

INTERIM MANAGEMENT SERVICES AGREEMENT

by and between

ADVENTIST HEALTH TULARE (“Manager”)

and

TULARE LOCAL HEALTHCARE DISTRICT (“Owner”)

[●], 2018

INTERIM MANAGEMENT SERVICES AGREEMENT

THIS INTERIM MANAGEMENT SERVICES AGREEMENT (“**Agreement**”) is entered into as of [●], 2018 (the “**Execution Date**”), by and between TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Owner**”), and ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Manager**”). Owner and Manager are sometimes referred to in this Agreement as a “**Party**” or, collectively, as the “**Parties.**”

RECITALS

A. Owner is the owner of an acute care general hospital located in Tulare, California, heretofore known as Tulare Regional Medical Center (the “**Hospital**”). As of the Execution Date, Owner has voluntarily and temporarily surrendered the Hospital’s general acute care hospital license with the California Department of Public Health (“**CDPH**”) and the Hospital is non-operational. Owner is currently taking steps to reinstate the Hospital’s general acute care hospital license with CDPH prior to October 28, 2018. Owner has also filed a petition under Chapter 9 of the U.S. Bankruptcy Code on September 30, 2017, Case No. 17-13797, with the United States Bankruptcy Court for the Eastern District of California, Fresno Division (the “**Bankruptcy Court**”).

B. Adventist Health System/West, a California nonprofit religious corporation, d/b/a ADVENTIST HEALTH (“**Adventist Health**”), is the sole corporate member of Manager and other nonprofit and proprietary entities comprising a health care delivery system operating in the western United States.

C. Manager is a newly incorporated affiliate of Adventist Health, formed for the purpose of becoming the successor operator of the Hospital, to effect the continued delivery of health care for the benefit of communities served by the Owner.

D. Concurrent with this Agreement and in accordance with Section 32121(p) of the California Health and Safety Code, Owner and Manager also entered into that certain (i) Agreement for Purchase and Sale of Assets (“**APA**”) whereby Manager has agreed to purchase from Owner certain assets as described therein (other than real property) comprising the Hospital; and (ii) the Lease (“**Lease**”) pursuant to which Manager shall lease real property utilized in the Hospital’s operation, all as more particularly described in the Lease. Pursuant to terms of the APA, Manager shall submit a change of ownership (“**CHOW**”) application package to CDPH to effect a change in licensed operator of the Hospital from Owner to Manager (“**Application**”). The date of CDPH’s approval of such application shall be the Closing Date under the APA and the Lease’s effective date, subject to the Bankruptcy Court’s prior approval of the parties’ entry into this Agreement, APA, Lease and Financing Documents (as defined below, and collectively, the “**Transaction Documents**”) (“**Bankruptcy Approval**”) and approval of the affiliation with Adventist Health by the Tulare Local Healthcare District electorate pursuant to a ballot initiative measure on November 6, 2018 (the “**Approval Election**”).

C. Additionally, to assist Owner in re-opening the Hospital and reinstating its licensure with CDPH (where such reinstatement is evidenced by Owner's receipt of written communication from CDPH of same) ("**License Reinstatement**") and in anticipation of the closing of the APA (the "**Closing**"), CHOW and the Lease pursuant to which the Hospital will be operated by Manager (collectively, the ("**Transactions**"), Adventist Health and Owner have entered into that certain Debtor-in-Possession Credit Agreement and the Security Agreement, each dated as of [●] (the "**Financing Documents**") under which Adventist Health has extended a revolving credit facility to Owner.

D. From the Effective Date of this Agreement (as defined in Section 6.1) until the Closing Date (as defined in the APA) (the "**Transition Period**"), the Parties desire for Manager to provide Owner with certain management and administrative services in support of the Hospital's operations as identified in this Agreement. Owner and Manager believe that Manager's provision of the services identified in this Agreement will enhance Owner's ability to provide high quality, efficient health care services to the community served by the Hospital during the Transition Period.

F. After the Closing Date, Manager will operate the Hospital pursuant to its own acute care health facility license issued by CDPH pursuant to the CHOW, and Owner will cease to operate the Hospital.

AGREEMENT

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. DUTIES OF MANAGER

1.1 Management. Subject to those duties which shall remain the responsibility of Owner as set forth in Article II, Manager shall provide day-to-day management and operations support for the Hospital, and shall do so in a fiscally responsible manner seeking to provide high-quality services to the community. Manager shall provide its services in a manner that meets the day-to-day requirements of the business, and operational and administrative needs of the Hospital. Manager shall have the exclusive authority to perform these functions, subject to Owner's ultimate authority and control over the professional, administrative and other operations of the Hospital as required under applicable conditions of participation (42 C.F.R. 482), California Health & Safety Code Section 1250 *et seq.*, and regulations thereunder.

1.2 Executives and Specific Responsibilities. Manager shall provide the Chief Executive Officer, Chief Financial Officer, Chief Nursing Officer, and general vice presidents (the "**Executives**") for the Hospital. Manager shall assume and discharge all usual and customary responsibilities, duties and obligations in connection with operating and maintaining the Hospital as a public hospital in full compliance with all regulations and standards required of a general acute care hospital so licensed, including, without limitation, the following services:

- (a) Maintenance of the Hospital;

- (b) Supervision of all patient care as required by law, regulations and community standards for a general acute care hospital;
- (c) Coordination with the Hospital's medical staff;
- (d) Management and supervision of all personnel and staff;
- (e) Billing and collection services for services provided by the Hospital before and after the Effective Date;
- (f) Processing and payment of all accounts payable of the Hospital in accordance with the provisions of this Agreement;
- (g) Payroll processing, including processing of payroll taxes;
- (h) Purchasing all supplies, consumable goods, and other items necessary for the operation of the Hospital, as provided herein;
- (i) Bookkeeping and accounting for the operation of the Hospital; provided, however, that Owner shall arrange for accounting review by a qualified firm independent of Manager to validate financial statements prepared by Manager on behalf of Owner during the term of this Agreement; and
- (j) The timely filing of all reports required by the government and/or any other person or entity, provided that such filing shall be provided to Owner for review and possible revision at least twenty (20) days prior to its filing.

1.3 Supervision of Personnel. Manager shall manage and supervise all Hospital employed or contracted personnel ("**Personnel**"), in compliance with all applicable federal, state and local laws and ordinances, rules, regulations and orders, and ensure compliance with all staffing requirements and all related obligations under California licensure, accreditation and certification and payor participation standards.

1.4 Financial Management.

- (a) Manager shall establish new bank accounts ("**New Bank Accounts**") in Owner's name, and shall deposit all revenues collected on and after the Effective Date on behalf of Owner into the New Bank Accounts.
- (b) Owner shall maintain at least one of the bank accounts that it has at the time of the Effective Date ("**Old Bank Accounts**").
- (c) Manager shall determine whether revenues collected by it after the Effective Date pertain to items and services provided before the Effective Date ("**Pre-Effective-Date-Revenues**") or to items and services provided on or after the Effective Date ("**Post-Effective-Date-Revenues**"). For purposes of this Agreement, Post-Effective-Date-Revenues shall not include any rental receipts during the term of this

Agreement with respect to any of Owner's Owned Real Property, which shall remain the property of Owner.

(d) Owner shall pay all expenses, invoices, accounts payable and other obligations of Owner that were incurred or arose from actions prior to the Effective Date from the Old Bank Accounts. Manager shall place all Post-Effective-Date-Revenues in a New Account, and shall pay all expenses, invoices, accounts payable and other obligations of Owner that were/are incurred or arise from actions on or after the Effective Date from New Bank Accounts and from additional funds of Manager as may be reasonably required to fund operations of the Hospital during the Transition Period in the manner in which Owner operated the Hospital prior to the Effective Date. Notwithstanding any other provision of this Agreement, in no event shall Manager be obligated for any cost or expense relating to any Excluded Liabilities as defined under the APA, or in connection with specific affirmative covenants of Owner in connection with the APA or Lease (as defined therein).

(e) Manager shall undertake, manage, and administer: (i) the timely payment of all Hospital expenses and accounts payable incurred on or after the Effective Date; (ii) the timely billing of fees for all services, goods and other items provided at the Hospital on or after the Effective Date; and (iii) the collection of accounts receivable pertaining to services and items provided after the Effective Date. Manager shall take such actions on behalf of Owner and under Owner's provider numbers, including, without limitation, Owner's provider numbers issued by Medicare, Medi-Cal or their fiscal intermediaries or paying agents (the "**Programs**").

(f) Manager shall maintain all accounting books and records that relate to Owner and its operations. Owner may audit those books at any time.

(g) Owner hereby appoints Manager as its agent for purposes of billing and collecting Owner's accounts receivable and Owner hereby agrees to execute any and all documents reasonably necessary to memorialize such appointments. Owner further appoints Manager to be its true and lawful attorney-in-fact during the term of this Agreement for purposes of (i) billing and collecting in the name of Owner, and (ii) receiving, taking possession of and endorsing in the name of Owner any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable of Owner. Owner agrees to cooperate with Manager, and to execute such documents and take such other actions as may be reasonably necessary or desirable, in connection with the efficient day-to-day billing and collection of the fees and charges of Owner, including, without limitation, the addition of Manager and its designated agents as authorized signatories on the New Bank Accounts, and granting Manager the right to make withdrawals from such New Bank Accounts when and as required to pay expenses pertaining to operations on or after the Effective Date.

(h) In connection with its administration, management and payment of all Owner expenses and accounts payable pertaining to the time on or after the Effective Date, Manager shall have full and complete authority to draw, by check or other means,

all available amounts in the New Bank Accounts to cover the payment of such fees and expenses.

1.5 Legal Compliance. Manager shall supervise the provision of patient care at the Hospital in compliance with all applicable federal, state and local laws and ordinances, rules, regulations and orders. Manager shall use all commercially reasonable efforts to manage the Hospital (including, without limitation, its billing and collection activities) in a manner that (i) is intended to result in the delivery of quality medical care, and (ii) eliminates as reasonably practical, grounds for complaints, investigations or adverse action against the Hospital or Owner's license (or against Owner, by virtue of Owner holding such license) by any governmental authority or third party relating to patient care or the operation and maintenance of the Hospital during the term of this Agreement.

1.6 Patient Information.

(a) Manager shall comply at all times, in all material respects, with the requirements of all applicable HIPAA Regulations (as defined in Exhibit A attached hereto) and the business associate agreement by and between the Parties attached hereto as Exhibit A (the "BAA") and incorporated herein by this reference.

(b) All patient records and information shall remain the property of Owner during the term of this Agreement. Manager shall properly and completely maintain all patient records of the Hospital during the term of this Agreement. Manager shall have the right, to the extent permitted by applicable law, to analyze and obtain information from such records and report same to Owner. Nothing in this section constitutes the waiver of any attorney-client privilege or other privilege or confidentiality obligation and neither Party shall be required hereunder to give the other Party documents if, as a result, an existing attorney-client privilege or other privilege or confidentiality obligation would be waived. All records, files, proceedings and related information with respect to patients, and of Owner and of Owner's medical staff ("**Medical Staff**") and its committees pertaining to the evaluation and improvement of the quality of patient care at the Hospital, shall be kept strictly confidential by Manager and its personnel according to any applicable federal and state laws and Owner policies. Manager shall take all steps necessary to assure that the confidentiality of medical records and health information of Hospital patients is preserved in accordance with HIPAA Regulations as defined in the BAA, and that all employees and agents of Manager shall use such information solely for the purposes necessary to perform Manager's obligations under this Agreement. Neither Manager nor its personnel shall voluntarily disclose such records or information, either orally or in writing, except as expressly required by law.

1.7 Utilities and Supplies. Manager shall order all utilities, services, materials and supplies reasonably required in the proper day-to-day operations of the Hospital, as required by all laws, regulations, certifications and payer requirements. Manager, on behalf of Owner, shall also arrange and manage the acquisition of all pharmaceutical items for the Hospital, to the extent allowed by law. Manager shall pay

for all such utilities, services, materials, supplies and pharmaceutical items following the Effective Date; provided that the cost and expense of utilities, services and supplies as reasonably required up to the Effective Date (including a reasonable and customary inventory in the case of supplies and pharmaceutical items shall be provided at the cost and expense of the District.

1.8 Public Communications. Owner shall have the sole authority to make public statements about the Hospital and its operations. Adventist Health and Manager may make public comments about its own actions.

1.9 Owner Access; Manager Liaison with Owner. Owner shall at all times during the term of this Agreement have full and unrestricted access to the Hospital, including all of its facilities, Personnel, accounts, books and records, contracts and otherwise, as the owner and operator of the Hospital and in furtherance of Owner's discharge of its duties thereby. Manager shall facilitate such access by the Owner's board of directors (the "**Board of Directors**") and its representatives. Manager also shall use its reasonable best efforts to ensure its attendance, through Manager's representatives, at all meetings of the Board of Directors during the term of this Agreement, and provide reports or presentations to the Board of Directors with respect to Hospital operations upon Owner's reasonable prior request.

1.10 Information Systems. Manager shall not change any application applicable to Owner's current information system or information technology during the term of this Agreement; provided, however, that following an Approval Election, Manager may initiate implementation of Adventist Health's standard Cerner Millennium Electronic Medical Record system for the Hospital at Manager's cost and expense.

1.11 Government Reporting Requirement.

(a) **Medicare Reporting Requirements.** Manager agrees that it will keep, and will make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General or any of their duly authorized representatives the contract and books, documents and records necessary to comply with the provisions of Section 1861(v)(1)(I) of the Social Security Act, which are in the possession of Manager, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, subject to applicable privileges and immunities. This Agreement (as stated in the first sentence of this Section) shall continue to be effective between the Parties notwithstanding the termination or rescission of all or part of the remainder of this Agreement.

(b) **Related Organization Reporting.** If Manager carries out any of the duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with a related organization, such subcontract shall contain a clause which is identical to paragraph (a) of this Section, but for the name of the subcontractor.

1.12 Contracts. Manager shall not bind Owner to any contracts without the prior approval of Owner, except that Manager may obligate Owner to any new contract if that contract will be automatically assigned to Manager upon the Closing of the APA. Manager may terminate any contract on behalf of Owner, provided that such termination is performed legally, does not jeopardize the operations of the Hospital, and Manager is responsible for any liabilities arising out of such termination. Otherwise, Manager must obtain Owner's approval prior to any such termination.

1.13 Final Cost Reporting. Manager shall provide to Owner all financial and administrative resources and support that are reasonably necessary to permit Owner to file a final cost report with all necessary governmental and nongovernmental payors, including but not limited to the CDPH and the Centers for Medicare & Medicaid Services ("CMS"), within forty-five (45) days following the Closing Date, in accordance with Section 1815(a) of the Social Security Act and the regulations thereunder. Notwithstanding the foregoing deadlines, the time for the Parties' respective performance concerning the delivery and filing of the final cost report will be reasonably extended in the event that an extension for filing is obtained in writing from CMS.

1.14 Manager's Right to Subcontract. Manager may subcontract with other persons or entities for any of the services that Manager is required to perform under this Agreement.

ARTICLE II. DUTIES OF OWNER

2.1 Owner's Board of Directors; Role and Responsibilities. Without limiting (a) the responsibility of Owner and its Board of Directors concerning establishment of the mission and vision of the Hospital and determination of appropriate strategic goals, objectives and relationships for the Hospital, or (b) the duties of Owner's Board of Directors as prescribed under applicable conditions of participation (42 C.F.R. 482) and by the California Health & Safety Code Sections 1250, *et seq.*, the Board of Directors of Owner, acting in its duly appointed role, shall:

(a) **Board Control.** Exercise ultimate control over the assets and operation of the Hospital, except that Manager (as provided in Section 1.1) shall act as Owner's agent for the management of the Hospital, and shall have the authority to supervise and manage its day-to-day operations in accordance with the policy directives, rules and regulations adopted by the Board and as otherwise expressly set forth herein. Notwithstanding the foregoing, Owner shall at all times during the term of this Agreement have full and unrestricted access to the Hospital, including all of its facilities, Personnel, accounts, books and records, contracts and otherwise, as the owner and operator of the Hospital; and

(b) **Medical Staff Appointments and Privileges.** Approve all Medical Staff appointments, as well as define, adjust, withhold, or withdraw any and all practice privileges in the Hospital. Such action will be based upon the recommendations of the Medical Staff within the provisions of the Bylaws of the Hospital. The Chief Executive

Officer shall serve as the liaison between the Medical Staff and Owner's Board, and Manager shall have the responsibility to consult with Owner's Board and/or the Medical Staff in regard to matters pertaining to appointments, the definition of privileges, and Medical Staff function within the Hospital.

Owner hereby approves and adopts the policies and procedures identified in Schedule 2.1.

2.2 Licensure. Provided that the Hospital's general acute care hospital license and other licenses, permits, certifications, etc. that were placed in suspension are reinstated, both Parties shall use commercially reasonable efforts to keep in full force and effect all licenses, certifications, permits, provider numbers and similar items necessary or appropriate to the continued operation of the Hospital, and both Parties shall use commercially reasonable efforts to not allow any of the same to become invalid, restricted, or otherwise adversely affected by the acts or omissions of any of their officers, employees, agents or representatives. Owner, with assistance from Manager, shall perform those obligations and responsibilities that must be performed by Owner for the Hospital to remain licensed, but the Parties recognize that the Hospital will be managed and operated by Manager, and that Manager therefore shall have the primary responsibility for taking all actions necessary to maintain all licenses, certifications and provider numbers. Manager shall notify Owner of any actions that must be affirmatively taken by Owner in order to maintain any of the above items during the term of this Agreement.

(a) Owner shall not: (i) take any action or fail to take any action that could be reasonably anticipated to terminate or jeopardize the effectiveness of any licenses, certifications, approvals or provider numbers necessary for operation of the Hospital; or (ii) take any action or adopt any policy that would interfere with Manager's provision of the services described herein, except as allowed by this Agreement.

(b) Owner shall: (i) notify Manager immediately if Owner receives any written notice or communication relating to the Hospital or operation thereof; and (ii) execute and return, in a timely manner, all contracts and agreements (including extensions and renewals thereof) reasonably necessary to continue in effect the Hospital's participation in and eligibility for the Programs.

2.3 Consent by Owner. Owner shall not unreasonably withhold consent from any action requested by Manager hereunder and shall not unreasonably interfere with Manager's activities hereunder. Owner shall not interfere with the day-to-day operations of the Hospital.

2.4 Owner Actions. During the term of this Agreement, Owner shall not, without the consent of Manager:

(a) Authorize or approve the transfer, sale or other disposition of any of the Hospital's real or personal property other than in the ordinary and usual course of business as heretofore conducted, except for such items as are no longer useful, or obsolete, worn out or incapable of any further use, and as will be replaced in accordance

with Owner's usual practice with other items of substantially the same value and utility as the items transferred, sold, exchanged or otherwise disposed of;

(b) Authorize or approve the creation, participation in or agreement to the creation of any liens, encumbrances or hypothecations of any of the Hospital's real or personal property, except any liens for current taxes not yet due and payable and liens created in the ordinary and usual course of its business as heretofore conducted and under the Financing Documents;

(c) Authorize or approve the execution of any lease, contract or agreement of any kind or character with respect to the Hospital or its licensed operations, or incur any liabilities in connection therewith, save and except (a) those which will terminate or expire prior to the Expiration Date (as defined below); and (b) those to which it is presently committed or that arise in the ordinary course of business as heretofore conducted;

(d) Authorize or approve the termination of any permits concerning the Hospital or the its licensed operations;

(e) Authorize or approve the waiver or release of any right or claim of Owner with respect to the Hospital or its licensed operations except in the ordinary course of business; or

(f) Take any action that in any way alters Manager's rights to access Hospital assets as set forth in this Agreement.

ARTICLE III. COMPENSATION

3.1 Management Fee. As compensation for providing the items and services under this Agreement, Manager shall retain any and all net income of the Hospital earned during the term of this Agreement; provided, however, that in no event shall such retention exceed an amount equal to the sum of [●] (\$[●]) ("**Maximum Monthly Fee**") multiplied by the number of months during the term of this Agreement, prorated for any partial month.

3.2 Pre-Manager Accounts. Owner shall close its financial books with respect to the time period prior to the Effective Date, and shall make a record of all accounts receivable, accounts payable and other financial information related to the Old Bank Accounts pertaining to the Hospital prior to the Effective Date (the "**Pre-Manager Accounts**"). Owner shall have sole responsibility for all liabilities and expenses that pertain to the operations of the Hospital prior to the Effective Date.

3.3 Post-Manager Accounts. Owner, with Manager's assistance, shall establish a new set of financial books, including New Bank Accounts, for the Hospital operations on and after the Effective Date (the "**Post-Manager Accounts**"). Owner shall provide Manager access to the Post-Manager Accounts and Manager shall, on Owner's behalf, pay all expenses and other obligations of the Hospital (except for those pertaining

to the Old Bank Accounts), using any of the following: (i) working capital from funds Owner has borrowed under the Financing Documents from Adventist Health, (ii) Manager’s own funds or (iii) any revenues that pertain to items or services provided by the Hospital on or after the Effective Date. Manager shall provide such funds as are necessary to pay any expenses, liabilities and/or other obligations that pertain to the operations of the Hospital on or after the Effective Date. Manager shall fund all costs of operating and paying the obligations incurred by the Hospital on or after the Effective Date.

3.4 Separate Accounting. All of the revenues, expenses and obligations of Owner related to the Hospital prior to the Effective Date shall be managed in the Old Bank Accounts and records that are separate from the New Bank Accounts and records that are used to operate the Hospital on or after the Effective Date. Owner shall have the right to audit all financial information and/or books with respect to Manager’s and the Hospital’s performance under the terms of this Agreement.

3.5 Billing and Collections of Pre-Manager Accounts. Until such service is discontinued by Owner, Manager shall assist Owner in performing all necessary actions to bill and collect on behalf of Owner all amounts due to Owner with respect to the Pre-Manager Accounts. Owner may terminate this billing and collections arrangement with Manager by providing thirty (30) days’ prior notice of termination to Manager. This Section 3.5 shall survive termination of this Agreement if this Section has not already been specifically terminated by Owner.

**ARTICLE IV.
INSURANCE AND INDEMNITY**

4.1 Insurance.

(a) **Coverage Requirements.** Each of the Parties during the term of this Agreement and any extensions or continuations, shall at their sole cost and expense, and as applicable, purchase or provide, keep and maintain, and require any agents or contractors providing services pursuant to this Agreement to do the same, insurance coverage as follows:

Coverage Type	Owner	Manager
Hospital Professional Liability	Primary	Additional Insured
General Liability	Primary	Additional Insured
Directors and Officers Liability	Yes	Yes
Property Insurance	Primary	Additional Insured
Automobile Liability	Owner-owned vehicles	Manager-owned / Manager employees-owned vehicles
Worker’s Compensation	Yes, covering Owner employees	Yes, covering Manager employees

Liability (including Employer's Liability)		
Fiduciary and ERISA Liability	Yes, covering Owner employees	Yes, covering Manager employees
Privacy (Cyber Risk) Liability	Primary	Additional Insured
Pollution Liability	Primary	Additional Insured
Fidelity (Crime)	Yes, covering Owner employees	Yes, covering Manager employees
Peer Review (follows HPL coverage)	Primary	Additional Insured
Employment Practices Liability	Yes, covering Owner employees	Yes, covering Manager employees (included in Manager's D&O coverage)

Such insurance shall be with carriers with a minimum Best rating (or equivalent) of A- VII, or through an acceptable program of self-insurance. Such insurance shall be in amounts and in a form necessary to protect against loss from claims arising out of the Parties business activities. Reasonable changes in the amounts or types of coverage necessary to protect against loss will be made upon the mutual agreement of the Parties. Evidence of coverage shall be provided to the other Party within thirty (30) days of Execution Date. Unless notified in writing within thirty (30) days thereafter the insurance coverages in place will be deemed reasonable as of the date of the Agreement. Changes can be requested by written notice of one Party to the other.

(b) **Evidence of Coverage.** The Parties shall provide to each other evidence of each coverage required in this Agreement on or as mutually agreed to after the Effective Date. Owner agrees that the following policies shall name Manager as Additional Insured during the term of this Agreement: Hospital Professional Liability, General Liability, Property Insurance, Privacy (Cyber Risk) Liability and Pollution Liability as respects the management and operations support of the Hospital.

(c) **Notice of Changes in Coverage; Tail Requirements.** Each of the Parties shall provide at least thirty (30) days' advance written notice to the other Party as to any material alteration or amendment of coverage including cancellation or other termination. If any policy is written on a "claims made" basis and is later converted to "occurrence" or canceled for any reason, "prior acts" or "tail" coverage shall be obtained in the amounts specified for an unlimited reporting period (except for D&O which tail coverage shall be as long as Owner deems appropriate).

4.2 Owner's Indemnification.

(a) Except as and to the extent relating to Manager's or any of its affiliates' gross negligence or willful misconduct, bad faith or fraud, Owner shall indemnify and hold harmless Manager, its affiliates, and its and their respective officers, directors, partners, managers, shareholders, members, principals, attorneys, agents, employees and other representatives

(collectively, the “**Manager Indemnified Parties**”) from and against any and all Losses (as defined below) that any such Manager Indemnified Party incurs as a result of, arising out of, relating to or in connection with: (i) any breach or nonfulfillment of any covenants or other agreements made by Owner in this Agreement; (ii) Owner’s non-compliance with any Law; or (iii) any gross negligence, fraud, willful misconduct or criminal acts of Owner or its current and past officers, directors, members, employees, agents and/or independent contractors.

(b) Specifically with regard to Owner’s indemnity obligations set forth under Section 4.2(a)(ii) above, Owner shall indemnify Manager for all Losses regardless of whether the non-compliance resulting in, arising out of, related to, or in connection with the Losses occurred before the Effective Date, during the term of this Agreement or following the termination of this Agreement.

4.3 Manager’s Indemnification.

(a) Except as and to the extent relating to Owner’s or any of its affiliates’ gross negligence or willful misconduct, bad faith or fraud, including the gross negligence, willful misconduct, bad faith or fraud of Owner’s employees or contractors, Manager shall indemnify and hold harmless Owner, its affiliates, and its and their respective officers, directors, partners, managers, shareholders, members, principals, attorneys, agents, employees and other representatives (collectively, the “**Owner Indemnified Parties**”) from and against any and all Losses that any such Owner Indemnified Party incurs as a result of, or arising from: (i) any breach or non-fulfillment of any of the covenants or other agreements made by Manager in this Agreement; and (ii) any gross negligence, fraud, willful misconduct or criminal acts of Manager or its officers, directors, employees, agents and independent contractors.

(b) Manager’s aggregate liability in respect of claims for indemnification pursuant to Section 4.3(a) shall not exceed the total management fees received by Manager pursuant to this Agreement.

The amount of any Losses shall be reduced or reimbursed, as the case may be, by any amount received by any Manager Indemnified Parties or any Owner Indemnified Parties, as applicable, with respect thereto under any insurance coverage provided by any third party or from any other party alleged to be responsible therefor, provided that such reduction or reimbursement shall be net of any (i) increase in premiums in any such insurance coverage or (ii) costs of collection. The Manager Indemnified Parties and the Owner Indemnified Parties, as applicable, shall use commercially reasonable efforts to collect any amounts available under such insurance coverage and from such other party alleged to have responsibility. If a Manager Indemnified Party or Owner Indemnified Party, as applicable, receives an amount under insurance coverage or from such other party with respect to Losses at any time subsequent to any indemnification provided by Owner pursuant to Section 4.2 or by Manager pursuant to Section 4.3, then such Manager Indemnified Party or Owner Indemnified Party, as applicable, shall promptly reimburse Manager or Owner, as applicable, for any payment made or out-of-pocket expense incurred by such Person in connection with providing such indemnification up to such amount received (less any costs or expenses incurred in recovering such amounts) by the Manager Indemnified Party or Owner Indemnified Party, as applicable. Notwithstanding the foregoing, nothing in this Section 4.3 shall be construed to relieve any insurance carrier of its

obligations under any insurance coverage maintained by Owner, Manager or any affiliate of Owner or Manager, which in all cases shall be primary to the indemnification obligations hereunder.

4.4 Notice of Third-Party Claims and Control of Litigation.

(a) If a Governmental Authority or other third party asserts a claim or potential liability (a “**Third Party Claim**”) against a Person entitled to indemnification under this Article IV (the “**Indemnified Party**”) that would give rise to a claim under this Article IV, the Indemnified Party promptly shall provide written notice of the Third Party Claim (a “**Claim Notice**”) to the Person providing indemnity hereunder (“**Indemnifying Party**”); provided, however, that the failure to provide such notice as so indicated shall not affect the Indemnifying Party’s obligation to indemnify the Indemnified Party unless such notice is not provided prior to the expiration of the Survival Period (as defined below in Section 4.7 for such Third Party Claim), and the Indemnifying Party shall have no remedy by reason of such failure except to the extent of any actual prejudice resulting from such delay. The Indemnifying Party, at its sole cost and expense, will be entitled to participate in the defense of any Third Party Claim and will have the right to defend the Indemnified Party against the Third Party Claim so long as (i) the Indemnifying Party gives written notice to the Indemnified Party within ten (10) business days after receipt of a Claim Notice that it will indemnify the Indemnified Party from and against the entirety of any and all Losses the Indemnified Party may suffer resulting from, arising out of, relating to, or in connection with the Third Party Claim described in such Claim Notice, (ii) the Third Party Claim involves only claims for monetary damages and does not seek an injunction or other equitable relief against the Indemnified Party, (iii) the Indemnified Party has not been advised by counsel that a conflict or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third Party Claim, (iv) the Third Party Claim does not relate to or otherwise arise in connection with any criminal or regulatory enforcement action, and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently. If the Indemnifying Party, within ten (10) business days after receipt of a Claim Notice, fails to defend such Third Party Claim, the Indemnified Party will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Third Party Claim on behalf of and for the account and risk of the Indemnifying Party and seek indemnification therefor under Section 4.2 or Section 4.3, as applicable.

(b) If the Indemnifying Party assumes the defense of a Third Party Claim in accordance with Section 4.4(a), the Indemnified Party shall cooperate in all commercially reasonable respects with the Indemnifying Party in the investigation, trial and defense of any Proceeding relating to such Third Party Claim, including any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost, participate in the investigation, trial and defense of such Proceeding or any appeal arising therefrom. The Parties shall cooperate with each other in any notifications to insurers. The Indemnified Party shall reasonably assist and cooperate, at the cost and expense of the Indemnifying Party, with the Indemnifying Party in the making of settlements and the enforcement of any right of contribution to which the Indemnified Party may be entitled from any Person or entity in connection with the subject matter of any litigation subject to indemnification hereunder.

4.5 Notice of Non-Third-Party Claims. If an Indemnified Party seeks indemnification under this Article IV with respect to any matter which does not involve a Third-Party Claim, the Indemnified Party shall give written notice to the Indemnifying Party promptly after discovering the liability, obligation or facts giving rise to such claim for indemnification, describing the nature of the claim in reasonable detail, the amount thereof (if known and quantifiable), and the basis thereof (the “**Indemnity Notice**”); provided that any failure to so notify or any delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party of its or his obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure or delay. If the Indemnifying Party does not notify the Indemnified Party in writing within thirty (30) days from its receipt of the Indemnity Notice that the Indemnifying Party disputes such claim, the Indemnifying Party shall be deemed to have accepted and agreed to indemnify the Indemnified Party from and against the entirety of any Losses described in the Indemnity Notice, subject to the limitations on indemnification set forth in this Article IV. If the Indemnifying Party delivers a notice disputing the indemnification claim to the Indemnified Party within thirty (30) days from its receipt of the Indemnity Notice, the Indemnifying Party and the Indemnified Party shall proceed in good faith to negotiate a resolution to such dispute. If the Indemnifying Party and the Indemnified Party cannot resolve such dispute within forty-five (45) days after delivery of the indemnity dispute notice, such dispute shall be resolved in accordance with Article ARTICLE VII.

4.6 Certain Definitions.

(a) “**Losses**” means all losses, liabilities, claims, damages, penalties, fines, judgments, awards, settlements, costs, fees (including court costs and costs of appeal), disbursements and expenses (including reasonable costs of investigation and defense and reasonable attorneys’ fees) or diminution in value incurred or suffered by an indemnified Party, whether or not involving a third-party claim, including reasonably foreseeable lost profits and other similar economic losses or damages.

(b) “**Governmental Authority**” means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal, special district or other instrumentality of any government, whether federal, state or local, domestic or foreign, and any self-regulatory organization.

(c) “**Person**” means an individual, association, corporation, limited liability company, partnership, limited liability partnership, trust, Governmental Authority or any other entity or organization.

(d) “**Proceeding**” means any claim, action, arbitration, audit (including any Recovery Audit Contractor, Medicaid Integrity Contractor, Comprehensive Error Rate Testing, Zone Program Integrity Contractor or similar audits), hearing, investigation, litigation suit or other similar proceeding by or before a Governmental Authority.

4.7 Survival. The provisions in Section 4.2 through Section 4.6 shall survive any expiration or termination of this Agreement until the later of (i) ninety (90) days after the expiration of the applicable statute of limitations, including any applicable tolling period or (ii) fully performed or observed in accordance with its terms (each such period, a “**Survival Period**”).

**ARTICLE V.
RELATIONSHIP BETWEEN THE PARTIES**

5.1 Independent Contractor. Each of Manager and Adventist Health is and shall at all times be an independent contractor with respect to Owner in meeting Manager’s or Adventist Health’s responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a partnership, employer-employee or joint venture relationship between Manager and Owner or between Manager and any Owner Practitioner.

5.2 Limitation on Control. Manager shall neither have nor exercise any control or direction over the professional medical judgment of any professional provider contracted with Owner, or the methods by any professional provider contracted with Owner performs professional medical services; provided, however, that Owner and any professional provider contracted with Owner shall be subject to and shall at all times comply with the bylaws, guidelines, policies and rules of Manager. Neither Party shall have any right, power or authority to act for or enter into binding agreements on behalf of the other Party, except as specifically set forth in this Agreement.

5.3 Referrals. No term of this Agreement shall be construed as requiring or inducing Owner or any person employed or retained by Owner to refer patients to Manager or any Manager-affiliated entity. Owner’s rights under this Agreement shall not be dependent in any way on the referral of patients to Manager or its affiliated organizations by Owner or any person employed or retained by Owner.

**ARTICLE VI.
TERM AND TERMINATION**

6.1 Term. This Agreement shall become effective on the date of License Reinstatement (the “**Effective Date**”), and shall continue until the Closing Date (the “**Expiration Date**”), subject to the termination provisions of this Agreement.

6.2 Termination.

(a) This Agreement shall terminate immediately on [November 30, 2018] if the November 6, 2018 ballot initiative measure concerning the Hospital’s affiliation with Adventist Health does not result in an Approval Election.

(b) If Manager breaches any material provision of this Agreement, then Owner may, at its option, upon thirty (30) days written notice to Manager, unless Manager has cured said breach before said thirty (30) days have elapsed or immediately in the case of danger to patient care, (i) terminate this Agreement, or (ii) maintain this

Agreement in full force and effect, and in either case seek damages or other relief appropriate thereto.

(c) If Owner breaches any material provision of this Agreement, the APA or the Financing Documents, then Manager may, at its option, upon thirty (30) days written notice to Owner, unless Owner has cured said default before said thirty (30) days have elapsed, or immediately in the case of danger to patient care, (i) terminate this Agreement, or (ii) maintain this Agreement in full force and effect, and in either case seek damages or other relief appropriate thereto.

(d) This Agreement may be terminated upon mutual agreement of the Parties.

6.3 Rights Upon Termination. Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive such termination or expiration.

ARTICLE VII. DISPUTE RESOLUTION

7.1 Dispute Resolution. Except as otherwise provided in this Agreement, any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate (collectively, a “*Dispute*”) shall be settled in accordance with the following procedures. Notwithstanding anything that may be construed to the contrary herein, each of the Parties expressly acknowledges that (i) it has an affirmative duty to expedite the process and procedures described below to the extent reasonably practical in order to facilitate a prompt resolution of any Dispute and (ii) each Party has a mission of serving their communities, and all communications and proposed resolutions of the Dispute shall take these missions into consideration.

(a) **Dispute Notice.** Notice by either Party of the existence of a Dispute shall (i) be delivered in writing, (ii) specify what provision of the Agreement such Party believes is under Dispute and (iii) recommend a course of action to resolve the Dispute (the “*Dispute Notice*”).

(b) **Meet and Confer.** If, within fifteen (15) days after receipt by the applicable Party of a Dispute Notice, the Parties do not resolve such dispute, then the Dispute shall be referred to the designated senior executives with authority to resolve the Dispute from each Party for further negotiation (the “*Meet and Confer*”). The obligation to conduct a Meet and Confer pursuant to this Section 7.1(b) does not obligate any Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable laws protecting statements, disclosures, or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such laws, including California Evidence Code Section 1152.

(c) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Dispute shall be determined by arbitration in Fresno County, California. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.

(i) Either Party may commence arbitration by giving written notice to the other Party demanding arbitration (the “**Arbitration Notice**”). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of action alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.

(ii) The parties shall cooperate in good faith to identify one person that is acceptable to both Parties to act as an arbitrator within fifteen (15) days after the commencement of arbitration. In the event the Parties are unable or fail to agree upon the arbitrator within the allotted time, the arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators, and they shall have the authority to grant any relief permitted by law, including equitable relief.

(iii) The Parties shall be entitled to reasonable production of relevant, non-privileged documents, carried out expeditiously. If the Parties are unable to agree upon same, the arbitrator shall have the power, upon application of any Party, to make all appropriate orders for production of documents by any Party. Depositions shall be permitted only upon a showing of substantial need.

(iv) The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute.

(v) The following time limits are to apply to any arbitration arising out of or related to this Agreement: The evidentiary hearing on the merits (“**Hearing**”) is to commence within six (6) months of the service of the arbitration demand. A brief, reasoned award is to be rendered within forty-five (45) days of the close of the Hearing or within forty-five (45) days of service of post-hearing briefs if the arbitrator directs the service of such briefs. The arbitrator must agree to the foregoing deadlines before accepting appointment. Failure to meet any of the foregoing deadlines will not render the award invalid, unenforceable or subject to being vacated.

(vi) The Parties shall maintain the confidential nature of the arbitration proceeding and the award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

(vii) The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by applicable law.

7.2 Provisional Measures. Nothing in this Agreement shall prevent either Party from seeking provisional measures from any court of competent jurisdiction, and any such

request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

7.3 Attorneys' Fees and Costs. The arbitrator(s) in the Sections 7.1(c) shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. In addition, the prevailing Party shall be entitled to its reasonable attorneys' fees and other costs for any other action, including court proceedings for provisional measures or for the enforcement of any arbitral award.

ARTICLE VIII. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Agreement.

8.2 Assignment. Except for assignment by Manager to an entity owned, controlled by, or under common control with Manager, neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

8.3 Attorneys' Fees. If either Party brings an action for any relief or collection against the other Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.

8.4 Authorized Persons. Whenever any consent, approval or determination of a Party is required pursuant to this Agreement, the consent, approval or determination shall be rendered on behalf of the Party by the person or persons duly authorized to do so, which the other Party shall be justified in assuming means any officer of the Party rendering such consent, approval or determination, or the Party's board of directors.

8.5 Choice of Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, except choice of law rules that would require the application of the laws of any other jurisdiction.

8.6 Compliance With Laws. The Parties shall comply with applicable laws, ordinances, codes and regulations of federal, state and local governments, including laws that require Owner and or any professional provider contracted with Owner to disclose any economic interest or relationship with Manager.

8.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8.8 Entire Agreement. This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

8.9 Schedules and Exhibits. The attached schedules and exhibits, together with all documents incorporated by reference in the schedules and exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

8.10 Force Majeure. Neither Party is liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), action of any governmental authority, riots, revolutions, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, strikes or similar nonperformance or defective performance or late performance of employees, suppliers or subcontractors.

8.11 Further Assurances. Each Party shall, at the reasonable request of the other Party, execute and deliver to the other party all further instruments, assignments, assurances and other documents, and take any actions as the other Party reasonably requests in connection with the carrying out of this Agreement.

8.12 Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

8.13 Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice is deemed given when sent if sent as specified in this paragraph, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

OWNER:	Tulare Local Healthcare District 1255 N. Cherry #536 Attention: Kevin Northcraft, President Michael Jamaica, Vice President
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With a copy to: McCormick Barstow, LLP
7647 North Fresno Street P.O. Box 28912
Fresno, California 93729
Attention: Todd Wynkoop, Esq.

MANAGER: Adventist Health Tulare
[●]
[●]
Attention: President

ADVENTIST HEALTH Adventist Health
P.O. Box 619002
2100 Douglas Boulevard
Roseville, California 95661
Attention: Office of General Counsel

With a copy to: Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Attention: Daniel K. Settelmayer, Esq.

8.14 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement unless the purpose of this Agreement is thereby destroyed.

8.15 No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, Owner, corporation or entity other than the Parties.

8.16 Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

[Signature Page Follows]

The Parties have executed this Agreement as of the date first above written.

OWNER

TULARE LOCAL HEALTHCARE DISTRICT,
a local health care district of the State of California

By: _____
Its _____

MANAGER

ADVENTIST HEALTH TULARE,
a California nonprofit religious corporation

By: _____
Its _____

Schedule 2.1

POLICIES AND PROCEDURES

Exhibit A

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (this “**BAA**”) is made by and between Tulare Local Healthcare District (“**Provider**”) and Adventist Health Tulare (“**Vendor**”), and is effective as of _____, 2018 (the “**BAA Effective Date**”).

RECITALS

- A. Vendor provides certain services for or on behalf of Provider (“**Services**”), pursuant to an agreement or arrangement (the “**Underlying Agreement**”), and, in the performance of the Services, Vendor may create, receive, maintain or transmit Protected Health Information on behalf of Provider (“**Provider PHI**”).
- B. Provider and Vendor intend to protect the privacy and provide for the security of the Provider PHI 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 the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “**HIPAA Regulations**”) and other applicable laws.
- C. The HIPAA Regulations require Provider to enter into an agreement containing specific requirements with its business associates prior to the disclosure of Protected Health Information.

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

1. **Definitions.**

- a. **General Definitions.** Unless otherwise provided in this BAA, all capitalized terms that are used in this BAA will have the same meaning as defined under HIPAA, the HITECH Act, and the HIPAA Regulations.
- b. “**Privacy Rule**” means the HIPAA Regulations that are codified at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- c. “**Security Rule**” means the HIPAA Regulations that are codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

2. **Obligations of BA.**

- a. **Permitted Uses.** Vendor may not use Provider PHI except for the purpose of performing the Services, or as otherwise explicitly permitted by this BAA or as Required By Law. Further, Vendor may not use Provider PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Provider. However, Vendor may use Provider PHI: (i) for the proper management and administration of Vendor; (ii) to carry

out the legal responsibilities of Vendor; and (iii) for Data Aggregation purposes for the Health Care Operations of Provider.

- b. **Permitted Disclosures.** Vendor may not disclose Provider PHI except for the purpose of performing the Services, or as otherwise explicitly permitted by this BAA or as Required By Law. Vendor may not disclose Provider PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Provider. However, Vendor may disclose Provider PHI: (i) for the proper management and administration of Vendor; (ii) to carry out the legal responsibilities of Vendor; or (iii) for Data Aggregation purposes for the Health Care Operations of Provider. If Vendor discloses Provider PHI to a third party for Vendor's proper management and administration or to carry out Vendor's legal responsibilities, the disclosure must be Required By Law, or prior to making any such disclosure, Vendor must obtain (i) reasonable written assurances from such third party that such Provider PHI will be held confidentially and only used or further 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 Vendor of any breach of its confidentiality obligations of which it becomes aware.
- c. **Appropriate Safeguards.** Vendor must comply with all applicable requirements of the Security Rule to the same extent the Security Rule applies to Provider. Vendor will implement appropriate administrative, physical and technical safeguards as are necessary to prevent the improper use or disclosure of Provider PHI other than as permitted by this BAA. Without limiting the foregoing, Vendor may not (i) transmit Provider PHI over a network that is not protected by Encryption technology, such as the Internet (e.g., a virtual private network must be used), or (ii) maintain Provider PHI on a laptop or other portable electronic media, unless such Provider PHI has been secured by the use of Encryption technology. Vendor will not (a) store any decryption key on the same device as encrypted Provider PHI, or (b) transmit any decryption key over an open network. Any Encryption technologies utilized in complying with this Section must at a minimum meet the Federal Information Processing Standard ("FIPS") 140-2 encryption standard and any of its successor security standards. Vendor represents and warrants that all of its Workforce members who may have access to Provider PHI have been appropriately trained on their obligations under the HIPAA Regulations.
- d. **Mitigation.** Vendor agrees to mitigate, to the maximum extent practicable, any harmful effect that is known to Vendor of a use or disclosure of Provider PHI in violation of this BAA.
- e. **Reporting of Improper Access, Use or Disclosure.** Vendor will notify Provider in writing of any access to, use or disclosure of Provider PHI not permitted by this BAA, including any Breach of Unsecured Provider PHI and Security Incident, without unreasonable delay (and in no case later than sixty (60) days after discovery of any Breach of Unsecured Provider PHI). Such notifications will include, to the extent known by Vendor at the time of the notification, the following:
 - A description of the impermissible access, use or disclosure of Provider PHI;

- Identification of each Individual whose Unsecured Provider PHI has been or is reasonably believed by Vendor to have been impermissibly accessed, used or disclosed;
- The date the incident occurred and the date the incident was discovered;
- A description of the type(s) and amount of Provider PHI involved in the incident;
- A description of the investigation process used by Vendor to determine the cause and extent of the incident;
- A description of the actions Vendor is taking to mitigate and protect against further impermissible uses or disclosures and losses; and
- A description of any steps individuals should take to protect themselves from potential harm resulting from the impermissible use or disclosure of Provider PHI.

Notwithstanding the foregoing, Provider and Vendor acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Provider acknowledges and agrees that no additional notification to Provider of such unsuccessful Security Incidents is necessary. However, to the extent that Vendor becomes aware of an unusually high number of such unsuccessful Security Incidents due to the repeated acts of a single party, Vendor shall notify Provider of these attempts and provide the name, if available, of said party.

- f. **Vendor's Agents and Subcontractors.** Vendor will ensure that any Subcontractors that create, receive, maintain or transmit Provider PHI on behalf of Vendor agree in writing to restrictions and conditions no less stringent than those that apply to Vendor under this BAA (with respect to such Provider PHI). Vendor will implement and maintain sanctions against Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. Vendor will be legally responsible to Provider for the actions and conduct of its Subcontractors involving Provider PHI.
- g. **Access to Provider PHI.** Vendor will make Provider PHI it maintains in Designated Record Sets available to Provider for inspection and copying within ten business days of a request by Provider in a manner that enables Provider to fulfill its obligations under 45 C.F.R. § 164.524. If any Individual asks to inspect or access his or her Provider PHI directly from Vendor, Vendor will notify Provider in writing of the request within five business days of the request. Any approval or denial of an Individual's request to access or inspect his or her Provider PHI is the responsibility of Provider.
- h. **Amendment of Provider PHI.** Within ten business days of the receipt of a request from Provider for an amendment to Provider PHI that is maintained in a Designated Record Set by Vendor, Vendor will make the Provider PHI available to Provider for amendment in such a manner so as to enable Provider to fulfill its obligations under 45 C.F.R. § 164.526.

If any Individual requests an amendment of Provider PHI directly from Vendor, Vendor will notify Provider in writing of the request within five business days of the request. Any approval or denial of an amendment of Provider PHI is the responsibility of Provider.

- i. **Accounting Rights.** Vendor will maintain a record of all disclosures of Provider PHI that Vendor makes, if Provider would be required to provide an accounting to an Individual of such Disclosures under 45 C.F.R. § 164.528. Within ten business days of notice by Provider of a request for an accounting of disclosures of Provider PHI, Vendor will make available to Provider all information related to disclosures by Vendor and its Subcontractors necessary for Provider to fulfill its obligations under 45 C.F.R. § 164.528. Vendor agrees to implement a process that allows for an accounting to be collected and maintained by Vendor for at least six years. At a minimum the information collected and maintained will include: (i) the date of disclosure; (ii) the name of the person who received the Provider PHI and, if known, the address of the person; (iii) a brief description of Provider PHI 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 Vendor, Vendor will, within five business days of a request, forward it to Provider in writing. It is Provider's responsibility to prepare and deliver any such accounting requested, and Vendor will not provide an accounting directly to an Individual.
- j. **Delegations of Obligations.** To the extent that Vendor contracts with Provider to carry out Provider's obligations under the Privacy Rule, Vendor shall comply with the requirements of the Privacy Rule that apply to Provider in the performance of such obligations.
- k. **Access to Records.** Vendor will make its internal practices, books and records relating to the use and disclosure of Provider PHI available, upon request, to Provider and the Secretary for purposes of determining Provider's and Vendor's compliance with the Privacy Rule and this BAA.
- l. **Minimum Necessary.** Provider and Vendor will work together to ensure that only the minimum amount of Provider PHI necessary to accomplish the purpose of the Services will be disclosed by Provider to Vendor. The Parties understand and agree that the definition of "minimum necessary" is in flux, and they will keep themselves informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- m. **Data Ownership.** Unless otherwise explicitly addressed in the Underlying Agreement, Vendor acknowledges that Vendor has no ownership rights in the Provider PHI.

3. **Term and Termination.**

- a. **Term.** The Term of this BAA is concurrent with that of the Underlying Agreement.

- b. **Material Breach of Provisions Applicable to Provider PHI.** Any other provision of the Underlying Agreement notwithstanding, the Underlying Agreement and this BAA may be terminated by a party (the “**Non-Breaching Party**”) upon thirty (30) days written notice to the other party (the “**Breaching Party**”) in the event that the Breaching Party materially breaches any provision in this BAA applicable to Provider PHI in any material respect and such breach is not cured within such thirty-day period.
 - c. **Judicial or Administrative Proceedings.** Provider may terminate this BAA and the Underlying Agreement, despite any contrary term in the Underlying Agreement, effective immediately, if (i) Vendor 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 Vendor 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 Provider has been joined.
 - d. **Effect of Termination.** Upon termination of this BAA for any reason, Vendor will return or destroy all Provider PHI that Vendor still maintains in any form, and will not retain any copies of such Provider PHI. Notwithstanding the foregoing, if Vendor determines that returning or destroying such Provider PHI is infeasible, then Vendor will provide to Provider notification of the conditions that make return or destruction of the Provider PHI infeasible. Vendor will continue to extend the protections of this BAA to such information and limit further use of such Provider PHI to those purposes that make the return or destruction of such Provider PHI infeasible. Vendor will be responsible for returning or destroying any Provider PHI in the possession of its Subcontractors consistent with the requirements of this Section related to return and destruction of Provider PHI.
4. **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 this BAA 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 Provider PHI. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Despite any contrary term in the Underlying Agreement, Provider may terminate the Underlying Agreement and this BAA upon thirty (30) days written notice in the event (i) Vendor does not promptly enter into negotiations to amend this BAA when requested by Provider pursuant to this Section, or (ii) Vendor does not enter into an amendment to this BAA providing assurances regarding the safeguarding of Provider PHI that is sufficient to satisfy the standards and requirements of applicable laws.
- 5 **Indemnification.** In addition to any other rights to indemnification, reimbursement or recovery, each party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other party and its respective employees, officers and directors, (“Indemnified Parties”) from and against any and all losses or costs the Indemnified Parties may suffer, pay or incur as a result of third party claims, demands or actions against the Indemnified Parties to the

extent such losses are attributable to the actions of the Indemnifying Party or its Workforce or Subcontractors or the failure of the Indemnifying Party or its Workforce or Subcontractors to comply with this BAA or applicable laws, rules and regulations. However, in no event shall either party or its agents, offices, or employees, be liable for any special damages, incidental damages, indirect damages, or consequential damages whatsoever (including without limitation, damages for loss of profits, business interruption, and loss of information).

6. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Provider, Vendor and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
7. **Interpretation.** The provisions of this BAA prevail over any provisions in the Underlying Agreement that may conflict or appear inconsistent with any provision in this BAA, provided that any terms in the Underlying Agreement that may provide greater protections to the privacy and security of Provider PHI than are set forth in this BAA govern. This BAA and the Underlying Agreement 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 BAA will be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.
8. **Survival.** The rights and obligation under Sections 2.i., 3.d., and 5 expressly survive termination of this BAA.

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

PROVIDER

VENDOR

By: _____
Print Name: _____
Title: _____
Date: _____

By: _____
Print Name: _____
Title: _____
Date: _____