



## **AGENDA**

### **KERN COUNTY HOSPITAL AUTHORITY BOARD OF GOVERNORS**

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

Regular Meeting  
Wednesday, September 20, 2017

11:30 A.M.

#### **BOARD TO RECONVENE**

Board Members: Berjis, Bigler, Lawson, McGauley, McLaughlin, Pelz, Sistrunk  
Roll Call:

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

STAFF RECOMMENDATION SHOWN IN CAPS



PUBLIC PRESENTATIONS

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

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

RECOGNITION

- 3) Presentation by the Chief Nursing Officer recognizing the Clairvia Implementation Team at Kern Medical –  
**MAKE PRESENTATION**

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on August 16, 2017 –  
**APPROVE**

CA

- 5) Proposed Agreement with Williams Scotsman, Inc., an independent contractor, for lease of a modular trailer to be located at 1111 Columbus Street for a term of 72 months commencing upon delivery, in an amount not to exceed \$260,000 –  
**APPROVE; MAKE FINDING THAT PROJECT IS EXEMPT FROM CEQA REVIEW PER SECTIONS 15301, 15302, AND 15061 (b)(3) OF STATE CEQA GUIDELINES; AUTHORIZE THE CHAIRMAN TO SIGN**

CA

- 6) Proposed Agreement with Glooko, Inc., an independent contractor, containing nonstandard terms and conditions, for remote patient monitoring for diabetes, for a term of 12 months commencing on delivery of equipment, in amount not to exceed \$5,370 –  
**APPROVE; AUTHORIZE CHAIRMAN TO SIGN**

CA

- 7) Proposed Resolution authorizing the Kern County Hospital Authority Chief Executive Officer to sign Whole Person Care Pilot Program Certifications of Lead Entity Reports as necessary, for any of the reports, invoice- or budget-related documents required in the Special Terms and Conditions of the California section 1115 Medi-Cal 2020 Demonstration Waiver specific to the Whole Person Care Pilot program and any other reports, invoice- or budget related documents requested by the California Department of Health Care Services specific to the Whole Person Care Pilot program –  
APPROVE; ADOPT RESOLUTION

CA

- 8) Request to employ retired Kern County Hospital Authority employee Anabel Moreno, as Extra Help Program Specialist II, for the period ending June 30, 2018, or 960 hours, whichever occurs first, effective September 21, 2017 –  
APPROVE

CA

- 9) Proposed retroactive Amendment No. 1 to Agreement 06816 with Health Advocates, LLC, an independent contractor, for accounts receivable and financial services, extending the term for three years from July 1, 2017 through June 30, 2020, and increasing the maximum payable by \$3,000,000, from \$1,000,000 to \$4,000,000, to cover the extended term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 10) Report on quarterly expenditures authorized by Kern County Hospital Authority Chief Executive Officer for Fiscal Year 2016-2017 –  
RECEIVE AND FILE

CA

- 11) Proposed Resolution revising the delegation of authority of the Kern County Hospital Authority Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services –  
APPROVE; ADOPT RESOLUTION

CA

- 12) Proposed retroactive Agreement 17-94322 with the California Department of Health Care Services, an independent contractor, for funding the nonfederal share of the Public Hospital Redesign and Incentives in the Medi-Cal Learning Collaboratives of the California Medi-Cal 2020 Demonstration Project from July 1, 2017 through June 30, 2020, in an amount not to exceed \$10,800 –  
APPROVE; AUTHORIZE CHIEF FINANCIAL OFFICER AND PRIME MANAGER TO SIGN

CA

- 13) Proposed retroactive Agreement with Pacific Gynecologic Specialists, an independent contractor, for professional medical services in the Department of Obstetrics and Gynecology from September 1, 2017 through August 31, 2019, in an amount not to exceed \$780,000 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 14) Proposed retroactive Amendment No. 3 to Agreement 392-2015 with Armanino LLP, doing business as AMF Media Group, an independent contractor, for communication consulting services, extending the term through December 31, 2017, and increasing the maximum payable by \$500,000, from \$3,021,000 to \$3,521,000, to cover the extended term –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 15) Proposed Amendment No. 9 to Agreement 042-2015 with Cantu Management Group, Inc., an independent contractor, for Chief Financial Officer and healthcare financial management services, extending the term for an additional two years from February 9, 2019, through February 8, 2021, deleting seven positions, adding three positions, decreasing the monthly management fee by \$56,122, from \$318,666 to \$262,544, decreasing the monthly staffing fee by 5%, from 49% to 44%, revising the methodology for payment of the performance fee from quarterly to annually, incorporating performance measures for FY 2017-2018, modifying certain terms to comply with applicable law and authority policy, and increasing the maximum payable by \$13,157,552, from \$16,880,688 to \$30,038,240, effective October 1, 2017 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN

CA

- 16) Proposed retroactive Agreements with File Recoup, an independent contractor, containing nonstandard terms and conditions, for diagnostic and data recovery services, in an amount not to exceed \$5,000, effective September 11, 2017 –  
APPROVE; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN

CA

- 17) Proposed Agreement with Jerry Cheriyan, M.D., a contract employee, for professional medical services in the Department of Surgery from November 11, 2017 through November 10, 2020, in an amount not to exceed \$1,850,400 –  
APPROVE; AUTHORIZE CHAIRMAN TO SIGN SUBJECT TO APPROVAL AS TO FORM BY COUNSEL

- 18) Proposed presentation by Moss-Adams LLP regarding the audit plan for the fiscal year ending June 30, 2017 –  
HEAR PRESENTATION; RECEIVE AND FILE

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

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

CA

21) Claims and Lawsuits Filed as of August 31, 2017 –  
RECEIVE AND FILE

CA

22) Proposed corrections to minutes for Kern County Hospital Authority Board of  
Governors regular meetings –  
APPROVE

ADJOURN TO CLOSED SESSION

CLOSED SESSION

23) Request for Closed Session regarding peer review of health practitioners (Health and  
Safety Code Section 101855(j)(2)) –

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

25) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2), (e)(3)) Number of cases: One (1) Significant  
exposure to litigation in the opinion of the Board of Governors on the advice of legal  
counsel, based on: The receipt of a claim pursuant to the Government Claims Act or  
some other written communication from a potential plaintiff threatening litigation, which  
non-exempt claim or communication is available for public inspection –

26) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 v. County of Kern, et al., Public Employment Relations  
Board Case No. LA-CE-1084-M –

27) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 v. County of Kern, et al., Public Employment Relations  
Board Case No. LA-CE-1096-M –

28) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 v. Kern County Hospital Authority, Public Employment  
Relations Board Case No. LA-CE-1121-M –

RECONVENE FROM CLOSED SESSION

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

ADJOURN TO WEDNESDAY, OCTOBER 18, 2017, 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.

CA

21) CLAIMS AND LAWSUITS FILED AS OF AUGUST 31, 2017 –  
RECEIVE AND FILE

- A) Claim in the matter of Thomas Preston Hill v. Kern County Hospital Authority
- B) Claim in the matter of Gabriel DiFabrizio v. Kern County Hospital Authority
- C) Complaint in the matter of Dean Elliott, a minor, et al. v. Kern County Hospital Authority, et al., Kern County Superior Court Case No. BCV-17-101961 SDS
- D) Unfair Practice Charge in the matter of Service Employees International Union, Local 521 v. Kern County Hospital Authority, Public Employment Relations Board Case No. LA-CE-1121-M

CA

22) PROPOSED CORRECTIONS TO MINUTES FOR KERN COUNTY HSOPITAL  
AUTHORITY BOARD OF GOVERNORS REGULAR MEETINGS –  
APPROVE

- A) Minutes for meeting on July 19, 2017

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

September 20, 2017

**Subject:** Presentation by the Chief Nursing Officer recognizing the Clairvia Implementation Online Staff Scheduling System at Kern Medical

**Recommended Action:** Make presentation

**Summary:**

Presentation by the Chief Nursing Officer recognizing the Clairvia Implementation Online Staff Scheduling System at Kern Medical.



## Clairvia Workforce Management Project

Linda O'Hotto  
Clinical Supervisor  
Nurse Staffing Office

# Phase 1 Project Team

Role	Name
Executive Sponsor	Toni Smith
Project Manager/Subject Matter Expert	Linda O’Hotto
Nurse Staffing Office: Subject Matter Expert	Marina Andreas
IT Nursing Informatics/Subject Matter Expert	Kathy Couch
IT Systems Network Manager	Christopher Leach
IT Network Systems Administrator	Choung Chea
IT Interface Analyst	Moises Ayala
IT Programmer	Isaac Ramirez
Human Resources, HRIS Administrator	Amber Ryan

# BETTER PATIENT OUTCOMES

Right Caregiver, Right Place  
and Right Time

## Phase I:

Kern Medical Implementation 18 weeks

Normal Implementation 25 weeks

## SOLUTIONS:

- ❖ Staff Manager
  - ❖ Accessible through Internet
  - ❖ Schedules, Day to Day Staffing
  - ❖ Shift Alert/Opportunities – Electronic Notifications to staff for “available shift”

## Phase 2: January 22, 2018 – go live

### Demand Manager

- ❖ Measures, tracks and predicts patient-specific care demands

### Patient Progress Manager

- ❖ Measures expected clinical progress to patients actual progress

### Assignment Manager

- ❖ Matches caregivers qualifications and experience to patient's current needs

## Phase 3: Upon implementation of a new EHR

- ❖ Outcomes Driven Patient Acuity

# Questions?



## **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, August 16, 2017

11:30 A.M.

#### **BOARD RECONVENED**

Directors present: Berjis, Bigler, Lawson, McGauley, McLaughlin, Pelz, Sistrunk  
Directors absent: None

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

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

#### **BOARD ACTION SHOWN IN CAPS**

#### **PUBLIC PRESENTATIONS**

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

**NO ONE HEARD**

### 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**

### RECOGNITION

- 3) Presentation by the Chief Medical Officer recognizing the Antimicrobial Stewardship program at Kern Medical –  
MADE PRESENTATION

### ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on July 19, 2017 –  
APPROVED

**Pelz-Lawson: All Ayes**

- 5) Public hearing regarding the meet and confer impasse between representatives of the Kern County Hospital Authority and Service Employees International Union, Local 521, and Resolution implementing the Kern Medical Center Disciplinary Policy –  
OPENED HEARING; CARMEN MORALES, NP, MICHAEL CARTER, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521, DANIEL BOWEN, AIRCONDITIONING MECHANIC, CONNIE EIDSON, RN, AND JERRI GUEVARA, OFFICE SERVICES SPECIALIST, HEARD; CLOSED HEARING; APPROVED; ADOPTED RESOLUTION 2017-005; DIRECTED STAFF TO IMPLEMENT POLICY

**McLaughlin-Sistrunk: All Ayes**

CA

- 6) Proposed retroactive Amendment No. 6 to Agreement 194-2012 with Ravi Patel, M.D. Inc., doing business as Comprehensive Blood and Cancer Center, an independent contractor, for medical practice management services at Kern Medical leased clinics, extending the term for one year from August 1, 2017 through July 31, 2018, and increasing the maximum payable by \$1,200,000, from \$2,146,000 to \$3,346,000, to cover the extended term –

APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-051

**Pelz-Lawson: All Ayes**

CA

- 7) Proposed retroactive Amendment No. 3 to Agreement 453-2015 with Comprehensive Cardiovascular Medical Group, Inc., an independent contractor, for professional medical services in the Department of Medicine, extending the term for one year from August 1, 2017 through July 31, 2018, and increasing the maximum payable by \$430,000, from \$1,055,000 to \$1,485,000, to cover the extended term – APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-052  
**Pelz-Lawson: All Ayes**

CA

- 8) Proposed Change Order No. 2 to Agreement 2016-052 Best Electric, an independent contractor, for construction management services related to the emergency power distribution upgrades, increasing the maximum payable by \$34,736 to \$698,957, to cover the cost of additional services – MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-053; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 10% OF THE TOTAL CONTRACT PRICE  
**Pelz-Lawson: All Ayes**

CA

- 9) Proposed Change Order No. 5 to Agreement 2016-074 with Anderson Group International, an independent contractor, for construction management services related to the infusion clinic project, increasing the maximum payable by \$50,322 to \$510,649, to cover the cost of additional services – MADE FINDING PROJECT IS EXEMPT FROM FURTHER CEQA REVIEW PER SECTIONS 15301 AND 15061(b)(3) OF STATE CEQA GUIDELINES; APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-054; AUTHORIZED CHIEF EXECUTIVE OFFICER TO APPROVE ANY FUTURE CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED 5% OF THE TOTAL CONTRACT PRICE  
**Pelz-Lawson: All Ayes**

CA

- 10) Proposed retroactive Amendment No. 1 to Agreement 16016 with Experian Health, Inc., an independent contractor, for patient demographic verification products and services, effective July 1, 2017, in an amount not to exceed \$300,000 – APPROVED; AUTHORIZED CHIEF EXECUTIVE OFFICER TO SIGN AGREEMENT 2017-055  
**Pelz-Lawson: All Ayes**

CA

- 11) Request to employ retired Kern County Hospital Authority employee Linda Markham, as Per Diem Medical Social Worker, for the period ending June 30, 2018, or 960 hours, whichever occurs first, effective August 17, 2017 – APPROVED  
**Pelz-Lawson: All Ayes**

CA

- 12) Request approval of Medical Staff policies concerning Telemedicine, Guidelines for Addressing Impaired Medical Staff Members, and the Late Career Practitioner – APPROVED POLICIES  
**Pelz-Lawson: All Ayes**
- 13) Request to employ retired Kern County Hospital Authority employee Wedad M. Rizkalla, M.D., as Associate-Pediatrics, for the period ending June 30, 2018, or 960 hours, whichever occurs first, effective September 4, 2017 – APPROVED  
**Berjis-McGauley: All Ayes**
- 14) Kern County Hospital Authority Chief Financial Officer report – RECEIVED AND FILED  
**Berjis-McGauley: All Ayes**
- 15) Kern County Hospital Authority Chief Executive Officer report – RECEIVED AND FILED  
**Berjis-Sistrunk: All Ayes**

CA

- 16) Claims and Lawsuits Filed as of July 31, 2017 – RECEIVED AND FILED  
**Pelz-Lawson: All Ayes**

ADJOURNED TO CLOSED SESSION  
**McGauley-McLaughlin**

CLOSED SESSION

- 17) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 18) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3)) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – SEE RESULTS BELOW
- 19) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Chief Executive Officer (Government Code Section 54957) – SEE RESULTS BELOW

RECONVENED FROM CLOSED SESSION  
**McGauley-Lawson**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 17 concerning a Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE (MOTION BY DIRECTOR LAWSON, SECOND BY DIRECTOR PELZ), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR INITIAL APPOINTMENT, REAPPOINTMENT, REVIEW AND RELEASE OF PROCTORING, ADVANCE IN STAFF STATUS, AND AUTOMATIC TERMINATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 18 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3)) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 19 concerning PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Title: Chief Executive Officer (Government Code Section 54957) – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, SEPTEMBER 20, 2017 AT 11:30 A.M.  
**Sistrunk**

/s/ Raquel D. Fore  
Authority Board Coordinator

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

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

September 20, 2017

**Subject:** Lease Agreement with Williams Scotsman, Inc., for Women, Infants, and Children Trailer to be Located at 1111 Columbus Street

**Recommended Action:** Approve; Authorize the Chairman to Sign

**Summary:**

Kern Medical proposes to lease a 3,840 square foot trailer from Williams Scotsman, Inc., to be located at 1111 Columbus St. for use by the Women, Infants, and Children (WIC) Program. Kern Medical will lease the trailer for 6 years. The total lease cost of the trailer is \$261,000, including a set-up and takedown fee of \$37,479, and a monthly fee of \$3,091.

**KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER TERMS & CONDITIONS**  
(Kern County Hospital Authority – Williams Scotsman, Inc.)

This Purchase Order is entered into this 28<sup>th</sup> day of July, 2017 ("Effective Date"), by and between the Kern County Hospital Authority, a local unit of government, which owns and operates Kern Medical Center ("KCHA") and Williams Scotsman, Inc. ("Vendor"), a (type of Business), with its principal place of business at 901 S. Bond Street, Suite 600, Baltimore, MD 21231.

Vendors must comply with all instructions, and the following conditions shall apply to any order awarded pursuant to this Purchase Order:

**Obligations of Vendor**

1. Vendor shall provide products on an as ordered, as needed basis, as set forth in a Purchase Order issued by KCHA. Such order(s) may be modified by mutual agreement, by a written Purchase Order Amendment.
2. Vendor shall provide products/services at the pricing identified in the Purchase Order. Unless otherwise clearly specified, the prices stated herein do not include California state sales or use tax.
3. Vendor warrants possession of clear and unencumbered title to the products and/or services involved herein.
4. Unless stated otherwise on the Purchase Order, all products provided by the Vendor shall be in good condition and shall conform to the specifications provided herein.
5. Vendors may be required to provide proof of insurance for one or more of the following types of insurance coverages as determined by KCHA's Risk Manager:
  - (a) **Workers' Compensation Insurance** in accordance with the provisions of section 3700 of the California Labor Code. This policy shall include employer's liability insurance with limits of at least one million dollars (\$1,000,000). Include a cover sheet stating the business is a sole proprietorship, if applicable.
  - (b) **Commercial General Liability Insurance** in the minimum amounts indicated below or such additional amounts as may be determined by the KCHA Risk Manager, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of any Purchase Order or agreement with KCHA), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of vendor's performance of work hereunder. The amount of said insurance coverage required hereunder 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.
  - (c) **Professional Liability (Errors and Omissions) Insurance** for liability arising out of, or in connection with the performance of all required services under this Purchase Order or 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) in aggregate unless otherwise indicated by KCHA's Risk Manager.

The **Commercial General Liability Insurance** shall name KCHA and KCHA's board members, officials, officers, agents and employees as additional insureds, evidenced by a blanket endorsement. 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. All insurance provided by Vendor hereunder shall be primary to and not contributing to any other insurance maintained by KCHA. Any exception to these requirements must be approved by KCHA's Risk Manager. KCHA's Risk Manager may require higher limits depending on the nature of the goods and/or services being provided. All insurance coverage requirements shall be maintained by vendor until completion of all of vendor's obligations to KCHA, and shall not be reduced, modified or canceled without 30 days prior written notice to the Chief Executive Officer ("CEO").

6. To the extent resulting from Vendor's negligence or defects in equipment provided by Vendor, Vendor 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 vendor or vendor's officers, agents, employees, independent contractors, sub-contractors 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 by or on behalf of vendor by any person or entity. Further, Vendor shall indemnify, defend and hold KCHA, its officers, agents, servants and employees harmless from liability of any nature or kind as a result of KCHA's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, or articles or appliances furnished or used under any purchase order. In no event shall either party be liable to the other party for any consequential, incidental, punitive, or other special damages of any kind.
7. Vendor shall comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

**Obligations of KCHA**

8. KCHA shall receive shipments during regular business hours, or otherwise as previously arranged, at its receiving dock or other designated locations, and shall perform receiving inspections(s) in a time and manner appropriate for the products involved.
9. KCHA shall notify Vendor of any discrepancies in products shipped, be they quantity, condition, or otherwise, promptly upon completion of the receiving inspection.

**Delivery, Invoicing, and Payment**

10. Unless stated otherwise on the Purchase Order, all goods and services shall be delivered Free On Board (F.O.B) Destination, with risk of loss to rest with Vendor until goods are accepted by KCHA.
11. As consideration for the services provided by Vendor hereunder, KCHA will pay Vendor in accordance with the prices identified on the Purchase Order. KCHA's finance office pays claims and Purchase Orders each week.

12. Invoices for payment shall be submitted in a form approved by KCHA and list each good ordered and received. Invoices shall be sent to KCHA for review and processing within 60 days of receipt of goods or payment will not be made. Payment shall be made to Vendor within 10 days of receipt (with an additional twenty (20) day grace period) for a total of thirty (30) days and approval of each invoice by KMC.

13. 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 Vendor, except for services performed prior to the date of termination or good purchased or any liability due to any default existing at the time this clause is exercised. Vendor will be given 30 days' prior written notice in the event that KCHA requires such an action. In accordance with Article XVI, Section 18 of the California Constitution, this Agreement creates no immediate indebtedness for the aggregate monthly payments for the entire Initial Term, but rather confines the liability of KCHA to each fiscal year of twelve (12) monthly payments for which it receives budget funding.

14. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination.

15. The liabilities or obligations of KCHA with respect to its activities pursuant to this Purchase Order shall be the liabilities or obligations solely of KCHA and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California.

16. 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 the CEO has been authorized by the Board of Governors to contract for personal/professional services in an amount not to exceed \$250,000 per year of a three (3) year agreement.

### **General Provisions**

17. This Purchase Order, including Addendum A and any other attachments hereto, contains the entire agreement between KCHA and Vendor relating to the goods/services identified herein. By signing the KCHA PO terms and conditions, Vendor agrees that in the event there is any inconsistency or conflict between the KCHA Purchase Order terms and conditions and Vendor's terms and conditions, the KCHA Purchase Order terms and conditions shall control.

18. KCHA and Vendor agree that the provisions of this Purchase Order or agreement will be construed pursuant to the laws of the State of California, and that venue of any action relating thereto shall be in the Superior Court of and for Kern County.

19. Access to Books and Records. Until the expiration of four (4) years after the expiration or termination of this Purchase Order, Vendor 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 Purchase Order and such books, documents and records of either party as are necessary to certify the nature and extent of costs of the services Vendor provided under this Purchase order. Vendor further agrees that if it carries out any of its duties under this Purchase Order through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (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.

20. Audits, Inspection and Retention of Records. Vendor agrees to maintain and make available to KCHA, accurate books and records relative to all its activities under this Purchase Order. Vendor 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 Purchase Order. Vendor 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 Purchase Order, 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 Purchase Order shall have the same rights conferred upon KCHA herein.

21. Health Insurance Portability and Accountability Act-HITECH. Where applicable, Vendor agrees to (i) implement appropriate safeguards and maintain individually identifiable patient health information ("Protected Health Information" or "PHI", including electronic PHI) as required by HIPAA; (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 KMC with an accounting of such disclosures promptly upon request; (vi) promptly notify KMC 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 KMC and 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, notify KMC of requests for correction and amendments to PHI by patients and incorporate into PHI amendments and/or corrections made to PHI by KMC as directed by KMC. Vendor acknowledges that PHI received from KMC shall remain KMC's property and that within ten (10) business days of KMC's request or upon termination of this Purchase Order, said PHI shall be returned to KMC or be destroyed, if KMC so directs. If such return or destruction is infeasible, Vendor shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Purchase Order shall survive with respect to such PHI. Vendor has established internal policies and procedures regarding HIPAA compliance and privacy and agrees to make such policies and procedures available to KMC upon request. If appropriate Vendor agrees to execute a business associate agreement with KMC to supplement this Purchase Order if requested, subject to the Parties' agreement upon terms and conditions of the business associate agreement.

22. Disqualified Persons. Vendor represents and warrants that no person providing goods and/or services under the terms of this Purchase Order (i) has been convicted of a criminal offense related to healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General ("OIG") and provided proof of such reinstatement to KCHA), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Vendor agrees that if any individuals providing goods and/or services under the terms of this Purchase Order becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an "Enforcement Action"), Vendor shall immediately notify KMC and such individual shall be immediately removed by Vendor from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to KMC patients; provided, however, that if Vendor is directly involved in the Enforcement Action, any agreement between KCHA and Vendor shall terminate immediately.

23. Non-collusion Covenant. Vendor 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 Purchase Order with KCHA. Vendor has received no incentive or special payments, nor considerations, not related to the provision of services under this Purchase Order from KCHA.

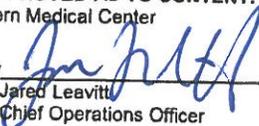
IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the day and year first written above.

**KERN COUNTY HOSPITAL AUTHORITY**

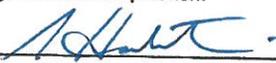
By \_\_\_\_\_  
Russell Bigler  
Chairman, Board of Governors

Date: \_\_\_\_\_

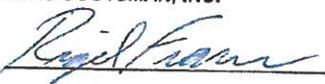
**APPROVED AS TO CONTENT:**  
Kern Medical Center

By  \_\_\_\_\_  
Jafed Leavitt  
Chief Operations Officer

**APPROVED AS TO FORM:**  
Legal Services Department

By  \_\_\_\_\_  
Hospital Counsel

**WILLIAMS SCOTSMAN, INC.**

By  \_\_\_\_\_  
Rigel Frame (Print Name)

General Manager - SCA (Title)

Date: 9/11/17

By \_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

ADDENDUM A  
ADDITIONAL LEASE TRANSACTION TERMS

The following terms shall apply to the KERN COUNTY HOSPITAL AUTHORITY PURCHASE ORDER for the leasing of modular equipment ("Equipment")

1. The arrangement between Lessor and Lessee is a true lease, and not a sale, of the Equipment. Title to the Equipment shall remain with Williams Scotsman.

2. Lessee shall maintain the Equipment per the Williams Scotsman Service Guide delivered with the Equipment. Lessee shall not use, release, store, dispose of, or otherwise have present any Hazardous Materials in, on, under or near the Equipment, unless Lessor shall have first consented in writing to such use or presence of Hazardous Materials, and such Hazardous Materials are used, stored, manufactured, disposed of or otherwise present in accordance with all applicable laws. "Hazardous Materials" shall mean any explosives, flammable substances, radioactive materials, asbestos, paints containing lead, materials containing urea, formaldehyde, polychlorinated biphenyls, oil, petroleum byproducts, or any other hazardous, toxic, dangerous or otherwise regulated substances, wastes, pollutants, contaminants, or biological substances (including fungi, bacteria, mold and microbial matter of any kind) whether having such characteristics in fact or defined as such under federal, state, or local laws and regulations. Lessee shall pay any and all fees, charges and expenses and comply with all laws related to the use, possession, and operation of the Equipment while it is in Lessee's possession, including obtaining all approvals and permits related to the use and/or possession of the Equipment.

unless earlier terminated under the terms of this agreement.

3. The term of the Lease begins at delivery and ends when the Equipment is returned after the minimum lease term. At the end of the term stated in the purchase order, this agreement is extended on a month-to-month basis until the Equipment is returned to Lessor (the "Extension Period"). Final Return Charges including but not limited to dismantle and return freight charges are estimated and will be charged at Lessor's then prevailing rate at time of return for any Term greater than twelve (12) months. During the Extension Period, the Lessor has the right, upon thirty (30) days notice to Lessee, to increase the Rate Per Month Lessor's then prevailing rate.

4. Rent commences at delivery. Lessee shall pay all rental payments, as well as any applicable sales, use and personal property taxes, other fees, taxes or payments due hereunder, in accordance with Lessor's invoice. Lessee shall provide Lessor with a copy of Lessee's tax exempt certificate if Lessee is tax exempt.

5. Lessee shall comply with all laws, regulations, and ordinances relating to the Equipment, and shall be responsible for all licenses, permits and other certificates that may be required by law related to the Equipment, all of which shall show Lessor as the owner. Lessor makes no representations as to the Equipment's compliance with federal, state or local building codes, zoning ordinances, or other types of regulations or use codes.

Lessee 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. Lessee, upon request of Lessor, shall forward documentation to Lessor that demonstrates that Lessee self-insures as a matter of normal business practice.

6. Upon delivery, Lessee shall bear all risk of loss and damage to the Equipment and indemnify, defend and keep harmless Lessor, its agents and employees, from and against any and all losses, claims, attorneys' fees and expenses, related to Lessee's use of the Equipment. Lessee shall maintain during the lease term, a policy of combined bodily injury and property damage insurance insuring Lessee and Lessor in an amount not less than \$1,000,000 per occurrence and a policy of insurance covering loss or damage to the Equipment, in an amount equal to one hundred percent (100%) of the Value of the Equipment with proceeds payable to Lessor. Lessor shall be named as additional insured and Loss Payee. Lessee shall be assessed non-compliance fees if Lessee fails to provide Lessor with evidence of the required insurance coverage.

7. For so long as Lessee timely makes all payments due hereunder, Lessor warrants throughout the term of the rental that it will repair structural or mechanical defects in the Equipment (excluding HVAC filters, fire extinguishers/fuses/breakers, and light bulbs) provided that Lessee notifies Lessor in writing of any defects, malfunctions, or leaks within thirty (30) business days of the occurrence thereof. Lessee shall pay for the repair of any defect or condition resulting from relocation of the Equipment by other than Lessor's employees, utilities connections by other than Lessor's employees, alteration of the Equipment, use of the Equipment for a purpose for which it was not intended, vandalism, misuse of the Equipment or excessive wear and tear. Lessor shall have no liability whatsoever for any consequential, incidental or punitive damages, costs or expenses, whether they be related to any defect, condition or repair or repossession of the Equipment, repairs to the Equipment Delivery Address, or any other factor. (b) EXCEPT FOR THE WILLIAMS SCOTSMAN WARRANTY SPECIFICALLY PROVIDED HEREIN, LESSOR DISCLAIMS ANY AND ALL WARRANTIES.

8. Lessee shall not transfer or sublet the Equipment to any entity, without the prior written consent of Lessor. Lessor may assign any of its rights and/or obligations hereunder without notice to Lessee.

9. Lessee shall give Lessor at least thirty (30) days notice of the return of the Equipment and will disconnect all utilities,

remove all its possessions from, and vacate the Equipment, leaving it in a "broom clean" condition. Lessor shall arrange for the return of the Equipment at Lessee's expense. Lessee acknowledges and agrees that during the Extension Period all amounts for return freight, knockdown and dismantle will be billed by Lessor to Lessee at the rates then in effect on the date of surrender.

10. If Lessee fails to pay Lessor within thirty (30) days after payment is due, or fails to perform its obligations under this Agreement, then Lessor may proceed with any remedies available at law or in equity, including but not limited to, the right of repossession or interest on late payment.

11. Time is of the essence with respect to this Agreement.



An ALGECO SCOTSMAN Company

Williams Scotsman, Inc.
34948 Gazelle Court
Bakersfield, CA 93308-9618

Your Williams Scotsman Representative
Bobby Whitaker
Phone: (661)588-1990 Ext.
Fax: 661-588-3970
Email: bswhitak@willscot.com

Contract Number: 762479
Revision: 6
Date: June 02, 2017

Lessor is aware that Lessee 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. Lessee, upon request by Lessor, shall forward documentation that demonstrates that Lessee self-insures as a matter of normal business practice. Lessor will accept reasonable proof of self-insurance comparable to the above requirements. KB 9-11-17

Table with 4 columns: QTY, PRODUCT, EQUIPMENT VALUE/BUILDING, DEDUCTIBLE PER UNIT. Row 1: 1, Trailer, \$100000.00, \$4000.00

Lessee: Kern Medical Center

Pursuant to Section 13 of the Williams Scotsman Lease Agreement and its Terms and Conditions ("Agreement"), a Lessee is obligated to provide insurance to Williams Scotsman, Inc. ("Lessor") with the following insurance coverage:

- 1. Commercial General Liability Insurance: policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence, naming the Lessor as Additional Insured and Loss Payee.
2. Commercial Property Insurance: covering all losses or damage, in an amount equal to 100% of the Equipment Value set forth in the Lease providing protection against perils included within the classification and special extended perils (all "risk" insurance), naming the Lessor as Additional Insured and Loss Payee.

Commercial General Liability Insurance

Lessee is providing Commercial General Liability Insurance in accordance with the requirements set forth Section 13 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

Commercial Property Insurance

Lessee is providing Commercial Property Insurance in accordance with the requirements set forth Section 13 of the Lease and will provide a certificate of insurance in the manner and within the time frame set forth in the Agreement. If Lessee fails to deliver the required certificate of insurance, Lessee understands and agrees that the Lessor has the right to impose a missing insurance certificate fee.

By signing below, the Lessee agrees to the terms and conditions stated herein. All other Terms and Conditions of the Agreement shall remain the same and in full force and effect. Each party is hereby authorized to accept and rely upon a facsimile or electronic signature of the other party on this Addendum. Any such signature shall be treated as an original signature for all purposes.

Otherwise, if elected on preceding pages:

Commercial General Liability Insurance

Lessee elects to participate in the Commercial General Liability Insurance Program, whereby Lessee will receive insurance coverage through American Southern Insurance Company ("Insurer") and administered by Allen Insurance Group ("Agent"). The Lessee acknowledges and agrees that the policy issued by the Insurer is a third party liability policy that covers those amounts that Lessee is legally obligated to pay due to bodily injury and property damage arising from the proper use and occupancy of Equipment leased from Williams Scotsman up to the policy limits. Coverage is subject to underwriting and specific terms and conditions set forth in the policy. An outline of cover is available upon request. By signing below, Lessee understands and agrees that the Lessor is not providing the insurance coverage and serves only as a billing agent for the Insurer and its Agent; and, accordingly, it assumes no liability therefore.

Signature of Lessee: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Damage Waiver Program

Lessee elects to participate in the Lessor's Damage Waiver Program. Lessee understands and agrees that under this program, the Lessor waives, for a fee, Lessee's obligation to carry Commercial Property Insurance and Lessee's liability to Lessor for repair or replacement of the modular units leased from Williams Scotsman resulting from loss or damage as specified in Section 12 of the Lease. Lessee remains liable to Williams Scotsman for the amount of the damage deductible per unit of equipment noted above. Please refer to the Agreement for specific details on coverage, exclusions and restrictions on coverage. The Property Damage Waiver is not and shall not constitute a contract for insurance.

Signature of Lessee: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_



An ALGECO SCOTSMAN Company

Williams Scotsman, Inc.  
34848 Gazelle Court  
Bakersfield, CA 93306-9618

Your Williams Scotsman Representative  
Becky Whitaker  
Phone: (661)588-1990 Ext.  
Fax: 661-588-3970  
Email: bwhitak@willscot.com  
Toll Free: 800-782-1500

Contract Number: 762479  
Revision: 6  
Date: June 02, 2017

**Lease Agreement**

<b>Lessee:</b> Kern County Hospital Authority 1700 MOUNT VERNON AVE BAKERSFIELD, California, 933064018	<b>Contact:</b> Jared Leavitt 1700 MOUNT VERNON AVE BAKERSFIELD, CA, 933064018 Phone: 6613262424 Fax: +1.681.663.3111	<b>Ship To Address:</b> 1111 Columbus BAKERSFIELD, CA, 93307
		<b>Delivery Date (on or about):</b> 7/31/2017
E-mail: jared.leavitt@kernmedical.com		

Rental Pricing Per Month	Quantity	Price	Extended
40x98' Multi Off. Conf, Brk Rm, 2 RR Unit Number:	1	\$1,961.00	\$1,961.00
ADA/IBC Ramp - 36' w/ switchback	1	\$222.00	\$222.00
Data Hub Rental	3	\$24.00	\$72.00
Restroom System w/ 2x Weekly Service	1	\$807.14	\$807.14
Steps - OSHA Aluminum Rental	1	\$26.00	\$26.00
Minimum Lease Term: 72 Months			
<b>Total Monthly Building Charges:</b>			\$1,961.00
<b>Other Monthly Charges:</b>			\$1,129.14
<b>Total Rental Charges Per Month:</b>			\$3,090.14
<b>Delivery &amp; Installation</b>			
CA Transport Delivery Fee	8	\$0.00	\$0.00
Ramp - Delivery & Setup	1	\$733.33	\$733.33
Restroom System Installation	2	\$187.50	\$375.00
Tiedowns into asphalt	80	\$80.00	\$6,400.00
Block and Level	1	\$10,996.67	\$10,996.67
Delivery Freight	8	\$250.00	\$2,000.00
Aluminum skirting	264	\$8.00	\$2,112.00
<b>Total Delivery &amp; Installation Charges:</b>			\$22,617.00
<b>Final Return Charges*</b>			
CA Transport Return Fee	8	\$0.00	\$0.00
Skirting Removal - Alum LF	264	\$4.51	\$1,190.84
Ramp - Knockdown & Return	1	\$500.00	\$500.00
Tiedown-Asphalt Removal	80	\$20.00	\$1,600.00
Teardown	1	\$9,571.43	\$9,571.43
Return Freight	8	\$250.00	\$2,000.00
<b>Due On Final Invoice**:</b>			\$14,862.07
<b>Total Charges Including ( 72 ) Month Rental, Delivery, Installation &amp; Return**:</b>			\$250,969.15

Summary of Charges		
Model: Trailer	QUANTITY: 1	Total Charges for (1) Building(s): \$250,969.15

**Additional Services:** For your convenience, we also recommend the following items (not included in this Agreement)

Recommended Items	Billing Frequency	Qty	Price	Extended
Prop Damage Waiver (11/12)	Monthly	8	\$70.00	\$560.00
General Liability - Alien Insurance	Monthly	1	\$76.00	\$76.00



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

September 20, 2017

**Subject:** Proposed Agreement with Glooko, Inc.

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Proposed Agreement with Glooko, Inc., an independent contractor, to provide software that allows a Physician to collect and analyze home glucose monitor readings from a wide variety of meter manufacturers. The proposed agreement with Glooko, Inc. is for one year and will commence upon delivery of equipment, in an amount not to exceed \$5,370. Counsel is unable to approve as to form due to non-standard terms in the Glooko, Inc.'s Business Associate Agreement that limits Glooko, Inc.'s liability of a possible breach of information to \$250,000.

# **GLOOKO SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS**

**The Glooko Subscription Agreement consists of these Terms and Conditions and one or more Service Orders. These Terms and Conditions shall apply to each Service Order executed by Glooko and Client.**

## **1. DEFINITIONS.**

**1.1 “Consulting Services”** shall mean any training, consulting, data migration, conversion, integration, implementation and/or other services provided by Glooko to Client, as described in the Service Order.

**1.2 “Content”** means all Client Confidential Information, software applications, text, pictures, sound, graphics, video and other data transmitted by Authorized Users using the Services.

**1.3 “Device Data”** means any data from or about device manufacturers (e.g., Medtronic, Johnson & Johnson One Touch, Abbott, etc.) or device models.

**1.4 “Authorized Users”** means persons authorized by Client (including its employees, Patients and Providers) to access and use the Services who possess an authorized user ID and password and for whom Client has paid the applicable user fees.

**1.5 “Patient”** means a person seeking health care and who, prior to using the Application Services, has been determined by Client to have a patient-physician relationship with a Physician in accordance with the applicable requirements of State law and of the applicable State licensure boards.

**1.6 “Patient Data”** means personally identifiable information and Device Data that Glooko receives from the Patient.

**1.7 “Physician”** means a licensed physician that participates in Client’s medical practice.

**1.8 “Provider”** means a provider of medical or health services, including, but not limited to a Physician, diabetes educator, a physician assistant, nurse, physical therapist or psychotherapist.

**1.9 “Service Order”** means the written description of the Services to be provided by Glooko to Client that is executed by Client and Glooko and expressly refers to this Agreement.

**1.10 “Services”** means the Application Services, Consulting Services and any other services identified in Section 2.1 of this Agreement.

**1.11 “Glooko Application”** means all software and databases used by Glooko to provide the Application Services to Client.

**1.12 “Application Services”** means hosting and operating a Glooko Application to provide Client with access to and use of such Glooko Application.

## **2. SERVICES.**

**2.1 Services.** Glooko shall use commercially reasonable efforts to provide the Services in accordance with the terms and conditions of this Agreement. In the event of any conflict between the body of this Agreement and a Service Order, the terms and conditions set forth in the body of this Agreement shall govern. The Services shall include the provision of technical support to Authorized Users via email or other online systems during Glooko’s regular business hours, in accordance with Glooko’s then-current technical support policies. Client’s Provider’s and employees shall complete such training prior to their use of the Application Services. Upon Client’s request, Glooko may provide additional technical support at Glooko’s then-current hourly rates, subject to the execution of a mutually agreed upon Service Order. Patients can subscribe to Glooko directly and in conjunction with that subscription, the Patient has control of their Patient Data and what third parties they give access to their Patient Data.

**2.2 Security.** Glooko has implemented commercially reasonable security measures to prevent unauthorized access to Patient Data, computer hardware and other equipment and/or software possessed and used by Glooko to provide the Application Services. In addition to securing Patient Data, Glooko will use the same commercially reasonable security measures to prevent unauthorized access to Protected Health Information, as defined in the business associate agreement. Client shall be solely responsible for the security of the Client operating environment.

**2.3 Glooko Application Changes.** Glooko may from time to time develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Application Services (“**Glooko Application Changes**”). Client hereby

authorizes Glooko to implement such Glooko Application Changes for use with the Application Services, provided that such Glooko Application Changes do not have a material adverse effect on the functionality or performance of the Application Services. When commercially practicable, Glooko shall notify Client in advance of the implementation of any material Glooko Application Changes.

**2.4 Cooperation; Access.** Client acknowledges that the successful and timely rendering of the Services shall require the good faith cooperation of Client. Glooko shall not be liable for any failure to perform the Services that arises from Client's failure to cooperate with Glooko.

**2.5 Special Terms.** The Application Services provided to Client shall be subject to any specific limitations set forth in the Service Order, including limitations on bandwidth and data storage.

### **3. USE OF THE APPLICATION SERVICES.**

**3.1 Glooko License.** Glooko hereby grants to Client a nontransferable, non-exclusive, license during the term of this Agreement, to allow Authorized Users to access and use, over public and private networks, the Application Services for its medical practice and not for use by any third party. **The number of Authorized Users and Providers accessing the Application Services shall not exceed the number purchased by Client, as indicated in the Service Order.** Client shall notify Glooko in writing in the event it wishes to increase the number of Providers or Authorized Users. Upon receipt of such notice, Glooko shall increase the number of Providers or Authorized Users at Glooko's then-current rates. Client may, upon 90 days' written notice, reduce the number of Providers or Authorized Users by up to ten percent (10%) during each Term of this Agreement.

#### **3.2 Restrictions.**

**3.2.1 Glooko** owns all right, title and interest in and to the Application Services and Glooko Application. The Application Services are provided to Client for use only as expressly set forth in this Agreement, and Client will not use the Application Services in whole or in part for any other use or purpose. Client will not, and will not allow any third party to (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Glooko Application by any means, or disclose any of the

foregoing; (ii) except as expressly set forth in this Agreement, provide, rent, lease, lend, or use the Glooko Application for timesharing, subscription, or service bureau purposes; or (iii) sublicense, transfer or assign this Glooko Application or any of the rights or licenses granted under this Agreement.

**3.2.2** Client shall not use the Application Services for storage, possession, or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, those laws regarding stolen materials, obscene materials or child pornography.

**3.2.3** Client shall not transmit Content over the Application Services that infringes upon or misappropriates the intellectual property or privacy rights of any third party.

**3.2.4** Client understands the Application Services stream-line the normal operations of a medical practice and that the Application Services are not designed for medical emergencies. Client agrees to inform its Patients that this service is not designed for emergency use.

**3.2.5** Glooko and Client agree that only appropriately licensed Providers and Authorized Users shall assess, diagnose, and recommend treatment for Patients. Client acknowledges and agrees that Glooko is not engaged in the practice of medicine through the provision of the services contemplated herein. Client shall take all actions required to ensure that its use of the Application Services is in compliance with all applicable laws, rules, regulations and professional standards. Client shall be solely responsible for verifying the identity and authenticity of Authorized Users. Neither party shall interfere with, control, or otherwise influence the physician-patient relationship established between a Physician and a Patient. Client shall take all reasonable precautions to ensure that the Application Services are utilized by its Authorized Users in a manner consistent with applicable ethical and legal requirements. Glooko SHALL HAVE NO OBLIGATION, RESPONSIBILITY OR LIABILITY FOR ANY PHYSICIAN'S PROVISION OF PROFESSIONAL SERVICES.

**3.2.6** Nothing in this Agreement shall be construed as an offer for payment by one party to the other party or any affiliate of the other party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, for Patient referrals or for recommending or for arranging, purchasing, leasing or ordering any item or service.

**3.2.7** Client shall be prohibited from: (i) sharing or publishing reports or analysis that includes Patient Data or Device Data (or any data contained therein); (ii) commercializing any product offerings utilizing the Device Data or Patient Data (or any data contained therein); or (iii) sublicensing or sharing the Device Data or Patient Data Extract (or any data contained therein) with any other individual or entity whatsoever.

**3.3** Client Content. Client hereby grants to Glooko a worldwide, non-exclusive, fully paid-up license to use, copy, modify, enhance, display, publish, distribute, create derivative works of and otherwise use the Content in any manner reasonably necessary to perform the Services. An example of Content would include a Client's logo that is presented in the Application Services. Client represents and warrants that it has all rights necessary to grant Glooko the foregoing license. Client further represents and warrants that Client owns or all right, title and interest in and to the Content or has a license granting it the rights necessary to permit it to grant the foregoing license. If Client licenses any Content, it shall not provide such Content to Glooko until it provide Glooko with a copy of the license.

#### **4. PAYMENTS.**

**4.1 Fees.** Client agrees to pay Glooko for the performance of the Services in accordance with the rates and fees specified in the Service Order. The number of Patients whose data is updated to Glooko at least once every 6 months shall be used for calculating fees in conjunction with the terms specified in the Service Order. On each one year anniversary of a Service Order, Glooko may increase the rates and fees set forth in such Service Order by up to the annual percentage change reflected in the 12-month non seasonally adjusted CPI-U , U.S. City Average published by the U.S. Bureau of Labor Statistics and found on the website: <http://www.bls.gov/cpi/>. Glooko shall give Client notice of such increase prior to its effective date. Unless otherwise set forth in the Service Order, all payments shall be made in United States dollars no later than thirty (30) days after the date of invoice.

**4.2 Taxes.** The fees payable under this Agreement shall not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties now in force or enacted in the future imposed on the transaction and/or the delivery of the Services, all of which Client shall be responsible for and pay in full except those taxes based on the net income of Glooko.

## **5. TERM AND TERMINATION.**

**5.1 Term.** Unless earlier terminated in accordance with its terms, each Services Agreement Order Form will have the initial term set forth in the Service Order (the “Initial Term”). Unless otherwise set forth in a Service Order, upon the expiration of each Initial Term, the term of a Service Order may be renewed for additional terms of one (1) year each (“Renewal Term”, and together with the Initial Term, the “Term”), by mutual written agreement by the parties. Unless earlier terminated in accordance with its terms, this Agreement will expire on the date the last Service Order then in effect expires or is terminated pursuant to the terms and conditions set forth in this Agreement.

**5.2 Termination for Cause.** Except as otherwise provided herein, either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for thirty (30) days following written notice to the breaching party.

**5.3 Non-appropriation.** Client 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, Client will be released from any further financial obligation to Glooko, 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. Glooko will be given 30 days’ prior written notice in the event that Client requires such an action.

**5.4 Effect of Termination.** Upon the expiration of this Agreement Glooko will terminate Client’s access to the Application Services and will cease the provision of all Services.

## **6. WARRANTIES; DISCLAIMER**

**6.1** Glooko hereby warrants that during the term of this Agreement, the Application Service will perform, in all material respects, in accordance with its then-current published functional specifications. In the event of any failure of the Application Services to perform in a material respect to such specifications, Glooko will, as Client’s sole and exclusive remedy for such failure, repair the applicable Application Service.

**6.2 DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN SECTION 6.1, GLOOKO MAKES NO WARRANTIES REGARDING THE SERVICES, AND GLOOKO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT**

**LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY OR SECURITY. GLOOKO DOES NOT WARRANT THAT ACCESS TO OR USE OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ALL DEFECTS AND ERRORS IN THE APPLICATION SERVICE WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. GLOOKO DOES NOT PROVIDE ANY WARRANTIES REGARDING THE ACCURACY OF DATA OR INFORMATION PROVIDED BY THIRD PARTIES. The provisions of this Section allocate the risks under this Agreement between Glooko and Client. Glooko's pricing reflects this allocation of risk and the limitation of liability specified herein.**

## **7. INDEMNITY.**

**7.1 Infringement.** Glooko shall defend, indemnify and hold harmless Client, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all claims, suits, proceedings, losses, damages, fines, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") suffered or incurred by them in connection with a third party claim arising out of the actions or omissions of Glooko or of any actual or threatened claim that the Application Services infringes upon or misappropriates any copyright, patent, trademark, trade secret, or other proprietary or other rights of any third party. Glooko shall have no obligation to indemnify Client to the extent the alleged infringement arises out of (i) the use of the Application Services in combination by Client with other data products, processes or materials not provided by Glooko and such infringement would not have occurred but for Client's combination; or (ii) the Content. Should the Application Services as used by Client become, or in Glooko's opinion be likely to become, the subject of an infringement claim, Glooko shall at its option and sole expense either: (i) procure for Client the right to continue to use the Application Services as contemplated hereunder, or (ii) modify the Application Services to eliminate any such claim that might result from its use hereunder or (iii) replace the Application Services with an equally suitable, compatible and functionally equivalent non-infringing Application Services at no additional charge to Client. If none of these options is

reasonably available to Glooko, then this Agreement may be terminated at the option of either party hereto without further obligation or liability on the part of either party hereto except that Glooko agrees to promptly refund to Client the pro-rata portion of any fees prepaid by Client amortized on a straight-line basis based over the term of this Agreement.

**7.2 Client Indemnity.** Client shall defend, indemnify and hold harmless Glooko, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all Losses suffered or incurred by them in connection with a third party claim arising out of (i) a breach by Client of this Agreement, (ii) Client's use of the Services or (iii) Client's failure to comply with laws, rules, regulations or professional standards.

**7.3 Mechanics of Indemnity.** The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (ii) granting control of the defense and settlement to the indemnifying party; and (iii) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

## **8. CONFIDENTIAL INFORMATION.**

**8.1** Except as expressly permitted in this Section 8, no party will, without the prior written consent of the other party, disclose any Confidential Information of the other party to any third party. Information will be considered Confidential Information of a party if either (i) it is disclosed by the party to the other party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (ii) (a) it is disclosed by a party to the other party in non-tangible form and is identified as confidential at the time of disclosure; and (b) it contains the disclosing party's customer lists, customer information, technical information, , pricing methodologies, or information regarding the disclosing party's business planning or business operations. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of Glooko. Glooko may, in any manner, publicly announce the relationship with Client. Glooko may also develop, with customer review and approval, a business use case that may be used for Glooko marketing purposes.

**8.2** Other than the terms and conditions of this Agreement, information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

**8.3** Each party will secure and protect the Confidential Information of the other party (including, without limitation, the terms of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. Each party may disclose the other party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with adequate time for such other party to seek a protective order; (ii) if in the opinion of counsel for such party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a party to exercise its rights and perform its obligations under this Agreement, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential. Each party is responsible for ensuring that any Confidential Information of the other party that the first party discloses pursuant to this Section 8 (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first party) is kept confidential by the person receiving the disclosure. Glooko 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.

**9. LIMITATIONS OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, GLOOKO AND ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, MANAGERS, EMPLOYEES OR OTHER REPRESENTATIVES SHALL NOT BE LIABLE TO CLIENT, AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND LOST PROFITS) THAT RESULT FROM OR ARE RELATED TO THIS AGREEMENT, EVEN IF GLOOKO HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, GLOOKO'S AGGREGATE LIABILITY TO CLIENT FOR DAMAGES, COSTS, AND EXPENSES SHALL NOT EXCEED THE AMOUNTS RECEIVED BY GLOOKO FROM CLIENT IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, GLOOKO'S LIMITATIONS OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT: (i) ANY OF GLOOKO'S DUTIES TO INDEMNIFY CLIENT IN ACCORDANCE WITH THIS AGREEMENT AND/OR (ii) ANY THIRD PARTY CLAIMS.

a. The liabilities or obligations of Client with respect to its activities pursuant to this Agreement shall be the liabilities or obligations solely of Client and shall not be or become the liabilities or obligations of the County of Kern or any other entity, including the state of California. California Health and Safety Code Section 101853(g)

**10. GENERAL PROVISIONS.**

**10.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any contract dispute or claim arising out of, or in connection with, this Agreement may be settled by binding arbitration in California, in accordance with (the "Uniform Arbitration Act") and the then current rules and procedures of the American Arbitration Association by one (1) arbitrator appointed by the American Arbitration Association. The arbitrator shall apply the law of

the State of California, without reference to rules of conflict of law or statutory rules of arbitration, to the merits of any dispute or claim. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any party. In the event that any arbitration, action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. Notwithstanding the foregoing, nothing herein shall preclude either party from seeking injunctive relief in any state or federal court of competent jurisdiction without first complying with the arbitration provisions of this Section.

**10.2 Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be deemed omitted and the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**10.3 Waiver.** The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**10.4 Assignment.** This Agreement shall be binding upon the parties' respective successors and permitted assigns. Client shall not assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of Glooko, which consent shall not be unreasonably withheld. This Agreement, and the rights and obligations herein, may be assigned by Glooko to any person or entity without the written consent of the Client.

**10.5 Independent Contractors.** Glooko is acting in performance of this Agreement as an independent contractor.

**10.6 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

**Strategic Relationships.** Glooko may enter into strategic relationships with third parties that may benefit Client by increasing patient utilization. In such an event, Glooko shall be permitted to place appropriate links, icons or displays within the Glooko Application that is accessed as part of the Application Services. Although Glooko may include links providing direct access to third-party Internet sites as a convenience, the inclusion of a link does not imply endorsement of the linked site by Glooko. Glooko does not take responsibility for the content or information contained on those other sites, and does not exert any editorial or other control over those other sites. Glooko does not take responsibility for the privacy policies and practices of these third-party links.

**10.7 Notices.** All notices required to be given under the terms of this Agreement or which any of the parties hereto may desire to give hereunder, shall be in writing, shall be delivered via one of the following methods, and shall be deemed to have been received: (i) on the day given delivered by hand (securing a receipt evidencing such delivery); or (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier service, full delivery cost paid; or (iii) on the fifth day after such notice was mailed, registered mail, prepaid, return receipt requested, and addressed to the party to be notified at the addresses set forth in the Service Order.

**10.8 Survival.** All provisions of this Agreement relating to proprietary rights, payment of fees accrued, confidentiality and non-disclosure, indemnification and limitation of liability shall survive the completion of the Services or any termination of this Agreement.

**10.9 Legal Fees.** In the event of any proceeding or lawsuit brought by Glooko or Client in connection with this Agreement, the prevailing party shall be entitled to recover its costs and legal fees (including, but not limited to, allocated costs of in-house staff counsel) and court costs.

**10.10 Force Majeure.** Neither party will be liable to the other for failure to meet its obligations under this Agreement where such failure is caused by events beyond its reasonable control such as fire, failure of communications networks, riots, civil disturbances, embargos, storms, acts of terrorism, pestilence, war, floods, tsunamis, earthquakes or other acts of God.

**10.11 Subsequent Modifications.** No amendment, alteration or modification of this Agreement shall be effective or binding unless it is set forth in a writing signed by duly authorized representatives of both parties.

**10.12 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 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. The Parties have entered into a Business Associate Agreement ("BAA"), which is attached hereto as Exhibit "A" and incorporated into this Agreement by this reference.

**10.13 Entire Agreement.** This Agreement and any exhibits and schedules attached hereto, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations and/or agreements among the parties in conjunction with the subject matter hereof except as set forth in this Agreement.

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## **BUSINESS ASSOCIATE AGREEMENT**

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Security and Privacy Rule”); and

WHEREAS, the American Recovery and Reinvestment Act (“ARRA”) of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the “Health Information Technology for Economic and Clinical Health” (“HITECH”) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the “HIPAA Security and Privacy Rule” are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations); and

WHEREAS, the Parties wish to enter into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Security and Privacy; and

WHEREAS, Business Associate may have access to Protected Health Information (“PHI”), as defined below, in fulfilling its responsibilities under such arrangement; and

If a Service Order entered into under a Subscription Agreement between Glooko and the client thereto provides that the parties will enter into Glooko’s standard Business Associate Agreement, then Glooko (“**Business Associate**”), and such client (the “**Covered Entity**”) (each a “**Party**” and collectively the “**Parties**”) hereby agree to the terms and conditions of this Business Associate Agreement (this “**Business Associate Agreement**”).

### **Article 1 Definitions**

Terms used but not otherwise defined in this Business Associate Agreement shall have the same meaning as the meaning ascribed to those terms in the Health Information

Portability and Accountability Act of 1996, codified as 42 U.S.C. §1320d (“**HIPAA**”), the Health Information Technology Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 (the “**HITECH**” Act), and any current and future regulations promulgated under HIPAA, HITECH or any applicable state regulation.

1.1 “**Breach**” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the “**HIPAA Privacy Regulations**”) which compromises the security or privacy of the Protected Health Information. “Breach” shall not include:

(a) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Regulations; or

(b) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Regulations; or

(c) A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

1.2 “**Designated Record Set**” means a group of records maintained by or for a Covered Entity that is (a) the medical and billing records about Individuals maintained by or for a covered healthcare provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) information used in whole or in part by or for the Covered Entity to make decisions about Individuals.

1.3 “**Electronic Protected Health Information**” or “**Electronic PHI**” means Protected Health Information 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 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

1.5 “**HIPAA Privacy Regulations**” shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. 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 C.F.R. 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 “**Individually Identifiable Information**” means information that is a subset of health information, including demographic information collected from an individual, and: (a) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (b) relates to 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; and: (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.9 “**Protected Health Information**” or “**PHI**” shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103 (as amended by the HITECH Act), limited to the information created or received by Business Associate from or on behalf of Covered Entity including, but not limited to Electronic PHI. PHI shall include individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that 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; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“Protected Health Information” includes without limitation “Electronic Protected

Health Information” as defined above. PHI does not include any data received by the business associate directly from a patient where the patient authorizes, in writing, to the sharing of their data. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Business Associate Agreement.

1.10 “**Secretary**” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

1.11 “**Unsecured Protected Health Information**” 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.** Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as required by law. Business Associate may (1) use and disclose PHI to perform the services agreed to by the Parties; (2) use or disclose PHI for the proper management and administration of Business Associate or in accordance with its legal responsibilities; (3) use PHI to provide data aggregation services relating to health care operations of Covered Entity; (4) use or disclose PHI to report violations of the law to law enforcement; or (5) use PHI to create de-identified information consistent with the standards set forth at 45 C.F.R. §164.514. Business Associate 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.** Business Associate agrees to require any subcontractor to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, to agree to the same restrictions and conditions that apply throughout this Business Associate Agreement to Business Associate with respect to such information. Subcontractors shall receive appropriate training, and agree to implement reasonable and appropriate safeguards to protect any of such information which is PHI or Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its

employees' actions or omissions do not cause Business Associate to breach the terms of this Business Associate Agreement.

**2.3 Safeguards.** Business Associate agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Business Associate Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.

**2.4 Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Association in violation of this Business Associate Agreement.

**2.5 Compliance.** Business Associate will, pursuant to the HITECH Act and its implementing regulations, comply with all additional applicable requirements of the Privacy Rule, including those contained in 45 CFR §§ 164.502(e) and 164.504(e)(1)(ii), at such time as the requirements are applicable to Business Associate. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed to be "marketing" under the HITECH Act. In addition, Business Associate will, pursuant to the HITECH Act and its implementing regulations, comply with all applicable requirements of the Security Rule, contained in 45 CFR §§ 164.308, 164.310, 164.312 and 164.316, at such time as the requirements are applicable to Business Associate.

**2.6 Notice of Use or Disclosure, Security Incident or Breach.** (a) Business Associate agrees to notify the Chief Executive Officer of the Covered Entity of any use or disclosure of PHI by Business Associate not permitted by this Business Associate Agreement, any Security Incident (as defined in 45 C.F.R. §164.304) involving Electronic PHI, and any Breach of Unsecured Protected Health Information without unreasonable delay, but in no case more than ten (10) business days following discovery

of breach. Business Associate shall provide the following information in such notice to Covered Entity:

(i) the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate 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 the Business Associate is doing to mitigate the damages and protect against future breaches; and

(vi) any other details necessary for Covered Entity 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) Covered Entity will be responsible for providing notification to Individuals whose unsecured PHI has been disclosed, as well as to the Secretary and the media, as required by the HITECH Act. Business Associate will reimburse all reasonable costs associated with providing notice. In the event that a breach of unsecured PHI, as defined in the HITECH Act or accompanying regulations, occurs as a result of actions by Covered Entity or by the customer or owner of such PHI, and not by Business Associate, Business Associate will cooperate in the Covered Entity's breach analysis procedures, including risk assessment and determination of the extent of access of such unsecured PHI, at the written request of the Covered Entity or customer/owner of such breached PHI, and for a fee consistent with Business Associate's then current rates.

(c) Business Associate agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

(d) The Parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but

Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, “**Unsuccessful Security Incidents**” include activity such as pings and other broadcast attacks on Business Associate’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 Electronic PHI.

**2.7 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. Business Associate's aggregate liability for Claims under this Agreement shall not exceed \$200,000.

**2.8 Legal Actions.** Promptly, but no later than ten (10) 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.

**2.9 Access.** Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably requested by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual.. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to Section 164.522 of the HIPAA Security and Privacy Rule to which Covered

Entity has agreed and of which Business Associate is notified by Covered Entity. Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information electronically available to the applicable individual. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule and Section 13405(c)(3) of the HITECH Act. Business Associate and Covered Entity shall cooperate in providing any accounting required on a timely basis.

**2.8 Amendments.** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees, upon request of Covered Entity or an Individual.

**2.9 Disclosure of Practices, Books and Records.** Business Associate agrees to make internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity or the Secretary in a time and manner designated by the Covered Entity or Secretary, for the purposes of the Secretary in determining the Parties compliance with HIPAA, the HITECH Act, the American Recovery and Reinvestment Act, and corresponding regulations.

**2.10 Accounting and Audit.** Business Associate agrees to provide to Covered Entity an accounting of PHI disclosures made by Business Associate, including disclosures made for treatment, payment and health care operations. The accounting shall be made within a reasonable amount of time upon receipt of a request from Covered Entity. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.

**2.11 Security of Electronic Protected Health Information.** Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity; (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 the Covered Entity any security incidents of which it becomes aware.

**2.12 Minimum Necessary.** To 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 C.F.R. §164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

**2.13 Permitted Uses and Disclosures.** Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate HIPAA, ARRA, or the HITECH Act if done by the Covered Entity. Notwithstanding the prohibitions set forth in this Business Associate Agreement, Business Associate may use and disclose Protected Health Information:

(a) if necessary, for the proper management and administration of Business Associate services or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; or

(b) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship, or as mutually agreed in writing by both Parties. For purposes of this Business Associate Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected

health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate may de-identify any and all Protected Health Information created or received by Business Associate under this Agreement; provided, however, that such de-identification conforms to the requirements under HIPAA. Such resulting de-identification information shall not be subject to the terms of this Agreement.

### **Article 3 Obligations of Covered Entity**

**3.1 Notice of Privacy Practices of Covered Entity.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520, as well as any changes to such notice.

**3.2 Restrictions in Use of PHI.** Covered Entity shall notify Business Associate of any changes in restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**3.3 Changes in the Use of PHI.** Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes or revocation affects Business Associate's use or disclosure of PHI.

**3.4 Appropriate Requests.** Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would violate the HIPAA Privacy Regulations, ARRA, or the HITECH Act if done by Covered Entity.

**3.5 Consents.** Obtain from individuals any and all consents or authorizations necessary for Business Associate to provide services to Covered Entity.

### **Article 4 Term and Termination**

**4.1 Term.** The Term of this Business Associate Agreement shall be effective as of the date listed above and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.

**4.2 Termination for Cause.** Upon either Party's determination that the other Party has committed a violation or material breach of this Business Associate Agreement, 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 this Agreement;

(b) Immediately terminate this Business Associate Agreement if the other Party has committed a material breach of this Agreement and cure of the material breach is not possible. If this option is taken then the underlying agreement will also be terminated; or

(c) If neither cure nor termination is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary in accordance with the requirements set forth in the HITECH Act.

**4.3 Disposition of PHI Upon Termination or Upon Request.** (a) Upon termination of this Business Associate Agreement, for any reason, or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate shall return or destroy all Protected Health Information created or received by Business Associate on behalf of Covered Entity which Business Associate still maintains in any form and retain no copies of such information. This provision shall apply to Protected Health Information that is in the possession of subcontractors of Business Associate.

(b) It may not be feasible for Business Associate to return or destroy all copies of customer data constituting Protected Health Information. In such cases, where such return or destruction is not feasible, Business Associate will extend the protections of this Business Associate Agreement to the information and limit further uses and disclosures solely to those purposes as originally intended under this Business Associate Agreement that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## **Article 5 Miscellaneous**

**5.1 No Third Parties; Survival.** Except as expressly stated herein or within the HIPAA Security and Privacy Rule, the Parties to this Business Associate Agreement do not intend to create any rights in any third parties. The respective rights and obligations of Business Associate under this Section shall survive the expiration, termination, or

cancellation of this Business Associate Agreement, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

5.2 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, ARRA, or the HITECH Act and any applicable regulations in regard to such laws.

5.3 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, ARRA, or the HITECH Act or any applicable regulations in regard to such laws.

5.4 **Prior Agreement.** This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement between the Parties.

5.5 **Ambiguity.** Any ambiguity of this Business Associate Agreement shall be resolved to permit the Parties to comply with the HITECH Act, HIPAA, ARRA, and the Privacy and Security Rules and other implementing regulations and guidance.

5.6 **Minimum Requirements.** The provisions of this Business Associate Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

5.7 **Notices.** Except as otherwise specified herein, all notices, demands or communications required under this Business Associate Agreement shall be in writing and delivered personally, or sent either by U.S. certified mail, postage prepaid return receipt requested, or by overnight delivery air courier (e.g., Federal Express) to the parties at their respective addresses set forth above in this Agreement and, for Glooko, with a copy to: Glooko Inc., Attention: CEO, Law Department, 899 W Evelyn Ave, Mountain View, CA 94041. All such notices, requests, demands, or communications shall be deemed effective immediately upon receipt.

5.8 **Entire Agreement, Amendments, Assignment, Relationship, Waiver, Governing Law.** This Business Associate Agreement is the entire agreement between the parties in connection with the subject matter herein and this Business Associate Agreement may be amended or modified only in a writing signed by the Parties. Either party may assign, sublicense, delegate or transfer all or any portion of its rights or responsibilities under this Business Associate Agreement by operation of law or

otherwise to any subsidiaries or affiliates thereof, or to any other party, in connection with a sale of the business related to this Business Associate Agreement. Any assignment of this Business Associate Agreement by Business Associate in connection with a sale of this business shall relieve Business Associate from any further liability hereunder. None of the provisions of this Business Associate Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Business Associate Agreement and any other agreements between the Parties evidencing their business relationship. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion. In the event that any provision of this Business Associate Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Business Associate Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Business Associate Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, including any then-current requirements of the HITECH Act or its regulations, such Party shall notify the other Party in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Business Associate Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, including the HITECH Act, then either Party has the right to terminate upon written notice to the other Party.

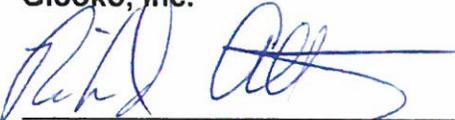
### **Contact**

If you have any questions regarding the Service, please contact Glooko at 650-720-5310, or you may fill out [this form](#).

Glooko, Inc. 303 Bryant St., Mountain View, CA 94041.

**Effective Date:** March 07, 2016

Glooko, Inc.

  
\_\_\_\_\_  
Richard Altinger

\_\_\_\_\_  
Chief Executive Officer

September 13, 2017  
Date

**Kern County Hospital Authority  
Kern Medical Center**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

REVIEWED ONLY  
NOT APPROVED AS TO FORM

By   
\_\_\_\_\_  
Legal Services Department



**Services Agreement  
Order Form**

Version: 02142017

**Address:**

Glooko, Inc. ("Company")  
899 W Evelyn Ave, Mountain View, CA 94041  
Voice: 650-720-5310  
Fax: 650-720-5310

<b>Client Name:</b> Kern Medical	<b>Address:</b> 1700 Mount Vernon Ave Bakersfield, CA 93306
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<b>Contact Name:</b> Glenn Goldis <b>Email:</b> <a href="mailto:glenn.goldis@kernmedical.com">glenn.goldis@kernmedical.com</a>	<b>Billing Email:</b> <a href="mailto:glenn.goldis@kernmedical.com">glenn.goldis@kernmedical.com</a> <b>Phone:</b> 661.236.2123 <b>Fax:</b>
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Patient / Device Quantity / Included	Application Service Description	Unit Cost per Year		Extended Initial Fee	Extended Annual Fee
0	<b>Glooko Remote Monitoring Platform</b>	\$180.00			\$0.00
Included	Web-Based Charts, Graphs and Visualizations				
1	<b>Glooko Kiosk Package (with 1st Kiosk)</b>	\$3,000.00			\$3,000.00
1	Additional Kiosks	\$1,500.00			\$1,500.00
0	<b>Glooko Diasend Transmitter Package (with 1st Transmitter)</b>	\$3,000.00			\$0.00
0	Additional Transmitters	\$1,500.00			\$0.00
0	Glooko-Joslin HypoMap™	\$6.00			\$0.00

Device Quantity	Hardware Devices	Unit Cost		Extended Initial Fee	Extended Annual Fee
0	MeterSync Blue Devices	\$30.00		\$0.00	
2	MeterSync Hardware for Glooko Kiosk	\$60.00		\$120.00	
2	Android Tablets for Glooko Kiosk	\$150.00		\$300.00	
0	Transmitter	\$250.00	100% Discount	\$0.00	
0	USB Hubs (1 per Transmitter)	\$50.00		\$0.00	

Quantity / Included	Client Services	Unit Cost		Extended Initial Fee	Extended Annual Fee
1	<b>Implementation, Training &amp; Project Management</b> (up to 3 hours of virtual, web-based training/support)	\$450.00		\$450.00	
0	Integration/API Access & Support			\$0.00	\$0.00

**SUBTOTALS**

\$870.00 \$4,500.00

	Initial Term of the Agreement (Months)		Total Initial Fees	Total Annual Fees
	12		\$870.00	\$4,500.00

This Services Agreement ("Agreement") between Company and Client consists of this services order form ("Services Order") subject to the terms and conditions ("Terms and Conditions") and the HIPAA Business Associate Addendum published at [www.glooko.com/protoc](http://www.glooko.com/protoc) and any subsequent addenda executed by both parties and referencing this Agreement. Under this Agreement, Glooko, Inc. will provide Client with access to the Glooko System, including the applications and services itemized above. State Sales and/or Use Tax may apply.

GLOOKO, INC. ACCEPTANCE		CLIENT ACCEPTANCE	
Signature		Signature	
Printed Name		Printed Name	
Title		Title	
Date		Date	

	Amount	
Total Initial Fees	\$870.00	<b>Upfront Payment:</b> 100% One-Time and first year Annual Fees due upon contract execution.  <b>Recurring Fees:</b> Billing for recurring fees will commence upon Glooko Delivery date. "Delivered" or "Delivery", with respect to a Service, means when the Service has been implemented by Glooko and is ready for testing by Customer. Recurring fees are subject to cost of living increases after the initial calendar year of the contract upon written notice. Recurring fees are invoiced annually in advance; Additional patient seats are invoiced in arrears at the contracted rate as they are added.  <b>Agreement Term:</b> Term is for the number of months stated in this agreement and begins upon the initial Delivery date. <del>Renewal: Contract automatically renews unless a party notifies the other party, at least ninety (90) days prior to the end of the then-current Term.</del>
1st Twelve Months Fees	\$4,500.00	
<b>Total Payment Due at Signing</b>	<b>\$5,370.00</b>	



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

September 20, 2017

**SUBJECT:** Proposed Resolution authorizing the Kern County Hospital Authority Chief Executive Officer to sign Whole Person Care Pilot Program Certifications of Lead Entity Deliverables, as necessary, for any of the reports, invoice- or budget-related documents in the Special Terms and Conditions of the California section 1115 Medi-Cal 2020 Demonstration Waiver specific to the Whole Person Care Pilot Program and any other deliverables requested by the California Department of Healthcare Services

**Requested Action:** Approve; Adopt Resolution

**Summary:** As the Lead Entity for Kern County's Whole Person Care Pilot Program, Kern Medical is required to submit mid-year and annual reports for each of the program years. As mandated by the Special Terms and Conditions of the California Section 1115 Medi-Cal 2020 Demonstration Waiver, Lead Entities must include with these reports, and any other deliverables requested by the California Department of Healthcare Services, a certification signed by an administrator, officer or other individual duly authorized by resolution by the Lead Entity's governing board. This resolution seeks to obtain that authorization for the Chief Executive Officer to sign any of the certifications required for the Whole Person Care Pilot Program on behalf of the Lead Entity.

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

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In the matter of:

Resolution No. \_\_\_\_\_

**AUTHORIZING CHIEF EXECUTIVE  
OFFICER RUSSELL V. JUDD TO EXECUTE  
WHOLE PERSON CARE PILOT PROGRAM  
CERTIFICATIONS OF LEAD ENTITY REPORTS**

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of September, 2017, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSTENTIONS:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

(a) The California Medi-Cal 2020 Demonstration Waiver authorizes the Whole Person Care initiative (“WPC”), to test locally-based initiatives that will coordinate physical health, behavioral health, and social services, as applicable, in a patient-centered manner for vulnerable Medi-Cal beneficiaries who are high users of multiple health care systems and continue to have poor outcomes with the goals of improved beneficiary health and well-being through more efficient and effective use of resources; and

(b) On October 19, 2016, the Board of Governors adopted Resolution No. 2016-021, which authorized Chief Executive Officer Russell V. Judd to sign the final approved WPC pilot application and agreement and to enter into the WPC agreement with the California Department of Health Care Services (“DHCS”); and

(c) Kern Medical Center is the Lead WPC Pilot Entity (“Lead Entity”) in a consortium of Kern County departments and community-based organizations; and

(d) Kern Medical Center is approved to implement the WPC Pilot program and is contracted with the DHCS to provide WPC Pilot program services; and

(e) The DHCS requires a Lead Entity to include a certification when submitting to DHCS any of the reports, invoice- or budget-related documents required in the Special Terms and Conditions specific to the WPC Pilot program and any other reports, invoice- or budget-related documents requested by DHCS specific to the WPC Pilot program; and

(g) The authorized signatory must be duly authorized in a resolution adopted by the governing body of the Lead Entity, as having authority to execute WPC Pilot program certifications of Lead Entity reports, invoice- or budget-related documents.

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

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

2. This Board hereby authorizes Chief Executive Officer Russell V. Judd to execute Whole Person Care Pilot Program Certifications of Lead Entity Reports as necessary, for any of the reports, invoice- or budget-related documents required in the Special Terms and Conditions of the California section 1115 Medi-Cal 2020 Demonstration Waiver specific to the Whole Person Care Pilot program and any other deliverables requested by the California Department of Health Care Services specific to the Whole Person Care Pilot program.

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

Kern Medical Center  
Legal Services Department  
California Department of Health Care Services

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

September 20, 2017

**Subject:** Request to employ retired Kern County Hospital Authority employee Anabel Moreno

**Recommended Action:** Approve

**Summary:**

Kern Medical is requesting approval to employ retired Kern County Hospital Authority employee Anabel Moreno, as Extra Help Program Specialist II, for the period ending June 30, 2018, or 960 hours, whichever occurs first, effective September 21, 2017. Ms. Moreno has the requisite experience and skill set needed to perform the work for which she is being reemployed. Ms. Moreno will be reemployed for a limited duration to fill voids in staffing in the Department of Obstetrics and Gynecology.

The Public Employee Pension Reform Act (PEPRA) sets forth post-retirement employment requirements for all KCERA retirees returning to work for a KCERA employer. The authority is a designated KCERA employer. Under PEPRA, a retiree may be reemployed up to a maximum of 960 hours per fiscal year, subject to approval by your Board.

Therefore, it is recommended that your Board approve the reemployment of Anabel Moreno, as Extra Help Program Specialist II, effective September 21, 2017.

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

September 20, 2017

**Subject:** Proposed Retroactive Amendment with Health Advocates, LLC

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

The purpose of the amendment is to set the maximum payable to Health Advocates LLC to provide Account Receivable/Financial Services, not to exceed \$1M per year and extend the terms of the agreement for four (4) years.

**AMENDMENT NO. 1 TO**  
**FINANCIAL SERVICES AGREEMENT**  
**BETWEEN KERN COUNTY HOSPITAL AUTHORITY AND HEALTH ADVOCATES, LLC**

The Financial Services Agreement (“Agreement”) effective July 1, 2016, by and between **Kern County Hospital Authority**, a county hospital authority, that owns and operates **Kern Medical Center** (“Client”) and **Health Advocates, LLC** (“Health Advocates”), to provide Account Receivable/Financial Services is hereby amended as set forth below (“First Amendment”).

The purpose of this First Amendment is to extend the term of the agreement and to replace the existing **Exhibit A – Fee Schedule**.

1. Section **TERM** in the Agreement will be deleted in its entirety and replaced with the following:

“**TERM** The duration of this Agreement is for a two-year period commencing on the Effective Date (“Initial Term”), and may renew for successive one year terms by either Party in a written amendment at least ninety (90) days before the expiration of the Initial Term or any subsequent one (1) year renewal term.

1. The term of the Agreement will begin on July 1, 2016 and will end on June 30, 2020 subject to the additional provisions regarding renewals and termination in the Agreement.”

2. Section **TERMINATION** subsection 2 in the Agreement is added to the Agreement and incorporated herein by this reference.

“2. In accordance with the Agreement, either Party may terminate this Agreement without cause upon ninety (90) day written notice to the other Party.”

3. Section **PAYMENT OF FEES AND EXPENSES** subsection 1 of the Agreement is added to the Agreement and incorporated herein by this reference:

“1. **Maximum Payable**. The maximum payable under the Agreement will not exceed one million (\$1,000,000) dollars each year of the four (4) year term for a total Not To Exceed of four million (\$4,000,000) dollars.”

4. Exhibit A-1, **FEE SCHEDULE**, to Amendment No. 1 is added to the Agreement and incorporated herein by this reference.
5. Except as provided herein, all other terms, conditions, and covenants of the Agreement and any and all amendments thereto shall remain in full force and effect; provided, however in the event of any conflict between the terms of the Agreement and this Amendment No. 1, the terms of this Amendment No. 1 shall control.

6. The Agreement, as amended by Amendment No. 1 constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior oral and written agreements, representations and understandings between the parties concerning such subject matter.

IN WITNESS TO THE FOREGOING, the Parties have executed this Amendment No. 1 as of the day and year first written above.

**Kern County Hospital Authority**  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306

**Health Advocates, LLC**  
21540 Plummer Street, Suite B  
Chatsworth, CA 91311

By: \_\_\_\_\_ 

By: \_\_\_\_\_ 

Name: Russell Bigler

Name: Steve Levine

Title: Chairman, Board of Governors

Title: CEO

Date: \_\_\_\_\_

Date: 9/11/17

Phone #: \_\_\_\_\_

Phone #: (818) 995-9500

Fax #: \_\_\_\_\_

Fax #: (818) 995-9599

Email: \_\_\_\_\_

Email: [SteveL@HealthAdvocates.com](mailto:SteveL@HealthAdvocates.com)

APPROVED AS TO FORM  
Legal Services Department

By   
Kern County Hospital Authority

**EXHIBIT A – 1  
FEE SCHEDULE**

Replace only the following captioned categories in **Exhibit A – Fee Schedule; Section A – Eligibility and Enrollment Services**. These changes to the fee categories below are made to facilitate the Client's claiming of Health Advocate qualifying fees for reimbursement under the Medi-Cal Administrative Activities program.

**Delete and replace the following categories:**

- Inpatient – (Pre-Legal)
- Outpatient and ER Treat and Release – (Pre-Legal)
- Support/Secondary Fee Structure (Pre-Legal)
- Eligibility Services (Legal)

**Replace with the following Per Approval Fees:**

	<b>A1</b> Acute Screening & Applications	<b>A2</b> Acute Fair Hearing & Appeals	<b>B1</b> Mental Health Screening & Applications	<b>B2</b> Mental Health Fair Hearing & Appeals
POE on or After 7/1/17	\$2,525	\$3,025	\$2,525	\$3,025
POE on or After 7/1/18	\$2,600	\$3,100	\$2,600	\$3,100
POE on or After 7/1/19	\$2,675	\$3,175	\$2,675	\$3,175

**Definitions:**

**A1 – Acute Medi-Cal** – Screen patients, Medi-Cal application filed, all processing support, and approved.

**A2 – Acute Fair Hearing/Appeals** – Screen patients, Medi-Cal applications filed, all processing support, and approved through Fair Hearing/Appeals.

**B1 – Mental Health** – Screen patients, Medi-Cal applications filed, all processing support, and approved.

**B2 – Mental Health Fair Hearing/Appeals** - Screen patients, Medi-Cal applications filed, all processing support, and approved through Fair Hearing/Appeals.

- These rates are based upon Proof of Eligibility (POE) Approvals (not Referrals or Payments) and apply to each discharge. This is a comprehensive fee that includes all screening, applications, processing, and follow-up resulting in Medi-Cal Approval.
- These fees apply to both Inpatient and Outpatient Eligibility Services referrals. They also apply to Medi-Cal coverage obtained as Primary of Secondary coverage with the exception of LTC applications and PRUCOL noted below.

- The fees will be adjusted and effective for Approvals on or after the date indicated in the table above.

Update the remaining fees for all other services as follows:

<b>SECTION A - Eligibility and Enrollment Services</b>	
<p><b>Baby Medi-Cal Applications (coverage extensions)</b> – Upon request, this fee specifically applies to referrals of a baby for the sole purpose of obtaining ongoing Medi-Cal benefits for the baby. It applies when the mother has existing Medi-Cal coverage (full or restricted), and the baby’s file is referred to assist in adding the baby to the Medi-Cal case. It does not apply when obtaining coverage for the baby results in invoicing for additional reimbursement for the baby (e.g. baby’s length of stay exceeds the mother’s). Any activities performed to establish eligibility/coverage for the mother, including PRUCOL or establishing eligibility via a new application are covered under other applicable fee sections.</p>	<ul style="list-style-type: none"> <li>• Pre-Discharge Referrals - \$150</li> <li>• Post-Discharge Referrals - \$275</li> </ul>
<p><b>Safety-Net Coverage/Long Term Care (LTC) Medi-Cal Applications</b> – Upon request, LTC Medi-Cal application shall be filed at no extra charge in conjunction with an Eligibility referral. All other <u>LTC applications</u> or PRUCOL referrals will be subject to a flat fee per approval.</p>	<ul style="list-style-type: none"> <li>• No Charge if in conjunction with an Eligibility Referral</li> <li>• If not in conjunction with an Eligibility Referral, the applicable a Flat Fee of \$450 per Approval</li> </ul>
<p><b>Out-of-State Medicaid Applications</b> – Upon request and with Client information support, Health Advocates will provide eligibility application/agreement processing (if a prerequisite to payment), treatment authorization, billing and follow-up for out-of-state accounts. This service is offered for all inpatient accounts and for outpatient accounts with “expected reimbursement” of \$2,000 or greater.</p>	<ul style="list-style-type: none"> <li>• Provider Application - \$1,000, if applicable, <u>plus</u></li> <li>• 20% x ASR</li> </ul>
<p><b>TAR/Billing (without appeals)</b> – Upon request, Health Advocates will provide TAR and/or Billing support on “<u>inpatient</u>” accounts referred with existing Medi-Cal approval:</p> <p>a. Client agrees to timely provide medical records, certifications, and a copy of any TARs processed by Client within five (5) business days of a TAR submission and/or approval by the Medi-Cal Field Office.</p> <p>b. These fees are subject to Client’s provision of any required clinical/nursing documentation support for InterQual processing as per state guidelines.</p>	<ul style="list-style-type: none"> <li>• <u>Acute Admissions</u> – TAR &amp; Billing <u>each</u> 1% x ASR</li> <li>• <u>Mental Health Admissions</u> – TAR 3% x ASR and Billing 1% ASR</li> </ul>
<p><b>Medicare Eligibility Services</b> – Fee earned during the “Upgrade Coverage Period” defined in (a) and (b) below:</p> <p>a. When “retroactive” Medicare is awarded - begins on the Medicare Effective Date and ends twelve months following the Approval Date</p> <p>b. When “prospective” Medicare is awarded – begins on the Medicare Effective Date and ends twelve months following the Medicare Effective Date</p>	<p>25% x ASR from Medicare on accounts falling within the Upgrade Coverage Period</p>

For this service, Client will include referrals for all affiliated entities of Client (i.e. clinics, sub-acute, long-term care, etc.) to maximize the identification of qualifying patients.	
<b><u>Medi-Cal Secondary, Safety-Net, and Disproportionate Share Services (DSH)</u></b> – This service is performed on patients that have existing primary coverage. Various DSH and account specific payments to Client may result from services under this program as described below. Health Advocates is entitled to compensation for each fee that may apply to any specific referral.	
a. <b><u>Approved DSH “Days” (on non - Medicare Patients)</u></b> - Health Advocates will be compensated for each day of approved Medi-Cal Title XIX coverage secured.	\$100 per Approved Medi-Cal Day
b. <b><u>Fee for Primary or Secondary Medi-Cal Payments</u></b> - Health Advocates will be compensated according to the applicable Eligibility Services fee for any additional payments that Client receives pursuant to billing Medi-Cal as the <u>Secondary</u> payor or <u>Primary</u> payor (should Medi-Cal become primary due to patient’s non-payment of policy premiums, exhaustion of benefits, or termination of coverage).	Applicable per Approval Fee noted in table above (i.e. A1, A2, B1, or B2)
<b><u>SECTION B - Third Party Recovery Services Fees</u></b>	
<b><u>Third Party Liability (TPL), Workers' Compensation Lien (Pre-Legal and Legal):</u></b>	
a. Out-of-Pocket costs include lien/action filing fees, court costs, etc. that will be advanced by Health Advocates	• <u>Pre-Legal</u> - 18% x ASR, plus, if incurred, Out-of-pocket costs
b. Legal fees apply to dispute resolution (e.g. arbitration, mediation, probate court, and hearing officers) on <u>authorized</u> legal actions	• <u>Legal</u> – 25%, <u>plus</u> , if incurred, Out-of-Pocket costs
c. These fees apply to direct referrals for Third Party Recovery Services or referrals initially made for Eligibility Services but where Third Party Recovery was identified.	
<b><u>SECTION C - Insurance Collection Service Fees</u></b>	
<b><u>HMO/PPO, Managed Care Claims Appeals/Denials, Workers' Compensation (Non-Lien Collections), Veterans, and COBRA (Pre Legal and Legal):</u></b>	
a. Out-of-Pocket costs include filing fees, court costs, etc. that will be advanced by Health Advocates.	• <u>Pre-Legal</u> - 18% x ASR, plus, if incurred, Out-of-pocket costs
b. Legal fees apply in these circumstances;	• <u>Legal</u> – 25%, <u>plus</u> , if incurred, Out-of-Pocket costs
1. Accounts requiring Legal action or Attorney Intervention for recovery	
2. Accounts that are a Zero-Balance (i.e. closed status upon referral date to Health Advocates)	
3. Accounts that are aged 365 days or more from discharge upon referral date to Health Advocates	
4. Accounts returned after rejection or closure by another vendor	
c. These fees apply to direct referrals for Insurance Collection Services or referrals initially made for Eligibility Services but where Insurance Collection was identified.	
<b><u>SECTION D - Electronic Verification and Existing Coverage</u></b>	
a. <b><u>Electronic Verification of Coverage</u></b> - Health Advocates electronically	• \$50 Per Account -

<p><u>verifies already existing coverage</u> (Medi-Cal, Medicare, or Commercial), without any patient/applicant contact to correct demographics, no coordination of completion or submission of any documents, no use of skip-tracing or field services to locate patient/applicant, etc. - <u>solely using the demographic information provided by the Client.</u></p> <p>b. <b><u>Post Account Closure Services</u></b> – Upon Client authorization, all closed/returned accounts will be routinely scrubbed electronically for active retro-coverage for twelve (12) months from the date closed.</p>	<p>Outpatients</p> <ul style="list-style-type: none"><li>• \$100 Per Account - Inpatients</li></ul>
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**BOARD OF GOVERNORS  
KERN COUNTY HOSPITAL AUTHORITY REGULAR MEETING**

September 20, 2017

**Subject:** Quarterly Expenditures Authorized by Kern County Hospital Authority CEO

**Recommended Action:** Receive and File

**Summary:**

Attached is the report on quarterly expenditures authorized by the Chief Executive Officer for Fiscal Year 2016-2017. Resolution No. 2016-022, adopted by your Board on December 14, 2016, authorizes the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services. This written report reflects the expenditures for medical services and payment of administrative fees and is provided pursuant to the Resolution.

Kern Medical																	
Expense Detail For Outside Services																	
For Fiscal Year 2017																	
	Jul 16	Aug 16	Sep 16	FY 2017 Q1	Oct 16	Nov 16	Dec 16	FY 2017 Q2	Jan 17	Feb 17	Mar 17	FY 2017 Q3	Apr 17	May 17	Jun 17	FY 2017 Q4	Grand Total
7957 - CORRECTIONAL MEDICINE	(5,364)	86	102,389	97,111	(101,988)	11,986	40,044	(49,959)	195,332	84,231	242,869	522,432	63,575	39,683	(11,742)	91,517	661,101
SAN JOAQUIN COMMUNITY HOSPITAL	1,812	3,332	7,651	12,795	21,579	6,281	2,088	29,948	5,130	683	6,562	12,375	-	16,859	-	16,859	71,977
BAKERSFIELD MEMORIAL HOSPITAL				-	1,700	20,571	643	22,914	3,652			3,652	21,053	10,365	(0)	31,419	57,985
JACOBO PHYSICAL THERAPY	1,720	6,390	1,195	9,305	525	4,225	5,275	10,025	7,780	150	1,305	9,235		8,330	-	8,330	36,895
COMPREHENSIVE BLOOD AND CANCER	306	9,647	8,583	18,536	173	398	1,961	2,531	1,045	202	38	1,285		3,785	-	3,785	26,138
AMERICAN RED CROSS				-			4,631	4,631	11,206	-	3,304	14,510	-	3,279	-	3,279	22,420
SAFELINE MEDICAL SERVICES	1,159	894	1,159	3,213	931	2,375	2,889	6,194	1,547	6,581	(2,852)	5,276	1,663	1,462	1,502	4,627	19,311
BAE, PETER				-		16,500	-	16,500				-				-	16,500
CA EMERG PHYS-INLAND	389	401	687	1,477	2,076	704	1,517	4,297	2,308			2,308				-	8,081
CEDAR SINAI MEDICAL CARE CLINIC			2,057	2,057	-			-				-			5,559	5,559	7,616
COLLEGE OF AM PATH		6,960	-	6,960	-		23,917	23,917	(23,917)		378	(23,539)	(378)			(378)	6,960
BAKERSFIELD DIALYSIS CTR	592		141	733	-	141	1,982	2,124		2,569		2,569		1,495	-	1,495	9,921
MERCY HOSPITAL BAKERSFIELD				-				-				-		6,624	-	6,624	6,624
FRESNO COMMUNITY HOSPITAL				-				-				-	6,379			6,379	6,379
KERN VALLEY HEALTH CARE DISTRICT	746	1,166	1,522	3,434	534	765	1,276	2,575	344			344				-	6,353
TRINITY MEDICAL TRANSPORT	600	480	50	1,130	-	800	200	1,000	1,470	100	480	2,050		1,305	-	1,305	5,485
KERN RADIOLOGY MEDICAL GROUP CONTRACT	82		232	314	-		1,505	1,505	194	605	576	1,375		1,152	576	1,727	4,922
TRUXTUN RADIOLOGY				-			2,467	2,467			2,303	2,303				-	4,770
HOFFMAN SPECIALIZED HOMECARE		-		-	1,648	3,061		4,709				-				-	4,709
AROUND THE CLOCK		1,500	300	1,800	948	1,355	150	2,453				-				-	4,253
OPTION CARE				-				-				-		3,452	-	3,452	3,452
UNIVERSITY OF TEXAS HEALTH				-				-		120	2,370	2,490	755	-		755	3,245
TRIANGLE EYE INST				-				-		2,954		2,954		201	-	201	3,155
ALLIED MEDICAL - E.V.	949	-		949	816			816	175	750	220	1,145		201	-	201	3,111
HOSPITAL OF THE UNIVERSITY OF PENNSYLVAN		675	675	1,350	-	675		675				-	975			975	3,000
MAYO COLLABORATIVE SERVICES				-				-	2,937			2,937				-	2,937
MERCY HEALTHCARE BAKERSFIELD				-			2,752	2,752				-				-	2,752
ASHLI HEALTHCARE INC		704	-	704		323	364	687	501	96	104	701		561	-	561	2,653
VALLEY MEDICAL TRANSPORT				-		703		703	1,126			1,126		495	-	495	2,324
THE UNIVERSITY OF TEXAS HEALTH SCIENCE			120	120	120	1,580	-	1,700	120	-		120				-	1,940
BAKERSFIELD EYE INSTITUTE	1,929	-		1,929				-				-				-	1,929
BAKERSFIELD HEART HOSPITAL	652	135	-	787			499	499	539			539				-	1,824
MISH FUNERAL HOME CREMATORIUM				-				-		1,800		1,800				-	1,800
UCLA PATHOLOGY				-	1,770	-		1,770				-				-	1,770
CLINICA SIERRA VISTA				-				-	252	252	265	770		713	-	713	1,483
PINNACLE EMERG PHY	205	45	120	370	-	68	702	771	315			315				-	1,456
BAKERSFIELD OPTICAL	-			-				-				-		1,380		1,380	1,380
UNIVERSITY OF WASHINGTON			43	43				-				-			1,235	1,235	1,277
HOFFMAN SPECIALIZED HOMECAR	1,190			1,190				-				-				-	1,190
CALIFORNIA RETINA CONSULTANTS				-	335	686		1,021				-				-	1,021
CASTEEN, CAROL M.D.	368			368	197	167		364				-		197	-	197	929
BAKERSFIELD PATHOLOGY MED GRP				-	51			112	163	303	219	522				-	686
BERMEJO, JUAN PHD AUD.	223			223			130	130		65	65	130		130	-	130	613
SAN JOAQUIN COMMUNITY HOSPI	525			525				-				-				-	525
REGENTS OF THE UNIV OF CA/BERKELEY	510	-	-	510	-	-	-	-	-	-	-	-	-	-	-	-	510
COMFORT ANESTHESIA ASSOCIATES, INC		496		496				-				-				-	496
CALIF EMERG PHYSICIANS GRP	393			393				-				-				-	393
UNIVERSITY FACULTY ASSOCIATES, INC				-				-				-		365	-	365	365
SANDHU, HARPREET MD				-				-	348			348				-	348
GLOBAL HEALTH MEDICAL TRANSPORTATION			100	100	-		193	193				-				-	293
PRONET IMAGING MEDICAL GRP		186	-	186		26	75	100				-				-	286
LIFECARE SOLUTIONS	155			155				-				-				-	155
REGENTS OF UNIV OF CA				-				-			36	36	-	80	-	80	116
PREMIER ANES MED GRP				-		112		112				-				-	112
PEDIATRIC ANESTHESIA ASSOCIATES MED GRP				-				-				-		112	-	112	112
TEAM PHYSICIANS OF CALIF MED GRP	45	-		45				-	45			45				-	89
CENTRAL NEPHROLOGY MEDICAL GROUP		86	-	86				-				-				-	86

<b>Kern Medical</b>																	
<b>Expense Detail For Outside Services</b>																	
<b>For Fiscal Year 2017</b>																	
	<b>Jul 16</b>	<b>Aug 16</b>	<b>Sep 16</b>	<b>FY 2017 Q1</b>	<b>Oct 16</b>	<b>Nov 16</b>	<b>Dec 16</b>	<b>FY 2017 Q2</b>	<b>Jan 17</b>	<b>Feb 17</b>	<b>Mar 17</b>	<b>FY 2017 Q3</b>	<b>Apr 17</b>	<b>May 17</b>	<b>Jun 17</b>	<b>FY 2017 Q4</b>	<b>Grand Total</b>
NOBLE CARE TRANSPORT	77			77				-				-				-	77
SAN JOAQUIN HOSPITAL				-	75	-		75				-				-	75
CENTRAL CARDIOLOGY MIA				-			69	69				-				-	69
CHASE DENNIS EMERGENCY MED		68	-	68				-				-				-	68
SHARMA, PARIKSHAT MD			38	38	-			-				-				-	38
CORNFORTH, DONALD, M.D. MIA	17			17				-				-				-	17
COMPREHENSIVE CARE CLINIC				-				-				-		12	-	12	12
Grand Total	9,282	33,250	127,063	169,595	(68,511)	73,500	95,441	100,430	212,752	101,379	258,022	572,153	94,023	102,238	(2,870)	193,391	1,035,568
<b>Administrative Penalty - CDPH</b>	<b>5-Jun-17</b>		<b>\$12,375.00</b>														

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

September 20, 2017

**Subject:** Proposed Resolution revising the delegation of authority of the Kern County Hospital Authority Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services

**Recommended Action:** Approve; Adopt Resolution

**Summary:**

On December 14, 2016, pursuant to the Kern County Hospital Authority Act (Health & Saf. Code, § 101852 et seq.) and the authority Bylaws for Governance, your Board adopted the most recent resolution (Resolution No. 2016-022) delegating authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services on behalf of the Hospital Authority. Kern Medical is recommending that your Board revise the delegation of authority to reflect more accurately the operational needs of the hospital. Attached are clean and reline versions of Exhibit "A," which is attached to the proposed resolution.

Therefore, it is recommended that your Board approve the recommended changes and adopt the attached proposed resolution.

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

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In the matter of:

Resolution No. \_\_\_\_\_

**REVISED DELEGATING AUTHORITY TO THE  
CHIEF EXECUTIVE OFFICER OF THE KERN  
COUNTY HOSPITAL AUTHORITY TO ENTER  
INTO CONTRACTS AND TO SECURE AND PAY  
FOR CERTAIN PROFESSIONAL AND SPECIAL  
SERVICES**

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I, MONA A. ALLEN, Authority Board Coordinator for the Kern County Hospital Authority, hereby certify that the following Resolution, on motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, was duly and regularly adopted by the Board of Governors of the Kern County Hospital Authority at an official meeting thereof on the 20th day of September, 2017, by the following vote, and that a copy of the Resolution has been delivered to the Chairman of the Board of Governors.

AYES:

NOES:

ABSENT:

**MONA A. ALLEN**  
Authority Board Coordinator  
Kern County Hospital Authority

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Mona A. Allen

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**RESOLUTION**

Section 1. WHEREAS:

(a) The Kern County Hospital Authority Act (Health & Saf. Code, § 101852 et seq.) (the "Act") states the Kern County Hospital Authority ("Hospital Authority") shall have the power "*to enter into one or more contracts or agreements, including, but not limited to, contracting with any public or private entity or person for management or other*

*services and personnel, and to authorize the chief executive officer to enter into contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in [the Act].”* (Health & Saf. Code, § 101855(a)(9).); and

(b) The Hospital Authority Bylaws for Governance (“Bylaws”) provide that *“the Chief Executive Officer shall be the general manager of the Hospital Authority, and shall have the authority to exercise executive supervision over the general business and affairs of the Hospital Authority in accordance with the statement of duties and responsibilities adopted by the Board of Governors, including, but not limited, to the following: (h) such duties assigned by the Board of Governors and required by these Bylaws or applicable law.”* (Bylaws, section 5.02.); and

(c) On May 18, 2016, the Board of Governors adopted Resolution No. 2016-009 delegating authority to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services on behalf of the Hospital Authority; and

(d) On December 14, 2016, the Board of Governors adopted Resolution No. 2016-022, which revised the authority delegated to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services on behalf of the Hospital Authority; and

(e) On recommendation of the Kern Medical Center, the Board of Governors desires to revise the authority delegated to the Chief Executive Officer to enter into contracts and to secure and pay for certain professional and special services.

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 Chief Executive Officer is hereby appointed as the Purchasing Agent for the Kern County Hospital Authority.

3. The Chief Executive Officer is hereby appointed as the Agency Designated Representative for labor negotiations, as directed by this Board.

4. This Board hereby delegates authority to the Chief Executive Officer of the Kern County Hospital Authority to enter into the contracts and to secure and pay for those certain professional and special services set forth in Exhibit “A,” attached hereto and incorporated herein by this reference.

5. Counsel shall review all contracts for approval as to legal form. Board of Governors approval is required if Counsel is unable to approve a contract as to form.

6. The provisions of this Resolution shall be effective, in force, and operative as of the 20th day of September, 2017.

7. Resolution No. 2016-022, adopted by the Board of Governors on December 14, 2016, is hereby repealed and superseded by this Resolution.

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

Kern Medical Center  
Chief Executive Officer  
Chief Financial Officer  
Legal Services Department  
Human Resources  
County Administrative Office

## **EXHIBIT "A"**

**Section I.** The Chief Executive Officer shall be the Purchasing Agent for the Kern County Hospital Authority ("Hospital Authority"). As provided herein, the Purchasing Agent shall have the responsibility to evaluate proposed purchases in order to bid or negotiate requisitions and contracts on behalf of the Hospital Authority. All purchases, rentals and contracts made by the Purchasing Agent shall be binding and constitute a lawful charge against the Hospital Authority. The Purchasing Agent or designee shall have the authority to:

1. Secure goods or services for the proper operation of the health facilities costing a maximum \$250,000 per year with a maximum cumulative total not to exceed \$750,000, unless otherwise specified in this Exhibit. Agreements that exceed a cumulative total greater than \$250,000 that do not contain a termination without cause provision or are subject to the Public Contract Code must be approved by the Board of Governors.
2. Negotiate and execute addenda that do not require the expenditure of funds where the agreement exceeds the amounts and term limit set forth above.
3. Secure goods for the proper operation of the pharmacies, clinical laboratory, and operating room that may exceed the amounts and term limit set forth above.
4. Enter into professional and specialized medical services that may exceed the specified amount set forth above, including without limitation, the following:
  - A. Medical services that are beyond the capability of employed staff to provide
  - B. Medical services of a very specialized nature which are not available at Kern Medical Center
  - C. Medical services that require special equipment or facilities that are not available at Kern Medical Center
  - D. Medical services that are infrequent in occurrence, are unpredictable in volume and costs, and therefore may not be identified specifically in the Hospital Authority budget
  - E. Medical services that are necessary to provide patient care or services to patients in an emergent situation
  - F. Patient-specific letters of agreement
  - G. Letters of agreement for medical services not provided at Kern Medical Center
5. Process and pay any administrative penalty that does not exceed \$50,000. Counsel shall review any notice of administrative penalty to determine whether a hearing to dispute the penalty is warranted and approve all settlement agreements, if any, negotiated between the Hospital Authority and the relevant agency, prior to payment of the penalty.

6. Negotiate and execute routine agreements that typically do not require the expenditure of funds or are revenue agreements, including without limitation, the following:
  - A. Indemnification agreements
  - B. Provider transfer agreements
  - C. Organ/tissue and blood services agreements
  - D. Accreditation contracts with The Joint Commission
  - E. Business Associate Agreements (BAA)
  - F. Provider participation agreements
  - G. Quality collaborative agreements
  - H. Affiliation agreements
  - I. Payer/provider agreements
  - J. Affiliation agreements
  - K. Peer review sharing agreements
  - L. Research studies and grants
  - M. Waivers and Inter-governmental Transfer (IGT) documents and agreements
7. Accept and execute contracts previously approved by the Kern County Board of Supervisors that are being assigned by the County of Kern to the Hospital Authority that may exceed the specified amounts set forth above.
8. Negotiate and execute lease agreements for real property with a not to exceed amount of \$250,000 per year, including multi-year lease agreements that do not exceed an initial term of 10 years with a maximum cumulative total not to exceed \$2,500,000.

**Section II.** The Chief Executive Officer shall have the following delegated authority for the proper staffing of the health facilities and shall be the Agency Designated Representative for labor negotiations with employee organizations, as directed by the Board of Governors. The Chief Executive Officer or designee shall have the authority to:

1. Negotiate within the established physician compensation model, and execute individual physician agreements with a not to exceed amount of \$500,000 per year, including multi-year agreements that do not exceed a term of three years, with a maximum cumulative payable of \$1,500,000.
2. Add and delete existing classifications required to provide hospital services that were not previously included in the adopted budget while not exceeding total expense appropriations.
3. Create new job classifications and establish salary ranges for new classifications. Salary ranges for management, mid-management, confidential and unrepresented classifications must be within the Board of Governors approved salary pay bands.
4. Meet and confer with employee organizations unless it involves matters related to MOU approval, declaration of impasse, or implementing any last, best, and final offer.

**Section III.** The Chief Executive Officer shall establish budgetary controls and be the official responsible to administer such controls. The Chief Executive Officer shall have authority to:

1. Approve budgetary transfers and revisions of appropriations within a budget unit or budget units that do not increase spending authority.
2. Spend surplus revenue subject to the limitations in the Agreement for Health Care Services, Finance and Support with the County of Kern and the amount set forth in Section I, under Purchasing Agent authority.
3. Substitute capital assets and capital or maintenance projects after the adoption of the budget that does not increase spending authority.

**Section IV.** The Chief Executive Officer shall be the official responsible to review pending legislation and chaptered laws to evaluate the impact on Hospital Authority operations and shall have the authority to:

1. Write advocacy letters on behalf of the Hospital Authority.
2. Accept and receive any donations or grants on behalf of Kern Medical Center and on behalf of its physicians.
3. Utilize Board-approved strategic initiatives that require immediate action, subject to any limitations set forth herein.

## EXHIBIT "A"

**Section I.** The Chief Executive Officer shall be the Purchasing Agent for the Kern County Hospital Authority ("Hospital Authority"). As provided herein, the Purchasing Agent shall have the responsibility to evaluate proposed purchases in order to bid or negotiate requisitions and contracts on behalf of the Hospital Authority. All purchases, rentals and contracts made by the Purchasing Agent shall be binding and constitute a lawful charge against the Hospital Authority. The Purchasing Agent or designee shall have the authority to:

1. Secure goods or services for the proper operation of the health facilities costing a maximum \$250,000 per year with a maximum cumulative total not to exceed \$750,000, unless otherwise specified in this Exhibit. Agreements that exceed a cumulative total greater than \$250,000 that do not contain a termination without cause provision or are subject to the Public Contract Code must be approved by the Board of Governors.
- ~~1.2.~~ Negotiate and execute addenda that do not require the expenditure of funds where the agreement exceeds the amounts and term limit set forth above.
- ~~2.3.~~ Secure goods for the proper operation of the pharmacies, clinical laboratory, and operating room that may exceed the ~~amount~~ amounts and term limit set forth above.
- ~~3.4.~~ Enter into professional and specialized medical services that may exceed the specified amount set forth above, including without limitation, the following:
  - A. Medical services that are beyond the capability of employed staff to provide-
  - B. Medical services of a very specialized nature which are not available at Kern Medical- Center
  - C. Medical services that require special equipment or facilities that are not available at Kern Medical- Center
  - D. Medical services that are infrequent in occurrence, are unpredictable in volume and costs, and therefore may not be identified specifically in the Hospital Authority budget-
  - E. Medical services that are necessary to provide patient care or services to patients in an emergent situation-
  - F. Patient-specific letters of agreement-
  - G. Letters of agreement for medical services not provided at Kern Medical- Center
- ~~4.5.~~ Process and pay ~~for administrative penalties (anyany~~ administrative penalty that does not exceed \$50,000; ~~County~~ County Counsel shall review any notice of administrative penalty to determine whether a hearing to dispute the penalty is warranted and approve all settlement agreements, if any, negotiated between the Hospital Authority and the relevant agency, prior to payment of the penalty).

~~5.6.~~ Negotiate and execute routine agreements that typically do not require the expenditure of funds or are revenue agreements, including without limitation, the following:

- A. Indemnification agreements
- B. Provider transfer agreements
- C. Organ/tissue and blood services agreements
- D. Accreditation contracts with The Joint Commission
- E. Business Associate Agreements (BAA)
- F. Provider participation agreements
- G. Quality collaborative agreements
- H. Affiliation agreements
- I. Payer/provider agreements
- J. Affiliation agreements
- K. Peer review sharing agreements
- K.L. Research studies and grants
- L.M. Waivers and Inter-governmental Transfer (IGT) documents and agreements

~~6.7.~~ Accept and execute contracts previously approved by the Kern County Board of Supervisors that are being assigned by the County of Kern to the Hospital Authority that may exceed the specified amounts set forth above.

8. Negotiate and execute lease agreements for real property with a not to exceed amount of \$250,000 per year, including multi-year lease agreements that do not exceed an initial term of ~~five~~ 10 years with a maximum cumulative total not to exceed \$2,500,000.

~~7.~~ \_\_\_\_\_

~~8. The Chief Executive Officer shall provide the Board of Governors a written report quarterly on expenditures paid pursuant to paragraphs 3 and 4 above.~~

**Section II.** The Chief Executive Officer shall have the following delegated authority for the proper staffing of the health facilities and shall be the Agency Designated Representative for labor negotiations with employee organizations, as directed by the Board of Governors. The Chief Executive Officer or designee shall have the authority to:

1. Negotiate within the established physician compensation model, and execute individual physician agreements with a not to exceed amount of \$500,000 per year, including multi-year agreements that do not exceed a term of three years, with a maximum cumulative payable of \$1,500,000.
2. Add and delete existing classifications required to provide hospital services that were not previously included in the adopted budget while not exceeding total expense appropriations.
3. Create new job classifications and ~~establishing~~ establish salary ranges for new classifications. Salary ranges for management, mid-management, confidential and

unrepresented classifications must be within the Board of Governors approved salary pay bands.

4. Meet and confer with employee organizations unless it involves matters related to MOU ~~negotiation~~/approval, declaration of impasse, ~~mediation, fact finding,~~ or implementing any last, best, and final offer.

**Section III.** The Chief Executive Officer shall establish budgetary controls and be the official responsible to administer such controls. The Chief Executive Officer shall have authority to:

1. Approve budgetary transfers and revisions of appropriations within a budget unit or budget units that do not increase spending authority.
2. Spend surplus revenue subject to the limitations in the Agreement for Health Care Services, Finance and Support with the County of Kern and the amount set forth in Section I, under Purchasing Agent authority.
3. Substitute capital assets and capital or maintenance projects after the adoption of the budget that does not increase spending authority.

**Section IV.** The Chief Executive Officer shall be the official responsible to review pending legislation and chaptered laws to evaluate the impact on Hospital Authority operations and shall have the authority to:

1. Write advocacy letters on behalf of the Hospital Authority.
2. Accept and receive any donations or grants on behalf of Kern Medical Center and on behalf of its physicians.
3. Utilize Board-approved strategic initiatives that require immediate action, subject to any limitations set forth herein.



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

September 20, 2017

**Subject:** Proposed retroactive Agreement 17-94322 with the California Department of Health Care Services, an independent contractor, for funding the nonfederal share of the Public Hospital Redesign and Incentives in Medi-Cal (PRIME) Learning Collaboratives of the California section 1115 Medi-Cal 2020 Demonstration Waiver from July 1, 2017 through June 30, 2020, in an amount not to exceed \$10,800.

**Recommended Action:** Approve; Authorize Chief Financial Officer and Prime Manager to sign

**Summary:**

As a participating entity in the Public Hospital Redesign and Incentives in Medi-Cal (PRIME) program of the California section 1115 Medi-Cal 2020 Demonstration Waiver (Waiver), Kern Medical is required to participate in learning collaboratives facilitated by the California Department of Healthcare Services (DHCS) focused on support for three main components: 1) Ongoing information sharing and technical assistance; 2) Progress and performance monitoring over the course of the demonstration period and intervention where needed, and; 3) Annual in-person convenings among all of the PRIME entities. The Special Terms and Conditions of the Waiver require at least one face-to-face statewide collaborative meeting. As consideration for participation in these Learning Collaboratives, PRIME entities must provide the non-federal share. This agreement authorizes payment of the non-federal share for PRIME Learning Collaboratives through June 30, 2020, in an amount not to exceed \$10,800.

AUG 25 2017

RECEIVED

AUG 30 2017

Kern Medical  
Administration Office

**CONTRACTOR:** Kern Medical Center

**AGREEMENT NUMBER:** 17-94322

17-94322  
Kern Medical Center  
Attn: Andy Cantu  
1700 Mt. Vernon Ave.  
Bakersfield, CA 93306

Department of Health Care Services (DHCS) has standardized its agreement formats. The enclosed agreement may reference on-line terms and conditions (GTC or GIA) that are not attached to the agreement. If applicable, the cited terms may be viewed at this web site: <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>. The enclosed agreement is not binding until signed by all parties and approved by the appropriate state agencies. No services should be provided prior to approval, as DHCS is not obligated to make any payments for services occurring prior to approval. Required action is noted by each checked [X] item below.

- Affix a signature to the enclosed agreement copy and each face sheet. Two copies must bear original signatures. Return **all** copies to CMU's address noted below along with each item noted by a check mark [X]. A copy of the approved agreement will be distributed to you after it is fully executed. Alterations, in general, are not allowed. Alterations, if any, must be approved by the funding program and initialed by the person who signs the agreement.
- Complete, sign, and return the Payee Data Record (STD 204). Payments cannot be issued without this form.
- Go to <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>, review the GTC version referenced on the face of the agreement as Exhibit C. Review provision 11 to locate the Contractor Certification Clause (CCC) version (i.e., 307) that applies. Read the CCC in its entirety. Sign the first page of the Certification. Return the first page of the originally signed Certification to the CMU address below. Failure to return the appropriate CCC version will prohibit DHCS from doing business with your firm.
- Enclosed for your records is a fully executed agreement copy. Include DHCS's agreement number on all invoices and future correspondence related to this agreement. Performance may commence.
- The enclosed agreement has been signed by DHCS. When fully executed, **return one signed copy** to CMU's address below. Cite DHCS's agreement number on all correspondence about this agreement.
- The enclosed agreement has been signed by DHCS and is fully executed. Cite the agreement number in future correspondence.

**Contact CMU at (916) 650-0150 if there are questions about this letter. Return all items identified above to this address:**

DHCS Contract Management Unit  
MS 1403, 1501 Capitol Avenue  
P.O. Box 997413  
Sacramento, CA 95899-7413

**For program matters, invoice/payment issues, or to discuss agreement alterations, contact:**

Citra Downey (916) 440-7405  
DHCS Director's  
1501 Capitol Avenue, MS 0000  
Sacramento, CA 95899-7413

Enclosure(s)

**AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES FOR FUNDING THE NONFEDERAL SHARE OF THE PUBLIC HOSPITAL REDESIGN AND INCENTIVES IN THE MEDI-CAL (PRIME) LEARNING COLLABORATIVES OF THE CALIFORNIA MEDI-CAL 2020 DEMONSTRATION PROJECT (11-W-00193/9)**

1. Parties.

The parties to "DHCS #17-94322" (Agreement) are Kern Medical Center, which is the PRIME Participating Entity (PPE), and the California Department of Health Care Services (DHCS).

DHCS is the single state agency responsible for administering the California Medical Assistance Program (Medi-Cal) pursuant to California Welfare and Institutions Code section 14100.1.

2. Term of the Agreement.

Subject to the provisions of this Agreement, the term of this Agreement shall be from State Fiscal Year (SFY) 2017-18 (July 1, 2017-June 30, 2018) and SFYs 2017-18 through 2019-20.

3. Maximum Payable Amount.

In full consideration of DHCS' performance of the services described in Section 7, the amount that PPE shall be obligated to pay for services rendered for the term of this Agreement shall not exceed \$10,800.00. The State Fiscal Year begins on July 1st each year and ends on June 30th.

The maximum payable amount shall be further subject to annual limits not to exceed:

\$3,600 - for State Fiscal Year 2017-18 (July 1, 2017-June 30, 2018)

\$3,600 - for State Fiscal Year 2018-19 (July 1, 2018-June 30, 2019)

\$3,600 - for State Fiscal Year 2019-20 (July 1, 2019-June 30, 2020)

4. Purpose of the Agreement.

The purpose of this Agreement is for DHCS to coordinate and organize PRIME Learning Collaboratives as described in Section 7. Further, the purpose of this Agreement is for PPE to pay its portion of the nonfederal share of DHCS' costs to coordinate and organize PRIME Learning Collaboratives.

5. Contact Persons.

Any notice, request, demand or other communication required or permitted hereunder, will be deemed to be properly given when deposited in the United States mail, postage prepaid, and addressed:

In the case of PPE, to:

Andy Cantu, Chief Financial Officer  
1700 Mount Vernon Avenue  
Bakersfield, CA 93306  
(661) 326-5411  
cantua1@kernmedical.com

Or to a different person or address furnished in writing to DHCS by PPE.

In the case of DHCS, to:

California Department of Health Care Services  
Division Name: Director's Office  
Attn: Citra Downey  
P.O. Box 997413, Suite 71.6001, MS 0000  
Sacramento, CA 95899-7413  
Phone: (916) 440-7405  
Email: citra.downey@dhcs.ca.gov

Or to a different person or address furnished in writing to PPE by DHCS.

6. Payment Terms.

- A. PPE shall compensate DHCS for services listed in Section 7, within forty-five (45) calendar days of receipt of an invoice from DHCS, which specifies both the total federally claimable cost and the nonfederal share of the cost.
- B. Failure by PPE to timely compensate DHCS pursuant to Paragraph A shall constitute a material breach of this Agreement by PPE, which at DHCS' discretion, may result in termination by DHCS pursuant to Section 9. PPE may cure such breach by rendering payment of the amount owed to DHCS prior to the termination of this Agreement pursuant to Section 9, at which point such notice of termination shall be automatically rescinded.
- C. In no event shall payment be made by PPE for any invoice or portion thereof exceeding the Agreement amount specified in Section 3. Payment for any services rendered by DHCS exceeding the Agreement amount shall require an amendment to this Agreement pursuant to Section 8. Services rendered by DHCS shall cease until an amendment is executed.
- D. DHCS shall submit annual invoices to PPE no sooner than forty-five (45) calendar days following the close of each SFY.
- E. PPE shall not be obligated to pay DHCS for the Learning Collaborative costs covered by any invoice if DHCS presents the invoice to PPE more than one (1) year after this Agreement terminates.

F. Payments shall be sent to DHCS at the following address:

California Department of Health Care Services  
Accounting Section, Suite 71.2014, MS 1101  
Attn: Accounts Receivable Unit  
P.O. Box 997415  
Sacramento, CA 95899-7415

7. Scope of Work.

In consideration of the payments hereinafter set forth, DHCS shall perform the activities related to administering the PRIME Learning Collaboratives as described in Exhibit A. PPE and DHCS understand that payments set forth under this Agreement are for the purpose of reimbursing DHCS for all direct and indirect expenses related to performing these activities. Should the scope of work or services to be performed under this Agreement conflict with DHCS' responsibilities as the single agency for Medi-Cal, the single state agency responsibilities shall take precedence. DHCS' cessation of any activities due to single state agency responsibilities does not relinquish the obligation of PPE to reimburse DHCS for PRIME Learning Collaborative costs actually incurred by DHCS.

8. Amendments.

Amendments to this Agreement will be made only by a written agreement signed by the parties to this Agreement. Notwithstanding the previous sentence, updates in writing on who will serve as the contact person identified in Section 5 may be transmitted by email to the other contact person or persons. In conformance with the 2020 Medi-Cal Section 1115(a) Demonstration Project (11-W-00193/9) requiring PPE to pay the State for the nonfederal share of its federally reimbursable costs for the PRIME Learning Collaboratives, by entering into this Agreement, PPE acknowledges and accepts that this Agreement shall be automatically amended to reflect updates to the State's costs.

9. Termination.

- A. This Agreement may be terminated by any party upon written notice given at least thirty (30) calendar days prior to the termination date. Notice must be addressed to the respective parties as identified in Section 5 of this Agreement. PPE shall be obligated to pay for all of the PRIME Learning Collaboratives costs incurred from the services duly performed by DHCS until the termination date.
- B. The terms of Section 6 (Payment Terms and Invoicing), Section 9 (Termination), Section 10A (Indemnification), and Section 10C (Records) shall survive the termination of this Agreement.

10. General Provisions.

- A. Indemnification. It is agreed that PPE shall defend, hold harmless, and indemnify DHCS, its officers, employees, and agents from any and all claims, liability, loss or expense (including reasonable attorney fees) for injuries or damage to any person and/or any property which arise out of the terms and conditions of this Agreement and the negligent or intentional acts or omissions of PPE, its officers, employees, or agents.
- B. Severability. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way. Notwithstanding the previous sentence, if a decision by a court of competent jurisdiction invalidates, voids, or renders unenforceable a term, condition, or provision in this Agreement that is included in the purpose of this Agreement then the parties to this Agreement shall either amend this Agreement pursuant to Section 8, or it shall be terminated pursuant to Section 9.
- C. Records.
- 1) Upon written notice, DHCS agrees to provide to PPE, or any federal or state department having monitoring or reviewing authority, access to and the right to examine and audit its applicable records and documents for compliance with relevant federal and state statutes, rules and regulations, and this Agreement.
  - 2) DHCS shall maintain and preserve all records relating to this Agreement for a period of three (3) years from receipt of the last payment of federal financial participation (FFP) or until audit findings are resolved, whichever is greater.
- D. Compliance with Applicable Laws. All services to be performed by DHCS and payments made by PPE pursuant to this Agreement shall be performed in accordance with all applicable federal and State laws, including, but not limited to:
- 1) The Americans with Disabilities Act of 1990, as amended;
  - 2) Section 504 of the Rehabilitation Act of 1973, as amended;
  - 3) Title 42, United States Code (U.S.C.) § 1396 et seq.;
  - 4) Welfare and Institutions Code (W&I), § 14000 et seq.;
  - 5) Government Code § 53060;
  - 6) The California Medicaid State Plan;
  - 7) Laws and regulations including, but not limited to licensure, certification, confidentiality of records, quality assurance, and nondiscrimination.
  - 8) Medi-Cal 2020 Section 1115(a) Demonstration Project (11-W-00193/9)
- E. Controlling law. The validity of this Agreement and its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

- F. Integration Clause. This Agreement shall constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated. Exhibit A, identified in Section 7 and attached to this Agreement, is incorporated by reference to this Agreement. The 5-Year PRIME Project Plan agreement identified in Paragraph G is incorporated by reference to this Agreement. The DHCS Form 6208 or DHCS Form 9098, as applicable and signed by PPE, is incorporated by reference to this Agreement.
- G. 5-Year PRIME Project Plan agreement. This Agreement does not alter, amend, or override any of PPE's obligations contained in the 5-Year PRIME Project Plan agreement. The 5-Year PRIME Project Plan agreement is an agreement between DHCS and each of the eligible PRIME entities, including PPE in its capacity as an eligible PRIME entity. The 5-Year PRIME Project Plan agreement provides the terms and conditions for the eligible providers to participate in PRIME. Such terms and conditions include, but are not limited to, (i) the requirement that PPE pays for its share of the PRIME Learning Collaboratives costs incurred by DHCS, as authorized by the 2020 Medi-Cal Section 1115(a) Demonstration Project (11-W-00193/9), and (ii) the term that DHCS shall immediately and automatically without prior notice cease making PRIME payments and initiate a recovery effort against PPE.
- H. Periodic Assessment. Pursuant to the 2020 Medi-Cal Section 1115(a) Demonstration Project (11-W-00193/9), PPE enters into this Agreement in order to initiate the PRIME Learning Collaboratives under which its eligible PRIME entities will participate and for which PPE will pay for its portion of the nonfederal share of all federally reimbursable costs incurred by DHCS performing activities described in Section 7. PPE agrees that DHCS may conduct a periodic assessment, as determined by DHCS, of such costs incurred by DHCS to determine compliance with the 2020 Medi-Cal Section 1115(a) Demonstration Project (11-W-00193/9).
- I. Conformance Clause. This Agreement is entered in accordance with the 2020 Medi-Cal Section 1115(a) Demonstration Project (11-W-00193/9). Any provision of this Agreement in conflict with the present or future governing authorities of the Welfare and Institutions Code or other applicable state law or federal law and rules, including but not limited to, Title XIX of the Social Security Act, California's Medicaid State Plan, the Medi-Cal 2020 Demonstration Project (11-W-00193/9), implementation directives promulgated by DHCS, and implementation directives promulgated by the Centers for Medicare & Medicaid Services, is hereby amended to conform to those authorities. Such amended provisions supersede any conflicting provision in this Agreement.



Exhibit A  
SCOPE OF WORK

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES  
JULY 1, 2017 - JUNE 30, 2020

In satisfaction of Section 7 of DHCS #17-94322 (Agreement), DHCS agrees to:

- A. Work in collaboration with participating PRIME entities to support regular learning collaboratives, which will be a required activity for all participating PRIME entities, and may be organized by the goals of PRIME or by the specific PRIME projects as described in the PRIME Program Funding and Mechanics Protocol.
- B. Support the PRIME Learning Collaboratives centers around three main components: 1) Ongoing information sharing and technical assistance through webinars, conference calls and PRIMEone; 2) Progress and performance monitoring over the course of the demonstration period and intervention where needed, and; 3) Annual in-person convenings among all of the PRIME entities. The Medi-Cal 2020 Demonstration Project STC #100.c, which states that the state will coordinate with participating PRIME entities to organize at least one face-to-face statewide collaborative meeting a year. The citation to STC #100.c refers to the version of the STC in effect as of the signing of this Agreement. Updates to this STC other than renumbering will be incorporated by reference as a federal requirement
- C. Ensure that an appropriate audit trail exists within DHCS records and accounting system and maintain expenditure data as indicated in this Agreement.
- D. Designate a person to act as liaison with Kern Medical Center, the PRIME Participating Entity (PPE) in regard to issues concerning this Agreement. This person shall be identified to PPE's contact person for this Agreement.
- E. Notwithstanding Section 5 of the Agreement, provide a written response by email or mail to PPE's contact person within thirty (30) calendar days of receiving a written request for information related to the PRIME Learning Collaboratives.
- F. Provide accounting, and program technical assistance, and training related to the PRIME Learning Collaboratives to PPE personnel after receiving a written request from PPE contact person identified in Section 5 of the Agreement.

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

September 20, 2017

**Subject:** Proposed Retroactive Agreement with Pacific Gynecologic Specialists, a California General Partnership, for Professional Physician Services

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Proposed retroactive Agreement with Pacific Gynecologic Specialists, a California general partnership, for professional gynecologic oncology services in the Department of Obstetrics and Gynecology. Pacific Gynecologic Specialists has contracted with Kern Medical since 2007 when it was owned and operated by the County of Kern. The Contractor is the only gynecologic oncology specialist in the county. The Contractor provides professional physician services at the hospital and clinics, has academic responsibilities in the OB/GYN residency, and supports Kern Medical's cancer programs.

The term of this agreement commences September 1, 2017 and ends August 31, 2019 unless terminated pursuant to other provisions in this Agreement. As consideration for the services provided by the Contractor, the Hospital Authority pays the Contractor a fixed fee in the amount of \$390,000 per year at the rate of \$32,500 per month. The maximum payable under this Agreement will not exceed \$780,000 over the two-year term.

**AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Pacific Gynecologic Specialists)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Pacific Gynecologic Specialists, a California general partnership (“Contractor”), and the individual partners of Contractor, with its principal place of business located at 300 West Huntington Drive, Arcadia, California 91007.

**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 Obstetrics and Gynecology (the “Department”); and

(c) Contractor is a California general partnership engaged in the practice of providing professional medical services, and includes individual partners who are professional medical corporations organized under the laws of the state of California (“Group Physician”). Group Physicians include John B. Schlaerth, M.D., A Medical Corporation, and Alan C. Schlaerth, M.D., A Medical Corporation; 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 September 1, 2017 (the “Effective Date”), and shall end August 31, 2019, 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 professional medical 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 Gynecologic Oncology at KMC. The Division chief shall report to the Chair, Department of Obstetrics and Gynecology.

2.1.2 Clinical Responsibilities: Contractor through Group Physicians shall provide mutually agreed upon gynecologic oncology and gynecologic services to patients of KMC.

2.1.3 Teaching. Contractor through Group Physicians shall provide mutually agreed upon gynecologic oncology and gynecologic teaching to resident physicians and medical students.

2.1.4 On-site Consultations. Contractor through Group Physicians shall provide on-site consultations, as requested, weekdays, Monday through Friday, and on-site emergency consultations, as requested, weekends, Saturday and Sunday.

2.1.5 Medical Education; Academic Responsibilities. Contractor shall ensure assigned Group Physicians (i) provide clinical mentoring to and evaluation of resident physicians and medical students, (ii) maintain board certification.

2.1.6 Committee Assignments. Contractor acknowledges the obligation of Group Physicians to (i) attend Department staff meetings and the annual medical staff meeting, (ii) participate in medical staff committees as assigned by the president of the medical staff, and (iii) attend and participate in the Cancer Committee.

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, John B. Schlaerth, 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 duly licensed physicians and surgeons in the state of California, practicing in the medical specialty of gynecologic oncology and gynecology, and certified by the American Board of Obstetrics and Gynecology in obstetrics and gynecology-general and gynecologic oncology-subspecialty, and maintain such certifications at all times during the term of this Agreement.

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) recent gynecologic oncology and gynecology experience in the operating room, emergency department, labor and delivery, and intensive care unit, (ii) 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 (iii) 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 a fixed fee in the amount of \$390,000 per year at the rate of \$32,500 per month. All services are payable in arrears.

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 \$780,000 over the two-year term of this Agreement.

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 and Group Physicians to KMC patients at KMC or a KMC location during the term of this Agreement. All professional fees generated by Contractor or Group Physicians 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 or a Group Physician and whether received during the term of this Agreement or anytime thereafter. Contractor and Group Physicians hereby assign 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. Notwithstanding the foregoing, all professional fees generated by Contractor or Group Physicians for services rendered to patients at non-KMC designated locations, including services rendered by Contractor or Group Physicians to KMC patients at such locations during the term of this Agreement shall be the sole and exclusive property of Contractor.

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 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.

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 acknowledge that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party 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

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 of Contractor:

Pacific Gynecologic Specialists  
300 West Huntington Drive  
Arcadia, California 91007  
Attn.: John B. Schlaerth, M.D.

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

36.2 **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; or (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.

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

PACIFIC GYNECOLOGIC SPECIALISTS

By \_\_\_\_\_  
Chairman  
Board of Governors

By John B. Schlaerth  
John B. Schlaerth, M.D.,  
A Medical Corporation  
John B. Schlaerth, M.D., Its President  
Managing General Partner

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By Russell V. Judd (initials)  
Russell V. Judd  
Chief Executive Officer

By Alan C. Schlaerth  
Alan C. Schlaerth, M.D.,  
A Medical Corporation  
Alan C. Schlaerth, M.D., Its President  
General Partner

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By David S. Barnes  
VP & General Counsel

Agreement.Pacific Gynecologic Specialists.090117

**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**

September 20, 2017

**Subject:** Proposed Retroactive Amendment No. 3 with Armanino LLP (dba AMF Media Group) for Professional Services

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Proposed retroactive approval to amend the Agreement for additional professional services relating to Armanino LLP (“Contractor”) providing marketing, public relations, and support for internal communications as well as digital media platforms for the Hospital Authority’s internet and intranet sites. Kern Medical originally entered into an agreement with this vendor on June 16, 2015.

The proposed amendment number 3 with the Contractor requests approval to extend the agreement from August 31, 2017 to December 31, 2017 as well as to provide additional funding and increase the maximum payable by \$500,000, from \$3,021,000 to \$3,521,000 to cover the extended term through December 31, 2017.

**AMENDMENT NO. 3  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Armanino LLP)**

This Amendment No. 3 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Armanino LLP, a California limited liability partnership, doing business as AMF Media Group (“Contractor”), with its principal place of business located at 12657 Alcosta Boulevard, Suite 500, San Ramon, California 94583.

**RECITALS**

- (a) The parties have heretofore entered into an Agreement for Professional Services (Kern County Agt. #392-2015, dated June 16, 2015), Amendment No. 1 (Kern County Agt. #787-2015, dated October 20, 2015), Assignment of Agreement (Kern County Agt. #349-2016, dated April 26, 2016, effective July 1, 2016), and Amendment No. 2 (Agt. #2016-058, dated August 17, 2016) (collectively, the “Agreement”), for the period June 16, 2015 through August 31, 2017, whereby Contractor provides communications consulting services to Authority and KMC; and
- (b) The Agreement expires August 31, 2017; and
- (c) Authority continues to require the services of Contractor; and
- (d) 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 Consultant; and
- (e) The parties agree to amend the Agreement to (i) extend the term of the Agreement through December 31, 2017, and (ii) increase the maximum payable by \$500,000, from \$3,021,000 to \$3,521,000, to cover the extended term; and
- (f) The Agreement is amended effective August 31, 2017;

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 1, Term, shall be deleted in its entirety and replaced with the following:

“1. Term. The term of this Agreement shall commence June 16, 2015 (“Effective Date”), and shall end December 31, 2017, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.”

2. Section 4, Payment for Services, paragraph 4.2, Travel Reimbursement, shall be deleted in its entirety and replaced with the following:

“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 Authority in an amount not to exceed \$12,500 for the period June 16, 2015 through August 31, 2016, \$25,000 for the period September 1, 2016 through August 31, 2017, and \$10,000 for the period September 1, 2017 through December 31, 2017, with total travel reimbursement not to exceed \$47,500 over the 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 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.”

3. Section 4, Payment for Services, paragraph 4.4, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“4.4 Maximum Payable. The maximum payable under this Agreement shall not exceed \$3,521,000 over the term of this Agreement.”

4. Except as otherwise defined herein, all capitalized terms used in this Amendment have the meaning set forth in the Agreement.

5. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

6. 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.

7. 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 have executed this Amendment No. 3 to the Agreement as of the day and year first written above.

ARMANINO LLP

By   
Vintage Foster  
Partner

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By  \_\_\_\_\_   
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By   
VP & General Counsel

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

September 20, 2017

**Subject:** Proposed Amendment No. 9 to Agreement 042-2015 with Cantu Management Group, Inc.

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve Amendment No. 9 to Agreement 042-2015 with Cantu Management Group, Inc. Kern Medical entered into the Agreement with Mr. Cantu on February 9, 2015, for Chief Financial Officer and healthcare financial management services. The proposed Amendment extends the term for an additional two years from February 9, 2019, through February 8, 2021; deletes seven positions and adds three positions from this list of staff reflected in Exhibit "B"; decreases the monthly management fee by \$56,122, from \$318,666 to \$262,544, as a result of deleting certain positions; decreases the monthly staffing fee for additional staff by 5%, from 49% to 44%; revises the methodology for payment of the performance fee from quarterly to annually; incorporates performance measures for FY 2017-2018; modifies certain terms to comply with applicable law and authority policy; and increases the maximum payable by \$13,157,552, from \$16,880,688 to \$30,038,240. The proposed changes are effective October 1, 2017.

**AMENDMENT NO. 9  
TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
INDEPENDENT CONTRACTOR  
(Kern County Hospital Authority – Cantu Management Group, Inc.)**

This Amendment No. 9 to the Agreement for Professional Services is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the Kern County Hospital Authority, a local unit of government (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Cantu Management Group, Inc., a California corporation (“Contractor”), with its principal place of business located at 11907 Privet Place, Bakersfield, California 93311.

**RECITALS**

(a) The parties have heretofore entered into an Agreement for Professional Services (Kern County Agt. #042-2015, dated January 27, 2015), Amendment No. 1 (Kern County Agt. #106-2015, date February 24, 2015), Amendment No. 2 (Kern County Agt. #241-2015, dated May 5, 2015), Amendment No. 3 (Kern County Agt. #778-2015, dated October 13, 2015), Amendment No. 4 (Kern County Agt. #855-2015, dated November 17, 2015), Amendment No. 5 (Kern County Agt. #097-2016, dated March 1, 2016), Amendment No. 6 (Kern County Agt. #608-2016, dated May 24, 2016), Assignment of Agreement (Kern County Agt. #362-2016, dated April 26, 2016, effective July 1, 2016), Amendment No. 7 (Agt. #2016-055, dated August 17, 2016), and Amendment No. 8 (Agt. #2016-081, dated November 16, 2016) (collectively, the “Agreement”), for the period February 9, 2015 through February 8, 2019, whereby Contractor provides supervision and management of the day-to-day financial operations of 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 Manager; and

(c) The parties agree to amend certain terms and conditions of the Agreement as hereinafter set forth, effective October 1, 2017;

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 1, Term, shall be deleted in its entirety and replaced with the following:

“1. **Term.** The term of this Agreement shall commence February 9, 2015 (the “Commencement Date”), and shall end February 8, 2021 (the “Term”), unless earlier terminated pursuant to other provisions of this Agreement as herein stated. Authority reserves the right to extend the Term of this Agreement for two (2) additional two (2) year terms, provided that Authority notifies Contractor in writing of its intention to renew at least 18 months prior to the expiration of the then current term. Any renewal shall be in writing and signed by both parties through a formal amendment to this Agreement.”

2. Section 3, Obligations of Contractor, paragraph 3.5, Contractor Staff, shall be deleted in its entirety and replaced with the following:

“3.5 Contractor Staff. Contractor shall engage or employ such qualified personnel as are necessary for the proper and efficient financial management of KMC, including without limitation, the following: Cantu; one (1) Director of Finance; one (1) Director of Business Office; one (1) Director of Patient Access; one (1) Manager of Reimbursement; one (1) Front End Revenue Cycle Manager – Inpatient and Emergency Department; one (1) Front End Revenue Cycle Manager – Patient Financial Counseling and Outpatient Clinics; one (1) Front End Revenue Cycle Manager – Pre-registration and Authorization; one (1) Revenue Integrity Manager; one (1) Manager of Decision Support; one (1) Administrative Coordinator; one (1) Financial Planning Director; one (1) Hospital Payroll Manager; one (1) Revenue Cycle Systems Support Manager; one (1) Finance Contract Compliance Manager; one (1) Revenue Cycle AR Administration Manager; one (1) Front End Revenue Cycle Manager – Cerner Registration; and one (1) Director of Materials Management. All personnel provided by Contractor shall be compensated by Contractor and shall be employees or independent contractors of Contractor. Contractor shall be responsible for compensating all such engaged or employed persons, including, as applicable, payroll taxes, benefits, and workers’ compensation insurance. Contractor shall be responsible for supervision of activities performed by all employees and independent contractors.”

3. Section 5, Payment for Services, paragraph 5.1, Management Fee, shall be deleted in its entirety and replaced with the following:

“5.1 Management Fee. Authority shall pay Contractor a monthly management fee in the amount of \$262,544.33 (the “Management Fee”) as follows: Contractor shall be entitled to receive two (2) payments per month, each payment being equal to \$131,272.16, payable on or before the 10th day and the 25th day of each month during the term of this Agreement. The fiscal provisions of the Management Fee are set forth in Exhibit “B,” attached hereto and incorporated herein by this reference. Authority shall have no obligation to pay the Management Fee set forth in Exhibit “B” until Contractor has incurred such expenses. The Management Fee shall be calculated on a prorated basis as positions are filled.”

4. Section 5, Payment for Services, paragraph 5.3, Performance Fee, shall be deleted in its entirety and replaced with the following:

“5.3 Annual Performance Fee. In addition to the Management Fee payable under paragraph 5.1, Contractor shall be eligible to receive from Authority an annual performance fee in the amount of \$48,000 (the “Performance Fee”), upon successful completion of the performance measures set forth in Exhibit “C,” attached hereto and incorporated herein by this reference. Payment shall be made within 60 days of the end of each fiscal year. The Performance Fee may be adjusted annually on the mutual agreement of the parties. If the parties are unable to reach an agreement concerning the Performance Fee before the applicable anniversary date, the Annual Performance Fee currently in effect will remain in effect until an agreement is reached, subject to possible

retroactive adjustment as may be mutually agreed. Any adjustment in the Performance Fee shall be in writing and signed by both parties through a formal amendment to this Agreement.”

5. Section 5, Payment for Services, paragraph 5.7, Maximum Payable, shall be deleted in its entirety and replaced with the following:

“5.7 Maximum Payable. The maximum payable under this Agreement shall not exceed \$30,038,240 over the six-year Term of this Agreement.”

6. Section 5, Payment for Services, paragraph 5.8, Staffing Fee, shall be deleted in its entirety and replaced with the following:

“5.8 Staffing Fee. Authority shall pay Contractor a monthly staffing fee (the “Staffing Fee”) for additional staff engaged or employed by Contractor pursuant to paragraph 3.12, based on the hourly rates set forth in Authority’s Standardized Salary Schedule plus 44%. Authority shall have no obligation to pay the Staffing Fee set forth in this paragraph until Contractor has incurred such expenses. The Staffing Fee shall be calculated on a prorated basis as positions are filled.”

7. Section 27, Insurance, shall be deleted in its entirety and replaced with the following:

“27. 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 “F,” attached hereto and incorporated herein by this reference.”

8. Amendment No. 6 to Exhibit “B,” Fee Schedule, shall be deleted in its entirety and replaced with Amendment No. 7 to Exhibit “B,” Fee Schedule, attached hereto and incorporated herein by this reference.

9. Exhibit “C-3,” Performance Measures Fiscal Year 2017-2018, attached hereto and incorporated herein by this reference, shall be made part of the Agreement.

10. Exhibit “E,” HIPAA Business Associate Addendum, shall be deleted in its entirety and replaced with Amendment No. 1 to Exhibit “E,” HIPAA Business Associate Addendum, attached hereto and incorporated herein by this reference.

11. Exhibit “F,” Insurance, attached hereto and incorporated herein by this reference, shall be made part of the Agreement.

12. Except as otherwise defined herein, all capitalized terms used in this Amendment have the meaning set forth in the Agreement.

13. This Amendment shall be governed by and construed in accordance with the laws of the state of California.

14. 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.

15. 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 have executed this Amendment No. 9 to the Agreement as of the day and year first written above.

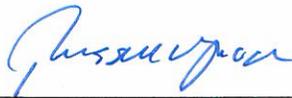
CANTU MANAGEMENT GROUP, INC.

By   
\_\_\_\_\_  
Andrew Cantu  
Its President

KERN COUNTY HOSPITAL AUTHORITY

By \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By   
\_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By \_\_\_\_\_  
VP & General Counsel  
Kern County Hospital Authority

Amend9.Cantu Management.090617

**AMENDMENT NO. 7  
TO  
EXHIBIT "B"  
FEE SCHEDULE  
Cantu Management Group, Inc.  
(Effective October 1, 2017)**

Category	Amount	Total
<b>Management Fee</b>		
Salaries:		
• Chief Financial Officer	\$320,000	
• Director of Finance	\$142,500	
• Director of Business Office	\$140,000	
• Financial Planning Director	\$125,000	
• Revenue Integrity Manager	\$115,000	
• Manager of Decision Support	\$110,000	
• Hospital Payroll Manager	\$105,000	
• Director of Patient Access	\$100,000	
• Revenue Cycle Systems Support Manager	\$100,000	
• Manager of Reimbursement	\$90,000	
• Administrative Coordinator	\$75,000	
• Front End Revenue Cycle Manager – Inpatient and Emergency Department	\$70,000	
• Front End Revenue Cycle Manager – Patient Financial Counseling and Outpatient Clinics	\$70,000	
• Front End Revenue Cycle Manager – Pre-registration and Authorization	\$70,000	
• Front End Revenue Cycle Manager – Cerner Registration	\$70,000	
• Finance Contract Compliance Manager	\$85,000	
• Revenue Cycle AR Administration Manager	\$85,000	
• Director of Materials Management	\$150,000	
Sub-total (salaries)		<b>\$2,022,500</b>

[Continued on next page]

<b>Category</b>	<b>Amount</b>	<b>Total</b>
<b>Management Fee</b>		
Benefits and Expenses:		
• Retirement	\$197,000	\$197,000
• Benefits (health and dental insurance, etc.)	\$429,000	\$429,000
• Insurance and taxes (payroll, liability, etc.)	\$397,032	\$397,032
• Business expenses, education, and travel	\$105,000	\$105,000
Sub-total (benefits and expenses)		<b>\$1,128,032</b>
<b>Total</b> (salaries, benefits, and expenses)		<b>\$3,150,532</b>
<b>Performance Fee Potential</b>	\$48,000	\$48,000
<b>Total</b>		<b>\$48,000</b>
<b>Grand Total</b> (annual not to exceed amount)		<b>\$3,198,532</b>

[Intentionally left blank]

**EXHIBIT “C-3”**  
**PERFORMANCE MEASURES**  
**FISCAL YEAR 2017-2018**  
(Effective July 1, 2017)

[Attached]

## Cantu Management Performance Measures

Fiscal Year 2017-2018  
(Effective July 1, 2017)

Indicator	Percentage	FY 2017 Qtr 1		FY 2017 Qtr 2		FY 2017 Qtr 3		FY 2017 Qtr 4	
		Budget		Budget		Budget		Budget	
Net Income (A)	20%								
Cash Collections (B)	20%	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000	\$ 51,750,000
Materials Management ( C ) - Supply Reduction/GPO Contract Compliance	15%	See Note Below							
Patient Experience	15%	Adopted Percent Improvement from Baseline							
Cash Management (D)	15%	Treasury Reporting Dashboard and Controls / Secure Financing							
Accounts Payable Conversion and Portal Implementation (E)	15%	See Note Below							
<b>Total</b>	<b>100%</b>								

**A) Net Income** - If Year to Date goal is achieved, quarterly measures will be considered 100%.

**B) Cash Collections** - If Year to Date goal is achieved, quarterly measures will be considered 100%.

**C) Materials Management** -

1) Greater than 90% GPO Compliance

**D) Cash Management** -

1) Days in AR < 75

2) Secure Cerner Financing

3) Secure MOB Financing

4) Capitation Agreement

5) Cost Accounting Service Line Reporting / Physician Reporting

**E) Electronic Payment Solutions** -

1) ACH, Pcard, Discounting Program

2) E-Invoicing Solution - Eliminate Manual entry

3) Supplier Portal - Inquiry/Statement Reconciliation

4) Supplier Registration - On-line Boarding

**AMENDMENT NO. 1  
TO  
EXHIBIT “D”  
HIPAA BUSINESS ASSOCIATE ADDENDUM**

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 Cantu Management Group, Inc., a California corporation (“**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”), effective as of October 1, 2017 (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 104-191), as amended, (“**HIPAA**”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160, 162, and 164 (“**HIPAA Rules**”);

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

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

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

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE II OBLIGATIONS OF BUSINESS ASSOCIATE**

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

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

2.3 Reporting Non-Permitted Use or Disclosure.

2.3.1 Reporting Security Incidents and Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity in writing each Security Incident or Use or Disclosure that is made by Business Associate, members of its Workforce, or Subcontractors that is not specifically permitted by this BAA no later than 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.

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

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

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

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

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

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

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

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

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

right to audit and monitor all applicable activities and records of Business Associate to determine Business Associate's compliance with the HIPAA Rules and shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI provided, created, received, maintained or transmitted by Business Associate on behalf of Covered Entity for such purpose.

2.11 Minimum Necessary. Business Associate (and its Subcontractors) shall, to the extent practicable, 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.

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

### **ARTICLE III OBLIGATIONS OF COVERED ENTITY**

#### 3.1 Covered Entity's Obligations.

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

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

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

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

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

## **ARTICLE IV TERM AND TERMINATION**

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

4.2 Termination of Underlying Agreement.

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

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

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

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

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

4.4 Disposition of Protected Health Information upon Termination or Expiration.

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

4.4.2 If return or destruction is not feasible, Business Associate shall: (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to

Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions set out in Sections 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **ARTICLE V MISCELLANEOUS**

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

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

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

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

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

5.6 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security or privacy obligations of Business Associate, its officers, employees, agents and Subcontractors under this

BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

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

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

5.9 Legal Actions. Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

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

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

5.12 Notices. Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage

prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this BAA, or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 5.12. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; 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  
Fax: (661) 326-2100  
Email: Russell.Judd@kernmedical.com

Business Associate's Notice Address:

Cantu Management Group, Inc.  
11907 Privet Place  
Bakersfield, CA 93311  
Attn.: Its President  
Fax: (661) 326-2100  
Email: Andrew.Cantu@kernmedical.com

5.13 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.

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

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

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

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

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

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

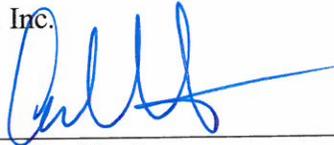
5.20 Certification. To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors may, at Covered Entity's 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.

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

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

**COVERED ENTITY:**  
Kern County Hospital Authority

**BUSINESS ASSOCIATE:**  
Organization Name: Cantu Management  
Group, Inc.



\_\_\_\_\_  
Title: Chairman, Board of Governors  
Date: \_\_\_\_\_

\_\_\_\_\_  
Title: Its President  
Date: 9/15/17

**EXHIBIT “F”**  
**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.**"
    - (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**

September 20, 2017

**Subject:** Proposed Retroactive Agreements with File Recoup

**Recommended Action:** Approve; Authorize Chief Executive Officer to sign

**Summary:**

The purpose of the proposed retroactive agreement is for File Recoup to conduct diagnostic and data recovery services of computer drive of the badge access system, in an amount not to exceed \$5,000.

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## Data Recovery Diagnostics & Service Authorization

By signing this Services Agreement and Payment Authorization for case # **130039**, you agree to the terms and conditions specified herein.

I, Russell Judd, am retaining the services of File Recoup and am responsible for making payments on all charges associated with receiving services. Client has the option to make payments via credit card / check / or wire transfer. Client specifically affirms that Client has the authority to authorize the Company to perform services.

If Client chooses to make payment via credit card: Client is authorizing File Recoup to charge Client credit card for the amount of \$2,499.00 for the data recovery services purchased. Client further affirms that he/she is the authorized user of the credit card used in the transaction. For more information about credit card payments please refer to the section entitled "credit card payments" below.

I, Russell Judd, understand that once payment is submitted, it is non-refundable and non-contingent upon the outcome of services rendered as more fully explained in the "No Guarantee" clause below. I understand this policy exists because Company incurs significant expenses in the expectation of preparing to perform services for Client. This includes allocating resources to reserve necessary lab space for a given matter, retaining the services of expertly qualified engineers, utilizing specially manufactured products unique to a particular client's matter, and investing time to analyze the intricacies and strategies of a given matter.



### Customer Information

Name: Russell Judd  
 Company:  
 Address Street: 1700 Mount Vernon Ave  
 Address City: Bakersfield  
 ZIP / Postal: 93306 State: CA  
 Email: john.aguilar@kernmedical.com  
 Phone: 6613265638



### Media Information

Type: Hard Disk Drive  
 Manufacturer: HP Server Dell Drives  
 OS:  
 Capacity: 100.01 GB - 200.0 GB



### Purchased Services and Products

Product name	Quantity	Price
Specialized Emergency RAID Diagnostic Service	1	\$2,499.00
	Subtotal	\$2,499.00
	Tax	\$0.00
	<b>TOTAL</b>	<b>\$2,499.00</b>

## TERMS OF SERVICE

**Agreement.** This Client Services Agreement ("Agreement") is by and between, Russell Judd ("Client") and File Recoup ("Company"), and collectively referred to as "parties".

**Services.** Client hereby retains Company to conduct diagnostic and data recovery services. Diagnostic services are conducted to evaluate Client's digital media device(s) for the purpose of identifying failures and faults in the media hardware and software so that Company can determine the amount of time, replacement components, and expertise needed to temporarily repair the damaged or overwritten digital media. Data Recovery is the process of extracting, recovering, and salvaging, lost or inaccessible data and digital information from failed or deleted devices.

It is the parties understanding that this Agreement shall govern all Services performed and matters handled by Company for Client until this Agreement is revised with consent of both parties or terminated in writing.

**(Client initials required to ensure understanding of below clause)**

**No Guarantee of Outcome or Results.** Company does not make any representations to Client regarding what may or may not be recovered from their media devices.

DS  
RJ

Client is agreeing to pay Company for its expertise, dedication, and time spent on a given matter, rather than a particular outcome or result. Client understands and acknowledges that authorizing a diagnostic evaluation and/or data recovery extraction is an agreement to receive a service, which means only that certain procedures and skilled labor will be devoted to extracting data contained on Client's media device(s) and that there are no guarantees that any specific data or particular outcome will be produced.

**About the Service.** Diagnostics and data recovery services are two separate and unique procedures with corresponding turnaround times. Client will purchase the initial diagnostic evaluation and receive the appropriate dedication from Company to identify the exact failure of the media/device. The Client may then request data recovery services to be performed, the additional costs of which are calculated after the diagnostics evaluation is completed to determine the amount of time and labor required for data extraction.

**Services Offered:** The following list provides the service options offered by Company: Free Service; 24 Hour Service; Premium Diagnostic; Advantage Service; Emergency Service; Premium Emergency Service; Standard Raid Service; Economy Raid service; Premium Raid Service; Emergency Raid Service; Specialized Emergency Raid service. This list is not exhaustive of all options offered. Please check Company website for up to date information.

Once Client selects a specific service, Client is locked in and committed to the diagnostics turnaround time and corresponding data recovery turnaround time that has been purchased.

**Services Quote.** Company provides turnaround times to Client for purposes of providing good faith estimates as to the hours necessary to complete services based upon previous experiences in handling similar matters. However, Client understands that every case is inherently unique and therefore it is impossible for Company to foresee all potential impediments or delays during performance of services. Therefore, Company makes no representations or guarantees for an exact turnaround time of diagnostics and data recovery extraction time.

**Price Quote.** Client understands that although Company submits a price quote for performing a diagnostics and data recovery, there may still be unforeseen circumstances requiring additional costs to be incurred by Client. There may be unforeseen failures, additional requests made by Client, or additional time or expertise devoted to an unusual or complex matter (this list not exhaustive). The price quote is calculated based on a \$225 per hour scale that will be adjusted should additional costs arise. In such an event Company will advise client in writing of those details and will request that client agree to incur the additional costs prior to proceeding with a given matter.

**Disclaimer as to Legal advice and Accuracy of Information.** While Company provides services within the context of litigation, Company is not a law firm and does not engage in the practice of law. The information contained in this agreement is not legal advice and company's services are not a substitute for legal representation. For legal questions, concerns, or advice please consult your counsel.

**Compensation.** Client understands that this authorization form constitutes a contractual agreement between Client and Company. This authorization form must be signed and all payments made in advance before any services can be performed. However, in some instances, Company may, at its discretion, authorize initiation of the Services before full payment is made such as by charging only a portion of the services upfront and expecting that the remainder portion be paid once written or oral confirmation of service completion is made to the client. Such practice is exceptional rather than ordinary and in no way creates expectation or reliance by the Client.

**Non-payment provision.** All invoices are due in full immediately when presented to the Client. All invoice disputes shall be brought to the Company's attention within three (3) days from receipt or be considered correct and final. If Client's credit card is being used to secure a future payment that is not made, the securing credit card shall be charged for the amount due unless the Client provides an alternative method of payment within three (3) days from the due date. The outcome of Client's matter and potentially their media/device(s) may be withheld by Company until payment is made in full. Client will also be subject to monetary penalties for late payments. Any unpaid invoices not satisfied within thirty (30) days of its billing date, shall accrue interest at the rate of eighteen (18) percent per annum until paid. After thirty (30) days have elapsed, Client may be subject to a breach of contract lawsuit initiated in Cuyahoga County, Ohio. In addition to the full contract amount plus late fees, Client acknowledges that Company is also entitled to reasonable attorney's fees. If the matter is referred to a collection agency, the fees and associated costs shall be added to the balance due.

**Return shipping costs for failed media.** Client understands that if recovery procedures are unsuccessful there will be shipping and handling costs for the return of their failed media. Specifically, single hard drives ground shipping is \$25 and overnight shipping is \$79 per drive; Raid array shipping is \$35 per drive for standard shipping and \$99 per drive overnight shipping. Shipping costs to return Client's devices such as server, computer, laptop, and peripherals, will be charged to Client. An invoice containing shipping details will be provided to Client.

**Credit Card Payments.** This section will govern when Client is making payment via credit card. PRIOR TO ENTERING INTO THIS CONTRACTUAL TRANSACTION, CLIENT HAS AUTHORIZED COMPANY TO BILL CLIENT'S CREDIT CARD IN THE AMOUNT DUE IN EXCHANGE FOR RECEIVING THE SERVICES AS OUTLINED HEREIN. If client is entering into a transaction through company website, client has agreed to the website terms of conditions and policies. Further, client has provided their initials to signify their understanding of the clause above entitled "no guarantee of outcome or results".

If Client is making payments via credit card, he/she is providing permission for Company to retain Client's credit card on file UNLESS PUT ON NOTICE OTHERWISE. Once Client receives the FDV, Client will have three days (3) to remit payment in full. After this period has elapsed and Client still has not paid in full the amount owed to Company, COMPANY WILL EITHER CHARGE CLIENT'S CREDIT CARD FOR THE REMAINDER BALANCE OR CLIENT WILL BE SUBJECT TO A LAWSUIT FILED IN CUYAHOGA COUNTY COURT FOR THE UNPAID FEE.

**Payments that exceed \$1,000 dollars.** The Company does not accept payments of One Thousand Dollars (\$1,000) or more via credit card, whether it be on a per case, multiple transaction, or single client basis. If Client is unable to make an alternative form of payment (certified check, money order, bank wire transfer) on a matter quoted at \$1,000 or more, however, Company may charge or put a hold on Client's credit card. In such situations, Client will be informed that the charge or hold will remain in place until Client agrees to make an alternative form of payment. After the alternative form of payment has been made, Company will issue a refund or release the hold on the credit card.

**Chargeback Policy.** As it relates to all Client issues or disputes with Company, Client is directed to review Company's "Complaint Resolution Process and Procedure" section below. If Client files a chargeback claim against Company, it will be vigorously disputed in the following manner: a chargeback rebuttal letter, production of records and invoices rebutting the charge, payment of chargeback fee, cost of going to arbitration if applicable, and various other administrative tasks associated with the chargeback representation process. After the investigation concludes with company's successful rebuttal, CLIENT WILL BE CHARGED the cost Company has incurred in disputing Client's chargeback (invoice to be provided). Client understands that this charge does not include reasonable attorneys' fees which may be included as a separate charge. Lastly, if the investigation reveals the chargeback was fraudulent, Client may be subject to civil or criminal legal proceedings in Cuyahoga County, Ohio.

**Breach of Locking Mechanisms/ Password protected digital devices.** In cases where devices are protected with passcodes or other forms of locking mechanisms, and access to the devices' digital data can only be gained through breach of such locking mechanisms (i.e. password lost or forgotten, true owner locked out), Client expressly warrants that Client has the legal right to authorize and that Client does expressly authorizes Company to breach these locking mechanisms by employing all available tools at its disposal designed for such purposes.

Further, Client agrees to indemnify Company against any and all legal actions arising out of or from such bypass or breach of locking mechanisms.

**Handling of Illegal Contents.** Notwithstanding any of the foregoing, Client is hereby informed, and consents, that if during the course of any investigation on Client's behalf, Company uncovers: 1) CHILD PORNOGRAPHY; or 2) EVIDENCE OF ANY CRIMINAL CONDUCT that has already occurred or still in progress which is likely to result in physical harm to any natural person, Company may notify appropriate law enforcement or other governmental authorities as required by law.

**Transportation of Devices.** Client acknowledges that submitted devices may be transported, if necessary, and the Services will be performed, in the state of Ohio. Company reserves the right to relocate Client media device(s), as may become necessary, to any of its locations.

**Shipping Diagnostics Results to Client.** After the diagnostics process has been completed, Company will send the results to Client on a media device Client's billing address on file. If, however, Client prefers that the results be sent to an alternate location other than the billing address, Client must adequately inform Company by email customerservice@filerecoup.com. In such a case, Company will ship Client's results to the nearest federal express location in proximity to Client's billing address. Federal express will hold the device for upto five (5) business days for Client to pick-up. Client's signature shall confirm receipt in accordance with federal express policy. Please note that If Client's billing address is a P.O. Box, Company will automatically ship the results to the nearest federal express location in proximity to Client's billing address, unless informed otherwise.

**Company Not Liable for Third Party Shipping.** With regard to courier pickup and shipping, Company shall not be held liable for media devices that are lost or damaged during shipping or transport to and from our facilities, using 3rd party couriers or shipping companies, including Federal Express and Uber. Further, Client agrees to indemnify and hold harmless Company for the loss of any data, stored on submitted devices, which may be unintentionally lost or stolen.

If Client is not the intended recipient of a drive/media, Client is instructed to promptly contact Company by e-mail or phone to arrange for its immediate return to Company facilities. Any unauthorized review, use, disclosure or distribution is strictly prohibited. Company makes no warranty of any kind when shipping and Client agrees to disclaim all liability of Company for inadvertent shipping.

**Communication with Client.** By retaining the services of Company, Client is authorizing Company to communicate via e-mail, phone calls, text messaging, and other electronic means. Communication with Client is strictly used to convey information to Client in a timely manner. Client information will not be sold, distributed, or in any other way shared with entities or affiliates outside the Company. Client may revoke this permission in writing at any time. Client agrees not to hold Company liable for any electronic messaging charges or fees generated by communication. Client shall provide Company with updated contact information in the event of any changes.

**Confidentiality and Client Feedback.** Due to the nature of the work performed by Company and the importance of maintaining confidentiality for both Client and the Company, both parties agree to abide by the following Complaint Resolution Process in the event of Client dissatisfaction.

**Complaint Resolution Process:** Company places a high value of importance on customer satisfaction and therefore treats every complaint with a commensurate degree of seriousness. For this reason, Company provides clear channels of communication for Client to convey any complaint or dissatisfaction with services rendered, with the goal of seeking a prompt and satisfactory resolution for both parties. In the event Client has a complaint or dispute with Company, Client agrees to communicate his/her grievance promptly to Company and allow Company a reasonable amount of time, as described below, to respond to Client's complaint and propose solutions. Client is agreeing to provide Company every reasonable opportunity to resolve disputes in the following manner and follow all alternative dispute provisions:

1) Initial Phase: In the event Client is not satisfied with services or is having billing issues, Client is instructed to contact customer service, at 800.761.0405 ext. 899. If the call goes to voicemail, Client must leave detailed message including case number and a brief description of the issue. Company will address stated customer issues **within 3-6 business days**.

2) Escalation Phase: In the event that customer service is unable to rectify customer issue, Client must email escalations@filerecoup.com providing detailed explanation of the issue. Once Client contacts Company management for escalation, a proposed resolution will be offered **within 7 business days**.

3) If any of the above methods prove unsuccessful in resolving an issue, Client will then be entitled to have the complaint to be reviewed by the President of the Company, to address Client's issue directly. Client will receive a resolution **within 7-10 business days** following communication with the President.

4) If the Complaint remains unresolved or in the event the Company has a dispute with the Client pursuant to the terms of this Agreement, the Parties will submit the dispute to Mediation before an agreed upon Mediator which shall take place no later than 45 days after Client has received the communication with the President as stated above. If the Parties cannot agree upon a mediator, the Company shall present a list of at least five (5) competent mediators, with no ties to the Company, and the Client shall pick one person from that list to serve as Mediator.

5) If mediation is unsuccessful, the dispute shall be submitted to binding arbitration pursuant to the commercial rules set by the American Arbitration Association. The Parties shall agree upon an arbitrator who shall be a retired judge from either a Common Pleas Court of the State of Ohio or a Federal District Court of the State of Ohio.

6) In the event the Company believes Client's breach of this Agreement creates a risk of irreparable harm, the Company has the right to seek emergency injunctive relief before the Court of Common Pleas of Cuyahoga County or the Federal District Court for the Northern District of Ohio. Further, only in the limited scenarios of collection of unpaid fees and defamation claims, Company has the right to initiate a lawsuit outside of arbitration. CLIENT AGREES THAT THESE LIMITED EXCEPTIONS ARE FAIR.

**Client Review and Feedback Policy.** Company takes into consideration all feedback it receives and values the opportunity to improve the Company in any manner that creates more efficient services for our Clients. Therefore, nothing in this agreement is intended to restrict Client from engaging in communications protected under the Consumer Review Freedom Act. However, Company will not accept and will vigorously defend against content left unprotected under the Act, such as defamatory, confidential, or misleading reviews regarding Company, its employees, or services. TO REMAIN COMPLIANT WITH THIS AGREEMENT, PLEASE REVIEW COMPANY GUIDELINES FOR ONLINE REVIEWS:

**Online Review Guidelines:**

- 1) As a courtesy to Company, Client agrees to provide Company with a reasonable opportunity to cure any defect in service or to address any client complaints prior to Client posting a review of Company online, or otherwise publicly disparaging Company's services;
- 2) Please contact Company with any issue pursuant to the Complaint process described above;
- 3) The online review should explain thoroughly with factual assertions how your experiences with Company deviated from Company's affirmations to you;
- 4) Provide actual dates and specific events rather than generic or ambiguous statements;
- 5) DO NOT include confidential names/privileged information about Company, per this agreement;
- 6) Indicate whether Company has made resolution attempts;

**Non-Disclosure.** Company and Client mutually agree to refrain from disclosing any Confidential Information of the Parties to any third party that is not a party to this Agreement. The term "Confidential Information" includes any and all written or oral communications between the parties (including agents, affiliates, and representatives of the parties) regarding or under this Agreement and the services rendered hereunder, as well as any materials and/or information exchanged between the parties, directly or indirectly, through any means of communication, including anything observed (seen or heard) by a Party while present at that offices, facilities, or residences occupied by the other Party. Confidential Information of Company includes, but is not limited to, the services rendered by Company, the details, fees, prices, times, places of transactions, or the methods or tools with which services were rendered, the nature of the Client data analyzed, the devices provided for data recovery, the methods or timing of transportation of devices, the files targeted for recovery or any diagnostics, the length of time required for specific services, the names of individuals involved, including sales representatives, customer services representatives, data recovery and forensic engineers and management personnel. Parties mutually agree not to make public or distribute any emails, texts, chat transcripts, or other electronic communications exchanged between the Parties. Nothing in this provision is intended to prevent Company from providing its contractors with information, as may be needed, for the performance and enforcement of this agreement. Should either party violate the terms of this Non-Disclosure Agreement, parties acknowledges that such a violation creates irreparable harm for which emergency injunctive relief is warranted.

**Exclusions from Confidential Information.** In the event either Party receives an order from a court of law, such as a subpoena, it may require the Party to disclose Confidential Information of the other Party. Further, in the event that Client publishes/posts statements regarding Company in violation of this Agreement, Company reserves the right to disclose whatever information may be necessary to refute Client's statements.

**Liquidated Damages.** All parties agree that in the event of Client's breach of the non-disclosure agreement, it would be difficult to calculate actual damages. THE PARTIES AGREE THAT FIVE HUNDRED DOLLARS (\$500.00) IS A REASONABLE ESTIMATE OF THE DAMAGES that would accrue if a breach of the non-disclosure agreement occurred. This amount is directly proportionate to the actual damages Company would suffer in hiring legal and technical professionals to have the disclosures removed from the public domain, costs to hire public relations professionals to mitigate the damage, and other such real costs Company may incur in order to undo the damage caused by a client's breach of confidentiality. CLIENT AGREES THAT THIS CLAUSE IS FAIR.

**Indemnification.** In the event any third-party brings a claim against the Company relating to services performed for Client, the Client shall defend, indemnify and hold harmless Company from any such claim. Once Company selects a law firm to represent itself in any such claim, the Client shall be notified to pay the reasonable attorneys' fees of said firm.

**Agent Acting On Behalf Of Client:** This clause shall govern if Company is entering into an Agreement with an agent acting for and on behalf of an individual Client or a Client's Organization (or its affiliate, associate, or subsidiaries). AGENT AFFIRMS THAT HE/SHE IS AN AUTHORIZED AGENT OF AN INDIVIDUAL OR THEIR ORGANIZATION. Agent further authenticates that he/she has received express authorization from the individual Client or authorized officers in the organization to enter into a contractual transaction with Company, to make financial decisions, to submit digital devices for review or analysis, and make any and all payments relating to services. Company has relied on these affirmations prior to proceeding with performance of services.

As it pertains to payment method being utilized by Agent, the individual Client or Client's Organization will be held liable regardless if the agent is using a personal credit card rather than the Organization's credit because of the above affirmations made by agent which Company has relied upon. All liability and responsibility for making payment shall be applied towards the Client or their agent personally, as permitted by law.

**Privacy Policy.** This section details Company protocol in handling Client's information and data. A more thorough breakdown of our policy is provided on the Company website. Client agrees to the collection and use of information in accordance with this privacy policy.

**Information Collection and Use.** In the course of day-to-day business operations, authorized individuals within the Company will encounter personal data that it collects from Clients, which is necessary in order to carry out the Company's business purposes. Company takes very seriously the integrity of the information and data that comes into Company's control. Therefore, Company has in place measures to protect Client privacy and to identify unauthorized attempts to access information or otherwise breach Company servers. Attempts to access any portion of the Company servers are strictly prohibited and may be punishable under applicable Ohio and Federal statute(s). Company does not ensure Client privacy when Client's data conflicts with above clause entitled "Handling of Illegal Contents." Company makes no representations and claims no responsibility over content found within Client property that involves confidential information relating to unknown third-parties.

**Breach.** In case of breach of this Agreement, Client shall be responsible for all costs and expenses, including but not limited to reasonable attorney's fees, court costs, and all other fees incurred by Company as a result of the Client's breach.

**Construction.** This Agreement shall not be construed by any arbitrator or Court to the detriment of either Party. This Agreement will be construed according to its fair meaning, and not strictly for or against a party merely because that party drafted the Agreement.

**Damages.** Parties understand and agree that monetary damages may not be a sufficient remedy for any breach of this Agreement and that each party shall be entitled to seek injunctive or other equitable relief to remedy or forestall any such breach or threatened breach. Such remedy shall not be deemed to be the exclusive remedy for any breach of this agreement, but shall be in addition to all other rights and remedies available at law or in equity.

**Governing Law.** This agreement shall be construed and enforced according to, and governed by, the laws of the State of Ohio, as well as any claim that might arise, without regard to conflict of law provisions.

**Jurisdiction.** Any legal action brought pursuant to this Agreement shall be governed by the alternative dispute provisions contained herein and shall be heard in Cuyahoga County, Ohio.

Should any disputes between the Parties be determined not to be subject to the alternative dispute resolution process contained in this Agreement, such as collection of unpaid fees or defamation claims, said disputes shall be brought in a Court of competent jurisdiction in Cuyahoga County, Ohio and the Parties agree that the Court shall determine all issues of law and fact and waive their respective right to jury regarding any dispute regarding the negotiation, formation or performance of the terms of the Agreement. The Parties agree that the waiver of the right to a jury is being made knowingly, voluntarily, and intelligently.

**Severability.** If any term in this Agreement is found to be invalid, void, or in conflict with Ohio law, only that clause will be null and void but the rest of the agreement remains valid and enforceable.

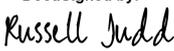
**Interpretation.** This agreement shall be interpreted as broadly as necessary for enforceability of each term and clause. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with an enforceable term and agreement.

**Application.** Company will receive the above protection even after all engagements have ended. This protection extends to any future suit.

\*\*\*\*\*

**Client acknowledges that it has had a reasonable opportunity to obtain or has obtained INDEPENDENT LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT AND THAT IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT.** Client acknowledges that any questions relating to process, procedure, timing, deliverables, billing, or any other matters of concern, have been addressed prior to executing this agreement, this agreement has not been signed or initialed under duress and that all terms of this agreement are reasonable and accepted.

Client agrees to provide complete and accurate information as requested by Company. Company reserves the right to terminate this agreement and Client's use of any products and services for violation of any terms of this agreement or in the event any false or misleading information is supplied by Client.

DocuSigned by:  
  
DA965E29476C4E7...

Client Signature: \_\_\_\_\_

Date: 9/11/2017

Printed Name: Russell Judd

## Consent to Search Form

Client understands that Company is not always able to verify or determine conclusively the true owner of an item being submitted for services or if a device has been illegally obtained. Therefore, Company relies on the following affirmations made by Client before proceeding with performance of services.

**Electronic Media/Devices.** I, Russell Judd, authorize and provide my consent to Company to take temporary possession and conduct diagnostic and/or data recovery services on the following electronic media/devices I have provided to Company: computer system, electronic data storage service, computer data storage, laptop, mobile device, or any other electronic device capable of storing, retrieving, processing and/ or accessing data.

**Internet Service Provider/Web-Based Email or Account.** I, Russell Judd, authorize and provide my consent to Company to recover, extract, and salvage the information contained in any electronic mail in all folders (sent, received, trash, etc.) stored offsite by the internet service provider or web based email provider associated with the accounts I have provided to Company.

Client acknowledges that it is illegal to access, review, investigate, monitor, or install software on a device they do not own without explicit permission of the device's owner, and is declaring the following:

**(Please initial each item below)**

<sup>DS</sup>  
RJ

\_\_\_\_ Client affirms that any item assigned to Company falls into one of the following categories: the item is Client's property, or Client is an authorized representative of the owner of the items, or client has the EXPRESSED PERMISSION FROM OWNER TO SUBMIT THE ITEMS, which may contain sensitive or private data.

<sup>DS</sup>  
RJ

\_\_\_\_ Client affirms that he/she has notified all other parties who may have privileged or private data contained on the device that Client has submitted for digital investigation and that, consequently, those parties can have NO REASONABLE EXPECTATION OF PRIVACY with regard to data or communications on the device, and that therefore all parties hold company harmless.

<sup>DS</sup>  
RJ

\_\_\_\_ Client acknowledges that there may be additional devices submitted during the course of investigation and his/her affirmations extend to those devices as well.

<sup>DS</sup>  
RJ

\_\_\_\_ The affirmations made by Client may also extend to Client in role of employee submitting items owned by Client's employer. If so, Client affirms to have the authority or express permission from the owner to submit an employer/organization owned device for services.

<sup>DS</sup>  
RJ

\_\_\_\_ Client understands that any legal questions and concerns relative to this consent form should be directed to Client's attorney.

**Indemnification.** Client shall indemnify and hold company harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) against anyone bringing a claim against Company related to Client actions or services performed for Client.

## Waiver, Release of Liability, and Indemnity Agreement

**Waiver of Liability.** To the extent permitted by Ohio law, CLIENT HEREBY RELEASES COMPANY AND ALL ITS EMPLOYEES FROM ANY AND ALL LIABILITY, resulting from any negligent conduct whether in the course of rendering services or through use of any of the acquisition methods (including remote), and forever waives any claim(s) against Company in connection with any such report made by Company, regardless of whether the subject of the report is the Client, or any other person with respect to whom such information is uncovered in the course of services provided.

This release of liability ALSO PREVENTS client's spouse, relatives, heirs, descendants and third parties from bringing suit against Company for any of the above described matters.

**Waiver of Consequential Damages.** Company SHALL NOT BE HELD LIABLE to Client for any incidental, indirect or consequential damages arising out of, or connected in any way to this Agreement. This includes but is not limited to loss of profits, loss of income, and loss of reputation, and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

**Indemnification.** In the event any legal action is brought against Company regarding the subject matter of the engagement, Client will indemnify, hold harmless, and defend Company and its affiliates to the fullest extent permitted by law against any claim arising or relating to the services performed. This indemnification of Company will include but not be limited to any liability or expense, losses, damages (actual and consequential), suits, judgments, litigation costs and reasonable attorney's fees.

Client also understands that efforts made by Company in the ordinary course of performing services covered by this Agreement may result in the inadvertent deletion, damage or destruction of the data/media/equipment. CLIENT AGREES TO INDEMNIFY AND HOLD HARMLESS COMPANY for any inadvertent or negligent act that results in the loss of any data stored on submitted devices, even if claimed to have a significant monetary or business value.

**Ohio Law.** Ohio Law governs this Waiver, Release of Liability, and Indemnity Agreement.

**Severability.** If any section of this Waiver Agreement is found to be invalid, void, or enforceable, only that section will be null and void but the remainder shall stay in full force and effect.

**Breach.** Should Client file a lawsuit in breach of this Agreement, Client is responsible for all costs and expenses, including but not limited to attorney fees, court costs and all other fees that are incurred by Company as a result of the Client's breach.

**I HAVE READ THIS ENTIRE WAIVER, RELEASE OF LIABILITY, AND INDEMNITY AGREEMENT (ONE PAGE), AND I FULLY UNDERSTAND IT AND AGREE THAT IT SHALL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY OHIO LAW.**

DocuSigned by:  
  
DA965E29476C4E7...

Client Signature: \_\_\_\_\_ Date: 9/11/2017

Printed Name: Russell Judd

Please type the name of the person who is signing authorization: Russe11 Judd



## Data Recovery Diagnostics & Service Authorization

By signing this Services Agreement and Payment Authorization for case # **130039**, you agree to the terms and conditions specified herein.

I, Russell Judd, am retaining the services of File Recoup and am responsible for making payments on all charges associated with receiving services. Client has the option to make payments via credit card / check / or wire transfer. Client specifically affirms that Client has the authority to authorize the Company to perform services.

If Client chooses to make payment via credit card: Client is authorizing File Recoup to charge Client credit card for the amount of \$2,500.00 for the data recovery services purchased. Client further affirms that he/she is the authorized user of the credit card used in the transaction. For more information about credit card payments please refer to the section entitled "credit card payments" below.

I, Russell Judd, understand that once payment is submitted, it is non-refundable and non-contingent upon the outcome of services rendered as more fully explained in the "No Guarantee" clause below. I understand this policy exists because Company incurs significant expenses in the expectation of preparing to perform services for Client. This includes allocating resources to reserve necessary lab space for a given matter, retaining the services of expertly qualified engineers, utilizing specially manufactured products unique to a particular client's matter, and investing time to analyze the intricacies and strategies of a given matter.



### Customer Information

Name: Russell Judd  
 Company:  
 Address Street: 1700 Mount Vernon Ave  
  
 Address City: Bakersfield  
 ZIP / Postal: 93306 State: CA  
 Email: john.aguilar@kernmedical.com  
 Phone: 6613265638



### Media Information

Type: Hard Disk Drive  
 Manufacturer: HP Server Dell Drives  
 OS:  
 Capacity: 100.01 GB - 200.0 GB



### Purchased Services and Products

Product name	Quantity	Price
Specialized Emergency RAID Diagnostic Service	1	\$2,500.00
Subtotal		\$2,500.00
Tax		\$0.00
<b>TOTAL</b>		<b>\$2,500.00</b>

## TERMS OF SERVICE

**Agreement.** This Client Services Agreement ("Agreement") is by and between, Russell Judd ("Client") and File Recoup ("Company"), and collectively referred to as "parties".

**Services.** Client hereby retains Company to conduct diagnostic and data recovery services. Diagnostic services are conducted to evaluate Client's digital media device(s) for the purpose of identifying failures and faults in the media hardware and software so that Company can determine the amount of time, replacement components, and expertise needed to temporarily repair the damaged or overwritten digital media. Data Recovery is the process of extracting, recovering, and salvaging, lost or inaccessible data and digital information from failed or deleted devices.

It is the parties understanding that this Agreement shall govern all Services performed and matters handled by Company for Client until this Agreement is revised with consent of both parties or terminated in writing.

### (Client initials required to ensure understanding of below clause)

**No Guarantee of Outcome or Results.** Company does not make any representations to Client regarding what may or may not be recovered from their media devices.

DS  
RJ

Client is agreeing to pay Company for its expertise, dedication, and time spent on a given matter, rather than a particular outcome or result. Client understands and acknowledges that authorizing a diagnostic evaluation and/or data recovery extraction is an agreement to receive a service, which means only that certain procedures and skilled labor will be devoted to extracting data contained on Client's media device(s) and that there are no guarantees that any specific data or particular outcome will be produced.

**About the Service.** Diagnostics and data recovery services are two separate and unique procedures with corresponding turnaround times. Client will purchase the initial diagnostic evaluation and receive the appropriate dedication from Company to identify the exact failure of the media/device. The Client may then request data recovery services to be performed, the additional costs of which are calculated after the diagnostics evaluation is completed to determine the amount of time and labor required for data extraction.

**Services Offered:** The following list provides the service options offered by Company: Free Service; 24 Hour Service; Premium Diagnostic; Advantage Service; Emergency Service; Premium Emergency Service; Standard Raid Service; Economy Raid service; Premium Raid Service; Emergency Raid Service; Specialized Emergency Raid service. This list is not exhaustive of all options offered. Please check Company website for up to date information.

Once Client selects a specific service, Client is locked in and committed to the diagnostics turnaround time and corresponding data recovery turnaround time that has been purchased.

**Services Quote.** Company provides turnaround times to Client for purposes of providing good faith estimates as to the hours necessary to complete services based upon previous experiences in handling similar matters. However, Client understands that every case is inherently unique and therefore it is impossible for Company to foresee all potential impediments or delays during performance of services. Therefore, Company makes no representations or guarantees for an exact turnaround time of diagnostics and data recovery extraction time.

**Price Quote.** Client understands that although Company submits a price quote for performing a diagnostics and data recovery, there may still be unforeseen circumstances requiring additional costs to be incurred by Client. There may be unforeseen failures, additional requests made by Client, or additional time or expertise devoted to an unusual or complex matter (this list not exhaustive). The price quote is calculated based on a \$225 per hour scale that will be adjusted should additional costs arise. In such an event Company will advise client in writing of those details and will request that client agree to incur the additional costs prior to proceeding with a given matter.

**Disclaimer as to Legal advice and Accuracy of Information.** While Company provides services within the context of litigation, Company is not a law firm and does not engage in the practice of law. The information contained in this agreement is not legal advice and company's services are not a substitute for legal representation. For legal questions, concerns, or advice please consult your counsel.

**Compensation.** Client understands that this authorization form constitutes a contractual agreement between Client and Company. This authorization form must be signed and all payments made in advance before any services can be performed. However, in some instances, Company may, at its discretion, authorize initiation of the Services before full payment is made such as by charging only a portion of the services upfront and expecting that the remainder portion be paid once written or oral confirmation of service completion is made to the client. Such practice is exceptional rather than ordinary and in no way creates expectation or reliance by the Client.

**Non-payment provision.** All invoices are due in full immediately when presented to the Client. All invoice disputes shall be brought to the Company's attention within three (3) days from receipt or be considered correct and final. If Client's credit card is being used to secure a future payment that is not made, the securing credit card shall be charged for the amount due unless the Client provides an alternative method of payment within three (3) days from the due date. The outcome of Client's matter and potentially their media/device(s) may be withheld by Company until payment is made in full. Client will also be subject to monetary penalties for late payments. Any unpaid invoices not satisfied within thirty (30) days of its billing date, shall accrue interest at the rate of eighteen (18) percent per annum until paid. After thirty (30) days have elapsed, Client may be subject to a breach of contract lawsuit initiated in Cuyahoga County, Ohio. In addition to the full contract amount plus late fees, Client acknowledges that Company is also entitled to reasonable attorney's fees. If the matter is referred to a collection agency, the fees and associated costs shall be added to the balance due.

**Return shipping costs for failed media.** Client understands that if recovery procedures are unsuccessful there will be shipping and handling costs for the return of their failed media. Specifically, single hard drives ground shipping is \$25 and overnight shipping is \$79 per drive; Raid array shipping is \$35 per drive for standard shipping and \$99 per drive overnight shipping. Shipping costs to return Client's devices such as server, computer, laptop, and peripherals, will be charged to Client. An invoice containing shipping details will be provided to Client.

**Credit Card Payments.** This section will govern when Client is making payment via credit card. PRIOR TO ENTERING INTO THIS CONTRACTUAL TRANSACTION, CLIENT HAS AUTHORIZED COMPANY TO BILL CLIENT'S CREDIT CARD IN THE AMOUNT DUE IN EXCHANGE FOR RECEIVING THE SERVICES AS OUTLINED HEREIN. If client is entering into a transaction through company website, client has agreed to the website terms of conditions and policies. Further, client has provided their initials to signify their understanding of the clause above entitled "no guarantee of outcome or results".

If Client is making payments via credit card, he/she is providing permission for Company to retain Client's credit card on file UNLESS PUT ON NOTICE OTHERWISE. Once Client receives the FDV, Client will have three days (3) to remit payment in full. After this period has elapsed and Client still has not paid in full the amount owed to Company, COMPANY WILL EITHER CHARGE CLIENT'S CREDIT CARD FOR THE REMAINDER BALANCE OR CLIENT WILL BE SUBJECT TO A LAWSUIT FILED IN CUYAHOGA COUNTY COURT FOR THE UNPAID FEE.

**Payments that exceed \$1,000 dollars.** The Company does not accept payments of One Thousand Dollars (\$1,000) or more via credit card, whether it be on a per case, multiple transaction, or single client basis. If Client is unable to make an alternative form of payment (certified check, money order, bank wire transfer) on a matter quoted at \$1,000 or more, however, Company may charge or put a hold on Client's credit card. In such situations, Client will be informed that the charge or hold will remain in place until Client agrees to make an alternative form of payment. After the alternative form of payment has been made, Company will issue a refund or release the hold on the credit card.

**Chargeback Policy.** As it relates to all Client issues or disputes with Company, Client is directed to review Company's "Complaint Resolution Process and Procedure" section below. If Client files a chargeback claim against Company, it will be vigorously disputed in the following manner: a chargeback rebuttal letter, production of records and invoices rebutting the charge, payment of chargeback fee, cost of going to arbitration if applicable, and various other administrative tasks associated with the chargeback representation process. After the investigation concludes with company's successful rebuttal, CLIENT WILL BE CHARGED the cost Company has incurred in disputing Client's chargeback (invoice to be provided). Client understands that this charge does not include reasonable attorneys' fees which may be included as a separate charge. Lastly, if the investigation reveals the chargeback was fraudulent, Client may be subject to civil or criminal legal proceedings in Cuyahoga County, Ohio.

**Breach of Locking Mechanisms/ Password protected digital devices.** In cases where devices are protected with passcodes or other forms of locking mechanisms, and access to the devices' digital data can only be gained through breach of such locking mechanisms (i.e. password lost or forgotten, true owner locked out), Client expressly warrants that Client has the legal right to authorize and that Client does expressly authorizes Company to breach these locking mechanisms by employing all available tools at its disposal designed for such purposes.

Further, Client agrees to indemnify Company against any and all legal actions arising out of or from such bypass or breach of locking mechanisms.

**Handling of Illegal Contents.** Notwithstanding any of the foregoing, Client is hereby informed, and consents, that if during the course of any investigation on Client's behalf, Company uncovers: 1) CHILD PORNOGRAPHY; or 2) EVIDENCE OF ANY CRIMINAL CONDUCT that has already occurred or still in progress which is likely to result in physical harm to any natural person, Company may notify appropriate law enforcement or other governmental authorities as required by law.

**Transportation of Devices.** Client acknowledges that submitted devices may be transported, if necessary, and the Services will be performed, in the state of Ohio. Company reserves the right to relocate Client media device(s), as may become necessary, to any of its locations.

**Shipping Diagnostics Results to Client.** After the diagnostics process has been completed, Company will send the results to Client on a media device Client's billing address on file. If, however, Client prefers that the results be sent to an alternate location other than the billing address, Client must adequately inform Company by email customerservice@filerecoup.com. In such a case, Company will ship Client's results to the nearest federal express location in proximity to Client's billing address. Federal express will hold the device for upto five (5) business days for Client to pick-up. Client's signature shall confirm receipt in accordance with federal express policy. Please note that If Client's billing address is a P.O. Box, Company will automatically ship the results to the nearest federal express location in proximity to Client's billing address, unless informed otherwise.

**Company Not Liable for Third Party Shipping.** With regard to courier pickup and shipping, Company shall not be held liable for media devices that are lost or damaged during shipping or transport to and from our facilities, using 3rd party couriers or shipping companies, including Federal Express and Uber. Further, Client agrees to indemnify and hold harmless Company for the loss of any data, stored on submitted devices, which may be unintentionally lost or stolen.

If Client is not the intended recipient of a drive/media, Client is instructed to promptly contact Company by e-mail or phone to arrange for its immediate return to Company facilities. Any unauthorized review, use, disclosure or distribution is strictly prohibited. Company makes no warranty of any kind when shipping and Client agrees to disclaim all liability of Company for inadvertent shipping.

**Communication with Client.** By retaining the services of Company, Client is authorizing Company to communicate via e-mail, phone calls, text messaging, and other electronic means. Communication with Client is strictly used to convey information to Client in a timely manner. Client information will not be sold, distributed, or in any other way shared with entities or affiliates outside the Company. Client may revoke this permission in writing at any time. Client agrees not to hold Company liable for any electronic messaging charges or fees generated by communication. Client shall provide Company with updated contact information in the event of any changes.

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2) Escalation Phase: In the event that customer service is unable to rectify customer issue, Client must email escalations@filerecoup.com providing detailed explanation of the issue. Once Client contacts Company management for escalation, a proposed resolution will be offered **within 7 business days**.

3) If any of the above methods prove unsuccessful in resolving an issue, Client will then be entitled to have the complaint to be reviewed by the President of the Company, to address Client's issue directly. Client will receive a resolution **within 7-10 business days** following communication with the President.

4) If the Complaint remains unresolved or in the event the Company has a dispute with the Client pursuant to the terms of this Agreement, the Parties will submit the dispute to Mediation before an agreed upon Mediator which shall take place no later than 45 days after Client has received the communication with the President as stated above. If the Parties cannot agree upon a mediator, the Company shall present a list of at least five (5) competent mediators, with no ties to the Company, and the Client shall pick one person from that list to serve as Mediator.

5) If mediation is unsuccessful, the dispute shall be submitted to binding arbitration pursuant to the commercial rules set by the American Arbitration Association. The Parties shall agree upon an arbitrator who shall be a retired judge from either a Common Pleas Court of the State of Ohio or a Federal District Court of the State of Ohio.

6) In the event the Company believes Client's breach of this Agreement creates a risk of irreparable harm, the Company has the right to seek emergency injunctive relief before the Court of Common Pleas of Cuyahoga County or the Federal District Court for the Northern District of Ohio. Further, only in the limited scenarios of collection of unpaid fees and defamation claims, Company has the right to initiate a lawsuit outside of arbitration. CLIENT AGREES THAT THESE LIMITED EXCEPTIONS ARE FAIR.

**Client Review and Feedback Policy.** Company takes into consideration all feedback it receives and values the opportunity to improve the Company in any manner that creates more efficient services for our Clients. Therefore, nothing in this agreement is intended to restrict Client from engaging in communications protected under the Consumer Review Freedom Act. However, Company will not accept and will vigorously defend against content left unprotected under the Act, such as defamatory, confidential, or misleading reviews regarding Company, its employees, or services. TO REMAIN COMPLIANT WITH THIS AGREEMENT, PLEASE REVIEW COMPANY GUIDELINES FOR ONLINE REVIEWS:

**Online Review Guidelines:**

- 1) As a courtesy to Company, Client agrees to provide Company with a reasonable opportunity to cure any defect in service or to address any client complaints prior to Client posting a review of Company online, or otherwise publicly disparaging Company's services;
- 2) Please contact Company with any issue pursuant to the Complaint process described above;
- 3) The online review should explain thoroughly with factual assertions how your experiences with Company deviated from Company's affirmations to you;
- 4) Provide actual dates and specific events rather than generic or ambiguous statements;
- 5) DO NOT include confidential names/privileged information about Company, per this agreement;
- 6) Indicate whether Company has made resolution attempts;

**Non-Disclosure.** Company and Client mutually agree to refrain from disclosing any Confidential Information of the Parties to any third party that is not a party to this Agreement. The term "Confidential Information" includes any and all written or oral communications between the parties (including agents, affiliates, and representatives of the parties) regarding or under this Agreement and the services rendered hereunder, as well as any materials and/or information exchanged between the parties, directly or indirectly, through any means of communication, including anything observed (seen or heard) by a Party while present at that offices, facilities, or residences occupied by the other Party. Confidential Information of Company includes, but is not limited to, the services rendered by Company, the details, fees, prices, times, places of transactions, or the methods or tools with which services were rendered, the nature of the Client data analyzed, the devices provided for data recovery, the methods or timing of transportation of devices, the files targeted for recovery or any diagnostics, the length of time required for specific services, the names of individuals involved, including sales representatives, customer services representatives, data recovery and forensic engineers and management personnel. Parties mutually agree not to make public or distribute any emails, texts, chat transcripts, or other electronic communications exchanged between the Parties. Nothing in this provision is intended to prevent Company from providing its contractors with information, as may be needed, for the performance and enforcement of this agreement. Should either party violate the terms of this Non-Disclosure Agreement, parties acknowledges that such a violation creates irreparable harm for which emergency injunctive relief is warranted.

**Exclusions from Confidential Information.** In the event either Party receives an order from a court of law, such as a subpoena, it may require the Party to disclose Confidential Information of the other Party. Further, in the event that Client publishes/posts statements regarding Company in violation of this Agreement, Company reserves the right to disclose whatever information may be necessary to refute Client's statements.

**Liquidated Damages.** All parties agree that in the event of Client's breach of the non-disclosure agreement, it would be difficult to calculate actual damages. THE PARTIES AGREE THAT FIVE HUNDRED DOLLARS (\$500.00) IS A REASONABLE ESTIMATE OF THE DAMAGES that would accrue if a breach of the non-disclosure agreement occurred. This amount is directly proportionate to the actual damages Company would suffer in hiring legal and technical professionals to have the disclosures removed from the public domain, costs to hire public relations professionals to mitigate the damage, and other such real costs Company may incur in order to undo the damage caused by a client's breach of confidentiality. CLIENT AGREES THAT THIS CLAUSE IS FAIR.

**Indemnification.** In the event any third-party brings a claim against the Company relating to services performed for Client, the Client shall defend, indemnify and hold harmless Company from any such claim. Once Company selects a law firm to represent itself in any such claim, the Client shall be notified to pay the reasonable attorneys' fees of said firm.

**Agent Acting On Behalf Of Client:** This clause shall govern if Company is entering into an Agreement with an agent acting for and on behalf of an individual Client or a Client's Organization (or its affiliate, associate, or subsidiaries). AGENT AFFIRMS THAT HE/SHE IS AN AUTHORIZED AGENT OF AN INDIVIDUAL OR THEIR ORGANIZATION. Agent further authenticates that he/she has received express authorization from the individual Client or authorized officers in the organization to enter into a contractual transaction with Company, to make financial decisions, to submit digital devices for review or analysis, and make any and all payments relating to services. Company has relied on these affirmations prior to proceeding with performance of services.

As it pertains to payment method being utilized by Agent, the individual Client or Client's Organization will be held liable regardless if the agent is using a personal credit card rather than the Organization's credit because of the above affirmations made by agent which Company has relied upon. All liability and responsibility for making payment shall be applied towards the Client or their agent personally, as permitted by law.

**Privacy Policy.** This section details Company protocol in handling Client's information and data. A more thorough breakdown of our policy is provided on the Company website. Client agrees to the collection and use of information in accordance with this privacy policy.

**Information Collection and Use.** In the course of day-to-day business operations, authorized individuals within the Company will encounter personal data that it collects from Clients, which is necessary in order to carry out the Company's business purposes. Company takes very seriously the integrity of the information and data that comes into Company's control. Therefore, Company has in place measures to protect Client privacy and to identify unauthorized attempts to access information or otherwise breach Company servers. Attempts to access any portion of the Company servers are strictly prohibited and may be punishable under applicable Ohio and Federal statute(s). Company does not ensure Client privacy when Client's data conflicts with above clause entitled "Handling of Illegal Contents." Company makes no representations and claims no responsibility over content found within Client property that involves confidential information relating to unknown third-parties.

**Breach.** In case of breach of this Agreement, Client shall be responsible for all costs and expenses, including but not limited to reasonable attorney's fees, court costs, and all other fees incurred by Company as a result of the Client's breach.

**Construction.** This Agreement shall not be construed by any arbitrator or Court to the detriment of either Party. This Agreement will be construed according to its fair meaning, and not strictly for or against a party merely because that party drafted the Agreement.

**Damages.** Parties understand and agree that monetary damages may not be a sufficient remedy for any breach of this Agreement and that each party shall be entitled to seek injunctive or other equitable relief to remedy or forestall any such breach or threatened breach. Such remedy shall not be deemed to be the exclusive remedy for any breach of this agreement, but shall be in addition to all other rights and remedies available at law or in equity.

**Governing Law.** This agreement shall be construed and enforced according to, and governed by, the laws of the State of Ohio, as well as any claim that might arise, without regard to conflict of law provisions.

**Jurisdiction.** Any legal action brought pursuant to this Agreement shall be governed by the alternative dispute provisions contained herein and shall be heard in Cuyahoga County, Ohio.

Should any disputes between the Parties be determined not to be subject to the alternative dispute resolution process contained in this Agreement, such as collection of unpaid fees or defamation claims, said disputes shall be brought in a Court of competent jurisdiction in Cuyahoga County, Ohio and the Parties agree that the Court shall determine all issues of law and fact and waive their respective right to jury regarding any dispute regarding the negotiation, formation or performance of the terms of the Agreement. The Parties agree that the waiver of the right to a jury is being made knowingly, voluntarily, and intelligently.

**Severability.** If any term in this Agreement is found to be invalid, void, or in conflict with Ohio law, only that clause will be null and void but the rest of the agreement remains valid and enforceable.

**Interpretation.** This agreement shall be interpreted as broadly as necessary for enforceability of each term and clause. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with an enforceable term and agreement.

**Application.** Company will receive the above protection even after all engagements have ended. This protection extends to any future suit.

\*\*\*\*\*

**Client acknowledges that it has had a reasonable opportunity to obtain or has obtained INDEPENDENT LEGAL ADVICE WITH RESPECT TO THIS AGREEMENT AND THAT IT HAS READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT.** Client acknowledges that any questions relating to process, procedure, timing, deliverables, billing, or any other matters of concern, have been addressed prior to executing this agreement, this agreement has not been signed or initialed under duress and that all terms of this agreement are reasonable and accepted.

Client agrees to provide complete and accurate information as requested by Company. Company reserves the right to terminate this agreement and Client's use of any products and services for violation of any terms of this agreement or in the event any false or misleading information is supplied by Client.

DocuSigned by:  
  
DA965E29476C4E7...

Client Signature: \_\_\_\_\_

Date: 9/11/2017

Printed Name: Russell Judd

## Consent to Search Form

Client understands that Company is not always able to verify or determine conclusively the true owner of an item being submitted for services or if a device has been illegally obtained. Therefore, Company relies on the following affirmations made by Client before proceeding with performance of services.

**Electronic Media/Devices.** I, Russell Judd, authorize and provide my consent to Company to take temporary possession and conduct diagnostic and/or data recovery services on the following electronic media/devices I have provided to Company: computer system, electronic data storage service, computer data storage, laptop, mobile device, or any other electronic device capable of storing, retrieving, processing and/ or accessing data.

**Internet Service Provider/Web-Based Email or Account.** I, Russell Judd, authorize and provide my consent to Company to recover, extract, and salvage the information contained in any electronic mail in all folders (sent, received, trash, etc.) stored offsite by the internet service provider or web based email provider associated with the accounts I have provided to Company.

Client acknowledges that it is illegal to access, review, investigate, monitor, or install software on a device they do not own without explicit permission of the device's owner, and is declaring the following:

**(Please initial each item below)**

<sup>DS</sup>  
RJ

Client affirms that any item assigned to Company falls into one of the following categories: the item is Client's property, or Client is an authorized representative of the owner of the items, or client has the EXPRESSED PERMISSION FROM OWNER TO SUBMIT THE ITEMS, which may contain sensitive or private data.

<sup>DS</sup>  
RJ

Client affirms that he/she has notified all other parties who may have privileged or private data contained on the device that Client has submitted for digital investigation and that, consequently, those parties can have NO REASONABLE EXPECTATION OF PRIVACY with regard to data or communications on the device, and that therefore all parties hold company harmless.

<sup>DS</sup>  
RJ

Client acknowledges that there may be additional devices submitted during the course of investigation and his/her affirmations extend to those devices as well.

<sup>DS</sup>  
RJ

The affirmations made by Client may also extend to Client in role of employee submitting items owned by Client's employer. If so, Client affirms to have the authority or express permission from the owner to submit an employer/organization owned device for services.

<sup>DS</sup>  
RJ

Client understands that any legal questions and concerns relative to this consent form should be directed to Client's attorney.

**Indemnification.** Client shall indemnify and hold company harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) against anyone bringing a claim against Company related to Client actions or services performed for Client.

## Waiver, Release of Liability, and Indemnity Agreement

**Waiver of Liability.** To the extent permitted by Ohio law, CLIENT HEREBY RELEASES COMPANY AND ALL ITS EMPLOYEES FROM ANY AND ALL LIABILITY, resulting from any negligent conduct whether in the course of rendering services or through use of any of the acquisition methods (including remote), and forever waives any claim(s) against Company in connection with any such report made by Company, regardless of whether the subject of the report is the Client, or any other person with respect to whom such information is uncovered in the course of services provided.

This release of liability ALSO PREVENTS client's spouse, relatives, heirs, descendants and third parties from bringing suit against Company for any of the above described matters.

**Waiver of Consequential Damages.** Company SHALL NOT BE HELD LIABLE to Client for any incidental, indirect or consequential damages arising out of, or connected in any way to this Agreement. This includes but is not limited to loss of profits, loss of income, and loss of reputation, and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

**Indemnification.** In the event any legal action is brought against Company regarding the subject matter of the engagement, Client will indemnify, hold harmless, and defend Company and its affiliates to the fullest extent permitted by law against any claim arising or relating to the services performed. This indemnification of Company will include but not be limited to any liability or expense, losses, damages (actual and consequential), suits, judgments, litigation costs and reasonable attorney's fees.

Client also understands that efforts made by Company in the ordinary course of performing services covered by this Agreement may result in the inadvertent deletion, damage or destruction of the data/media/equipment. CLIENT AGREES TO INDEMNIFY AND HOLD HARMLESS COMPANY for any inadvertent or negligent act that results in the loss of any data stored on submitted devices, even if claimed to have a significant monetary or business value.

**Ohio Law.** Ohio Law governs this Waiver, Release of Liability, and Indemnity Agreement.

**Severability.** If any section of this Waiver Agreement is found to be invalid, void, or enforceable, only that section will be null and void but the remainder shall stay in full force and effect.

**Breach.** Should Client file a lawsuit in breach of this Agreement, Client is responsible for all costs and expenses, including but not limited to attorney fees, court costs and all other fees that are incurred by Company as a result of the Client's breach.

**I HAVE READ THIS ENTIRE WAIVER, RELEASE OF LIABILITY, AND INDEMNITY AGREEMENT (ONE PAGE), AND I FULLY UNDERSTAND IT AND AGREE THAT IT SHALL BE ENFORCED TO THE GREATEST EXTENT PERMITTED BY OHIO LAW.**

DocuSigned by:  
  
DA965E29476C4E7...

Client Signature: \_\_\_\_\_

Date: 9/11/2017

Printed Name: Russell Judd

Please type the name of the person who is signing authorization: Russe11 Judd

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

September 20, 2017

**Subject:** Proposed Agreement with Jerry Cheriyan, MD

**Recommended Action:** Approve; Authorize Chairman to sign

**Summary:**

Kern Medical requests your Board approve the Proposed Agreement with Jerry Cheriyan, MD, for professional medical services as a full-time core trauma, bariatric and minimally invasive surgery faculty member in the Department of Surgery at Kern Medical. Dr. Cheriyan will work a minimum of 2,500 hours annually in teaching, administrative duties, clinical care, trauma, and general surgery. Dr. Cheriyan completed a surgical critical care fellowship at Mayo Clinic in 2017, and a general surgery residency at the Marshfield Clinic in Wisconsin in 2016.

The initial term of this Agreement shall be for a period of three (3) years commencing on November 11, 2017, or the approved date of the physician's O-1 nonimmigrant visa, J-1 visa, or subsequent visa, but no later than 90 days after such visa approval. Due to the respective visa requirements as stipulated by the Federal Department of State, this agreement may only be terminated for cause and cannot be terminated by mutual agreement until the statutorily required three-year Initial Term has expired.

The Authority shall pay Dr. Cheriyan an annual salary comprised of a base salary for teaching and administrative duties and payment for care of KMC patients in the amount of \$455,000 per year plus additional compensation for call coverage, incentive compensation for achieving certain quality/safety and patient satisfaction metrics as well as excess cash collections, and a starting bonus in the amount of \$15,000. The maximum compensation payable under this Agreement shall not exceed \$1,850,400 over the term of this agreement.

**AGREEMENT FOR PROFESSIONAL SERVICES  
CONTRACT EMPLOYEE  
(Kern County Hospital Authority – Jerry Cheriyan, M.D.)**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the Kern County Hospital Authority, a county hospital authority (“Authority”), which owns and operates Kern Medical Center (“KMC”), and Jerry Cheriyan, M.D. (“Physician”).

**I.  
RECITALS**

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

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

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

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

**II.  
TERMS AND CONDITIONS**

1. **Term.** The initial term of this Agreement (“Initial Term”) shall be for a period of three (3) years, commencing as of November 11, 2017, or the approved date of Physician’s O-1 nonimmigrant visa or J-1 visa, but no later than 90 days after the approved O-1 or J-1 visa date (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 one (1) year 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 Person<sup>1</sup>; (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. Physician shall provide primary care services to Medicare, Medicaid ("Medi-Cal"), low-income, and uninsured patients. Physician shall provide services to a caseload that is comprised of at least 30% Medi-Cal patients or a 30% caseload comprised of a combination of Medi-Cal and uninsured patients throughout the Initial Term of this Agreement.

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 obtain board certification by the American Board of Surgery in surgery-general within 24 months of the Commencement Date, and maintain such certification at all times during the Term of this Agreement.

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<sup>1</sup> 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.

4.3.3 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, except as otherwise provided herein.

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"). The benefits package set forth in section 6 herein is not included as part of the 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 \$455,000 per year, to be paid as follows: Physician shall be paid \$17,500 biweekly not to exceed \$455,000 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 50th 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 **Restricted Call Coverage.** Authority shall pay Physician for "restricted call"<sup>1</sup> coverage as follows: (i) Physician shall be paid a fixed fee in the amount of \$2,400 per 24-hour day for every weekend and holiday of restricted call coverage assigned (Saturday and Sunday; designated Authority holidays only); (ii) Physician shall be paid a fixed fee in the amount of \$1,200 for every weekday night of restricted call coverage assigned (Monday through Friday); and (iii) Physician shall be paid a per diem rate of \$500 per 24-hour day for backup call coverage.

5.3 **Incentive Compensation.** Within 30 days following the end of each Employment Year, beginning from the Commencement Date, KMC will calculate the professional fee net collections (defined as actual cash received) for all professional services provided by Physician. Physician shall receive 25% of the professional fee net collections in excess of \$455,000, less all applicable federal and state taxes and withholdings, per Employment Year.

5.4 **Starting Bonus.**

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<sup>1</sup> "Restricted call" means Physician must be physically present in the hospital during the entire call period and may not leave the hospital until Physician has been relieved from call duty.

5.4.1 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.

5.4.2 Repayment. In the event that Physician voluntarily terminates his employment with Authority for any reason whatsoever before the first anniversary of this Agreement, Physician will repay to Authority an amount equal to \$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 starting bonus.

5.5 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, Physician shall be eligible to receive a quality bonus based on the following measures:

5.5.1 Quality/Safety Measure(s). Physician shall be eligible to receive a quality bonus an amount not to exceed \$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, 2018. 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.

5.5.2 Patient Satisfaction Measure. Physician shall be eligible to receive a quality bonus in an amount not to exceed \$12,500 each Employment Year if the trauma and general surgery physicians as a group achieve certain patient satisfaction target metrics. 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, 2018.

5.5.3 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.

5.6 Professional Fee Billing.

5.6.1 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, and professional retainer fees (but excluding Physician's private investment and nonprofessional income, intellectual property developed or work on similar development projects prior to the Commencement Date and any time thereafter as long as such work is performed by Physician on his own time and without the use of Authority or KMC resources, 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.

5.6.2 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.

5.7 Maximum Payable. The maximum compensation payable under this Agreement shall not exceed \$1,850,400 over the three-year Initial Term of this Agreement.

## 6. Benefits Package.

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

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

6.3 Holidays. Physician shall be entitled to all paid holidays authorized as official holidays for Authority employees. A holiday occurring on a Sunday shall be observed on the following Monday and a holiday occurring on a Saturday shall be observed on the preceding

Friday. In the event Physician is scheduled for and works on a holiday, he shall be entitled to an equivalent period of time off at a later date. Physician will not be paid for banked holidays upon termination of employment.

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

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

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

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

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

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

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

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

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

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

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

6.15 Visa Fees. Authority agrees to pay for all reasonable and necessary expenditures related to Physician’s O-1 nonimmigrant visa, J-1 visa waiver, H1-B visa, and/or Green Card in an amount not to exceed \$20,000 (“Visa Fees”). In the event Physician fails to report to work on the Commencement Date or voluntarily terminates his employment with Authority for any reason whatsoever before the first anniversary of this Agreement, Physician will repay to Authority an amount less than or equal to \$20,000 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 no-show or termination of employment with Authority. 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 Visa Fees.

6.16 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 \$208.34 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.<sup>1</sup>

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<sup>1</sup> By way of example only, in the event Physician terminates his employment after 12-months then Physician will be vested to the extent of \$2,500 in the relocation expenses described herein and will be obligated to repay Authority the amount of \$5,000. **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.**

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

7. **Assignment.** Physician shall not assign or transfer this Agreement or his obligations hereunder or any part thereof. Physician shall not assign any money due or which becomes due to Physician under this Agreement without the prior written approval of Authority. Authority may, without the consent of Physician, assign all of its rights and duties under this Agreement with the concurrence of the federal Department of State.

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. Any Amendment to this Agreement shall adhere to state and federal J-1 visa waiver requirements.

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:

Jerry Cheriyan, M.D.  
1805 Quarry Ridge Place NW, Apt. 104  
Rochester, Minnesota 55901

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 for Cause.** This Agreement may be terminated only for cause and cannot be terminated by mutual agreement until the statutorily required three-year Initial Term has expired.

28.2 **Immediate Termination.** Authority may terminate this Agreement immediately by written notice to Physician upon the occurrence of any of the following events (“Event of Default”): (i) Authority determines that Physician does not have the proper credentials, experience, or skill to perform the required services under this Agreement; (ii) Authority determines the conduct of Physician in the providing of services may result in civil, criminal, or monetary penalties against Authority or KMC; (iii) Physician violates any federal or state law or regulatory rule or regulation or condition of accreditation or certification to which Authority or Practice Sites is subject; (iv) Physician engages in the commission of a material act involving moral turpitude, fraud, dishonesty, embezzlement, misappropriation or financial dishonesty against Authority or KMC; (v) the actions of Physician result in the loss or threatened loss of KMC’s ability to participate in any federal or state health care program, including Medicare or Medi-Cal; (vi) Physician’s license to practice medicine in the state of California lapses or is denied, suspended, revoked, terminated, relinquished or made subject to terms of probation or other restriction; (vii) Physician’s medical staff privileges are denied, suspended, revoked, terminated, relinquished under threat of disciplinary action or made subject to terms of probation or other restriction; (viii) Physician’s Controlled Substance Registration Certificate issued by the Drug Enforcement Administration is revoked, suspended, terminated, relinquished, placed on terms of probation, or restricted in any way; (ix) Physician becomes debarred, excluded, or suspended, or if any other event occurs that makes Physician an Ineligible Person; (x) Physician fails to make a timely disclosure pursuant to paragraph 4.4; (xi) Physician engages in conduct that, in the sole discretion of Authority, is detrimental to patient care or to the reputation or operations of Authority and/or KMC; (xii) Physician breaches the confidentiality provisions of this Agreement; (xiii) Physician dies; (xiv) Physician fails to follow Authority’s policies and procedures and other rules of conduct applicable to all employees of Authority, including without limitation, policies prohibiting sexual harassment; (xv) insubordination, flagrant tardiness, or interpersonal problems in the workplace with colleagues, patients or associates; (xvi) Physician breaches any covenant set forth in paragraph 4.11; or (xvii) failure to comply at all times with the requirements of the J-1 visa waiver or subsequent visa status.

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.

29.5 Liquidated Damages. In the event that Physician terminates this Agreement during the Initial Term or this Agreement is terminated by Authority prior to the expiration of the Initial Term due to an Event of Default, the parties agree that Authority will suffer a substantial injury for which it is impracticable or extremely difficult to ascertain or fix actual damages with any degree of certainty. If Physician terminates this Agreement during the Initial Term or this Agreement is terminated by Authority prior to the expiration of the Initial Term due to an Event of Default, Physician agrees to pay liquidated damages to Authority according to the following schedule: \$20,000 if Physician terminates this Agreement before the end of the first Employment Year; \$15,000 if Physician terminates this Agreement after the first Employment Year but prior to the end of the second Employment Year; and \$10,000 if Physician terminates this Agreement after the end of the second Employment Year but prior to the end of the third Employment Year. The parties intend that Physician's payment of the liquidated damages amount would serve to compensate Authority for the early termination of this Agreement, and they do not intend for it to serve as punishment for such termination.

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

[Signatures follow on next page]

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

PHYSICIAN

By: \_\_\_\_\_  
Jerry Cheriyan, M.D.

KERN COUNTY HOSPITAL AUTHORITY

By: \_\_\_\_\_  
Chairman  
Board of Governors

APPROVED AS TO CONTENT:  
KERN MEDICAL CENTER

By: \_\_\_\_\_  
Russell V. Judd  
Chief Executive Officer

APPROVED AS TO FORM:  
LEGAL SERVICES DEPARTMENT

By: \_\_\_\_\_  
VP & General Counsel  
Kern County Hospital Authority

Agreement.Cheriyan.091317

**EXHIBIT “A”**  
**Job Description**  
**Jerry Cheriyan, M.D.**

**Position Description:** Reports to Chair, Department of Surgery; serves as a full-time core trauma, bariatric, and minimally invasive surgery faculty member in the Department; Physician work effort will be a minimum 2,500 hours annually in teaching, administrative, and clinical activity; day-to-day activities and clinical workload will include call coverage for trauma, critical care, and emergency general surgery; provides comprehensive and safe clinical coverage for day-to-day operations, timely completion of surgery, direct patient care, scholarly research and resident education; works collaboratively with clinic and surgery staff and hospital administration to ensure efficient workflow, adequacy of support equipment, and superior patient experience.

**Essential Functions:**

1. Clinical Responsibilities and Assignments:
  - Coordinate with current general surgery faculty schedules and activities to provide service and improve efficiency for general surgery clinical activities
  - Conduct daily inpatient rounds
  - Provide service and improve efficiency for trauma, bariatric, critical care, and minimally invasive surgery cases
  - Provide faculty service for trauma, critical care, and general surgical call coverage
  - Supervise surgery Physician Assistant activity and competence
  - Operating Room –minimum of two (2) half days per week
  - KMC, Stockdale Highway, Truxtun Avenue, or other designated clinic sites – minimum of three (3) half-day clinics per week
  - Call coverage – weekday coverage, Monday through Thursday, one (1) in four (4) weekdays up to a maximum of 52 weekday call shifts per year; weekend coverage, one (1) in four (4) weekends up to a maximum of 13 weekends per year
  
2. Administrative Responsibilities:
  - Assist in clinical and administrative integration efforts across KMC as appropriate for trauma, bariatric, critical care, and minimally invasive surgery assisting with proper program planning, surgeon recruitment and faculty development, resource allocation, analysis, communication and assessment
  - Assist with program oversight and strategic planning for the surgery residency program
  - Gather data through best practices and collaborate with other members of the Department to recommend services that will increase productivity, minimize duplication of services, increase workflow efficiency, and provide the highest quality of care to KMC patients
  - Support the Department chair to develop monitoring tools to measure financial, access, quality and satisfaction outcomes for minimally invasive, trauma, bariatric, and general surgery services
  - Attend and actively participate in assigned Medical Staff and hospital committees

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

3. Teaching Responsibilities:

- Assist the Program Director with individual resident mentoring, counseling, and evaluation as appropriate for general surgery and critical care rotations
- Lead the initiative to develop a resident simulation lab at KMC
- Assist with didactic curriculum and teaching conference activity including noon, preoperative, oncology, and journal club
- Assist in resident research and scholarly activity

**Employment Standards:**

One (1) year of post-residency experience in general and trauma 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

**Knowledge of:** The principles and practices of modern medicine; current techniques, procedures, and equipment applicable to trauma, bariatric, and minimally invasive surgery; principles of effective supervision and program development.

[Continued on next page]

**Location of Services; Hours of Operation:**

Services will be performed at one or more of the following locations:

Kern Medical Center  
1700 Mount Vernon Avenue  
Bakersfield, Kern County, California 93306  
Hours of operation: 24/7  
Service type: General Acute Care Hospital

Kern Medical Center  
1830 Flower Street  
Bakersfield, Kern County, California 93305  
Hours of operation: 24/7  
Service type: General Acute Care Hospital

Sagebrush Medical Plaza  
1111 Columbus Street  
Bakersfield, Kern County, California 93305  
Hours of operation: Monday-Friday, 8:00 a.m.-7:00 p.m.; after-hours by  
appointment only  
Service type: Clinic

Kern Medical Physicians  
6401 Truxtun Avenue, Suite A-1  
Bakersfield, Kern County, California 93309  
Hours of Operation: Monday-Friday, 8:00 a.m.-5:00 p.m.; after-hours by  
appointment only  
Service type: Clinic

Kern Medical Physicians  
9300 Stockdale Highway, Suites 100-300  
Bakersfield, Kern County, California 93311  
Hours of Operation: Monday-Friday, 8:00 a.m.-5:00 p.m.; after-hours by  
appointment only  
Service type: Clinic; Ambulatory Surgery Center

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**EXHIBIT "B"**

**AUTHORIZATION TO RELEASE INFORMATION**

**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**

September 20, 2017

**Subject:** Moss-Adams, LLP – Audit Plan FYE June 30, 2017

**Recommended Action:** Make Presentation

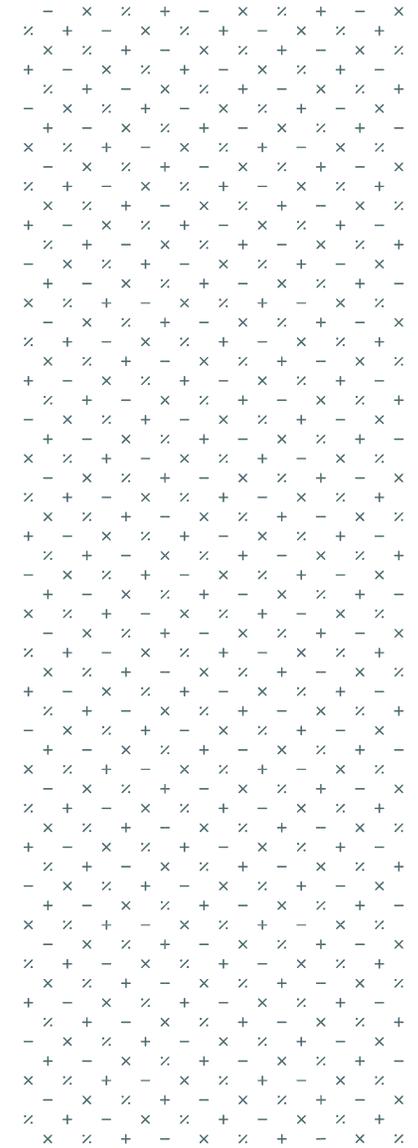
**Summary:**

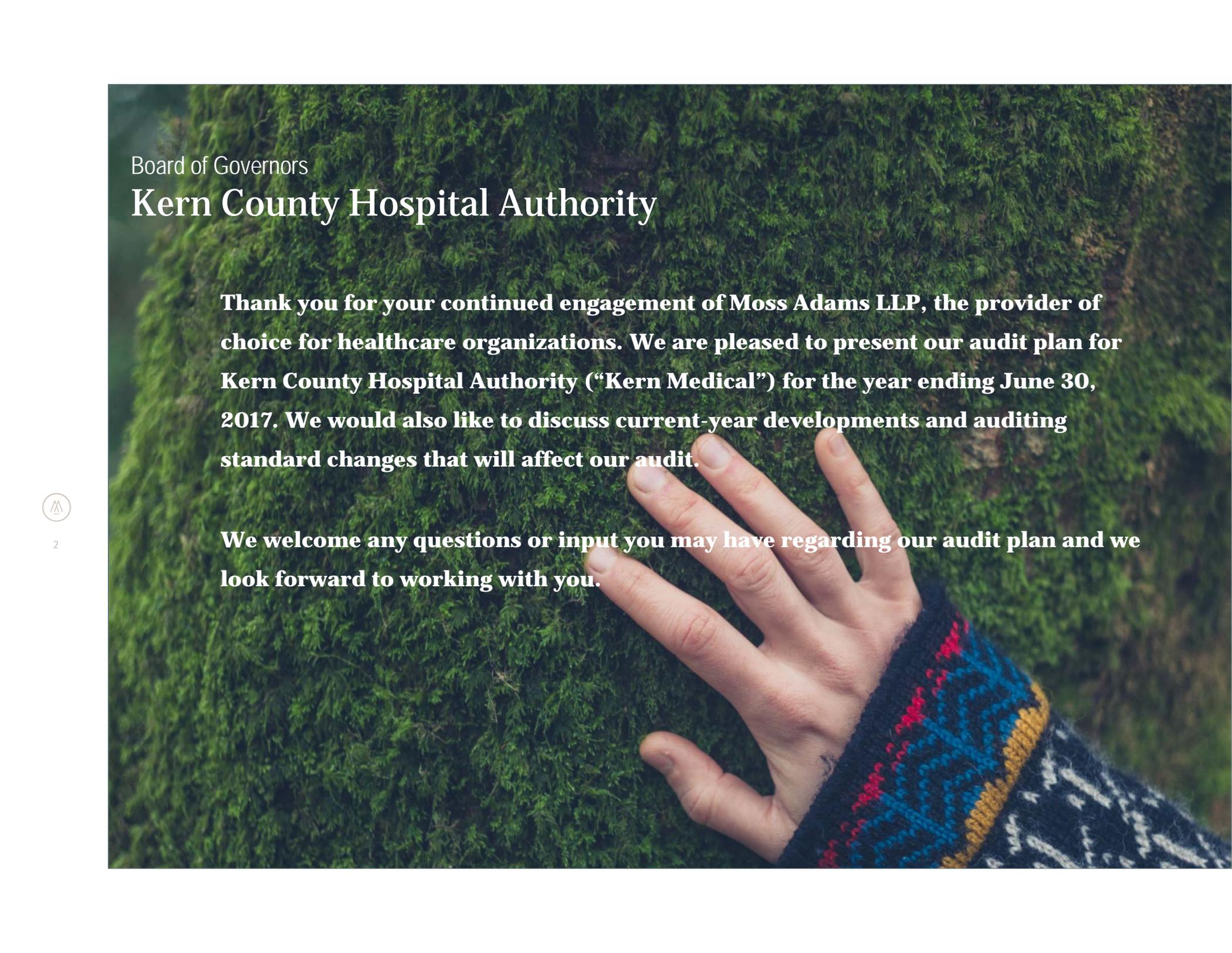
In connection with our engagement to audit the financial statements of Kern Medical as of and for the year ended June 30, 2017, professional standards require that we communicate certain items including our responsibilities with regard to the financial statement audit and the planned scope and timing of our audit.



# Audit Entrance: Kern County Hospital Authority

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A close-up photograph of a person's hand resting on a thick layer of vibrant green moss. The hand is positioned in the lower right quadrant of the frame, with fingers slightly spread. The person is wearing a dark-colored sweater with a colorful, geometric pattern in shades of blue, red, and yellow. The background is a dense, textured wall of moss, creating a rich, natural setting.

Board of Governors

# Kern County Hospital Authority

**Thank you for your continued engagement of Moss Adams LLP, the provider of choice for healthcare organizations. We are pleased to present our audit plan for Kern County Hospital Authority (“Kern Medical”) for the year ending June 30, 2017. We would also like to discuss current-year developments and auditing standard changes that will affect our audit.**

**We welcome any questions or input you may have regarding our audit plan and we look forward to working with you.**



# Your Dedicated Team

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**Stacy Stelriede**  
Partner



**Ben Mack**  
Partner,  
Concurring  
Reviewer

## Other Recurring Team Members:



**Stelian Damu**  
Senior Manager,  
Engagement  
Reviewer



**Elizabeth Lasnier**  
Manager

**Jae Hyun**  
Audit Senior

**May Lee**  
Audit Staff



# Required Communications to Those Charged with Governance

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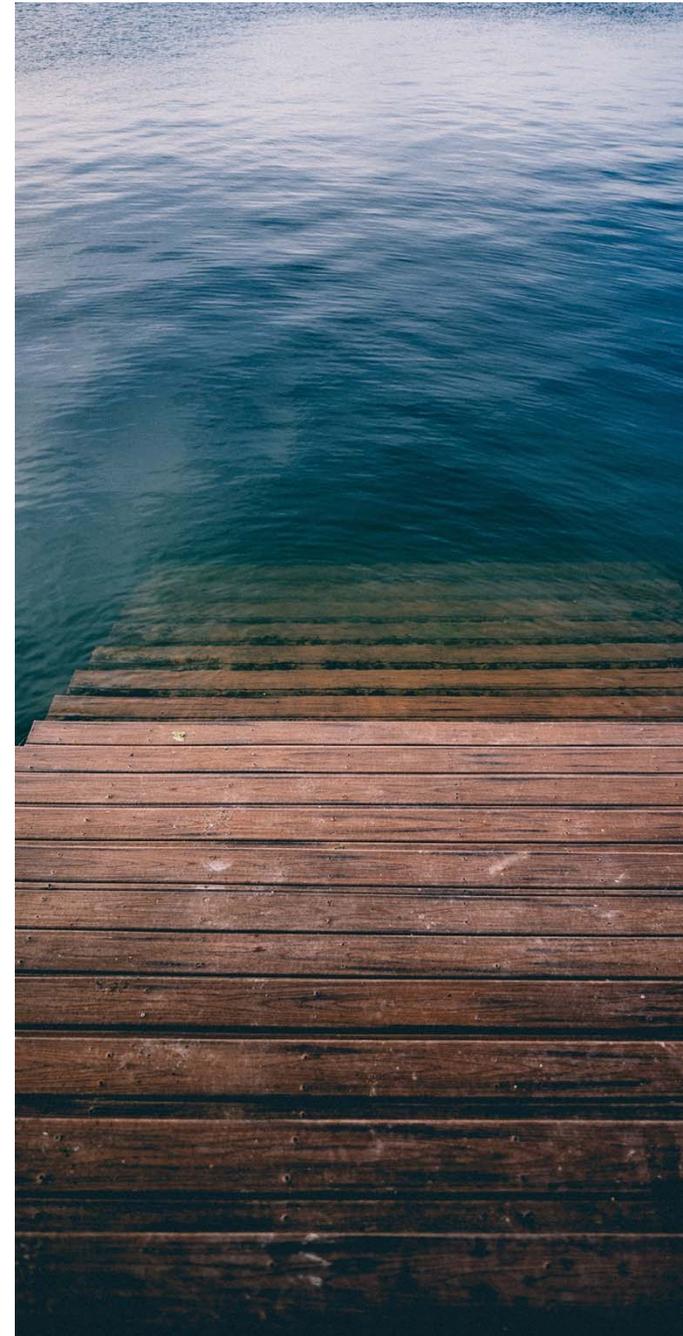
## Now

- Auditor's responsibility under U.S. and government auditing standards
- Planned scope and timing of audit

---

## Later

- Significant audit findings
- Qualitative aspects of accounting practices
- Difficulties encountered in performing the audit
- Corrected and uncorrected misstatements
- Management representations
- Management consultations with other independent accountants
- Other audit findings or issues



# Our Responsibility

## Our responsibility under US Generally Accepted Auditing Standards and Government Auditing Standards.



1  
To express our opinion on whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, and in accordance with U.S. GAAP. However, our audit does not relieve you or management of your responsibilities.

2  
To perform an audit in accordance with generally accepted auditing standards issued by the AICPA, Government Auditing Standards issued by the Comptroller General of the United States, and the California (CA) Code of Regulations, Title 2, Section 1131.2, State Controller's Minimum Audit Requirements for CA Special Districts, and design the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement.

3  
To consider internal control over financial reporting and internal control over compliance as a basis for designing audit procedures but not for the purpose of expressing an opinion on its effectiveness or to provide assurance concerning such internal control.

4  
To communicate findings that, in our judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.



# Audit Process

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**Internal Controls**



**Analytical Procedures**



**Substantive Procedures**

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Includes information technology

Revenues and expenses

Confirmation of account balances

Trends, comparisons, and expectations

Vouching to supporting documentation

Representations from attorneys and management

Examining objective evidence



# What is Materiality?

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**The amount of a misstatement that could influence the economic decisions of users, taken on the basis of the financial statements.**

## How It's Calculated:

- Using certain quantitative (e.g., total assets) and qualitative factors (e.g., covenants, expectations, or industry factors)

## It's Used To Identify:

- Significant risk areas
- Nature, timing, extent, and scope of test work
- Findings or misstatements



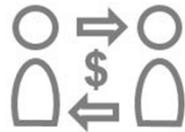
# Significant Audit Areas (continued)

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Transfer of  
Operations – New  
Hospital Authority



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Revenue  
Recognition



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Valuation of Patient  
Receivables

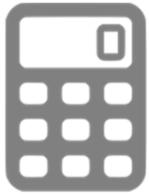


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Valuation of Third  
Party Settlements

# Significant Audit Areas

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Professional Liability  
Estimates



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Pension Obligation



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Other Post-  
Employment  
Benefits



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Related Party  
Transactions



# Consideration of Fraud

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**Auditors must consider fraud to “improve the likelihood that auditors will detect material misstatements due to fraud in a financial statement audit.”**

**How we gather information to identify fraud-related risks of material misstatement:**

- Brainstorm with team
- Conduct personnel interviews
- Document understanding of internal control
- Consider unusual or unexpected relationships identified in planning and performing the audit

**Procedures to be performed:**

- Examine general journal entries for nonstandard transactions
- Evaluate policies and accounting for revenue recognition
- Test and analyze significant accounting estimates for biases
- Evaluate the business rationale for significant unusual transactions



# Deliverables

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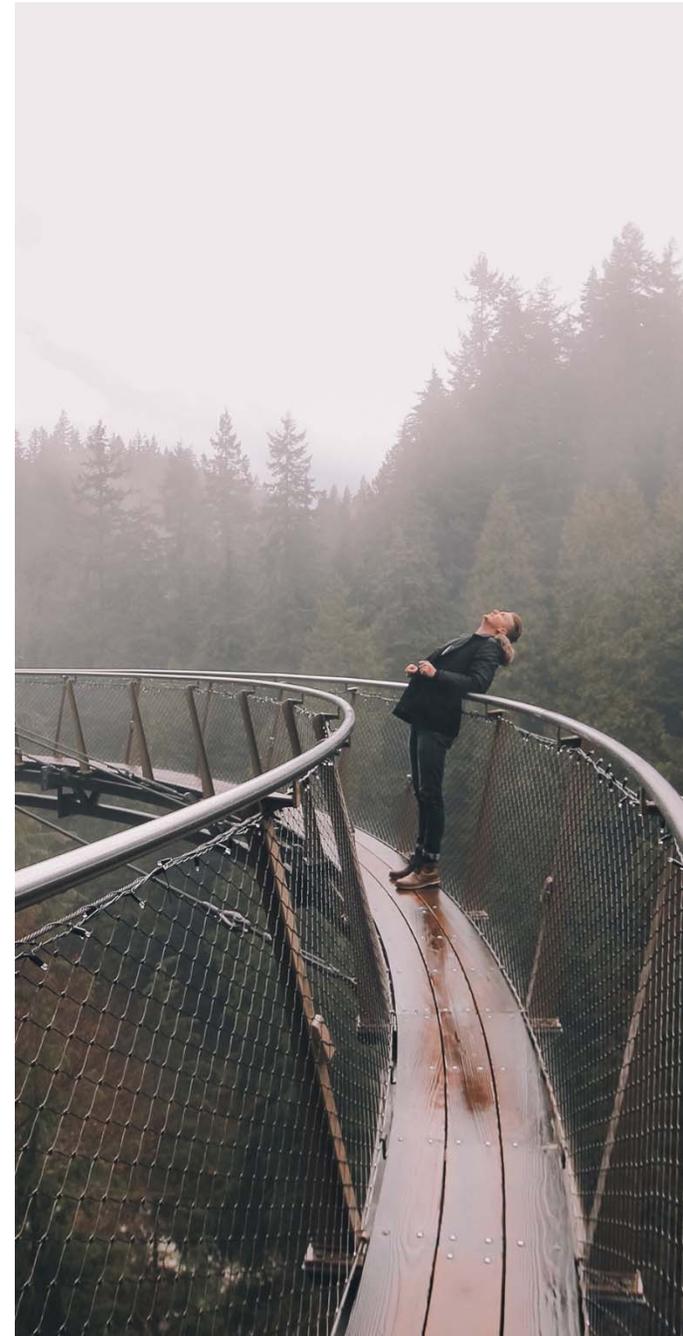
## We will issue the following reports:

- Audit report on the financial statements of Kern Medical as of and for the year ended June 30, 2017
- Report to those charged with governance
  - Communicating required matters and other matters of interest
- Report to Management and the Audit Committee
  - Communicating internal control related matters identified during the audit

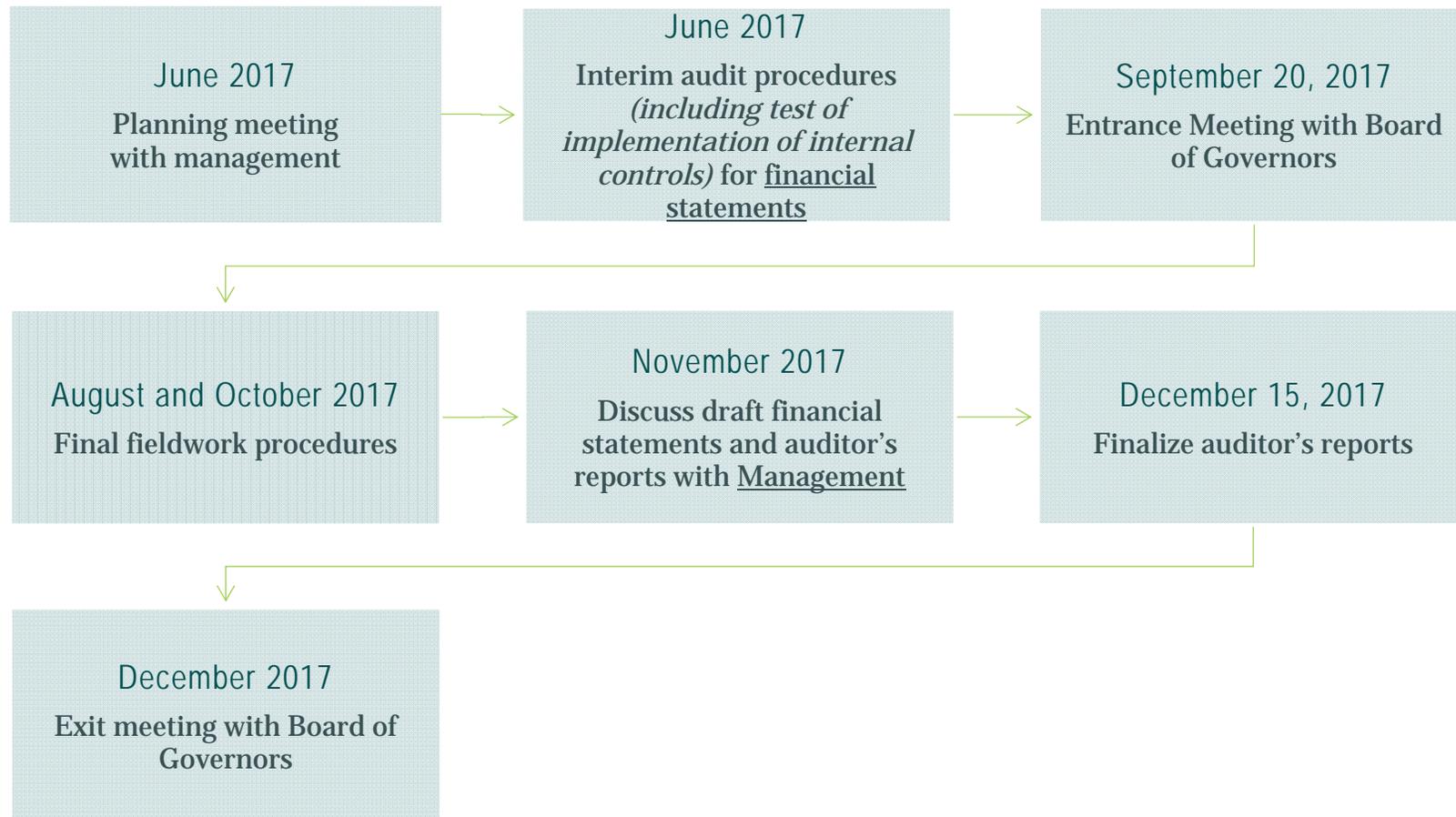
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## Non-attest services:

- Assist in drafting of the financial statements of Kern Medical, excluding Management's Discussion and Analysis



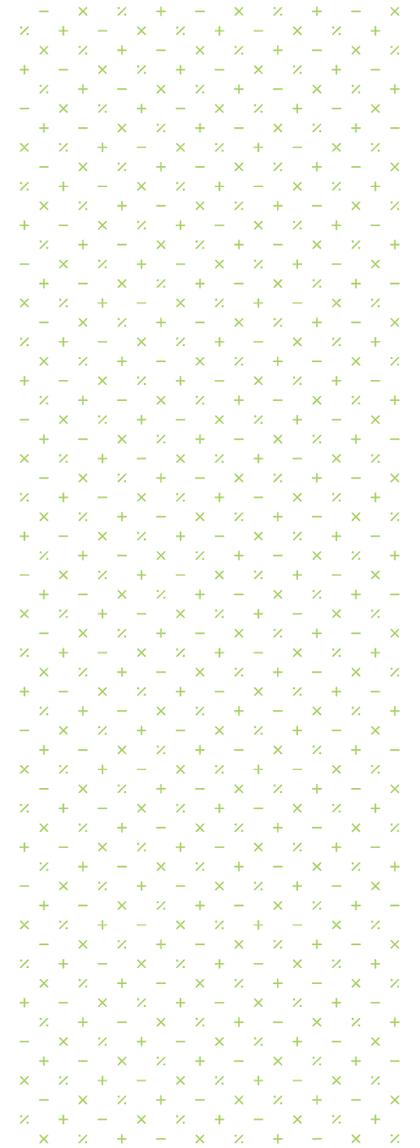
# Audit Timing





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# Accounting Update



# New Standards

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## **GASB 74 / 75** | Financial Reporting for Postemployment Benefits other than Pension Plans (OPEB)

- Effectively replaces GASB 43 and 45.
- Reporting essentially the same as pensions under GASB 67 and 68, respectively. Significant note disclosure and required supplementary information.
- Effective for OPEB plan annual periods beginning after June 15, 2016 and Employers for annual periods beginning after June 15, 2017.



# New Standards

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## **GASB 76** | The Hierarchy of GAAP for Governments

- Establishes two categories
  - Category A – Formally approved statements by the GASB Board
  - Category B – GASB Technical Bulletins and Implementation Guides
- Effective for annual periods beginning after June 15, 2016.



# New Standards

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## **GASB 84** | Fiduciary Activities

- Clarifies fiduciary activities as having the following characteristics:
  1. Government controls the assets of the activity.
  2. Those assets are not derived solely from the government's own source revenue.
  3. One of the following:
    - The assets result from a pass-through grant or trust agreement.
    - Assets are used to benefit individuals not typical recipients of the government's goods and services (i.e. employees receive the benefit instead of patients.)
    - Assets are to be used to benefit other organizations or governments.
- Would require stand alone business-type entities (i.e. hospitals) with pension and OPEB trusts or patient custodial accounts to report separate fiduciary fund financial statements within the financial statements.
- Effective for reporting periods beginning after December 15, 2018. Earlier application is encouraged.



# New Standards

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## **GASB 87** | Leases

- Effectively replaces GASB 62.
- All leases treated as financings (no classification of capital v. operating) similar to FASB ASU 2016-02.
- Lessee would record an intangible asset (amortized over the shorter of its useful life or lease term) and present value of future lease payments as a liability.
- Lessor would record a lease receivable and deferred inflow of resources for cash received up front + future payments (revenue recognized over lease term in a systematic and rational basis).
- Effective for reporting periods beginning after December 15, 2019. Earlier application is encouraged.



# 2017 HEALTH CARE CONFERENCE

We're pleased to present our 22nd annual health care conference at Red Rock Casino, Resort & Spa in Las Vegas on November 15–17, 2017. This year's conference promises to be one of our best yet, featuring:

- Dr. Sanjay Gupta, Emmy® award-winning chief medical correspondent for CNN and practicing neurosurgeon
- Dr. Tom Coburn, former Republican US Senator (OK), physician, and two-time cancer survivor
- Wendy Davis, former Democratic state senator (TX), recognized women's equality leader, and Secretary Clinton campaign supporter
- Ken Leonczyk, legal and public policy expert and Senior Director of The Advisory Board
- Dr. Lowell Catlett, futurist, renowned speaker, and author

This year, the conference will provide a forum for executives to discuss pressing topics including the Trump administration's progress and platform for repealing and replacing the ACA and the impact of reforming health care, again.

# 2017 HEALTH CARE CONFERENCE

Our exclusive conference brings together notable C-suite and executive teams from across the country to share industry knowledge, best practices, and new ideas.



**Dr. Sanjay Gupta**

*Emmy® award-winning chief medical correspondent for CNN and practicing neurosurgeon*



**Ken Leonczyk**

*Legal and public policy expert and Senior Director of The Advisory Board*



**Dr. Tom Coburn**

*Former Republican US Senator (OK), physician, and two-time cancer survivor*



**Dr. Lowell Catlett**

*Futurist, renowned speaker, and author*



**Wendy Davis**

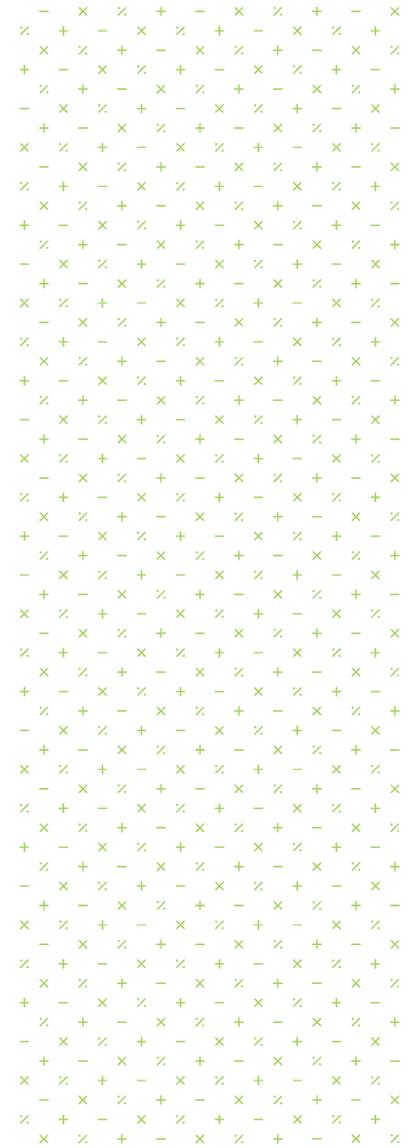
*Former Democratic state Senator from Texas, recognized women's equality leader, and Secretary Clinton campaign supporter*

Register at: [www.mossadams.com/2017hcconf](http://www.mossadams.com/2017hcconf)

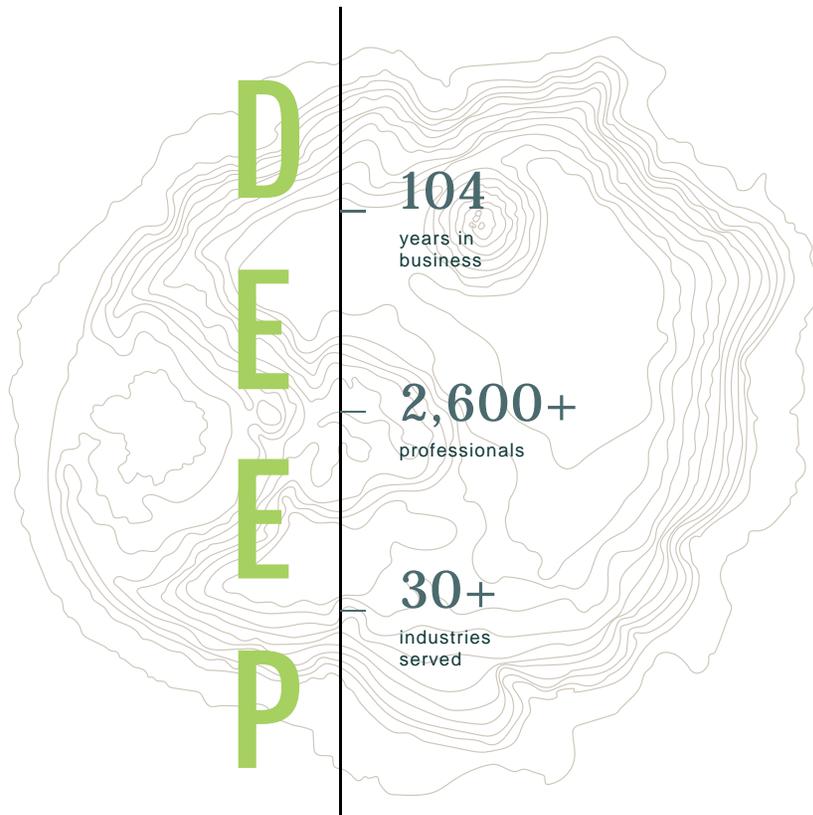


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# About Moss Adams

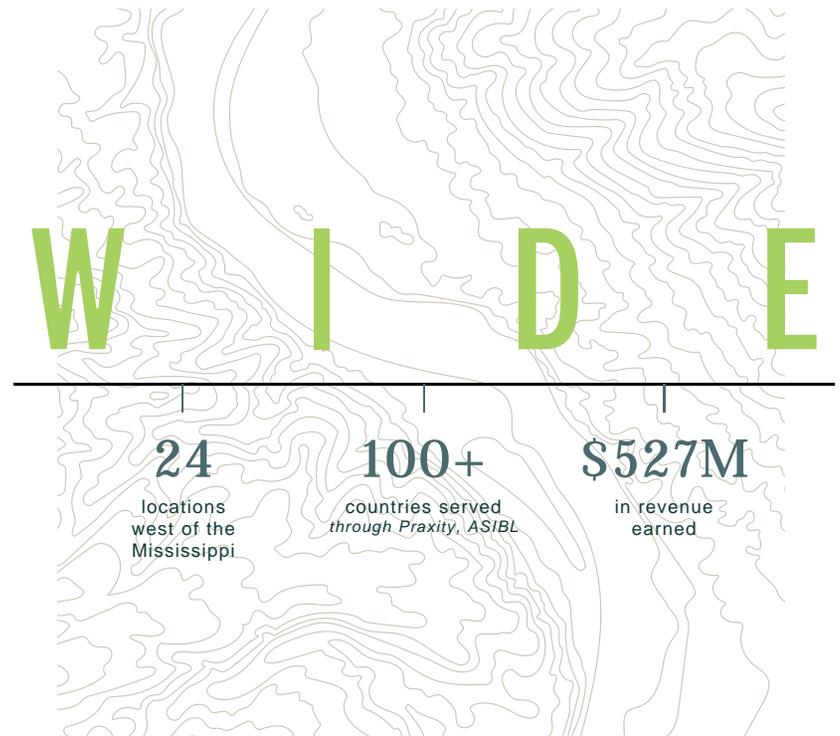


## Expertise



*Crater Lake—  
A monument to perseverance, North America's  
deepest lake filled to 1,949 feet over 720 years.*

## Reach



*Grand Canyon—  
At 277 miles long and up to 18 miles wide, this icon  
serves as a testament to determination and time.*

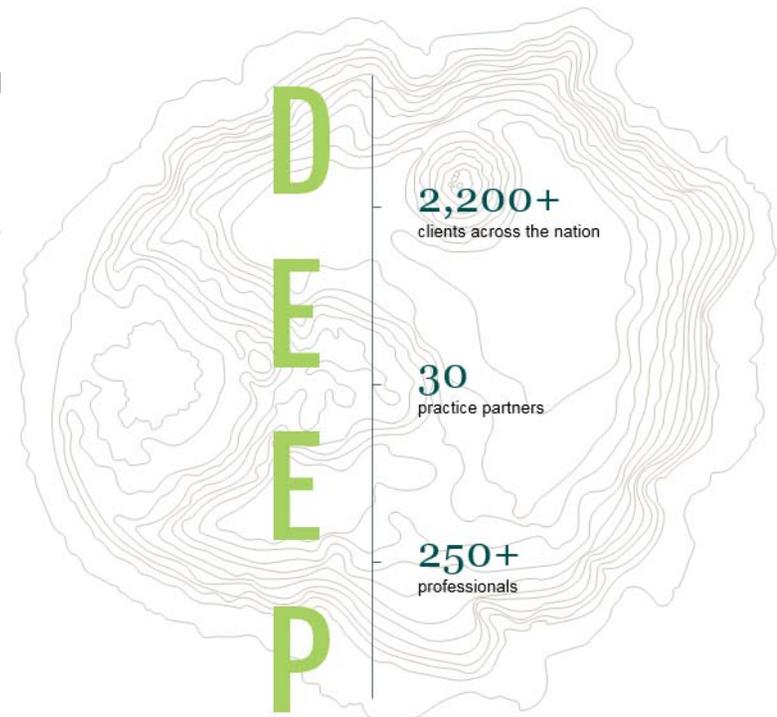


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Our health care professionals dedicate their careers to serving the industry.

We cover the full spectrum of health care including

- Hospitals and health systems
- Independent practice associations
- Medical groups
- Community health centers
- Behavioral health organizations
- Long-term care
- Surgery centers
- Knox Keene licensed health plans
- Health care ancillary services



*Crater Lake—  
A monument to perseverance, North America's  
deepest lake filled to 1,949 feet over 720 years.*

Data as of March 2017



# Services

We offer a full range of services and specializations that span accounting, consulting, and wealth management to suit your specific needs.

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Accounting Methods
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THANK  
YOU



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

September 20, 2017

**Subject:** Comments Regarding Budget Variances for Operating Expenses – July 2017

**Recommended Action:** Receive and File

**Summary:**

For July 2017, most operating expenses were in line with budgeted expectations as Kern Medical begins fiscal year 2018. Operating expenses for fiscal year 2018 were budgeted based in large part on the actual average fiscal year 2017 expenses. The following items had an unfavorable budget variance for the month of July 2017:

**Net Revenue:**

- Net revenue has a \$1.9M favorable budget variance for July 2017 due to an increase in patient volumes and better than expected reimbursement rates.

**Salaries:**

- Salaries have an unfavorable budget variance for the month of July 2017 due in part to an under accrual in prior month for physician Relative Value Units (RVUs), as well as higher than expected patient volumes. There was a 35 Full Time Equivalent (FTE) employee variance for the month that equates to approximately \$400k. We continue to evaluate the total the FTE count vs. budgeted standards.

**Nurse Registry:**

- Nurse registry expense is over budget for July 2017 as the nursing departments continue to supplement their staffing levels with a relatively large amount of contracted labor. The Emergency Department, the Neonatal Intensive Care Unit and the Intensive Care Unit utilize a particularly large amount of contracted labor.

**Medical Fees:**

- Medical fees have a slightly unfavorable budget variance for the month of July 2017 due in part to an under accrual in the prior month for additional physician and therapist fees.

**Purchased Services:**

- Purchased services have an unfavorable budget variance for the month of July 2017 due to an under accrual in the prior few months for CBCC. Finance will continue to work with CBCC to standardize the accounting process for CBCC expenses.



**BOARD OF GOVERNORS' FINANCIAL REPORT  
KERN MEDICAL – JULY 2017**

SEPTEMBER 2017



### 3-Month Trend Analysis: Revenue & Expense

July 31, 2017

	MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>Gross Patient Revenue</b>	\$ 73,205,111	\$ 72,937,524	\$ 73,121,331	\$ 71,332,856	2.5%	\$ 65,986,272
Contractual Deductions	(52,905,197)	(56,090,490)	(53,850,296)	(53,995,779)	(0.3%)	\$ (49,415,915)
<b>Net Revenue</b>	20,299,914	16,847,034	19,271,035	17,337,077	11%	16,570,358
Indigent Funding	8,870,563	8,765,956	8,967,443	9,650,779	(7%)	6,360,864
Correctional Medicine	1,976,045	1,976,045	1,976,127	2,002,051	(1%)	1,942,469
County Contribution	285,211	285,211	285,211	297,260	(4%)	297,260
Incentive Funding	(1,698,630)	0	0	0	0%	849,315
<b>Net Patient Revenue</b>	29,733,103	27,874,246	30,499,816	29,287,167	4%	26,020,266
Other Operating Revenue	1,523,938	470,101	1,078,715	1,011,006	7%	1,115,253
Other Non-Operating Revenue	144,665	212,819	59,203	88,883	(33%)	105,591
<b>Total Operating Revenue</b>	31,401,706	28,557,166	31,637,734	30,387,057	4%	27,241,110
<b>Expenses</b>						
Salaries	11,575,494	10,926,597	12,653,598	12,268,872	3%	11,687,472
Employee Benefits	5,589,394	1,335,127	6,727,715	6,396,414	5%	5,048,433
Contract Labor	1,102,404	1,075,607	1,152,349	897,830	28%	782,414
Medical Fees	1,118,976	1,393,156	1,455,698	1,407,326	3%	1,198,506
Other Professional Fees	2,103,401	1,942,998	1,759,127	1,778,830	(1%)	1,589,837
Supplies	5,063,539	4,471,915	4,036,138	4,143,052	(3%)	3,448,647
Purchased Services	1,839,750	1,687,099	1,867,291	1,569,779	19%	1,110,954
Other Expenses	1,732,797	1,506,629	1,303,715	1,332,172	(2%)	1,677,646
Operating Expenses	30,125,756	24,339,128	30,955,631	29,794,273	4%	26,543,908
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	1,275,951	4,218,038	682,103	592,784	15%	697,202
EBIDA Margin	4%	15%	2%	2%	11%	3%
Interest	21,544	3,131,765	19,168	39,744	(52%)	18,808
Depreciation	468,380	477,071	513,275	482,712	6%	450,376
Amortization	69,761	32,280	23,488	25,327	(7%)	21,125
Total Expenses	30,685,441	27,980,244	31,511,563	30,342,056	4%	27,034,217
<b>Operating Gain (Loss)</b>	716,266	576,922	126,171	45,001	180%	206,893
<b>Operating Margin</b>	2%	2%	0.4%	0.1%	169%	1%

Year to Date: Revenue & Expense						
July 31, 2017						
	ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE	
	FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)	
<b>Gross Patient Revenue</b>	\$ 73,121,331	\$ 71,332,856	2.5%	\$ 65,986,272	11%	
Contractual Deductions	(53,850,296)	(53,995,779)	(0.3%)	\$ (49,415,915)	9%	
<b>Net Revenue</b>	19,271,035	17,337,077	11%	16,570,358		
Indigent Funding	8,967,443	9,650,779	(7%)	6,360,864	41%	
Correctional Medicine	1,976,127	2,002,051	(1%)	1,942,469	2%	
County Contribution	285,211	297,260	(4%)	297,260	(4%)	
Incentive Funding	0	0	0%	849,315	(100%)	
<b>Net Patient Revenue</b>	30,499,816	29,287,167	4%	26,020,266	17%	
Other Operating Revenue	1,078,715	1,011,006	7%	1,115,253	(3%)	
Other Non-Operating Revenue	59,203	88,883	(33%)	105,591	(44%)	
<b>Total Operating Revenue</b>	31,637,734	30,387,057	4%	27,241,110	16%	
<b>Expenses</b>						
Salaries	12,653,598	12,268,872	3%	11,687,472	8%	
Employee Benefits	6,727,715	6,396,414	5%	5,048,433	33%	
Contract Labor	1,152,349	897,830	28%	782,414	47%	
Medical Fees	1,455,698	1,407,326	3%	1,198,506	21%	
Other Professional Fees	1,759,127	1,778,830	(1%)	1,589,837	11%	
Supplies	4,036,138	4,143,052	(3%)	3,448,647	17%	
Purchased Services	1,867,291	1,569,779	19%	1,110,954	68%	
Other Expenses	1,303,715	1,332,172	(2%)	1,677,646	(22%)	
Operating Expenses	30,955,631	29,794,273	4%	26,543,908	17%	
Earnings Before Interest, Depreciation, and Amortization (EBIDA)	682,103	592,784	15%	697,202	(2%)	
EBIDA Margin	2%	2%	11%	3%	-16%	
Interest	19,168	39,744	(52%)	18,808	2%	
Depreciation	513,275	482,712	6%	450,376	14%	
Amortization	23,488	25,327	(7%)	21,125	11%	
Total Expenses	31,511,563	30,342,056	4%	27,034,217	17%	
<b>Operating Gain (Loss)</b>	126,171	45,001	180%	206,893	(39%)	
<b>Operating Margin</b>	0.4%	0.1%	169%	1%	(47%)	

### 3-Month Trend Analysis: Cash Indicators

July 31, 2017

		MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>CASH</b>							
	Total Cash	63,766,149	41,406,224	49,391,658	14,659,661	237%	49,391,658
	Days Cash On Hand	63	51	49	15	224%	58
	Days In A/R - Gross	91.3	86.2	89.4	76.0	18%	87.69
	Patient Cash Collections	\$ 18,540,963	\$ 18,963,104	\$ 14,305,965	N/A	N/A	\$ 15,918,211
	Patient Cash Goal	\$ 17,597,550	\$ 17,643,533	\$ 17,943,467	N/A	N/A	\$ 16,125,658
	Projected Year End Cash Balance	44,855,082	44,855,082	64,131,440	N/A	N/A	N/A

### 3-Month Trend Analysis: Operating Metrics

July 31, 2017

		MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>Operating Metrics</b>							
	Total Expense per Adjusted Admission	19,571	17,693	21,336	19,560	9%	18,020
	Total Expense per Adjusted Patient Day	3,823	3,471	4,178	3,876	8%	3,403
	Supply Expense per Adjusted Admission	3,229	2,828	2,733	2,671	2.3%	2,299
	Supply Expense per Surgery	1,823	1,549	1,526	1,880	(19%)	1,496
	Supplies as % of Net Patient Revenue	17%	16%	13%	14%	(6%)	13%
	Pharmaceutical Cost per Adjusted Admission	1,186	1,022	1,219	1,097	11%	950
	Net Revenue Per Adjusted Admission	\$ 11,566	\$ 10,653	\$ 13,048	\$ 11,176	17%	\$ 11,045

## Year to Date: Operating Metrics

July 31, 2017

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Operating Metrics</b>						
	Total Expense per Adjusted Admission	21,336	19,560	9%	18,020	18%
	Total Expense per Adjusted Patient Day	4,178	3,876	8%	3,403	23%
	Supply Expense per Adjusted Admission	2,733	2,671	2.3%	2,299	19%
	Supply Expense per Surgery	1,526	1,880	(19%)	1,496	2%
	Supplies as % of Net Patient Revenue	13%	14%	(6%)	13%	(0.2%)
	Pharmaceutical Cost per Adjusted Admission	1,219	1,097	11%	950	28%
	Net Revenue Per Adjusted Admission	\$ 13,048	\$ 11,176	17%	\$ 11,045	18%

## INDIGENT PATIENT CARE FUNDING - MTD &amp; YTD

FOR THE MONTH JULY 31, 2017

MTD ACTUAL	MTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %	DESCRIPTION	YTD ACTUAL	YTD BUDGET	VAR \$ FAV/(UNFAV)	VAR %
121,027	127,397	(6,370)	-5.0%	MEDI-CAL HOSPITAL QUALITY ASSURANCE FEE	121,027	127,397	(6,370)	-5.0%
2,084,500	2,194,210	(109,711)	-5.0%	MEDI-CAL EXPANSION REVENUE FROM HMO	2,084,500	2,194,210	(109,711)	-5.0%
0	196,257	(196,257)	-100.0%	COUNTY REALIGNMENT FUNDS	0	196,257	(196,257)	-100.0%
1,192,661	1,255,432	(62,772)	-5.0%	MEDI-CAL SUPPLEMENTAL FUNDING	1,192,661	1,255,432	(62,772)	-5.0%
2,178,493	2,293,151	(114,658)	-5.0%	PRIME - NEW WAIVER	2,178,493	2,293,151	(114,658)	-5.0%
2,121,207	2,232,849	(111,642)	-5.0%	GPP - NEW WAIVER	2,121,207	2,232,849	(111,642)	-5.0%
1,269,555	1,336,374	(66,819)	-5.0%	WHOLE PERSON CARE	1,269,555	1,336,374	(66,819)	-5.0%
0	15,108	(15,108)	-100.0%	EMR	0	15,108	(15,108)	-100.0%
8,967,443	9,650,779	(683,336)	-7.1%	<b>SUB-TOTAL - GOVERNMENTAL REVENUE</b>	8,967,443	9,650,779	(683,336)	-7.1%
1,976,127	2,002,051	(25,924)	-1.3%	CORRECTIONAL MEDICINE	1,976,127	2,002,051	(25,924)	-1.3%
285,211	297,260	(12,049)	-4.1%	COUNTY CONTRIBUTION	285,211	297,260	(12,049)	-4.1%
11,228,781	11,950,091	(721,309)	-6.0%	<b>TOTAL INDIGENT CARE &amp; COUNTY FUNDING</b>	11,228,781	11,950,091	(721,309)	-6.0%

**OTHER REVENUE**

FOR THE MONTH JULY 31, 2017

## OTHER OPERATING REVENUE

	<u>MTD ACTUAL</u>	<u>MTD BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>VARIANCE</u>
PARKING LOT REVENUE	0	896	(896)	0	896	(896)
OTHER COUNTY DEPT. REIMBURSEMENT	18,759	40,983	(22,224)	18,759	40,983	(22,224)
EMS REVENUE (SB-612)	0	46,046	(46,046)	0	46,046	(46,046)
MEDICAL RECORDS FEES	1,115	2,984	(1,869)	1,115	2,984	(1,869)
X-RAY COPY FEES	0	5	(5)	0	5	(5)
MEDICAL SCHOOL STUDENT FEES	333,587	413,639	(80,052)	333,587	413,639	(80,052)
JURY/WITNESS FEES	148	326	(178)	148	326	(178)
CANCELLED OUTLAWED WARRANTS	468	2,708	(2,240)	468	2,708	(2,240)
WORKER'S COMP REFUNDS	0	13,649	(13,649)	0	13,649	(13,649)
PROFESSIONAL FEES	53,609	0	53,609	53,609	0	53,609
FOUNDATION CONTRIBUTIONS	18,602	0	18,602	18,602	0	18,602
CAFETERIA SALES	72,556	88,399	(15,842)	72,556	88,399	(15,842)
FEDERAL-OTHER AID	3,850	7,901	(4,051)	3,850	7,901	(4,051)
GRANTS	0	82	(82)	0	82	(82)
KHS GRANT PCMH	282,536	127,397	155,139	282,536	127,397	155,139
MENTAL HEALTH MOU	183,833	226,038	(42,205)	183,833	226,038	(42,205)
REBATES & REFUNDS	109,652	39,953	69,699	109,652	39,953	69,699
<b>TOTAL OTHER OPERATING REVENUE</b>	<b>1,078,715</b>	<b>1,011,006</b>	<b>67,709</b>	<b>1,078,715</b>	<b>1,011,006</b>	<b>67,709</b>
<b>OTHER NON-OPERATING REVENUE</b>						
INTEREST ON COLLECTIONS	9,470	19,773	(10,303)	9,470	19,773	(10,303)
OTHER MISCELLANEOUS REVENUE	2,992	35,552	(32,560)	2,992	35,552	(32,560)
INTEREST ON FUND BALANCE	46,741	33,558	13,183	46,741	33,558	13,183
<b>TOTAL OTHER NON-OPER REVENUE</b>	<b>59,203</b>	<b>88,883</b>	<b>(29,680)</b>	<b>59,203</b>	<b>88,883</b>	<b>(29,680)</b>

<b>KERN MEDICAL BALANCE SHEET</b>		
	July 2017	July 2016
<b>CURRENT ASSETS:</b>		
CASH	\$49,391,658	\$40,668,820
CURRENT ACCOUNTS RECEIVABLE (incl. CLINIC CHARGES RECEIVABLE)	212,936,707	192,581,496
ALLOWANCE FOR UNCOLLECTIBLE RECEIVABLES - CURRENT	(168,620,823)	(159,719,185)
-NET OF CONT ALLOWANCES	44,315,884	32,862,311
CORRECTIONAL MEDICINE RECEIVABLE	2,956,694	2,239,729
MD SPA	3,175,496	1,488,129
HOSPITAL FEE RECEIVABLE	3,482,605	3,381,782
REALIGNMENT FUNDS RECEIVABLE	-	196,257
CPE - O/P DSH RECEIVABLE	4,745,598	5,458,627
MENTAL HEALTH MOU	546,119	21,458
MANAGED CARE IGT (RATE RANGE)	15,867,709	8,605,220
RECEIVABLE FROM LIHP	(6,547,536)	(5,722,111)
OTHER RECEIVABLES	658,587	569,927
PRIME RECEIVABLE	16,931,045	26,207,135
AB85/75% DEFAULT PCP RECEIVABLE	1,979,518	2,228,149
GPP (Global Payment Program)	8,299,328	9,047,266
WPC (Whole Person Care)	1,336,374	0
INTEREST ON FUND BALANCE RECEIVABLE	53,548	65,351
MANAGED CARE IGT (SPD)	68,546	0
OTHER NON PATIENT RECEIVABLE	1,524,840	1,484,983
WAIVER RECEIVABLE FY07	(745,824)	(745,824)
WAIVER RECEIVABLE FY08	(6,169,000)	(6,169,000)
WAIVER RECEIVABLE FY09	(2,384,000)	(2,384,000)
WAIVER RECEIVABLE FY10	579,696	579,696
WAIVER RECEIVABLE FY11	(10,493,878)	(10,493,878)
WAIVER RECEIVABLE FY12	679,308	679,308
WAIVER RECEIVABLE FY14	0	(22,576,506)
WAIVER RECEIVABLE FY15	(23,770,144)	(18,531,165)
WAIVER RECEIVABLE FY16	(2,819,361)	0
KHS GRANT RECEIVABLE	0	476,402
PREPAID EXPENSES	3,625,269	1,754,309
PREPAID MORRISON DEPOSIT	799,706	297,090
INVENTORY AT COST	4,504,172	6,207,589
<b>TOTAL CURRENT ASSETS</b>	<b>112,591,955</b>	<b>77,897,053</b>
<b>PROPERTY, PLANT &amp; EQUIPMENT:</b>		
LAND	170,395	168,115
EQUIPMENT	47,231,613	42,639,543
BUILDINGS	82,462,622	82,462,622
CONSTRUCTION IN PROGRESS	5,891,297	1,458,579
LESS: ACCUMULATED DEPRECIATION	(84,125,214)	(78,507,889)
<b>NET PROPERTY, PLANT &amp; EQUIPMENT</b>	<b>51,630,713</b>	<b>48,220,970</b>
<b>NET INTANGIBLE ASSETS</b>		
INTANGIBLE ASSETS	12,302,618	10,678,947
ACCUMULATED AMORTIZATION INTANGIBLES	(10,573,857)	(10,249,882)
<b>NET INTANGIBLE ASSETS</b>	<b>1,728,761</b>	<b>429,065</b>
<b>LONG-TERM ASSETS:</b>		
LONG-TERM PATIENT ACCOUNTS RECEIVABLE		
DEFERRED OUTFLOWS - PENSIONS	49,355,076	54,532,940
CASH HELD BY COP IV TRUSTEE	912,973	906,469
<b>TOTAL LONG-TERM ASSETS</b>	<b>50,268,049</b>	<b>55,439,409</b>
<b>TOTAL ASSETS</b>	<b>\$216,219,478</b>	<b>\$181,986,497</b>

<b>KERN MEDICAL</b>		
<b>BALANCE SHEET</b>		
	July 2017	July 2016
<b>CURRENT LIABILITIES:</b>		
ACCOUNTS PAYABLE	\$17,888,081	\$22,335,590
ACCRUED SALARIES & EMPLOYEE BENEFITS	11,008,048	12,398,349
OTHER ACCRUALS	5,772,445	4,211,566
ACCRUED CWCAP LIABILITY	26,400	329,401
CURRENT PORTION - CAPITALIZED LEASES	337,560	118,093
CURR LIAB - COP 2011 PAYABLE	1,032,670	986,694
CURR LIAB - P.O.B.	2,451,929	2,274,954
MEDICARE COST REPORT LIAB PAYABLE	3,794,129	1,486,835
ACCRUED PROFESSIONAL LIABILITY	3,119,059	5,432,551
HOSPITAL FEE-IGT PAYABLE	0	1,143,153
MEDI-CAL COST REPORT LIABILITY	1,430,435	853,483
INDIGENT FUNDING PAYABLE	15,089,283	22,218,509
DSH PAYABLE FY14	24,746,355	0
CREDIT BALANCES PAYABLES	2,981,334	3,437,678
DEFERRED REVENUE - COUNTY CONTRIBUTION	2,090,345	0
<b>TOTAL CURRENT LIABILITIES</b>	<b>91,768,073</b>	<b>77,226,856</b>
<b>LONG-TERM LIABILITIES:</b>		
LONG-TERM LIABILITY-COP 2011	2,217,410	3,250,080
NET UNAMORTIZED DISCOUNT COP	59,978	79,971
LONG-TERM LIABILITY - CAPITAL LEASES	1,387,154	2,138,036
NET OPEB (OTHER POST EMPLOYMENT BENEFITS)	5,354,890	6,070,276
NET PENSION LIABILITY	345,262,534	330,492,938
L.T. LIAB. - P.O.B. INTEREST PAYABLE 08	14,722,232	17,201,707
L.T. LIAB. - P.O.B. INTEREST PAYABLE 03	3,917,722	3,528,303
L.T. P.O.B. PAYABLE 03	16,695,541	18,326,891
L.T. P.O.B. PAYABLE 08	5,392,893	5,392,893
DEFERRED INFLOWS - PENSIONS	15,299,688	33,503,503
PENSION OBLIGATION BOND PAYABLE	3,678,145	4,721,626
ACCRUED COMPENSATED ABSENCES	16,478,066	9,078,608
<b>TOTAL LONG-TERM LIABILITIES</b>	<b>430,466,253</b>	<b>433,784,832</b>
<b>NET POSITION</b>		
RETAINED EARNINGS - CURRENT YEAR	126,171	40,431,339
RETAINED EARNINGS - PRIOR YEAR	(306,141,019)	(369,456,530)
<b>TOTAL NET POSITION</b>	<b>(306,014,848)</b>	<b>(329,025,191)</b>
<b>TOTAL LIABILITIES &amp; NET POSITION</b>	<b>\$216,219,478</b>	<b>\$181,986,497</b>

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

September 20, 2017

**Subject:** Kern County Hospital Authority, Chief Executive Officer Report

**Recommended Action:** Receive and File

**Summary:**

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



150 YEARS  
*Health for Life.*

**BOARD OF GOVERNORS' VOLUMES REPORT  
KERN MEDICAL – JULY 2017**

SEPTEMBER 2017



### 3-Month Trend Analysis: Volume and Strategic Indicators

July 31, 2017

		MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>VOLUME</b>							
	Adjusted Admissions (AA)	1,568	1,581	1,477	1,551	(5%)	1,500
	Adjusted Patient Days	8,027	8,062	7,542	7,829	(4%)	7,945
	Admissions	863	818	828	808	2%	787
	Average Daily Census	143	139	136	132	3.7%	134
	Patient Days	4,418	4,170	4,228	4,078	3.7%	4,168
	Available Occupancy %	66.6%	65.0%	63.7%	61.5%	3.7%	62.8%
	Average LOS	5.1	5.1	5.1	5.0	1%	5.3
	Surgeries						
	Inpatient Surgeries (Main Campus)	294	235	248	239	4%	214
	Outpatient Surgeries (Main Campus)	250	255	233	224	4%	249
	Total Surgeries	544	490	481	463	4%	463
	Births	213	199	227	216	5%	216
	ER Visits						
	Admissions	455	417	455	372	22%	390
	Treated & Released	3,441	3,320	3,252	3,414	(4.7%)	3,574
	Total ER Visits	3,896	3,737	3,707	3,786	(2%)	3,964
	Outpatient Clinic Visits						
	Total Clinic Visits	11,887	11,341	10,172	10,396	(2%)	9,056

## Year-to-Date: Volume and Strategic Indicators

July 31, 2017

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>VOLUME</b>						
	Adjusted Admissions (AA)	1,477	1,551	(5%)	1,500	(2%)
	Adjusted Patient Days	7,542	7,829	(4%)	7,945	(5%)
	Admissions	828	808	2%	787	5%
	Average Daily Census	136	132	4%	134	1%
	Patient Days	4,228	4,078	4%	4,168	1.4%
	Available Occupancy %	63.7%	61.5%	4%	62.8%	1.4%
	Average LOS	5.1	5.0	1%	5.3	(4%)
	Surgeries					
	Inpatient Surgeries (Main Campus)	248	239	4%	214	16%
	Outpatient Surgeries (Main Campus)	233	224	4%	249	(6%)
	Total Surgeries	481	463	4%	463	4%
	Births	227	216	5%	216	5%
	ER Visits					
	Admissions	455	372	22%	390	17%
	Treated & Released	3,252	3,414	(5%)	3,574	(9%)
	Total ER Visits	3,707	3,786	(2%)	3,964	(6%)
	Outpatient Clinic Visits					
	Total Clinic Visits	10,172	10,396	(2%)	9,056	12%

### 3-Month Trend Analysis: Payor Mix

July 31, 2017

	MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>PAYOR MIX - Charges</b>						
Commercial FFS	5.8%	4.9%	3.6%	5.1%	(29%)	4.6%
Commercial HMO/PPO	5.2%	5.5%	5.5%	6.8%	(19%)	5.8%
Medi-Cal	23.3%	25.7%	28.3%	23.2%	22%	30.1%
Medi-Cal HMO - Kern Health Systems	31.2%	31.6%	31.4%	31.6%	(1%)	30.3%
Medi-Cal HMO - Health Net	9.5%	9.3%	8.3%	9.1%	(9%)	5.1%
Medi-Cal HMO - Other	1.2%	1.1%	1.0%	1.4%	(29%)	1.1%
Medicare	8.7%	9.5%	11.1%	9.8%	14%	9.8%
Medicare - HMO	2.6%	2.4%	1.3%	1.4%	(4%)	2.6%
County Programs	1.5%	1.8%	2.1%	0.6%	268%	1.3%
Workers' Compensation	0.7%	0.8%	0.8%	1.8%	(56%)	1.8%
Self Pay	10.3%	7.4%	6.6%	9.3%	(29%)	7.6%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>		<b>100.0%</b>

## Year-to-Date: Payor Mix

July 31, 2017

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>PAYOR MIX - Charges</b>						
	Commercial FFS	3.6%	5.1%	(29%)	4.6%	(22%)
	Commercial HMO/PPO	5.5%	6.8%	(19%)	5.8%	(4%)
	Medi-Cal	28.3%	23.2%	22%	30.1%	(6%)
	Medi-Cal HMO - Kern Health Systems	31.4%	31.6%	(1%)	30.3%	4%
	Medi-Cal HMO - Health Net	8.3%	9.1%	(9%)	5.1%	64%
	Medi-Cal HMO - Other	1.0%	1.4%	(29%)	1.1%	(9%)
	Medicare	11.1%	9.8%	14%	9.8%	14%
	Medicare - HMO	1.3%	1.4%	(4%)	2.6%	(51%)
	County Programs	2.1%	0.6%	268%	1.3%	68%
	Workers' Compensation	0.8%	1.8%	(56%)	1.8%	(55%)
	Self Pay	6.6%	9.3%	(29%)	7.6%	(13%)
	<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>		<b>100.0%</b>	

### 3-Month Trend Analysis: Labor and Productivity Metrics

July 31, 2017

	MAY	JUNE	JULY	BUDGET JULY	VARIANCE POS (NEG)	PY JULY
<b>Labor Metrics</b>						
Productive FTEs	1,323.33	1,314.75	1,331.62	1,320.49	1%	1,200.42
Non-Productive FTEs	177.73	226.01	225.92	202.14	12%	214.13
Contract Labor FTEs	83.75	85.23	84.18	63.56	32%	61.63
Total FTEs	1,501.06	1,540.76	1,557.54	1,522.63	2%	1,414.55
FTE's Per AOB Paid	5.61	5.94	6.11	6.03	1%	5.52
FTE's Per AOB Worked	4.95	5.07	5.23	5.23	(0%)	4.68
Labor Cost/FTE (Annualized)	131,180.29	93,418.30	141,248.60	136,009.23	4%	132,307.76
Benefits Expense as a % of Benefitted Labor Expense	69%	66%	74%	70%	7%	67%
Salaries & Benefits as % of Net Patient Revenue	66%	62%	67%	67%	1%	66%

## Year to Date: Labor and Productivity Metrics

July 31, 2017

		ACTUAL	BUDGET	VARIANCE	PY	PY VARIANCE
		FYTD	FYTD	POS (NEG)	FYTD	POS (NEG)
<b>Labor Metrics</b>						
	Productive FTEs	1,331.62	1,320.49	1%	1,200.42	11%
	Non-Productive FTEs	225.92	202.14	12%	214.13	6%
	Contract Labor FTEs	84.18	63.56	32%	61.63	37%
	Total FTEs	1,557.54	1,522.63	2%	1,414.55	10%
	FTE's Per AOB Paid	6.11	6.03	1%	5.52	11%
	FTE's Per AOB Worked	5.23	5.23	(0%)	4.68	12%
	Labor Cost/FTE (Annualized)	141,248.60	136,009.23	4%	132,307.76	7%
	Benefits Expense as a % of Benefitted Labor Expense	74%	70%	7%	67%	12%
	Salaries & Benefits as % of Net Patient Revenue	67%	67%	1%	66%	2%



## **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, July 19, 2017

11:30 A.M.

#### **BOARD RECONVENED**

Directors present: Berjis, Bigler, Lawson, McGauley, McLaughlin, Sistrunk  
Directors absent: Pelz

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

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

#### **BOARD ACTION SHOWN IN CAPS**

#### **PUBLIC PRESENTATIONS**

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

**ELIZABETH JACKSON, NP, PEDIATIRCS, HEARD REGARDING STATUS OF THE  
KERN MEDICAL DISCIPLINE POLICY**

BOARD MEMBER ANNOUNCEMENTS OR REPORTS

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

**DIRECTOR BERJIS REPORTED ON THE RECENT KERN MEDICAL RESIDENT AND FELLOW GRADUATION AND THANKED ALL WHO ATTENDED**

**DIRECTOR MCGAULEY THANKED STAFF FOR THE CARE ONE OF HER COLLEAGUES RECEIVED AT KERN MEDICAL FOLLOWING AN ACCIDENT**

RECOGNITION

- 3) Presentation by the Chief Executive Officer recognizing the Kern Medical Engineering staff on the recent Labor & Delivery unit remodeling project –  
MADE PRESENTATION

ITEMS FOR CONSIDERATION

CA

- 4) Minutes for Kern County Hospital Authority Board of Governors regular meeting on June 21, 2017 –  
APPROVED  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

CA

- 5) Proposed Amendment No. 1 with United Neuroscience, Inc., an independent contractor, for professional medical services in the Department of Medicine, extending the term for two years from October 1, 2017 through September 30, 2019, adding seizure and epilepsy monitoring coverage, and increasing the maximum payable by \$1,498,000, from \$1,260,000 to \$2,758,000, to cover the term –  
APPROVED; AUTHORIZED THE CHAIRMAN TO SIGN AGREEMENT 2017-047  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

CA

- 6) Proposed Amendment No. 1 with Valley Neurosurgery and Neurorestoration Center, a Medical Corporation, an independent contractor, for professional medical services in the Department of Surgery, adding neurophysiological monitoring services and mid-level practitioner support, and increasing the maximum payable by \$1,547,607, from \$9,120,425 to \$10,668,425, to cover the term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-048  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

CA

- 7) Proposed Agreement with M. Brandon Freeman, M.D., a contract employee, for professional medical services in the Department of Surgery from July 17, 2017 through July 16, 2019, in an amount not to exceed \$1,100,000 –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-049  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

CA

- 8) Proposed retroactive Amendment No. 4 to Agreement 319-2012 with Mansoor Gilani, D.D.S, an independent contractor, for the provision of dental services to adult inmates in detention facilities owned and operated by the County of Kern, extending the term for two years from June 1, 2017 through May 31, 2019, and increasing the maximum payable by \$240,000, from \$600,000 to \$840,000, to cover the extended term –  
APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 2017-050  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

CA

- 9) Request to employ retired Kern County Hospital Authority employees Jeffrey Hill, as Per Diem Nurse II, John Caldwell, as Per Diem Pharmacist, and Florence Alacar, as Per Diem Nurse II, for the period ending June 30, 2018, or 960 hours, whichever occurs first, effective July 20, 2017; and request to employ retired Kern County employee Debra Pershadsingh, as ~~Administrative Coordinator~~ **Extra Help Special Projects Manager**, for the period ending October 31, 2018, or 960 hours, whichever occurs first, effective July 20, 2017 –  
APPROVED  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

***CORRECTION PER SUMMARY OF SEPTEMBER 20, 2017, ITEM 22***

- 10) Proposed election of officers to the Kern County Hospital Authority Board of Governors to include Russell Bigler, Chair, Philip McLaughlin, Vice-Chair, and Nancy Lawson, Secretary/Treasurer, terms to expire June 30, 2019 –  
ELECTED OFFICERS  
**Berjis-Sistrunk: 6 Ayes; 1 Absent - Pelz**
- 11) Kern County Hospital Authority Chief Financial Officer report –  
RECEIVED AND FILED  
**Berjis-McLaughlin: 6 Ayes; 1 Absent - Pelz**
- 12) Kern County Hospital Authority Chief Executive Officer report –  
RECEIVED AND FILED  
**Lawson-Berjis: 6 Ayes; 1 Absent - Pelz**

CA

- 13) Claims and Lawsuits Filed as of June 30, 2017 –  
RECEIVED AND FILED  
**Lawson-McGauley: 6 Ayes; 1 Absent - Pelz**

**ADJOURNED TO CLOSED SESSION**  
**Sistrunk-McGauley**

CLOSED SESSION

- 14) Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 15) Request for Closed Session regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – SEE RESULTS BELOW
- 16) 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) – SEE RESULTS BELOW
- 17) CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3)) Number of cases: One (1) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – SEE RESULTS BELOW
- 18) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Resource Anesthesiology Associates of California, A Medical Corporation, a California Corporation v. County of Kern, et al., Kern County Superior Court Case No. BCV-17-101504 SDS – SEE RESULTS BELOW

**RECONVENED FROM CLOSED SESSION**  
**Lawson-McGauley**

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

Item No. 14 concerning a Request for Closed Session regarding peer review of health practitioners (Health and Safety Code Section 101855(j)(2)) – HEARD; BY A UNANIMOUS VOTE OF THOSE DIRECTORS PRESENT (MOTION BY DIRECTOR MCGAULEY, SECONDED BY DIRECTOR LAWSON; 1 ABSENT - PELZ), THE BOARD APPROVED ALL PROVIDERS RECOMMENDED FOR REAPPOINTMENT, RELEASE OF PROCTORING, AND VOLUNTARY RESIGNATION OF PRIVILEGES; NO OTHER REPORTABLE ACTION TAKEN

Item No. 15 concerning REQUES FOR CLOSED SESSION regarding peer review of health facilities (Health and Safety Code Section 101855(j)(2)) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 16 concerning 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) – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 17 concerning CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2), (e)(3)) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection – HEARD; NO REPORTABLE ACTION TAKEN

Item No. 18 concerning CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code Section 54956.9(d)(1)) Name of case: Resource Anesthesiology Associates of California, A Medical Corporation, a California Corporation v. County of Kern, et al., Kern County Superior Court Case No. BCV-17-101504 SDS – HEARD; NO REPORTABLE ACTION TAKEN

ADJOURNED TO WEDNESDAY, AUGUST 16, 2017 AT 11:30 A.M.

**Berjis**

/s/ Raquel D. Fore  
Authority Board Coordinator

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

**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 September 20, 2017, 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**

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

On the recommendation of the Chief Executive Officer, the Board of Governors will hold a closed session on September 20, 2017, the premature disclosure of which would create a substantial probability of depriving the authority of a substantial economic benefit or opportunity. The closed session involves:

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

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

Government Code Section 54956.9

Based on the advice of Counsel, the Board of Governors is holding a closed session on September 20, 2017, 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 - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2), (e)(3).) Number of cases: One (1)  
Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –

**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 September 20, 2017, 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 - ANTICIPATED LITIGATION  
(Government Code Section 54956.9(d)(2), (e)(3).) Number of cases: One (1)  
Significant exposure to litigation in the opinion of the Board of Governors on the advice of legal counsel, based on: The receipt of a claim pursuant to the Government Claims Act or some other written communication from a potential plaintiff threatening litigation, which non-exempt claim or communication is available for public inspection –

**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 September 20, 2017, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 v. County of Kern, et al., Public Employment Relations Board Case No. LA-CE-1084-M –

**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 September 20, 2017, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees International Union, Local 521 v. County of Kern, et al., Public Employment Relations Board Case No. LA-CE-1096-M –

**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 September 20, 2017, to confer with, or receive advice from Counsel regarding pending litigation, because discussion in open session concerning this matter would prejudice the position of the authority in the litigation. The closed session involves:

  X   CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
(Government Code Section 54956.9(d)(1)) Name of case: Service Employees  
International Union, Local 521 v. Kern County Hospital Authority, Public  
Employment Relations Board Case No. LA-CE-1121-M –

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