

PROFESSIONAL SERVICES AGREEMENT

FOR

Insert Service Here

BETWEEN

KERN HEALTH SYSTEMS

AND

Selected Vendor

**PROFESSIONAL SERVICES AGREEMENT
KERN HEALTH SYSTEMS**

This Professional Services Agreement is made and entered into on [[date]] (“**Execution Date**”) by and between Kern Health Systems (“**KHS**”), a county health authority, and _____<insert Contractor’s legal name>, a _____<insert Contractor’s legal status> (“**Contractor**”), with reference to the following facts:

RECITALS

- (a) Welfare and Institutions Code section 14087.38 authorizes KHS to contract for services required to meet its obligations; and
- (b) Contractor has offered evidence of having the relevant specialized training, experience and knowledge and is interested in providing the scope of work as set forth herein; and,
- (c) KHS desires to engage Contractor to provide said services on the terms and conditions set forth in this Agreement;

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

- 1. **Term of Agreement.** The term of this Agreement shall be from _____<insert commencement date> to _____<insert termination date>, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.
- 2. **Scope of Services.**
 - 2.1 **Contractor’s Specified Services.** Contractor shall perform the services described in **Exhibit “A,”** attached hereto and incorporated herein by this reference (“**Scope of Work**”), and within the times or by the dates provided in Exhibit “A.” The Scope of Services set forth in **Exhibit “A”** shall be performed at [Contractor’s principal place of business located at _____<insert Contractor’s address>] **OR** [KHS].
 - 2.2 **Cooperation with KHS.** Contractor shall cooperate with KHS and KHS staff in the performance of all work hereunder.
 - 2.3 **Representations.** Contractor makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement: (a) Contractor has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and (b) Contractor does not have any actual or potential interests adverse to KHS nor does Contractor represent a person or firm with an interest adverse to KHS with reference to the subject of this Agreement; and (c) 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.

2.4 Performance Standards. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. KHS has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all 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 KHS shall not operate as a waiver or release. If KHS determines that any of Contractor's work is not in accordance with such level of competency and standard of care, KHS, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with KHS 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 Compliance with Standards. All services performed by Contractor shall be performed in accordance with applicable state and federal laws and regulations and KHS policies and procedures.

2.6 Assigned Personnel.

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

2.6.2 Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by KHS to be key personnel whose services were a material inducement to KHS to enter into this Agreement, and without whose services KHS would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written approval of KHS.

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

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

3. **Payment for Services.**

3.1 **Compensation.** For all services and incidental costs required hereunder, Contractor shall be paid on a time and material basis in accordance with the budget set forth in "Exhibit "B," attached hereto and incorporated herein by this reference.

3.2 **Maximum Payable.** Contractor shall be paid an amount not to exceed \$ _____ <insert numeric dollar value>, without the prior written approval of KHS.

3.3 **Invoices.** Contractor shall submit its invoices in arrears on a monthly basis in a form approved by KHS. The invoices shall show or include: (a) the task(s) performed; (b) the time in quarter hours devoted to the task(s); (c) the hourly rate or rates of the persons performing the task(s); and (d) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by this Agreement shall not be reimbursed. Unless otherwise noted in this Agreement, payments shall be made within the normal course of KHS business after presentation of an invoice in a form approved by KHS for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by KHS.

3.4 **Overpayment.** If KHS overpays Contractor for any reason, Contractor agrees to return the amount of such overpayment to KHS, or at KHS's option, permit KHS to offset the amount of such overpayment against future payments owed to Contractor under this Agreement or any other agreement.

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

4. **Access to Books and Records.** Until the expiration of five (5) years after the expiration or termination of this Agreement, KHS 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 five (5) 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.

5. **Assignment and Delegation.** No contract or agreement shall be made by Contractor with any party for the furnishing of any of the work or services described in this Agreement (“**Subcontractors**”), without KHS’s prior written consent. This provision shall not require the approval of employment contracts or agreements between Contractor and personnel that have been specifically named in this Agreement or in any attachments hereto. Subcontractors do not include third parties who provide support or incidental services to Contractor and no prior written approval is necessary. This Agreement shall not be assigned by either party, either in whole or in part, without prior written consent of the other party. Notwithstanding the foregoing, Contractor expressly agrees that any assignment or delegation of this Agreement shall be void unless prior written approval is obtained from Department of Health Care Services (DHCS) and Department of Managed Health Care (DMHC) where required.

6. **Audits, Inspection and Retention of Records.** Contractor agrees to maintain and make available to KHS, DHCS, the Department of Health and Human Services, the Department of Justice, and DMHC and any other state or federal agency having an interest in the subject of this Agreement accurate books and records relative to all its activities under this Agreement. Contractor shall permit KHS, DHCS and DMHC to audit, examine, copy and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, records of personnel or other data related to all other matters covered by this Agreement at all reasonable times at Contractor’s place of business or other mutually agreeable location in the state of California. Contractor shall maintain such books and records in an accessible location and condition in the state of California for a period of not less than five (5) years from the close of the current fiscal year in which the date of service occurred, in which the record or data were created or applied, and for which the financial record was created. KHS shall provide reasonable notice of any audit, inspection, examination or copying requested by KHS and shall be responsible for all costs and expenses in conducting such audit. The books and records of Contractor relative to all its activities under this Agreement shall not be removed from the state of California without the prior consent of DHCS and DMHC.

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

8. **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.

9. **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.

10. **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.

11. **Compliance with Law.** Contractor shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which is hereby made a part of this Agreement and incorporated herein by reference.

12. **Confidentiality.**

12.1 **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: (a) pursuant to applicable law; (b) 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 (c) on a confidential basis to its legal or financial advisors.

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

12.3 **Medical Records.** Contractor agrees 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, Welfare and Institutions Code section 14100.2, and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.

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

Exhibit “D” and any other confidentiality provision of this Agreement, **Exhibit “D”** shall control.

12.5 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind (“**Documents**”), in whatever form or format, assembled, prepared or utilized by Contractor or Contractor’s assigned personnel during and in connection with this Agreement shall remain the property of KHS at all times. Upon the expiration or termination of this Agreement, Contractor shall promptly deliver to KHS all such Documents, which have not already been provided to KHS in such form or format as KHS deems appropriate. Such Documents shall be and will remain the property of KHS 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 KHS.

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

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

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

16. 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.

17. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing

demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “**Commercially reasonable**” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding 30 days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this section shall limit KHS's right to terminate this Agreement pursuant to **Section 36**.

18. **Disaster Recovery Plan.** Contractor shall develop and maintain a disaster recovery plan during the term of this Agreement, in the event there is a significant disruption to Contractor's core business (“**Force Majeure Event**”). The disaster recovery plan shall describe the key recovery steps to be performed by Contractor during and after a disruption in services, to enable Contractor to return to normal operations as soon as possible. Upon occurrence of a Force Majeure Event, Contractor shall promptly notify KHS of the Force Majeure Event, its effect on performance, and how long Contractor expects it to last. Thereafter Contractor shall update that information as reasonably necessary. During a Force Majeure Event, Contractor shall use reasonable efforts to limit damages to KHS and to resume its performance under this Agreement. Notwithstanding the foregoing, KHS shall have the right to terminate this Agreement immediately if Contractor is unable to resume performance of the delegated functions within a reasonable period of time, as determined by KHS in its sole discretion.

19. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (a) 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**”); (b) 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 (c) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately.

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

21. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified, and shall provide KHS with a copy of such verification required in 8 U.S.C. section 1324a. Contractor agrees to indemnify, defend, and hold harmless KHS, its agents, officers, and employees, from any liability, damages, or causes of action arising out of Contractor's failure to comply with this paragraph.
22. **Indemnification and Hold Harmless.** Contractor agrees to indemnify, defend and hold harmless KHS and KHS's agents, board members, officers, employees, agents, 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 counsel retained by KHS, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of KHS; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.
23. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of KHS. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to KHS under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, state or local, and compliance with any and all other laws regulating employment.
24. **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.
25. **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 "E,"** attached hereto and incorporated herein by this reference.
26. **Modifications of Agreement.** No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the governing board of KHS may authorize any modification or revision of this Agreement on behalf of KHS. The parties expressly recognize that KHS personnel, including

the Chief Executive Officer are without authority to either change or waive any requirements of this Agreement. Any subcontract or amendment shall become effective only upon approval by DMHC in writing, or by operation of law where the DMHC has acknowledged receipt of the proposed subcontract or amendment, and has failed to approve or disapprove the proposed subcontract or amendment within 30 calendar days of receipt. KHS shall notify DMHC in the event this Agreement is amended. Contractor shall notify DHCS in the event this Agreement is amended. Notice to DHCS is considered given when properly addressed and deposited in the United States Postal Services as first-class registered mail, postage attached.

27. **Monitoring, Assessment and Evaluation.** Authorized state, federal and/or KHS representatives shall have the right to monitor, assess, and evaluate Contractor's performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, audits, inspections of project premises, interviews of project staff and participants, and review of all records. Contractor shall cooperate with KHS in the monitoring, assessment, and evaluation process, which includes making any program or administrative staff available during any scheduled process.

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

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

30. **Nondiscrimination.** Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment practices and in delivery of services because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, KHS's policy on nondiscrimination. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference. Contractor understands and agrees that administrative methods and/or procedures which have the effect of subjecting individuals to discrimination or otherwise defeating the objectives of the applicable and aforementioned laws shall be prohibited.

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

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

Notice to Contractor:

<insert Contractor's name>
<insert Contractor's address>
<insert city, state, ZIP code>
Attn.: <insert name or title>

Notice to KHS:

Kern Health Systems
9700 Stockdale Highway
Bakersfield, California 93311
Attn.: Chief Executive Officer

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

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

35. **Standards for Plan Organization.** In compliance with Health and Safety Code section 1367(g) and title 28, California Code of Regulations, section 1300.67.3, the KHS _____<insert title, e.g., Chief Operations Officer> shall retain fiscal and administrative oversight for services rendered under this Agreement. The KHS _____<insert title> shall be responsible for primary oversight of the delegated functions set forth in Exhibit "A." Contractor shall apprise KHS of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KHS for follow-up action and evaluation of performance.

36. **Termination.**

36.1 **Termination without Cause.** Notwithstanding any other provision of this Agreement, at any time and without cause, KHS shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to Contractor.

36.2 **Termination for Cause.** Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, KHS may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

36.3 **Changes in Funding.** Contractor understands and agrees that KHS shall have the right to terminate this Agreement immediately upon written notice to Contractor in the event that

(a) any state or federal agency or other funding source reduces, withholds or terminates funding which KHS anticipated using to pay Contractor for services provided under this Agreement or
(b) KHS has exhausted all funds legally available for payments due under this Agreement.

36.4 Termination Obligations. If, for any reason, this Agreement is terminated prior to completion of all services, the parties agree that: (a) each party shall immediately furnish to the other party all documents related to the services rendered under this Agreement, including but not limited to, any confidential information and any advertising matters bearing any trademark or trade names of the other party relating to this Agreement; (b) KHS shall discontinue use of the services and shall promptly notify Members, if applicable, that the services are no longer available; and (c) Contractor shall notify DHCS and DMHC that this Agreement has been terminated. Notice to DHCS and DMHC is considered given when properly addressed and deposited in the United States Postal Services as first-class registered mail, postage attached.

37. Effect of Termination.

37.1 Delivery of Work Product and Final Payment upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to KHS all materials and work product subject to **Section 12.5** (Ownership of Records) and shall submit to KHS an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

37.2 Payment upon Termination. Upon termination of this Agreement by KHS, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in this Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Contractor shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if KHS terminates this Agreement for cause pursuant to **Section 36.2**, KHS shall deduct from such amount the amount of damage, if any, sustained by KHS by virtue of the breach of this Agreement by Contractor.

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

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

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.

[Signatures follow on next page]

DRAFT

IN WITNESS TO THE FOREGOING, the parties have executed this Agreement as of the Execution Date.

KERN HEALTH SYSTEMS

CONTRACTOR

By: _____
Douglas A. Hayward
Chief Executive Officer

By: _____
<Name>
<Title>

Date: _____

Date: _____

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL

By: [Karen S. Barnes] **OR** [Brian Van Wyk]
[Chief] **OR** [Deputy]
Counsel for Kern Health Systems

DRAFT

EXHIBIT "A"
SCOPE OF SERVICES
<CONTRACTOR'S NAME>

DRAFT

EXHIBIT "B"
SCHEDULE OF FEES
<CONTRACTOR'S NAME>

DRAFT

EXHIBIT “C”

IRS FORM W-9

DRAFT

EXHIBIT “D”
HIPAA BUSINESS ASSOCIATE ADDENDUM

WHEREAS, Contractor, hereinafter referred to in this Business Associate Addendum (this “**Addendum**”) as “**Business Associate**,” and Kern Health Systems, hereinafter referred to in this Addendum as “**Covered Entity**,” have entered into an Professional Services Agreement, with an effective date of _____<insert effective date of underlying agreement> (the “**Underlying Agreement**”); and

WHEREAS, Business Associate acknowledges Covered Entity has in its possession data that contain individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (“**HIPAA**”) and the regulations promulgated thereunder; and

WHEREAS, Business Associate and Covered Entity acknowledge that the fulfillment of the parties’ obligations under the Underlying Agreement necessitates the exchange of, or access to, data including individual identifiable health information; and

WHEREAS, the parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

Definitions

Catch-all definition:

The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean _____<insert name of Contractor/Business Associate>.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean Kern Health Systems.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Underlying Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Underlying Agreement;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Underlying Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- (e) Make available protected health information in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (h) Comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s), to the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164; and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Underlying Agreement.
- (b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.

(e) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes 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.

(f) Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

(b) 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 protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth set forth in paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate."

Term and Termination

(a) Term. The term of this Addendum shall be effective as of _____<insert effective date of underlying agreement>, and shall terminate on _____<insert termination date of underlying agreement>, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Addendum by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Addendum and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

(c) Obligations of Business Associate upon Termination. Upon termination of this Addendum for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(a) Retain only that protected health information 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 or, if agreed to by Covered Entity, destroy the remaining protected health information that Business Associate still maintains in any form;

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this section, for as long as Business Associate retains the protected health information;

(d) Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set forth in paragraphs (e) and (f) above under “Permitted Uses and Disclosures by Business Associate,” which applied prior to termination; and

(e) Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information 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.

(d) Survival. The obligations of Business Associate under this section shall survive the termination of this Addendum.

Miscellaneous

(a) Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. All amendments to this Addendum shall be in writing and signed by both parties through a formal amendment to the Addendum.

(c) Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.

(d) Indemnification.

1. Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its respective officers, directors, board members, elected and appointed officials, employees, agents and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, fines, penalties, and expenses (including, but not limited to, reasonable attorneys' fees of counsel retained by Covered Entity, 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 (including, but not limited to, any material breach of this Addendum) of Business Associate and its respective officers, directors, agents, employees, subcontractors of any tier, or authorized representatives.

2. With respect to any action or claim subject to indemnification herein by Business Associate, Business Associate shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of Covered Entity, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim only with the prior consent of Covered Entity, which shall not be unreasonably withheld; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Business Associate's indemnification to Covered Entity as set forth herein. Business Associate's obligation to defend, indemnify and hold harmless Covered Entity shall be subject to Covered Entity having given Business Associate written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Business Associate's expense, for the defense or settlement thereof. Business Associate's obligation hereunder shall be satisfied (if Covered Entity has no liability whatsoever for the claim) when Business Associate has provided to Covered Entity the appropriate form of dismissal relieving Covered Entity from any liability for the action or claim involved.

3. The specified insurance limits required in the Underlying Agreement shall in no way limit or circumscribe Business Associate's obligations to indemnify, defend and hold harmless Covered Entity herein from third party claims arising out of or in any way relating to this Addendum.

4. In the event there is a conflict between this indemnification clause and the indemnification clause contained in the Underlying Agreement, this indemnification clause shall only apply to the subject issues set forth in this Addendum.

(e) Injunctive Relief. Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of protected health information by Business Associate or any agent, contractor or third party that received protected health information from Business Associate.

(f) Third Party Beneficiary. Unless otherwise set forth herein, nothing contained herein is intended, nor shall it be construed, to create rights running of the benefit of third parties.

[Intentionally left blank]

DRAFT

EXHIBIT “E” 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 KHS. Any requirement for insurance to be maintained after completion of the work shall survive the termination or expiration of this Agreement.

KHS 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 agrees to obtain the specified Workers’ Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions thereof.
- (b) Workers’ Compensation insurance with statutory limits as required by the Labor Code of the state of California.
- (c) Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- (d) 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, KHS 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 KHS. Contractor is responsible for any deductible or self-insured retention and shall fund it upon KHS’s written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving KHS.
- (d) KHS 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.

- (e) The insurance provided to KHS as an additional insured shall be primary to and non-contributory with any insurance or self-insurance program maintained by KHS.
- (f) 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).
- (g) The policy shall cover inter-insured suits between KHS and Contractor and include a “separation of insureds” or “severability” clause which treats each insured separately.
- (h) 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.
- (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 apply to hired and non-owned autos.
- (d) Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability Insurance:

- (a) Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 Annual Aggregate.
- (b) If the Professional Liability Insurance is written on a claims-made basis, Contractor, at Contractor’s option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- (c) Required Evidence of Insurance: Certificate of Insurance.

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

6. Documentation:

- (a) The Certificate of Insurance must include the following reference: <insert contract number or project name>.
- (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 KHS 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 Additional Insured endorsements and Certificates of Insurance is: Kern Health Systems, 9700 Stockdale Highway, Bakersfield, California 93311.

- (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 KHS within 30 days.
7. Policy Obligations: Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
8. Material Breach: If Contractor fails to maintain the insurance required by this Agreement, it shall be deemed a material breach of this Agreement. KHS, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, KHS may purchase the required insurance, and without further notice to Contractor, KHS may deduct from sums due to Contractor any premium costs advanced by KHS for such insurance. These remedies shall be in addition to any other remedies available to KHS.

[Intentionally left blank]