

**PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**<<Type of Service>>**

**BETWEEN**

**KERN HEALTH SYSTEMS**

**AND**

**<<Subcontractor's Name>>**

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## 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**, and continue until 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 35**; 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”**; 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.

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 Return of KHS 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, upon written request of the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.
5. **Assignment and Delegation.** No contract or agreement shall be made by Contractor with any party for the furnishing of any of the work or Services described in this Agreement (“**Subcontractors**”), without KHS’s prior written consent. This provision shall not require the approval of employment contracts or agreements between Contractor and personnel that have been specifically named in this Agreement or in any attachments hereto. Subcontractors do not include third parties who provide support or incidental services to Contractor and no prior written approval is necessary. This Agreement shall not be assigned by either party, either in whole or in part, without prior written consent of the other party. Notwithstanding the foregoing, Contractor expressly agrees that any assignment or delegation of this Agreement shall be void unless prior written approval is obtained from DHCS and DMHC where required by applicable law.
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. 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, modifications, or terminations, 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, modification, or termination 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 acknowledges that each party, in connection with its business, has developed certain operating manuals, symbols, trademarks, trade names, service marks, designs, patient lists, procedures, processes, and other copyrighted, patented, trademarked, or legally protectable information which is confidential and proprietary to the party that constitute its trade secrets. The parties shall not use any name, symbol, mark, 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.** Controversies between the parties with respect to this Agreement, or the rights of either party, or with respect to any transaction contemplated by this Agreement, shall be resolved, to the extent possible, by informal meetings and discussions among appropriate representatives of the parties.
25. **Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in **Exhibit "E,"** attached hereto and incorporated herein by this reference.
26. **Modifications of Agreement.** No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the governing board of KHS may authorize any modification or revision of this Agreement on behalf of KHS. The parties expressly recognize that KHS personnel, including the Chief Executive Officer are without authority to either change or waive any requirements of this Agreement. Any 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.

Notice to DHCS and DMHC is considered given when properly addressed and deposited in the United States Postal Services as first-class registered mail, postage attached.

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

37. **Effect of Termination.**

- 37.1 Delivery of Work Product and Final Payment upon Termination. In the event of termination, Contractor, within fourteen (14) days following the date of termination, shall deliver to KHS all Documents subject to **Section 12.5** (Ownership of Records) and shall submit to KHS an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 37.2 Payment upon Termination. Upon termination of this Agreement by KHS, Contractor shall be entitled to receive as full payment for all services 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 35.2**, 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 ON 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:  
OFFICE OF COUNTY COUNSEL

By: Ann Story Garza  
Deputy County 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. [DESCRIBE CONTRACTOR’S SERVICES]**

**3. IMPLEMENTATION AND SUPPORT SERVICES**

[DESCRIBE PROCESS]

**4. KHS RESPONSIBILITIES**

[DESCRIBE ANY KHS RESPONSIBILITIES AND DEADLINES SPECIFIC TO SERVICES]

**5. FEES AND PAYMENT TERMS**

Any fees associated with this Scope of Work are detailed in the Exhibit B.

**6. TERM AND TERMINATION**

- (a) The term of this Scope of Work shall remain in effect for [INSERT TERM] from the Scope of Work Effective Date (“**Scope of Work Term**”). Following the Scope of Work term, KHS shall have the option to renew this Scope of Work for [INSERT RENEWAL PERIOD IF APPLICABLE].
- (b) Either Party may terminate this Scope of Work in accordance with the Agreement or otherwise at any time if changes in regulations prevent either party from being able to perform their duties under this Scope of Work.

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.

KHS:

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

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

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

CONTRACTOR:

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

Name:

\_\_\_\_\_

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

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

**EXHIBIT “B”**  
**SCHEDULE OF FEES**  
<<Contractor’s Name>>

**[DESCRIBE FEES/COMPENSATION]**

**1. PACKAGES**

KHS is ordering the Package selected below.....

**2. PRICING AND FEES**

The fees associated .....

**3. GEOGRAPHIC SCOPE**

Contractor shall provide the services selected to the KHS plan(s) in California.

**EXHIBIT “C”**

**IRS FORM W-9**

## **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: <<insert contract number or project name>>.
- (b) All required Evidence of Insurance shall be submitted prior to the execution of this



Agreement. Contractor agrees to maintain current Evidence of Insurance on file with KHS for the entire term of this Agreement and any additional periods if specified in sections 1, 2 or 3 above.

- (c) The name and address for Additional Insured endorsements and Certificates of Insurance is: Kern Health Systems, 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.

[Intentionally left blank]

**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**

☐

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.

☐

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.

☐

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.

☐

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.

☐

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: \_\_\_\_\_

☐

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**

<b>Vendor</b>	<b>Kern Health Systems</b>
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 provided by Contractor. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.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 *et seq.*; 22 CCR Sections 53800 *et seq.*; and 22 CCR Sections 53900 *et seq.* (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.B.7; 22 CCR 53250(c)(2).)
3. This Agreement and any amendments thereof will become effective only upon approval by DHCS in writing, or by operation of law where DHCS has acknowledged receipt of the Agreement and has failed to approve or disapprove the proposed Agreement or amendment thereof with sixty (60) calendar days of receipt. (Medi-Cal Contract, Exhibit A, Attachment III, Sections 3.1.6.B.4 and 3.1.2.B; 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 3.1.6.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 3.1.6.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 3.1.6.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, 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 3.1.6.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 3.1.6.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 3.1.6.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, Sections 3.1.6.B and 3.1.6.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, postage attached. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.B.17; 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 3.1.6.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 3.1.6.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 1.27 (*Litigation Support*).. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.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 3.1.6.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 3.1.6.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 3.1.6.B.23.)
20. Contractor must ensure that cultural competency, sensitivity, Health Equity, and diversity training is provided for Contractor's staff at key points of contact with Members. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.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 3.1.12.)
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; 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 3.1.6.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 3.1.6.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 3.1.6.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 3.1.6.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 3.1.6.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 1.17 (*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 3.1.6.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 3.1.6.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. (Medi-Cal Contract, Exhibit A, Attachment III, Section 3.1.6.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 3.1.6.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 3.1.6.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 A.)

## EXHIBIT “H”

### Certificate of Destruction

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

<b>Request Date</b>	<a href="#">Click here to enter a date.</a>
<b>Requested By</b>	<a href="#">Click here to enter text.</a>
<b>Case/Client Matter</b>	<a href="#">Click here to enter text.</a>

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

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>
<a href="#">Click here to enter text.</a>		<a href="#">Click here to enter a date.</a>

## **EXHIBIT “I” IRSM REQUIREMENTS**

This Information Risk Strategy Management (“IRSM”) exhibit supplements the body of the contract. If there is any conflict between the provisions of this exhibit and the body of the contract or a Work Order, the terms of this exhibit prevail to the extent of the conflict.

### **1. DEFINITIONS**

**“Company Assets”** means information systems, including hardware, software, and Company Information that are owned, licensed, leased, operated, or controlled by Company.

**“Information Protection Safeguards”** means measures for preventing loss, alteration, or unauthorized use of Company Information during accessing, storage, processing, or transmission of Company Information.

**“Security Compromise”** means any actual or reasonably suspected vulnerability, breach, denial, exfiltration, hacking, destruction, or other misuse of Company Assets that compromises (A) the safety of personnel or the region, (B) Personal Data, (C) the confidentiality, integrity, or availability of Company Assets, or (D) the operations of Company or any other affiliates.

**“Vulnerability”** means any deficiency, susceptibility, omission, defect, or vulnerability in the use of equipment’s, deliverables or Contractor obligations that may comprise the integrity or security of Company Assets.

### **2. INFORMATION PROTECTION SAFERGUARDS**

- 2.1. Contractor shall establish and maintain Information Protection Safeguards that comply with industry standards, including XXXXXXXXXXXX and any specific measures agreed to by the Parties in a Work Order resulting from an information risk assessment conducted by KHS. Contractor to provide Company Information required to validate compliance with Information Protection Safeguards

### **3. SECURITY COMPROMISES**

- 3.1. Reporting and Advisories. Contractor shall report to KHS any Security Compromise immediately after Contractor believes that the Security Compromise has occurred. Within XX days, Contractor shall provide to KHS a written confirmation of the Security Compromise and any advisories received by Contractor relating to third-party products in the Work.
- 3.2. Incident Response. Contractor shall promptly implement an incident response plan in the event of a Security Compromise. Contractor shall provide KHS with the name and contacting information of a Contractor employee to serve as the primary security contact. Contractor shall provide KHS with uninterrupted access to Contractor’s incident analysis related to the Security Compromise.
- 3.3. Cooperation. Contractor shall assist KHS with any investigation related to a Security Compromise, and making available all records, logs and other information required to comply with Applicable Law, industry standards or KHS’s request.

3.4. Correction Obligation. Contractor shall immediately remedy a Security Compromise and take all actions to minimize the impact to KHS and to prevent any further Security Compromise.

4. **WARRANTIES.**

4.1. Contractor has performed dynamic application security testing and has taken other reasonable actions to ensure the Work does not contain vulnerabilities that compromise the integrity or security of KHS assets. Contractor shall promptly remediate at Contractor's sole cost and expense should Contractor later become aware of changes.

5. **IT COMPLIANCE REPORTS**

6. **MONITORING AND INSPECTION of REMOVABLE STORAGE DEVICES**