ingress and egress rights granted under the Joint Use Agreement

Required Action: Approve; Authorize Chairman to sign subject to Approval as to form by Counsel.

This reciprocal easement grants each party and their guests a perpetual, non-exclusive, irrevocable land use right. This easement provides each party with reciprocal access, ingress, and egress on all sidewalks, parking lots, and other public spaces within a delineated, commonly-used area on the hospital/public health complex. Attachment A shows the commonly-used area highlighted. The easement provides for mutual indemnification of either party. The proposed Agreement is effective July 1, 2016.

THIS INSTRUMENT PREPARED BY
AND RETURN TO:

County of Kern
General Services Division
1115 Truxtun Avenue 3rd Floor/Property Management
Bakersfield, CA 93301

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of June __, 2016, by and between **COUNTY OF KERN**, a political subdivision of the State of California (the “**County**”), and the **KERN COUNTY HOSPITAL AUTHORITY**, a county hospital authority (the “**Authority**”). County and Authority are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, County has owned improved real property along Mount Vernon Avenue between Ridge Road and Flower Street in Bakersfield, County of Kern, State of California, which includes improvements and facilities (the “**Facilities**”) commonly known and referred to as Kern Medical Center, Public Health Department, Probation Headquarters, Coroner’s Office, Mary K. Shell Mental Health Clinic, Juvenile Justice Center, and common areas amongst and between these Facilities (collectively, the real property and Facilities thereon shall be referred to herein as the “**Complex**”);

WHEREAS, ownership of a portion of the Complex, to include Kern Medical Center, shall be concurrently herewith (or has been) transferred to the Authority, by vote of the Kern County Board of Supervisors on _____, effective July 1, 2016, as such portion is legally described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Authority Parcel**”);

WHEREAS, the remainder portion of the Complex that is not being transferred to the Authority, as provided above, shall be retained by the County and such portion is legally described in Exhibit “B” attached hereto and incorporated herein by this reference (the “**County Parcel**”);

WHEREAS, the Complex contains common areas to all the Facilities (the “**Common Use Areas**”) that are shared by, and shall continue to be provided and/or designated for the

general use and convenience of, the Parties and their employees, agents, representatives, invitees, licensees, clients, and the general public, including, without limitation, parking lots, parking areas, parking lot lights, sign kiosks, signage, utilities service roads, sidewalks, landscaping and landscaped areas, ingress and egress to public roads and over, upon and across portions of their respective parcels, and those utilities that serve the Common Use Areas. Specifically, the Common Use Areas are all areas outside the Facilities and within the exterior boundaries of the Complex, as designated on the Site Plan, attached hereto as Exhibit "C" and incorporated herein by this reference, that are, respectively, PURPLE (also designated with slashes), for the Common Use Areas located on the County Parcel (the "**County Common Use**") and YELLOW (also designated with cross-hatching), for the Common Use Areas located on the Authority Parcel (the "**Authority Common Use**"). The Common Use Areas are not a part of the County Exclusive Use areas or the Authority Exclusive Use areas (collectively, the "**Exclusive Use Areas**"), as designated on the Site Plan, that are, respectively, BLUE (also designated with "x's") (the "**County Exclusive Use**") and RED (also designated with "o's") (the "**Authority Exclusive Use**");

WHEREAS, on May 10, 2016, the Parties entered into that certain Joint Use Agreement for Common Use Areas at the Complex (Kern County Agreement No. 556-2016, the "**Joint Use Agreement**"), which defines the access, use, maintenance, repair, and replacement rights and obligations of the Common Use Areas and Exclusive Use Areas by the Parties. The Joint Use Agreement attaches the same depiction as Exhibit "C" hereto with the same defined areas, designated with the same colors;

WHEREAS, in support of the access, ingress and egress rights granted under the Joint Use Agreement, the Parties desire hereby to grant to each other perpetual, nonexclusive and irrevocable (except by mutual written agreement of the Parties) easements over, upon and across portions of their respective parcels for pedestrian and vehicular ingress and egress between the parcels for the use of the Complex by the Parties and their respective representatives, licensees, invitees, and the general public; and

NOW, THEREFORE, in consideration of the premises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Mutual, Nonexclusive Easements.**

a. County and Authority hereby grant to each other and their respective agents, employees, representatives, tenants, subtenants, guests, invitees, licensees, contractors and subcontractors, over the Common Use Areas, certain easements as further specified herein: (i) a perpetual, nonexclusive and irrevocable easement to enter and exit the County Parcel and Authority Parcel, respectively, through the existing ingress and egress points to public rights-of-way located on each other's parcel in the County Common Use area and the Authority Common Use area, as depicted on the Site Plan attached hereto as Exhibit "C", together with the right to travel over and across any driveways and/or parking areas existing on the respective parcels' Common Use Areas for access to and from the public rights-of-way fronting the respective parcels (subject to the right of each Party to regulate the direction of traffic over such driveways and/or parking areas located on its parcel); and (ii) a perpetual, nonexclusive and irrevocable easement for ingress and egress of vehicular and pedestrian traffic over, upon and across the

roadways, driveways, sidewalks and paved areas located on their respective parcels' Common Use Areas. The afore-described easements are hereinafter referred to collectively as the "**Ingress and Egress Easements**".

b. The Authority shall allow vehicles and pedestrians to enter and exit the County Parcel by means of the Authority Parcel, through the Authority Common Use area using the Ingress and Egress Easements. The County shall allow vehicles and pedestrians to enter and exit the Authority Parcel by means of the County Parcel, through the County Common Use Area using the Ingress and Egress Easements. Neither Authority nor the County shall be entitled to entirely restrict ingress or egress or negatively disturb or obstruct traffic flow within the Common Use Areas and the Ingress and Egress Easement areas, whether by means of improvements, parking areas, curbs or other obstructions, except for temporary repairs (i.e., less than seventy-two (72) hours), in the future development of the Common Use Areas, unless agreed to in advance in writing, by both Parties.

c. Each Party accepts the Ingress and Egress Easements in there "AS-IS" condition as of the date of this Agreement. Neither Party makes any, and hereby disclaims any and all, representations or warranties, express or implied, with respect to the Ingress and Egress Easements, their condition, and their fitness for the Parties' intended use thereof.

2. **Maintenance of Cross Access Area, Roadways and Driveways.**

a. Each Party shall keep its respective Common Use Area located on such Party's parcel and the Ingress and Egress Easement areas located on its respective Parcel in good condition and repair, which shall include maintaining the surfaces of the cross access and parking areas in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability, and placing, keeping in good repair and replacing any necessary and appropriate directional signs, markers and lines within said access and parking areas located on its respective Common Use Area on such Party's parcel. Curb cuts and driveways on the Authority Parcel shall be maintained by the Authority at its sole cost and expense. Curb cuts and driveways on the County Parcel shall be maintained by the County at its sole cost and expense.

b. The Ingress and Egress Easements granted hereunder shall not prevent the right of the County to enter upon said easement areas located on the County Parcel to construct, install, maintain, repair and replace the curb cuts and related driveway facilities and walkways in a location mutually acceptable to the Parties.

c. The Ingress and Egress Easements granted hereunder shall not prevent the right of the Authority to enter upon said easement areas located on the Authority Parcel to construct, install, maintain, repair and replace the curb cuts and related driveway facilities and walkways in a location mutually acceptable to the Parties.

3. **Default; Remedies.**

a. Default. If the owner of the County Parcel or the Authority Parcel shall default in the performance of maintenance obligations hereunder, then said non-defaulting party, in addition to all remedies it may have at law or in equity, after thirty (30) days' prior written

notice to said defaulting party and such party's failure to commence and to diligently pursue cure of said default within said thirty (30) day period, shall have the right to perform such maintenance obligation on behalf of the defaulting party. Notwithstanding any of the language contained herein to the contrary, in case of an emergency (which shall be defined as an imminent threat to life, safety or health), any Party hereto may initiate and complete immediate emergency repairs and receive reimbursement thereof from the Parties obligated to make and reimburse such repairs. In the event of default (but not an emergency), the non-initiating party shall promptly reimburse the initiating party the cost thereof, together with interest thereon from the date of outlay at a rate of ten percent (10%) per annum. If the owner of the County Parcel or the Authority Parcel interferes with the Ingress and Egress Easement rights granted hereunder, the other Party shall have the remedies set forth in Section 7 without the necessity of providing notice to the defaulting Party or allowing any time to cure same.

b. Delay; No Waiver. No delay or omission of any Party in the exercise of any right accruing upon any default of the other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised upon thirty (30) days written notice given to the defaulting party as provided in subparagraph (a) above (except with respect to an emergency). A waiver by any Party of a breach or a default of any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof. Except as otherwise herein provided, no remedy provided in this Agreement shall be exclusive, but shall be cumulative (to the extent not inconsistent) with all other remedies herein and at law or in equity.

c. No Rescission of Agreement. It is expressly agreed that no breach of the provisions of this Agreement of any kind or nature shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this Agreement.

4. Compliance with Laws and Regulations. Each Party shall, with respect to its respective Parcel, comply with all laws, rules, regulations and requirements of all public authorities.

5. Reciprocal Indemnification. Liability for environmental or safety conditions with the Common Use Areas shall be assigned to each Party according to ownership specific to the location of an incident. Subject to the foregoing assignment of liability, each Party agrees to defend, hold harmless, and indemnify the other Party (and the other Party's officers, employees, trustees, agents, successors, assigns, and invitees, collectively referred to as the "**Indemnified Parties**") against all claims, suits, expenses (including reasonable attorney's fees), losses, penalties, fines, costs, and liability whether in contract, tort, or strict liability (including but not limited to personal injury, death at any time, and property damage) arising out of or made necessary by (i) the indemnifying Party's breach of the terms of this Agreement; (ii) the act or omission of the indemnifying Party and its Indemnified Parties in connection with performance of any of the obligations of this Agreement; and (iii) the presence of the indemnifying Party and its Indemnified Parties on the other Party's parcel. A Party claiming the right to be indemnified hereunder shall give prompt and timely written notice to the other Party of any claim made or suit or action commenced against the Party claiming the right to be indemnified or which in any

way would result in indemnification under this Agreement. In the event that any action or proceeding is brought against a Party by reason of any claim or demand discussed in this Section 5, upon reasonable notice from the other Party, the indemnifying Party shall defend the action or proceeding at the other Party's expense through counsel reasonably satisfactory to the other Party. The obligations to indemnify set forth in this Section 5 shall include reasonable attorney's fees, investigation costs, and all other reasonable costs, expenses, and liabilities from the first notice than any claim or demand is to be made. The indemnifying Party's obligations under this Section 5 shall apply regardless of whether the other Party or its Indemnified Parties are actively or passively negligent, but shall not apply to any loss, liability, fine, penalty, forfeiture, cost, or damage determined by an arbitrator or court of competent jurisdiction to be caused solely by the active negligence or willful misconduct of the other Party and its Indemnified Parties.

6. **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any dispute arising out of this Agreement shall be Kern County, California.

7. **Enforcement.** Except as set forth in Section 3, in the event of any violation or threatened violation, by an owner, tenant or occupant of either the Authority Parcel or the County Parcel of any of the terms, covenants and conditions of this Agreement, the owner of either Parcel, or portion thereof, shall have the right, but not the obligation, to enjoin such violation or threatened violation in a court of competent jurisdiction in Kern County, California. The right of injunction shall be in addition to any and all other remedies under statute, at law or in equity or under this Agreement, including, without limitation, specific performance of this Agreement.

8. **Attorneys' Fees.** The prevailing party in any litigation involving this Agreement shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, paralegal fees and costs incurred in connection with such litigation, at arbitration, or appeal or otherwise, including reasonable attorneys' fees and paralegal fees in the enforcement of any indemnity hereunder.

9. **No Third-Party Beneficiary.** The provisions of this Agreement are for the exclusive benefit of the Parties, their heirs, successors, grantees and assigns, except as otherwise provided herein, and not for the benefit of any third person, nor, except with respect to rights of ingress and egress, shall this Agreement be deemed to have conferred any rights, express or implied upon any third person.

10. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11. **Termination and Amendments.** Except as otherwise specified in this Agreement, this Agreement may be canceled, changed, modified or amended in whole or in part only by a written and legally recorded instrument executed by the Parties hereto.

12. **Covenants Running with the Land.** All the easements, provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Agreement shall be binding upon each Party, its successors (by merger, consolidation or otherwise) and assigns, lessees and all other persons acquiring any interest in the Authority Parcel or the County Parcel, or any portion thereof, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the owners of the respective Parcels and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall constitute covenants running with the land pursuant to California law.

13. **Subordination.** County and Authority hereby covenant and agree that this Agreement shall be subordinate to any institutional first mortgages encumbering the Parcels or any portion thereof, provided any such mortgagee agrees that a foreclosure or deed in lieu of foreclosure shall not terminate or otherwise adversely affect any of the easements established hereby.

14. **Notices.** All notices and demands hereunder shall be in writing and be served by personal service or by mailing a copy thereof, by certified mail, postage prepaid, return receipt requested to the Parties at the addresses set forth herein. The addresses to which notices shall be delivered may be changed from time to time by notice served as hereinafter set forth:

To Authority: Russell V. Judd
 Chief Executive Officer
 Kern County Hospital Authority
 c/o Kern Medical Center
 1700 Mt. Vernon Avenue
 Bakersfield, CA 93306

With a copy to:

Attorney for Authority
Karen S. Barnes, Chief Deputy
1115 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

To County: County of Kern
 General Services Division
 1115 Truxtun Avenue 3rd Floor/Property Management
 Bakersfield, CA 93301

15. **Captions.** The captions of the paragraphs herein are inserted for the convenience of the Parties only and shall not be construed as part of this Agreement or as limiting, affecting or defining the provisions contained herein.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, which together shall have the same force and effect as if this single instrument were executed by both Parties hereon.

(SIGNATURES BEGIN ON NEXT PAGE)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the day and year first above written.

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman, Board of Supervisors
"County"

By _____
Chairman, Board of Governors
"Authority"

APPROVED AS TO CONTENT:
County Administrative Office

APPROVE AS TO CONTENT:
Kern County Hospital Authority

By _____
Assistant County Administrative
Officer for General Services

By _____
Chief Operating Officer

APPROVED AS TO FORM:
Office of County Counsel

APPROVED AS TO FORM:
Office of County Counsel

By _____
Chief Deputy

By _____
Deputy

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
(Date) (Here Insert Name and Title of the Officer)

personally appeared _____
(Name(s) of Signer(s))

_____ ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Signature of Notary Public)

(Place Notary Seal Above)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
(Date) (Here Insert Name and Title of the Officer)

personally appeared _____
(Name(s) of Signer(s))

_____ ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Signature of Notary Public)

(Place Notary Seal Above)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
(Date) (Here Insert Name and Title of the Officer)

personally appeared _____
(Name(s) of Signer(s))

_____ ,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Signature of Notary Public)

(Place Notary Seal Above)

EXHIBIT A

Authority Parcel Legal Description

Being a portion of the Southeast Quarter of Section 21 and a portion of the Northeast Quarter of Section 28, Township 29 South, Range 28 East, Mount Diablo Base & Meridian in the City of Bakersfield, County of Kern, State of California being more particularly described as follows:

BEGINNING at the intersection of the centerlines of Mount Vernon Avenue and Flower Street; thence North $73^{\circ}48'25''$ West along the centerline of Flower Street as shown on Map 16-7 29/28-28 MI dated May 1940 on file in the office of County Surveyor of said County a distance of 1708.16 feet to a point which lies on an extension of the face of a block wall; thence North $16^{\circ}08'35''$ East along said extension and face of said block wall a distance of 400.01 feet to a point which lies in the centerline of Lincoln Street; thence South $73^{\circ}48'22''$ East along said centerline of Lincoln Street a distance of 220.33 feet to the centerline of Jessie Street; thence North $00^{\circ}14'12''$ West along said centerline of Jessie Street a distance of 386.74 feet; thence departing last said centerline South $73^{\circ}38'09''$ East a distance of 166.70 feet to a point which lies 20 feet Northerly of an existing trailer and the extension of a fence line; thence North $17^{\circ}46'40''$ East along said extension and said fence line a distance of 37.16 feet to a fence corner; thence North $53^{\circ}23'03''$ East along said fence line a distance of 6.70 feet to a fence corner; thence North $16^{\circ}14'18''$ East along said fence line a distance of 158.05 feet to a fence corner; thence North $00^{\circ}35'24''$ West along said fence line a distance of 101.64 feet to a fence corner; thence North $89^{\circ}28'06''$ East along said fence line a distance of 54.22 feet to a fence corner; thence South $43^{\circ}15'00''$ East along the face of a block wall a distance of 11.99 feet; thence South $00^{\circ}05'16''$ West parallel with and 20 feet West of the West wall of the Coroner's Probation Warehouse a distance of 140.93 feet; thence South $89^{\circ}42'29''$ East parallel with and 20 feet South of the South wall of the Coroner's Probation Warehouse a distance of 150.33 feet; thence North $00^{\circ}12'45''$ East parallel with and five feet East of the East wall of the Coroner's Probation Warehouse a distance of 126.35 to a point which lies on the face of a block wall; thence North $44^{\circ}36'04''$ East along the face of said block wall a distance of 34.32 feet to the corner of said block wall and a fence corner; thence North $89^{\circ}55'01''$ East along a fence line a distance of 146.89 feet to a fence corner; thence South $01^{\circ}22'23''$ East along said fence line a distance of 9.84 feet to a fence corner; thence South $89^{\circ}55'58''$ East along said fence line a distance of 97.63 feet to a fence corner; thence South $04^{\circ}17'48''$ West a distance of 37.49 feet along said fence line to the face of a block wall; thence South $00^{\circ}25'25''$ East along the face of said block wall and an extension thereof a distance of 76.89 feet; thence South $88^{\circ}19'01''$ East a distance of 16.19 feet to a point which lies of the back of a concrete curb; thence South $00^{\circ}44'29''$ East along the back of said concrete curb a distance of 90.66 feet to a point on the back of a concrete sidewalk; thence

EXHIBIT A-1


South 73°04'03" East along the back of said concrete sidewalk a distance of 14.60 feet; thence departing said concrete sidewalk South 16°07'40" West crossing a parking lot entrance a distance of 40.09 feet to a point on the back of a concrete curb; thence South 16°24'38" West along said back of concrete curb a distance of 120.94 feet; thence South 14°55'12" West a distance of 30.03 feet to a point which lies on the back of a concrete curb and the sump fence; thence North 74°21'39" West along the back of said concrete curb and sump fence a distance of 37.99 feet to the sump fence corner; thence North 15°30'47" East crossing a concrete sidewalk a distance of 5.55 feet to a point in a fence line at the back of a concrete curb; thence North 88°15'57" West along the said fence line and back of concrete curb a distance of 22.54 feet; thence departing said back of curb North 70°20'27" West crossing a parking lot entrance a distance of 24.09 feet to a point at the back of a concrete curb and a fence line; thence North 73°55'57" West along the back of said concrete curb and fence line a distance of 178.50 feet to a point in a fence line at a gate; thence South 16°56'10" West a distance of 57.31 feet to a point on the back of a concrete curb; thence South 15°52'49" West a distance of 115.81 feet to a point on the back of a concrete curb; thence South 73°44'23" East parallel with and 20 feet South of the South wall of the Coroner's Office a distance of 169.94 feet; thence North 89°59'41" East a distance of 101.47 feet to a point in the back of a concrete curb and sump fence corner; thence South 78°23'56" East along the back of curb and sump fence a distance of 70.23 feet to a point in the back of a concrete curb and sump fence corner; thence South 73°48'59" East along the back of said concrete curb a distance of 213.24 feet; thence continuing along the back of said concrete curb southeasterly, 21.30 feet along a tangent curve concave northeasterly with a radius of 100.00 feet, a central angle of 12°12'05" and a beginning radial which bears North 16°11'01" East; thence South 86°01'05" East along the back of said concrete curb a distance of 35.12 feet; thence continuing along the back of said concrete curb easterly 11.33 feet along a tangent curve concave northerly with a radius of 20.00 feet, a central angle of 32°26'59" and a beginning radial of North 03°58'55" East to the beginning of a compound curve concave northwesterly; thence continuing along the back of said concrete curb northeasterly 9.72 feet along a tangent curve with a radius of 11.00 feet, a central angle of 50°38'54" and a beginning radial of North 28°28'04" West; thence North 10°53'02" East continuing along the back of said concrete curb a distance of 5.50 feet; thence South 89°21'26" East a distance of 2.63 feet to the lip of said concrete curb; thence South 00°03'07" East along said lip of concrete curb a distance of 19.17 feet; thence South 04°05'20" East crossing College Ave a distance of 44.96 feet to a point on the lip of a concrete curb; thence South 16°59'38" West a distance of 7.71 feet to a point on the back of a concrete accessible ramp; thence South 59°37'52" West along the back of said accessible ramp a distance of 5.74 feet; thence North 78°02'01" West along the back of said accessible ramp a distance of 5.38 feet to a point on the back of a concrete curb; thence South 16°02'49" West along the back of said concrete curb a distance of 42.11 feet; thence continuing along the back of said concrete curb southeasterly 2.09 feet along a tangent curve concave northeasterly with a radius of 1.43 feet, a central angle of 83°41'57" and a beginning radial which bears South

EXHIBIT A-2


73°57'11" East; thence South 15°53'25" West a distance of 25.33 feet to a point which lies on the lip of a concrete v-gutter; thence South 02°48'46" East a distance of 6.25 feet to a point which lies on the back of a concrete curb; thence South 00°33'13" East along the back of said concrete curb a distance of 109.73 feet; thence South 00°57'16" East along the back of said concrete curb a distance of 38.08 feet; thence southerly along the back of said concrete curb 11.87 feet along a tangent curve concave westerly with a radius of 40.00 feet, a central angle of 17°00'24" and a beginning radial which bears South 89°02'44" West; thence South 16°03'08" West along the back of said concrete curb a distance of 70.01 feet; thence South 73°47'14" East along the back of said concrete curb and an extension thereof a distance of 389.97 feet to a point which lies in the centerline of Mount Vernon Avenue; thence South 00°11'52" West along the centerline of said Mount Vernon Avenue a distance of 343.54 feet to the centerline of Flower Street and the **POINT OF BEGINNING**.

Contains 25.19 acres more or less.





Kristie M. Achee, PLS 8189



Date

EXHIBIT B

County Parcel Legal Description

[TO BE PROVIDED BY COUNTY GENERAL SERVICES AFTER 6/3/16]

EXHIBIT B-1

EXHIBIT C

Site Plan

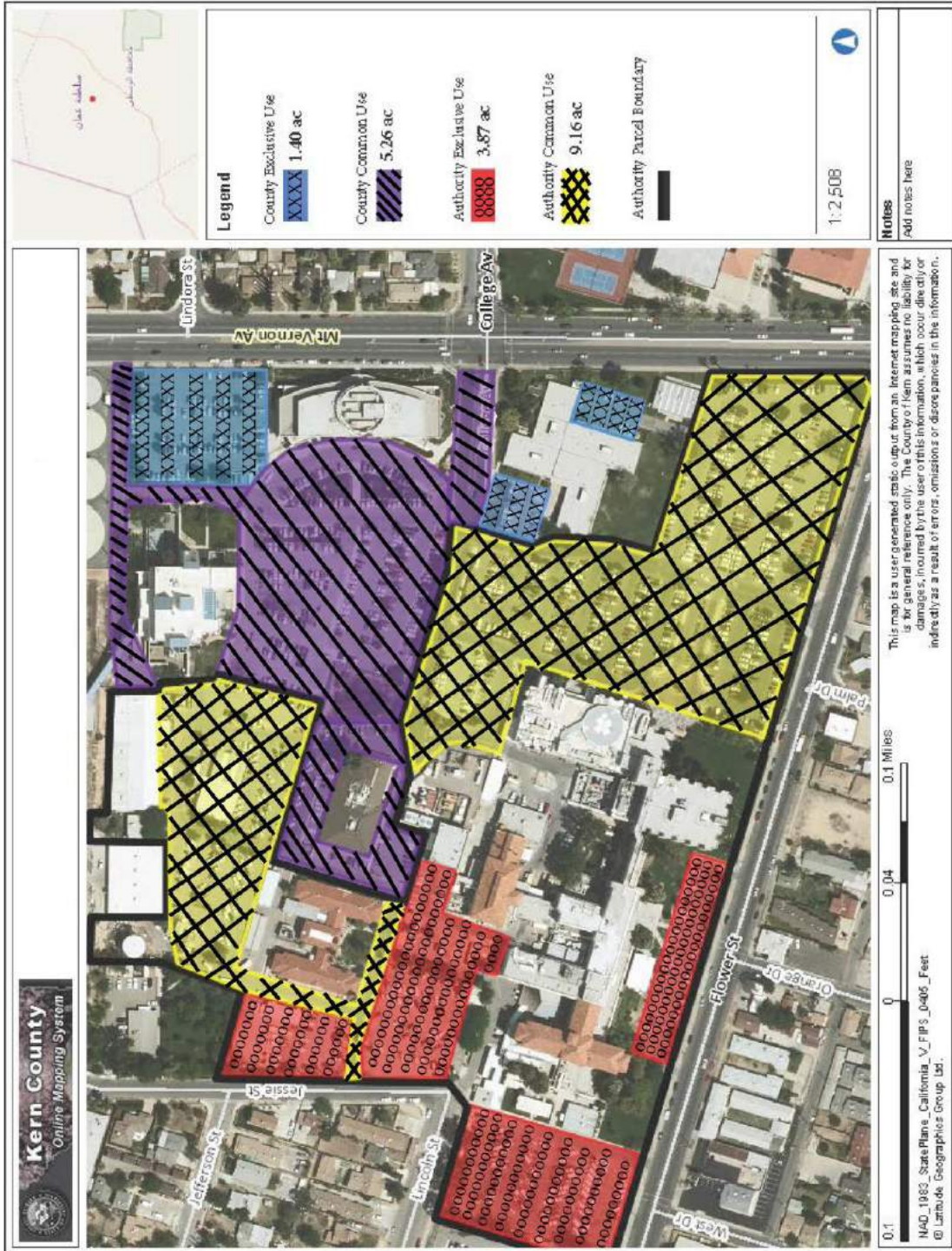


EXHIBIT C-1



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

June 22, 2016

SUBJECT: Proposed renewal and binding of insurance coverage for hospital professional liability, general liability and umbrella/excess liability, workers' compensation and employers liability, automobile liability, helipad liability, directors and officers liability, employment practices liability, crime, cyber liability, premises pollution liability, underground storage tank liability, and property

Request: Approve

Background

Kern County Hospital Authority (KCHA) seeks to bind the following insurance coverages:

- Hospital Professional Liability, General Liability and Umbrella/Excess Liability
- Workers Compensation and Employers Liability
- Automobile Liability
- Helipad & Non-Owned Aircraft Liability
- Directors & Officers Liability
- Employment Practices Liability
- Crime
- Privacy and Security (Cyber) Liability
- Premises Pollution Liability
- Underground Storage Tanks (UST) Liability
- Property: Building, Equipment, Business Interruption, Earthquake & Flood

KCHA utilizes Alliant Insurance services as its insurance agent to access the insurance carrier market and perform the day to day servicing of the account. It is recommended that KCHA bind coverage as outlined below.

Hospital Professional Liability, General Liability and Umbrella/Excess Liability

Management recommends placing coverage for the Hospital Professional Liability, General Liability and Umbrella/Excess Liability with the expiring carrier.

- Insurance Carrier: Columbia Casualty Company (CNA)

- Rating: Carrier has an A (Excellent) XV rating from A.M. Best
- Term: July 1, 2016 through July 1, 2017
- Coverage: Hospital Professional Liability insurance protects physicians and other licensed health care professionals from liability associated with wrongful practices resulting in bodily injury, medical expenses, and the cost of defending lawsuits related to such claims. General Liability insures against losses from bodily injury, personal injury and property damage. Umbrella/Excess Liability provides additional limits excess Self-Insured Retentions and Underlying Coverages.
- Limit per Medical Incident or per Occurrence: \$25,000,000
- SIR: \$1,000,000 per Medical Incident or Per Occurrence
- Underlying Coverages: Automobile Liability, Employers Liability and Helipad Liability
- Retroactive Date (Hospital Professional Liability): July 1, 1999
- Annual Premium: \$907,128

Workers Compensation and Employers Liability

Management recommends participation in the Workers Compensation and Employer Liability program offered by California State Association of Counties Excess Insurance Authority (CSAC-EIA).

- Insurance Carriers: CSAC Excess Insurance Authority (Pool Layer) and Insurers Wesco Insurance Company, ACE American Insurance Company, and Liberty Insurance Corporation
- Ratings: Insurers have the following ratings with A.M. Best – Wesco [A (Excellent) XIV], ACE [A++ (Superior) XV] and Liberty [A (Excellent) XV]
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against losses from work-related bodily injury or disease and coverage against the common law liability of an employer for injuries sustained by employees.
- Limit per Occurrence:
 - Workers Compensation – Statutory
 - Employers Liability - \$5,000,000
- SIR: \$500,000
- Annual Premium: \$743,596

Automobile Liability

KCHA owns and operates 11 vehicles and 1 trailer. Management recommends purchasing Automobile Liability insurance for each of these exposures.

- Insurance Carrier: Hartford Casualty Insurance Company
- Rating: Carrier has an A+ (Superior) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against losses from automobile accident related injuries and property damage, including Owned, Non-Owned and Hired Automobiles.
- Limit per Occurrence: \$1,000,000
- SIR: \$500 for comprehensive and collision; \$0 for liability
- Annual Premium: \$15,223

Helipad Liability

Management recommends purchasing Helipad Liability insurance through ACE Property & Casualty Insurance Co.

- Insurance Carrier: ACE Property & Casualty Insurance Co.
- Rating: Carrier has an A++ (Superior) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against losses for injury to a third-party or their property arising from the operation of the KCHA's operation and maintenance of the hospital's helipad; for example, damage caused to a vehicle from debris. The policy also protects the hospital against losses associated with non-owned aircraft (for example, patient transport by helicopter).
- Limit per Occurrence: \$10,000,000
- SIR: \$0
- Annual Premium: \$5,884

Directors and Officers Liability

Management recommends extending coverage for Directors and Officers Liability insurance through AIG Specialty Insurance Company.

- Insurance Carrier: AIG Specialty Insurance Company
- Rating: Carrier has an A (Excellent) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy provides financial protection for managers against the consequences of actual or "wrongful acts" when acting within the scope of the managerial duties.
- Limit Each Wrongful Act Claim: \$5,000,000
- Continuity Date: November 6, 2015
- SIR: \$25,000
- Annual Premium: \$19,945

Employment Practices Liability

Management recommends purchasing Employment Practices Liability insurance through AIG Specialty Insurance Company.

- Insurance Carrier: AIG Specialty Insurance Company
- Rating: Carrier has an A (Excellent) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against losses for wrongful acts, including wrongful termination, sexual harassment, discrimination, invasion of privacy, false imprisonment, breach of contract, and emotional distress.
- Limit Each Wrongful Act Claim: \$5,000,000
- SIR: \$500,000
- Annual Premium: \$71,753

Crime

Management recommends purchasing Crime insurance program offer by California State Association of Counties Excess Insurance Authority (CSAC-EIA).

- Insurance Carrier: National Union Fire Insurance of Pittsburgh, PA
- Rating: Carrier has an A (Excellent) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against employee theft, robbery, forgery, extortion, and computer fraud.
- Limit per Occurrence: \$15,000,000
- SIR: \$25,000
- Annual Premium: \$10,630

Cyber Liability

Management recommends purchasing Cyber Liability insurance through California State Association of Counties Excess Insurance Authority (CSAC-EIA).

- Insurance Carrier: Lloyds of London – Beazley Syndicate
- Rating: Carrier has an A (Excellent) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: This policy insures against losses from data breaches in which the hospital's patients and employees personal information, such as names, date of birth, Social Security and credit card information, is exposed and stolen.
- Limit – Incident and Aggregate: \$4,000,000
- SIR: \$100,000
- Annual Premium: \$28,406

Premises Pollution Liability

Management recommends renewing Premises Pollution Liability insurance through Illinois Union Insurance Company.

- Insurance Carrier: Illinois Union Insurance Company
- Rating: Carrier has an A++ (Superior) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: Coverage for first-party claims arising from a pollution condition from premises, including clean-up, emergency response and business interruption; coverage for third-party bodily injury and property damage; coverage for transport of hazardous materials and non-owned disposal sites.
- Limit per Pollution or Indoor Environmental Condition: \$1,000,000
- SIR: \$25,000
- Retroactive Date: July 1, 2015
- Annual Premium: \$11,552

Underground Storage Tank Liability

KCHA has one underground storage tank with 10,000 gallons of diesel fuel. Management recommends purchasing Underground Storage Tank Liability insurance through ACE American Insurance Company.

- Insurance Carrier: ACE American Insurance Company
- Rating: Carrier has an A++ (Superior) XV rating from A.M. Best
- Term: July 1, 2016 – July 1, 2017
- Coverage: Bodily Injury or Property Damage caused by a storage tank incident, including Corrective Action Costs and Legal Defense Expense. Meets requirements for Financial Responsibility.
- Limit per Occurrence: \$1,000,000
- SIR/Deductible: \$25,000
- Annual Premium: \$481

Property

Management recommends purchasing Property insurance through California State Association of Counties Excess Insurance Authority (CSAC-EIA).

- Insurance Carriers: CSAC-EIA with excess insurance and/or reinsurance from various carriers.
- Rating: All Carriers must have at least an A- (Excellent) IX rating from A.M. Best
- Term: 7/1/2016 – 7/1/2017
- Coverage: This policy provides All Risk coverage, including Earthquake, Flood, Boiler & Machinery, for all properties.
- Limit per Occurrence: \$600,000,000 All Risk and \$490,000,000 Annual Aggregate for Earthquake.
- SIR: \$50,000 All Risk; 5% of Values for Earthquake (\$100,000 Minimum)
- Annual Premium: \$550,251

Effective July 1, 2016 through June 30, 2017, in an amount not to exceed \$2,364,822.



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

June 22, 2016

SUBJECT: Proposed Resolution providing for the extension of excess medical professional liability coverage for Kern Medical employed and independent contractor physicians

Required Action: Approve; Adopt Resolution

Summary:

This is to request your Board approve the extension of excess medical professional liability coverage within the Hospital Authority's self-insured retention, effective July 1, 2016, for Kern Medical employed and independent contractor physicians, when providing services at approved off-site facilities. The Hospital Authority will administer/submit claims, if any, in excess of the self-insured retention to the Hospital Authority's excess medical professional liability carrier.

The Hospital Authority provides professional liability coverage in the form of indemnification for all claims relating to the services rendered on behalf of the Hospital Authority; provided, however, that the indemnification does not apply to any services rendered at any location other than Kern Medical without approval of your Board.

Extending excess medical professional liability coverage to approved off-site locations will enable physicians to generate additional revenue for the hospital and will provide Kern Medical the opportunity to provide care to patients and continue to build its reputation as a hospital of excellence.

There is no added cost to the Hospital Authority's medical professional liability program to extend the requested coverage.

The Authority will be self-insuring the first \$1,000,000 of each occurrence and is purchasing umbrella coverage of \$25,000,000 in excess of the self-insured retention.

Therefore, it is recommended that your Board approve and adopt the attached resolution extending excess medical professional liability coverage for employed and independent contractor physicians, when providing professional medical services on behalf of Kern Medical at the facilities listed in the resolution, effective July 1, 2016.

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

In the matter of:

Resolution No. _____

**EXTENDING EXCESS MEDICAL
PROFESSIONAL LIABILITY COVERAGE
FOR KERN COUNTY HOSPITAL AUTHORITY
EMPLOYED AND INDEPENDENT
CONTRACTOR PHYSICIANS**

I, RAQUEL D. FORE, 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 the Kern County Hospital Authority at an official meeting thereof on the 22nd day of June, 2016, 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:

RAQUEL D. FORE
Authority Board Coordinator
Kern County Hospital Authority

Raquel D. Fore

RESOLUTION

Section 1. WHEREAS:

(a) The Kern County Hospital Authority (“Hospital Authority”) provides professional liability coverage in the form of indemnification for all claims relating to the services rendered on behalf of the Hospital Authority; provided, however, that the indemnification does not extend to any services rendered at any location other than Kern Medical and its affiliated clinics without approval of the Board of Governors; and

(b) Kern Medical has the exclusive right and authority to set, bill, collect and retain all fees, including professional fees, for all direct patient care services provided by its employed and independent contractor physicians (collectively, "Physicians") to Kern Medical patients; and

(c) Extending excess medical professional liability coverage to the Physicians at off-site locations will enable the Physicians to generate additional revenue for Kern Medical and will provide Kern Medical the opportunity to care for patients and continue to build its reputation as a hospital of excellence; and

(d) The Hospital Authority has self-insured the first \$1,000,000 per medical incident or occurrence and has purchased umbrella coverage of \$25,000,000 in excess of the self-insured retention; and

(e) There is no added cost to the Hospital Authority's medical professional liability program to extend the requested coverage; and

(f) The Hospital Authority will administer/submit claims, if any, in excess of the \$1,000,000 million self-insured retention to CNA, the Hospital Authority's excess medical professional liability carrier;

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 finds the best interests of the Hospital Authority shall be served by extending excess medical professional liability coverage to the Physicians at the following authorized off-site locations:

- (a) Comprehensive Blood and Cancer Center;
- (b) Mercy Hospitals;
- (c) Bakersfield Memorial Hospital;
- (d) San Joaquin Community Hospital;
- (e) Bakersfield Heart Hospital;
- (f) Bahamas Surgery Center;
- (g) Clinica Sierra Vista;
- (h) Kern County owned and operated correctional facilities;
- (i) Kern County Mental Health; and
- (j) Facilities owned or leased and operated by Kern Medical.

3. The provisions of this Resolution shall be effective, in force and operative as of the 1st day of July, 2016.

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

Office of County Counsel
Kern Medical Center
Columbia Casualty Company (CNA)
Alliant Insurance Services, Inc.



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

June 22, 2016

SUBJECT: Proposed Resolution providing for the assumption and adoption of the Kern County Pension Plan for Physician Employees

Recommended Action: Approve; Adopt Resolution

Summary:

The employees of Kern Medical, which includes the employed physicians, will become employees of the Hospital Authority on the effective date of the transfer of ownership and control of Kern Medical, which is currently expected to be July 1, 2016. Health and Safety Code section 101853.1(d)(2) requires the Hospital Authority to provide the same level of employee benefits to its employees for a period of 24 months after the effective date of the transfer.

The County of Kern has sponsored the Kern County Pension Plan for Physician Employees, an Internal Revenue Code section 401(a) retirement plan, since 1980. For the purpose of continuing to provide retirement benefits to eligible physician employees through the Plan after the transfer of Kern Medical, it is necessary for your Board to adopt the Plan as the successor sponsoring employer.

Those physician employees covered under the Plan are not eligible to participate in, or receive any benefit from, the Kern County Employees' Retirement Association. Funding of the Plan occurs exclusively through a combination of mandatory employer and employee contributions through payroll withholdings, and earnings on such contributions.

On June 14, 2016, the Kern County Board of Supervisors adopted a resolution providing for the transfer of the Plan to the Hospital Authority. Under the county resolution, the Hospital Authority is designated as the successor trustor for the trust agreement under which the assets for the Plan are held in trust by the trustee designated in the trust agreements.

Therefore, it is recommended that your Board approve and adopt the proposed resolution providing for the assumption and adoption of the Kern County Pension Plan for Physician Employees.

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

In the matter of:

Resolution No. _____

**ASSUMPTION AND ADOPTION OF
THE KERN COUNTY PENSION PLAN
FOR PHYSICIAN EMPLOYEES**

I, RAQUEL D. FORE, 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 the Kern County Hospital Authority at an official meeting thereof on the 22nd day of June, 2016, 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:

RAQUEL D. FORE
Authority Board Coordinator
Kern County Hospital Authority

Raquel D. Fore

RESOLUTION

Section 1. WHEREAS:

(a) Chapter 5.5 commencing with section 101852 of Part 4 of Division 101 of the Health and Safety Code established the Kern County Hospital Authority (“Authority”) as a new political subdivision, which will operate the existing Kern Medical Center; and

(b) The County of Kern (“County”) has heretofore adopted a retirement plan for physician employees of the Kern Medical Center known as the Kern County Pension Plan for Physician Employees (“Plan”); and

(c) Prior to becoming employees of the Authority, physician employees of the Kern Medical Center were County employees and became participants of the Plan when qualified; and

(d) Health and Safety Code section 101853.1(d)(2) requires the Authority to provide the same level of employee benefits to its employees for a period of 24 months after the effective date of the transfer of control of the Kern Medical Center to the Authority, which is currently expected to be July 1, 2016 (the "Effective Date");

(e) For the purpose of continuing to provide retirement benefits to eligible physician employees of the Authority through the Plan, it is the desire of the Board of Governors to adopt the Plan as the successor sponsoring employer; and

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. The following sentence shall be made part of the Plan document at the end of the "Introduction" section in Article 1: "The Plan was transferred to and assumed by the Kern County Hospital Authority as Plan Sponsor effective July 1, 2016, in connection with the transfer of ownership of the Kern Medical Center to the Hospital Authority by the County of Kern."

3. All references in the Plan document to "County" shall be deleted in their entirety and replaced with "Hospital Authority," except where the context requires the continued use of the term "County."

4. All references in the Plan document to "County Board of Supervisors" shall be deleted in their entirety and replaced with "Hospital Authority Board of Governors."

5. Section 2.8, "Definition of County," shall be deleted in its entirety and current Sections 2.9 through 2.13 renumbered 2.8 through 2.12 accordingly.

6. Section 2.13 shall be made part of the Plan document as follows: "Kern County Hospital Authority means the Kern County Hospital Authority, a political subdivision of the state of California established pursuant to the Kern County Hospital Authority Act."

7. This Board does hereby appoint a five member Pension Committee pursuant to Article 8 of the Plan document, consisting of the five individual members listed in Appendix A to this Resolution, as the same may be changed by the Board from time to time. The Pension Committee shall begin performing in accordance with Article 8 of the Plan document effective July 1, 2016.

8. The Authority does hereby accept the designation as trustor of the trust agreement under which assets for the Plan are held effective with the date of its assumption of the Plan and position as Plan Sponsor.

9. Counsel for the Authority shall be and hereby is given the authority to execute all documents and amendments and take all actions necessary to implement this Resolution.

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

County Administrative Office
Office of County Counsel
Kern Medical Center
Wells Fargo Bank, National Association
RBC Wealth Management
TIAA-CREF

APPENDIX A
PENSION COMMITTEE MEMBERSHIP

Rick A. McPheeters, D.O.

Glenn E. Goldis, M.D.

Scott Thygerson

Tyler Whitezell

Marko Horvat



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

June 22, 2016

SUBJECT: Proposed rescission of Agreement with the County of Kern, Risk Management Division

Required Action: Approve

On May 4, 2016, your Board approved the Agreement with the County of Kern, Risk Management Division, to administer our Workers Compensation and Liability Claims. Kern Medical is requesting to rescind the Agreement.



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

June 22, 2016

SUBJECT: Proposed Agreement with Tristar Risk Management for the provision of claims administration under the Kern County Hospital Authority self-insured retention program

Required Action: Approve; Authorize Chairman to sign subject to Approval as to form by Counsel

Summary:

Kern Medical is requesting to enter into an Agreement with Tristar to administer workers' compensation and liability claims under the Authority's self-insured retention program, effective July 1, 2016. Tristar shall review all claims received from Authority and process each such claim in accordance with Government Code Section 910.



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

June 22, 2016

SUBJECT: Proposed Agreement with ScriptCare Ltd., for the provision of third party administrative services related to the 340B drug pricing program

Recommended Action: Approve; Authorize Chairman to sign

Summary:

The proposed Agreement allows ScriptCare, LTD to provide 340B third party administrative services with Non-Kern Medical retail pharmacies who fill prescriptions on behalf of patients cared for by Kern Medical Center providers. This agreement will extend program benefits to Kern Medical Center for eligible prescriptions, effective July 1, 2016 through June 30, 2019, with an annual user fee of \$11,000 and projected annual net revenue of \$901,000.

Attachments to the Agreement:

Attachment A:

Defines terminology used in the agreement and the scope of services that will be provided on behalf of Kern Medical Center by ScriptCare, LTD. These services include:

- Community Pharmacy Network Management
- Customer Service
- Claims Adjudication
- 340B Covered Entity Services
- Internal Audits

Additionally, Kern Medical Center agrees to:

- Manage the business agreement, terms, and conditions
- Provide eligibility files
- Compensate ScriptCare according to the terms of the agreement
- Provide tracking of eligible drug purchases
- Verify patient eligibility
- Provide a list of authorized providers
- Approve purchase orders for 340B covered medication

Attachment B:

Defines pricing and reimbursement parameters for services rendered under the agreement.

**A MANAGED 340B PRESCRIPTION DRUG PROGRAM AGREEMENT
ADMINISTERED BY SCRIPT CARE LTD. FOR
KERN MEDICAL**

THIS AGREEMENT is made by and between **Script Care, LTD.**, Texas limited corporation acting as a 340B third party administrator (“SCL”), and the Kern County Hospital Authority, a county hospital authority, which owns and operates **KERN MEDICAL CENTER** (“Sponsor” or “Covered Entity”, and together with SCL, being sometimes individually referred to as a “Party”, and collectively referred to as the “Parties”).

RECITALS

WHEREAS, Sponsor desires to participate in the 340B Drug Pricing Program (“340B Program”);

WHEREAS, the Parties desire to have SCL provide the exclusive 340B third party administrative services for the Sponsor in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, Sponsor has satisfied all the legally required condition precedents to participate in the 340B Program; and

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

ARTICLES

General Terms and Conditions

- A. **Governing Law, Forum Selection Clause, and Venue Selection Clause.** Any and all disputes that relate to or arise from this Agreement shall be governed by California law, and shall be decided solely and exclusively in Kern County, California.
- B. **Dispute Resolution.** Any controversy, dispute or disagreement arising out of or relating to this Agreement or any breach hereof, may be settled by binding mediation, which shall be conducted in Bakersfield, California, in accordance with the Judicate West’s Commercial Arbitration Rules in effect at the time of the arbitration, and judgment on the award rendered by the mediator may be entered in any court having jurisdiction with respect thereto.
- C. **Entire Agreement:** This Agreement, including any Schedules attached hereto and authorized amendments, shall constitute the entire understanding between the parties hereto and shall supersede and explicitly waives any and all prior or contemporaneous representations, statements, understandings, proposals, negotiations, bids, bid commitments, or agreements, whether oral or written between the parties.
- D. **Amendments:** This Agreement shall not be amended or modified in any manner whatsoever except by a written instrument signed by the parties hereto. Any handwritten or verbal changes to this Agreement are void.
- E. **Taxes:** Unless otherwise provided herein or by law, prices quoted do not include applicable state sales or use taxes.
- F. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, legal representatives, successors and assigns of the Parties.

Obligations undertaken by SCL pursuant to this Agreement may be carried out by means of subcontracting,

without the prior consent of Sponsor, so long as such subcontractors meet the requirements of this Agreement and SCL is ultimately responsible for the acts and/or omissions of the subcontractors.

- G. Non-Discrimination:** In the performance of this Agreement, SCL agrees that it will comply with the requirements of applicable law and will not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, age, religion, veteran status, pregnancy, mental disability, medical condition, marital status, or sex of such persons.
- H. 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.
- I. Termination:** The Initial Term of this Agreement shall be three (3) years, commencing on July 1, 2016, and ending on the third anniversary of such date. However, this Agreement may be terminated earlier or extended in accordance with the provisions of this Agreement as follows:
- a. In accordance with the Agreement, either Party may terminate this Agreement with cause upon written notice of the occurrence of any breach of a material provision, covenant, or condition of this Agreement. In the event of an aforementioned breach, the non-defaulting Party shall afford the defaulting Party written notice of the breach and allow the defaulting Party ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach.
 - b. Sponsor, as a government entity, 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, Sponsor will be released from any further financial obligation to SCL, 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. SCL will be given 30 days' prior written notice in the event that Sponsor requires such an action.
 - c. The terms of this Agreement may be renewed for successive additional 1 year period thereafter (each a "Renewal Term") if written notice is given by Sponsor not less than sixty (60) days prior to the end of the current contract term. Notwithstanding any provisions of this Agreement to the contrary, the Agreement may not be terminated by either party "without cause" prior to the expiration of the Initial Term or any Renewal Term.
 - d. Either party in accordance with applicable law may terminate this agreement upon the insolvency of the other party. Insolvency shall mean the filing of a bankruptcy petition, either voluntary or involuntary, under the United States Bankruptcy Code, inability to pay debts as they become due, appointment of trustees to liquidate any material part of its property or holdings, proceedings under any receivership, composition, readjustment, liquidation, insolvency, dissolution or any like law or statute.

- J. Independent Contractor:** With respect to each other, Sponsor and SCL are independent contractors, and this Agreement shall not be construed to create any other relationship between the parties.
- K. Performance:** SCL shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to Sponsor's reasonable satisfaction as specified in the attached Scope of Work, Exhibit "A". SCL shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other services furnished by SCL under this Agreement. SCL shall perform all work diligently, carefully, and in a good and workman-like manner; and shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary.
- L. Confidentiality:** Each Party agrees to maintain the confidentiality of the other Party's confidential and proprietary information consistent with, at a minimum, all laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Agreement.

The provisions of this paragraph shall apply with respect to any SCL Data that may be provided to Sponsor in connection with this Agreement. During the term of this Agreement, Sponsor may request, and SCL may provide, certain confidential information concerning SCL's 340B administration services, including, without limitation, financial information, business information, and SCL Data. As a condition to such information being furnished to Sponsor, Sponsor agrees to treat all of such information (whether or not prepared by SCL or its representatives and regardless of the form of communication (i.e., whether written or oral) that is furnished to Sponsor now or in the future by or on behalf of SCL in accordance with the provisions of this Agreement. SCL is aware that 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.

Sponsor hereby agrees that (a) Sponsor will keep confidential the SCL Data in accordance with the requirements of this section and not disclose any of the SCL Data to any person or entity anywhere in the world except as permitted by this section, and (b) Sponsor will not use any of the SCL Data for any purpose except for the mutual benefit of Sponsor and SCL in carrying out the terms of this Agreement; provided, however, that (i) Sponsor may make any disclosure of the SCL Data with SCL's prior written consent, and (ii) Sponsor may make any disclosure of the SCL Data to its representatives who need to know such information for the purpose of assisting Sponsor in carrying out the terms of this Agreement, who are informed of the confidential nature of such SCL Data and who are instructed to maintain the confidentiality thereof. Sponsor shall be responsible for any breach of the provisions of this section by any of its representatives.

Notwithstanding any other provision in this section to the contrary, Sponsor expressly agrees, on behalf of itself and its representatives, that prior to disclosing any SCL Data to any individual or entity outside of Sponsor's organization, including, without limitation, a competitor of SCL (an "Outside Party"), Sponsor and its representatives shall contact SCL and obtain SCL's written consent to release to the Outside Party only the redacted form of the SCL Data as approved by SCL, it being expressly acknowledged by Sponsor that the SCL Data may be manipulated by an Outside Party in such a manner so as to cause immediate and irreparable business and financial harm to SCL.

If Sponsor is requested (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, other demand or request by a governmental agency or the application of federal securities laws or other statutes, rules and regulations or similar process) to disclose any of the SCL Data, then in connection with any such request, Sponsor shall provide SCL with

prompt written notice of any such request (to the extent providing such notice is not prohibited by law) so that SCL may in its sole discretion seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this section.

At any time upon the written request of SCL in its sole discretion and for any reason, Sponsor will as directed by SCL promptly destroy all SCL Data (and any copies thereof) and direct Sponsor's representatives to do the same. Notwithstanding the return or destruction of the SCL Data, Sponsor and its representatives will continue to be bound by the obligations of confidentiality hereunder.

In addition, it is further understood and agreed that money damages may not be a sufficient remedy for any breach of this section by Sponsor or any of its representatives and that SCL and its representatives shall be entitled to seek equitable relief, including, without limitation, injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by Sponsor or any of its representatives of this section but shall be in addition to all other remedies available at law or equity to SCL and its representatives, and in the event of any breach of the provisions of this section by Sponsor or its representatives, SCL shall be entitled to seek recovery of not only its actual damages, but the following types of damages: economic, business reputation, loss of business, loss of company, loss of assets, lost profits and good will, consequential, exemplary, prejudgment and post judgment interest, court costs and attorneys' fees.

- M. Compliance with Laws:** Each Party represents and warrants that services to be provided under this Agreement shall fully comply, at the Party's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations applicable to the Party (collectively "Laws"). Each Party shall be required to comply with the applicable Laws that govern the Party's operations and business.
- N. Severability:** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- O. Interpretation:** The parties affirmatively represent that they are entering into an arms-length transaction and have both been given an opportunity to review the Agreement and have reviewed the Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof.
- P. Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- Q. Indemnification Provisions:**

Each Party ("Indemnifying Party") shall hold harmless, defend, and indemnify the other Party ("Indemnified Party") and its directors, board members, elected and appointed officials, officers, agents and employees against any and all loss, liability, claim, damage, fine, lien or expense, including any direct, indirect or consequential loss, liability, damage, or expense, including court costs and attorneys' fees, resulting from or attributable to (i) the acts or omissions of the Indemnifying Party, or their agent, under the Agreement; and/or (ii) the breach by Indemnifying Party's, or their agent, covenants, obligations, representations or warranties under this Agreement.

Each party agrees to provide the indemnifying party with written notification of any claim related to services provided by either party pursuant to this Agreement within thirty (30) calendar days of notice thereof, and in the event the indemnifying party is subsequently named party to the litigation, each party

shall cooperate with the indemnifying party in its defense.

R. **Insurance.** SCL, in order to protect Sponsor and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of SCL's actions in connection with the performance of SCL's obligations, as required in this Agreement, shall secure and maintain insurance as described below. SCL shall not perform any work under this Agreement until SCL has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with County's authorized insurance representative, Insurance Tracking Services, Inc. ("ITS"). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, SCL shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. SCL shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. SCL shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by SCL or Sponsor as an additional insured.

a. Workers' Compensation and Employers Liability Insurance Requirement: In the event SCL has employees who may perform any services pursuant to this Agreement, SCL shall submit written proof that SCL is insured against liability for workers' compensation in accordance with its applicable state's laws.

SCL shall require any subcontractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered by the insurance afforded by SCL. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, SCL shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered. SCL shall maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. Liability Insurance Requirements:

(1) SCL shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Agreement. The Commercial General Liability Insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. SCL shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement, with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence.

(c) Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than \$1,000,000 per occurrence and \$3,000,000 aggregate.

(2) The Commercial General Liability and Automobile Liability Insurance required in this subparagraph b. shall include an endorsement naming Sponsor and Sponsor's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms that provide coverage at least equal to or better than form CG 20 10 11 85.

(3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to Sponsor and must be approved by the Sponsor Risk Manager.

(4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, SCL, at SCL's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the Effective Date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. The above stated insurance coverages required to be maintained by SCL shall be maintained until the completion of all of SCL's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by SCL must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after 10 days' prior written notice in the case of non-payment of premiums, or 30 days' prior written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. SCL shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the Sponsor Risk Manager.

e. If SCL is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, SCL shall provide coverage equivalent to the insurance coverages and endorsements required above. Sponsor will not accept such coverage unless Sponsor determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by SCL is equivalent to the above-required coverages.

f. All insurance afforded by SCL pursuant to this Agreement shall be primary to and not contributing

to all insurance or self-insurance maintained by Sponsor. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against Sponsor.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve SCL for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude Sponsor from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by SCL to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by SCL, and Sponsor, at its sole option, may terminate this Agreement immediately.

Q. **Recitals:** The recitals are incorporated herein as though they have been fully set forth.

R. **Force Majeure:** Neither party shall be liable for failure to perform its obligation under this Agreement if prevented from doing so by a cause or causes beyond its commercially reasonable control, including, but not limited to, acts of God or nature, fires, storms, floods, hurricanes, earthquakes, riots, strikes, wars, or restraints of government.

S. **Patient Confidentiality:** Each party acknowledges and agrees that the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") govern the privacy of personally identifiable health information ("PHI"). Accordingly, each party agrees to comply with the HIPAA Regulations and applicable state regulations to the extent such regulations apply to the sharing of PHI between them.

In conjunction with this Agreement the parties are executing a HIPAA Business Associate Agreement in accordance with federal and state regulations.

T. **Notices:** All notices to be furnished pursuant to the terms and provisions of this Agreement shall be personally delivered or sent by certified mail, return receipt requested, to the addresses listed below:

For SCL: Name: Script Care, Ltd.
 Attention: Kevin Brown, President
 Address: 6380 Folsom, Beaumont, Texas 77706
 Telephone: (800) 880-9902
 E-mail: kbrown@scriptcare.com

For Sponsor: Name: Kern Medical
 Attention: Chief Executive Officer
 Address: 1700 Mt. Vernon Ave.
 Bakersfield, CA 93306

U. **Scope of Agreement:** This Agreement, together with the Attachments attached hereto and incorporated herein by reference, specify the contractual terms and conditions by which Sponsor will procure, receive and pay for services from SCL.

Executed this ____ day of _____, 201__.

KERN COUNTY HOSPITAL AUTHORITY

SCRIPT CARE LTD

By _____
Chairman
Board of Governors

By 
Kevin J. Brown
President

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By 
Deputy

ATTACHMENT A

SCOPE OF WORK

I. **DEFINITIONS.** As used in this Agreement, the following terms have the meanings set forth below:

A. “**340B Covered Drug**” means a drug covered under the federal 340B Drug Pricing Program approved by the Covered Entity for dispensing to a Patient.

B. “**340B Drug Pricing Program**” or “**Program**” means the federal drug discount program established under Section 340B of the Public Health Service Act, 42 U.S.C. § 256b.

C. “**Formulary**” means a listing of all prescription medications that are eligible to be prescribed by an Authorized Provider of Covered Entity by therapeutic class and NDC 11 Number.

D. “**Acquisition Cost**” means the cost of the Formulary Drug charged by the manufacturer to each Covered Entity plus any Wholesaler fee.

E. “**Administrative Fee**” means the administrative fee payable to SCL pursuant to this Agreement.

F. “**Authorized Provider**” means any individual duly licensed to prescribe medications that is employed by or contracted to a Covered Entity, or otherwise is authorized to prescribe a 340B Covered Drug to a Patient.

G. “**Brand Name Drug**” means an FDA approved drug, which is manufactured and distributed by an innovator drug company or its licensee, which has undergone testing for safety and efficacy for the FDA under an Investigational New Drug Application sponsored by the innovator drug company, and which has a proprietary name assigned to it by the manufacturer or distributor, or an FDA approved drug which is defined by Medispan or another nationally recognized source mutually agreed upon by the parties as a Brand Name Drug.

H. “**Claim**” means a Pharmacy's billing or invoice for a single prescription for Formulary Drugs dispensed to a Patient.

I. “**Clean claim**” - a clean claim has no defect, impropriety or special circumstance, including incomplete documentation that delays timely payment. A provider submits a clean claim by providing the required data elements on the standard claims forms, along with any attachments and additional elements, or revisions to data elements, attachments and additional elements, of which the provider has knowledge.

J. “**Contract Pharmacy**” means a licensed pharmacy which has entered into a Pharmacy Provider Agreement with Covered Entity to dispense 340B Covered Drugs to Patients.

K. “**Contract Pharmacy Services**” means the dispensing and associated services provided by a Contract Pharmacy pursuant to a Pharmacy Provider Agreement.

L. “**Covered Entity**” means the Sponsor named in this Agreement

M. “**Dispensing Fee**” means the amount payable to a Contract Pharmacy as agreed to in the Pharmacy Provider Agreement entered into by Covered Entity and Contract Pharmacy as specified in Exhibit B of this Agreement.

N. **“Excluded Drugs”** the following drugs are excluded as 340B Covered Drugs. All other drugs excluded from the 340B program must be agreed upon in writing by both the Contract Pharmacy and Covered Entity.

- a. CII controlled substances.
- b. Immunizations and vaccines.
- c. Prescriptions adjudicated with a compound code (NCPDP compound code field 406-D6 value “2”).

O. **“Generic Drug”** means an FDA approved drug, which is manufactured and distributed under the approval of the FDA through an Abbreviated New Drug Application, which is identified by its chemical or non-proprietary name (as determined by the United States Adopted Names Council) and which the drug which is defined by Medispan or another nationally recognized source mutually selected by the parties as a Generic Drug. No generic waiting periods shall apply in that as soon as pioneer medications lose patent protection, they must be dispensed as generic.

P. **“Lower of Pricing”** means the lower of (1) 340B drug acquisition cost plus negotiated Dispensing Fee, (2) usual and customary pharmacy charge, (3) MAC cost plus negotiated MAC Dispensing Fee, or (4) non-340B replenished drug reimbursement as set forth by Covered Entity.

Q. **“Maximum Allowable Cost (MAC)”** means a list of drugs developed by SCL that are subject to maximum allowable cost payment schedules which specify the maximum unit ingredient cost payable by Sponsor for drugs on the MAC list. The MAC list and schedules are subject to change as determined by SCL from time to time.

R. **“Patient”** means those individuals who meet the statutory 340B definition and criteria as set forth in the guidance issued by HRSA.

T. **“Pharmacy Provider Agreement”** means the current negotiated agreement between Covered Entity and Contract Pharmacy with respect to Contract Pharmacy Services.

U. **“Plan”** means the Formulary established by Covered Entity, including patient charges, varying co-payments, deductibles, maximum quantities, maximum days, benefit eligibility, benefit limitations in the Plan and the corresponding accurate price calculations.

V. **“SCL Data”** means any and all of the items described below that have been or may hereafter be disclosed to Sponsor by SCL: trade secrets concerning the business and affairs of SCL, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, claims adjudication software, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, price lists, supplier lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related processes, formulae, composition, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information). The term “SCL Data” also includes any documents or information prepared by Sponsor or its representatives that derive from, contain, reflect or are based upon, in whole or in part, the information furnished to Sponsor or its representatives pursuant hereto. Notwithstanding any other provision hereof, the term SCL Data does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by Sponsor or its representatives in violation of these provisions, and (ii) was within Sponsor’s lawful possession prior to its being furnished to Sponsor.

W. **“Usual and Customary”** means the lowest price which each Contract Pharmacy would charge to a Patient if the Patient were paying cash for the identical Formulary Drug on the same date of services. This includes any applicable discounts including, but not limited to, senior discounts, frequent shopper discounts and other special discounts offered to customers, inclusive of the Dispensing Fee.

X. **“Wholesaler”** means the wholesale distributor of 340B Covered Drugs designated by the Covered Entity as the distributor from which 340B Covered Drugs are purchased by the Covered Entity.

II. Pharmacy Network Management:

- A. SCL shall assist Covered entity in establishing Contract Pharmacy arrangements, including assistance in negotiating Pharmacy Provider Agreements with terms consistent with those required by the Health Resources and Services Administration (HRSA) Office of Pharmacy Affairs (OPA). Such Agreements shall include appropriate provisions to authorize SCL to carry out its obligations to Covered Entity under this Agreement.
- B. SCL shall assist the Covered Entity in administering the Pharmacy Provider Agreement.
- C. SCL shall assist the Covered Entity in managing the relationship between the pharmacy and the Covered Entity, including credentialing and contractual disputes related to the Pharmacy Provider Agreement.
- D. SCL shall conduct desktop audits to determine the accuracy of claims adjudication and detect potential errors and omissions use. SCL shall advise Covered Entity of any audit findings.
 - 1. SCL’s desktop audits shall include certain financial variances, formulary and drug utilization review (DUR) compliance, Usual & Customary (U&C) compliance, and dollar per prescription limits in addition to system parameters. Of that total, certain pharmacies may be selected for an on-site audit.
 - 2. In the event of detection of errors and omissions, including but not limited to fraudulent conduct, SCL shall immediately notify Covered Entity. After consultation with Covered Entity, and depending on the severity of the offense, SCL shall either provide additional education about the infraction to the offending pharmacy or assist Covered Entity in terminating the Contract Pharmacy arrangement.
 - 3. Any audit findings will result in the proper credit of inventory and/or monies to the appropriate party.
- E. SCL shall provide a pass through arrangement with Covered Entity, and shall not keep any spread on drugs purchased through Contract Pharmacies and the amount billed to Covered Entity.

III. Customer Service:

- A. SCL shall maintain a telephone number dedicated to facilitating communication with Covered Entity and Contract Pharmacies submitting claims.
- B. SCL’s customer service call center shall manage pharmacy communications. SCL’s customer service call center shall feature toll free access 7 days a week and 24 hours a day service.
- C. SCL shall use a call management tracking system to log calls and establish an escalation procedure to handle caller inquiries.

- D. SCL shall train and instruct the customer service representatives regarding the Plan design. This includes providing the customer service representatives with written information regarding the Plan design.
- E. SCL shall assign an account team to oversee Plan administration. The account team will be trained and instructed regarding the Plan design.

IV. Claims Adjudication:

- A. SCL shall provide electronic claims processing, as required by this Agreement. SCL shall provide the claims processing services related to Claims for prescriptions dispensed by Contract Pharmacies on or after the Effective Date of this Agreement, using its own BIN number.
- B. SCL agrees to accurately process Claims received from Contract Pharmacies, determine whether such Claims are covered on behalf of Covered Entity within the Plan specifications, and accurately calculate the price of such Claims.
- C. SCL shall adjudicate claims in accordance with the Plan and shall provide information to Covered Entity for optimization of the Plan, including providing the Covered Entity with current, ad-hoc drug reviews.
- D. If Covered Entity requests a modification to its Plan design, SCL shall implement said modifications and adjudicate claims in accordance with the modification.
- E. Pharmacies
 - 1. All pharmacy claims to SCL must be submitted within Plan time parameters. Claims submitted after this timeframe shall be denied.
 - 2. SCL shall pay Contract Pharmacies in accordance with Covered Entity's Agreements with its Contract Pharmacies.

V. 340B Covered Entity Services:

- A. Drug Ordering: SCL shall generate and submit an electronic purchase order for 340B Covered Drugs to replenish the Contract Pharmacies' drug inventory used to dispense 340B Covered Drugs. Purchase orders will specify drugs by NDC 11 Number, unit quantity, and other required data needed to complete such purchase order.
- B. Virtual Inventory: SCL will manage Covered Entity's 340B Contract Pharmacy inventory and generate orders to replenish the dispensed 340B inventory based on replenishment levels established in the Plan specifications. The replenishment of the inventory will be made at the then current Acquisition Cost of the 340B Covered Drugs.

SCL shall perform daily loading into a data management system of valid processed Claims of 340B Covered Drugs by Contract Pharmacies for product replenishment for the Covered Entity.

SCL agrees to manage and track current 340B Covered Drug inventories including unit quantities used and unit quantities remaining with each Contract Pharmacy.

- C. Contract Pharmacy Payment: The Covered Entity shall pay SCL the amount charged by the Contract Pharmacy in accordance with the Pharmacy Provider Agreement. The amount paid shall be in accordance

with Lower of Pricing. Once SCL receives the payment from the Covered Entity, SCL shall then pay the Contract Pharmacy the payment received by the Covered Entity.

- D. Management of Patient Profiles: SCL agrees to implement and provide ongoing management of a Patient eligibility system. SCL agrees to load the Patient eligibility files upon receipt not to exceed twenty-four (24) hours of receipt of complete file.

VI. Audits:

Sponsor or its representative approved by SCL shall have the right to perform an audit of charges submitted to Sponsor by SCL for services provided under the terms of this Agreement for a maximum period of twenty-four (24) months prior to the agreed upon audit date. Such audit will be subject to execution of a confidentiality agreement provided by SCL and any other applicable confidentiality provisions and legal requirements. Any audit requested by Sponsor may only be conducted once annually and requires sixty (60) days' prior written notice. The audit will be performed at the SCL corporate offices during regular business hours and all costs for such audits will be entirely the responsibility of Sponsor and will be due and payable upon completion of such audits. Any agreements between SCL and pharmaceutical manufacturers or any subcontracted formulary management company may be subject to confidentiality agreements. Any audits conducted by Sponsor in accordance with the above will not include any such agreements that are subject to confidentiality agreements.

VII. Covered Entity Responsibilities:

- A. Covered Entity represents that it is legally entitled to have SCL perform the services described in this Agreement.
- B. Sponsor retains the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and any assets of the Plan. Sponsor will also have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of claims or provision of benefits, to review denied claims and to resolve complaints by Participants. SCL and Sponsor acknowledge and agree that SCL shall not be a named fiduciary with respect to the Plan for purposes of any applicable law. Sponsor shall provide SCL with at least fifteen (15) days prior written notice of any proposed changes to the Plan, which changes shall be consistent with the scope and nature of the services to be performed by SCL under this Agreement.
- C. Provide SCL with complete Patient eligibility files and/or data feeds in real time or near real time. Sponsor shall be totally responsible for the correctness, completeness and accuracy of all data submitted to SCL or its agent, concerning the Patient eligibility files and any updates thereof. If any such data submitted to SCL, or its agent, is incorrect, incomplete, not in good condition, or not submitted on time, Sponsor shall be responsible for any charges that may result from the use of said information.
- D. Covered Entity shall be responsible for compensating SCL according to the terms in Attachment B, and as set forth elsewhere in this Agreement for the provision of services under this Agreement. Covered Entity shall be responsible for providing to SCL all items required by SCL and as set forth in this Agreement in order for SCL to satisfactorily perform its services under this Agreement. SCL shall bill Sponsor twice a month (on or about the first and fifteenth of each month). All invoices shall be paid in United States dollars by check or electronic payment, within twenty (20) days of the receipt of each invoice. Sponsor shall pay all expenses incurred by SCL in connection with the collection of any and all amounts due SCL hereunder, including all reasonable attorney's fees plus interest and collection agency service fees. If payment for any billing cycle is not received by the close of the next billing cycle, the invoice will be deemed past due. All Prescription transactions may be suspended **automatically** by SCL when at any time, an outstanding

invoice is thirty (30) days past due. The Plan shall be reinstated if payment of all past due amounts is received within ten (10) working days of the suspension. Thereafter, a written request to reinstate, and full payment of any amounts due, must be received by SCL before reinstatement will occur.

- E. Ensure that a tracking system exists which will ensure that drugs purchased under the Program are not diverted to individuals who are not eligible Patients.
- F. Develop a system to verify Patient eligibility, as defined by Health Resources and Services Administration ("HRSA") guidelines. Sponsor acknowledges that SCL relies on Sponsor for the information necessary for SCL to identify both captured claims and replenishable claims.
- G. Furnish a list to SCL and Contract Pharmacy of all Authorized Providers affiliated with Sponsor and update the list of Authorized Providers to reflect any changes. The Authorized Providers shall be used to electronically process and adjudicate all electronic prescription claims from Contract Pharmacy.
- H. Approve all purchase orders for, and assume responsibility for pricing of all 340B Covered Drugs.

ATTACHMENT B

PRICING/FEES

A. The Parties agree that these fees shall be in addition to the actual cost of the prescriptions filled through Contract Pharmacies managed through this Agreement:

	SERVICES	ASSOCIATED FEES
1.	Processing Services: Minimum Administrative Fee per month, includes: 340B Contract Pharmacy Network 340B Claim Replenishment	Greater of \$3,800 per month or per claim rate
2.	340B Replenishment Claims: Claim Fee	\$2.95/Rx
3.	340B Non Replenished Claims: Claim Fee	\$2.55/Rx
4.	Implementation Services: Eligibility Verification/Software Management System: User access and authorization and planning	Waived
5.	Inventory Reconciliation: Quarterly Inventory Reconciliation Fee	2% of gross reconciliation amount

B. Additional services that are not included in the claims processing fee, but can be provided upon request:

Item #	Miscellaneous	Associated Fees
1.	IT Development Rate	\$200.00/hour
2.	Clinical PA Program	\$40.00/Auth
	Non-Standard Reporting Services	
3.	Developer Ad Hoc Reports - for reports that require system programming and must be developed by SCL	\$125.00/hour



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

June 22, 2016

SUBJECT: Proposed Agreement with the County of Kern, as represented by Kern Medical Mental Health, for involuntary care under section 5150 of the Welfare and Institutions Code, inpatient psychiatric services, and reimbursement for Chair of Psychiatry and resident physicians

Recommended Action: Approve; Authorize Chairman to sign

Summary:

Kern County Hospital Authority in collaboration with KCMH provide services as outlined in the MOU presented for adoption, effective July 1, 2016 through June 30, 2021, in the amount of \$4,350,000 for Fiscal Year 2016 – 2017.

The Exhibits within the Agreement address the following:

- Exhibit A: Services Provided by Hospital Authority
- Exhibit B: Services Provided by KCMH
- Exhibit C: Fee Schedule for Services
- Exhibit D: Business Associate Agreement

Exhibits:

The Hospital Authority & KCMH will provide services in compliance with DHCS, JCAHO, EMTALA, CCR, CFR, HIPAA, EEOC, FEHA, and OSHA.

Exhibit A addresses coverage of involuntary care services, Staffing of the IPU, PEC-CSU, and Emergency Department for Mental Health, Emergency Medical Care, crisis intervention, and pre-admission evaluation and inpatient care.

Exhibit B addresses the responsibilities of Civil Service Physicians, the Crisis Case Management Outreach Team (CCMO), the Treatment Authorization Request (TAR) process, Outpatient management services including Correctional Mental Health, Substance Use Division services, and Patients' Rights hearings.

Exhibit C addresses the fee schedule including a benefits and liability matrix, compensation for Acute Inpatient and Administrative Bed Days, Reimbursement for the Chair of Psychiatry, and Resident Reimbursement.

Exhibit D is the Business Associate Agreement outlining mutual obligations around PHI, Data Breach Notification, Use of Subcontractors, Access to Records, and Term & Termination language.

**AGREEMENT FOR MENTAL HEALTH SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority - County of Kern)**

This Agreement is made and entered into this _____ day of _____ 2016, between KERN COUNTY HOSPITAL AUTHORITY, (“**Authority**”) a legal business entity which owns and operates Kern Medical Center (“**KMC**”), and the COUNTY OF KERN, a political subdivision of the state of California, (“**County**”) which contains the constituent department of Kern County Mental Health (“**KCMH**”) (each a “**Party**” and collectively the “**Parties**”).

**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) County is authorized, pursuant to Government Code sections 31000 and 53060, to contract for special services with individuals specially trained, experienced, expert, and competent to perform those services; and
- (c) Both Authority and County requires the assistance of the other Party to provide services, as such services are unavailable from Authority and County resources, and the Parties agree to provide such services on the terms and conditions set forth in this Agreement;

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 term of this Agreement shall commence on the transfer of Kern Medical Center to the Authority, which is scheduled to occur on or about July 1, 2016 (the “**Effective Date**”), and shall end June 30, 2021, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

2. **Obligations of Authority.**

2.1 **Specified Services.** Authority 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.

2.2 **Representations.** Authority makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) Authority has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) Authority does not

have any actual or potential interests adverse to County; and (iii) Authority shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

2.3 Standard of Care. County has relied upon the professional ability and training of Authority as a material inducement to enter into this Agreement. Authority 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 Authority's work by County shall not operate as a waiver or release.

3. Obligations of County.

3.1 Specified Services. County shall perform the services set forth in **Exhibit "B,"** 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.

3.2 Representations. County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (i) County has the expertise and support staff necessary to provide the services described in this Agreement; and (ii) County does not have any actual or potential interests adverse to Authority; and (iii) County shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions set forth in this Agreement.

3.3 Standard of Care. Authority has relied upon the professional ability and training of County as a material inducement to enter into this Agreement. County 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 County's work by Authority shall not operate as a waiver or release.

3.4 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. KCMH shall work collaboratively with KMC in matters pertaining to said responsibility.

4. Payment for Services.

4.1 Fees and Charges. As consideration for the services provided by Parties hereunder, the Parties will pay in accordance with the fee schedule set forth in **Exhibit "C,"** attached hereto and incorporated herein by this reference. All services are payable in arrears.

4.2 Taxes. Parties agree 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.

4.3 Any reimbursements due to either party will be made within 30 days of receipt and approval of each invoice by the paying party.

4.3.1 Payments for Bed Days in KMC's Inpatient Unit will be reimbursed in accordance with the TAR process detailed in Exhibit A.6.c.vii.1 of this agreement.

4.3.2 Both parties will reimburse the other for the actual cost of shared physicians based upon where the service was rendered.

5. **Access to Books and Records.** Until the expiration of four (4) years after the expiration or termination of this Agreement, Authority and County shall make available, upon written request of the Secretary of the United States Secretary of Health and Human Services (“**Secretary**”) or the Comptroller General of the United States General Accounting Office (“**Comptroller General**”), or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of either Party as are necessary to certify the nature and extent of costs of the services the Parties provided under this Agreement. Each Party further agrees that if it carries out any of its duties under this Agreement through a subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization, that such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6. **Assignment.** The Parties shall not assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the written consent of the other Party. The Parties shall not assign any money due or which becomes due to a Party under this Agreement without the prior written approval of the other Party.

7. **Audits, Inspection and Retention of Records.** The Parties agree to maintain and make available to the other Party accurate books and records relative to all its activities under this Agreement. The Parties shall permit the other Party to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel (unless prohibited by law) or other data related to all other matters covered by this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the Parties herein.

8. **Authority to Bind.** It is understood that neither Party, in its performance of any and all duties under this Agreement, has authority to bind the other Party to any agreements or undertakings.

9. **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.

10. **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 at the end of such 30-day period.

11. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the state of California. It is expressly acknowledged that this Agreement has been entered into and will be performed within the County of Kern. Should any suit or action be commenced to enforce or interpret the terms of this Agreement or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, state of California.

12. **Compliance with Law.** The Parties shall observe and comply with all applicable County, 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. **Compliance Program.** During the term of this Agreement, the Parties shall maintain a compliance program designed to promote compliance with applicable laws, rules and regulations. The compliance program shall be based on the policies and procedures recommended in compliance program guidance issued by the Office of the Inspector General of the Department of Health and Human Services for hospitals. Said policies and procedures shall include, without limitation: (1) the distribution of written standards of conduct and policies and procedures relating to compliance; (2) the designation of a chief compliance officer and a committee authorized to operate the compliance program; (3) the provision of regular training and education programs and materials for the Parties' assigned personnel; (4) the establishment of a communications channel for receiving on an anonymous basis allegations of violations; (5) a program to investigate and discipline the Parties' assigned personnel who violate the Parties' policies or applicable laws, rules or regulations; (6) use of audits and other risk evaluation techniques to monitor compliance; and (7) a program to investigate and correct errors and assure that individuals excluded and/or sanctioned by the Medicare or Medi-Cal programs are not employed by or otherwise contracted with the Parties. The Parties' assigned personnel shall demonstrate the existence of an internal compliance program or plan.

14. **Confidentiality.**

14.1 Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to the other hereunder, it may have access to certain information of the other Party that constitutes a trade secret or is otherwise confidential and constitutes valuable, special, and unique property. Each Party acknowledges their mutual confidential relationship and each Party's respective ownership of all proprietary and confidential information not generally available to the public or legally accessible from third parties relating to the respective businesses of the Parties, including without limitation, business plans, marketing plans, statistical data and reports, pricing, reimbursement and other financial information relating to a Party's ongoing business, treatment methods, and all quality assurance and utilization review information (the foregoing is collectively referred to as "Confidential Information"). Notwithstanding the foregoing, Confidential Information will not include information: (i) rightfully in the public domain or which hereafter becomes a part of the public domain (other than through a breach of this Agreement); (ii) required to be disclosed by law; (iii) that is independently developed by the disclosing Party; or (iv) that was learned by the disclosing Party from a third party who did not impose a confidentiality obligation on such Party. Each Party hereto acknowledges and agrees that the receiving Party may be provided access to Confidential Information solely to enable the Parties to perform services as provided for or contemplated in this Agreement. Except as otherwise required by

applicable law, each Party agrees to hold the other Party's Confidential Information in strictest confidence and not to disclose it or allow it to be disclosed directly or indirectly to any person or entity (other than persons employed or engaged by the recipient Party who have a need to know such information and who are obligated by written agreement to maintain the confidentiality thereof without the other Party's prior written consent.

14.2 **Medical Records.** If applicable, the Parties agree to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Records Information Act, codified at section 56.1 of the California Civil Code, California Evidence Code sections 1156 and 1157, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

14.3 **Protected Health Information.** The Parties will comply with all federal and state laws governing the privacy, confidentiality and security of protected health information and medical information including, without limitation, the Health Insurance Portability and Accountability Act of 1996 and implementing regulations ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder (the "HITECH Act"), 42 CFR Part 2, and applicable California privacy, confidentiality and security laws and regulations, all as amended from time to time. The Parties agree to consult and cooperate with one another to assure appropriate and consistent handling of protected health information and medical information. The provisions of this paragraph shall survive termination of this Agreement. The Authority also agrees to abide by the terms of the HIPAA Business Associate Agreement attached hereto as **Exhibit "D,"** attached hereto and incorporated herein by this reference.

15. **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.

16. **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. Authority and County 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. Authority and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

17. **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.

18. **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.

19. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Parties 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.

20. **Indemnification and Hold Harmless.**

20.1 Indemnification by the Authority. The Authority, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse, and hold harmless the County and its supervisors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person a “County Indemnified Person”) from and against any claim or demand by a third party asserted against a County Indemnified Person, and any loss, cost, or expense incurred or suffered by a County Indemnified Person on account thereof, directly or indirectly, as a result of or arising from the following, except to the extent the same is attributable solely to the County’s negligent acts taken in connection with the provision of services under this Agreement:

20.1.1 the ownership or operation of KMC by the Authority after the date hereof, or the performance by the Authority, its agents, contractors, or assigns in performing the Authority’s obligations under this Agreement;

20.1.2 any breach or the nonfulfillment of any covenant, agreement or other obligation of the Authority set forth in this Agreement;

20.1.3 any liabilities or obligations arising out of or in connection with any claims, litigation or proceedings related to KMC or the Authority’s operation thereof for acts or omissions which allegedly occurred after the date hereof;

20.1.4 any and all liabilities of the Authority of any kind or nature, whenever arising, whether known or unknown, fixed or contingent, recorded or unrecorded, arising out of or in any manner related to the ownership, use or operation of KMC; or

20.1.5 penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the Authority of any legal requirement, but only to the extent that such violation is directly caused by a condition that is subject to indemnification under this Agreement.

20.2 Indemnification by County. The County, from and after the date of this Agreement, shall indemnify, protect, defend, reimburse and hold harmless the Authority and its governors, officials, directors, managers, officers, employees, agents, successors and assigns (each such person an “Authority Indemnified Person”) from and against any claim by a third party asserted against an Authority Indemnified Person, and any loss, cost, or expense incurred or suffered by an Authority Indemnified Person on account thereof, directly or indirectly, as a result of or arising from the following, except to the extent the same is attributable solely to the Authority’s negligent acts taken in connection with the provision of services under this Agreement:

20.2.1 any breach or the nonfulfillment of any covenant, agreement or other obligation of the County set forth in this Agreement or in the performance, or failure to perform, of any of the services to be performed by the County pursuant hereto; or

20.2.2 penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the County of any legal requirement, but only to the extent that such violation is directly caused by a condition that is subject to indemnification under this Agreement.

20.3. Notice and Claims. Section 8.3 (Notice and Claims) of the Transition Services Agreement by and between the County and Authority dated _____, 2016 is hereby incorporated by reference.

20.4. The foregoing indemnification obligations shall survive the expiration or termination of this Agreement.

20.5 The foregoing indemnification obligations shall have no force or effect where precluded by law, but shall be enforceable to the extent not precluded by law.

20.6 Nothing in this Section 20 or elsewhere in this Agreement shall be construed as imposing any personal liability on any elected or appointed officials, managers, directors, officers, employees, agents, successors and assigns of County or the Authority for the acts or omissions of the County or the Authority, respectively, under this Agreement.

21. **Independent Contractor.** In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the other Party is in fact and law, an independent contractor and not an agent or employee of the other Party. Each Party has and retains the right to exercise full supervision and control over the manner and methods of providing services to the other Party under this Agreement. Each Party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting the Party in the provision of services under this Agreement. With respect to a Party's employees, if any, the Party 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.

22. **Insurance.** County and Authority self-insure as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Any self-insuring Party, upon request of the other Party, shall forward documentation to the requesting Party that demonstrates to the requesting Party's satisfaction that the Party self-insures as a matter of normal business practice before commencing the Work. Either Party will accept reasonable proof of self-insurance comparable to the above requirements.

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

24. **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 County and Authority. 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 the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

25. **Non-appropriation.** The Parties reserve 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, the terminating Party will be released from any further financial obligation to the other Party, 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. The terminated Party will be given 30 days' prior written notice in the event that a Party requires such an action.

26. **Nondiscrimination.** Neither Party, nor any officer, agent, employee, servant or subcontractor of Party 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.

27. **Non-solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither Party nor any of their affiliates shall, without the prior written approval of the other, knowingly (i) employ, retain, offer employment to or offer retention of any person who is or was employed by or under contract with the non-soliciting Party during the term of this Agreement, or (ii) solicit, advise or otherwise do, or attempt to do, business with any employee or independent contractor of the non-soliciting Party who is or was employed by or under contract with the non-soliciting Party during the term of this Agreement.

29. **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 County: Kern County Mental Health
Post Office Box 1000
Bakersfield, California
Attn: Director

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

30. **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.

31. **Sole Agreement.** This Agreement, including all attachments 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.

32. **Termination.**

32.1 **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 will 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 30 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 30 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.

32.2 **Immediate Termination.** Notwithstanding the foregoing, the Parties shall have the right to terminate this Agreement effective immediately after giving written notice to the other Party, for any of the following reasons: (i) a Party determines that the other Party does not have the proper credentials, experience or skill to perform the required services under this Agreement; (ii) continuation by the other Party in the providing of services may result in civil, criminal, or monetary penalties against the Party; (iii) the violation of any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which the Party is subject; (iv) an unauthorized use or disclosure of confidential or proprietary information by the other Party which causes material harm to the Party; (v) commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty by the other Party against the Party; (vi) the loss or threatened loss of the Party's ability to participate in any federal or state health care program, including Medicare or Medi-Cal, due to the actions of the other Party; or (vii) the failure of a Party to cure a default within the time allowed in section 32.1.

33. **Effect of Termination.**

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

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

34. **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.

35. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized

and empowered to enter into this Agreement.

[Signatures to Follow]

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

COUNTY OF KERN

KERN COUNTY HOSPITAL AUTHORITY

By _____
Chairman
Board of Supervisors

By _____
Chairman
Board of Governors

APPROVED AS TO CONTENT:
Kern County Mental Health

APPROVED AS TO CONTENT:
Kern Medical Center

By _____
Bill Walker, LMFT
Director

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
Office of County Counsel

APPROVED AS TO FORM:
Office of County Counsel

By _____
Deputy

By _____
Deputy

EXHIBIT “A”
Description of Authority & Hospital Services

1. **Kern Medical Center (KMC)** is the designated entity to provide involuntary care under Section 5150 of the California Welfare and Institutions Code (W&I) otherwise known as the Lanterman-Petris-Short Act (LPS). KMC shall:
 - a. Comply with all California Department of Health Care Services (DHCS) requirements including but not limited to licensure, certification, and designation.
 - b. Comply with all applicable federal, state, and local requirements in providing services, including but not limited to Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), Emergency Medical Treatment and Active Labor Act (EMTALA), California Code of Regulations (CCR) Title 9, CCR Title 22, Code of Federal Regulations (CFR) Title 42, federal and state billing requirements including Medicare and Medi-Cal regulations. Health Insurance Portability and Accountability Act (HIPAA), Equal Employment Opportunity Commission (EEOC), Fair Employment and Housing Act (FEHA), and Cal-Occupational Safety and Health Administration (OSHA).
2. **KMC** shall maintain and monitor all necessary professional staff licensure.
3. **KMC** shall provide credentialing and privileging services for Kern County Mental Health (KCMH) physicians.
4. **KMC** shall maintain twenty-four (24) available beds in the Inpatient Psychiatric Unit (IPU). The KMC IPU Medical Director shall ensure notification to the Joint Chair of Psychiatry and the KCMH Crisis Services Administrator or designee of any variance from this number and of the reasons for the variance, as soon as the variance occurs.
 - a. In the event that the KMC IPU bed census does not return to twenty-four (24) beds within two calendar (2) days, the KMC IPU Medical Director shall again notify the KCMH Crisis Services Administrator, which notification shall trigger if necessary, an emergency meeting for the purpose of resolving the decrease in beds as quickly as possible. The emergency meeting shall include the Joint Chair of Psychiatry or designee, the KMC IPU Medical Director or designee, the KMC Chief Nursing Officer, the KMC IPU Clinical Director, the KCMH Crisis Services Administrator or designee, the KCMH PEC-CSU Supervisor or designee, and others as needed. The emergency meeting shall be held within one (1) business day of notification and may be conducted via teleconference or face-to-face.
 - b. KMC IPU bed availability shall be allocated according to the prioritization determined by the KCMH Transfer Resource Coordinator (TRC) and KMC Transfer Coordinator collaboratively.
5. **KMC recognizes Kern County Mental Health (KCMH)**, as the Mental Health Plan (MHP) provider, who oversees the KMC Inpatient Psychiatric Unit (IPU).
 - a. KMC further recognizes KCMH who oversees the **Psychiatric Evaluation Center-Crisis Stabilization Unit (PEC-CSU)** as a California State designated stand-alone unit operating under the KCMH Tax Identification Number.
6. KMC, in compliance with HIPAA and 42 CFR, shall provide services for voluntary and involuntary individuals presenting with behavioral health challenges as follows:
 - a. **KMC Emergency Department (ED)** shall:
 - i. Provide identified emergency medical care, and in coordination with the Department of Psychiatry, provide crisis intervention, pre-admission medical evaluation and screening services.
 - a. For voluntary adult individuals, the ED shall provide medical evaluation and treatment. Additionally:
 1. For individuals who are unable to be medically cleared, the ED shall involve Consultation and Liaison (C&L) psychiatric services in the care of the individual.
 2. If the individual is medically cleared and is willing to receive psychiatric

- services, the ED shall coordinate with the TRC to secure transfer to the most appropriate placement (e.g., PEC-CSU, KMC IPU, GeroPsych Unit, etc.) by contacting the TRC;
- b. For involuntary adult individuals:
 1. For individuals who are unable to be medically cleared, the ED shall coordinate through the TRC and Hospital Transfer Coordinator to secure a psychiatric or medical bed as appropriate.
 2. For individuals who are medically cleared, the ED shall:
 - i. Collaborate with the TRC to determine the most appropriate placement (e.g., PEC-CSU, KMC IPU, GeroPsych Unit, etc.).
 1. If a placement other than PEC-CSU is determined, then ED shall liaise with C&L services to complete the W&I 5151 Admission Assessment Process as required by the Welfare & Institution Code (WIC).
 - c. For minors on an involuntary W&I 5150 hold, the ED shall provide medical evaluation, treatment and clearance, and as appropriate:
 1. Coordinate with the TRC to determine the appropriateness of a secure transfer to the PEC-CSU or a designated child/adolescent psychiatric facility.
 - ii. Provide monitoring for safety of all individuals presenting with acute behavioral health issues while in the ED.
 - a. All individuals on a W&I 5150 Involuntary Hold shall be monitored to preclude elopement and to minimize the risk of other dangerous behaviors.
 - iii. Refer patients to community resources or KCMH as appropriate.
 - iv. Coordinate patient care with the following entities as appropriate:
 - a. KMC IPU
 - b. KCMH PEC-CSU including, but not limited to, the TRC
 - c. KCMH Mobile Evaluation Team (MET)
 - v. Provide supportive crisis counseling for individuals and members of their support systems as appropriate.
- b. **KMC Medical Floor**, KMC shall:
- i. Obtain approval from the KCMH Crisis Services Administrator when considering the Medical Floor admission of voluntary or involuntary individuals with medical conditions that prohibit admission to the IPU.
 - a. If admitted to the medical floor, voluntary or involuntary patients shall:
 1. Be designated with a primary Psychiatric diagnosis;
 2. Have C & L services as the admitting/attending service;
 3. Be provided with all services that are the standard of care on the IPU, including but not limited to completion of the W&I 5150 or 5151 processes, psychiatric services, nursing services, social services and other related services. In addition, these services shall include but are not limited to the interdisciplinary treatment (IDT) process, the Daily Treatment Focus (DTF) process, and compliance with all legal processes.
 4. Be designated on KMC IPU census so that KMC IPU staff shall assure appropriate psychiatric oversight, treatment and consultation;
 - b. KMC shall provide ongoing communication with KCMH related to any KCMH patients that are being treated on the Medical Floor for primary psychiatric conditions to include any change in hospitalization status. KCMH patients located on the Medical Floor who are receiving primary psychiatric treatment shall be reported to KCMH on

the Daily Census.

c. **KMC IPU**, KMC shall:

- i. Provide therapeutic and/or rehabilitative inpatient services. The program shall provide services to improve an individual's ability to function in the community by addressing and ameliorating the individual's acute needs through an acute stabilization treatment model focused on precipitating events.
- ii. Coordinate services provided by the therapeutic and/or rehabilitative inpatient services program, with the Outpatient Specialty Mental Health Service Providers, Crisis Case Management Outreach (CCMO) and/or the Care Coordination Unit (CCU) to assist in a seamless discharge to the least restrictive level of care that can successfully meet the individual's needs.
- iii. Notify KCMH of the daily census.
- iv. KMC Physicians shall share on-call duties with Civil Service Physicians to provide on-call psychiatric consultation on weekdays, Monday through Thursday, from 5:00 p.m. to 8:00 a.m., and on weekends, starting on Friday from 5:00 p.m. until Monday at 8:00 a.m., for individuals in the PEC-CSU and for individuals incarcerated at the Lerdo Correctional Facility.
- v. Manage an acute stabilization treatment model which provides an individualized treatment system based on the following premises and **Description of Services**:
 - a. The primary treatment goal is the reduction of the acute symptomology that led to the medical necessity of the inpatient admission.
 - b. Psychiatric Nursing and other services shall include monitoring and evaluation of the quality and appropriateness of care and resolving identified problems.
 - c. Social Services shall be designed to meet the objective of each individual's IDT plan.
 - d. The primary goal of Rehabilitation Services is to restore, establish and maintain optimum levels of social, vocational and physical functioning, and to minimize residual disabilities.
 - e. Any length of stay exceeding seven (7) days, will undergo daily review for plan of care.
 - f. Discharge planning shall be an on-going process that begins at the moment of admission. Through the Daily Treatment Focus (DTF) and Inter-Disciplinary Treatment (IDT) processes, the individual shall be involved in the decision making process.
 1. CCMO and/or KCMH designee shall be included in the DTF and IDT processes.
 2. Upon the approval of the individual, the support system shall be involved in the decision-making process and discharge planning.
 3. Treatment issues needing further services are identified and coordinated with the outpatient specialty mental health and community service provider. Coordination is to include, but is not limited to, in-person transfer of provision of services from KMC IPU to the outpatient service.
 4. Ensure that treatment plans address goals for inpatient treatment and plans for reintegration of the patient into the community setting.
 5. The acute stabilization treatment program, based on the Recovery Model, shall provide an individualized intensive daily schedule of treatment services in addition to individualized treatment. Each individual's involvement in the programmed services shall be based on his/her condition at the time the service is provided with the premise that the individual shall be prompted to participate and placed in programmed services as quickly as possible. Participation in the programmed or individualized components of the intensive daily schedule of treatment services shall be strongly encouraged

on a daily basis. Staff shall be trained in and provide the following programmatic or individualized components which may include, but are not limited to, the following, if applicable:

- i. Assessment and Evaluation
 - ii. Psychopharmacology
 - iii. Scheduled and collaborative meetings to assist in the treatment and placement/discharge planning needs of the individual (IDTs)
 - iv. Positive Behavioral Interventions, Skill Development, and Support
 - v. Wellness & Recovery Action Plan (WRAP)
 - vi. Relapse Prevention
 - vii. Individual and Group Therapy, including but not limited to; Dialectical Behavioral Therapy (DBT), Cognitive Behavioral Therapy (CBT), ASIST, Motivational Interviewing, Seeking Safety, and other evidence-based practices as clinically appropriate.
 - viii. Family Services
 - ix. Therapeutic Treatment Milieu
 - x. Psycho-Education Services
 - xi. Social, Recreational and Physical Exercise Rehabilitation
 - xii. Behavioral Programming and Plans
 - xiii. Assistance with financial, housing and community resource/access problems.
- vi. First use approved **Non-Violent Crisis Intervention** techniques for managing mental health challenges that would traditionally be responded to by seclusion and physical restraints: Seclusion or restraint shall be used only when less restrictive interventions have been determined to be ineffective to protect the individual, staff, or others from harm.
- a. Centers for Medicare and Medicaid Services (CMS) guidelines shall be followed and incorporated into the program's policies and procedures.
 - b. All clinical staff assigned to the KMC IPU must maintain certification in an approved crisis intervention model such as PRO-ACT, CPI, Aegis, or Therapeutic Options.
 - c. Physicians and all staff members shall be familiar with the types of restraints used and how to appropriately apply, monitor, and assess potential bodily injury that might result from application of the restraints.
 - d. Video monitoring is permissible in the IPU; however, video recording requires written consent from the patient prior to use.
 - e. Following any physical intervention, any recorded video may be reviewed by the Mental Health Plan designee, Patients' Right Advocate, KMC IPU Program Director and KMC IPU Medical Director to assure appropriate level of intervention and opportunities for staff training.
 - f. Following any physical intervention, a mandatory debriefing with staff shall occur prior to the end of their work shift. Debriefing of the involved individual shall occur as quickly as is therapeutically appropriate. Debriefing of staff shall include, but is not limited to, identifying opportunities for early intervention that may have been utilized in lieu of physical intervention, reviewing positive aspects of the intervention as well as past effective interventions and Best Practice intervention strategies, identifying areas for improvement, and enhancing team collaboration and communication.
 - g. Seclusion or restraint shall be used only when less restrictive interventions have been determined to be ineffective to protect the individual, staff, or others from harm.

- h. All individuals have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff.
 - i. Restraint or seclusion shall only be imposed to ensure the immediate physical safety of the individual, staff, or others.
 - j. Seclusion and restraint rooms shall be clean and free from hazards that might pose a danger to individuals confined within them.
 - k. A face-to-face assessment by the Physician for individuals in restraints is required no later than four (4) hours after initiation of restraint.
 - l. Seclusion and restraint must be discontinued at the earliest possible time.
 - m. Beds in the seclusion and restraint room shall be securely bolted to the floor.
 - n. Individuals in seclusion and restraints shall be monitored via direct line of sight &/or using cameras as required.
- vii. Comply with the following **Standards of Service**
- a. The following standards, if not followed, are grounds for denial of reimbursement for some or all of the KMC IPU services:
 - b. There shall be a face-to-face evaluation by a psychiatrist of all individuals within twenty-four (24) hours of admission. Medical necessity, in accordance with CCR Title 9 and DHCS standards, must be established for any individual admitted for psychiatric inpatient services. To substantiate medical necessity, the psychiatrist's evaluation must include at least the following:
 - 1. a mental status exam,
 - 2. onset of illness,
 - 3. chief complaint,
 - 4. the circumstances that led to the services.
 - c. There shall be a note, within twenty-four (24) hours of admission and each day thereafter, by the attending physician that explains continuing medical necessity and the means used to decrease the medical necessity, including:
 - 1. current symptoms,
 - 2. response to treatment,
 - 3. the rationale for modifications or no modifications of the course of treatment or treatment plan.
 - d. The Nursing Evaluation shall be completed within eight (8) hours of admission and the Psychosocial Evaluation shall be completed within thirty-six (36) hours of admission or as soon as reasonably possible with the extenuating circumstances documented daily until completed. Because this information is required for the treatment planning process, failure to complete these evaluations within the required time frames shall result in denial of reimbursement for the first day of the inpatient stay and subsequent days wherein the evaluations are not completed.
 - e. There shall be a History and Physical (H&P) examination for every individual within twenty-four (24) hours of admission in accordance with CCR Title 22 regulatory requirements.
 - 1. Examinations shall include, but not be limited to:
 - i. Systems review and list of all current medical conditions
 - ii. Summary of medical history
 - iii. Complete Blood Count
 - iv. Urinalysis
 - v. Urine Drug Screen
 - vi. Liver/Kidney Function Tests

- vii. Electrolytes
 - viii. Thyroid Function Test
 - ix. Pregnancy Test (when indicated)
2. If the individual refuses any of the above medical procedures, refusal shall be documented in the individual's chart.
- f. Laboratory tests for therapeutic medication levels shall be ordered within standards and treatment adjusted accordingly.
 - g. Documentation of medical necessity shall be consistent by all disciplines and shall meet DHCS standards. Daily documentation concerning medical necessity must include a description of supporting evidence to justify the medical necessity statement. When the Psychiatric Evaluation includes the components of a daily progress note, the need for a progress note for that day is eliminated.
 - h. To reduce acute symptomology and extended length of stay, after the first day an individual refuses prescribed medications, the process for a Riese/Capacity hearing shall be initiated and documented in the medical record. If a decision not to do so is made, an explanation shall be clearly documented in the medical record by the KMC IPU physician. In this case, KCMH Crisis Services Administrator shall be notified, and it is recommended that KMC IPU Administrators shall be notified. If the Riese/Capacity process is not initiated and the KMC IPU physician's explanation is not included in the medical record, reimbursement for inpatient days may be denied beginning with the date of first medication refusal until the date a Riese/Capacity hearing is initiated.
 - i. After an appropriate case review, should it be determined there was a delay in treatment or discharge planning caused by KMC IPU resulting in an increased length of stay, those days shall be denied.
 - j. Administrative Day Services shall be authorized by the MHP when, due to a lack of residential placement options at appropriate, non-acute treatment facilities, the individual's stay at KMC IPU must be continued beyond the need for acute psychiatric inpatient hospitalization. KMC shall document a minimum of five (5) attempts per week to secure appropriate placement for the individual. Reimbursement for Administrative Days shall be determined by the State through the TAR process.
 - k. KMC IPU shall ensure all individuals are provided with a 30-day prescription of discharge medications. Should the individual be without benefits, KMC shall obtain authorization through County Authorization Unit and utilize only specified county contracted pharmacies.
 - l. Following are standards that, if not followed, are grounds for requiring **a plan of correction** to assure the standards shall be met:
 1. If concerns arise about the appropriateness of an admission within the criteria of the Medical Care Matrix that was in effect at the time of the admission for KMC IPU, KMC IPU shall initiate a physician-to-physician contact to attempt to resolve the concern before a determination to refuse admission is made. Following physician-to-physician contact, all denials for admission shall immediately be forwarded to both the KMC IPU Medical Director and Clinical Director and to KCMH Administration for review.
 2. Evaluations as to the need for psychiatric inpatient services shall address acute needs related to life functioning deficits and must explain the circumstances that led to the need for services. KMC IPU intake assessments must also define proposed goals for services. KMC IPU is responsible to assure that this information is included in the individual medical record and is

- available through the subsequent DTF or IDT to assist in the aftercare placement/discharge planning process.
3. KMC IPU staff shall check the KCMH's computer system for Red Flags and other treatment information relevant to the individual's care to assure that any special plan of care for the individual being evaluated is addressed.
 4. KMC IPU shall publish the prearranged time slot for IDT meetings to discuss each individual's condition, readiness for discharge, placement planning, and to update the treatment plan. The initial IDT shall be scheduled within seventy-two (72) hours of admission and shall be scheduled on at least a weekly basis thereafter. Time slots shall be specific to each individual. The attending physician or designee shall attend IDTs.
 5. KMC IPU shall schedule a DTF meeting Monday through Friday to discuss each individual's condition, readiness for discharge, placement planning, and to update the treatment plan. Scheduled DTFs shall include the attending Physician, Nursing, Social Services, UR staff and other treatment staff as appropriate.
 6. When an individual arrives for intake and is eligible for Medi-Cal benefits, KMC IPU shall initiate the Medi-Cal application. KMC IPU shall provide documentation verifying contact.
 7. KMC staff shall complete an accurate Cerner financial review form for each individual at the time of intake or as soon as possible thereafter, regardless of funding or benefits.
 8. KMC staff shall verify benefit coverage at the beginning of each month for those individuals whose psychiatric treatment stay crosses over into another month.
 9. Any identified medical problem or abnormal laboratory result shall be addressed through consultation and follow up appointment as appropriate.
 10. Documentation shall include IDT plan review and modifications as frequently as the individual's condition warrants.
 11. Documentation of current outpatient medications or reasonable attempts to obtain such documentation shall be included in the KMC IPU record. KMC IPU and outpatient specialty mental health services medical staff shall work in conjunction with each other to ensure continuity in care.
 12. KMC IPU shall document all efforts to obtain medication consents in a good faith effort to begin medication therapy to avoid a delay in treatment.
 13. KMC IPU shall document evidence that individual's support system has been involved, or has been invited to be involved, in the treatment process as consented to by the individual.
 14. KMC IPU shall document reasonable continued efforts to involve the individual in daily program participation when the individual refuses to attend programming.
 15. KMC IPU shall receive the KCMH IDT Information Sheet from the KCMH team. The IDT Information Sheet includes recent treatment information relevant to the individual's care. If unable to obtain the KCMH IDT Information Sheet, there must be evidence that ongoing attempts were made to acquire the information in an effort to increase continuity and appropriateness of care.
 16. KMC IPU shall provide Early Periodic Screening, Diagnosis and Treatment

(EPSDT) and Therapeutic Behavioral Services (TBS) literature at discharge to all individuals who may qualify for these services.

17. The attending psychiatrist shall write discharge summaries no later than fourteen (14) calendar days of discharge from the KMC IPU.
 18. KMC IPU's utilization review staff shall monitor practices and procedures to assure that all staff from all disciplines evaluate and document with consistent standards so the treatment team has consistent information with which to plan treatment in a culturally competent fashion. Documentation shall be written per DHCS standards.
 19. KMC IPU shall scan the KMC IPU transfer discharge form, transition Aftercare Plan, discharge medication list, psychiatric evaluation and documentation of any laboratory tests performed, into the individual electronic health care record within twenty-four (24) hours of discharge on the next business day.
 20. Accurate census notification shall be password protected and sent daily to the Crisis Services Administrator's designee for distribution to the appropriate Outpatient provider.
 21. KCMH shall evaluate KMC IPU's performance, through chart reviews to determine the presence of medical necessity and compliance with State and Federal laws and regulations, and with KCMH policies and procedures.
 22. Handwritten documentation shall be legible.
 23. KMC IPU shall adhere to the KCMH's Problem Resolution Process.
 24. KMC IPU shall use the assigned Unit/Subunit designation for service entry into KCMH's computer system.
 25. Services shall be provided at 1700 Mount Vernon Avenue, Bakersfield, California, 93306.
- m.* Reimbursement for Medi-Cal insured Individuals and Uninsured Individuals
1. KMC shall provide written notification to the KCMH Authorizations Unit, within ten (10) days of admission, when a Kern County Medi-Cal beneficiary or uninsured individual has been hospitalized for psychiatric inpatient services. A request for payment for Kern County Medi-Cal beneficiaries may be denied if the notification is not submitted within this timeframe.
 2. KMC shall submit a Treatment Authorization Request (TAR) to the KCMH Authorization Unit within fourteen (14) days following the discharge of a Kern County Medi-Cal beneficiary or uninsured individual. A request for payment may be denied for Kern County Medi-Cal beneficiaries if the request is not submitted within this timeframe. A copy of the complete medical record shall be submitted with the completed TAR.
 3. KMC shall meet medical necessity criteria set forth in California Code of Regulations Title 9 (CCR Title 9), Section 1820.205 for each day an individual is hospitalized and shall meet Standards of Service as set forth in Exhibit A. Medical record documentation shall meet CCR Title 9 and DHCS standards.
 4. KMC shall, for the submission of a TAR exceeding 100 days: submit a TAR for the first 99 days and then submit a separate TAR for the one hundredth day and beyond.
 5. KMC agrees that the KCMH Authorization Unit shall follow authorization procedures set forth in CCR Title 9, Section 1820.220, and KCMH System of Care Manual of Policies and Procedures, Section 5.1.19, Treatment Authorization Requests in processing TARs received from KMC.

n. Additional Training Requirements

1. KMC staff shall comply with the Mental Health Cultural Competency Plan and attend a minimum of six (6) hours of KMC or KCMH-approved cultural competency training each year. KMC shall annually determine the individuals required to attend.
2. KMC shall train relevant clinical staff on EPSDT services and TBS.
3. KMC will comply with any training requirements of DHCS related to operating an IPU.

d. Certification Review and Capacity Hearings

i. Certification Review Hearings

a. Notice of Certification

1. Inpatient Facility Designated Staff Duties:

- i. Sign the required notice of certification, per required signatures as indicated on the petition.
- ii. On the same day, deliver a copy of the notice of certification to the patient certified.
- iii. At the time of delivery, inform the patient certified that he or she is entitled to a certification review hearing, to be held within four (4) days of the date on which the patient is certified for a period of intensive treatment unless judicial review is requested, to determine whether or not probable cause exists to detain the patient for intensive treatment related to the mental disorder.
- iv. On each day the facility is scheduled for hearings (each facility has a designated schedule) the facility's designated staff will notify the Patients' Rights Advocate Office and the assigned hearing officer, of the number of patients that received a notice of certification.

b. Certification Review Hearing

1. Inpatient Facility Social Services Staff Duties:

- i. Provide any interpretation services as needed for the hearing and for the pre-hearing preparation with the Patients' Rights Advocate and patient.
- ii. Review patient records and psychiatric treatment recommendations related to criteria described in Welfare & Institutions Code, Div. 5, Part I, Ch. 2, Article 4 for Certification for Intensive Treatment.
- iii. Present evidence on behalf of the treating psychiatrist in support of the criteria described in Welfare & Institutions Code, Div. 5, Part I, Ch. 2, Article 4 for Certification for Intensive Treatment.
- iv. At the conclusion of the certification review hearing, provide the Patients' Rights Advocate with a copy of the certification review Minute Order, and file any request for a Writ of Habeas Corpus.
- v. Coordinate any discharge or treatment plans for a patient determined by the hearing officer to either remain in intensive treatment or be discharged to the community.

ii. Capacity (Riese) Hearings

a. Medication Capacity Petition

1. Inpatient Facility Designated Staff Duties:

- i. Complete the Medication Capacity Petition.
- ii. Contact the Clerk of the Court via telephone (661)868-4361 during business hours to provide the Court with the name of the patient

- and to obtain the case number.
- iii. Place the case number on the petition and the proposed order. A capacity hearing will be heard only after a case number is provided by the clerk.
 - iv. Serve a completed copy of the petition in person to the patient.
 - v. Deliver a completed copy of the petition to the Patients' Rights Office via facsimile at (661)635-2980.
 - vi. If the Patients' Rights Office is unable to schedule a Judge Pro Tempore within 48 hours of the request, then a hearing at Kern County Superior Court may be scheduled. The facility must make all attempts to utilize the Judge Pro Tempore Hearing Officer system.
 - vii. If the patient has additionally filed for a Writ of Habeas Corpus, the Kern County Superior Court will allow for both the Writ and the Capacity hearing petition to be heard simultaneously by a Kern County Superior Court judge sitting at the Juvenile Justice Center.
 - viii. When the capacity hearing is heard by a Kern County Superior Court Judge at the Juvenile Justice Center, the facility will contact County Counsel via facsimile or send the referral to County Counsel, who will coordinate the scheduling of the hearing with the court.
- b. Capacity (Riese) Hearing
1. Inpatient Social Services Staff Duties:
 - i. Ensure that the patient is present at the appointed time of the hearing unless the patient has waived his or her presence. If the patient does not wish to appear, then the refusal to appear will be considered as a waiver of appearance.
 - ii. Close the hearing to all but necessary participants. Provide any interpretation services as needed for the hearing and for the pre-hearing preparation with the Patients' Rights Advocate and patient. The patient may expressly invite individuals, at the discretion of the Judge Pro Tempore, or the facility may have additional individuals present as permitted by the Judge Pro Tempore for safety reasons or training purposes.
 - iii. Present to the Judge Pro Tempore its petition which includes the current treating physician's signature. The physician shall be a member of the facility staff who has personally discussed with the patient the prescribed treatment. The petition, signed under penalty of perjury, will serve as the facility's offer of proof. The petition will then be documented on the recorded record by the parties when the capacity hearing begins. The petition will include statement(s) evidencing that the patient lacks the capacity to refuse the prescribed medication. Presentation of the petition will serve as the initial evidence for the facility.
 - iv. At the conclusion of the patient's opposition presentation, if any, the facility shall have the opportunity to rebuttal. Evidence on rebuttal may include testimony, cross examination, and introduction of additional documentation.
 - v. At the conclusion of the hearing, deliver the original petition and signed order to Kern County Superior Court, Juvenile Justice Center, 2100 College Avenue, Bakersfield, CA 93305, within three (3)

business days of the hearing. A copy of the petition and order will be placed in the patient's chart.

- vi. At the conclusion of the hearing, provide a copy of the signed order to the patient and Patients' Rights Advocate.
 - vii. The facility may request a judicial review, also known as an appeal, following an adverse determination. All appeals will be heard via video conference in Department J4 at the Juvenile Justice Center of Kern County Superior Court, or alternatively in the facility where the patient is receiving treatment, within two (2) judicial days from the filing of an appeal.
- e. **Correctional Mental Health:** Individuals housed at Central Receiving or Lerdo Correctional Facility (Correctional Facilities) shall access emergency psychiatric services in compliance with KCMH Memo "Emergency Psychiatric Services for Jail Inmates." Any changes to this memo must be reviewed and approved by KCMH, KMC, and Kern County Sheriff's Office.

7. RESIDENCY PROGRAM

- a. KMC shall continue to provide and maintain its Psychiatry Graduate Medical Education program including the following:
 - i. General Psychiatry Residency
 - ii. Fellowship in Child & Adolescent Psychiatry
 - iii. Fellowship in Addiction Psychiatry
 - iv. Future graduate educational fellowships as deemed necessary by Hospital Authority
- b. KMC shall identify a Joint Chair of Psychiatry and provide payment to the Chair in accordance with the current compensation model for the Department of Psychiatry.

8. PROBLEM RESOLUTION PROCESS

KMC shall inform all individuals receiving psychiatric services of the MHP Problem Resolution Process.

- a. Grievance and Appeal forms shall be visible and available to all individuals receiving psychiatric services, so that they may access the forms independent of staff.
- b. When an individual receiving psychiatric services makes a complaint verbally or in writing to the mental health provider, the provider shall inform the individual of the MHP Problem Resolution Process.
- c. KMC shall forward any completed grievance or appeal forms to the KCMH Patients' Rights Advocates Office (PRA).
- d. When an individual makes a complaint about their inpatient psychiatric services, KMC will notify KCMH's PRA. In conjunction with KMC, the KCMH's PRA shall assist the individual with their complaint and make all attempts to resolve the complaint. Throughout this process, PRA shall have access to patient records and recorded video.

9. REPORTING UNUSUAL OCCURRENCES

- a. KMC shall report unusual occurrences to the KCMH Director, or the KCMH Director's designee.
- b. An unusual occurrence is any event that jeopardized the health and/or safety of individuals receiving psychiatric services, staff and/or members of the general public, including but not limited to physical injury and death. Unusual occurrences shall include, but not be limited to:
 - i. Death other than suicide.
 - ii. Death by suspected or known suicide.
 - iii. Suicide attempt requiring Emergency Medical Treatment (EMT).
 - iv. Intentional injury (not suicide attempt) requiring EMT.

- v. Client injured another person (e.g., staff/another client/visitor).
- vi. Tarasoff Report, i.e., client makes a threat to harm another person.
- vii. Seclusion, restraint or manual containment.
- viii. Allegations of abuse of client/visitor.
- ix. Medication prescription and/or administration errors.
- x. Client/visitor is victim and/or perpetrator of assault-physical, sexual, or verbal.
- xi. Allegations of client/visitor property loss.
- xii. Unauthorized/inappropriate release of protected health information.
- xiii. Allegations of unethical relationships or other unprofessional conduct by staff.
- xiv. Observation and/or information regarding:
 - a. Questionable or inappropriate staff behavior related to client/visitor care.
 - b. Suspected violation of professional licensure and/or ethics.
- xv. Possibility or threat of legal action and/or negative media attention.
- xvi. Unusual occurrences are to be reported to the KCMH Director, or the KCMH Director's designee, within five (5) workdays of the event, or as soon as possible after becoming aware of an unusual event. Written reports are to include the following elements:
 - a. Name and address of the person(s) involved; and
 - b. Complete written description of the occurrence, including outcomes; and
 - c. Written report of KMC's investigation and conclusions; and
 - d. List of persons directly involved and/or with direct knowledge of the occurrence; and
 - e. Name and address of KMC's liability insurance carrier believed to be involved.
 - f. In addition, KMC shall provide quarterly occurrence reports to the KCMH Director, or the KCMH Director's designee, or indication of no occurrences if applicable. Quarterly occurrence reports shall include the following:
 - 1. Date of occurrence;
 - 2. Name of individual(s) involved; and
 - 3. Date occurrence was reported to KCMH.
- xvii. Unusual occurrences involving seclusion, restraint and/or manual containment must be reported quarterly to the Office of Patients' Rights and to the Crisis Services Administrator via the Denial of Rights / Seclusion and Restraint Quarterly Report, in accordance with the deadlines required by the California Health and Human Services Agency.

10. Performance Measures

- a. Patient Satisfaction Surveys shall indicate a goal of an overall satisfaction rating of 80% or above and shall be provided quarterly. Any results below 80% shall be reviewed in the joint Monthly Administrative meetings to identify plans for improvement.
- b. The performance goal for recidivism for readmission shall be less than 25% within 30 days from the date of discharge and shall be reported quarterly. Any results below 25% shall be reviewed in the joint Monthly Administrative meetings to identify plans for improvement.
- c. One hundred percent (100%) of charts for individuals who are readmitted within a 30-day period from the date of discharge shall be reviewed by KMC IPU. All identified internal risk factors shall be discussed and resolved if possible. Outcomes shall be presented at the joint Monthly Administrative meeting between KCMH and KMC Administration.

EXHIBIT “B”
Description of County Services

1. **Kern County Mental Health (KCMH)** has, in accordance Title 9, California Code of Regulations (CCR) Section 1810.430 Contracting for Psychiatric Inpatient Hospital Service Availability, contracted with **Kern Medical Center**, in accordance with Title 42, Code of Federal Regulations (CFR), Section 438.6(/), for the provision of inpatient psychiatric services.
2. **KCMH**, as the Mental Health Plan (MHP) provider, shall conduct oversight with authority assigned to the Crisis Services Administrator or designee to ensure quality of care and compliance with Department of Health Care Services (DHCS) standards.
3. **KCMH** shall:
 - a. Comply with all California (DHCS) requirements including but not limited to licensure, certification, and designation.
 - b. Comply with all applicable federal, state, and local requirements in providing services, including but not limited to the California Code of Regulations (CCR) Title 9, CCR Title 22, Code of Federal Regulations (CFR) Title 42, federal and state billing requirements including Medicare and Medi-Cal regulations. Health Insurance Portability and Accountability Act (HIPAA), Equal Employment Opportunity Commission (EEOC), Fair Employment and Housing Act (FEHA), and Cal-Occupational Safety and Health Administration (OSHA).
 - c. Provide Hospital Authority with Encounter Level Data Reports for care rendered to the uninsured population on a monthly basis for purposes of reporting to the Medi-Cal 2020 Global Payment Program (GPP).
4. **KCMH shall recognize KMC** as the designated entity to provide involuntary care under Section W&I 5150 of the California Welfare and Institutions Code (WIC) otherwise known as the Lanterman-Petris-Short Act (LPS). **KMC** shall:
 - a. Comply with all California Department of Health Care Services (DHCS) requirements including but not limited to licensure, certification, and designation.
 - b. Comply with all applicable federal, state, and local requirements in providing services, including but not limited to Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), Emergency Medical Treatment and Active Labor Act (EMTALA), California Code of Regulations (CCR) Title 9, CCR Title 22, Code of Federal Regulations (CFR) Title 42, federal and state billing requirements including Medicare and Medi-Cal regulations. Health Insurance Portability and Accountability Act (HIPAA), Equal Employment Opportunity Commission (EEOC), Fair Employment and Housing Act (FEHA), and Cal-Occupational Safety and Health Administration (OSHA).
5. **KCMH** shall maintain and monitor all necessary professional staff licensure. **KCMH** shall meet all the requirements made known to **KCMH** to allow staff to participate in and provide services, including, but not limited to, medical examinations, patients' rights functions, performance improvement activities, supervision, orientation, in-service education, and attendance at case conferences.
6. **KCMH** shall provide the following services:
 - a. Physician Services:
 - i. **KCMH** Civil Service Physicians who are assigned to provide psychiatric services at **KMC** shall perform medical assessments, psychiatric assessments, medication services and treatment management in accordance with their licensure.
 - a. Services shall be provided at 1700 Mount Vernon Avenue, Bakersfield, California, 93306.
 - ii. **KCMH** Civil Service Physicians will share on-call duties with **KMC** Physicians to provide psychiatric consultation on weekdays, Monday through Thursday, from 5:00 p.m. to 8:00 a.m., and on weekends, starting on Friday from 5:00 p.m. until Monday at 8:00 a.m.

- iii. KCMH intends that Kern Medical Hospital Authority shall become the primary Physician employer and hiring source for full-time new employee Physicians serving both organizations. KCMH will continue to collaborate with the KMC in Physician recruitment, hiring, supervision and retention.
 - 1. KCMH intends to continue to engage part-time Physician services as appropriate.
 - 2. Civil Service Physicians who choose to maintain their employment with KCMH may continue to do so during and after KMC's transition to the Kern County Hospital Authority.
- b. Crisis Services Administration
 - i. Psychiatric Evaluation Center-Crisis Stabilization Unit (PEC-CSU), including the Transfer Resource Center (TRC), shall follow the processes set forth in the most recent revision of the Memorandum "Transfer Protocol from PEC-CSU to KMC-IPU", currently dated June 26, 2012, including but not limited to:
 - 1. PEC-CSU staff shall contact the KMC House Supervisor to coordinate pending admissions to KMC IPU.
 - 2. The PEC-CSU Transfer and Resource Coordinator (TRC) staff shall assist in providing linkage for individuals from the KMC Emergency Department (ED), Medical Floor, or other non-IPU location to the KMC IPU or other inpatient psychiatric facilities as appropriate.
 - 3. Per the most recent revision of the KCMH Memorandum entitled "Access to Medical Care," currently dated June 1, 2016, PEC-CSU staff shall accompany for up to eight (8) hours, individuals requiring emergency services from KMC ED who have been admitted to PEC-CSU on a W&I 5150.
 - 4. PEC-CSU shall receive individuals from the KMC ED who require acute psychiatric services (after medical clearance) in accordance with the current revision of the Medical Care Matrix and/or the most recent revision of the KCMH Memorandum "Guidelines for Psychiatric Evaluation of Patients in the KMC-ED," currently dated August 3, 2011.
 - ii. KCMH, through the Crisis Services Division shall monitor services provided by KMC to:
 - 1. Ensure clinically appropriate care;
 - 2. Ensure proper discharge planning and linkage to services
 - 3. Ensure collaboration between System of Care providers
 - 4. Ensure collaboration with community partners
 - 5. Interface with KMC IPU daily
 - 6. Support of patients' rights
 - 7. Provide oversight of:
 - a. Contract standards monitoring and compliance
 - b. Technical compliance
 - c. DHCS and/or KCMH Plans of Correction
 - d. Integration of Recovery-Based services
 - e. Inpatient Peer Service development
 - iii. The Mobile Evaluation Team (MET) provides crisis intervention and W&IC 5150 evaluations. In the event a W&I 5150 certified doctor from KMC is not available to provide the mental health intervention and/or W&IC 5150 evaluation, the Mobile Evaluation Team will respond and provide the service.
 - 1. MET staff shall provide W&I 5150 Certification Training that is available to KMC psychiatric physicians.
 - 2. Facilitation of Hospital-to-KMC Transfer Process:

- a. When MET has concluded that a W&I 5150 involuntary hold is needed for an individual at a Hospital other than KMC, and a medical condition precludes admission to the PEC-CSU, then:
 - i. MET shall contact the KMC Transfer Coordinator to initiate the admission process to KMC IPU.
 - ii. The sending Hospital shall contact the KMC Transfer Coordinator and provide additional required information.
 - iii. The KMC Transfer Coordinator shall coordinate with KMC IPU to determine whether to accept or deny the request for admission.
 - iv. The KMC Transfer Coordinator shall inform the sending Hospital and MET of the decision to accept or deny the request for admission.
 - 1. The sending Hospital and KMC IPU shall perform the transfer process.
 - 2. If not accepted, a consult shall occur between the KMC physician and the sending hospital physician to satisfactorily resolve any remaining concerns.
- iv. KCMH Crisis Case Management Outreach (CCMO) team, in accordance with the most recent revision of the KCMH Memorandum entitled "CCMO/KCMH New Case Referral Protocol," currently dated August 17, 2014, shall:
 - 1. Review KMC IPU census and referrals on a daily (Monday-Friday) basis.
 - 2. Meet with individuals hospitalized in the KMC IPU and with KMC IPU staff within one (1) business day of receipt of referral to discuss services provided by KCMH. If the individual is receptive to services, CCMO staff shall advise and assist KMC IPU staff to coordinate inclusion of KCMH services in the Discharge Plan.
 - 3. CCMO staff shall attend scheduled Daily Treatment Focus (DTF) and Interdisciplinary Treatment (IDT) meetings.
- v. Care Coordination Unit (CCU) shall monitor for appropriate referrals to lower level of care with Managed Care Plans' (Health Net, KHS) behavioral health services. CCU shall assist with referral process and linkage to Behavioral Health providers for those inpatient clients not meeting criteria for Specialty Mental Health services. CCU shall follow clients after hospital discharge until linkage is completed.
- vi. Authorizations/Treatment Authorization Requests (TAR): KCMH Authorization Unit shall follow authorization procedures set forth in CCR Title 9, Section 1820.220, and KCMH System of Care Manual of Policies and Procedures, Section 5.1.19, Treatment Authorization Requests in processing TARs received from the Kern Medical Hospital Authority.
 - 1. Conduct monthly Utilization Review (UR) meetings, including oversight of the TAR process and documentation standards as required by DHCS.
- c. Outpatient services:
 - i. KCMH outpatient teams and other contracted outpatient teams shall document in the KCMH Electronic Health Record (EHR, currently Cerner) as required by KCMH policies and procedures.
 - ii. The KCMH team or contracted team assigned to the individual who has been admitted to the KMC IPU shall
 - 1. Within twenty-four (24) hours of notification of admission, submit the KCMH IDT Information Sheet to KMC IPU.
 - 2. Conduct a face-to-face meeting with the individual at KMC IPU.

3. Re-open charts for individuals who received services from the KCMH System of Care within the prior twelve (12) month period, i.e., open "Warm Charts."
 4. Assist with discharge planning and placement.
 5. Ensure psychiatric follow-up has been scheduled in accordance with KCMH Policies and Procedures and/or Contractual requirements as appropriate.
 6. Attend IDTs.
 7. Complete the IDT Brown Form.
 8. Assist with acquisition of Benefits.
 9. Assist with designation of Payees if needed.
- d. Correctional Mental Health: Individuals housed at Central Receiving or Lerdo Correctional Facility (Correctional Facilities) shall access emergency psychiatric services in compliance with the most recent revision of KCMH Memo "Emergency Psychiatric Services for Jail Inmates", currently dated April 4 2016.
 - e. Substance Use Division (SUD) services shall be provided to individuals in the KMC IPU as needed. Follow-up outpatient SUD services shall be made available to individuals as part of the discharge planning process, as appropriate. Individuals are referred to specialty SUD treatment based on medical necessity criteria. KCMH SUD System of Care staff shall provide:
 - i. Screening and referral to SUD community based services for individuals who are Medi-Cal funded or indigent, at the request of KCMH or KMC.
 - ii. Staff utilize the Screening Brief Intervention and Referral to Treatment (SBIRT) model to screen individuals both at the KMC IPU and Medical Floors.
 - iii. Treatment referrals may include social model detoxification, residential treatment, and/or outpatient treatment.
 - f. Recovery Support Services shall be provided as part of the discharge planning process, including, but not limited to, the Consumer Family Learning Center (CFLC) and Freise HOPE House.
 - g. Patients' Rights Services
 - i. Certification Review Hearings
 1. Notice of Certification
 - a. The Patients' Rights Advocate (PRA) shall meet with each individual certified to discuss the commitment process and to assist each individual in preparing for the certification hearing, to answer questions or otherwise assist the individual as appropriate.
 - b. Certification Review Hearing Officer shall:
 - i. Determine whether the notice has been properly completed and served on the individual and sent to his or her PRA.
 - ii. Determine whether the hearing is being held within four (4) days of certification. If not, then the facility shall notify the Crisis Services Administrator and the Office of Patient Rights and designees within twenty-four (24) hours via the Unusual Occurrence Report (UOR).
 2. Certification Review Hearing
 - a. Certification Review Hearing Officer shall:
 - i. Conduct the individual's certification review hearing.
 - ii. Electronically record proceedings. The hearing officer shall inform all parties of the electronic recording taking place. If objections are made by the individual or representative witness, a verbal statement to the objection shall be made and the respective individual's testimony shall be recorded in writing.

- iii. At the conclusion of the certification review hearing, make a determination as to whether or not the individual certified is, as a result of a mental disorder is a danger to others, to himself or herself, or gravely disabled. The determination of the hearing officer should be given both verbally and in writing.
 - b. PRA Duties:
 - i. Provide and operate recording device for the hearing officer.
 - ii. Assist the individual in presenting evidence on his or her behalf, to ask questions of each person presenting evidence in support of the certification decision, and make reasonable requests for the attendance of the facility employees who have knowledge of, or participated in, the certification decision.
 - iii. Secure all documents containing Protected Health Information (PHI) in the lock box provided by KCMH.
 - iv. Store electronic hearing records onto the KCMH secured electronic drive (VPN-virtual private network), available by individual VPN number for designated individuals only. Designated individuals include the KCMH Director, Crisis Services Administrator, PRA Supervisor, County Counsel, and Inpatient Treatment Psychiatrists for review of their assigned patients' hearings. The recording shall be released only for purposes of patient rights investigations regarding the individual while he or she was treated for inpatient psychiatric care during the period of time that the hearing took place.
- ii. Capacity (Riese) Hearings
 - 1. Medication Capacity Petition
 - a. The PRA shall contact the available Judge Pro Tempore to schedule a time and date to hold the hearing within 48 hours of the filing and serving a copy of the petition to the individual.
 - b. The PRA shall verify with the individual that he or she received a copy of the petition. The PRA shall also inform the individual of his or her hearing rights, and request if the individual desires representation from the PRA in the hearing.
 - 2. Capacity (Riese) Hearing
 - a. PRA Duties:
 - i. Provide and operate recording device for the hearing officer.
 - ii. After the facility provides the petition as the offer of proof to the Judge Pro Tempore at the beginning of the hearing on record, the individual or the Patients' Rights Advocate shall present his or her evidence to the Judge Pro Tempore. Evidence may include testimony, cross examination, and introduction of documentation. Cross-examination of the petitioner regarding declared statements made in the petition shall commence at this time.
 - iii. If the individual refuses representation by the PRA, the PRA shall announce such refusal on the record at the beginning of the hearing. At that time, the Judge Pro Tempore will question the individual under *in re Conservatorship of Joel E.* (2005) 132 Cal.

App. 4th 429, to determine if the individual has capacity to represent his or her self. If the individual has capacity to represent his or her self, the PRA will be asked to leave the hearing. A determination of capacity to represent one's self is not a determination that one has the capacity to give or withhold consent to antipsychotic medication.

- iv. Secure all documents containing Protected Health Information (PHI) in the lock box provided by the KCMH Department.
 - v. Store electronic hearing records onto the KCMH secured electronic drive (VPN-virtual private network), available by individual VPN number for designated individuals only. Designated individuals include the Mental Health Director, Crisis Services Administrator, PRA Supervisor, County Counsel, and Inpatient Treatment Psychiatrists for review of their assigned patients' hearings. The recording will be released only for purposes of patient rights investigations regarding the individual while he or she was treated for inpatient psychiatric care during the period of time that the hearing took place.
- iii. Access and Use of Hearing Recordings
- 1. Protected Storage
 - a. The PRA shall:
 - i. Transport the recording device in a locked case, stored in a locked vehicle trunk to the KCMH Administration facility.
 - ii. Upload each hearing recording immediately following hearing sessions to the virtual private network.
 - iii. Place each hearing recording separately in the respective inpatient facility file by name, date, and individual represented.
 - iv. Erase entire recording once it is electronically stored.
 - b. The KCMH Director's Office shall:
 - i. Maintain oversight of the virtual private network.
 - ii. Provide an individual VPN number to designated personnel for access to the network for review of requested hearings.
 - iii. Release recordings only to the designated individuals (as described in Section II. C. 4.) who have a right to review the recording for investigation regarding information shared in the respective individual's hearing.
 - 2. Access and Use
 - 1. The KCMH Director's Office shall, upon written request by a designated individual (as described in Section II. C. 4.) for review of a specific hearing, provide access for the individual to the hearing via the electronic virtual private network hearing file within 10 working days of written request.
 - ii. Designated individuals shall:
 - 1. Request to review specific hearing by facility name, date, and name of individual represented via secure zip email to the Mental Health Director's Senior Office Services Specialist, and include in the subject line, "Request for

review of hearing recording”; in message box include hearing identifying information and reason for the review.

2. Review recording within 5 working days of receipt of recording access.
3. Inform the KCMH Director’s Senior Office Services Specialist in writing when review is complete.

iv. Training

1. Social Services and Treatment personnel

a. The Patients’ Rights Advocate shall:

- i. Provide Bi-Annual training to all KMC IPU social service and medical treatment personnel in the LPS Intensive Treatment Certification Review mandates as described in Welfare & Institutions Code, Div. 5, Part I, Ch. 2, Article 4.
- ii. Provide additional training and consultation as requested.

7. KCMH shall provide services that follow the agreed upon protocols for the following:

a. KMC Emergency Department (ED)

i. Per the most recent revision of KCMH Memorandum entitled, “Access to Medical Care,” currently dated June 1, 2016, PEC-CSU shall:

1. Upon receipt of the initiating phone call and patient medical clearance information from KMC ED, the PEC-CSU staff shall accept or deny transfer of the individual to the PEC-CSU and advise the KMC ED accordingly.
 - a. Based primarily on the Medical Care Matrix, PEC-CSU staff shall either accept transfer to the PEC-CSU or request direct admittance to the KMC IPU or Medical Floor.
 - b. If accepted for admittance to the PEC-CSU, the PEC-CSU shall triage, assess and admit the individual as appropriate.
2. PEC-CSU licensed medical staff shall perform a medical screening within the first hour of the arrival of an individual at the PEC-CSU:
 - a. If it is determined by the licensed medical staff that the individual is not medically stable and requires medical treatment, then:
 - i. PEC-CSU licensed medical staff in consultation with a Physician shall notify the KMC ED staff of the need for the transfer from PEC-CSU to KMC ED.
 - ii. The PEC-CSU staff shall facilitate the transfer of the individual to the KMC ED.
 - iii. PEC-CSU staff shall accompany for up to eight (8) hours, individuals requiring emergency services from KMC ED who have been admitted to PEC-CSU on a W&I 5150.
 - b. If it is determined by the licensed medical staff that the individual is medically stable, then the PEC-CSU shall triage, assess and admit the individual as appropriate.

b. For individuals receiving services on the KMC Medical Floor, KCMH shall provide all services that are the standard of care on the KMC IPU, including but not limited to:

- i. Inpatient Services Supervisor
- ii. CCMO services
- iii. CCU services
- iv. KCMH Outpatient Teams and Contract Provider services

- v. Participation in the following processes as appropriate:
 - 1. IDT
 - 2. DTF
 - 3. Hearing Processes
 - vi. Additional services as appropriate.
 - c. KCMH, as the MHP, shall provide oversight and supportive services to the KMC IPU as appropriate. Services shall include, but are not limited to:
 - i. Attendance at IDTs and DTFs as scheduled.
 - ii. Provision of SUD services to individuals in the KMC IPU as needed. Follow-up outpatient SUD services shall be made available to individuals as part of the discharge planning process, as appropriate.
 - iii. Collaboration with KMC Social Services to assist with discharge planning.
 - iv. Assistance with continuity of care, as permitted by HIPAA and 42 CFR, by providing relevant patient information as appropriate. Information provided may include, but is not limited to:
 - 1. The IDT Information Sheet
 - 2. A current Medication Administration Record (MAR),
 - 3. Psychiatric evaluations and testing reports for KCMH individuals admitted as inpatients to the KMC IPU.
 - v. Assistance with patient transportation at the time of discharge as appropriate.
 - vi. Assistance with linkage to outpatient and community-based services.
 - vii. Access and linkage to long-term care facility placements.
 - viii. Provision of patients' rights services.
 - ix. Assistance with the Hearing Process as needed.
 - x. Initiate planned admissions to the Kern Medical IPU. Planned Admissions shall be authorized according to KCMH Manual of Policies and Procedures, Section 5.3.4, titled Planned Admission to Kern County Mental Health Contracted Inpatient Facilities. Individuals shall meet medical necessity criteria for reimbursement of psychiatric inpatient hospital services as specified in CCR Title 9, Chapter 13, Section 1820.205.
8. **KCMH Physicians shall comply with the following **Standards of Service** while working at KMC:**
- a. First use approved **Non-Violent Crisis Intervention** techniques for managing mental health challenges that would traditionally be responded to by seclusion and physical restraints.
 - b. There shall be a face-to-face evaluation by a psychiatrist of all individuals within twenty-four (24) hours of admission to KMC at which time, KCMH will be notified. Medical necessity, in accordance with CCR Title 9 and DHCS standards, must be established for any individual admitted for psychiatric inpatient services. To substantiate medical necessity, the psychiatrist's evaluation must include at least the following:
 - i. a mental status exam,
 - ii. onset of illness,
 - iii. chief complaint,
 - iv. the circumstances that led to the services.
 - c. Documentation of medical necessity shall be consistent by all disciplines and shall meet DHCS standards. Additional Training Requirements
 - i. KCMH staff shall comply with the Mental Health Cultural Competency Plan and attend a minimum of six (6) hours of KCMH-approved cultural competency training each year.
 - ii. KCMH shall train relevant clinical staff on TBS and EPSDT services.
 - iii. KCMH shall comply with any training requirements of DHCS related to operating an IPU.
 - iv. KCMH shall provide training on Core Competencies as identified by KCMH.

9. RESIDENCY PROGRAM

- a. KCMH shall continue to provide and maintain its Psychiatry Graduate Medical Education program jointly with KMC including the following:
 - i. General Psychiatry Residency
 - ii. Fellowship in Child & Adolescent Psychiatry
 - iii. Fellowship in Addiction Psychiatry
 - iv. Future graduate educational fellowships as deemed necessary by Hospital Authority
- b. KCMH shall recognize a Joint Chair of Psychiatry as identified jointly by KMC and KCMH and provide payment to the Chair in accordance with the current compensation model for the Department of Psychiatry.

10. PROBLEM RESOLUTION PROCESS

KCMH shall inform all individuals receiving psychiatric services of the MHP Problem Resolution Process.

- a. Grievance and Appeal forms shall be visible and available to all individuals receiving psychiatric services, so that they may access the forms independent of staff.
- b. When an individual receiving psychiatric services makes a complaint verbally or in writing to the mental health provider, the provider shall inform the individual of the MHP Problem Resolution Process.
- c. KCMH staff shall forward any completed grievance or appeal forms to the KCMH PRA Office.
- d. When an individual makes a complaint about their inpatient psychiatric services, KCMH staff will notify KCMH's PRA Office. In conjunction with KMC, the KCMH's PRA Office shall assist the individual with their complaint and make all attempts to resolve the complaint. Throughout this process, the KCMH PRA Office shall have access to patient records and recorded video.

11. REPORTING UNUSUAL OCCURRENCES

- a. KCMH staff shall report unusual occurrences to the Director, or the Director's designee.
- b. An unusual occurrence is any event that jeopardized the health and/or safety of individuals receiving psychiatric services, staff and/or members of the general public, including but not limited to physical injury and death. Unusual occurrences shall include, but not be limited to:
 - i. Death other than suicide.
 - ii. Death by suspected or known suicide.
 - iii. Suicide attempt requiring Emergency Medical Treatment (EMT).
 - iv. Intentional injury (not suicide attempt) requiring EMT.
 - v. Client injured another person (e.g., staff/another client/visitor).
 - vi. Tarasoff Report, i.e., client makes a threat to harm another person.
 - vii. Seclusion, restraint or manual containment.
 - viii. Allegations of abuse of client/visitor.
 - ix. Medication prescription and/or administration errors.
 - x. Client/visitor is victim and/or perpetrator of assault-physical, sexual, or verbal.
 - xi. Allegations of client/visitor property loss.
 - xii. Unauthorized/inappropriate release of protected health information.
 - xiii. Allegations of unethical relationships or other unprofessional conduct by staff.
 - xiv. Observation and/or information regarding:
 1. Questionable or inappropriate staff behavior related to client/visitor care.
 2. Suspected violation of professional licensure and/or ethics.

- xv. Possibility or threat of legal action and/or negative media attention.
- xvi. Unusual occurrences are to be reported to the Director, or the Director's designee, within five (5) workdays of the event, or as soon as possible after becoming aware of an unusual event. Written reports are to include the following elements:
 - 1. Name and address of the person(s) involved; and
 - 2. Complete written description of the occurrence, including outcomes; and
 - 3. Written report of Kern Medical Hospital Authority's investigation and conclusions; and
 - 4. List of persons directly involved and/or with direct knowledge of the occurrence; and
 - 5. Name and address of Kern Medical Hospital Authority's liability insurance carrier believed to be involved.
 - 6. In addition, Kern Medical Hospital Authority shall provide quarterly occurrence reports to the Director, or the Director's designee, or indication of no occurrences if applicable. Quarterly occurrence reports shall include the following:
 - a. Date of occurrence;
 - b. Name of individual(s) involved; and
 - c.** Date occurrence was reported to KCMH.

**EXHIBIT “C”
Fee Schedule**

1. Kern County Mental Health (KCMH) & Kern Medical Center (KMC) both agree to:
 - a. Collaborate on re-defining the role of Conservator to include Medical Necessity Standards of Care.
 - b. Adhere to invoicing and payment reimbursement for services rendered according to the Benefits and Liability Matrix.
 - c. Comply with financial reconciliation standards according to a claims adjudication process
 - d. Collaborate in data-sharing to support the Annual Acute Care Hospital Cost Report and any other cost reporting necessary to insure compliance with operational and financial obligations of KMC and KCMH.
 - e. Comply with the County Administrative Day Waiver Policy as follows:
 - i. The waiver addresses how many placement contact attempts are required each week and is driven by the number of clinically appropriate facilities available in the area.
 - ii. An appropriate facility is defined as one that has the clinical capability and expertise to safely manage the patient’s active conditions.
 - iii. KCMH issues administrative day waivers and may waive the 5 contact attempts per week requirement if there are fewer than five (5) appropriate facilities available.
 - iv. One cannot designate a facility as "inappropriate" based on availability of beds or how full the facility is.
 - v. There must be in all cases no less than one (1) placement contact attempt per week if an administrative day waiver is issued.
 - vi. Documentation must be present in the clinical record or on a log reflecting when, where, who, and status of each placement attempt made.
 - vii. Each waiver is case/patient specific thus requiring separate waivers issued for each individual situation.
2. Benefits & Liability Matrix:
 - a. The following grid indicates how benefits and medical liability payments will be adjudicated based on
 - i. Who employs the provider
 - ii. Location of Job Duties
 - b. Assumptions used in the matrix are as follows:
 - i. Finance to pay amounts owed each month.
 - ii. Reconciliation between entities to be settled quarterly.
 - iii. The entity employing the physician holds the Medical Liability Policy for that physician.
 - iv. Location of Job Duties dictates who is financially responsible for Salary, Wages, Benefits, Liability Premium, and Settlement payments.
 - v. Bidirectional information sharing between entities is expected to support the Hospital Authority finance protocol for split billing when necessary

Benefits and Liability Matrix:

Provider Employed By	Location of Job Duties	Entity Contracts With	Responsible for SALARY	Responsible for BENEFITS	Responsible for LIABILITY PREMIUM	Holds Medical Liability Policy	Pays Settlements	Bills for SWB & Liability Reimbursement
Hospital Authority	Hospital Authority (100%)	N/A	Hospital Authority	Hospital Authority	Hospital Authority	Hospital Authority	Hospital Authority	N/A
	Kern County Mental Health	Mental Health contracts with Hospital Authority	Kern County Mental Health	Kern County Mental Health	Kern County Mental Health		Kern County Mental Health	Hospital Authority Bills Kern County Mental Health
	Mixed	Bidirectional Contract	Split Respective Portion	Split Respective Portion	Split Respective Portion		Depends on Location of Service	Hospital Authority Bills Kern County Mental Health
Kern County Mental Health	Hospital Authority (100%)	Hospital Authority contracts with Mental Health	Hospital Authority	Hospital Authority	Hospital Authority	Kern County Mental Health	Hospital Authority	Kern County Mental Health Bills Hospital Authority
	Kern County Mental Health	N/A	Kern County Mental Health	Kern County Mental Health	Kern County Mental Health		Kern County Mental Health	N/A
	Mixed	Bidirectional Contract	Split Respective Portion	Split Respective Portion	Split Respective Portion		Depends on Location of Service	Kern County Mental Health Bills Hospital Authority

3. Compensation: Kern County Mental Health (KCMH) shall compensate Kern Medical Center (KMC) for services provided as follows:

- a. KMC will be reimbursed the per diem rate for Acute Inpatient and Administrative Bed Days as outlined in the Department of Health Care Services’ County Interim Rate Table for Short-Doyle Medi-Cal Reimbursement for Kern County for patients with Medi-Cal.
- b. KMC will be reimbursed the per diem rate for Acute Inpatient and Administrative Bed Days as outlined in the Department of Health Care Services’ County Interim Rate Table for Short-Doyle Medi-Cal Reimbursement for Kern County for patients without a payer source (e.g. Indigent population).
- c. KMC will be compensated for services rendered to the Dually Eligible (Medi-Cal/Medicare) population as follows:
 - i. Hospital Authority will bill Medicare initially
 - ii. Hospital Authority will submit a Treatment Authorization Request (TAR) to Kern County Mental Health for Medi-Cal authorization of services not otherwise covered by Medicare.
- d. KCMH agrees to a transition period from July 1, 2016 through January 31, 2017 wherein any denied TARs will be reimbursed by KCMH through an alternative funding source. In addition, the KCMH Authorization Team will provide KMC with a monthly summary of TAR results for feedback and quality improvement.
- e. KCMH shall provide KMC with Encounter Level Data Reports for care rendered to the uninsured population on a monthly basis for purposes of reporting to the Medi-Cal 2020 Global Payment Program (GPP).
- f. KMC will be compensated according to the table below for the Chair of Psychiatry.
- g. KMC will be compensated according to the table below for Resident Services provided

Any changes to the amount of this agreement will require written approval by the Kern County Board of Supervisors and the consent of each agency.

Summary Table	Realignment				
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Acute Inpatient Bed Days	\$ 2,150,000	*	*	*	*
Administrative Bed Days	\$ 450,000	*	*	*	*
Reimbursement for Chair of Psychiatry	\$ 250,000	\$ 260,000	\$ 270,000	\$ 280,000	\$ 290,000
Resident Reimbursement	\$ 1,500,000	\$ 1,560,000	\$ 1,600,000	\$ 1,700,000	\$ 1,800,000
Medi-Cal/Medicare Dual Eligible	See #3 Above	See #3 Above	See #3 Above	See #3 Above	See #3 Above

*Annual Inpatient and Administrative Bed Day Rate determined Annually by the State of CA, DHCS according to the County Interim Rate Table for Medi-Cal Reimbursement.

EXHIBIT “D”
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 Kern County Mental Health (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of _____ (the “**Effective Date**”).

RECITALS

WHEREAS, Covered Entity and BAA is each 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:

DEFINITIONS

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

“**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.

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

“**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](#).

“**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](#).

“**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.

“**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.

“**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.

“**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](#).

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

“**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.

“**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](#).

“**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.

OBLIGATIONS OF BUSINESS ASSOCIATE

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.

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.

Reporting Non-Permitted Use or Disclosure.

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 twenty-four (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.

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.

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.

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.

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.

Access to Protected Health Information. To the extent that Business Associate maintains 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.

Amendment of Protected Health Information. To the extent that Business Associate maintains 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.

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.

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.

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.

Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, limits 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.

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.

OBLIGATIONS OF COVERED ENTITY

Covered Entity's Obligations.

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.

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.

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.

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.

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.

TERM AND TERMINATION

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

Termination of Underlying Agreement.

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.

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.

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:

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

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.

Disposition of Protected Health Information Upon Termination or Expiration.

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.

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.

MISCELLANEOUS

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.

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.

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.

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.

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.

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. Business Associate self-insures as a matter of normal business practice, and will continue to self-insure for the term of this Agreement in at least the minimum amounts necessary to meet reasonable risks. Business Associate, upon request of Covered Entity, shall forward documentation that demonstrates that Business Associate self-insures as a matter of normal business practice before commencing the Work.

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.

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.

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.

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.

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.

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:

Kern County Mental Health
PO Box 1000
Bakersfield, California 93302
Attn: Director

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

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.

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

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 of Kern County, California, which shall have jurisdiction over all such claims.

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.

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.

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.

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

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:
Kern County Mental Health

Title: Chief Executive Officer
Date: _____

Title: Director
Date: _____



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

June 22, 2016

SUBJECT: Proposed Legal Services Agreement with the County of Kern, Office of County Counsel

Required Action: Approve; Authorize Chairman to Sign

Kern County Ordinance Code section 2.170.080 H states: "As provided in a legal services agreement between the County of Kern and the hospital authority and until such time as this chapter is amended by the board of supervisors to provide otherwise, the office of county counsel shall provide or arrange for legal services to the hospital authority, and shall bill the hospital authority accordingly"

Under the proposed agreement, the Office of County Counsel will provide or arrange for competent and experienced legal counsel, to provide advice on contractual, statutory, regulatory, and other legal matters related to the business and operations of the Hospital Authority. This advice will include, without limitation, drafting and reviewing contracts, meeting agendas and notices, providing legal opinions and resolutions, reviewing policies and procedures, attending Hospital Authority board meetings and closed sessions as legal advisor to Hospital Authority, generally supervising and coordinating litigation involving Hospital Authority with special counsel retained to represent it on specific cases and matters, and advising the Board of Governors and its Chief Executive Officer and staff on matters pertaining to the Hospital Authority.

The proposed agreement memorializes the duties of the parties, the compensation, billing requirements, and provides for a supplemental conflicts policy that establishes an ethical wall within the Office to County Counsel to ensure both the county and the Hospital Authority receive independent legal advice and to prevent confidential information from being shared with opposing counsel. The Hospital Authority will compensate the Office of County Counsel based on an hourly rate, which is subject to change on an annual basis. The term of the agreement is from June 21, 2016, and remains in effect until terminated.

Therefore, it is recommended that your Board approve the Legal Services Agreement with the County of Kern, Office of County Counsel for the provision of legal services to the Hospital Authority, and authorize the Chairman to sign.

LEGAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into effective this ____ day of _____, 2016, by and between the COUNTY OF KERN, a political subdivision of the state of California ("County"), and the KERN COUNTY HOSPITAL AUTHORITY, a county hospital authority, which owns and operates Kern Medical Center ("Hospital Authority").

WITNESSETH:

WHEREAS:

(a) Kern County Counsel ("Attorney") is the legal adviser to the County of Kern under authority of Government Code sections 26526 and 26529 and is authorized to render legal services to other local public entities under authority of Government Code 26520; and

(b) Kern County Ordinance Code section 2.170.080 H states: "As provided in a legal services agreement between the County of Kern and the hospital authority and until such time as this chapter is amended by the board of supervisors to provide otherwise, the office of county counsel shall provide or arrange for legal services to the hospital authority, and shall bill the hospital authority accordingly"; and

(c) It is necessary and appropriate that legal services be performed for Hospital Authority with respect to general legal matters pertinent to the Hospital Authority's mission and purpose.

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

1. **Services to be Rendered.** Attorney shall provide or arrange for competent and experienced legal counsel to provide advice on contractual, statutory, regulatory, and other legal matters related to the business and operations of the Hospital Authority. This advice will include, without limitation, drafting and reviewing contracts, meeting agendas and notices, providing legal opinions and resolutions, reviewing policies and procedures, generally supervising and coordinating litigation involving Hospital Authority with special counsel retained to represent it on specific cases and matters, and advising the Hospital Authority Board of Governors and its Chief Executive Officer and staff on matters pertaining to the Hospital Authority. Attorney will also attend Hospital Authority board meetings and closed sessions as legal advisor to Hospital Authority.

2. **Hospital Authority Duties.** Hospital Authority shall provide such assistance, information, cooperation, and access to books, records, and other information as is necessary for Attorney to effectively and efficiently render its services under this Agreement to Hospital Authority. Hospital Authority shall comply with this Agreement and timely pay Attorney's bills for fees, costs, and expenses in accordance with this Agreement.

3. **Compensation to Attorney.** Hospital Authority shall compensate Attorney at the rate of \$173.00 per hour for attorney time and \$88.00 per hour for paralegal time. These rates are subject to change on an annual basis. Any change in rates shall be the subject of a written amendment to this Agreement. Attorney will notify Hospital Authority in writing of any revised rates at least thirty (30) days prior to the effective date thereof and revised rates shall not be retroactively applied. Hospital Authority will reimburse Attorney for all necessary and reasonable costs incurred on behalf of Hospital Authority as set forth below in section 4. No additional compensation will be paid to Attorney for secretarial, clerical support staff or overhead costs.

The time charged will include the time Attorney spends on telephone calls relating to Hospital Authority matters. The legal personnel assigned to Hospital Authority matters may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent.

Notwithstanding the foregoing, in the event Attorney shall provide or arrange for competent and experienced legal counsel who is not an employee of Attorney, i.e., who is not a County employee in the Office of Kern County Counsel, including, but not limited to, special counsel retained by Attorney to represent Hospital Authority on specific cases and matters (collectively, "outside counsel"), Hospital Authority shall be responsible for and shall pay within 10 business days, all of the contractual rates, fees, expenses and charges billed by such outside counsel as approved by Attorney, and such rates, fees, expenses and charges of outside counsel shall not be limited to the amount of Attorney's rates, fees expenses and charges set forth in this Agreement.

4. **Reimbursement Policy and Billing Requirements.**

a. Hospital Authority shall reimburse Attorney at actual cost for the following items, when reasonably necessary and incurred:

- (1) Deposition and transcript fees;
- (2) Filing Fees;
- (3) Postage;
- (4) Travel expenses to include actual cost for lowest coach round-trip airfare to and from Bakersfield, California, local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement rates for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement rate established by the U.S. General Services Administration), meals and incidental expenses 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 County. Attorney will use accommodations that offer the lower government rate;
- (5) Photocopying;
- (6) Consultant and expert witness fees; and

(7) Other expenses when approved in advance by Hospital Authority.

b. Hospital Authority will not reimburse Attorney for any staff time or overtime for secretarial, clerical, word processing or similar costs connected with preparing required status reports, time spent to provide information for a fee audit or for work not authorized by the Hospital Authority.

c. All invoices for payment shall contain an itemization of all costs and fees broken down monthly and also stated as a cumulative total. Invoices will be sent to Hospital Authority Chief Executive Officer for review and processing. The following information shall be accurately stated in or attached to each billing invoice:

(1) The hourly rate, and detailed time and activity description.

The narrative shall specifically identify the person whose time is being billed for each item stated.

(2) Invoices describing and supporting all costs in excess of \$75 which are being submitted for reimbursement.

5. **Term.** This Agreement shall be deemed in force as of the date stated in the recitals above and shall remain in effect until terminated as hereinafter provided.

6. **Representations.** County makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement:

a. Attorney has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and

b. Attorney has potential interests adverse to Hospital Authority by reason of its representation of County. Both parties acknowledge and waive the *potential* conflict of interest. However, when any actual conflict arises with respect to Attorney's representation of Hospital Authority, Attorney will comply with Rule 3-310 of the California Rules of Professional Conduct and other rules governing the professional conduct of Attorney and obtain the consent of Hospital Authority or advise Hospital Authority of the conflict and allow Hospital Authority to retain conflicts counsel; and

c. Attorney shall diligently provide such legal services as are necessary and assigned by Hospital Authority in a timely and professional manner in accordance with the terms and conditions stated in this Agreement, will comply with all ethical duties, and will maintain the integrity of the attorney-client relationship. To ensure maintenance of the integrity of the attorney-client relationship, Attorney will comply with the Supplemental Conflicts Policy, attached as Exhibit "A," with respect to the individual attorneys assigned to represent Hospital Authority. Attorney shall have the sole discretion to assign (or reassign) individual attorneys to represent Hospital Authority.

7. **Assignment.** County shall not assign, sublet or transfer this Agreement or any part hereof. County shall not assign any monies due or which become due to Attorney under this Agreement without the prior express written approval of Hospital Authority.

8. **Negation of Partnership.** In the performance of legal services under this Agreement, Attorney shall be, and County acknowledges that Attorney is, in fact and law, an employee of Kern County and not of Hospital Authority. Attorney has and retains the right to exercise full supervision and control of the manner and methods of providing services to Hospital Authority under this Agreement. Attorney retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Attorney in the provision of services under this Agreement. With respect to Attorney's employees, Attorney 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 employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.

9. **Indemnification and Insurance.**

a. County shall indemnify, defend (upon written request of Hospital Authority) and save harmless Hospital Authority, its officers, directors, agents, employees and officials from any and all loss, damage, liability, claims or causes of action or other actions of every nature whatsoever for professional negligence, physical damage to or destruction of property, including property of Hospital Authority, and for physical injury to or death of any person, including its employees, agents, officers and officials, and employees and agents of County, which may arise out of any act or omission of County, its officers, partners, employees, agents and servants, provided that County shall have no obligation respecting losses directly caused by any negligent, intentional or willful misconduct or gross neglect on the part of Hospital Authority, its employees, officers, directors, agents and officials.

b. County represents it is self-insured for Professional Liability, General Liability, Automobile Liability and Workers' Compensation. All exposures, including contractual liability, arising out of its operations are covered by County's self-insurance program undertaken pursuant to California Government Code section 990.

10. **Termination.** This Agreement may be terminated at such time as the Kern County Board of Supervisors votes to amend Kern County Ordinance Code Chapter 2.170 to provide for termination. In the event this Agreement is terminated, Attorney shall submit to Hospital Authority a final status report on any pending matters, and shall deliver to Hospital Authority all files, memoranda, documents, correspondence and other items generated in the course of performing this Agreement, within fifteen (15) days after the effective date of any written Notice of Termination.

11. **Ownership and Inspection of Files.** All files, pleadings, reports, exhibits, evidence and other items generated or gathered in the course of providing services to Hospital Authority under this Agreement are and shall remain the property of Hospital Authority, and shall be returned to Hospital Authority upon termination of this Agreement, except that Hospital Authority shall have no right to obtain Attorney work product from Attorney except as otherwise provided by law. During the pendency of this Agreement, all billings, invoices and other documents as to which no ethical conflicts considerations exist shall be made available, during normal business hours and upon

reasonable notice, for inspection by Hospital Authority or persons authorized by Hospital Authority.

12. **Notices.** All notices required or provided for in this Agreement shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as follows:

To County/Attorney: Theresa A. Goldner, County Counsel
Office of County Counsel
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301

To Hospital Authority: Kern County Hospital Authority
c/o Kern Medical Center
1700 Mount Vernon Avenue
Bakersfield, California 93306
Attn.: Chief Executive Officer

The parties may, if necessary, amend this Agreement to indicate a change of address by ten (10) days written notice to the other party, said notice to be given in the manner above described. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by leaving such notice with the receptionist or other person of like capacity employed in Attorney's office or Hospital Authority.

13. **Conflict of Interest.** The parties to this Agreement have read and are aware of the provisions of section 1090 et seq. and section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any disqualifying financial or economic interest of any public officer or employee of County or Hospital Authority relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice thereof. Hospital Authority shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

14. **Sole Agreement.** This Agreement contains the entire agreement of 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, and all changes or modifications to this Agreement shall be made in and reduced to writing, duly signed and agreed to by both parties.

15. **Modification.** This Agreement may be amended at any time by formal written agreement of the parties.

16. **Partial Invalidity.** Should any part, term, portion, or provision of this Agreement be finally decided 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 place.

17. **Waiver.** No waiver of a breach or provision of this Agreement shall constitute a waiver of any other breach or provision. The parties' failure to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

18. **Access to Books and Records.** If, and to the extent that, section 1861 (v)(1)(I) of the Social Security Act (42 USC section 1395x(v)(1)(I)) is applicable, Attorney agrees that for a period of four (4) years following the furnishing of services under this Agreement, Attorney shall maintain and make available, upon written request, to the Secretary of the Department of Health and Human Services or the Comptroller General of the United States, or to any of their duly authorized representatives, the contract, books, documents and records of Attorney which are necessary to verify the nature and extent of the cost of services provided hereunder. Furthermore, if Attorney carries out any of the services provided hereunder through any subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization (as that term is defined under federal law), Attorney agrees that each subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

19. **Protected Health Information.** Attorney and Hospital Authority recognize that in performing services, Attorney may receive, create or otherwise have access to protected health information ("PHI") and thereby become a business associate of Hospital Authority (all as defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations [45 C.F.R. Parts 160 through 164, inclusive] ["HIPAA"] and the Health Information Technology for Economic and Clinical Act of 2009 [the "HITECH Act"], and all other applicable laws and regulations). Accordingly, the parties shall protect PHI in accordance with the HIPAA Business Associate Addendum attached hereto and incorporated herein by this reference as Exhibit "B." In the event of a conflict between Exhibit "B" and any other confidentiality provision of this Agreement, Exhibit "B" shall control.

[Signatures follow on next page]

IN WITNESS TO WHICH, each party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

Dated: 6/14, 2016

KERN COUNTY BOARD OF SUPERVISORS

By 
Mick Gleason, Chairman

"County"

Dated: _____, 2016

KERN COUNTY HOSPITAL AUTHORITY

By _____

"Hospital Authority"

EXHIBIT A

**KERN COUNTY COUNSEL
KERN COUNTY HOSPITAL AUTHORITY REPRESENTATION
SUPPLEMENTAL CONFLICTS POLICY**

By statute, the County Counsel has the legal obligation to provide legal services to the County and to its component departments. Pursuant to Government Code section 26520, the County Counsel may provide legal advice to other public entities when requested. Kern County Hospital Authority has requested and the County Counsel has agreed to provide such legal services. Because of the potential conflicts in the representation of the County and Kern County Hospital Authority, and to ensure the confidences of each client are maintained, the Office of County Counsel will provide adequate screening processes to assure there is no inappropriate contact between the attorneys representing Kern County Hospital Authority and those representing the County. The purpose of this policy is to provide an ethical wall to ensure that both the County and Kern County Hospital Authority receive independent legal advice and to prevent confidential information from being given to opposing counsel.

Chief Deputy County Counsel Karen S. Barnes and Deputy County Counsel Shannon R. Hochstein are directed to serve as counsel to Kern County Health Authority.

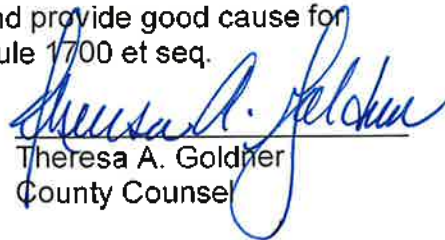
1. In undertaking this representation, neither attorney shall discuss or communicate in any way with County staff or with other attorneys in the Office of County Counsel any confidential information regarding their representation of Kern County Hospital Authority.

2. The mail and fax communications to both attorneys from Kern County Hospital Authority is to be routed to that attorney without inspection by any other attorney in the office. Clerical staff assigned to produce any documents shall be instructed not to discuss the document with any person other than the attorney assigned to the matter and to take reasonable steps to maintain the confidentiality of the document while the work is in progress. All Kern County Hospital Authority files shall be maintained separate from other County Counsel files and shall be accessible only by the attorneys or clerical staff assigned.

3. Both attorneys have been advised that violation of this conflicts policy will constitute a violation of a lawful order of a superior and provide good cause for disciplinary action under Kern County Civil Service Rule 1700 et seq.



Karen S. Barnes
Chief Deputy County Counsel



Theresa A. Goldner
County Counsel


Shannon R. Hochstein, Deputy

EXHIBIT "B"

BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (the "Addendum") is incorporated into and made a part of the underlying legal services agreement (the "Underlying Agreement") by and between the Kern County Hospital Authority, a county hospital authority, which owns and operates Kern Medical Center ("Hospital Authority" or "Covered Entity"), and the County of Kern, a political subdivision of the state of California ("Attorney" or "Business Associate") (each a "Party" and collectively the "Parties"), as of the date of approval by both Parties (the "Effective Date").

Recitals

WHEREAS, Hospital Authority and County entered into the Underlying Agreement pursuant to which Attorney provides services to or on behalf of Hospital Authority, and in conjunction with the provision of such services certain Protected Health Information may be made available to Attorney for purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, Hospital Authority and County desire to protect the privacy and provide for the security of Protected Health Information (as that term is defined herein) used by or disclosed to Attorney in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and 164, the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), California Health and Safety Code section 1280.15, California Civil Code sections 1798.82 and 1798.29, and other applicable laws and regulations; and

WHEREAS, the purpose of this Addendum is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR section 164.504(e), and the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time; and

WHEREAS, under the Underlying Agreement, Attorney provides services to Hospital Authority, or performs or assists in the performance of Hospital Authority activities or functions, involving the use or disclosure of Protected Health Information in the course of such service or assistance; and

WHEREAS, Hospital Authority wishes to disclose to Attorney certain information, some of which may constitute Protected Health Information or Medical Information (herein collectively referred to as "PHI");

WHEREAS, the provisions of the HITECH Act were effective as of February 17, 2010;

WHEREAS, the provisions of this Addendum are effective as of the Effective Date;

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:

Article 1 Definitions

Terms used but not otherwise defined in this Addendum shall have the same meaning as the meaning ascribed to those terms in HIPAA or the HITECH Act, as applicable, and any current and future regulations promulgated under HIPAA or the HITECH Act.

1.1 "Breach" has the meaning in 45 CFR section 164.402.

1.2 "Designated Record Set" has the meaning in 45 CFR section 164.501.

1.3 "Electronic PHI" means PHI that is transmitted by or maintained in electronic media as defined by the HIPAA Security Regulations.

1.4 "Individual" shall have the same meaning as the term "individual" in 45 CFR section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR section 164.502(g).

1.5 "HIPAA Privacy Regulations" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

1.6 "HIPAA Security Regulations" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.

1.7 "HITECH Standards" means the privacy, security and security Breach notification provisions applicable to a business associate under Subtitle D of the HITECH Act and any regulations promulgated thereafter.

1.8 Intentionally Left Blank

1.9 "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR section 160.103 (as amended by the HITECH Act), limited to the information created or received by Attorney from or on behalf of Hospital Authority, including, but not limited to, Electronic PHI.

1.10 "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his or her designee.

1.11 "Unsecured PHI" shall mean Electronic PHI that is not secured through the use of technology or methodology specified by the Secretary in regulations or as otherwise defined in section 13402(h) of the HITECH Act.

Article 2 Obligations of Business Associate

2.1 Limited Use or Disclosure of PHI. Attorney shall not Use or further Disclose PHI other than as permitted or required by the Underlying Agreement or as required by law. Attorney may (a) Use and Disclose PHI to perform the services agreed to by the Parties; (b) Use or Disclose PHI for the proper management and administration of Attorney or in accordance with its legal responsibilities; (c) Use PHI to provide data aggregation services relating to health care operations of Hospital Authority; (d) Use or Disclose PHI to report violations of the law to law enforcement; or (e) Use PHI to create de-identified information consistent with the standards set forth at 45 CFR section 164.514. Attorney will not sell PHI or Use or Disclose PHI for marketing or fund raising purposes as set forth in the HITECH Act.

2.2 Subcontractors. Attorney agrees to require any subcontractor to whom it provides PHI received from, or created or received by Attorney on behalf of Hospital Authority, to agree to restrictions and conditions that are substantially similar in all material respects to the restrictions and conditions that apply throughout this Addendum to Attorney with respect to such information.

2.3 Safeguards. Attorney agrees to use appropriate administrative, physical and technical safeguards to prevent Use or Disclosure of PHI other than as provided for by this Addendum.

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

2.5 Notice of Use or Disclosure, Security Incident or Breach.

(a) Attorney agrees to notify the designed Privacy Officer of Hospital Authority of any Use or Disclosure of PHI by Attorney not permitted by this Addendum, any Security Incident (as defined in 45 CFR section 164.304 but not including trivial incidents that occur on a frequent basis, such as scans, "pings" or unsuccessful attempts to penetrate computer networks or servers) involving Electronic PHI, and any Breach of Unsecured PHI in accordance with 45 CFR section 164.410. Attorney shall provide, to the extent known, the following information in such notice to Hospital Authority: (i) the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Attorney to have been, accessed, acquired, or Disclosed during

such Breach; (ii) a description of the nature of the Breach including the types of Unsecured PHI that were involved, the date of the Breach and the date of discovery; (iii) a description of the type of Unsecured PHI acquired, accessed, Used or Disclosed in the Breach (e.g., full name, social security number, date of birth, etc.); (iv) the identity of the person who made and who received (if known) the unauthorized acquisition, access, Use or Disclosure; (v) a description of what Attorney is doing to mitigate the damages and protect against any future Breach; and (vi) any other details necessary for Hospital Authority to assess risk of harm to Individual(s), including identification of each Individual whose Unsecured PHI has been Breached and steps such Individuals should take to protect themselves.

(b) Hospital Authority shall be responsible for providing notification to Individuals whose Unsecured PHI has been Disclosed, as well as the Secretary and the media, as required by the HITECH Act.

(c) Attorney agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breach, and to provide a description of these procedures and the specific findings of the investigation to Hospital Authority in the time and manner reasonably requested by Hospital Authority.

(d) The Parties agree that this section satisfies any notice requirements of Attorney to Hospital Authority of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Hospital Authority shall be required. For purposes of this Addendum, "Unsuccessful Security Incidents" includes activity such as pings and other broadcast attacks on Attorney's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, as long as no such incident results in unauthorized access, Use or Disclosure of Electronic PHI.

2.6 Access. Attorney agrees to provide access, at the request of Hospital Authority, and in the time and manner reasonably requested by Hospital Authority, to PHI in a Designated Record Set, to Hospital Authority or, as directed by Hospital Authority, to an Individual, at no cost to Hospital Authority or the Individual.

2.7 Amendments. Attorney agrees to make any amendment(s) to PHI in a Designated Record Set that Hospital Authority directs or agrees, upon request of Hospital Authority or an Individual, at no cost to Hospital Authority or the Individual.

2.8 Disclosure of Practices, Books and Records. Attorney agrees to make internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by Attorney on behalf of Hospital Authority, available to Hospital Authority or the Secretary in a time and manner designated by Hospital Authority or the Secretary, for purposes of the Secretary in determining the Parties' compliance with HIPAA, the HITECH Act and implementing regulations.

2.9 Accounting. Attorney agrees to provide to Hospital Authority an accounting of PHI Disclosures made by Attorney, including Disclosures made for treatment, payment and health care operations, provided, however, with respect to disclosures made at the request of Hospital Authority or by Attorney as part of the services under the Underlying Agreement, Hospital Authority shall provide Attorney with notice of the requirement to document such disclosures and access to the system it utilizes to record and track disclosures required by 45 CFR section 164.528, and Attorney will use such system to track such disclosures. The accounting shall be made within a reasonable amount of time upon receipt of a request from Hospital Authority.

2.10 Security of Electronic PHI. Subject to section 2.3, Attorney agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI that it creates, receives, maintains or transmits on behalf of Hospital Authority; (2) ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (3) report to Hospital Authority any security incidents of which it becomes aware.

2.11 Minimum Necessary. Attorney shall limit its Uses and Disclosures of, and requests for, PHI (a) when practical, to the information making up a Limited Data Set; and (b) in all other cases subject to the requirements of 45 CFR section 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the Use, Disclosure or request.

2.12 Indemnification.

(a) County agrees to indemnify, defend and hold harmless Hospital Authority and its respective officers, directors, board members, employees, agents and authorized representatives from any and all third party losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, fines, penalties, and expenses of whatever kind or nature, which arise out of or are in any way connected with any material breach of this Addendum by County and its respective officers, directors, board members, elected and appointed officials, agents, employees, subcontractors of any tier, or authorized representatives.

(b) County's obligation to defend, indemnify and hold harmless Hospital Authority shall be subject to Hospital Authority having given written notice within a reasonable period of time of the Claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, for the defense or settlement thereof. County shall have the sole authority to defend or settle such claim.

(c) The specified insurance limits required in the Underlying Agreement shall in no way limit or circumscribe County's obligations to indemnify, defend and hold harmless Hospital Authority herein from third party claims covered by the indemnification obligations in Section 2.12(a).

(d) In the event there is a conflict between this indemnification clause and the indemnification clause contained in the Underlying Agreement, this indemnification clause shall only apply to the subject issues set forth in this Addendum.

2.13 Permitted Uses and Disclosures. Except as otherwise limited in this Addendum or the Underlying Agreement, Attorney may Use or Disclose PHI to perform functions, activities, or services for or on behalf of Hospital Authority, provided that such Use or Disclosure would not violate HIPAA or the HITECH Act if done by Hospital Authority.

Article 3 Obligations of Covered Entity

3.1 Notice of Privacy Practices of Covered Entity. Hospital Authority shall provide Attorney with the notice of privacy practices that Hospital Authority produces in accordance with 45 CFR section 164.520, as well as any changes to such notice.

3.2 Restrictions in the Use of PHI. County shall notify Attorney of any changes or restrictions to the Use or Disclosure of PHI that County has agreed, to the extent that such change or restriction may affect Attorney's Use or Disclosure of PHI.

3.3 Changes in the Use of PHI. Hospital Authority agrees to notify Attorney of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent such changes or revocation affects Attorney's Use or Disclosure of PHI.

3.4 Appropriate Requests. Hospital Authority shall not ask Attorney to Use or Disclose PHI in any manner that would violate the HIPAA Privacy Regulations or the HITECH Act if done by Hospital Authority.

Article 4 Term and Termination

4.1 Term. The term of this Addendum shall be effective as of the Effective Date and shall terminate upon termination of the Underlying Agreement, except as otherwise terminated by a Party as provided herein.

4.2 Termination for Cause. Upon either Party's determination that the other Party has committed a violation or material breach of this Addendum, the non-breaching Party may take one of the following steps: (a) provide an opportunity for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation within a reasonable time, terminate the Underlying Agreement immediately; (b) immediately terminate the Underlying Agreement if the other Party has committed a material breach of this Addendum and cure of the material breach is not possible; or (c) if neither cure nor termination is feasible, elect to continue the Underlying Agreement and report the violation or material breach to the Secretary in accordance with the requirements set forth in the HITECH Act.

4.3 Judicial or Administrative Proceeding. Hospital Authority may, in its sole discretion, terminate the Underlying Agreement effective immediately if (a) Attorney is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other security or privacy laws or (b) a finding or stipulation that Attorney has violated any standard or requirement of HIPAA, the HIPAA Regulations, the HITECH Act or other security or privacy laws is made in any administrative or civil proceeding in which Attorney has been joined.

4.4 Effect of Termination.

(a) Return or Destruction of PHI. Upon termination of the Underlying Agreement, for any reason, Attorney shall return or destroy all PHI received from Hospital Authority, or created or received by Attorney on behalf of Hospital Authority, and, in the event of destruction, Attorney shall certify such destruction, in writing to Hospital Authority. This provision shall apply to PHI that is in the possession of subcontractors or agents of Attorney. Attorney shall not retain copies of PHI.

(b) Return or Destruction of PHI Not Feasible. In the event that Attorney determines that returning or destroying the PHI is not feasible, Attorney shall provide to Hospital Authority notification of the conditions that make return or destruction not feasible. Attorney shall extend the protections of this Addendum to such PHI and limit any further Use and Disclosure of such PHI to those purposes that make the return or destruction not feasible, for as long as Attorney maintains such PHI.

**Article 5
Miscellaneous**

5.1 Amendment. The Parties agree to take such necessary action to amend this Addendum from time to time as is necessary for Hospital Authority to comply with the requirements of HIPAA or the HITECH Act and any applicable regulations regarding such laws.

5.2 Survival. The respective rights and obligations of Attorney shall survive the expiration or termination of this Addendum.

5.3 Interpretation. This Addendum and the Underlying Agreement shall be construed and interpreted in a manner that will cause the Parties to comply with the requirement of HIPAA and the HITECH Act or any applicable regulations regarding such laws.

5.4 Prior Agreement. This Addendum shall replace and supersede any prior business associate agreement or addendum between the Parties.

5.5 Ambiguity. Any ambiguity in this Addendum shall be resolved to permit the Parties to comply with HIPAA, the HITECH Act, and the Privacy and Security Rules and other implementing regulations and guidance.

5.6 No Third-Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, any rights, remedies, obligations or liabilities whatsoever upon any person or entity other than Hospital Authority, Attorney and their respective agents, successors or assigns.

5.7 Governing Law. Notwithstanding any other provision to the contrary, this Addendum shall be governed by and construed in accordance with the laws of the state of California.

5.8 Compliance with Law. In connection with all matters related to this Addendum, Hospital Authority and Attorney shall comply with all applicable state and federal laws and regulations, including, but not limited to, HIPAA, the HIPAA Regulations, the HITECH Act, California Civil Code section 1798.29 and California Health and Safety Code section 1280.15, as they may be amended from time to time.

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

June 22, 2016

SUBJECT: Proposed Amendment No.8 to Agreement (Kern County Agt. #185-2011) with Weatherby Locums, Inc. for temporary physician staffing services

Recommended Action: Approve; Authorize Chairman to sign subject to Approval as to form by Counsel

Summary:

Kern Medical requests approval Amendment No. 8 (Kern County Agt. #185-2011) for professional services with Weatherby Locums, Inc. ("Weatherby"). Kern Medical requires temporary physician staffing services for interim periods of time and has agreements with various temporary physician staffing companies. Temporary physician staffing is also known as locum tenens physicians.

The proposed Amendment No. 8 with Weatherby locus, Inc. adds additional funding, effective July 1, 2016, increasing the maximum payable by \$750,000, from \$2,950,000 to \$3,700,000, to cover the term.

**AMENDMENT NO. 8
TO
AGREEMENT FOR PROFESSIONAL SERVICES
INDEPENDENT CONTRACTOR
(Kern County Hospital Authority – Weatherby Locums, Inc.)**

This Amendment No. 8 to the Agreement for Professional Services is entered into this _____ day of _____, 2016, between the Kern County Hospital Authority, a county hospital authority, which owns and operates Kern Medical Center (“KMC”), and Weatherby Locums, Inc. (“Weatherby”), with its principal place of business located at 6451 North Federal Highway, Suite 800, Fort Lauderdale, Florida 33308.

RECITALS

(a) The Parties have heretofore entered into an Agreement for Professional Services (Kern County Agt. #185-2011, dated March 29, 2011), Amendment No. 1 (Kern County Agt. #816-2011, dated November 14, 2011), Amendment No. 2 (Kern County Agt. #133-2012, dated March 12, 2012), Amendment No. 3 (Kern County Agt. #259-2013, dated May 13, 2013), Amendment No. 4 (Kern County Agt. #743-2014, dated September 30, 2014), Amendment No. 5 (Kern County Agt. #094-2015, dated February 24, 2015), Amendment No. 6 (Kern County Agt. #842-2015, dated November 17, 2015), Amendment No. 7 (Kern County Agt. #132-2016, dated March 15, 2016), and Assignment of Agreement (Kern County Agt. #342-2016, dated March 1, 2016) (“Agreement”), for the period March 29, 2011 through March 27, 2017, to provide temporary physicians to fill voids in staffing at KMC; and

(b) 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 Weatherby; and

(c) The Parties agree to amend the Agreement to increase the not to exceed amount by \$750,000, from \$2,950,000 to \$3,700,000, to cover the remaining term; and

(d) The Agreement is amended effective July 1, 2016;

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 4, Fees, paragraph 4.A, Fees, shall be deleted in its entirety and replaced with the following:

“4.A Fees. Client shall pay Weatherby fees (“Fee(s)” or “Fee Schedule”) for Physician Coverage for each Assignment, as specified in Exhibit “A,” attached hereto and incorporated herein by this reference, or as agreed upon by the Parties and outlined in the Confirmation for that Assignment, in an amount not to exceed \$3,700,000 over the term of this Agreement.”

2. Exhibit “A,” Not to Exceed Amount, shall be deleted in its entirety and replaced with the following:

“Not to Exceed Amount: County shall compensate Weatherby in an aggregate sum not to exceed \$3,700,000 over the term of the Agreement.”

3. All capitalized terms used in this Amendment and not otherwise defined, shall have the meaning ascribed thereto in the Agreement.

4. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

5. This Amendment 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.

6. 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]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 8 as of the day and year first written above.

KERN COUNTY HOSPITAL AUTHORITY WEATHERBY LOCUMS, INC.

By _____
Chairman
Board of Governors

By _____
John Wagner
Senior Director

APPROVED AS TO CONTENT:
KERN MEDICAL CENTER

By _____
Russell V. Judd
Chief Executive Officer

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By _____
Deputy

Amend8.Weatherby.061616



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

June 22, 2016

SUBJECT: Kern County Hospital Authority, Chief Executive Officer report

Required Action: Receive and File.

Report of Hospital Activities

Transfer – We fully anticipated the transfer of the hospital to the Kern County Hospital Authority on July 1, 2016 as planned.

Graduate Medical Education – this month we will graduate 31 residents. Some of these residents have been with us for 5 years. These physicians have completed their training and will shortly sit for their board exams. On July 1 we welcome 32 new Residents who just completed Medical School and now begin their post graduate training.

Whole Person Care – on July 1 we will turn in our application for Whole Person Care. This is a competitive process and have worked very hard to receive this funding. Our projected budget for this is approximately \$10,000,000. We will know by September 1, 2016 if we are included in this pilot program.

April Financial Results

In anticipation of the transfer and the fiduciary obligation of the Board of Governors, I have attached the financial results of Kern Medical for April 2016 for your review.

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

(Government Code Section 54957.7)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on June 22, 2016, to consider:

 PUBLIC EMPLOYEE APPOINTMENT/RECRUITMENT - Title: _____
(Government Code Section 54957)

 X PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Kern County Hospital
Authority Chief Executive Officer (Government Code Section 54957)

 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE -
(Government Code Section 54957)

 CONFERENCE WITH LABOR NEGOTIATORS - _____
(Government Code Section 54957.6)

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

Health and Safety Code Section 101855(j)(2)

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on June 22, 2016, to discharge its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners. The closed session involves:

 X Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) –

**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 June 22, 2016, to consider:

 PUBLIC EMPLOYEE APPOINTMENT/RECRUITMENT - Title: _____
(Government Code Section 54957)

 PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: _____
(Government Code Section 54957)

 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE -
(Government Code Section 54957)

 X CONFERENCE WITH LABOR NEGOTIATORS - Agency designated representatives:
Chief Executive Officer Russell V. Judd, and designated staff - Employee organization:
Service Employees International Union, Local 521 (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 June 22, 2016, 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)) Service Employees International Union, Local 521 v. Kern County Hospital Authority, et al., PERB Case No. LA-CE-1084-M