

PROFESSIONAL SERVICES AGREEMENT

FOR

<<Type of Service>>

BETWEEN

KERN HEALTH SYSTEMS

AND

<<Subcontractor's Name>>

PROFESSIONAL SERVICES AGREEMENT KERN HEALTH SYSTEMS

This Professional Services Agreement (“**Agreement**”) is made and entered into on (“**Execution Date**”) by and between Kern Health Systems (“**KHS**”), a county health authority, and <<Contractor’s Legal Name>>, (“**Contractor**” or <<“**Contractor’s Legal Status**”>>), 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 obligation to administer Medi-Cal benefits to its health plan members (“**Members**”); 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.**

1.1 **Term of Agreement.** The term of this Agreement shall commence on **Date** to **termination date**, unless earlier terminated pursuant to other provisions of this Agreement as herein stated.

1.2 **Term of Scope of Work.** The term of a Scope of Work shall be set forth in such Scope of Work (the initial term together with all renewal terms, the “**Scope of Work Term**”).

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 Work services set forth in **Exhibit “A”** shall be provided at <<Contractor’s principle place of business>> or otherwise provided by Contractor at its place of business which is located at <<Contractor’s address>>.

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 shall 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. During the Scope of Work Term, 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 the applicable requirements of 42 CFR 438.230 (c) (1)(i) – (iii), Knox-Keene Health Care Services Plan Act of 1975, Health and Safety Code Section 1340 et seq.; Title 28 of the California Code of Regulations (“**CCR**”), Section 1300 et seq.; Welfare and Institutions Code Section 14200 et seq.; and other applicable federal and State laws, regulations and regulatory guidance issued by Department of Health Care Services (“**DHCS**”) and Department of Managed Health Care (“**DMHC**”); requirements set forth in **Exhibit “G”, Medi-Cal Requirements**; and KHS policies and procedures; and the terms of the Medi-Cal contract between KHS and DHCS (“**Medi-Cal Contract**”). Contractor shall also comply, to the extent applicable, with the Social Security Act and its implementing regulations, the Health Insurance Portability and Accountability Act (“**HIPAA**”) and its implementing regulations, the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, the Deficit Reduction Act of 2005 and its implementing regulations, the Federal Patient Protection and Affordable Care Act (Public Law 111-148) as amended by the Federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (collectively, “**Affordable Care Act**”), the California Consumer Privacy Act of 2018 and its implementing regulations, and the California Confidentiality of Medical Information Act.

2.6 Assigned Personnel.

2.6.1 Contractor shall assign only competent personnel to perform work hereunder. Contractor's personnel shall be licensed or certified by a respective board or

agency as required by law. In addition, Contractor's personnel shall ensure that equipment is licensed or registered as required by law. 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 Replacements. 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. Contractor shall be paid an amount not to exceed \$_____<insert numeric dollar value>, without the prior written approval of KHS.

3.2 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. Payments shall be made paid within forty-five (45) days following receipt by KHS of an invoice in a form approved by KHS for services performed.

3.3 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. In the event of a good faith dispute regarding overpayment the parties shall follow the dispute resolution process set forth in Section 24 of this agreement, Informal Dispute Resolution.

3.4 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.

3.5 Equipment. Contractor will be required to provide Contractor employee with all necessary equipment. In the event KHS provides equipment, all equipment provided by KHS shall be returned to KHS within thirty (30) days after termination of the agreement and/or termination of resource assignment, unless the parties mutually agree to a different date in writing. In the event that the equipment provided by KHS is not returned to KHS within the agreed-upon timeframe, or if the equipment is returned to damaged beyond normal wear and tear, vendor agrees, and KHS reserves the right, to offset the value of the equipment against any outstanding payments due from the Contractor. The determination of damage beyond normal wear and tear shall be at the sole discretion of KHS.

4. **Access to Books and Records.** Until the expiration of ten (10) years after the expiration or termination of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later, 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 ten (10) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available within five (5) days, 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. Contractor shall notify KHS upon termination of any approved subcontracting of services and the parties shall amend the agreement and provide notices as required pursuant to California Code of Regulations, Title 28, section 1300.52.4. Contractor shall require subcontractors to comply with the terms and conditions contained in this Agreement and Exhibits. Contractor shall assume all liability for use of approved subcontractors and agrees to indemnify KHS for any claim or penalties associated with Contractor's use of approved subcontractors. 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 DHCS and DMHC where required by applicable law, including any modification or alterations pursuant to California Code of Regulations, Title 28, section 1300.52.4. In the event DHCS, and/or DMHC requires amendment of this Agreement, the parties agree to amend this Agreement to comply with DHCS and/or DMHC requirements; notwithstanding the foregoing, Contractor will make a good faith effort to comply with all regulatory requirements. If Contractor cannot commit to the new requirements, Contractor shall have the right to terminate the agreement without penalty.

6. **Audits, Inspection and Retention of Records.** Contractor shall allow the DHCS, CMS, the Department of Health and Human Services (DHHS) Inspector General, the Comptroller General of the United States, the Department of Justice (DOJ), Attorney General's Division of Medi-Cal Fraud and Elder Abuse (DMFEA), DMHC, and other authorized State or Federal agencies, or their duly authorized representatives or designees, including DHCS' External Quality Review Organization (EQRO) contractor, to audit, inspect, monitor, examine, and otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Agreement, and to inspect, evaluate, examine, copy, and audit, pursuant to the Access Requirements and State's Right to Monitor, as set forth in the Medi-Cal Contract, Exhibit E, Section 1.1.22 (*Inspection and Audit of Records and Facilities*), any and all premises, books, records, equipment, and physical facilities, contracts, computers, or other electronic systems maintained by Contractor and/or Subcontractors pertaining to the obligations and functions undertaken pursuant to this Agreement. Records and documents will include, but are not limited to, all physical books or records originated or prepared pursuant to the performance under this Agreement, including working papers, reports, financial records, subcontracts, information systems and procedures, and any other documentation pertaining to medical and non-medical services rendered to Members.

- 6.1 **Records.** Contractor shall maintain all of these records, documents, and encounter data for a minimum of ten (10) years from the final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later. The books and records of Contractor relative to all its activities under this Agreement will be available in electronic format in California. After such books and records have been preserved for two years, they may be warehoused or stored, or microfilmed, subject to their availability upon written request within not more than five (5) days after request therefore. 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 DMHC.

- 6.2 **Inspection and Audit.** Contractor shall furnish any record, or copy of it, to DHCS or any other entity listed in this Section 6, at Contractor's sole expense. Contractor shall allow authorized agencies listed in this Section 6, the right to audit at all reasonable times, including normal business hours, at the Contractor's place of business or at such mutually agreeable location in California for a minimum of ten (10) years from the final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later.

In addition, DMHC shall be entitled to conduct an examination of Contractor's fiscal and administrative affairs as often as DMHC deems necessary.

- 6.3 **Alternative to Audit.** Notwithstanding the foregoing, solely with respect to audits for information security purposes only, if Contractor's operations related to the services are covered by an active HITRUST Certification, Service Organization Control 2 ("**SOC 2**") report or other third-party assessment (a "**Third Party Assessment**") then KHS agrees to accept the Third-Party Assessment in lieu of an audit and as evidence of Contractor's compliance with any security controls or requirements.
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. If the change in law occurs prior the end of the 30-day negotiation period, the parties agree to comply with the law until the end of the 30-day negotiation period. The parties, by mutual agreement, may waive the 30-day negotiation requirement and terminate the Agreement immediately if negotiation would be futile.
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. **Regulatory Approval Requirement.** This Agreement, including any amendments, or modifications, is subject to the approval of all applicable regulatory authorities. The Parties agree to cooperate fully and promptly in obtaining any necessary regulatory approvals. No amendment or modification of this Agreement shall be effective until such

approval is obtained. If any regulatory authority disapproves this Agreement or any proposed amendment, or termination, the Parties shall negotiate in good faith to modify the Agreement to address the concerns of the regulatory authority. The Parties agree to comply with all applicable laws, regulations, and orders of any regulatory authority having jurisdiction over this Agreement.

13. Confidentiality.

- 13.1 Use and Disclosure Restrictions. Neither party shall, without the written consent of the other, communicate Confidential Information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that the receiving party would protect its own confidential information. Confidential Information means specific facts or documents identified as "confidential" by any law, regulations or contractual language ("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. Upon termination of this Agreement, Contractor shall return or destroy Confidential Information as instructed by KHS and in accordance with applicable laws and regulations regarding the maintenance of records.
- 13.2 Data Protection and Geographic Restrictions. Contractor agrees that the Services to be performed, and all confidential data associated therewith, shall be within the geographical boundaries of the United States. Contractor shall not perform any Services or transmit any confidential data outside of the United States without prior written consent from KHS. Any breach of this provision will result in a material breach of this Agreement and provide grounds for immediate termination.
- 13.3 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, trade secret or other proprietary information of the other party except as expressly permitted.
- 13.4 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 Information Act,

codified at section 56.107 of the California Civil Code, California Evidence Code sections 1156 and 1157, Welfare and Institutions Code section 14100.2, Title 42 CFR Section 431.300 et seq., and the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations. Contractor shall not use medical records pertaining to the provision of services under this Agreement for any purpose other than carrying out the express terms of this Agreement, shall promptly transmit to KHS all requests for disclosure of such information, and shall not disclose except as otherwise specifically permitted by this Agreement any such information to any party other than KHS, without KHS's prior written authorization specifying that the information is releasable under applicable law.

- 13.5 Protected Health Information. Contractor and KHS recognize that in performing services, Contractor may receive, create, or otherwise have access to Protected Health Information (“**PHI**”) or Personal Information (“**PI**”) 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.
- 13.6 Ownership of Records. All documents, papers, notes, memoranda, computer files and other written or electronic records of any kind in whatever form or format, assembled, prepared or utilized by Contractor or Contractor's assigned personnel during and in connection with this Agreement that contain Confidential Information of KHS or that consist of intellectual property or materials provided by KHS (“**Documents**”), 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. For clarity, nothing contained in this Section shall transfer to KHS any rights of ownership, intellectual property rights, or any other proprietary right in the Platform or any portion thereof or any Confidential Information of Contractor.
14. **Conflict of Interest.** Contractor covenants that Contractor and its employees, officers, and directors have no and will not acquire any interest, financial or otherwise, direct or indirect, that represents a conflict of interest under state law or as set forth in Exhibit H, Section C of the Medi-Cal Contract (*Conflicts of Interest*), or that would otherwise conflict in any manner or degree with the performance of its services hereunder.

Contractor further covenants that no person or entity having any such interests shall be employed or subcontracted for obligations relating to the performance of this Agreement. 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.

- 14.1 Contractor and Subcontractors must provide written disclosure of information on ownership and control as required under 42 CFR section 455.104 and written disclosure of any prohibited affiliation under 42 CFR section 438.610, upon request by KHS. Such information is subject to audit by appropriate government entities, including, but not limited to, DHCS. In addition, if requested to do so by KHS, Contractor, Subcontractor, and/or any employee, officer, and/or director of Contractor or Subcontractor shall complete and file a Form 700 - "Statement of Economic Interest" with KHS, which will be provided by KHS. Contractor and Subcontractors must accurately and timely provide all required information in their disclosures.
 - 14.2 Contractor and Subcontractors must notify KHS and DHCS within ten (10) Working Days of when they become aware of any potential, suspected, or actual conflict of interest, or when any change occurs to the information provided to KHS and DHCS previously. The notice provided to DHCS shall be in a form and manner directed by DHCS through an All-Plan Letter ("APL") or other similar instructions.
15. **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
16. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and 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.
17. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
18. **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 as a result of a cause beyond its control, including acts of God,

terrorist attacks, act of any military, civil or regulatory authority, change in law or regulation, fire, flood, earthquake, storm or like event, pandemic, disruption or outage of communications, power or other utility, labor problem, unavailability of supplies, or any other causes reasonably beyond its control (“**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.

18.1 State of Emergency. Upon declaration of a State of Emergency by the Governor or declaration by the State Public Health Officer of a health emergency that displaces or has the immediate potential to displace Members, Contractor will immediately notify KHS to provide the following information, as applicable:

18.1.1 Description of whether the Contractor has experienced or expects to experience any disruption to operations;

18.1.2 Explanation of how the Contractor is communicating with potentially impacted enrollees; and,

18.1.3 Summary of actions the Contractor has taken or is in process of taking to ensure the health care needs of enrollees are met.

19. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not and have not been: (a) excluded, debarred, suspended, or otherwise ineligible to participate in the state health care programs or federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “**governmental 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 felony; (c) convicted of a misdemeanor involving fraud, abuse of the governmental health care program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service;; (d) lost or surrendered a license, certificate, or approval to provide health care; or (e) 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. 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.**
 - 22.1 **Indemnification.** 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, regulatory agency imposed penalties or sanctions (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 violation of any law or negligence or willful misconduct 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.
 - 22.2 **Release and Hold Harmless.** KHS shall release and hold harmless Contractor, and Contractor's agents, board members, officers, employees, agents, volunteers, and authorized representatives from, and Contractor shall be excused from any obligations of indemnification related to, any claims arising in connection with: (i) the violation by any materials provided by KHS of the intellectual property rights of a third party; (ii) KHS's failure to obtain any consents or approvals required by applicable law; (iii) KHS's violation of any law applicable to its obligations; or (iv) KHS's gross negligence or willful misconduct.
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.** It is the intent of the Parties that all disputes arising under this Agreement be resolved expeditiously, amicably, and at the level within each Party's organization that is most knowledgeable about the disputed issues. The Parties understand and agree that the procedures outlined in this Section are not intended to supplant the routine inquiries and handling of complaints through informal contact with their respective managers. Accordingly, for purposes of the procedures set forth in this paragraph, a "dispute" shall mean any action, dispute, claim, or controversy, of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to the Agreement. The steps for dispute resolution are set forth below.
- 24.1 The complaining Party's representative will notify the other Party's representative in writing of the dispute, and the non-complaining Party will exercise good faith efforts to resolve the matter as expeditiously as possible.
- 24.2 If such matter remains unresolved ten (10) business days after delivery of the complaining Party's written notice, a senior representative of each Party shall meet or participate in a telephone conference call within five (5) business days of a request for such a meeting or conference call by either Party to resolve such matter.
- 24.3 If the meeting or conference call specified above does not resolve such matter, a senior officer of each Party shall meet or participate in a telephone conference call within five (5) business days of a request for such a meeting or conference call by either Party to discuss a mutually satisfactory resolution of such matter.
- 24.4 If the meeting or conference call specified above does not resolve such matter, either Party may request that the Parties participate in nonbinding mediation, in a forum and with a mediator mutually agreeable to both Parties, and at a cost to be borne equally by both Parties. If the Parties are not able to agree on mediation proceedings or are otherwise unable to reach a resolution of the dispute following mediation, the Parties may thereupon seek all remedies available to them under the Agreement, at Law or in equity.
- 24.5 Notwithstanding any dispute between KHS and Contractor, if practical, the Parties shall continue to perform their obligations under the Agreement in good faith during the resolution of the dispute
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, including subcontracting of services pursuant to 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 amendment shall become effective only upon approval by DMHC in writing, and by DHCS in writing or by operation of law where DHCS has acknowledged receipt of the proposed amendment, and has failed to approve, disapprove, or postpone the proposed amendment within sixty (60) calendar days of receipt. KHS shall notify DMHC and DHCS in the event this Agreement is amended, in accordance with applicable law. Notice to DMHC is considered given when properly addressed through the filing of an Amendment or a Notice of Material Modification in accordance with California Code of Regulations, Title 28, section 1300.52.4. Notice is considered given to DHCS when submitted as required by the DHCS and contract.
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 and documents as the governmental or KHS representatives deem appropriate, at any time pursuant to 42 CFR 438.3(h). 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. The monitoring activities will be either announced or unannounced.
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, Contractor, and DHCS. 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, sexual orientation, marital status, age, medical condition, pregnancy, mental and/or physical disability, gender, gender identification, ethnic group identification, creed, health status, identification with any other persons or groups identified in Penal Code section 422.56 or other prohibited basis, including without limitation, KHS's policy on nondiscrimination. Contractor agrees to comply with all nondiscrimination rules or regulations required by law, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 USC Section 2000d, 45 C.F.R. Part 80); Titles II and III of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Rehabilitation Act of 1973, as amended; Section 1557 of the Patient Protection and Affordable Care Act; Unruh Civil Rights Act; Government Code sections 7405 and 11135; Welfare and Institutions Code section 14029.91; 1365.5 of the Knox-Keene Health Care Service Plan Act; and the regulations promulgated thereunder the above listed statutes, all of which 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:

<<Name>>

<<Address>>

<<City, State Zip>>

Attn.: << Name of Contractor's Rep. >>

Notice to KHS:

Kern Health Systems

2900 Buck Owens Boulevard

Bakersfield, California 93308

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 and exhibits hereto, which are incorporated herein by this reference, 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 <<Title, e.g., Chief Operations Officer>> shall retain fiscal and administrative oversight for services rendered under this Agreement. The KHS <<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 monthly, quarterly, and annual reports, which shall be retained by KHS for follow-up action and evaluation of performance. The reports must include adequately detailed data elements to present an accurate report of Contractor’s performance. Contractor shall also prepare and submit to the KHS <<Title, e.g., Chief Operations Officer>> any special reports as requested by KHS regarding any proposed or rendered services specified in this Agreement within the specified timeframe referenced in **Exhibit “A”**.
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 thirty (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 or is otherwise disqualified from participation in governmental health care programs, as provided in **Section 19** of this Agreement, 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 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, provided that KHS shall provide at least ninety (90) days’ notice of such event.
- 36.4 **Termination Obligations.** If, for any reason, this Agreement is terminated, or any subcontracting services are 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.

37. **Effect of Termination.**

- 37.1 **Delivery of Work Product and Final Payment upon Termination.** In the event of termination, Contractor, within fourteen (14) days following the date of termination, shall deliver to KHS all Documents subject to **Section 13.6** (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 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.

39. **LIMITATIONS OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER, FOR ANY SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE OF DATA OR THE SERVICES, LOST BUSINESS, LOSS OF GOODWILL, LOST REVENUES, FAILURE TO REALIZE ANTICIPATED SAVINGS, OR LOST PROFITS, AND ANY OTHER DAMAGES FOR ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE INSTALLATION, IMPLEMENTATION, CUSTOMIZATION, USE, INABILITY TO USE, OPERATION OR SUPPORT OF THE SERVICES. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER OR TO ANY OTHER PERSON FOR ANY LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE INSTALLATION, IMPLEMENTATION, CUSTOMIZATION, USE, INABILITY TO USE, OPERATION OR SUPPORT OF THE SERVICES SHALL NOT EXCEED THE TOTAL FEES PAID AND/OR PAYABLE BY KHS TO CONTRACTOR IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO, AFFECT, OR LIMIT CONTRACTOR'S DUTY TO INDEMNIFY KHS IN ACCORDANCE WITH THIS AGREEMENT AND/OR (II) ANY THIRD PARTY CLAIMS.
40. **Governing Law.** This Agreement shall be governed by and construed in accordance with all laws and applicable regulations governing the Medi-Cal Contract, including, but not limited to, 42 CFR section 438.230, the Knox-Keene Health Care Services Plan Act of 1975 as codified in Health and Safety Code Section 1340 *et seq.* (unless expressly excluded under the Medi-Cal Contract); 28 CCR Section 1300.43 *et seq.*; Welfare and Institutions Code Sections 14000 *et seq.*; 22 CCR Sections 53800 *et seq.*; and 22 CCR Sections 53900 *et seq.*

[Signatures follow on next page]

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

KERN HEALTH SYSTEMS

CONTRACTOR

By: _____
Emily Duran
Chief Executive Officer

By: _____
<<Name>>
<<Title>>

Date: _____

Date: _____

APPROVED AS TO FORM:

By: Ann Story Garza
Assistant General Counsel
for Kern Health Systems

EXHIBIT “A”
SCOPE OF SERVICES
<<Contractor’s Name>>

THIS SCOPE OF SERVICES (“Scope of Work”) is effective <<Date>>, (the “**Scope of Work Effective Date**”) and is governed by the Agreement between **KHS** and **Contractor** dated, <<Date>>. Any conflict in definitions between the Agreement and this Scope of Work shall have the meanings set forth in the Agreement unless explicitly modified herein, and in such case shall apply for the purposes of this Scope of Work only.

1. **DEFINITIONS.** [INSERT ANY APPLICABLE DEFINITIONS]
2. **SCOPE OF SERVICES**
3. **SERVICE LEVEL AGREEMENTS**
4. **MILESTONES**
5. **CONTRACTOR RESPONSIBILITIES**
6. **KHS RESPONSIBILITIES**

IN WITNESS WHEREOF, the undersigned, being duly authorized to do so, has executed this Scope of Work as of the Scope of Work Effective Date.

KERN HEALTH SYSTEMS :

CONTRACTOR:

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

EXHIBIT “B”
COMPENSATION EXHIBIT
<<Contractor’s Name>>

1 Compensation

- 1.1** Basis of Compensation. [Insert compensation (e.g., hourly, daily, monthly or fixed rates) and any other information that is applicable.
- 1.2 Rates.** If rates are specified in this Compensation Exhibit, they begin on the date Contractor commences the Work and end upon termination of the relevant scope of work or agreement.
- 1.3 Rate Adjustments.**
 - 1.3.1** Any rate adjustments must be agreed upon in writing by both KHS and the contractor before implementation.
 - 1.3.2** Rate adjustments due to changes in law or regulatory requirements must be communicated in advance and agreed upon by both parties
- 1.4 Travel and Per Diem Compensation.** If KHS agrees to pay travel costs, KHS shall reimburse Contractor for the documented cost incurred by Contractor for transportation to and from Point of Origin and KHS, pre-approved by KHS. All cost incurred to perform services shall be itemized and accompanied by invoices, receipts or vouchers. Travel and Per Diem expenses are not subject to markups. Contractor will not bill professional fees for travel time unless they carry out SOW tasks during the travel period.
 - 1.4.1 Travel.** The cost of air transportation must not exceed the lowest available economy class fare, by the most direct route to KHS from the Point of Origin or other place pre-approved by KHS.
 - 1.4.2 Per Diem.** If KHS agrees to pay for food, lodging and ground transportation, Contractor will be required to submit a copy of General Services Administration (GSA) rates for meals and incidental expenses for per diem reimbursement when conducting work at KHS.
- 1.5 Approvals for Travel and Per Diem Compensation.** All travel related expenses require pre-approval from KHS. All out of state travel must be approved by KHS CEO.

2 GEOGRAPHIC SCOPE

- 2.1** Contractor shall provide the services selected to the KHS plan(s) in California

EXHIBIT “C”

IRS FORM W-9

EXHIBIT “D”
HIPAA BUSINESS ASSOCIATE ADDENDUM
<<Contractor’s Name>>

This Business Associate Addendum (“Addendum”) by and between KHS and Contractor, which for the purposes of this Addendum shall be referred to as “Business Associate,” is effective as of the Effective Date of the Professional Services Agreement.

RECITALS

WHEREAS, the parties have executed an agreement(s) whereby Business Associate provides services to KHS, and Business Associate creates, receives, maintains, uses, transmits protected health information (“PHI”) in order to provide those services;

WHEREAS, as a covered entity, KHS is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996, Public Law 104-191, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and Subparts A and E of 45 C.F.R. Part 164 (“Privacy Regulations”) and the Security Standards for Electronic Protected Health Information (“Security Regulations”) at 45 C.F.R. Parts 160 and Subparts A and C of 45 C.F.R. Part 164, as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) of 2009, Public Law 111-5, and regulations promulgated thereunder including the Breach Notification Regulations at Subpart D of 45 C.F.R. Part 164, and is subject to certain state privacy laws;

WHEREAS, as a business associate, Business Associate is subject to certain provisions of HIPAA, and regulations promulgated thereunder, as required by the HITECH Act and regulations promulgated thereunder;

WHEREAS KHS and Business Associate are required to enter into a contract in order to mandate certain protections for the privacy and security of PHI;

WHEREAS, KHS’s regulator(s) have adopted certain administrative, technical and physical safeguards deemed necessary and appropriate by it/them to safeguard regulators’ PHI and have required that KHS incorporate such requirements in its business associate agreements with subcontractors that require access to the regulators’ PHI;

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HIPAA, the HITECH Act, and regulations promulgated thereunder.
 - 1.1. **Addendum** as used in this document means this Business Associate Addendum.

- 1.2. **Breach** means, unless expressly excluded under 45 C.F.R. § 164.402, the acquisition, access, use, or disclosure of PHI in a manner not permitted under Subpart E of 45 C.F.R. Part 164 which compromises the security or privacy of the PHI and as more particularly defined under 45 C.F.R. § 164.402.
- 1.3. **Business associate** has the meaning given such term in 45 C.F.R. § 160.103.
- 1.4. **Confidential information** refers to information not otherwise defined as PHI in Section 1.15 below, but to which state and/or federal privacy and/or security protections apply.
- 1.5. **Data aggregation** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.6. **Designated record set** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.7. **Disclose** and **disclosure** mean the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
- 1.8. **Electronic health record** has the meaning given such term in 42 U.S.C. § 17921.
- 1.9. **Electronic media** means:
 - 1.9.1. Electronic storage material on which data is or may be recorded electronically including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or
 - 1.9.2. Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.
- 1.10. **Electronic protected health information (“ePHI”)** means individually identifiable health information that is transmitted by or maintained in electronic media.
- 1.11. **Health care operations** has the meaning given such term in 45 C.F.R. § 164.501.
- 1.12. **Individual** means the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

- 1.13. **Individually identifiable health information** means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and 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, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 C.F.R. § 160.103.
- 1.14. **Information system** means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.
- 1.15. **Protected health information** (“PHI”), as used in this Addendum and unless otherwise stated, refers to and includes both PHI as defined at 45 C.F.R. § 160.103 and personal information (“PI”) as defined in the Information Practices Act at California Civil Code § 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
- 1.16. **Required by law** means a mandate contained in law that compels an entity to make a use or disclosure of PHI and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.
- 1.17. **Secretary** means the Secretary of the U.S. Department of Health and Human Services or the Secretary’s designee.
- 1.18. **Security incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 1.19. **Services** means those services performed by Business Associate pursuant to the Agreement.
- 1.20. **Unsecured protected health information** (“unsecured PHI”) means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary in the guidance issued under 42 U.S.C. § 17932(h)(2).

- 1.21. **Use and uses** mean, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination or analysis of such information within the entity that maintains such information.
2. KHS intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Addendum and the Agreement, some of which information may constitute PHI and/or confidential information protected by federal and/or state laws.
3. Business Associate is the business associate of KHS acting on KHS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of KHS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Addendum and the Agreement.
4. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Addendum and the Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Addendum and the Agreement on behalf of KHS, provided that such use or disclosure would not violate HIPAA, including the Privacy Regulations, if done by KHS.
 - 4.1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum and the Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or Business Associate obtains reasonable assurances, in writing, from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
 - 4.2. **Data Aggregation.** If authorized as part of the services provided to KHS under the Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of KHS.
5. **Prohibited Uses and Disclosures of PHI**
 - 5.1. **Restrictions on Certain Disclosures to Health Plans.** Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction in accordance with HIPAA and the HITECH Act, including 45 C.F.R. § 164.522(a). The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.
 - 5.2. **Prohibition on Sale of PHI; No Remuneration.** Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written authorization of KHS and KHS's regulator(s), as applicable, and then, only

as permitted by HIPAA and the HITECH Act. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103.

6. Compliance with Other Applicable Laws

- 6.1. To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, “more protective”) privacy and/or security protections to PHI or other confidential information covered under this Addendum and the Agreement beyond those provided through HIPAA, Business Associate agrees:
 - 6.1.1. To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
 - 6.1.2. To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 17 of this Addendum.
- 6.2. Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 1 of this Addendum, include, but are not limited to, the Information Practices Act, California Civil Code §§ 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, Welfare and Institutions Code § 5328, and California Health and Safety Code § 11845.5.
- 6.3. If Business Associate is a Qualified Service Organization (“QSO”), as defined in 42 C.F.R. § 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 C.F.R. § 2.11.

7. Additional Responsibilities of Business Associate

- 7.1. **Nondisclosure.** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Addendum and the Agreement or as required by law.
- 7.2. **Safeguards and Security**
 - 7.2.1. Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of the information other than as provided for by this Addendum and the Agreement. Such safeguards shall be, at a minimum, at Federal Information Processing Standards (“FIPS”) Publication 199 protection levels. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of Subpart C of 45 C.F.R. Part 164, in compliance with 45 C.F.R. § 164.316. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of Business Associate’s operations

and the nature and scope of its activities.

7.2.2. Business Associate shall, at a minimum, utilize an industry-recognized security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. Examples of industry-recognized security frameworks include but are not limited to:

7.2.2.1. NIST SP 800-53 - National Institute of Standards and Technology Special Publication 800-53

7.2.2.2. FedRAMP - Federal Risk and Authorization Management Program

7.2.2.3. PCI - PCI Security Standards Council

7.2.2.4. ISO/IEC 27002 - International Organization for Standardization / International Electrotechnical Commission standard 27002

7.2.2.6. IRS PUB 1075 - Internal Revenue Service Publication 1075

7.2.2.7. HITRUST CSF - HITRUST Common Security Framework

7.2.3. Business Associate shall employ FIPS 140-2 compliant encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information, including, but not limited to, encryption of all workstations, laptops, and removable media devices containing PHI and data transmissions of PHI.

[Alternate Provision for Section 7.2.3: “Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information. Without limiting the foregoing, Business Associate shall maintain, at a minimum, the most current industry standards, for encryption of all workstations, laptops, and removable media devices containing PHI and data transmissions of PHI, unless Business Associate complies with applicable requirements of the Security Regulations, including 45 C.F.R. §§ 164.306 and 164.312.”]

7.2.4. Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.

7.2.5. Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.

- 7.2.6. Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 C.F.R. Part 164, Subpart C.
- 7.3. **Minimum Necessary.** With respect to any permitted use, disclosure, or request of PHI under this Addendum and the Agreement, Business Associate shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request respectively, as specified in 45 C.F.R. § 164.502(b).
- 7.4. **Business Associate's Agent.** Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree through a written agreement to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI and/or confidential information.
8. **Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Addendum and the Agreement.
9. **Access to PHI.** Business Associate shall, to the extent KHS determines that any PHI constitutes a designated record set, make the PHI specified by KHS available to the individual(s) identified by KHS as being entitled to access and copy that PHI. Business Associate shall provide such access for inspection of that PHI within fifteen (15) calendar days after receipt of request from KHS. Business Associate shall also provide copies of that PHI ten (10) calendar days after receipt of request from KHS. If Business Associate maintains an electronic health record with PHI, and an individual requests a copy of such information in electronic format, Business Associate shall make such information available in that format as required under the HITECH Act and 45 C.F.R. § 164.524(c)(2)(ii).
10. **Amendment of PHI.** Business Associate shall, to the extent KHS determines that any PHI constitutes a designated record set, make PHI available for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526 as requested by KHS in the time and manner designated by KHS.

11. **Accounting of Disclosures.** Business Associate shall document and make available to KHS or (at the direction of KHS) to an individual, such disclosures of PHI and information related to such disclosures, necessary to respond to a proper request by the subject individual for an accounting of disclosures of PHI in accordance with HIPAA, the HITECH Act and implementing regulations. Unless directed by KHS to make available to an individual, Business Associate shall provide to KHS, within thirty (30) calendar days after receipt of request from KHS, information collected in accordance with this Section to permit KHS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The term PHI, as used in this Section, only refers to PHI as defined in 45 C.F.R. § 160.103. Any accounting provided by Business Associate under this Section shall include:
- 11.1. The date of the disclosure;
 - 11.2. The name, and address if known, of the entity or person who received the PHI;
 - 11.3. A brief description of the PHI disclosed; and
 - 11.4. A brief statement of the purpose of the disclosure.

For each disclosure that could require an accounting under this Section, Business Associate shall document the information enumerated above, and shall securely maintain the information for six (6) years from the date of the disclosure (but beginning no earlier than April 14, 2003).

12. **Compliance with HITECH Act.** Business Associate shall comply with the requirements of Title XIII, Subtitle D, of the HITECH Act, which are applicable to business associates, and shall comply with the regulations promulgated thereunder.
13. **Compliance with Obligations of KHS or DHCS.** To the extent Business Associate is to carry out an obligation of KHS or the California Department of Healthcare Services ("DHCS") under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of such Subpart that apply to KHS or DHCS, as applicable, in the performance of such obligation.
14. **Access to Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of KHS available to KHS upon reasonable request, and to the DHCS and the Secretary for purposes of determining KHS's compliance with 45 C.F.R. Part 164, Subpart E. Business Associate also agrees to make its internal practices, books and records relating to the use and disclosure of PHI on behalf of KHS available to DHCS, KHS, and the Secretary for purposes of determining Business Associate's compliance with applicable requirements of HIPAA, the HITECH Act, and implementing regulations. Business Associate shall immediately notify KHS of any requests made by DHCS or the Secretary and provide KHS with copies of any documents produced in response to such request.
15. **Return or Destroy PHI on Termination; Survival.** At termination of this Addendum, if feasible, Business Associate shall return to KHS or, if agreed to by KHS, destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, KHS that Business Associate or its agents or subcontractors still maintains in any form, and shall retain no copies of such information. If KHS elects destruction of PHI and/or other confidential information, Business Associate shall ensure such information is destroyed in accordance with the destruction methods specified in

Sections 15.1 and 15.2 below and shall certify in writing to KHS that such information has been destroyed accordingly. If return or destruction is not feasible, Business Associate shall notify KHS of the conditions that make the return or destruction infeasible. Subject to the approval of KHS's regulator(s) if necessary, if such return or destruction is not feasible, KHS shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall also extend the protections of this Addendum to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

- 15.1 **Data Destruction.** Data destruction methods for KHS PHI or confidential information must conform to U.S. Department of Defense standards for data destruction DoD 5220.22-M (7 Pass) standard or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of KHS and, if necessary, KHS's regulator(s).
- 15.2 **Destruction of Hard Copy Confidential Data.** KHS PHI or confidential information in hard copy form must be disposed of through confidential means, such as crosscut shredding and pulverizing.
- 15.3 **Survival.** The obligations of Business Associate under this Section shall survive the termination of this Addendum.
- 16. **Special Provision for SSA Data.** If Business Associate receives data from or on behalf of KHS that was verified by or provided by the Social Security Administration ("SSA Data") and is subject to an agreement between DHCS and the Social Security Administration, Business Associate shall provide, upon request by KHS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to KHS.
- 17. **Breaches and Security Incidents.** Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:
 - 17.1. **Notice to KHS**
 - 17.1.1. **Immediate Notice.** Business Associate shall notify KHS immediately upon the discovery of a suspected breach or security incident that involves SSA Data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to KHS.
 - 17.1.2. **24-Hour Notice.** Business Associate shall notify KHS within 24 hours by email (or by telephone if Business Associate is unable to email KHS) of the discovery of:
 - 17.1.2.1. Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;
 - 17.1.2.2. Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

- 17.1.2.3. Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Addendum and/or the Agreement; or
 - 17.1.2.4. Potential loss of confidential data affecting this Addendum and/or the Agreement.
- 17.1.3. Notice shall be provided to the KHS Privacy Officer (“KHS Contact”) using the KHS Contact Information at Section 17.7 below. Such notification by Business Associate shall comply with KHS’s form and content requirements for reporting privacy incident and shall include all information known at the time the incident is reported.
- 17.2. **Required Actions.** Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take:
 - 17.2.1. Prompt action to mitigate any risks or damages involved with the security incident or breach;
 - 17.2.2. Any action pertaining to such unauthorized disclosure required by applicable federal and state law; and
 - 17.2.3. Any corrective actions required by KHS or KHS’s regulator(s).
- 17.3. **Investigation.** Business Associate shall immediately investigate such security incident or confidential breach. Business Associate shall comply with KHS’s additional form and content requirements for reporting such privacy incident.
 - 17.3.1. Incident details including the date of the incident and when it was discovered;
 - 17.3.2. The identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the breach;
 - 17.3.3. The nature of the data elements involved, and the extent of the data involved in the breach;
 - 17.3.4. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - 17.3.5. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - 17.3.6. A description of the probable causes of the improper use or disclosure;
 - 17.3.7. Any other available information that Business Associate is required to include in notification to the individual under 45 C.F.R. § 164.404(c);
 - 17.3.8. Whether the PHI or confidential data that is the subject of the security incident, breach, or unauthorized use or disclosure of PHI or confidential

data included unsecured PHI;

- 17.3.9. Whether a law enforcement official has requested a delay in notification of individuals of the security incident, breach, or unauthorized use or disclosure of PHI or confidential data because such notification would impede a criminal investigation or damage national security and whether such notice is in writing; and
 - 17.3.10. Whether Section 13402 of the HITECH Act (codified at 42 U.S.C. § 17932), California Civil Code §§ 1798.29 or 1798.82, or any other federal or state laws requiring individual notifications of breaches are triggered.
- 17.4. **Complete Report.** Business Associate shall provide a complete written report of the investigation (“Final Report”) to the KHS Contact within seven (7) working days of the discovery of the security incident or breach. Business Associate shall comply with KHS’s additional form and content requirements for reporting of such privacy incident.
- 17.4.1. The Final Report shall provide a comprehensive discussion of the matters identified in Section 17.3 above and the following:
 - 17.4.1.1. An assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws;
 - 17.4.1.2. A full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure and to reduce the harmful effects of the breach;
 - 17.4.1.3. The potential impacts of the incident, such as potential misuse of data, identity theft, etc.; and
 - 17.4.1.4. A corrective action plan describing how Business Associate will prevent reoccurrence of the incident in the future. Notwithstanding the foregoing, all corrective actions are subject to the approval of KHS and KHS’s regulator(s), as applicable.
 - 17.4.2. If KHS or KHS’s regulator(s) requests additional information, Business Associate shall make reasonable efforts to provide KHS with such information. A supplemental written report may be used to submit revised or additional information after the Final Report is submitted.
 - 17.4.3. KHS and KHS’s regulator(s), as applicable, will review and approve or disapprove Business Associate’s determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate’s corrective action plan.
 - 17.4.4. **New Submission Timeframe.** If Business Associate does not complete a

Final Report within the seven (7) working day timeframe specified in Section 17.4 above, Business Associate shall request approval from KHS within the seven (7) working day timeframe of a new submission timeframe for the Final Report. Business Associate acknowledges that a new submission timeframe requires the approval of KHS and, if necessary, KHS's regulator(s).

- 17.5. **Notification of Individuals.** If the cause of a breach is attributable to Business Associate or its agents, then KHS or, as required by KHS, Business Associate shall notify individuals accordingly and Business Associate shall pay all costs of such notifications. The notifications shall comply with applicable federal and state law. All such notifications shall be coordinated with KHS. KHS and KHS regulator(s), as applicable, shall approve the time, manner and content of any such notifications. Business Associate acknowledges that such review and approval by KHS and KHS regulator(s), as applicable, must be obtained before the notifications are made.
- 17.6. **Responsibility for Reporting of Breaches to Entities Other than KHS.** If the cause of a breach of PHI is attributable to Business Associate or its subcontractors, Business Associate agrees that KHS shall make all required reporting of the breach as required by applicable federal and state law, including any required notifications to media outlets, the Secretary, and other government agency/regulator.
- 17.7. **KHS Contact Information.** To direct communications to KHS Privacy Officer, Business Associate shall initiate contact as indicated here. KHS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Addendum.

KHS Privacy Officer

Privacy Officer

c/o: Deborah Murr, Chief Compliance and Fraud Prevention Officer
KHS
2900 Buck Owens Blvd.
Bakersfield, CA 93308

Email: deborah.murr@khs-net.com

Telephone: 661-664-5000

18. **Responsibilities of KHS**

- 18.1 KHS agrees to not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.
- 18.2 **Notification of SSA Data.** KHS shall notify Business Associate if Business Associate receives data that is SSA Data from or on behalf of KHS.
19. **Indemnification.** Business Associate will immediately indemnify and pay KHS for and hold it harmless from (i) any and all fees and expenses KHS incurs in investigating, responding to, and/or mitigating a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents; (ii) any damages, attorneys' fees, costs,

liabilities or other sums actually incurred by KHS due to a claim, lawsuit, or demand by a third party arising out of a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents; and/or (iii) for fines, assessments, sanctions, and/or civil penalties assessed or imposed against KHS by any government agency/regulator based on a breach of PHI or confidential information caused by Business Associate or its subcontractors or agents. Such fees and expenses may include, without limitation, attorneys' fees and costs and costs for computer security consultants, credit reporting agency services, postal or other delivery charges, notifications of breach to individuals, and required reporting of breach. Acceptance by KHS of any insurance certificates and endorsements required under the Agreement does not relieve Business Associate from liability under this indemnification provision. This provision shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

19.1 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 KHS, 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 KHS, 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 KHS as set forth herein. Business Associate's obligation to defend, indemnify and hold harmless KHS shall be subject to KHS 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 KHS has no liability whatsoever for the claim) when Business Associate has provided to KHS the appropriate form of dismissal relieving KHS from any liability for the action or claim involved.

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

20. Audits, Inspection and Enforcement

20.1. From time to time, KHS or KHS's regulator(s) may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Addendum. Business Associate shall promptly remedy any violation of this Addendum and shall certify the same to the KHS Privacy Officer in writing. Whether or how KHS or KHS's regulator(s) exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Addendum.

20.2. If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Addendum, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify KHS unless it is legally prohibited from doing so.

21. Term and Termination

- 21.1 **Term.** This Addendum is effective as of the Effective Date and shall terminate when (i) the Agreement terminates, (ii) in accordance with this Section 21 of this Business Associate Addendum, or (iii) when all of the PHI provided by KHS to Business Associate, or created or received by Business Associate on behalf of KHS, is destroyed or returned to KHS, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in Section 15 of this Business Associate Addendum.
- 21.2. **Termination for Cause.** Upon KHS's knowledge of a violation of this Addendum by Business Associate, KHS may in its discretion:
- 21.2.1. Provide an opportunity for Business Associate to cure the violation and terminate this Addendum and the Agreement if Business Associate does not do so within the time specified by KHS; or
- 21.2.2. Terminate this Addendum and the Agreement if Business Associate has violated a material term of this Addendum.
- 21.3. **Judicial or Administrative Proceedings.** KHS may terminate this Addendum and the Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

22. **Miscellaneous Provisions**

- 22.1. **Disclaimer.** KHS makes no warranty or representation that compliance by Business Associate with this Addendum will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.
- 22.2. **Amendment**
- 22.2.1. Any provision of this Addendum which is in conflict with current or future applicable federal or state laws is hereby amended to conform to the provisions of those laws. Such amendment of this Addendum shall be effective on the effective date of the laws necessitating it and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- 22.2.2. Failure by Business Associate to take necessary actions required by Section 22.2.1 of this Addendum shall constitute a material violation of this Addendum.
- 22.3. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and agents available to KHS or KHS's regulator(s) at no cost to KHS or KHS's regulator(s), as applicable, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against KHS or KHS's regulator(s), their respective directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by Business Associate.

- 22.4. **No Third-Party Beneficiaries.** Nothing in this Addendum is intended to or shall confer, upon any third person any rights or remedies whatsoever.
- 22.5. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.
- 22.6. **No Waiver of Obligations.** 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.
- 22.7. **Statutory or Regulatory Reference.** Any reference to statutory or regulatory language in this Addendum shall be to such language as in effect or as amended.
- 22.8. **Injunctive Relief.** Notwithstanding any rights or remedies provided in this Addendum, KHS retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI or confidential information by Business Associate or any agent, subcontractor, employee or third party that received PHI or confidential information.
- 22.9. **Monitoring.** As applicable, Business Associate shall comply with monitoring requirements of KHS's contracts with regulator(s) or any other monitoring requests by KHS's regulator(s).
- 22.10 **Venue.** It is expressly acknowledged that this Addendum 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 Addendum or any claim arising under it, it is expressly agreed that proper venue shall be in County of Kern, State of California.

EXECUTION

Subject to the execution of the Agreement or amendments thereto by Business Associate and KHS, this Business Associate Addendum shall become effective on the Effective Date.

In witness thereof, the parties have executed this Business Associate Addendum:

Business Associate

KHS

Print Name

Print Name

Signature

Signature

Title

Title

Date

Date

[Intentionally left blank]

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. Cyber Liability Insurance:

- (a) Contractor shall at the minimum obtain and maintain, without interruption, a professional liability policy and/or security and privacy liability policy covering liability arising out of unauthorized access to Contractor’s computer systems or unauthorized access to KHS data stored by Contractor with limits of liability equaling at least \$1,000,000 per claim or occurrence and in the aggregate.

7. Documentation:

- (a) The Certificate of Insurance must include the following reference: Kern Health Systems
- (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, 2900 Buck Owens Boulevard, Bakersfield, California 93308.
 - (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.
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. 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.

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Exhibit “F”
Vendor Data Transfer Checklist
<<Contractor’s Name>>

In order for Kern Health Systems (“KHS”) to be assured that data shared with entities outside KHS, is protected; a checklist of basic security procedures and affirmations has been compiled for attestation by <<Contractor’s Name>> (“Vendor”). The following Vendor Data Transfer Checklist outlines seven (7) areas that must be reviewed and signed off by any vendor receiving KHS data. A checkbox has been provided that will be initialed by an authorized signing authority prior to the transmission of KHS data to any external vendor. By initialing the checklist, Vendor attests that the area initialed has been reviewed and that all requirements are or will be satisfied by the vendor receiving the data. If Vendor cannot satisfy a requirement, then a comment section has been added at the end of the list for a detailed explanation. If additional comments are necessary, please provide an additional page. Satisfaction of these checklist requirements does not excuse Vendor from other performance obligations under the Agreement, including those obligations which may necessitate Vendor employ more stringent and protective standards than are listed within this Exhibit.

Initials **Data Transfer Checklist**

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1. Physical Security

- a. Access to facilities where data is stored are monitored with video surveillance.
- b. Access to facilities where the data is stored is access controlled with some type of electronic access system (i.e., security badge).
- c. Access control to the facilities where the data is stored is logged for security and reporting purposes.
- d. Location of the data transferred will reside in a data center of some type and the data center is access controlled with an electronic monitoring/security system.
- e. Vendor has a current physical security policy.

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2. Desktop Computer Security

- a. Desktop/Server systems access are restricted by username/password and require authentication to a central system such as Microsoft Active Directory.
- b. Desktop/Server access passwords are changed every 90 days by policy.
- c. Desktops do not grant administrative access to users carte blanc.
- d. USB ports on desktops and servers are restricted and data transfer is prohibited to all mass storage devices.
- e. All desktop/server systems have current anti-virus/malware software protection.
- f. Vendor has a current desktop security policy.

☐

3. Database Security

- a. Database security is leveraged using an access control layer.
 - i. Specify Access Controls: _____

- b. Data systems will reside within a secure database environment.
- c. Database access is monitored for security purposes.
- d. Data received from client will reside in an isolated database and not co-mingled with another client's data.
- e. Databases with Personal Healthcare Information (PHI) are encrypted.
- f. Vendor has a current data security policy.

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4. Network Security

- a. Wired network access is restricted to known devices.
- b. Wireless access is restricted, secure, and encrypted.
- c. All network access is logged and monitored for security.
- d. Network is firewall protected from the Internet.
- e. Network has an Intrusion Detection System (IDS) on the same physical network where the data resides.
- f. Vendor has a current network security policy.

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5. Technical Staffing

- a. Information Security Officer or similar role (please list):

i. Name:

ii. Title:

iii. Email:

iv. Telephone:

- b. The vendor employs a Database Administrator.
- c. The vendor employs a Network Administrator.
- d. The vendor employs a Systems Administrator.

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6. Data Destruction Verification

- a. Upon completion of the project/work the data that has been transferred to the contracted entity will be destroyed.
- b. Proof that the transferred data (any metadata, compiled/calculated results, etc.) has been destroyed will be provided with a certified data destruction report from reputable digital data sanitation software.
- c. Person responsible for the data destruction (please list):

i. Name:

ii. Title:

iii. Email:

iv. Telephone:

d. Estimated destruction date of the complete data set: _____

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7. Audit

- a. Vendor will keep accurate and complete records and accounts pertaining to the data, access to the data, subsets of calculated data, etc. Customer may audit, or nominate a reputable accounting firm to audit, Vendor's records, policies, or information security practices relating to the safeguarding of KHS data.

Comments:

Attestation

I attest that this information is true, accurate, and complete and understand that any falsification, omission, or concealment of material fact may subject me or the represented organization to administrative, civil, or criminal liability. Furthermore, I am a duly authorized representative to sign such agreement for the party that I represent.

Signatures

Vendor	Kern Health Systems
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT “G” MEDI-CAL REQUIREMENTS

This Exhibit sets forth the applicable requirements that are required by the contract between the California Department of Health Care Services (“DHCS”) and Kern Health System (“KHS”) (the “Medi-Cal Contract”) to be included in this Agreement and any other provisions necessary to reflect compliance with law. Any citations in this Exhibit are to the applicable sections of the Medi-Cal Contract, or applicable law. This Exhibit will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Exhibit and any other provision of the Agreement, this Exhibit will control with respect to Medi-Cal. Any capitalized term utilized in this Exhibit will have the same meaning ascribed to it in the Agreement unless otherwise set forth in this Exhibit. If a capitalized term used in this Exhibit is not defined in the Agreement or this Exhibit, it will have the same meaning ascribed to it in the Medi-Cal Contract. For purposes of this Exhibit, “Contractor” means Vendor.

1. The parties acknowledge and agree that this Agreement specifies the services to be undertaken by Contractor. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.1; 22 CCR 53250(c)(1).)
2. This Agreement will be governed by and construed in accordance with all laws and applicable regulations governing the Medi-Cal Contract, including, but not limited to, 42 CFR section 438.230, the Knox-Keene Health Care Services Plan Act of 1975 as codified in Health and Safety Code Section 1340 *et seq.* (unless expressly excluded under the Medi-Cal Contract); 28 CCR Section 1300.43 *et seq.*; W&I Code Sections 14000 and 14200 *et seq.*; 22 CCR Sections 53800 *et seq.*; and 22 CCR Sections 53900 *et seq.* (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.7; 22 CCR 53250(c)(2).)
3. This Agreement and any amendments thereof will become effective only upon approval by DHCS in writing. (Medi-Cal Contract, Exhibit A, Attachment III, Sections 3.1.5.B.4 and 3.1.2.A.2; 22 CCR 53250(c)(3).)
4. The parties acknowledge and agree that the term of the Agreement, including the beginning and end dates as well as methods of extension, renegotiation, phaseout, and termination, are included in this Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.2; 22 CCR 53250(c)(4).)
5. Contractor agrees to submit to KHS, either directly or through a KHS subcontractor, as applicable, complete, accurate, reasonable, and timely Encounter Data and Provider Data, and any other reports or data as required by KHS, in order for KHS to meet its reporting requirements to DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.10; DHCS APL 23-006; 22 CCR 53250(c)(5).)
6. Contractor will comply with all monitoring provisions in the Medi-Cal Contract and any monitoring requests by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.11; 22 CCR Sections 53250(e)(1).)

7. Contractor agrees to make all of its premises, facilities, equipment, books, records, contracts, computer, and other electronic systems pertaining to the obligations and functions undertaken pursuant to the terms of the Agreement, available for the purpose of an audit, inspection, evaluation, examination or copying, pursuant to the Access Requirements and State's Right to Monitor, as set forth in Medi-Cal Contract, Exhibit E, Section 1.1.22 (*Inspection and Audit of Records and Facilities*), and as follows: (a) As directed by KHS, DHCS, CMS, DHHS Inspector General, the Comptroller General, DOJ, DMFEA, DMHC, or their designees; (b) At all reasonable times at Contractor's place of business or at such other mutually agreeable location in California; and (c) For a term of at least ten (10) years from final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.13; 42 CFR 438.3(h).)
8. Contractor shall maintain all of its books and records, including Encounter Data, in accordance with good business practices and generally accepted accounting principles for a term of at least ten (10) years from the final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.14.)
9. If DHCS, DMFEA, DOJ, CMS, or the DHHS Inspector General determines there is a reasonable possibility of fraud or similar risk, DHCS, DMFEA, DOJ, CMS, or the DHHS Inspector General may inspect, evaluate, and audit Contractor at any time. Upon resolution of a full investigation of fraud, DHCS reserves the right to suspend or terminate Contractor from participation in the Medi-Cal program; seek recovery of payments made to Contractor; impose other sanctions provided under the State Plan or governing APLs, and direct KHS to terminate the Agreement due to fraud. (Medi-Cal Contract, Exhibit A, Attachment III, Section 1.3.4.D; DHCS APL 23-006; 42 CFR 438.230(c)(3)(iv).)
10. The parties acknowledge and agree that this Agreement contains full disclosure of the method and amount of compensation or other consideration to be received by Contractor from KHS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.3; 22 CCR 53250(e)(2).)
11. Contractor agrees to maintain and make available to DHCS, upon request, copies of all downstream subcontracts Contractor enters into related to the performance of the obligations and functions it undertakes pursuant to the Agreement. Contractor shall ensure that all downstream subcontracts are in writing and contain provisions that require the downstream subcontractor to comply with all requirements under the Agreement, including this Exhibit, and the Medi-Cal Contract applicable to the specific obligations and functions Contractor delegates to the downstream subcontractor to the same extent Contractor is required to comply with said requirements. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.12; 22 CCR 53250(e)(3); 42 CFR 438.3(u).)
12. Contractor agrees to notify DHCS in the event this Agreement or any related downstream subcontract is amended or terminated. Notice is considered given when properly addressed and deposited in the United States Postal Service as first-class registered mail, attached.

(Medi-Cal Contract, Exhibit A, Attachment III, Sections 3.1.5.B.17 and Exhibit E, Section 1.1.12; 22 CCR 53250(e)(4).)

California Department of Health Care Services
Managed Care Operations Division
Attn: DHCS Contract Manager
MS 4407 P.O. Box 997413
Sacramento, CA 95899-7413

13. Contractor agrees that assignment or delegation of the Agreement and any related downstream subcontract will be void unless prior written approval is obtained from DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.5–6; 22 CCR 53250(e)(5).)
14. Contractor agrees to hold harmless both the State and Members in the event KHS or another KHS subcontractor, if applicable, cannot or will not pay for obligations and functions undertaken pursuant to this Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.18; 22 CCR 53250(e)(6).)
15. Contractor agrees to timely gather, preserve, and provide to DHCS, CMS, DMFEA, and any authorized State or federal regulatory agencies, any records in Contractor's possession, in accordance with the Medi-Cal Contract, Exhibit E, Section 1.1.27 (*Litigation Support*). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.15.)
16. Contractor agrees to comply with all applicable requirements of the DHCS Medi-Cal Managed Care Program pertaining to the obligations and functions undertaken by Contractor, including, but not limited to, all applicable Medicaid and Medi-Cal laws, regulations, subregulatory guidance, All Plan Letters, and the provisions of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.8; DHCS APL 23-006.)
17. Contractor agrees to all remedies specified by the Agreement and the Medi-Cal Contract, including, but not limited to, revocation of delegated functions, imposition of corrective actions, and financial sanctions, in instances where DHCS or KHS determine that the Contractor has not performed satisfactorily. Contractor acknowledges that KHS must, upon discovery of Contractor's noncompliance with the terms of the Agreement or any Medi-Cal requirements, report any significant instances (i.e., in terms of gravity, scope and/or frequency) of noncompliance, imposition of corrective actions, or financial sanctions pertaining to the obligations under the Medi-Cal Contract to DHCS within three (3) working days of the discovery or imposition. (42 CFR 438.230(c)(iii); DHCS APL 23-006.)
18. KHS agrees to inform Contractor of prospective requirements added by State or federal law or DHCS related to the Medi-Cal Contract that impact obligations and functions undertaken through the Agreement before the requirement is effective, and Contractor agrees to comply with the new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.22.)

19. Contractor must inform its downstream subcontractors taking on delegated KHS functions of prospective requirements added by State or federal law or DHCS related to the Medi-Cal Contract that impact obligations and functions undertaken through the downstream subcontract before the requirement would be effective, and the downstream subcontractors must comply with the new requirements within thirty (30) calendar days of the effective date, unless otherwise instructed by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.23.)
20. Contractor must ensure that cultural competency/humility, sensitivity, Health Equity, and diversity training is provided for Contractor's staff at key points of contact with Members in accordance with Exhibit A, Attachment III, Subsection 5.2.11.C of the Medi-Cal Contract (*Cultural and Linguistic Programs and Committees*). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.24.)
21. This Agreement and all information received from Contractor in accordance with the requirements under the Medi-Cal Contract shall become public record on file with DHCS, except as specifically exempted in statute. The names of the officers and owners of Contractor, stockholders owning five (5) percent or more of the stock issued by Contractor and major creditors holding five (5) percent or more of the debt of Contractor will be attached to the Agreement at the time the Agreement is presented to DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.11.)
22. Contractor will provide KHS with written disclosure of information on its ownership and control as set forth in 42 CFR 455.104, in a format as directed by KHS prior to commencing services under this Agreement. Contractor's ownership and control disclosure information will be made available to DHCS, and upon request, the information is subject to audit by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Section 1.3.5.A; DHCS APL 23-006; 42 CFR 438.602(c); 438.608(c)(2).)
23. Contractor will notify KHS within ten (10) working days of any suspected fraud, waste, or abuse. Contractor agrees that KHS may share such information with DHCS in accordance with Medi-Cal Contract, Exhibit A, Attachment III, Section 1.3.2.D (*Subcontractor's Reporting Obligations*) and Section 1.3.2.D.6) (*Confidentiality*). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.26.)
24. Contractor represents and warrants that Contractor and its affiliates are not debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or guidelines implementing Executive Order No. 12549. Further, Contractor represents and warrants that Contractor is not excluded from participation in any health care program under section 1128 or 1128A of the Social Security Act. (42 CFR 438.610.)
25. To the extent that Contractor communicates with Members, Contractor agrees to provide interpreter services for Members at all Contractor sites and comply with language assistance standards developed pursuant to Health and Safety Code section 1367.04. (Medi-Cal

Contract, Exhibit A, Attachment III, Section 3.1.5.B.25.)

26. If applicable, Contractor agrees to participate and cooperate in KHS's Quality Improvement System. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.19.)
27. To the extent this Agreement includes the delegation of Quality Improvement activities to Contractor, the parties agree this Agreement includes those provisions stipulated in Medi-Cal Contract, Exhibit A, Attachment III, Section 2.2.5 (*Subcontractor and Downstream Subcontractor QI Activities*). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.20.)
28. In the event and to the extent Contractor is at risk for non-contracting emergency services, Contractor shall comply with the requirements of Exhibit A, Attachment III, Section 3.3.16 (*Emergency Services and Post-Stabilization Care Services*) of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.9.)
29. If appropriate, Contractor agrees to assist KHS in the transfer of Members' care pursuant to as needed, and in accordance with Exhibit E, Section 1.1.17 (*Phaseout Requirements*) of the Medi-Cal Contract and any other applicable provisions of the Medi-Cal Contract in the event of the Medi-Cal Contract termination for any reason. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.16.)
30. To the extent Contractor is responsible for the coordination of care for Members, KHS agrees to share with Contractor any utilization data that DHCS has provided to KHS, and the Contractor agrees to receive the utilization data and use it solely for the purpose of Member care coordination. (Medi-Cal Contract Exhibit A, Attachment III, Section 3.1.5.B.21; 42 CFR 438.208.)
31. Contractor shall (i) report to KHS, or to a KHS subcontractor as applicable, when Contractor has received an overpayment, (ii) return the overpayment to KHS within sixty (60) calendar days after the date on which the overpayment was identified, and (iii) notify KHS in writing of the reason for the overpayment in accordance with Exhibit A, Attachment III, Subsection 1.3.6 (*Treatment of Overpayment Recoveries*) of the Medi-Cal Contract and 42 CFR section 438.608(d)(2). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.27.)
32. Contractor must perform the obligations and functions undertaken pursuant to this Agreement, including, but not limited to, reporting responsibilities, in compliance with KHS's obligations under the Medi-Cal Contract in accordance with 42 CFR section 438.230(c)(1)(ii). (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.28.)
33. Contractor agrees and acknowledges that DHCS is a direct beneficiary of the Agreement with respect to all obligations and functions undertaken pursuant to this Agreement and that DHCS may directly enforce any and all provisions of the Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.5.B.29.)
34. Contractor, and Contractor's employees, officers, and directors, shall comply with the conflict of interest requirements set forth in Exhibit H of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit H, Section 1.0.)

35. To the extent applicable to the Services rendered under the Agreement and the costs associated therewith, Contractor agrees to comply with the Federal Equal Opportunity Requirements set forth in Exhibit D(f) of the Medi-Cal Contract. Specifically, Contractor agrees as follows:

- a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action includes, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of Contractor's commitments under the provisions herein and post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by

regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- f. In the event of Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further federal and State contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. Contractor will include these provisions set forth under this Section # in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

(Medi-Cal Contract, Exhibit D(f), Section 1.)

EXHIBIT “H”

Certificate of Destruction

Certificate No: [Click here to enter text.](#)

Request Date	Click here to enter a date.
Requested By	Click here to enter text.
Case/Client Matter	Click here to enter text.

Data Destruction Scope	
Area	Action
Email	
Local Email Clients	Choose an item.
Email Servers	Choose an item.
Network Storage	
Network Data Storage	Choose an item.
Shared Drives	Choose an item.
Third Party Service Providers	
Cloud Storage Locations	Choose an item.
SaaS Providers	Choose an item.
Data Centers	Choose an item.
Backups	
Archived Data	Choose an item.
Electronic Media	
Hard Drives, USB Media, CD, DVD	Choose an item.
FTP	Choose an item.
Other	
Other	Choose an item.

The undersigned hereby certifies that all original and copies of the above identified data residing in the above identified areas have been destroyed in accordance with National Institute of Standards and Technology Guidelines for Media Sanitization (NIST 800-88 Rev. 1)

<i>Business Associate Representative</i>	<i>Signature</i>	<i>Date Actioned</i>
Click here to enter text.		Click here to enter a date.

EXHIBIT I

D-SNP REQUIREMENTS

This Exhibit sets forth Medicare program requirements that are required to be included in this Agreement with respect to the provision of services under a Medicare Advantage Part C plan, including any D-SNP, the CMS Contract, and the State Medicaid Agency Contract (“SMAC”). This Exhibit will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Exhibit and any other provision of the Agreement, this Exhibit will control with respect to services performed in relation to KHS’ Medicare Advantage program. Capitalized terms utilized in this Exhibit will have the same meaning ascribed to them in the Agreement unless otherwise set forth in this Exhibit. To the extent a capitalized term is not otherwise defined in the Agreement nor this Exhibit, it shall have the same meaning ascribed to it in the SMAC.

Definitions:

Centers for Medicare and Medicaid Services (“CMS”): the agency within the Department of Health and Human Services that administers the Medicare program.

Completion of Audit: completion of audit by the Department of Health and Human Services (“DHHS”), the Government Accountability Office, or their designees of a Medicare Advantage Organization, Medicare Advantage Organization contractor, or Related Entity.

Downstream Entity: any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the MA benefit, below the level of the arrangement between an MA Organization (or applicant) and a First Tier Entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

Final Contract Period: the final term of the contract between CMS and KHS.

First Tier Entity: any party that enters into a written arrangement, acceptable to CMS, with an MA Organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program. Contractor is deemed a First Tier Entity.

Medicare Advantage (“MA”): an alternative to the traditional Medicare program in which plans run by health insurance companies provide health care benefits that eligible beneficiaries would otherwise receive directly from the Medicare program.

Medicare Advantage Organization (“MA Organization”): a public or private entity organized and licensed by a State as a risk-bearing entity (with the exception of provider-sponsored organizations receiving waivers) that is certified by CMS as meeting the MA contract requirements. KHS is deemed an MA Organization.

Member or Enrollee: a Medicare Advantage eligible individual who has enrolled in or elected coverage through KHS.

Related Entity: any entity that is related to the MA Organization by common ownership or

control and (1) performs some of the MA Organization's management functions under contract or delegation; (2) furnishes services to Medicare enrollees under an oral or written agreement; or (3) leases real property or sells materials to the MA Organization at a cost of more than \$2,500 during a contract period.

Terms:

1. Downstream Compliance. Contractor agrees (and will require its Downstream and Related Entities to agree in writing) to all the provisions contained in this Exhibit. (42 CFR 422.504(i)(2).)
2. Right to Audit. DHHS, the Comptroller General, and other regulatory agencies, or their designees, have the right to audit, evaluate, collect, and inspect any books, contracts, records, computer or other electronic systems, including medical records and patient care documentation that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the SMAC or CMS Contract if applicable, or as the Secretary may deem necessary to enforce the SMAC or CMS Contract if applicable. Contractor agrees to make available, for the purposes specified in 42 CFR 422.504(d), its premises, physical facilities and equipment, and records relating to Medicare enrollees, and any additional relevant information that CMS may require. Contractor must maintain such records and other information for ten (10) years from the end date of the CMS Contract or the completion date of an audit, whichever is later. DHHS, the Comptroller General, other regulatory agencies, or their designee's right to inspect, evaluate, and audit extends through ten (10) years from the end of the Final Contract Period or Completion of Audit, whichever is later. (42 CFR 422.504(e)(2)–(4) and 422.504(i)(2)(ii).)
3. Hold Harmless. Contractor agrees under no circumstance will a KHS Medicare enrollee be liable for payment of any fees to Contractor that are the legal obligation of KHS. (42 CFR 422.504(g)(1)(i), 422.504(g)(1)(iii), and 422.504(i)(3)(i).)
4. Accountability/Delegation. KHS will oversee and continually monitor Contractor's performance and remains accountable to CMS. KHS only delegates activities or functions to Contractor in a manner consistent with the requirements set forth in 42 CFR 422.504(i)(4). CMS and KHS reserve the right to revoke the delegation of activities and reporting responsibilities or to specify other remedies in instances where KHS or CMS determines Contractor has not performed satisfactorily. (42 CFR 422.504(i)(3)(ii) and 42 CFR 422.504(i)(4)(ii).)
5. Contract Compliance. Any Services or activities performed by Contractor must be consistent and comply with KHS contractual obligations to DHCS and CMS. (42 CFR 422.504(i)(3)(iii).)
6. Selection of Providers, Contractors, or Subcontractors. To the extent KHS delegates the selection of providers, contractors, or subcontractors to Contractor, KHS retains the right to

approve, suspend, or terminate any such arrangement. (42 CFR 422.504(i)(5).)

7. Confidentiality. Contractor shall comply with the confidentiality and enrollee record accuracy requirements set forth in 42 CFR 422.118. (42 CFR 422.504(a)(13).)
8. Reporting. To the extent applicable, Contractor agrees to provide relevant data to support KHS in complying with the requirements set forth in 42 CFR 422.516 and 42 CFR 422.310. (42 CFR 504(a)(8).)
9. Compliance with Medicare Laws and Regulations. Contractor shall comply with all applicable Medicare laws, regulations, and CMS instructions. Contractor must also comply with DHCS guidance, such as the guidance in the CalAIM D-SNP Policy Guide. To the extent State guidance, conflicts with Medicare requirements or regulation, Contractor shall comply with Medicare requirements and regulations. For purposes of this provision, State guidance only conflicts with Medicare requirements or regulations to the extent that the guidance requires conduct that would violate Medicare requirements or regulations. (42 CFR 422.504(i)(4)(v); SMAC, Exhibit A, Attachment 1, Section 7.)
10. Credentialing. Contractor agrees any medical credentials of medical professionals affiliated with Contractor will be either reviewed by KHS; or Contractor's credentialing process will be reviewed, approved, and audited on an ongoing basis by KHS. (42 CFR 422.504(i)(4)(iv).)
11. Preclusion List. To the extent applicable, Contractor shall ensure payments are not made to individuals and entities included on the preclusion list as defined in 42 CFR 422.2. (42 CFR 422.504(i)(2)(v).)
12. Debarment and Suspension Certification. By signing the Agreement, Contractor agrees to comply with applicable Federal suspension and debarment regulations, including, but not limited to, 7 CFR 3017, 45 CFR 76, 40 CFR 32, and 34 CFR 85. Contractor further certifies to the best of its knowledge and belief, that it and its principals: a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; b) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in the preceding clause; d) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, State or local) terminated for cause or default; e) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and f) Will include a

clause entitled “Debarment and Suspension Certification” that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (SMAC, Exhibit D(F), Section 19.)

13. Integrated Appeals and Grievances. The parties acknowledge KHS provided information about KHS’ Integrated Appeals and Grievance system, including, at a minimum, information on Integrated Appeals, Integrated Grievances, State Hearings, and Independent Medical Review (IMR) procedures and timeframes, as applicable, to Contractor at the time the parties entered into this Agreement. (SMAC, Exhibit A, Exhibit 1, Section 20.B.)

EXHIBIT “J”

DMHC ADMINISTRATIVE SERVICES REQUIREMENTS

This Exhibit sets forth provisions that are required to be included in certain agreements pursuant KHS’s license with the DMHC, and other provisions necessary to reflect compliance with Applicable Requirements. Any citations in this Exhibit are to the applicable sections of the Knox-Keene Health Care Service Plan Act of 1975 as contained in Health and Safety Code Section 1340 et seq. (“Section(s)”), and the regulations promulgated thereunder as set forth in Title 28 of the California Code of Regulations (“Rule(s)”) (collectively, “Knox-Keene Requirements”). This Exhibit will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Exhibit and any other provision of the Agreement, the parties agree the most stringent requirement will control. If a capitalized term used in this Exhibit is not defined in the Agreement or this Exhibit, it will have the same meaning ascribed to it in the Knox-Keene Requirements.

1. **Books and Records.** To the extent required by the Knox-Keene Requirements or other applicable laws (a) Contractor shall maintain and make available to KHS, DMHC, and any other state or federal agency (“Regulatory Agency”) having an interest in the subject of this Agreement, accurate books and records relative to all of Contractor’s activities under this Agreement for a period of at least five (5) years; and (b) a paper or electronic copy of such books and records must be available in California in order to permit KHS, DMHC, and Regulatory Agency to audit, examine, copy, review, and inspect all invoices, materials, records, or other data related to matters covered by this Agreement. (Sections 1381, 1382(a), and 1385; Rules 1300.81, 1300.85, and 1300.85.1.)
2. **Confidentiality of Medical Information Act.** To the extent applicable, Contractor shall comply with the provisions of the Confidentiality of Medical Information Act, Civil Code §56 et seq. (Section 1348.5.)
3. **Liability.** Contractor agrees that Contractor and KHS are each responsible for their own acts or omissions and are not liable for the acts or omissions of, or the costs of defending others. (Section 1371.25.)
4. **Proper Licensure/Certification of Contracted Personnel & Equipment.** To the extent applicable, Contractor represents and warrants that it shall, at all times during the term of the Agreement, hold any necessary licenses, certifications, or accreditations that, to its knowledge, are necessary to perform its obligations under this Agreement, with no restrictions or other limitations that would prevent it from performing its obligations under this Agreement, and shall ensure that personnel employed by or under contract with Contractor and who are performing any obligations under this Agreement hold any necessary licenses, certifications, or accreditations that, to Contractor’s knowledge, are necessary for such personnel to perform such obligations under this Agreement, with no restrictions or other limitations that would prevent such personnel from performing such obligations under this Agreement. To the extent applicable, Contractor further represents and warrants that any and all equipment utilized for the performance of Services or obligations under this Agreement shall be licensed or registered as required by law. To the extent required by the Knox-Keene Requirements or other applicable laws, upon request, Contractor shall provide KHS with a copy of such licenses, certifications, accreditations, registrations, and any renewals thereof. (Section 1367(b)–(c).)
5. **Administrative Capacity.** Contractor shall maintain the organizational and administrative capacity to perform its obligations under this Agreement. (Section 1367(g); Rule 1300.67.3.)

6. Audits & Inspections. To the extent required by the Knox-Keene Requirements or other applicable laws, Contractor shall cooperate with and allow access to KHS, DMHC, and applicable Regulatory Agency for the purposes of audits, inspections, examinations, and any other reviews necessary to ensure proper performance of the terms of the Agreement and as required by law. (Sections 1381 and 1382(a); Rules 1300.82 and 1300.82.1.)
7. Corrective Actions. To the extent required by the Knox-Keene Requirements or other applicable laws, Contractor agrees to promptly implement any corrective actions dictated by KHS in the event there is a failure of performance on behalf of Contractor. (Rule 1300.51(d)(N)(2).)
8. Language Assistance Program. To the extent required by the Knox-Keene Requirements or other applicable laws, Contractor shall comply with the KHS's language assistance program developed pursuant to Section 1367.04 and Rule 1300.67.04. (Section 1367.04; Rule 1300.67.04.)
9. Compliance. Contractor represents and warrants that it shall perform, and shall ensure any approved subcontractor performs, its obligations under this Agreement in compliance with all applicable Knox-Keene Requirements. (Section 1367(j).)
10. Delegation & Assignment. In the event Contractor wants to subdelegate any of the any Services performed under this Agreement and/or assign any of its obligations under this Agreement, in whole or in part, Contractor shall obtain KHS's prior approval, which is subject to the approval of any required Regulatory Agency. Contractor will provide KHS with all downstream agreements related to the performance of Services under this Agreement. Contractor shall regularly report to KHS on the performance of any subcontractor. Contractor shall timely submit all requested reports from KHS regarding any subcontractor's performance of Services. Contractor shall timely notify KHS of any termination of a downstream agreement relating to the performance of Services under this Agreement. (Sections 1352 and 1367(g); Rules 1300.52, 1300.52.1, 1300.52.4, and 1300.67.3.)