

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 obligations; and
- (b) Contractor has offered evidence of having the relevant specialized training, experience and knowledge and is interested in providing the scope of work as set forth herein; and,
- (c) KHS desires to engage Contractor to provide said services on the terms and conditions set forth in this Agreement;

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

1. **Term.**

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 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 “F”**; and KHS policies and procedures. 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.

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

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

4. Access to Books and Records. Until the expiration of ten (10) years after the expiration or termination of this Agreement 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, except that << Contractor’s Name >> may assign this Agreement in the event of a sale or transfer of substantially all of its assets. 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), DMHC, and other authorized State agencies, or their duly authorized representatives or Designees, including DHCS’ External Quality Review Organization (EQRO) contractor, including authorized State and federal agencies to audit, inspect, monitor, examine and otherwise evaluate the quality, appropriateness, and timeliness of Services performed under this Agreement, and to inspect, evaluate, and audit any and all premises, books, records, equipment, and physical facilities, contracts, computers, or other electronic systems maintained by Contractor and Subcontractors pertaining to these Services at any time, pursuant to 42 CRF 438.3(h). 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 Agreement 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.

6.2 **Inspection and Audit.** Contractor shall furnish any record, or copy of it, to DHCS or any other entity listed in this Section, at Contractor's sole expense. Contractor shall allow authorized agencies listed in this Section, 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. 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 or vendor questionnaire's provided by KHS.

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. **Confidentiality.**

12.1 **Use and Disclosure Restrictions.** Neither party shall, without the written consent of the other, communicate Confidential Information of the other, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent

disclosure to any third party in the same manner that the receiving party would protect its own confidential information. 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.

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

12.3 Medical Records. Contractor agrees to maintain the confidentiality of all medical records pertaining to the provision of services under this Agreement in accordance with applicable federal and state laws and regulations including, but not limited to, the California Confidentiality of Medical Information Act, codified at section 56.10 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.

12.4 Protected Health Information. Contractor and KHS recognize that in performing services, Contractor may receive, create, or otherwise have access to Protected Health Information (“**PHI**”) 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.

12.5 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.

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

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

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

16. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. **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.

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

- Description of whether the Contractor has experienced or expects to experience any disruption to operations;
- Explanation of how the Contractor is communicating with potentially impacted enrollees; and,
- Summary of actions the Contractor has taken or is in process of taking to ensure the health care needs of enrollees are met.

18. **Disqualified Persons.** The parties mutually represent and warrant to one another that they and their respective representatives are not: (a) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. section 1320a-7b-(f) (the “**Federal health care programs**”) and/or present on the exclusion database of the Office of the Inspector General (“**OIG**”) or the Government Services Administration (“**GSA**”); (b) convicted of a felony; (c) convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (d) debarred, suspended, excluded or disqualified by any federal governmental agency or department or otherwise declared ineligible from receiving federal contracts or federally approved subcontracts or from receiving federal financial and nonfinancial assistance and benefits. This shall be an ongoing representation and warranty during the term of this Agreement and a party shall immediately notify the other party of any change in the status of any of the representations and/or warranties set forth in this section. Any breach of this section shall give the non-breaching party the right to terminate this Agreement immediately.

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

20. **Immigration Compliance.** Contractor shall comply with all provisions of immigration law with respect to hiring, recruiting or referring for employment persons whose authorization for employment in the United States has been verified. 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.

21. **Indemnification and Hold Harmless.**

21.1 **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.

21.2 **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.

22. **Independent Contractor.** In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of 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.

23. **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.

24. **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.

25. **Modifications of Agreement.** No alteration, amendment, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Only the governing board of KHS may authorize any modification or revision of this Agreement on behalf of KHS. The parties expressly recognize that KHS personnel, including the Chief Executive Officer are without authority to either change or waive any requirements of this Agreement. Any subcontract or amendment shall become effective only upon approval by DHCS in writing, or by operation of law where the DMHC and DHCS have acknowledged receipt of the proposed subcontract or amendment, and has failed to approve or disapprove the proposed subcontract or amendment within 30 calendar days of receipt. KHS shall notify DMHC 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.

26. **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 Director deems 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.

27. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to KHS and Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of KHS and Contractor that any such person or entity, other than KHS or Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

28. **Non-collusion Covenant.** Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KHS. Contractor has received from KHS no incentive or special payments, nor considerations, not related to the provision of services under this Agreement.

29. **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. 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); Title 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; and

Section 1557 of the Patient Protection and Affordable Care Act, to be included in this Agreement are incorporated herein by this reference. Contractor understands and agrees that administrative methods and/or procedures which have the effect of subjecting individuals to discrimination or otherwise defeating the objectives of the applicable and aforementioned laws shall be prohibited.

30. **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.

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

Notice to Contractor:

<<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

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

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

34. **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 Contractors specified timeframe referenced in Exhibit A.

35. **Termination.**

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

35.2 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 Federal 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.

35.3 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 90 days' notice of such event.

35.4 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.

36. **Effect of Termination.**

36.1 Delivery of Work Product and Final Payment upon Termination. In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to KHS all 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.

36.2 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.

36.3 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.

36.4 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.

37. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

38. 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.

39. Governing Law. This Agreement shall be interpreted according to the laws of the State of California and shall be subject to all applicable state and federal laws.

[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: Gurujodha S. Khalsa
Chief Deputy
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 “D”
HIPAA BUSINESS ASSOCIATE ADDENDUM
<<Contractor’s Name>>

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

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

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

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

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

1. Definitions

The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA Rules. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

Catch-all definition:

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

Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean <<Contractor’s Legal Name>>.

- (b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Addendum, shall mean Kern Health Systems.
- (c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Privacy Rule. “Privacy Rule” shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- (e) Security Rule. “Security Rule” shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- (f) Protected Health Information (PHI). “Protected Health Information” or “PHI” shall mean individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103 and shall include the for the purposes of this Addendum Personal Information (PI) and Electronic Protected Health Information (ePHI).
- (g) Personal Information (PI). “Personal Information” or “PI” shall have the meaning given to such term in California Civil Code section 1798.29.
- (h) Electronic Protected Health Information (ePHI). “Electronic Protected Health Information” or “ePHI” shall mean individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- (i) Breach. “Breach” shall have the same meaning as the term “Breach” at 45 CFR 160.103.
- (j) Security Incident. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, ePHI, or PI, or confidential data that is essential to the ongoing operation of the Business Associate’s organization and intended for internal use; or interference with system operations in an information system as set forth under 45 CFR section 164.304.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as Required by Law;
- (b) Make available Protected Health Information in a designated record set to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524;

- (c) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (d) Maintain and make available the information required to provide an accounting of disclosures made by Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (e) Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to Covered Entity, DHCS, DMHC, or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the requestor for the purposes of determining compliance with the HIPAA Rules.
- (f) Assist in Litigation or Administrative Proceedings requirement that the Business Associate shall make itself and its employees, and use all due diligence to make any agents assisting Business Associate in the performance of its obligations under this Contract, available to Covered Entity, State, or Federal Agencies at no cost to Covered Entity or Agencies to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, State, or Federal Agencies, its directors, officers or employees based upon claimed violation of HIPAA Rule or other laws relating to security and privacy, except where Business Associate or its agents, employee or agent is a named adverse party.
- (g) Comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s), to the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164;
- (h) Use appropriate safeguards and security to comply under Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Underlying Agreement;

i. Safeguards. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, uses or transmits on behalf of Covered Entity; and to prevent use or disclosure of PHI other than as provided for by the Underlying Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164. 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 the Business Associate's operations and the nature and scope of its activities Business Associate will provide to Covered Entity its current and updated policies.

ii.Security. To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and to protect paper documents containing PHI. These steps shall include, at a minimum: (a) Comply with all of the data system security precautions listed in the underlying agreement the Business Associate Data Security Requirements; (b) Achieve and maintain compliance with the HIPAA Rules (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of Covered Entity under this Agreement; (c) Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with Covered Entity.

- (i) Comply with the required Personal Controls under 45 CFR Part 164 for all individuals who assist, access, or disclose PHI in the performance of the functions or activities; and

i.Confidentiality Statement. All persons that will be working with PHI must sign a confidentiality statement supplied by the Business Associate. The statement must include at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to PHI. The statement must be renewed annually. The Business Associate shall retain each person's written confidentiality statement for Covered Entity's inspection for a period of six (6) years following contract termination.

ii.Background Check. Before a member of the Business Associate's workforce may access PHI, Business Associate must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Business Associate shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

- (j) Comply with the required Technical Security Controls under 45 CFR Part 164 for all types of electronic media or workstations that process and store PHI; and

i.Workstation/Laptop Encryption. All workstations and laptops that process and/or store PHI must be encrypted with a Covered Entity approved solution or using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disc unless approved by the Covered Entity's Information Security Department.

ii.Minimum Necessary. Only the minimum necessary amount of PHI required to perform necessary business functions may be copied, downloaded, or exported.

iii.Removable Media Devices. All electronic files that contain PHI data must be encrypted when stored on any removable media or portable device type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with a Covered Entity approved solution as specified in the paragraph (i) of this section.

- iv.Email Security. All emails that include PHI must be sent in an encrypted method using a Covered Entity approved solution as specified in the paragraph (i) of this section.
- v.Antivirus Software. All workstations, laptops, and other systems that process and/or store PHI must install and actively use a comprehensive anti-virus solution with automatic updates scheduled at least daily.
- vi.Patch Management. All workstations, laptops, and other systems that process and store PHI must have critical security patches applied and up-to-date, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and recommendations.
- vii.User IDs and Password Controls. All users must be issued a unique username for accessing PHI. (a) Passwords are not to be shared; (b) Must be at least eight (8) characters; (c) Must be a non-dictionary word; (d) Must not be stored in readable format on the computer; (e) Must be changed every sixty (60) days; (f) Must be changed if revealed or compromised; (g) Must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- viii.Data Destruction. All PHI data must be destroyed using the Gutmann or US Department of Defense (DOD) 5220.22-M (7 Pass) standard methods, or by degaussing methods for data destruction when the PHI data is no longer needed. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Covered Entity's Information Technology Department.
- ix.Remote Access. Any remote access to PHI must be executed over an encrypted method approved by Covered Entity as specified in the paragraph (i) of this section. All remote access must be limited to minimum necessary and least privilege principles.
- x.System Timeout. The system providing access to PHI must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
- xi.Warning Banners. All systems containing PHI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
- xii.System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI or which alters PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If PHI is stored in a database, database

logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- xiii. Access Controls. The system providing access to PHI must use role-based access controls for all user authentication, enforcing the principle of least privilege.
 - xiv. Transmission Encryption. All data transmissions of PHI must be encrypted end-to-end using the approved solution as specified in the paragraph (i) of this section. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.
 - xv. Intrusion Detection. All systems that are involved in accessing, holding, transporting, and protecting PHI that is accessible via the Internet or store must be actively protected by use of a comprehensive third-party real-time host-based intrusion detection and prevention solution.
- (k) Comply with the required Audit Controls under 45 CFR Part 164 for all systems processing and storing PHI; and
- i. System Security Review. All systems processing and storing PHI must have at least an annual system security review to assure that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews must include administrative and technical vulnerability scanning tools.
 - ii. Log Reviews. All systems processing and storing PHI must have a routine procedure in place to review system logs for unauthorized access. Logs must be maintained for six (6) years after the occurrence.
 - iii. Change Control. All systems processing and storing PHI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
- (l) Comply with required Paper Document Controls under 45 CFR Part 164 for PHI; and
- i. Supervision of Data. (a) PHI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. (b) PHI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes. Unattended means that information is not being observed by an employee authorized to access the information.
 - ii. Escorting Visitors. Visitors to areas where PHI is contained shall be escorted and PHI shall be kept out of sight while visitors are in the area.
 - iii. Confidential Destruction. PHI must be disposed of through confidential means, such as shredding and pulverizing.

- iv. Removal of Data. PHI must not be removed from the premises of the Contractor except for routine business purposes or with the express written permission of Covered Entity.
 - v. Faxing. Faxes containing PHI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
 - vi. Mailing. PHI shall be sealed and secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include large volume (500 or more) mailings of PHI in a single package shall be securely sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of Covered Entity to use another method is obtained. Any electronic other transportable media sent through the mail must be encrypted.
- (m) Have required Business Continuity / Disaster Recovery Controls under 45 CFR 164; and
- i. Emergency Mode Operation Plan. Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic PHI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
 - ii. Data Backup Plan. Contractor must have established documented procedures to backup PHI data to maintain retrievable exact copies of PHI. The plan must include a regular schedule for making backups, storing backup's offsite, an inventory of backup media, and the amount of time to restore PHI data should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of PHI data.
- (n) Report to Covered Entity any use or disclosure of PHI not provided for by the Underlying Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware; and Implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
- i. Notify to Covered Entity's Information Technology Department immediately by telephone call plus e-mail or fax upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident.
 - ii. Notify to Covered Entity's Information Technology Department within twenty-four (24) hours by email or fax of the discovery of any suspected security incident, intrusion or unauthorized access, use, or disclosure of PHI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising

reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

- iii. Notice shall be provided to the Covered Entity's Information Technology Department, if the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Covered Entity's Information Technology Department.
- iv. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take: (a) Promptly operate a corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; (b) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- v. Immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Business Associate shall notify the Covered Entity's Information Technology Department of: (a) What data elements were involved and the extent of the data involved in the breach; (b) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (c) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (d) A description of the probable causes of the improper use or disclosure; (e) Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
- (o) Provide a completed report of the investigation to the Covered Entity's Information Technology Department within ten (10) working days of the discovery of the breach or unauthorized use or disclosure; the report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- (p) Ensure that any agents, including subcontractors and vendors that create, receive, maintain, or transmit protected health information or personal information on behalf of Business Associate agree to comply to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable.
- (q) Provide Covered Entity with a list of external entities, including persons, organizations, and agencies, other than those within its treatment network and other than Covered Entity, to which it discloses lists of Member names and addresses. This list will be provided upon request.
- (r) Mitigate to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its Subcontractors in violation of the requirements of this Addendum.

- (s) Exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA Rules, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- (t) Comply with the provisions of HIPAA Rules that are applicable to Business Associate and understands failure to comply may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA Rules.
- (u) Apply the most stringent standard in case of a conflict between any of the HIPAA Rules contained in any of these enumerated sources of privacy and security standards. The most stringent means one that provides the highest level of protection to PHI, ePHI, and PI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

3. Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only Use or Disclose Protected Health Information as necessary to perform functions, activities or services set forth in the Underlying Agreement.
- (b) Business Associate activities which are for purposes directly connected with the administration of the Medi-Cal program include, but are not limited to: (a) establishing eligibility and methods of reimbursement; (b) determining the amount of medical assistance; (c) providing services for Members; (d) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Medi-Cal program; (e) conducting or assisting a legislative investigation or audit related to the administration of the Medi-Cal program.
- (c) Business Associate may use or disclose Protected Health Information as required by law.
- (d) Business Associate may use or disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Business Associate may provide data aggregation services relating to the Health Care Operations of Covered Entity.
- (f) Business Associate agrees to make Uses, Disclosures, and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.

- (g) Business Associate may not divulge the Medi-Cal status of a Covered Entity Members without Covered Entity's prior approval except for treatment, payment and operations, or as required by law.
- (h) Business Associate shall not disclose Protected Health Information about an individual to a health plan for payment or health care operations purposes if the Protected Health Information 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 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
- (i) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth below.
- (j) Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by 42 U.S.C. section 17935(d)(2).

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

- (a) A Notice of Privacy Practices (NPP) in accordance with standards and requirements of HIPAA Rule, applicable State and Federal laws and regulations shall be provided. Such NPP's must include the Covered Entity's Privacy Officer contact information.
- (b) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (d) Covered Entity shall notify Business Associate of any restriction on the Use or Disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 and HIPAA Rules if done by Covered Entity, except for the specific uses and disclosures set forth set

forth in paragraphs (d) and (e) above under “Permitted Uses and Disclosures By Business Associate.”

6. Term and Termination

- (a) Term. The term of this Addendum shall commence effective as of <<effective date of underlying agreement>>, and shall terminate on the date upon which the Underlying Agreement, expires or terminates or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this section, whichever is sooner.
- (b) Termination for Cause. Business Associate authorizes termination of this Addendum by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Addendum and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
- (c) Obligations of Business Associate upon Termination. Upon termination of this Addendum for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
- i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that Business Associate still maintains in any form and provide an executed copy of the Certificate of Destruction attached as Exhibit G;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this section, for as long as Business Associate retains the Protected Health Information;
 - iv. Not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set forth in paragraphs (e) and (f) above under “Permitted Uses and Disclosures by Business Associate,” which applied prior to termination; and
 - v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities. Business Associate shall provide Covered Entity an executed copy of the “Certificate of Destruction” within 3 business days following the destruction of the Protecting Health Information.
- (d) Survival. The obligations of Business Associate under this section shall survive the

termination of this Addendum.

7. Miscellaneous

- (a) Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. All amendments to this Addendum shall be in writing and signed by both parties through a formal amendment to the Addendum.
- (c) Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.

- (d) Indemnification.

- i. Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its respective officers, directors, board members, elected and appointed officials, employees, agents and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, fines, penalties, and expenses (including, but not limited to, reasonable attorneys' fees of counsel retained by Covered Entity, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission (including, but not limited to, any material breach of this Addendum) of Business Associate and its respective officers, directors, agents, employees, subcontractors of any tier, or authorized representatives.

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

- iii. The Business Associate agrees to indemnify the state, DHCS, and its officers, agents, and employees for damages and costs related to actual or alleged breaches of HIPAA and the HITECH Act, as well as those related to member claims that the mobile application caused cellular data usage overages as a result of downloading, updating, or using the mobile application.
 - iv. The specified insurance limits required in the Underlying Agreement shall in no way limit or circumscribe Business Associate's obligations to indemnify, defend and hold harmless Covered Entity herein from third party claims arising out of or in any way relating to this Addendum.
 - v. In the event there is a conflict between this indemnification clause and the indemnification clause contained in the Underlying Agreement, this indemnification clause shall only apply to the subject issues set forth in this Addendum.
- (e) Injunctive Relief. Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized Use of Disclosure of Protected Health Information by Business Associate or any agent, contractor or third party that received Protected Health Information from Business Associate.
 - (f) Third Party Beneficiary. Unless otherwise set forth herein, nothing contained herein is intended, nor shall it be construed, to create rights running of the benefit of third parties.

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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.

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Vendor Data Transfer Check List

<<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, the 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 the 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.

<u>Initials</u>	<u>Data Transfer Checklist</u>
------------------------	---------------------------------------

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 blanche.
- 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 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. Upon no less than seven (7) days' written notice, and no more than once per calendar year, 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 “F”
SUBCONTRACTOR
MEDI-CAL ADDENDUM**

This Addendum 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 Addendum are to the applicable sections of the Medi-Cal Contract, or applicable law. This Addendum will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Addendum and any other provision of the Agreement, this Addendum will control with respect to Medi-Cal. Any capitalized term utilized in this Addendum will have the same meaning ascribed to it in the Agreement unless otherwise set forth in this Addendum. If a capitalized term used in this Addendum is not defined in the Agreement or this Addendum, it will have the same meaning ascribed to it in the Medi-Cal Contract. For purposes of this Addendum, “Subcontractor” means **Vendor**.

1. The parties acknowledge and agree that this Agreement specifies the services to be provided by Subcontractor. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.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. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.2; 22 CCR 53250(c)(2).)
3. This Agreement 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 with sixty (60) calendar days of receipt. Amendments to this Agreement will be submitted to DHCS for prior approval at least thirty (30) calendar days before the effective date of any proposed changes governing compensation, services, or term. Proposed changes that are neither approved nor disapproved by DHCS shall become effective by operation of law thirty (30) calendar days after DHCS has acknowledged receipt or upon the date specified in the Agreement amendment, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.3; 22 CCR 53250(c)(3) and 53867.)
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 and termination, are included in this Agreement. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.4; 22 CCR 53250(c)(4).)
5. Subcontractor agrees to submit reports as required by KHS. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.6; 22 CCR 53250(c)(5) and 53867.)

6. Subcontractor will comply with all monitoring provisions in the Medi-Cal Contract and any monitoring requests by DHCS. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.7; 42 CFR 438.3(h); 22 CCR Sections 53250(e)(1) and 53867.)
7. Subcontractor agrees to make all of its premises, facilities, equipment, books, records, contracts, computer, and other electronic systems pertaining to the goods and services furnished under the terms of the Agreement, available for the purpose of an audit, inspection, evaluation, examination or copying: (a) By KHS, DHCS, CMS, DHHS Inspector General, the Comptroller General, DOJ, DMHC, or their designees; (b) At all reasonable times at Subcontractor's place of business or at such other mutually agreeable location in California; (c) In a form maintained in accordance with the general standards applicable to such book or record keeping; (d) For a term of at least ten (10) years from final date of the Agreement period or from the date of completion of any audit, whichever is later; (e) Including all Encounter Data for a period of at least ten (10) years; (f) If DHCS, CMS, or the DHHS Inspector General determines there is a reasonable possibility of fraud or similar risk, DHCS, CMS, or the DHHS Inspector General may inspect, evaluate, and audit Subcontractor at any time; (g) Upon resolution of a full investigation of fraud, DHCS reserves the right to suspend or terminate Subcontractor from participation in the Medi-Cal program; seek recovery of payments made to Subcontractor; 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 6, 14.B.8; DHCS APL 17-004; 22 CCR 53250(e)(1) and 53867; 42 CFR 438.3(a).)
8. 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 Subcontractor from KHS. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.9; 22 CCR 53250(e)(2) and 53867.)
9. Subcontractor agrees to maintain and make available to DHCS, upon request, copies of all sub-subcontracts and to ensure that all sub-subcontracts are in writing and require that the Subcontractor: (a) Make all premises, facilities, equipment, applicable books, records, contracts, computer, or other electronic systems related to this Agreement, available at all reasonable times for audit, inspection, examination, or copying by DHCS, CMS, or the DHHS Inspector General, the Comptroller General, DOJ, and DMHC, or their designees; and (b) Retain all records and documents for a minimum of ten (10) years from the final date of the Agreement period or from the date of completion of any audit, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.10; 22 CCR 53250(e)(3); 42 CFR 438.3(u).)
10. Subcontractor agrees to notify DHCS in the event this Agreement 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 6, 14.B.13; 22 CCR 53250(e)(4) and 53867.)

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

11. Subcontractor agrees that assignment or delegation of the Agreement will be void unless prior written approval is obtained from DHCS. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.14; 22 CCR 53250(e)(5) and 53867.)
12. Subcontractor agrees to hold harmless both the State and Members in the event KHS cannot or will not pay for services performed by Subcontractor pursuant to this Agreement. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.15; 22 CCR 53250(e)(6) and 53867.)
13. Subcontractor agrees to timely gather, preserve, and provide to DHCS, any records in Subcontractor's possession in accordance with Exhibit E, Attachment 2, Provision 24. Records Related to Recovery for Litigation and Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.16.)
14. Subcontractor agrees to comply with all applicable requirements specified in: the Medi-Cal Contract and subsequent amendments, federal and state laws and regulations, and other DHCS guidance, including, but not limited to, Medi-Cal Managed Care Program Policy Letters and All Plan Letters. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.21.)
15. To the extent KHS delegates functions to Subcontractor, Subcontractor agrees to all remedies specified by the Agreement and the Medi-Cal Contract, including revocation of delegated functions, in instances where DHCS or KHS determine that the Subcontractor has not performed satisfactorily. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.22; 42 CFR 438.230(c)(iii); 22 CCR Section 53250 and 53867.)
16. KHS agrees to inform Subcontractor of prospective requirements added by DHCS to the Medi-Cal Contract before the requirement is effective, and Subcontractor agrees to comply with the new requirements within 30 days of the effective date, unless otherwise instructed by DHCS and to the extent possible. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.23; 42 CFR 438.208.)
17. Subcontractor agrees that it is prohibited from balance billing a Medi-Cal member. (Medi-Cal Contract, Exhibit A, Attachment 8, Provision 6.)
18. Parties agree and acknowledge that KHS will provide cultural competency, sensitivity, and diversity training to Subcontractor. (Medi-Cal Contract, Exhibit A, Attachment 9, Provision 13.E.)

19. Parties agree and acknowledge that Subcontractor shall have the right to access KHS's dispute resolution mechanism. (Health & Safety Code § 1367(h)(1).)
20. Subcontractor agrees to comply with KHS's Language Assistance Program standards developed and adopted pursuant to Health & Safety Code § 1367.04.
21. This Agreement and all information received from Subcontractor 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 Subcontractor, stockholders owning more than 5 percent of the stock issued by Subcontractor and major creditors holding more than 5 percent of the debt of Subcontractor will be attached to the Agreement at the time the Agreement is presented to DHCS. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.E.)
22. Subcontractor 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. Subcontractor's ownership and control disclosure information will be made available to DHCS, and upon request, the information is subject to audit by DHCS. (DHCS APL 17-004; 42 CFR 438.602(c); 438.608(c)(2).)
23. To the extent that Subcontractor is delegated responsibility by KHS for coverage of services and payment of claims under this Agreement, Subcontractor must implement and maintain policies and procedures that are designed to detect and prevent fraud, waste, and abuse. (Medi-Cal Contract, Exhibit E, Attachment 2, 26.B.1.)
24. KHS may impose corrective action and financial sanctions on Subcontractor upon discovery of noncompliance with this Agreement or other Medi-Cal requirements. (DHCS APL 17-004.)
25. Subcontractor represents and warrants that all data submitted by Subcontractor under this Agreement is complete, accurate, reasonable, and timely. (DHCS APL 17-004.)
26. Subcontractor represents and warrants that Subcontractor 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, Subcontractor represents and warrants that Subcontractor is not excluded from participation in any health care program under section 1128 or 1128A of the Social Security Act. (42 CFR 438.610.)
27. As applicable, Subcontractor agrees to provide interpreter services for Members at all Subcontractor sites. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.17.)

28. If applicable, this Agreement may contain Subcontractor's right to submit a grievance and KHS's formal process to resolve grievances. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.18.)
29. If applicable, Subcontractor agrees to participate and cooperate in KHS's Quality Improvement System. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.19.)
30. If KHS delegates Quality Improvement activities, the Agreement must include the provisions stipulated in the Medi-Cal Contract and at minimum: (a) Quality improvement responsibilities, and specific delegated functions and activities of KHS and Subcontractor; (b) KHS oversight, monitoring, and evaluation processes and Subcontractor agreement to such processes; (c) KHS reporting requirements and approval processes. The agreement must include Subcontractor responsibility to report findings and actions taken as a result of the quality improvement activities at least quarterly; (d) KHS actions/remedies if Subcontractor obligations are not met. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.20 and Exhibit A, Attachment 4, 6.A.)
31. In the event and to the extent Subcontractor is at risk for non-contracting emergency services, Subcontractor shall comply with the Medi-Cal Contract requirements with respect to Contracting & Non-Contracting Emergency Service Providers & Post-Stabilization. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.5.)
32. If appropriate, Subcontractor agrees to assist KHS in the transfer of care pursuant to Exhibit E, Attachment 2, Provision 14 and applicable provisions of the Medi-Cal Contract in the event of the Medi-Cal Contract termination. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.11.)
33. If appropriate, Subcontractor agrees to assist KHS in the transfer of care in the event of sub-subcontract termination for any reason. (Medi-Cal Contract, Exhibit A, Attachment 6, 14.B.12.)
34. To the extent Subcontractor is responsible for the coordination of care for Members, KHS agrees to share with Subcontractor any utilization data that DHCS has provided to KHS, and the Subcontractor agrees to receive the utilization data and use it as the Subcontractor is able for the purpose of Member care coordination. (Medi-Cal contract Exhibit A, Attachment 6, 14.B.23; 42 CFR 438.208.)
35. If applicable, Subcontractor agrees to submit to KHS complete, accurate, reasonable, and timely provider data needed by KHS in order for KHS to meet its provider data reporting requirements to DHCS. (Medi-Cal Contract, Exhibit A, Attachment 3, Provision 1.)
36. If applicable, Subcontractor agrees to submit to KHS complete, accurate, reasonable, and timely Encounter Data needed by KHS in order for KHS to meet its encounter data reporting requirements to DHCS. (Medi-Cal Contract, Exhibit A, Attachment 3, Provisions 2.C and 2.G.)

37. Subcontractor is entitled to any and all protections afforded them under the Health Care Providers' Bill of Rights pursuant to Health and Safety Code § 1375.7.

EXHIBIT “G”

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.