

PROFESSIONAL SERVICES AGREEMENT

TO

**Provide the ANSI X12 835 Health Care Remittance Transaction
with a format change from 4010 to 5010 in 2012**

BETWEEN

KERN HEALTH SYSTEMS

AND

**PROFESSIONAL SERVICES AGREEMENT
KERN HEALTH SYSTEMS**

This Professional Services Agreement is made and entered into by and between Kern Health Systems, (“KHS”) a public entity of the State of California, and [contractor’s name](#), (“CONTRACTOR”) with references to the following facts:

RECITALS

WHEREAS, KHS is in need of the professional services offered by CONTRACTOR, and this Agreement shall be presented to the Governing Board of KHS for adoption and authorization; and,

WHEREAS, CONTRACTOR has offered evidence of having the relevant specialized training and/or experience and/or knowledge and is interested in providing the scope of work as set forth herein, including any attachments hereto; and,

WHEREAS, this Agreement is effective only upon the authorization of the Governing Board of KHS;

NOW THEREFORE in consideration of the mutual promises, covenants and conditions hereinafter contained, the Parties hereto mutually agree as follows, and in any exhibits or attachments attached hereto and incorporated herein by reference:

1. **SERVICES**

- A. **DESCRIPTION OF-SERVICES.** CONTRACTOR shall provide [Provide the ANSI X12 835 Health Care Remittance Transaction with format change from 4010 to 5010 in 2012](#) services to KHS, with such services as set forth in Attachment A attached hereto, and incorporated herein by reference.
- B. **SCOPE OF SERVICES.** CONTRACTOR shall furnish labor necessary to perform in a complete, skillful and professional manner all those services described in Attachment A.

2. **PERIOD OF PERFORMANCE**

- A. It is mutually agreed and understood that the obligations of KHS are contingent upon the availability of state and federal funds. In the event that such funds are not forthcoming for any reason, this Agreement is rendered null and void, and KHS shall immediately notify CONTRACTOR in writing. This Agreement shall be deemed terminated and of no further force and effect immediately on KHS’s notification to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of costs in accordance with Section 3 (COMPENSATION).

Without limiting or diminishing the CONTRACTOR's obligation to indemnify and hold KHS harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement.

- A. **Workers' Compensation:** If CONTRACTOR has employees as defined by the State of California, CONTRACTOR shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of KHS; and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

- B. **Commercial General Liability:** CONTRACTOR shall maintain Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, personal and advertising injury covering claims which may arise from or out of CONTRACTOR's performance of its obligations hereunder, in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall be endorsed to name KHS as an Additional Insured. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

- C. **Vehicle Liability:** CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Non-owned or hired vehicle coverage may be included as a part of the Commercial General Liability policy. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall be endorsed to name KHS as an Additional Insured.

- D. **Professional Liability:** CONTRACTOR shall maintain Professional Liability Insurance providing coverage for performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CONTRACTOR's Professional Liability Insurance is written on a claims-made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement. Upon termination of this Agreement or the expiration or cancellation of the claims made insurance policy CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or, 3) demonstrate through Certificates of Insurance that Consultant has maintained continuous coverage with the same or original insurer. Coverage provided under the above shall continue for a period of five (5) years beyond the termination of this Agreement.

E. **General Insurance Provisions - All lines:**

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by KHS. If KHS waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) The CONTRACTOR's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of KHS before the commencement of operations under this Agreement. Upon notification of deductibles or self insured retentions which are deemed unacceptable to KHS, at the election of KHS, CONTRACTOR's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with KHS, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.
- 3) The CONTRACTOR shall cause their insurance carrier(s) to furnish KHS with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; and / or, 2) if requested to do so orally or in writing by KHS, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) shall provide no less than thirty (30) days written notice be given to the KHS prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Agreement shall terminate forthwith, unless the KHS receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. ***CONTRACTOR shall not commence operations until the KHS has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.***
- 4) It is understood and agreed by the parties hereto and the CONTRACTOR's insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the KHS'S insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or performance of work KHS reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage required herein, if; in the KHS'S reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.
- 6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7. **REPORTS**

- A. Furnished reports, as applicable, shall be provided as outlined and identified in Attachment A.
- B. Upon request of KHS, CONTRACTOR agrees to furnish to KHS copies of work papers, schedules or other work products related to this Agreement.

8. **TERMINATION PROVISION**

- A. Either party may terminate this Agreement, without cause, upon thirty (30) days written notice served upon the other party.
- B. If, for any reason, Agreement is terminated prior to full completion of services, CONTRACTOR agrees to immediately furnish to KHS all documents related to services rendered under this Agreement.
- C. Should KHS determine that there is a basis for termination for cause, such termination shall be effected upon **five (5)** days written notice to CONTRACTOR.

9. **OFFICERS, OWNERS, STOCKHOLDERS AND CREDITORS**

On an annual basis CONTRACTOR shall identify the names of the following persons by listing them on Attachment C, attached hereto and incorporated by this reference:

- A. CONTRACTOR officers and owners who own greater than 10% of the CONTRACTOR;
- B. Stockholders owning greater than 10% of any stock issued by CONTRACTOR
- C. Major creditors holding more than 5% of any debts owed by PROVIDER;

In addition, PROVIDER shall notify KHS HEALTH PLAN in writing within thirty (30) days of any changes in the information provided in Attachment C.

10. **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 herein, and in Attachment A hereto, and this Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of KHS, as approved and authorized by the Governing Board of KHS. This provision shall not require the approval of contracts or agreements for the employment between CONTRACTOR and personnel that have been specifically named in this Agreement or in any attachments hereto.

11. **ALTERATION AND/OR AMENDMENT**

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 alteration or revision of this Agreement on behalf of KHS. The parties expressly recognize that KHS personnel, including the Chief Executive Officer of KHS are without authorization to either change or waive any requirements of this Agreement.

12. **NONDISCRIMINATION**

This Agreement hereby incorporates by reference the provisions of Title 2, CCR, Section 8107 et. Seq., as may be amended from time to time. CONTRACTOR agrees to comply with the provisions of Title 2, CCR, Section 8107 et. Seq., and further agrees to include this Nondiscrimination Clause in any and all subcontracts to perform services under this Agreement.

13. **CONFLICT OF INTEREST**

CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.

14. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

KHS and CONTRACTOR are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and regulations promulgated subsequent hereto, for purposes of services rendered pursuant to the Agreement. Both parties agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under this Law. Both parties further agree that it shall be in compliance with the requirements of HIPAA, and the laws and regulations promulgated subsequent hereto. CONTRACTOR further agrees to the provisions of the HIPAA Business Associate Agreement, attached hereto in Attachment D, and incorporated herein by this reference.

15. **CONFIDENTIALITY**

- A. CONTRACTOR shall safeguard the confidentiality of Member medical records and treatments in accordance with all state and federal laws, including, without limitation, Title 42, Code of Federal Regulations, Section 431.300 et seq., and Section 14100.2, California Welfare and Institutions Code and regulations adopted thereunder.
- B. To the extent reasonably possible, each party agrees to maintain this Agreement as a confidential document and not to disclose the Agreement or any of its terms or reports without the approval of the other party, subject to the limitation of the Public Records Act and the Brown Act.

16. **NOTICES**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one day after their deposit in the United States mail, postage prepaid:

KHS:
Carol L. Sorrell, R.N.
Chief Executive Officer
KHS
9700 Stockdale Hwy
Bakersfield, CA 93311
(661) 664-5000

CONTRACTOR:

or to such other address(es) as the parties may hereafter designate in writing.

17. **LICENSES**

CONTRACTOR shall maintain any professional licenses required by the laws of the State of California at all times while performing services under this Agreement.

18. **WORK PRODUCT**

All reports, findings, data or documents compiled or assembled by CONTRACTOR under this Agreement becomes the property of KHS, and shall be transmitted to KHS at the termination of this Agreement.

19. **SEVERABILITY**

In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

20. **WAIVER**

Any waiver by KHS of any breach of any one (1) or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same term or of any other term herein.

21. **GOVERNING LAW**

- A. The provisions of the Government Claims Act (Government Code Section 900, et. Seq.) must be followed first for any disputes under this Agreement.
- B. All actions and proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the counties of San Bernardino or Riverside, State of California.

22. **DISALLOWANCE**

In the event CONTRACTOR receives payment for services under this Agreement, which are later disallowed for nonconformance with the terms and conditions herein, CONTRACTOR shall promptly refund the disallowed amount to KHS on request. KHS retains the option to offset the amount disallowed from any payment due to CONTRACTOR under this Agreement, or under any other contract or agreement between CONTRACTOR and KHS.

23. **LIMITATION OF LIABILITY**

In no event shall either party be liable for consequential, indirect, or incidental damages, including, without limitation, lost profits, arising out of the services provided under this Agreement. CONTRACTOR's liability for KHS's direct damages, whether based on principles of contract, tort or otherwise, shall not exceed, in the aggregate, the total amount paid by KHS to CONTRACTOR under this Agreement.

24. **ENTIRE AGREEMENT**

This Agreement, including all attachments and manuals, which are hereby incorporated in this Agreement, supersedes any and all other agreements, promises, negotiations or representations, either oral or written, between the parties with respect to the subject matter and period governed by this Agreement and no other agreement, statement or promise relating to this Agreement shall be binding or valid.

25. **CERTIFICATION OF AUTHORITY TO EXECUTE THIS AGREEMENT**

CONTRACTOR certifies that the individual signing below has authority to execute this Agreement on behalf of CONTRACTOR, and may legally bind CONTRACTOR to the terms and conditions of this Agreement, and any attachments hereto.

IN WITNESS WHEREOF, the parties hereto have signed this Professional Services Agreement as set forth below.

CONTRACTOR:

KERN HEALTH SYSTEMS:

By: _____
<Name>
<Title>

By: _____
Carol L. Sorrell, R.N.
Chief Executive Officer

Date: _____

Date: _____

By: _____
<Name> [If another signer required]
<Title>

By: _____
Chair, KHS Governing Board

Date: _____

Date: _____

Attest: _____
Secretary, KHS Governing Board

Date: _____

Approved as to Form and Content:

County Counsel

By: _____
County Counsel
Attorneys for Kern Health Systems

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

<CONTRACTOR'S NAME>

ATTACHMENT B

SCHEDULE OF FEES

<CONTRACTOR'S NAME>

ATTACHMENT D

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“The Agreement”) is Attachment to the Professional Service Agreement (the “Underlying Agreement”) between the Kern Health Systems (“KHS”) and **[name of Contractor]** (“Contractor”) as of the date on Section 2. Period of Performance of the Underlying Agreement.

RECITALS

WHEREAS, KHS and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to KHS, and in conjunction with the provision of such services certain Protected Health Information (“PHI”) and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the “Privacy Rule”) and/or Part 162 (the “Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, KHS is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI and/or ePHI from KHS, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

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

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of KHS Disclosed PHI and/or ePHI
 - A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the KHS:
 - (1) On behalf of the KHS, or to provide services to the KHS for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.

- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Contractor may:
- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as necessary for Contractor's operations only if:
 - (a) The disclosure is required by law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI and/or aggregate the PHI and/or ePHI with that of other data for the purpose of providing KHS with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by KHS.
 - (4) Not disclose PHI and/or ePHI disclosed to Contractor by KHS not authorized by the Underlying Agreement or this Agreement without patient authorization or De-identification of the PHI and/or ePHI as authorized in writing by KHS.
 - (5) De-identify any and all PHI and/or ePHI of KHS received by Contractor under this Agreement provided that the De-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives from KHS, nor from another business associate of KHS, except as permitted or required by this Agreement, or as required by law, or as otherwise permitted by law.

D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Obligations of KHS.

A. KHS agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by KHS that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Agreement.

B. KHS agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Agreement.

C. KHS agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.

D. KHS shall not request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.

E. KHS will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Agreement and/or the Underlying Agreement.

4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by KHS to Contractor, Contractor agrees to:

A. Use or disclose PHI and/or ePHI only as permitted or required by this Agreement or as required by law.

B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Agreement.

C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Agreement.

D. Report to KHS any use or disclosure of PHI and/or ePHI not provided for by this Agreement of which Contractor becomes aware.

- E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Agreement.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the KHS.
 - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of KHS, within five (5) days, to PHI in a Designated Record Set, to the KHS, or to an Individual as directed by the KHS.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the KHS directs or agrees to at the request of KHS or an Individual within sixty (60) days of the request of KHS.
 - C. To assist the KHS in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the KHS to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to KHS on an individual, within sixty (60) days, information collected in accordance with this section to permit the KHS to respond to a request by an individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the KHS the information required by this section for the six (6) years preceding the KHS's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
 - D. Make available to KHS, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
 - E. Within thirty (30) days of receiving a written request from KHS, make available any and all information necessary for KHS to make an accounting of disclosures of KHS PHI by Contractor.
 - F. Within thirty (30) days of receiving a written request from KHS, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that KHS would be prohibited from making.
6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to KHS ePHI, Contractor agrees to:
- A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, KHS ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the Contractor may create, receive, maintain, or transmit on behalf of the KHS.
 - B. Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriate safeguards.
 - C. Report to KHS any security incident of which Contractor becomes aware that concerns KHS ePHI.
7. Term and Termination.
- A. Term – this Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement.
 - B. Termination for Breach – KHS may terminate the Underlying Agreement, effective immediately, without cause, if KHS, in its sole discretion, determines that Contractor has breached a material provision of this Agreement. Alternatively, KHS may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of KHS in a timely manner, KHS reserves the right to immediately terminate the Underlying Agreement.
 - 7) Effect of Termination – upon termination of the Underlying Agreement, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the KHS, or created or received by Contractor on behalf of KHS, and, in the event of destruction, Contractor shall certify such destruction, in writing, to KHS. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI and/or ePHI.
 - D. Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to KHS of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Agreement to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

With respect to the subject matter in this HIPAA Business Associates Agreement, the following shall be applicable:

Contractor shall indemnify and hold harmless all KHS, its respective directors, officers, Governing Board, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Agreement. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards KHS, its respective directors, officers, Governing Board, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of KHS, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of KHS; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to KHS as set forth herein. Contractor's obligation to defend, indemnify and hold harmless KHS shall be subject to KHS having given Contractor 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 Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to KHS the appropriate form of dismissal relieving KHS from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the KHS herein from third party claims arising from the issues of this Agreement.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the KHS to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement, this indemnification shall only apply to the subject issues included within this Agreement.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for KHS to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- B. Survival – the respective rights and obligations of this Agreement shall survive the termination or expiration of this Agreement.
- C. Regulatory References – a reference in this Agreement to a section in the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- D. Conflicts – any ambiguity in this Agreement and the Underlying Agreement shall be resolved to permit KHS to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Attachment – this Attachment shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.