

COUNTY OF KERN



**KERN MEDICAL CENTER
REQUEST FOR PROPOSAL**

Group Purchasing Organization (GPO) Membership

Issuance Date	September 21, 2010
Pre-Proposal Meeting	October 14, 2010
Proposal Due Date	October 26, 2010
Time Due	Before 11:00 A.M. (PST)

Envelopes shall contain one (1) original and six (6) copies of the Proposal and are to be marked as follows:

RFP PROPOSAL – Group Purchasing Organization (GPO) Membership

KERN MEDICAL CENTER
Request for Proposal
Group Purchasing Organization (GPO) Membership

The County of Kern is seeking a membership agreement with a Group Purchasing Organization (GPO). This membership will enable Kern Medical Center (KMC) to align its mission and goals with a GPO who can provide purchasing and acquisition solutions which meet or exceed the County's purchasing requirements by taking advantage of volume purchase agreements and other services in an effort to cut costs and to streamline the procurement process.

The term of the agreement will be for a period not to exceed three (3) years with the possibility of two (2) one (1) year extensions. The County of Kern has several other departments such as Public Health, Mental Health, Environmental Health, Fire, and Sheriff to name a few that might benefit from participation in KMC's GPO in order to make similar medical supply purchases. To this end, the County reserves the right to amend the signed contract resulting from this RFP in order to add other county departments should the necessity arise.

Proposers are specifically directed not to contact any County personnel, other than the Contact Person indicated below, for any purpose related to this RFP. **Unauthorized contact of any County personnel may be cause for rejection of a vendor's proposal.** All inquiries concerning this RFP should be directed to the following Contact Person:

Ollie Zachary
Kern Medical Center
1700 Mt. Vernon Ave
Bakersfield, California 93306-4018
Telephone: (661) 326-5101
E-mail: zacharyo@kernmedctr.com

Envelopes containing the Proposals are to be marked:

PROPOSAL: Group Purchasing Organization (GPO) Membership

Projected Timetable

The following dates are set forth for information and planning purposes only. These dates may be changed by County upon notice to prospective proposers:

Issuance DateSeptember 21, 2010
Pre-Proposal MeetingOctober 14, 2010
Proposal Due DateOctober 26, 2010
Proposal Due TimeBefore 11:00 A.M. (PST)

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their Proposals.

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I. GENERAL INFORMATION

A. Project Background and Description

KMC is a busy 222-bed, county-owned trauma center and general acute care teaching hospital. KMC is a Level 2 trauma center that provides comprehensive indigent care and high risk inpatient, outpatient and ancillary services. It is the largest provider of health care services in Kern County and is the only trauma center within a 100 mile radius. It is the only hospital in Kern County with ACGME accredited residency training programs and provides seven residency programs that include Emergency Medicine, Family Medicine, Internal Medicine, Obstetrics/Gynecology, Surgery, General Psychiatry and Child and Adolescent Psychiatry Fellowship. KMC is also one of only two inpatient pediatric facilities in Kern County.

Currently, KMC utilizes Premier Adventist affiliation GPO to fully access the contracts and services provided under the agreement to cover purchases for the following areas:

- Medical / Surgical
- Food Services
- Pharmacy
- Clinical Laboratory Services
- Capital Equipment (limited use)

KMC spends approximately \$24 million annually in the purchase of medical supplies, major/minor medical equipment, office equipment and minor office supplies. KMC is seeking access to a full service Group Purchasing Organization, who understands and can work within the framework of the County's procurement requirements in order to enable the hospital to take advantage of volume discounts with substantiated cost savings in medical, pharmaceutical and support services; supply contracts and service agreements.

KMC seeks a partnership with a GPO whose philosophy is to provide their members with purchasing solutions, cost savings at the point of sale; volume discounts for special buys, participation extended to other related County departments, and annual cash rebates. In addition KMC desires a GPO whose selection of supplier vendors have the ability to support the mission and goals of a Level 2 trauma center and teaching hospital.

The County of Kern's purchasing policies and procedures, known as 'Chapter 5 – Purchasing' define the purchasing process requirements for participation in Group Purchasing Organizations. Section 526 – Group Purchasing Organization and Section 527 – Best Value Procurement Process are provided in **Exhibit B** to assist GPO's in preparing a response to this Request for Proposal.

B. Services Required of Successful Proposer

Please refer to **Exhibit A** for requirements.

C. Services Provided by the County

The County will provide a Contact Person as a primary contact, who will arrange for staff assistance by other County staff as may be required. County will also provide whatever information as may be available. County will also be available to meet and discuss project requirements and development at key times in the process.

D. Selection Process

1. All Proposals received by the specified deadline will be reviewed by a County Evaluation Committee. After the initial scoring, the Evaluation Committee may select those firms deemed most qualified for this project for further evaluation. Interviews of these selected firms may be conducted as part of the final selection process. Proposers are advised that the County, at its option, may award a contract strictly on the basis of the initial Proposals, and not create a short list of Proposals for further consideration. The firm selected by the Evaluation Committee will be recommended to the Board of Supervisors for this project, but the Board is not bound to accept the recommendation or award the project to the recommended firm.
2. If one or more of the proposers is a local vendor as defined herein, said proposer(s) shall be entitled to a local vendor preference as herein described, provided: (i) said proposer(s) achieved a score of at least seventy percent (70%) during the initial scoring phase by the Evaluation Committee; and (ii) they were included in the short list of proposers for further consideration by the Evaluation Committee, if the Evaluation Committee elected to create a short list of Proposals.

All local vendors meeting the above stated criteria shall have their final evaluation score increased by five percent (5%) for purposes of determining the Evaluation Committee's final selection for recommendation to the Board of Supervisors.

A local vendor is defined as a proposer who:

- i. Has maintained a local office address within Kern County for the six months immediately prior to the issuance date of the RFP; and
- ii. Employs at least one (1) full-time or two (2) part-time employees whose primary residence is located within Kern County, or if the business has no employees shall be at least fifty percent (50%) owned by one or more persons whose primary residence is located within Kern County.
- iii. Will credit all sales taxes generated pursuant to the contract resulting from this RFP to its business location in Kern County.

This local vendor preference shall not apply to any contracts funded in whole or in part with federal or state funds which do not allow the use of local preferences, or any

other contracts which are statutorily or otherwise precluded from the use of local preferences during the selection process.

3. The following is a list of general criteria that may be used by the Evaluation Committee in determining its recommendation to the Board of Supervisors. **Please note that the Evaluation Committee may consider any information they deem relevant in determining a recommendation to the Board of Supervisors, and may give each of the criteria considered as little or as much weight as they consider appropriate.**
 - (a) GPO Philosophy.
 - (b) GPO Operations.
 - (c) GPO Administrative Fees, Costs and Savings.
 - (d) GPO Compliance.
 - (e) Transition Plan.
 - (f) References.
 - (g) **Any other factor(s) that fall within the scope of the RFP that the Evaluation Committee deems relevant.**
4. The County reserves the right to reject any and all Proposals and to waive informalities and irregularities in any Proposals received. Absence of required information may render a Proposal non-responsive, in the sole discretion of the County, resulting in rejection of the Proposal.
5. The County may, during the evaluation process, request from any proposer additional information which the County deems necessary to determine the proposer's ability to perform the required services. If such information is requested, the Proposer shall be permitted five (5) working days to submit the information requested.
6. An error in the Proposal may cause the rejection of that Proposal; however, the County may, in its sole discretion, retain the Proposal and make any corrections it deems appropriate. In determining if a correction will be made, the County will consider the conformance of the Proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP. If the proposer's intent is clearly established based on review of the complete Proposal submittal, the County may, at its sole option, correct an error based on that established content. The County may also correct obvious clerical errors. The County may also request clarification from a proposer on any item in a Proposal that County believes to be in error, and make corrections accordingly.
7. The County reserves the right to select the Proposal which in its sole judgment best meets the needs of the County. The recommendation by the Evaluation Committee, and the final selection of a proposer by the Board of Supervisors, shall be based on any information and criteria the Evaluation Committee and Board consider relevant, which may include criteria not listed in paragraph 2 above. **The lowest proposed cost is not the sole criterion for recommending contract award.**

8. All firms responding to this RFP will be notified of their selection or non-selection in writing after the Evaluation Committee has completed the selection process. All proposers shall have seven days from the date of the notice to submit any additional information **not previously submitted** to the County for final consideration before the Evaluation Committee's recommendation is placed on the Board of Supervisors' agenda.
9. County employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a Proposal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or business entity submitting a Proposal who has such a relationship with a County employee who may be involved in the selection process shall advise the County of the name of the County employee in the Proposal.
10. Any person or business entity which engages in practices which might result in unlawful activity relating to the selection process including, but not limited to, kickbacks or other unlawful consideration paid to County employees, will be disqualified from the selection process.
11. The process, procedures and evaluation criteria used by County staff and the Evaluation Committee in developing and issuing this RFP and evaluating the Proposals received for purposes of making a recommendation to the Board of Supervisors shall be determined in the sole discretion of the County. Potential proposers shall have no rights whatsoever regarding the processes and procedures used by the County relating to this RFP or the manner in which a proposer is selected by either the Evaluation Committee or the Board of Supervisors, provided their decisions are not arbitrary and capricious, and there is some reasonable basis for the selection(s) made.

E. Solicitation Caveat

The issuance of this solicitation does not constitute an award commitment on the part of the County, and the County shall not pay for costs incurred in the preparation or submission of Proposals. **The County reserves the right to reject any or all Proposals or portions thereof if the County determines that it is in the best interest of the County to do so.**

Failure to furnish all information requested or to follow the format requested herein, or the submission of false information, may disqualify the proposer, in the sole discretion of the County. The County may waive **any** deviation in a Proposal. The County's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful proposer from full compliance with any resultant agreement requirements or obligations.

F. Time

Time and the time limits stated in this RFP are of the essence of this Request for Proposal.

G. Form of Agreement

No agreement with the County is in effect until a contract has been signed by both parties. Attached to this RFP as Exhibit "B" is a sample agreement which is in substantially the form the successful proposer will be expected to sign. The final agreement may include the contents of the RFP, any addenda to this RFP, portions of the successful proposer's Proposal and any other modifications determined by the County to be necessary prior to its execution by the parties.

The sample agreement included in this RFP is for informational purposes and should not be returned with a Proposal; however, the Proposal shall include a statement that the proposer has reviewed the sample agreement and either i) will agree to the terms contained therein if selected, or ii) indicate those specific provisions of the sample agreement to which the proposer takes exception and why. Raising of significant exceptions in a Proposal, as determined in the sole discretion of the County, may be cause for rejection of the Consultant's Proposal.

The selected Consultant will be required to execute an agreement with the County for the services requested within 45 days of the award. If agreement on the terms and conditions of the contract that are acceptable to the County including, but not limited to, compensation, cannot be achieved within that timeframe, the County reserves the right to continue negotiations or to award the bid to another Consultant and begin negotiations with that Consultant.

Consultant must identify and provide contact information in their Proposal of the individual within their organization who is authorized to negotiate the terms and conditions of any agreement between Consultant and County.

H. Modifications to Scope of Work

In the event that sufficient funds do not become available to complete all the services identified in this RFP, the scope of services may be amended, as determined in the sole discretion of the County. The County may also, from time-to-time, request changes in and/or additions to the services to be provided by the successful proposer. Such changes, including any increase or decrease in compensation, which are mutually agreed upon by and between the County and the successful proposer, shall be incorporated into the contract prior to execution of the contract, and by written amendments thereto after execution.

I. News Releases

News releases pertaining to any award resulting from this RFP may not be made without prior written approval of the CEO of Kern Medical Center.

J. Payment Schedule

Periodic payments will be made to the Consultant upon submission of an invoice, based on a payment schedule to be developed and included in the final agreement for services.

K. Statutes and Rules

The terms and conditions of this RFP, and the resulting consulting services and activities performed by the successful proposer, shall conform to all applicable statutes, rules and regulations of the federal government, the State of California and the County of Kern.

L. Background Review

The County reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a Proposal to the County the proposer consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the review.

II. PROPOSAL INFORMATION AND REQUIREMENTS

A. General Instructions

To receive consideration, Proposals shall be made in accordance with the following general instructions:

1. The completed Proposal shall be without alterations or erasures. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in ink by an authorized representative of the proposer.
2. No oral, telephonic, telegraphic, e-mailed or faxed Proposals will be considered.
3. The submission of a Proposal shall be an indication that the proposer has investigated and satisfied him/herself as to the selection process to be used by the County, the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the County.
4. All Proposals shall remain firm for one hundred and eighty (180) days from the Proposal submission deadline.

B. Business Address

Proposers shall furnish their business street address. Any communications directed either to the address so given, or to the address listed on the sealed Proposal container, and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service thereof upon the proposer.

C. Corrections and Addenda

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

If a proposer fails to notify the Contact Person prior to the date fixed for submission of Proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a Proposal at their own risk, and if the proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Addenda issued by the County interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the Proposal. The proposer shall sign and date the Addenda Cover Sheet and submit same with the Proposal (or deliver them to the (or deliver them to Ollie Zachary at KMC, 1700 Mt. Vernon Ave. [Trailer # 8] Bakersfield CA. 93306, if the proposer has previously submitted a Proposal to the department).

Any oral communication by the County's designated Contact Person or any other County staff member concerning this RFP is not binding on the County and shall in no way modify this RFP or the obligations of the County or any proposers.

D. Proposal Format and Contents

For ease of review and to facilitate evaluation, the Proposals for this project should be organized and presented in the order requested as follows:

1. Cover Page:

Include a letter of introduction signed by an authorized representative of the firm certifying that all statements in the Proposal are true and correct and shall constitute a warranty, the falsity of which shall entitle Kern County to pursue any remedy authorized by law, which shall include the right, at the option of Kern County, to declare any contract made as a result thereof, to be void. Indicate the name of the firm and the RFP project title.

2. Section I - Corporate/Agency Profile:

Provide specific information concerning the firm in this section, including the legal name, address and telephone number of your company and the type of entity (sole proprietorship, partnership, or corporation and whether public or private).

State if you are a local Kern County vendor as defined in section I.D.2. of this RFP (provide the street address of the local office).

Include the name and telephone number of the person(s) in your company authorized to execute the proposed contract.

If two or more firms are involved in a joint venture or association, the Proposal(s) should clearly delineate the respective areas of authority and responsibility of each party.

All parties signing the Agreement with the County shall be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.

3. Section II - Qualifications and Experience:

This section is designed to establish the proposer as an entity with the ability and experience to operate the program, or provide the services, as specified in the RFP. Provide specific information in this section concerning the firm's experience in the services specified in this RFP, preferably within the State of California. Include the number of employees involved in providing services; number of years providing services; and financial statements (balance sheet and Dun & Bradstreet credit rating acceptable). Additionally, provide examples of completed projects.

Documentation of Satisfactory Past Performance/References. Provide a minimum of three (3) reference letters for similar services rendered (must be within the last six (6) months on the reference company's letterhead. Each reference shall include a current point of contact and a phone number. Each reference letter must have the following information: Date of the original contract; end date of the contract; services rendered; and names, addresses, and telephone numbers of contact persons within client agencies for whom the services have been provided.

Provide a list of all clients, if any, to whom you have provided similar services over the last two years, but are not currently working for. Please indicate why you are not currently providing services to said client(s).

4. Section III - Credentials/Resumes:

Of critical importance is the composition of the team proposed to provide services on this project. Credentials and resumes of the person(s) responsible for administering

or providing the services must be provided. Include a statement of qualifications and resumes/backgrounds of key personnel assigned to the project, including training certifications of professional and non-professional personnel. Proposer shall specifically provide the following information on all management, supervisory and other key employees who will be providing service:

- Name, address and phone number
- Description of education
- General experience
- Experience or education related to the RFP project
- Letters of reference, if available

In addition, List consultant firms, if any, that you plan to use for this project and their relevant experience.

County will consider proposed agreements that involve the firm's use of subcontractors. List all subcontractors you plan to use for this project and their relevant experience. Such subcontractors will be acting as independent contractors and not as agents of the County.

5. Section IV - Project Approach, Work Schedule, Proposed Transition Plan and Technology Available:

Provide a detailed description of the methodology proposed to perform all required services. The project approach should include specific details with regard to how and what services, training, installation, etc. are included in your response to the County. Provide specific information and details. Include any additional information and options that you feel may be advantageous to the County. Label options clearly and specify all costs and fees associated with each option. Include specific details with regard to a work schedule/transition plan which contains an aggressive schedule that will complete, or start up, the project before **February 27, 2010**, if possible. This schedule should contain specific milestones and dates of completion which will be used to set schedules. Also identify the extent of County personnel involvement deemed necessary, including key decision points at each stage of the project. Specify all software and computer technology that is anticipated to be used in rendering the services. If the Proposal includes the purchase of any software by the County, provide a copy of any software license agreements that the County would be required to execute.

Do not include brochures and advertisements in your Proposal unless the content they provide is identified and included specifically in your description of the methodology and/or approach to the services you are proposing to provide the County.

6. Section V - Cost of Service:

The Proposal shall clearly state all of the costs associated with the project, broken down by category of products and services, and all on-going costs for recommended/required products/services such as maintenance, and any proposed annual cost of living increases for contracts with terms exceeding one year. As a general rule, the County prefers a set price or hourly rate for the entire term of any contract. Therefore, do not assume that the County will accept any proposed price escalations. Proposed price escalators may also have a detrimental impact on the proposer's score determined by the Evaluation Committee.

The project costs should include all expenses that will be charged to the County including but not limited to costs for shipping, insurance, communications, documentation reproduction, travel, taxes, etc. **Failure to not clearly identify all costs associated with the Proposal may be cause for rejection of the Consultant's Proposal.**

7. Section VI - Insurance:

The selected proposer will be required to obtain, as a condition of the award of a contract, and the Proposal shall state that the proposer will obtain the insurance as required in the attached agreement.

All insurance shall be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of A-, VII rating; or in special circumstances, as pre-approved by the Risk Management Division of the Office of County Counsel. The selected proposer shall file with the Contact Person a Certificate(s) of Insurance stating the required coverage is in effect.

8. Section VII - Additional Information:

Include any other information you believe to be pertinent but not required.

E. Pre-Proposal Meeting

A Pre-Proposal meeting has been set for **October 14, 2010, at 2:00 P.M.** The meeting will be held at **KMC, 1700 Mt. Vernon Ave. [First Floor, Room #1058] Bakersfield CA. 93306.** The purpose of the conference is to permit proposers an opportunity to ask questions and/or provide feedback to County staff on specifics of this RFP. Preliminary answers may be given at the Pre-Proposal meeting. However, these responses are only preliminary and will not be final until they are provided as an addendum to the RFP. While some input obtained at the meeting may be incorporated into the RFP via addenda, remarks and explanations made at the meeting shall not change the provisions of the final RFP. **All interested parties who may have questions are urged to attend.**

F. Proposal Submission

The proposer shall submit six (6) written copies of the Proposal and one (1) electronic copy. The electronic media must be a standard Microsoft Windows compatible format readable by the County; using word processing software that is Windows based, preferably Microsoft Word. Please submit all Proposals to:

**Kern County General Services Division
1115 Truxtun Ave., 3rd Floor
Bakersfield, CA 93301
Telephone (661) 868-3000**

Proposals may be delivered in person, by courier service or by mail to the address indicated above. **ALL PROPOSALS MUST BE SEALED AND RECEIVED BEFORE 11:00 A.M. on October 26, 2010, at the above office and address.** Proposals submitted after the above deadline will not be accepted. It is strongly suggested that any proposers intending to hand deliver a proposal on the last day for submission arrive at the General Services Division third floor main lobby at least ten (10) minutes prior to the proposal receipt deadline to receive a “test” time stamp to validate the official current time. **The time stamp clock in the main lobby of General Services will be the official time. Any Proposal received at or after 11:00 a.m. will be returned unopened.**

Only one (1) Proposal may be submitted from each proposer. For purposes of this RFP, a proposer is defined to include a parent corporation of the proposer and any other subsidiary of that parent corporation. If a proposer submits more than one (1) Proposal, all Proposals from that proposer shall be rejected.

RFP Proposals are not publicly opened.

G. Withdrawal and Submission of Modified Proposal

A proposer may withdraw a Proposal at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the proposer or his/her authorized agent. The proposer must, in person, retrieve the entire sealed submission package. Another Proposal may be submitted prior to the deadline. A Proposal may not be changed after the designated deadline for submission of Proposals.

H. Disposition of Proposals and Proprietary Data

All materials submitted in response to this RFP become the property of the County. Any and all Proposals received by the County shall be subject to public disclosure and inspection, except to the extent the proposer designates trade secrets or other proprietary data to be confidential, after the Evaluation Committee has completed its deliberative process and either the proposer has been informed that they are not the vendor selected by the Evaluation Committee for recommendation to the Board of Supervisors, or the

matter has been set for consideration before the Board of Supervisors, whichever comes first.

Material designated as proprietary or confidential shall accompany the Proposal and each page shall be clearly marked and readily separable from the Proposal in order to facilitate public inspection of the non-confidential portion of the Proposal. Prices, makes and models or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary. The County will endeavor to restrict distribution of material designated as confidential or proprietary to only those individuals involved in the review and analysis of the Proposals.

Proposers are cautioned that materials designated as confidential may nevertheless be subject to disclosure. Proposers are advised that the County does not wish to receive confidential or proprietary information and that proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any Proposal submitted is labeled confidential or proprietary, the Proposal shall include the following clause:

(legal name of proposer) shall indemnify, defend and hold harmless the County of Kern, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §6250 et seq.) arising out of, concerning or in any way involving any materials or information in this Proposal that _____ (legal name of proposer) has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

EXHIBIT A

Requirements/Specifications

(a) GPO Philosophy

- Provide your unique offerings or programs that differentiate you from other GPOs for:
 - Supplier selection
 - Single source, dual source, multi source programs
 - Supplier Investment policy
 - Admin Fee practices
 - Collection
 - Sharing
 - Portfolio flexibility
 - Compliance requirements
- Describe the scope of contract coverage for each of your program categories, stated in terms as a percentage of the member hospital's total annual expenditures for each program category:
 - Medical / Surgical
 - Food Services
 - Pharmacy
 - Clinical Laboratory Services
 - Capital Equipment (limited use)
- Detail how you obtain and substantiate 'best pricing' from vendors.
- Use and sourcing of possible qualified local County of Kern vendors.
- Recommendations for processes done by GPO that meet County's competitive/best value requirements.
- Describe any programs for enhanced pricing programs for an organization such as KMC. Explain any requirements for attainment of enhanced pricing programs.
- Provide samples of current pricing contracts, tier level pricing and pricing comparisons that demonstrate GPO's ability to negotiate and substantiate cost savings from supplier vendors.
- Provide any other pertinent information regarding your GPO in general that may be beneficial to the County of Kern's 'Kern Medical Center'.

(b) GPO Operations

- Describe the operational support provided to member hospitals, such as local representation, national customer service support, electronic catalogs, and contract announcements, contract implementation support, pricing verification, and communications documents, e.g., newsletters. (Please list all forms of communications and their purpose.)
- Describe the tools and/or checks and balances in place to ensure member hospitals receive accurate invoice pricing that match contracted prices.
- Provide staffing information and resumes of key staff who would be handling the County's account, along with a company organization chart.
- Provide representation to assist with program implementation.

- Manage vendors and distributors as to the reporting of all items purchased on contract that will result in an annual rebate check from each of the vendors or distributors.
- Provide on-going support/assistance in the area of compliance, available manufacturer rebates, tier level appropriateness, pricing validation, and letters of commitment data.
- Update all contract tier level changes, changes in contract extension dates, and/or new expiration dates of all contracted vendors within three (3) days of notification.

(c) GPO Administrative Fees, Costs and Savings

- Provide an Administrative Fee Schedule in the agreement.
- Provide a written statement of estimated savings.
- Define any opportunity to offset the Administrative Fees through reinvesting a portion of the dollar saved.
- Provide a flow chart of the money flows within your GPO, e.g., member pays membership fee to GPO, member pays invoices from suppliers for goods or services received, suppliers pay administrative fees to GPO for member purchases, GPO returns portion of administrative fee collected back to member hospital.

(d) GPO Compliance

- Define and propose the rebate payment method for KMC.
- Provide quarterly reports of all items purchased and rebates paid. (and/or unpaid).
- Provide Quarterly reports showing the progress made toward an agreed upon estimated savings goal.
- Provide quarterly reports showing past, present and future trending in contract purchases.
- Provide a detailed summary of compliance policy including levels of compliance, percentage of business that each level of compliance requires, and sole source contractors.
- Describe significant “value added” (non-price related) programs and/or benefits available to your member hospitals.

Additional Requirements:

- (a)** Must have experience in providing services requested in the RFP.
- (b)** Must have experience working with hospitals similar in size and scope to KMC - 200 beds or more.
- (c)** Provide five (5) hospital references served by your organization. For each reference, provide a brief summary of the types(s) of work performed and identify the role(s) played by the key individuals of the proposed project team in the work for that client. For each reference, indicate the name, address, and telephone number of a responsible official who could be contacted. (In the event the key individuals did not work on one or more of the above-referenced clients, please provide **additional** references regarding clients of the key individuals).
- (d)** Provide a 60 day transition plan with detailed events and milestones and estimated timeline.

- (e)** Provide a list of your members that are unique configuration, e.g., university, for-profit, state or county.
- (f)** Provide a list of new members within the last year that were previously:
 - o Members of another GPO
 - Identify the previous GPO
 - Describe the primary motivation the new member cited for affiliation with your GPO.
 - o Operating primarily under a self-contracting model.
- (g)** Provide a list of lost members within the last year that:
 - o Became members of another GPO
 - Identify the new GPO
 - Describe the primary motivation the lost member cited for leaving your GPO.
 - o Began operating primarily under a self-contracting model.
- (h)** Provide information which indicates if your company is either privately or publicly held.
- (i)** Describe your organization's financial stability and economic capability to perform the contract requirements. Provide financial statements for the past three years as proof of financial capacity and capability to undertake and successfully provide services required under this RFP. Financial documents such as audited financial statements or recent tax returns will be acceptable to the Board. The County reserves the right to check and evaluate the firm's financial capacity and capability by any means deemed appropriate.
- (j)** Disclose any criminal and/or civil legal action prosecuted against your organization or any officer or principal with your company within the last four (4) years. Please indicate whether any license your organization holds has been denied, suspended or revoked by any state, territory or governmental authority. If so, please explain.
- (k)** Disclose and describe the nature of any pending investigation or administrative action by any governmental agency that involves your organization or any of its products.
- (l)** Disclose any complaints lodged against you by the Attorney General of the State of California or the Federal Trade Commission. If applicable, provide the date the complaint was filed, the reason for the complaint and the outcome.
- (m)** Identify any mergers, sales, acquisitions or other changes in your company's ownership that have occurred in the last 3 years.
- (n)** Disclose any planned mergers, sales, acquisitions or other changes in ownership of your company that will affect over a 20% change in ownership of your company.

EXHIBIT B
County of Kern's Purchasing Policies and Procedures
Chapter 5 – Sections 526 & 527

526. Group Purchasing Organization (GPO). Departments may obtain authorization to participate in a Group Purchasing Organization (GPO) and utilize the member vendors affiliated with these organizations. The authorization to participate in such a GPO must first be granted by the Board of Supervisors upon request by the department. Once authorization has been granted, an *RFP* process will be utilized by the department to select a GPO to recommend to the Board of Supervisors for approval. A resolution identifying the selected GPO must be written by the department, with assistance from County Counsel.

When purchasing through the GPO, the department shall perform a *Best Value* process (see section 527) for each *blanket purchase order of goods* over \$100,000 annually or *services* over \$50,000 annually to select the GPO participating vendor most qualified to provide the *goods* or *services* required. If a local vendor, in addition to GPO participating vendors, can provide the *good* or *service* required of the department, the department must give these local vendors an opportunity to participate by providing specifications to the Purchasing Division to conduct a bid process and the *Best Value* process by the department will not be utilized. Purchases under these dollar thresholds do not require additional bidding or *Best Value* analysis, though the department shall still negotiate for the best pricing. The department shall submit a *requisition* to the Purchasing Division referencing the selected GPO participating vendor on the *requisition*.

When seeking *professional services* among GPO participating vendors of \$50,000 or more, the department must either perform an *RFP* process among these vendors or request the Board of Supervisors grant an exemption from the *RFP* process and permission to use another method of award. If a local vendor, in addition to GPO participating vendors, can provide the *professional services* required of the department, the department must give these local vendors an opportunity to participate by conducting a formal *RFP* process or request exemption from the Board of Supervisors. For those *professional services* under \$50,000, the department may select a qualified vendor and follow the procedures as outlined in section 510.4 of this manual.

527. Best Value Procurement Process. The Best Value method of procurement incorporates cost, quality and other 'best value' requirements to achieve a resulting award that is fair, efficient, competitive and meets all of the procurement objectives. Procurements utilizing this process shall be made in accordance with all applicable State and County policies and regulations. The Best Value process may be used by the Purchasing Division when bidding for *goods* when low cost alone would not be in the best interest of the County and when it is clearly stated in the *Quotation Request* to the bidders that Best Value will be the basis of award. Qualified bidders must first meet all of the minimum specifications before being elevated to the 'best value' evaluation, final ranking and award.

The policies of the procurement methods for *goods* and *services*, as described in section 508 of this manual, have not changed, only the competitive process has been modified to a Best Value process and evaluation for use with these vendors.

The Best Value process for use among GPO participating vendors can be performed by the department. The process includes submitting written specifications and requirements, along with the County's terms and conditions, to at least two GPO participating vendors. The department shall evaluate those responses for compliance with specifications, trade-in considerations, delivery terms, past performance, cost analysis, special features, warranties and maintenance availability, probable life of the item selected compared with that of a comparable item, and energy efficiency considerations at a minimum. Department shall summarize these findings in a memo signed by the department head, or a representative of the department head, acknowledging that the Best Value process was completed and that the findings/recommendations on the memo are accurate. The memo shall be submitted to the Purchasing Division as an attachment to the *requisition* for the purchase. If a local vendor may be able to provide the *goods* or *services* required, the Best Value process cannot be utilized among the GPO participating vendors. A bid process must be performed. See section 526 of this manual for more information on GPO's.

EXHIBIT C

AGREEMENT FOR PROFESSIONAL SERVICES **INDEPENDENT CONTRACTOR** (County - [Name of Consultant])

THIS AGREEMENT is made and entered into this day of , 200 , by and between the COUNTY OF KERN, a political subdivision of the State of California, as represented by the **[Department name]** (hereinafter "County"), and **[name of Contractor]** (hereinafter "Contractor"), whose principal place of business is at **[address]**;

WITNESSETH:

WHEREAS:

- (a) Government Code sections 31000 and 53060 permit the County Board of Supervisors to contract for the furnishing of special services with individuals specially trained and experienced and competent to perform those services; and
- (b) The **[Department name]** (hereinafter "Responsible County Department") requires **[state services required]**; and
- (c) County desires to engage Consultant to provide said services and Consultant, by reason of his/her qualifications, experience, and facilities for doing the type of work herein contemplated, has offered to provide the required services on the terms set forth herein;

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

- 1. **Services to be Rendered.** [Insert description of services to be provided or indicate that a description of the services to be provided is contained in Exhibit "A" which is attached hereto and incorporated herein by this reference.]
- 2. **Compensation to Consultant.** County shall compensate Consultant at the rate of dollars (\$) per hour, in an aggregate sum not to exceed dollars (\$). **[If the compensation is a fixed fee use the following language: As compensation for all services to be provided by Consultant, County shall pay Consultant a fixed fee in the amount of dollars (\$).]** County will reimburse Consultant for all necessary and reasonable costs incurred on behalf of County as set forth below. No additional compensation will be paid for secretarial, clerical support staff or overhead costs.
- 3. **Travel Reimbursement.** Consultant will be reimbursed for all approved travel expenses, which approval will not be unreasonably withheld, incurred by Consultant on behalf of County in an amount not to exceed dollars (\$) over the year term of this Agreement. Reimbursement of "travel expenses will include actual cost for lowest refundable coach round-trip airfare local transportation (rental cars are reimbursable at actual cost for compact or midsize vehicles only; per mile reimbursement rates for personal vehicle use at the current privately owned vehicle [POV] mileage reimbursement

rate established by the U.S General Services Administration), meals and incidental expenses at the current domestic per diem rates established by the U.S. General Services Administration for Kern County, and reasonable hotel accommodations not to exceed the maximum allowable reimbursement rate including taxes established by County. Travel-related expenses will be billed monthly, as incurred, and are payable in arrears within thirty (30) days of receipt and approval of each invoice by KMC.

4. **Term.** This Agreement shall be deemed in force as of the date first above written and shall remain in effect until _____, 200 , unless sooner terminated as hereinafter provided.
5. **Representations.** Consultant makes the following representations which are agreed to be material to and from a part of the inducement for this Agreement:
 - a. Consultant has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and
 - b. Consultant does not have any actual or potential interests adverse to County nor does Consultant represent a person or firm with an interest adverse to County with reference to the subject of this Agreement; and
 - c. Consultant shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement.
6. **Anti-referral Laws.** The parties expressly agree that nothing contained in this Agreement will require either the referral of any patients to, or order of any goods or services from Contractor or Kern Medical Center. Notwithstanding any unanticipated effect of any provision of this Agreement, neither party will knowingly or intentionally conduct itself in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs (42 U.S.C. section 1320a-7b).
7. **Access to Books and Records.**
 - 7.1 **Maintaining and Release of Books and Records.** Contractor shall, in connection with the subject of this Agreement, cooperate fully with County, by, among other things, maintaining and making available all necessary books, documents and records, in order to assure that County and Kern Medical Center will be able to meet all requirements for participation and payment associated with public or private third party payment programs, including matters covered by section 1861(v)(1)(I) of the Social Security Act, as amended.
 - 7.2 **Regulatory Requirements.** For the purpose of implementing section 1861(v)(1)(I) of the Social Security Act, and any written regulations thereto, Contractor shall comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:
 - (a) Until the expiration of four (4) years after the furnishing of services pursuant to the Agreement, Contractor shall make available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly

authorized representatives, upon written request of any of them, this Agreement, and all books, documents and records that are necessary to certify the nature and extent of the cost of services hereunder; and

- (b) If Contractor carries out any of the duties of this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of Health and Human Services or the Comptroller General of the United States, 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.

7.3 Notification. If Contractor is requested to disclose books, documents or records pursuant to this section, Contractor shall notify Kern Medical Center of the nature and scope of such request and Contractor shall make available, upon written request of County or Kern Medical Center, all such books, documents or records, during regular business hours of Contractor.

- 8. Compliance Program.** Contractor acknowledges that Kern Medical Center has implemented a compliance program ("Compliance Program") for the purpose of ensuring that the provision of, and billing for, healthcare at KMC is in compliance with applicable federal and state laws, relating to such Compliance Program and that Contractor will adhere to and support the policies set forth therein. KMC, upon request, shall make available such information relating to its Compliance Program as is appropriate to assist Contractor in adhering to the policies set forth in the Compliance Program. Contractor shall participate in training and education sessions relating to the Compliance Program, upon the request of Kern Medical Center.
- 9. Confidentiality of Medical Records.** Any and all patient records, charts, documents and other hospital records produced at Kern Medical Center as a result of either party's performance under this Agreement shall be and remain the property of Kern Medical Center. Both during and after the term of this Agreement, Contractor shall be permitted to inspect and/or duplicate, at Contractor's expense, any individual chart or record to the extent necessary to (i) perform billing for the services provided under this Agreement, or (ii) assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, provided that such inspection or duplication is permitted and conducted in accordance with the applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. Contractor shall be solely responsible for obtaining patient consent, if required, and for maintaining patient confidentiality with respect to any information obtained by Contractor or its agents pursuant to this paragraph.
- 10. Disqualified Persons.** Contractor represents and warrants that no person providing services under the terms of this Agreement (i) has been convicted of a criminal offense related to

healthcare (unless such individual has been officially reinstated into the federal healthcare programs by the Office of Inspector General (“OIG”) and provided proof of such reinstatement to County), (ii) is currently under sanction, exclusion or investigation (civil or criminal) by any federal or state enforcement, regulatory, administrative or licensing agency or is ineligible for federal or state program participation, or (iii) is currently listed on the General Services Administration List of Parties Excluded from the Federal Procurement and Non-Procurement Programs. Contractor agrees that if any individual providing services under the terms of this Agreement becomes involved in a pending criminal action or proposed civil debarment, exclusion or other sanctioning action related to any federal or state healthcare program (each, an “Enforcement Action”), Contractor shall immediately notify Kern Medical Center and such individual shall be immediately removed by Contractor from any functions involving (i) the claims development and submission process, and (ii) any healthcare provider contact related to KMC patients; provided, however, that if Contractor is directly involved in the Enforcement Action, any agreement between County and Contractor shall terminate immediately.

11. **HIPAA.** Contractor and County recognize that in performing services, Contractor may receive, create or otherwise have access to protected health information (“PHI”) and thereby become a business associate of Kern Medical Center (all as defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations [45 CFR Parts 160 through 164, inclusive] [“HIPAA”]). Accordingly, the parties will protect PHI in accordance with the HIPAA Business Associate Addendum attached hereto and incorporated herein by this reference as Exhibit “_.” In the event of a conflict between Exhibit “_” and any other confidentiality provision of this Agreement, Exhibit “_” will control.
12. **Responsibilities of Kern Medical Center. Regulatory Compliance.** In compliance with title 22, California Code of Regulations, section 70713 KMC will retain professional and administrative responsibility for services rendered under this Agreement. Contractor shall apprise KMC of recommendations, plans for implementation and continuing assessment through dated and signed reports which shall be retained by KMC for follow-up action and evaluation of performance.
13. **Termination.** The County may at its option, without cause, terminate this Agreement by written notice. A Notice of Termination will be deemed effective fifteen (15) days after personal delivery, or twenty (20) days after mailing by regular U.S. Mail, postage prepaid. In addition, either party may immediately terminate this Agreement should the other party fail to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the party initiating the termination. In the event this Agreement is terminated by either Consultant or the County, Consultant shall submit to the Responsible County Department all files, memoranda, documents, correspondence and other items generated in the course of performing this Agreement, within fifteen (15) days after the effective date of any written Notice of Termination. Should either party terminate this Agreement as provided herein, County shall pay Consultant for all satisfactory services rendered by Consultant prior to the effective date of termination in an amount not to exceed the maximum dollar amount indicated in Section 2 herein.

14. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing services to the County under this Agreement are and shall remain the property of the County, and shall be returned to County upon full completion of all services by Consultant or termination of this Agreement, whichever first occurs.
15. **Notices.** All notices required or provided for in this Agreement shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

To County:

To Consultant:

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

16. **Conflict of Interest.** The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Consultant agrees that they are unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the County may immediately terminate this Agreement by giving written notice thereof. Consultant shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
17. **Sole Agreement.** This document contains the entire agreement of 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.
18. **Authority to Bind County.** It is understood that Consultant, in Consultant's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind County to any agreements or undertakings.
19. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.
20. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Consultant. County shall be entitled to invoke any remedy available to County under this Agreement or

by law or in equity despite said forbearance or indulgence.

21. **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. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
22. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to County 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.
23. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.
24. **Compliance with Law.** Consultant 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 are hereby made a part hereof and incorporated herein by reference.
25. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.
26. **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.
27. **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.
28. **Nondiscrimination.** Neither Consultant nor any officer, agent, employee, servant or subcontractor of Consultant, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age or sex, either directly, indirectly or through contractual or other arrangements.
29. **Compliance with IRCA.** Consultant acknowledges that Consultant, and all subcontractors hired by Consultant to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in

compliance with the IRCA and shall ensure that any subcontractors hired by Consultant to perform services under this Agreement are in compliance with the IRCA. In addition, Consultant agrees to indemnify, defend and hold harmless the County, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Consultant's employees, or the employees of any subcontractor hired by Consultant, are not authorized to work in the United States for Consultant or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Consultant or Consultant's subcontractor(s).

30. Signature Authority. Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

31. Indemnification:

- a. CONTRACTOR agrees to indemnify, defend and hold harmless COUNTY and COUNTY's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by COUNTY, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of CONTRACTOR or CONTRACTOR's officers, agents, employees, independent CONTRACTORS, sub-SUPPLIERS of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of COUNTY; 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.
- b. Third Party Claims: If any claim is asserted or action or proceeding brought against COUNTY which alleges that all or any part of the Products supplied by CONTRACTOR or COUNTY's use thereof, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, COUNTY shall give CONTRACTOR prompt written notice thereof. CONTRACTOR shall defend any such claim or action with counsel of CONTRACTOR's choice and at CONTRACTOR's expense and shall indemnify COUNTY for any costs, including reasonable attorney's fees and damages actually incurred by COUNTY in connection therewith, including steps COUNTY may take to avoid entry of any default judgment or other waiver of COUNTY's rights. COUNTY shall cooperate fully with and may monitor CONTRACTOR in the defense of any claim, action or proceeding and will make employees available as CONTRACTOR may reasonably request with regard to such defense, subject to reimbursement by CONTRACTOR of all costs and expenses occasioned by COUNTY's cooperation in such defense.

34. Insurance

CONTRACTOR, in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of CONTRACTOR's actions in connection with the performance of CONTRACTOR's obligations, as required in this Agreement, shall secure and maintain insurance as described below. CONTRACTOR shall not perform any work under this Agreement until CONTRACTOR has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by COUNTY. CONTRACTOR shall pay any deductibles and self-insured retentions under all required insurance policies.

- a.** Workers' Compensation and Employer's Liability Insurance Requirement In the event Contractor has employees who may perform any services pursuant to this Agreement, CONTRACTOR shall submit written proof that CONTRACTOR is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the California Labor Code.

CONTRACTOR shall require any sub-contractor to provide workers' compensation for all of the sub-contractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by CONTRACTOR. If any class of employees engaged in work or services performed under this Agreement is not covered by CA Labor Code Section 3700, CONTRACTOR shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

CONTRACTOR shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

- b.** Liability Insurance Requirements:

- (1)** CONTRACTOR shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance as indicated in the attached Schedule:

- (a)** Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CONTRACTOR's performance of work under this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and three million dollars (\$3,000,000) aggregate.

- (b)** Automobile Liability Insurance against claims of Personal Injury

(including bodily injury and death) and Property Damage covering any vehicle and/ or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with the County with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

- (c) Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate.
 - (2) The Commercial General Liability and Automobile Liability Insurance required in this sub-paragraph b. shall include an endorsement naming the COUNTY and COUNTY's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto.
 - (3) If any of the insurance coverage required under this Agreement is written on a claims-made basis, Contractor, at Contractor's option, shall either (i) maintain said coverage for at least four (4) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement, or (ii) purchase an extended reporting period for not less than four (4) years following the termination of this Agreement.
 - (4) Prior to CONTRACTOR commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to COUNTY by Certificate of Insurance. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.
- c. Cancellation of Insurance -- The above stated insurance coverage required to be maintained by CONTRACTOR shall be maintained until the completion of all of CONTRACTOR's obligations under this Agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to COUNTY. CONTRACTOR shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
 - d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-;VII" rating. Any exception to these requirements must be approved by the County Risk Manager. All insurance coverage requirements shall be maintained by Vendor until completion of all Vendor's obligations to the County, and shall not be reduced, modified or canceled without thirty(30) days prior written notice to the County Purchasing Agent.

- e. If CONTRACTOR is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, CONTRACTOR shall provide coverage equivalent to the insurance coverage and endorsements required above. COUNTY will not accept such coverage unless COUNTY determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by CONTRACTOR is equivalent to the above-required coverage.
- f. All insurance afforded by Vendor pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the County.
- g. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
- h. Failure by CONTRACTOR to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by CONTRACTOR. COUNTY, at its sole option, may terminate this Agreement and obtain damages from CONTRACTOR resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONTRACTOR, COUNTY shall deduct from sums due to CONTRACTOR any premiums and associated costs advanced or paid by COUNTY for such insurance. If the balance of monies obligated to CONTRACTOR pursuant to this Agreement is insufficient to reimburse COUNTY for the premiums and any associated costs, CONTRACTOR agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve CONTRACTOR of its obligation to obtain and maintain the insurance coverage required by this Agreement.

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IN WITNESS TO WHICH, each party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

COUNTY OF KERN

Dated: _____

By: _____

Chairman, Board of Supervisors

"County"

[Name of Consulting Firm or Consultant]

Dated: _____

By: _____

[Name and title of person signing]

"Consultant"

APPROVED AS TO CONTENT:

[Name of County department]

Dated: _____

By: _____

[Name and title of person signing]

APPROVED AS TO FORM:

Office of the County Counsel

Dated: _____

By: _____

Deputy

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is by and between County of Kern, which owns and operates Kern Medical Center (Covered Entity ("CE"), 1700 Mount Vernon Ave., Bakersfield, CA 93306 and _____, hereinafter Business Associate ("BA").

RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.
- f. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- g. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- h. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- i. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- j. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
- k. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- l. Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. Obligations of Business Associate

- a. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities

of BA. or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

- b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. [42 U.S.C. Section 17935(a)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and

appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. (45 C.F.R. Section 164.504(e)(2)(ii)(S); 45 C.F.R. Section 164.308(b)). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

- e. **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than three(3) business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI ""I [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** If applicable BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** If applicable within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from BA or its agents or subcontractors. BA must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. Business Associate's Insurance.

1. BA in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of BA's actions in connection with the performance of BA's obligations, as required in this BAA, shall secure and maintain insurance as described below. BAA shall not perform any work under this Agreement until BAA has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by COUNTY. BAA shall pay any deductibles and self-insured retentions under all required insurance policies. BA shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance as indicated in the attached Schedule:
 2. Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and three million dollars (\$3,000,000) aggregate.
- n. Notification of Breach.** During the term of the Contract, BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- o. Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. Audits, Inspection and Enforcement.** Within ten (10) days of a written request by CE, BA and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information

pursuant to this Addendum for the purpose of determining whether BA has complied with this Addendum; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection. (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties. If requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract or Addendum, BA shall notify CE within ten (10) days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(1)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed.

4. Indemnification

BA agrees to indemnify, defend and hold harmless COUNTY and COUNTY's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges,

damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by COUNTY, 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 negligent act or omission of BA or BA's officers, agents, employees, independent BAs, sub-contractor of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of COUNTY; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of BA by any person or entity.

5. Disclaimer

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

6. Certification

To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine BA's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which BA's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Addendum.

7. Amendment

- a. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this Section or (ii) BA does not enter into an

amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

- b. **Amendment of Attachment A.** Attachment A may be modified or amended by mutual agreement of the parties at any time without amendment of the Contract or Addendum.

8. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract or Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, The Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

9. No Third-Party Beneficiaries

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

10. Effect on Contract

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

11. Interpretation

The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

COVERED ENTITY

BUSINESS ASSOCIATE

Kern Medical Center

By: _____

By: _____

Print Name: Paul J. Hensler
Title: Chief Executive Officer

Print Name:
Title: Chief Executive Officer

Date: _____

Date: _____