

## MANAGEMENT SERVICES AGREEMENT<sup>1</sup>

THIS MANAGEMENT SERVICES AGREEMENT (this “Agreement”) is entered into on [●], 2014 (the “Effective Date”) by and between [New Found Health Management, LLC, a Delaware limited liability company] (“Manager”), and each Person (as defined below) listed as “DOCHS Members” on the signature pages hereto (each a “DOCHS Member” and collectively, “DOCHS”). Manager, each DOCHS Member and DOCHS are sometimes collectively referred to herein as the “Parties” and individually referred to herein as a “Party.”

WHEREAS, DOCHS engages in the business of delivering healthcare services to the public through the hospitals identified in Annex I hereto (the “Hospitals”) in furtherance of the mission of serving the sick and the poor by providing comprehensive health care that is compassionate and attentive to the whole person: body, mind and spirit; and promoting healthy families, responsible stewardship of the environment and a just society through value-based relationships and community-based collaboration (the “Mission”);

WHEREAS, in the interest of avoiding a possible closure of the Hospitals and subsequent liquidation which more than likely would result in (i) DOCHS’ failure to repay certain outstanding liabilities, including in respect of certain tax-exempt bonds issued by the California Statewide Community Development Authority (the “Revenue Bonds”), (ii) the loss of employment for the individuals who work for and with the Health Care System (as defined below) and (iii) the elimination of a hospital and emergency department in the applicable communities, among other results, DOCHS wishes to retain a qualified administrative manager for the purpose of providing certain management services in the day-to-day operation of the Hospitals and other assets held by and businesses and operations of the DOCHS Members (the Hospitals and such other assets, businesses and operations, collectively, the “Health Care System”);

WHEREAS, each DOCHS Member desires to retain Manager to manage the Health Care System, and Manager desires to provide such services, on the terms set forth herein;

WHEREAS, Manager acknowledges that its management of the Health Care System will be in a manner consistent with the Mission and, to the extent applicable, the exempt purposes (as set forth in Section 501(c)(3) of the Internal Revenue Code of 1986) of the DOCHS Members identified in Annex II hereto (the “NP DOCHS Members”); and

WHEREAS, on [●], 2014 Manager filed an application with the California Department of Public Health, Licensing and Certification Program (“CDPH”) pursuant to Section 1265 of the California Health and Safety Code to seek CDPH’s approval for Manager to manage the Health Care System and obtained such approval prior to the Effective Date.

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<sup>1</sup> Note to Draft: Asset purchase option will be documented under a separate option agreement (which will include as an exhibit the form of asset purchase agreement) in favor of Newfound Health Management or an affiliate/designee thereof. Master/Reaffiliation Agreement to be updated to reflect two separate agreements.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants, agreements and conditions hereinafter set forth, and intending to be legally bound hereby, each Party hereby agrees as follows:

## **ARTICLE I DUTIES OF MANAGER AND DOCHS**

### **1.1. Exclusive Appointment; Standard of Care.**

1.1.1 Each DOCHS Member does hereby exclusively designate and appoint Manager as its sole and exclusive agent to provide and assume responsibility for the management, administrative and support services required under this Agreement, and Manager does hereby accept such appointment and agrees to provide such administrative and management services in accordance with the terms of this Agreement. The Parties acknowledge that the scope of both Manager's authority and duties to manage, administer and support the Health Care System are limited to the authority and duties set forth in this Agreement.

1.1.2 Manager agrees with DOCHS that (a) it will execute its duties under this Agreement in a manner that Manager reasonably believes will promote the overall long-term economic value of the Health Care System (the "Manager's Standard of Care"), and (b) Manager shall be acting as the agent of DOCHS in connection with the performance of its duties under this Agreement. Each DOCHS Member agrees that Manager's Standard of Care and Manager's duties as agent to DOCHS are further subject to, and limited by, the terms and conditions of this Agreement and the Operating Limitations.

**1.2. Applicable Laws.** At all times during the Term (as defined below) of this Agreement, the Parties shall not knowingly take any action in material violation of applicable Laws relating to the Health Care System, including: (a) federal laws and regulations relating to the participation by DOCHS in the Medicare program or any other federal health care benefit program; (b) state laws and regulations applicable to participation by DOCHS in any state Medicaid program or any other state health care benefit program; (c) state laws and regulations requiring DOCHS to obtain any license to provide or arrange for the provision of Management Services (as defined below) and related services as contemplated herein; (d) applicable standards and requirements, if any, of accreditation organizations; and (e) all other requirements relating to the provision of Management Services or payment for such services, including, laws relating to confidentiality of patient-related information, and laws governing billing and collecting payments from payors and arrangements between providers and sources of referrals of patients, medical services or supplies. For purposes hereof, "Laws" means all federal, state, local, municipal, foreign, international, multinational or other statutes or laws (including common law), ordinances, rules, treaties, codes or regulations and all decrees, injunctions, judgments, orders, rulings, assessments or writs of any applicable Governmental Authority, and "Governmental Authority" means any federal, state or local or any foreign government, legislature, governmental entity, regulatory, administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

**1.3. Cooperation and Further Assurances.** Each DOCHS Member agrees to cooperate with Manager, and to execute such other documents and take such other actions as

may be reasonably necessary or desirable, in connection with the management, administration and support of the operations of the Health Care System in compliance with applicable Laws.

**1.4. DOCHS Licenses.** During the Term of this Agreement, the Parties shall not voluntarily allow any of the Health Care System's licenses or any of its certification(s) to participate in the Medicare, Medicaid or any other federal or state health care benefit program (collectively, the "Licenses") to become invalid, restricted, suspended, or otherwise adversely affected by the acts or omissions of any Party or any of its directors, officers, employees, agents or representatives.

**1.5. Employees.** Pursuant to this Agreement, Manager shall act in a professional, competent and efficient manner and shall provide a quality of service consistent with and comparable to other licensed and Joint Commission-accredited acute care hospitals in and around Los Angeles, Santa Clara and San Mateo Counties, California. In connection therewith, and subject to budgetary limitations and personnel allocations described below, Manager shall provide for the continuing operation of the Health Care System by supervising, overseeing, and directing (including but not limited to the right to discipline, suspend, layoff and/or terminate) all personnel, including Health Care System officers, employed by DOCHS and required in support of the Health Care System (the "Employees"). Compensation for the Employees, including but not limited to salaries, bonuses, payroll and withholding taxes, health insurance disability, social security contributions, and premiums for all government mandated insurance programs, shall be included in Operating Expenses (as defined below). For purposes hereof, "Joint Commission" means Joint Commission on Hospital Accreditation.

(a) Employment of Employees. DOCHS shall employ (or otherwise provide with Manager's approval) all personnel required in support of the Health Care System, but such personnel shall be supervised by Manager in the performance of activities described in this Article I, including Manager's sole and absolute discretion to discipline, suspend, layoff and/or terminate the Employees, pursuant to applicable Laws. Unless expressly agreed to in writing by Manager or pursuant to an existing written agreement of which Manager has actual knowledge and which is specifically disclosed in Annex III hereto, all Employees shall be at-will employees, and no employees shall be hired for a specific term or time period.

(b) Additional Employees. Manager, on behalf of and through DOCHS, may employ other personnel to supervise medical records, medical staff liaison, nursing, engineering, laboratory, radiology, pharmacy and dietary, in order to comply with Title 22 of the California Code of Regulations and other applicable Laws. At all times pursuant to this Agreement, such employees shall be Employees.

**1.6. Specific Management Services.** Subject to the provisions of this Agreement, at all times during the Term of this Agreement, Manager shall have the exclusive right to provide such services as Manager determines in its sole and absolute discretion to be necessary or appropriate for the management and administration of the Health Care System, including the medical care, products and services provided by the Hospitals to the general public, including emergency services, and all activities and operations of the Hospitals and the actions relating thereto (collectively, the "Management Services"). The Management Services may include any or all of the following as Manager determines in its sole and absolute discretion:

(a) on behalf of DOCHS, employing or engaging licensed professional and administrative Hospital staffing and all other staffing and employment, including the hiring and firing, of all of the Employees in support of the Management Services;

(b) leasing, maintenance and repair of the Hospitals and equipment as required by the terms of this Agreement;

(c) billing for medical care, products and services provided by the Health Care System to the general public rendered before (as necessary) or after the Effective Date of this Agreement, collection of revenue for such care, products and services (subject to any limitations set forth in Article III below) and settlement or compromise of any such amounts;

(d) financial management and accounting services for the Health Care System;

(e) preparation of policies, procedures, and other materials and all communications regarding the Health Care System;

(f) credentialing on behalf of DOCHS physicians and other licensed medical care professionals;

(g) contract negotiations with payors on behalf of DOCHS;

(h) preparation of periodic reports pertaining to the Health Care System;

(i) supervision of the provision of all patient care as required under the regulations and standards for the Health Care System;

(j) timely payment of all rents, insurance, taxes, operating costs and all other costs and expenses relating to operation of the Health Care System, before delinquency or penalty, including payments due and owing by DOCHS relating to the Revenue Bonds;

(k) performance of maintenance and repairs and commencement of any capital improvements; and

(l) establishing credit in Manager's own name or in the name of any DOCHS Member, and purchasing in its own name or in the name of any DOCHS Member all supplies and other items necessary for the efficient operation of the Management Services.

Notwithstanding the above, to the extent Management Services relate to Hospital deficiencies arising prior to the Effective Date, Manager shall use commercially reasonable efforts to implement appropriate corrective action plans, as necessary, but shall not be held responsible for said deficiencies, if any.

**1.7. Specific Management Improvements.** Subject to the provisions of this Agreement, at all times during the Term of this Agreement, Manager may use commercially

reasonable efforts to improve upon the overall performance of the Health Care System as Manager determines in its sole and absolute discretion may be necessary or appropriate, including improvement in the following categories:

(a) *Financial Management Objectives.* Manager shall use commercially reasonable efforts to:

1. Organize the functions of reimbursement, budget, patient accounting, and general accounting, including accounts payable and cashiering, while at the same time provide direction and support to the Health Care System's business office, admitting, accounting and health information services departments;
2. Prepare and evaluate financial and cost reports for the Health Care System;
3. Prepare department operating budgets for purposes of maximizing operational efficiencies;
4. Analyze, make and/or recommend changes as necessary with respect to costs, charges, rates, among other items, to permit income to support Health Care System activities;
5. Monitor the financial basis for any Health Care System activity; and
6. Oversee third parties to expedite payment of overdue accounts.

(b) *Quality Assurance/Utilization Review.* Manager shall use commercially reasonable efforts to:

1. Direct the Health Care System with its utilization management and quality assurance mechanisms;
2. Direct the Health Care System in educating the physicians and personnel concerning inappropriate utilization of care or delivery of medical services;
3. Oversee the Health Care System's existing policies and procedures relating to the quality of medical services as it relates to compliance with licensing and accreditation requirements;
4. Direct the Health Care System in the preparation and conduct of surveys by the Joint Commission and/or any other national, state or local agency; and
5. Direct the Health Care System with the development of quality improvement indicators for medical outcomes, and develop effective means for

communicating to the Health Care System feedback from the community and physicians regarding quality and effectiveness of the Health Care System's programs.

(c) *Hospital Quality Improvement Measures.* Manager shall use commercially reasonable efforts to:

1. Direct the Health Care System in maximizing its total performance score ("TPS") under the value based purchasing program ("VBP Program"), including but not limited to the clinical process of care measures;

2. Direct the Health Care System in maximizing its TPS under the VBP Program, including but not limited to the patient experience of care dimensions; and

3. Direct the Health Care System in optimizing its TPS in connection with the Hospital Consumer Assessment of Healthcare Providers and Systems surveys.

(d) *Hospital Development Actions.* Manager shall use commercially reasonable efforts to:

1. Direct the Health Care System with the development of strategies and action plans enabling the Health Care System to respond to the health care needs of individuals residing in the Cities of Daly City, Gilroy, Los Angeles, Lynwood, Moss Beach and San Jose and surrounding communities;

2. Direct the Health Care System in expanding any community relations program; and

3. Direct the Health Care System with respect to physician and staff development.

**1.8. Scope of Authority.** Manager shall have the power and authority to do any and all actions that Manager determines, in its sole and absolute discretion, to be necessary, advisable, or proper, consistent with the terms of this Agreement and all applicable Laws, to provide the services pursuant to this Agreement to manage, administer or support the Health Care System, and is hereby expressly authorized to subcontract for the provision of any of the Management Services that Manager performs under this Agreement. Each DOCHS Member shall, from time to time, at Manager's request, execute and deliver, or cause to be executed and delivered, such further instruments or other documents, and perform such further acts, as Manager may reasonably require to fully perform the Management Services in accordance with this Agreement.

**1.9. Applications for Licenses.** Manager may submit all necessary applications and other materials to the appropriate governmental authority and take such other actions to effect the issuance of new Licenses as contemplated pursuant to this Agreement, and each DOCHS

Member agrees to cooperate with Manager to cause the new Licenses to be issued pursuant to this Agreement.

**1.10. Custodian of Medical Records.** Each DOCHS Member hereby appoints Manager as its sole and exclusive custodian of medical records for all of its inpatients and outpatients during the Term of this Agreement and at all times thereafter, unless otherwise agreed by the Parties in a written amendment to this Agreement. Manager shall keep and maintain the security and privacy of such medical records as required by applicable Laws, and such medical records shall at all times be maintained so that they are readily accessible for patient care. Following the termination of this Agreement, unless otherwise agreed by the Parties in connection with a termination pursuant to Section 5.4 below, each DOCHS Member agrees: (a) to continue to store and preserve medical records of the Health Care System in accordance with the foregoing for a minimum of seven (7) years from the date of termination of this Agreement, or for such longer period as legally required, or in the case of minors, for at least one year after such minors reach the age of eighteen (18), but in no case less than seven (7) years, and in the case of a deceased patient, Manager shall continue to store and preserve the medical records for a period of five (5) years from the decedent's death; and (b) upon reasonable notice, during normal business hours, and at the sole cost and expense of DOCHS, to afford Manager and its representatives, including its legal counsel and accountants, full and complete access to, and the right to make copies of, the medical records in the custody of DOCHS as provided hereunder during the Term of this Agreement.

**1.11. Confidentiality of Medical Records.** The Parties agree to comply with all applicable Laws, and all policies, procedures, rules and regulations adopted by mutual agreement of the Parties and in effect from time to time during the Term of this Agreement, regarding the confidentiality of patient medical records and information. Without limiting the foregoing: (a) each of the Parties agrees to comply with its obligations as a covered entity under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the Department of Health and Human Services ("HHS") (collectively, "HIPAA"), including the HIPAA Privacy Rule, 45 CFR Parts 160 and 164, the HIPAA Security Rule, 45 CFR Parts 160, 162 and 164, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and regulations promulgated thereunder by HHS, including requirements related to security and privacy of patient information, and standard electronic transactions, code sets and identifiers; and (b) each of the Parties agrees to comply with the obligations of a HIPAA Business Associate within the meaning of 45 CFR §160.103, subject to and in accordance with an addendum consistent with the form attached hereto as Exhibit A.

**1.12. Ownership of Recorded Media.** The means by which and the media upon which patient medical records and information are recorded (including any and all written, magnetic, optical, electronic or other machine-readable media) are and shall remain Manager's exclusive property and shall not be removed from Manager's possession or control without Manager's prior written consent, and if applicable the written consent of the patient(s). Nothing in this Agreement or the implementation hereof by the Parties shall create or entitle any DOCHS Member to an ownership right or interest in any of Manager's property, assets or interests, including Manager's electronic patient records, software, databases, servers, hardware, or any other tangible or intangible property or assets (such as goodwill or going concern value).

**1.13. Report Requirements.** Notwithstanding the generality of the foregoing, Manager shall prepare and make available to DOCHS monthly reports for the Health Care System, including profit and loss statements, to be available to DOCHS by the 30<sup>th</sup> day of the following month. Year-end profit and loss statements, as well as information required for preparation of applicable tax returns, shall be available to DOCHS and, at DOCHS' direction, to its accountants prior to 130 days into the year following the year for which they are prepared. In addition, at any DOCHS Member's request, Manager shall make available to such DOCHS Member the following: (a) all required federal or state agency reports required in connection with the operation of the Health Care System; (b) all inspection reports, correspondence and notices from all state licensing agencies relating to the Health Care System; and (c) all correspondence and notices from all lenders and insurers relating to the Health Care System.

**1.14. Manager Insurance.** During the Term of this Agreement, Manager shall, on behalf of DOCHS and at DOCHS' expense, maintain comprehensive general liability insurance coverage, written by a commercial carrier reasonably acceptable to hospitals in California with respect to its provision of services at the Health Care System pursuant to this Agreement, with limits of liability of no less than \$[●] per occurrence and \$[●] annual aggregate and either with a fidelity endorsement or a separate crime policy with limits of liability of no less than \$[●] per occurrence and \$[●] annual aggregate. Each DOCHS Member shall be named as an additional insured on any commercial liability insurance policies maintained by Manager hereunder.

**1.15. DOCHS Insurance.** Each DOCHS Member shall have obtained and shall maintain in full force and effect adequate insurance for the Health Care System and its operations, including professional liability and malpractice coverage, director and officer liability coverage and fiduciary liability coverage. In the event any DOCHS Member fails to obtain the insurance set forth in this Section 1.15, then Manager shall obtain this insurance consistent with the insurance referenced in Section 1.14 above.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**2.1. General Capacity to Perform.** Manager hereby represents and warrants to DOCHS that, and each DOCHS Member hereby represents and warrants to Manager that, it: (a) has the full power and authority to own its property and to carry on its business as now being conducted; (b) is duly qualified to do business in and is in good standing in the State of California; and (c) has the full power and authority to execute and deliver this Agreement and to perform and comply with its terms, conditions and agreements, all of which have been duly authorized by all proper and necessary corporate or limited liability company action, as applicable.

**2.2. Specific Capacity to Perform.** Manager hereby represents and warrants to DOCHS that, and each DOCHS Member hereby represents and warrants to Manager that, this Agreement has been duly executed and delivered by its proper and authorized officers and constitutes the valid and legally binding obligation of such Party. Manager further represents and warrants, and DOCHS is relying upon such representation and warranty, that Manager possesses the skill, knowledge and resources required to fulfill its obligations under this



Agreement. Further, Manager represents, warrants and covenants that it will at all times maintain all required licenses and permits required to perform the Management Services.

**2.3. Licenses and DOCHS' Provider Enrollment.** Manager hereby represents and warrants to DOCHS that, and each DOCHS Member hereby represents and warrants to Manager that, it has and shall maintain throughout the Term of this Agreement all appropriate federal and state licenses and certifications which are required in order for such party to perform the services required of it under this Agreement. Each DOCHS Member other than [REDACTED] further represents and warrants that it is currently enrolled as a provider in good standing with the Medicare and Medi-Cal programs.

**2.4. Government Payment Programs; Excluded Individuals.** Manager hereby represents and warrants to DOCHS that, and each DOCHS Member hereby represents and warrants to Manager that, (a) it has not been suspended or excluded from participation in the Medicare or Medi-Cal programs or is otherwise subject to any restriction upon its participation therein, (b) no corporate member or owner (as applicable), director, manager, officer, employee or contractor of such Party is, or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including Medicare and Medicaid) (an "Excluded Individual"), (c) it has not been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients, (d) it is not unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices and (e) it is not presently operating in such a manner as to cause any other Party or any of such other Party's corporate members or owners (as applicable), directors, managers, officers, employees or contractors to be an Excluded Individual, or otherwise to be ineligible to provide the services required to be provided by it to or on behalf of any other Party. Each DOCHS Member further represents and warrants that it has not received any notice of investigation by any governmental or regulatory agency in connection with its activities as a provider under the Medicare and Medi-Cal programs. Manager further represents and warrants that it has not failed to maintain a current license to provide the Management Services required to be provided by it to or on behalf of DOCHS.

**2.5. Additional Representation of Manager.** Manager hereby represents that as of the Effective Date it has no financial interest and is not an "Interested Person" (as defined in Internal Revenue Service Form 1023) as it may relate to any third party contractor or vendor of the Health Care System. Manager further represents that in the event Manager becomes an Interested Person during the Term of this Agreement, Manager shall make this disclosure to DOCHS.

### **ARTICLE III LEGAL RESPONSIBILITIES**

**3.1. Staff Licenses.** DOCHS shall ensure that all Employees as of the Effective Date shall have all appropriate licenses and certifications in the State of California and any medical or professional staff privileges at the Health Care System required in order for such Employees to perform the functions assigned to them by DOCHS.

**3.2. Legal Compliance.** Manager and each DOCHS Member shall fully comply with the applicable Laws in the performance of their duties, powers and responsibilities hereunder.

**3.3. Assignment of Claims.** To the extent permitted by Law, each DOCHS Member hereby irrevocably assigns, exclusively to Manager, all claims, demands and rights of such DOCHS Member to charge, bill and collect all revenue of the Health Care System (“Revenue”) and settle or compromise all or any portion thereof, including from patients, insurance companies and payors but other than Medicare, Medicaid and other Governmental Authority payors. Each DOCHS Member agrees to execute any and all documents necessary to secure and perfect Manager’s interest in such claims, Revenue and Accounts Receivable (as defined below). All Revenue received (other than Governmental Payments (as defined below)) shall be directly deposited in a bank account or accounts (each an “Operating Account”) established by Manager at such bank(s) as Manager may from time to time designate in its sole and absolute discretion (each a “Bank”). Manager shall designate such persons who shall have authority to write checks upon or otherwise authorize the disbursement of funds from each Operating Account (“Authorized Signer”). Manager shall have the sole and exclusive right to designate each Authorized Signer, and to write checks upon and authorize disbursements from any Operating Account. Notwithstanding the above, Manager shall provide written notice to the California Statewide Community Development Authority of any new Operating Account established by Manager pursuant to this Section 3.3.

**3.4. Governmental Payments.** As required pursuant to the applicable Laws, the Parties agree to establish, if necessary, and maintain an additional and separate deposit account (the “Lockbox Account”), to the extent possible, into which all checks, money orders and other instruments or electronic funds transfers received from Medicare, Medicaid and other health care benefit programs established by federal or state law which require that payments for health care services be made to the providers of such services, including all DSH Payments, Stabilization Funds and QAF Payments (each as defined below) constituting part of Revenue (“Governmental Payments”) shall be deposited. Unless otherwise agreed by the Parties, and subject to the capabilities of governmental payors, each DOCHS Member agrees to do all things necessary or desirable by Manager to authorize the deposit of Governmental Payments into the Lockbox Account via electronic funds transfer throughout the Term of this Agreement. If Manager receives any Governmental Payments in the form of checks, it will use its best efforts to promptly deposit such checks into the Lockbox Account. Each DOCHS Member agrees to enter into and maintain a depository agreement (“Depository Agreement”) with a Bank, in form reasonably acceptable to Manager and such DOCHS Member, and consistent with this Agreement and applicable Laws, pursuant to which the Bank shall be instructed that all Governmental Payments received into the Lockbox Account shall be swept and transferred to the Operating Account at least once each week. For purposes of complying with restrictions on assignment of Medicare payments under applicable Laws, the Lockbox Account will be in the name of [●] (the “Lockbox Party”).<sup>2</sup> However, the Lockbox Party shall not withdraw from or write drafts or checks against the Lockbox Account. The Lockbox Party agrees that it will not, during the Term of this Agreement, take any actions to rescind, suspend, or otherwise interfere

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<sup>2</sup> Note to Draft: To include new name of “DOCHS Parent” (as defined in the Reaffiliation Agreement). To also ensure coordination with account requirements of the bond indenture.

with the sweep and transfer of funds from the Lockbox Account to the Operating Account, nor will the Lockbox Party or its agents remove, withdraw or authorize the removal or withdrawal of any funds from the Lockbox Account for any purpose except to accomplish the transfer of funds addressed above, nor will the Lockbox Party or its agents rescind, replace, or cause or agree to the rescission, termination or amendment of the Lockbox Account depository agreement or any standing order relating thereto. The failure of the Lockbox Party to strictly comply with any of the foregoing shall be a breach of this Agreement by DOCHS, a remedy for which shall be termination of this Agreement by Manager at its sole and absolute election.

**3.5. Monthly Debt Service Schedule.** DOCHS shall provide Manager with a schedule of all principal and interest payments due with respect to indebtedness with respect to the Health Care System and the method for calculating interest with respect to such indebtedness.

#### **ARTICLE IV APPLICATION OF FUNDS; MANAGEMENT FEES**

**4.1. Application of Funds; Management Compensation.** Manager shall receive, as part of its compensation for the Management Services rendered pursuant to this Agreement, for each Collection Month (as defined below) during the Term of this Agreement (the “Monthly Fee”) as follows:

- (a) **[\$[●] – Stated Dollar Amount as Fixed Fee];** and
- (b) **[Percentage of Revenue - [●]%]** of the Net Operating Revenues for such Collection Month.

In addition, at the end of each 12-month period starting from the Effective Date, Manager shall also be entitled, as part of its compensation, to a productivity reward equal to **[\$[●] – Stated Dollar Amount]** if Net Operating Revenues for such period are greater than **\$[●]**.

If the Agreement is terminated other than on the last day of a calendar month, the Monthly Fee for the month of termination shall be based on the Net Operating Revenues received through the date of termination, and the dollar amounts in Sections 4.1(a) and 4.1(b) shall be prorated based on the number of days in the month of termination.

If Net Operating Revenues for a Collection Month plus all other available funds in the Operating Account and Lockbox Account do not exceed the sum of monthly Operating Expenses plus the monthly principal payment to the bond trustee of the Revenue Bonds (such shortfall referred to as “Monthly Operating Losses”), Manager may use any line of credit available to any DOCHS Member to pay for the Monthly Operating Losses.

If the Net Operating Revenues for a Collection Month remaining after deducting the monthly Operating Expenses and the principal payment to the bond trustee of the Revenue Bonds, together with all other available funds in the Operating Account and Lockbox Account, is insufficient to pay all or any portion of the Monthly Fee (such shortfall referred to as “Monthly Fee Shortfall”), the Monthly Fee Shortfall shall accrue and become payable at such time as there are available funds.

Any and all Monthly Fees and any and all amounts included in a Monthly Fee Shortfall for any Collection Month shall be due and payable to Manager quarterly in arrears on the 10<sup>th</sup> day following the end of each calendar quarter. The Parties agree that the Net Operating Revenues (as defined below) for each Collection Month (as defined below) shall be applied first in the discharge of the Operating Expenses (as defined below) and any amount representing any accrued Monthly Fee may be set aside in the Operating Account by Manager.

**4.2. Certain Defined Terms.** For purposes of this Agreement:

4.2.1 “Collection Month” shall mean any calendar month falling within the Term of this Agreement, including the calendar month during which the Agreement is terminated (regardless of whether termination occurs on the last day of a calendar month);

4.2.2 [“Net Operating Revenues” shall mean all collections received on or after the Effective Date by the Health Care System that relate to any and all presently existing and hereafter arising Accounts Receivable (as defined below), DSH Payments, Stabilization Funds, QAF Payments and Governmental Receivables (as defined below) and grants, including any of the foregoing that are attributable to the rendering of hospital inpatient and outpatient services or related supplies, devices and equipment, including diagnosis, treatment, technical and ancillary services (“Patient Services”) during the Term of this Agreement, irrespective of the source of payment or for the time period with which it may relate. Net Operating Revenues shall also include checks, cash, credit and debit cards received at the time of service or otherwise during a Collection Month, less any refunds for overpayments, withholdings or amounts paid to Medicare for cost report adjustments, patient discounts and write-downs, but only for dates of service after the Effective Date. Notwithstanding the above, Net Operating Revenues shall not include: (i) infusions of capital from Ellen Corbett-related funds; (ii) intergovernmental transfers; (iii) private donations from individual, community members; and (iv) revenues relating to Measure A funds;]

4.2.3 “Accounts Receivable” mean and include, in addition to the definition of accounts in the Uniform Commercial Code, any and all presently existing and hereafter arising accounts receivable, recoveries, refunds, counterclaims, claims of set-off and claims of DOCHS against payers and third persons relating thereto, and all other forms of obligations owing to DOCHS, without regard to dates of service before or after the Effective Date, whether known or unknown, matured or unmatured, accrued or contingent, that arise out of the provision of Patient Services or other services of the Health Care System at any time, including: (i) payments on a fee-for-service basis; (ii) payments on a capitated, case rate, percentage of premium basis, or any other prepaid basis; (iii) payments attributable to diagnostic imaging, testing or other ancillary services provided directly or under arrangements; (iv) risk sharing or gain sharing payments; (v) payments under policies of reinsurance; (vi) payments based on liens in cases of third party liability and workers’ compensation; (vii) all Governmental Receivables that are assignable under applicable Laws; (viii) the proceeds of all Governmental Receivables that are not assignable under applicable Laws; and (ix) all permissible gifts, grants and donations from any Person relating to any of the foregoing;

4.2.4 “DSH Payments” mean and include payments owing to DOCHS and/or the Health Care System under the Medi-Cal disproportionate share hospital program;

4.2.5 “QAF Payments” means any and all payments made to the Health Care System and any and all payments to which DOCHS and/or the Health Care System receives or is entitled to claim or receive under the Medi-Cal Hospital Quality Assurance Fee Program, as now existing or, as amended and superseded by any other California legislation, or any successor legislation which imposes a fee or tax on hospitals that is used to generated additional or supplemental Medi-Cal payments to hospitals and/or Medi-Cal managed health care plans to be used for hospital services, including the Hospital Quality Assurance Fee Act of 2011 (California Welfare and Institutions Code, Chapter 7, Article 5.227) and any subsequent California legislation relating to QAF Payments;

4.2.6 “Stabilization Funds” mean and include any and all payments made to the Health Care System and any and all payments which the Health Care System receives or is entitled to claim or receive under the Medi-Cal Hospital Provider Rate Stabilization Act, as amended and superseded by any other California legislation, or any successor legislation which imposes a fee or tax on hospitals that is used to generated additional or supplemental Medi-Cal payments to hospitals and/or Medi-Cal managed health care plans to be used for hospital services, including but not limited to the Hospital Quality Assurance Fee Act of 2011 (California Welfare and Institutions Code, Chapter 7, Article 5.227) and any subsequent California legislation relating to stabilization payments;

4.2.7 “Governmental Receivables” mean and include all presently existing and hereafter arising accounts receivable, contract rights and all other forms of obligations owing from any Governmental Authority to DOCHS that arise out of the sale, lease, license or assignment of goods or other property, or the provision of Hospital Services or other services of the Health Care System, including any payments, grants or funds from Medicare, Medicaid or any other Governmental Authority; and

4.2.8 [“Operating Expenses” means, with respect to any period of time, all ordinary and necessary expenses incurred in the operation, management, administration and support of the Health Care System, including: (i) the cost of inventory, supplies and outside ancillary services furnished or obtained by Manager for the Health Care System; (ii) the direct costs of billing and collection services on behalf of the Health Care System; (iii) the salaries, wages, employee benefits (including medical insurance where applicable), Social Security contributions, payroll taxes, workers’ compensation insurance premiums and other amounts withheld for the Employees and contractors, including non-physician professional personnel; (iv) costs for utilities, including electricity, gas, water and telephone and obtaining other necessary services and supplies, whether purchased directly by DOCHS or provided by independent contractors, vendors, and other third parties, which may include Manager; (v) cost of advertising and marketing performed on behalf of the Health Care System; (vi) all monies paid in connection with capital expenditures, including capital leases; (vii) all insurance premiums, charges and other costs and expenses with respect to insurance covering the Health Care System and the operations thereof, including liability, fire and casualty and extended coverage insurances; (viii) all expenses for maintenance and repair; (ix) administrative expenses, including all costs and expenses relating to the Lockbox Account and the Operating Account; (x) costs for the lease, rental or license of real or personal property (including payments with respect to intellectual property); (xi) fees and costs for professional services, including the fees and expenses of attorneys, accountants and appraisers, incurred directly or indirectly in

connection with any category of expense that is not itself an Operating Expense and required to be capitalized in accordance with GAAP; and (xii) any interest expense.]

**4.3. Reimbursable Expenses.** DOCHS shall reimburse Manager for all Reimbursable Expenses incurred by Manager during the Term. The Reimbursable Expenses (a) may be withdrawn by Manager from the Operating Account to pay such Reimbursable Expenses when such amounts become due or (b) shall be due monthly in arrears for the immediately preceding month within thirty (30) days of delivery to DOCHS of an invoice therefor. If funds in the Operating Account are insufficient to pay such Reimbursable Expenses or if such withdrawal is otherwise restricted within the thirty (30) day period, such Reimbursable Expenses shall accrue interest in accordance with Section 4.4 and shall be withdrawn by Manager as soon as funds are sufficient therefor. For purposes hereof, “Reimbursable Expenses” means all amounts designated as the sole cost and expense of DOCHS under this Agreement that are initially paid or otherwise covered by Manager; provided, however, that Reimbursable Expenses shall not include [Employee] salaries. DOCHS shall pay to Manager an amount equal to any sales, use, commercial activity tax, gross receipts, value added, excise or similar tax assessed against Manager by any Governmental Authority that are calculated on Reimbursable Expenses required to be paid by DOCHS under this Agreement, other than income taxes on Manager’s income.

**4.4. Interest.** If any fee or other amount due by DOCHS to Manager under this Agreement is not paid within thirty (30) days after such payment is due, such amount shall bear interest from and after the respective due dates thereof until the date on which the amount is received in the bank account designated by Manager to which such amount is owed at an annual rate of interest equal to the lesser of (a) the prevailing lending rate of Manager’s principal bank for working capital loans to Manager plus three percent (3%) and (b) the highest rate permitted by applicable Law.

## **ARTICLE V TERM AND TERMINATION**

**5.1. Term.** The initial term (the “Initial Term”) of this Agreement (together with any Renewal Terms, the “Term”) shall commence on the Effective Date and expire on the day immediately preceding the third (3<sup>rd</sup>) anniversary of the Effective Date, unless terminated earlier in accordance with the terms of this Agreement or extended by Manager. Manager shall have the right (but not the obligation) to extend the Initial Term of this Agreement for two (2) additional one-year terms (each, a “Renewal Term”) by giving DOCHS written notice of its desire to extend not later than thirty (30) days prior to the expiration of the Initial Term or applicable Renewal Term of this Agreement. Each Renewal Term is subject to earlier termination in accordance with the terms of this Agreement. If this Agreement is renewed for one or more Renewal Terms, unless otherwise agreed by the Parties in writing, this Agreement, and all terms, covenants and conditions set forth herein, shall be automatically extended to the expiration or earlier termination in accordance with the terms of this Agreement of the applicable Renewal Term. The “Effective Date of Termination” shall be the effective date of the termination of this Agreement, as determined in accordance with the provisions of this Article V.

**5.2. Termination for Cause by DOCHS.** DOCHS shall have the right to terminate this Agreement at any time if there shall be Cause that is not cured within thirty (30) days after

receipt by Manager of written notice from DOCHS. The following shall constitute Cause for purposes of this Section 5.2:

(a) A conviction of Manager for illegal conduct that imminently jeopardizes any of the necessary Licenses to operate the Health Care System and/or receive reimbursement for medical goods and services provided at the Health Care System;

(b) Manager's failure to remove any officer of Manager who is an Excluded Individual within ten (10) business days following actual knowledge by Manager;

(c) Any Governmental Authority gives notice of any action to seek or cause a Medicare decertification of the Health Care System, or notice of any intent to do so, or any action to de-license all or any part of the Health Care System (collectively, "Government Action") based solely on activities of Manager that occurred after the Effective Date; or

(d) Any Governmental Authority undertakes any action or requests that a receiver be appointed with respect to the operation of the Health Care System for the purpose of replacing Manager as the manager of the Health Care System based solely on the activities of Manager that occurred after the Effective Date;

provided that, notwithstanding the above, in the event of any such actions as those described in paragraphs (a) through (c) above, Manager shall be entitled to a period of thirty (30) days within which to cure said action, commencing after the provision of written notice by DOCHS to Manager; provided, however, that if Manager has taken all reasonable steps necessary to cure and/or resolve such actions, and the same is not amenable to cure within said thirty (30) day period, the Parties shall extend the cure period on a month-by-month basis to the extent reasonably necessary to afford Manager reasonable opportunity to cure the same; and provided further that, if the action set forth in paragraphs (a) through (c) above consists of or results in actions of a third party obligation or violation of applicable Laws by a third party, then the obligations in this Section 5.2 shall only apply to the extent that the third party obligation or violation of applicable Laws by a third party is subject to cure. Notwithstanding the above, this Section 5.2 shall not apply for any activities of DOCHS that occurred prior to or after the Effective Date.

**5.3. Termination for Cause by Manager.** Manager may elect at its sole and absolute discretion to terminate this Agreement for Cause pursuant to this Section 5.3 upon the date specified in Manager's written notice to DOCHS in respect thereof. The following shall constitute Cause for purposes of this Section 5.3:

(a) A breach of any of DOCHS' representations and warranties set forth in Article II;

(b) The filing by or against any DOCHS Member of any proceeding under the federal bankruptcy law, foreclosure laws or the insolvency law of any state or foreign jurisdiction;

(c) Any conviction of any DOCHS Member for illegal conduct that imminently jeopardizes any of the necessary Licenses to operate the Health Care System and/or receive reimbursement for medical goods and services provided at the Health Care System;

(d) Any DOCHS Member's failure to remove any officer of such DOCHS Member who is an Excluded Individual within ten (10) business days following actual knowledge by any DOCHS Member;

(e) Any DOCHS Member's failure to cooperate and support in good faith Manager's performance pursuant to this Agreement, subject to the proviso in this Section 5.3;

(f) Any Government Action based solely on activities of one or more of the DOCHS Members that occurred before or after the Effective Date; or

(g) Any Governmental Authority undertakes any action or requests that a receiver be appointed with respect to the operation of the Health Care System for the purpose of replacing any DOCHS Member as the owner of its portion of the Health Care System based solely on the activities of any DOCHS Member that occurred before or after the Effective Date;

provided that, notwithstanding the above, in the event of any such actions as those described in paragraphs (a) through (g) above, DOCHS shall be entitled to a period of thirty (30) days within which to cure said action, commencing after the provision of written notice by Manager to DOCHS; provided, however, that if DOCHS has taken all reasonable steps necessary to cure and/or resolve such actions, and the same is not amenable to cure within said thirty (30) day period, the Parties shall extend the cure period on a month-by-month basis to the extent reasonably necessary to afford DOCHS reasonable opportunity to cure the same.

**5.4. Termination Upon Mutual Agreement.** This Agreement may be terminated at any time by the mutual written consent of the Parties.<sup>3</sup>

**5.5. At Will Termination.** Each of DOCHS and Manager shall have the right to terminate this Agreement at any time during any Renewal Term upon written notice to the other Party(ies), such termination to be effective ninety (90) days after delivery of such notice.

**5.6. Effect of Termination.** As of the Effective Date of Termination of this Agreement, all rights and obligations accruing prior to such Effective Date of Termination shall remain in full force and effect, including all rights and obligations arising as a result of any termination of this Agreement pursuant to this Article V and Section 5.7 in particular. Furthermore, the following provisions shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination: Section 1.1.2; Article IV; this Section 5.6; Article VI; Article VII; Article VIII; and Sections 9.2, 9.3, 9.5, 9.9, 9.10, 9.11, 9.12, 9.15 and 9.16.

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<sup>3</sup> Note to Draft: We expect that if the asset purchase option is exercised, the Parties will terminate this Agreement pursuant to this Section 5.4 and, in connection with such termination, Manager would waive its rights to all accrued fees (thereby amending Section 5.6 below). Note that the parties would also, at such time, nullify Section 5.7.



**5.7. Payments Upon Termination.** Upon any termination of this Agreement, DOCHS shall remain obligated to compensate Manager for all expenses and fees (including accrued expenses and fees) due and owing Manager as of the Effective Date of Termination of this Agreement, including Manager's fees as set forth in Section 4.1.

**5.8. Transition of Management Upon Termination.** Upon the expiration or earlier termination of this Agreement, Manager and each DOCHS Member shall use commercially reasonable efforts to arrange for transition management of the Health Care System to DOCHS or its designee in a safe and orderly manner, with the primary goal of avoiding jeopardy to the health and safety of all patients of the Health Care System. Manager shall be entitled to rely with certainty that DOCHS or its designee shall assume management of the Health Care System as of the Effective Date of Termination. DOCHS shall be responsible for the Operating Expenses of the Health Care System accruing on and after the Effective Date of Termination.

**5.9. Payment to Manager by DOCHS.** Within fifteen (15) days from the Effective Date of Termination pursuant to this Article V, DOCHS shall pay Manager all amounts owing pursuant to this Agreement.

**5.10. No Other Early Termination.** This Agreement may only be terminated prior to the expiration of the Term as provided in this Article V. Notwithstanding any applicable Law to the contrary, including principles of agency, fiduciary duties or operation of law, no DOCHS Member shall be permitted to terminate this Agreement except in accordance with the express provisions of this Article V.

## **ARTICLE VI INDEMNITIES**

**6.1. Indemnity by Manager.** Subject to Sections 6.3 and 6.4, Manager shall indemnify and hold each DOCHS Member and its directors, officers, employees, agents, and representatives (the "DOCHS Indemnified Parties") harmless from any and all liabilities, obligations, claims, causes of action, contingencies, damages, costs, and expenses (including all court costs and attorneys' fees, whether as a result of direct claims or third party claims that the DOCHS Indemnified Parties or any of them may suffer or incur) of any nature to the extent caused by Manager's Gross Negligence or Willful Misconduct. Except for Manager's indemnification obligations set forth in Article VI, each DOCHS Member agrees that, as between DOCHS and Manager, Manager will have no liability for monetary damages or monetary relief to any DOCHS Member for any violation of Manager's Standard of Care or claims of breach of any fiduciary duties or duties as agent unless such violation or breach was due to Manager's Gross Negligence or Willful Misconduct. For purposes hereof: "Operating Limitations" means (a) the requirements and limitations on Manager set forth in this Agreement, (b) any provisions of any contracts or other agreements relating to the Revenue Bonds limiting or otherwise imposing conditions on the assets or operation of the Health Care System and (c) any limitation or conditions arising under applicable Laws; and "Manager's Gross Negligence or Willful Misconduct" means any gross negligence in the performance of Manager's duties under this Agreement or willful misconduct or fraud committed by Manager or its affiliates with respect to the Health Care System, provided that (a) the acts or omissions of the Employees (as defined below) shall not be imputed to Manager or its affiliates, or otherwise deemed to

constitute Manager's Gross Negligence or Willful Misconduct, unless such acts or omissions resulted from the gross negligence, willful misconduct or fraudulent acts of Manager in supervising such Employees, and (b) no settlement by any Party in good faith of any claims (including claims by the Employees) shall be deemed to create any presumption that the acts or omissions giving rise to such claims constitute Manager's Gross Negligence or Willful Misconduct.

**6.2. Indemnity by DOCHS.** Subject to Sections 6.3 and 6.4, each DOCHS Member shall indemnify and hold Manager and its directors, officers, employees, agents, and representatives (the "Manager Indemnified Parties") harmless from any and all liabilities, obligations, claims, causes of action, contingencies, damages, costs, and expenses (including all court costs and attorneys' fees, whether as a result of direct claims or third party claims that the Manager Indemnified Parties or any of them may suffer or incur) of any nature that are not within the scope of Manager's indemnification pursuant to Section 6.1.

**6.3. Waiver of Liability.** AS LONG AS A PARTY IS A NAMED INSURED OR ADDITIONAL INSURED UNDER THE OTHER PARTY'S INSURANCE POLICIES, OR THE POLICIES OTHERWISE PERMIT IF SUCH PARTY IS NOT SO NAMED, SUCH PARTY HEREBY RELEASES THE OTHER PARTY AND ITS AFFILIATES AND ITS AND THEIR TRUSTEES, BENEFICIARIES, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, AND THE SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, FROM ANY AND ALL LIABILITY FOR MONETARY RELIEF, DAMAGE, LOSS, COST OR EXPENSE INCURRED BY THE RELEASING PARTY, WHETHER OR NOT DUE TO THE NEGLIGENT OR OTHER ACTS OR OMISSIONS OF THE PERSONS SO RELEASED TO THE EXTENT SUCH LIABILITY, DAMAGE, LOSS, COST OR EXPENSE IS COVERED BY THE INSURANCE POLICIES OF THE RELEASING PARTY, BUT ONLY TO THE EXTENT OF INSURANCE PROCEEDS RECEIVED.

**6.4. Special Damages.** Other than liability for third party claims, no Party shall have any liability for any punitive, incidental, consequential, special or indirect damages, loss of future profits, revenue or income, diminution in value or loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, regardless of whether such losses were foreseeable.

**6.5. Indemnification Procedures.** The indemnifying Party shall have the right to assume the defense of any claim with respect to which the indemnified Party is entitled to indemnification hereunder. If the indemnifying Party assumes such defense: (a) such defense shall be conducted by counsel selected by the indemnifying Party and approved by the indemnified Party, such approval not to be unreasonably withheld or delayed (provided, that the indemnified Party's approval shall not be required with respect to counsel designated by the indemnifying Party's insurer); (b) so long as the indemnifying Party is conducting such defense with reasonable diligence, the indemnifying Party shall have the right to control said defense and shall not be required to pay the fees or disbursements of any counsel engaged by the indemnified Party except if a material conflict of interest exists between the indemnified Party and the indemnifying Party with respect to such claim or defense; and (c) the indemnifying Party shall have the right, without the consent of the indemnified Party, to settle such claim, but only if such settlement involves only the payment of money, the indemnifying Party pays all amounts due in

connection with or by reason of such settlement and, as part thereof, the indemnified Party is unconditionally released from all liability in respect of such claim. The indemnified Party shall have the right to participate in the defense of such claim being defended by the indemnifying Party at the expense of the indemnified Party, but the indemnifying Party shall have the right to control such defense (other than in the event of a material conflict of interest between the parties with respect to such claim or defense). In no event shall (i) the indemnified Party settle any claim without the consent of the indemnifying Party so long as the indemnifying Party is conducting the defense thereof in accordance with this Agreement or (ii) if a claim is covered by the indemnifying Party's insurance, knowingly take or omit to take any action that would cause the insurer not to defend such claim or to disclaim liability in respect thereof.

**6.6. No Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO PARTY MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE MANAGEMENT SERVICES, INCLUDING WITH RESPECT TO (I) MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OR (II) THE PROBABLE SUCCESS OR PROFITABILITY OF THE HEALTH CARE SYSTEM AFTER THE RECEIPT OF THE MANAGEMENT SERVICES.

**6.7. Exclusive Remedy.** This Article VI shall provide the exclusive remedy for the Parties for any dispute, misrepresentation or breach of warranty or covenant or for any claim which may arise out of this Agreement or the transactions described herein.

## **ARTICLE VII NOTICE**

All notices, requests and approvals required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, (ii) deposited in the United States mail, with postage prepaid, registered or certified, as follows:

If to DOCHS:

If to Manager:

Any notice, request or approval required or permitted to be given hereunder shall be deemed to be given and received by the addressee thereof upon personal delivery or on the third business day after the mailing thereof, as the case may be. Either party may change its address for these purposes by giving notice of such change to the other party in the manner hereinabove provided.

## **ARTICLE VIII INDEPENDENT CONTRACTOR**

In entering into this Agreement, and in acting in compliance herewith, Manager is at all times acting and performing as an independent contractor duly authorized to perform the services required of it hereunder as an agent of each DOCHS Member. Nothing contained in this

Agreement or any agreements, instruments, documents or transactions contemplated hereby shall constitute or be construed to create a partnership, joint venture, general agency, or similar relationship between any DOCHS Member, or its successors or permitted assigns, and Manager, or its successors or permitted assigns. The Parties acknowledge and agree that (a) Manager shall have the authority to bind the each DOCHS Member with respect to third Persons to the extent Manager is performing its obligations under and consistent with this Agreement; (b) Manager's agency established with the DOCHS is, and is intended to be, an agency coupled with an interest; and (c) in performing the Management Services, including entering into leases and contracts and conducting financial transactions for the Health Care System, (i) Manager assumes no independent contractual liability and (ii) Manager shall have no obligation to extend its own credit with respect to any obligation incurred in operating the Health Care System or performing its obligations under this Agreement.

## **ARTICLE IX MISCELLANEOUS**

**9.1. Waiver.** The waiver by a Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a continuing waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance by a Party of performance by the other shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of this Agreement, other than the failure to perform the particular duties so accepted, regardless of knowledge of such preceding breach at the time of acceptance of such performance.

**9.2. Prevailing Party.** If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against any other Party, all fees, costs and expenses, including reasonable attorneys' fees, court costs and other expenses, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the losing Party; provided, that if a Party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such Party on an equitable basis.

**9.3. Binding Nature of Agreement.** Subject to Section 9.5 below, this Agreement shall be binding upon and shall be for the benefit of the Parties hereto and their respective permitted successors and assigns.

**9.4. Entire Agreement.** This Agreement, and all exhibits referenced herein and attached hereto, contain the entire agreement between the Parties relating to the subject matter contained herein and supersede any prior oral or written communication between them concerning its terms. Any waiver or modification of this Agreement shall be effective only if in writing and signed by the Party against whom such waiver or modification is sought to be enforced.

**9.5. Assignability.** No DOCHS Member may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of Manager. Manager may assign any or all of its rights, interests and obligations hereunder to one or more of

its affiliates or to any other Person (including as expressly provided in Section 1.8 with respect to subcontracting).

**9.6. Preparation of Agreement.** Each of the Parties acknowledges that they have had an opportunity to obtain counsel of their own choosing, and that both of them have read this Agreement, understand the terms used herein, and consequences thereof and that they have freely and voluntarily entered into this Agreement. Each of the Parties is willing to and does hereby assume joint responsibility for the form and composition of each and all of the contents of this Agreement, and they further agree that this instrument shall be interpreted as though each of the Parties participated equally in the composition of this instrument, and each and every part thereof.

**9.7. Severability.** In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

**9.8. Counterparts.** This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute and be one and the same instrument.

**9.9. Governing Law.** The rights and duties of the Parties and the construction of this Agreement shall be governed by the laws of the State of California.

**9.10. Benefit.** This Agreement is not intended to confer upon any Person other than Manager and DOCS any rights, obligations or remedies hereunder.

**9.11. Headings; Interpretation.** The descriptive heading of the articles and sections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not control or affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” “Person” means any natural person, general or limited partnership, corporation, limited liability company, firm, association, trust or other legal entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**9.12. Access to Books.** As an independent contractor of DOCHS, Manager shall, in accordance with 42 U.S.C. §1395(v)(1)(I) and 42. C.P.R. Part 420, Subpart D § 420.300 et seq., until the expiration of four (4) years after the furnishing of Medicare reimbursable services pursuant to this Agreement, upon proper written request, allow the Comptroller General of the United States, the Secretary of Health and Human Services, and their duly authorized representatives access to this Agreement and to Manager’s books, documents and records necessary to certify the nature and extent of costs of Medicare reimbursable services provided under this Agreement. In accordance with such laws and regulations, if Medicare reimbursable

services provided by Manager under this Agreement are carried out by means of a subcontract with an organization related to Manager, and such related organization provides the services at a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, then the subcontract between Manager and the related organization shall contain a clause comparable to the clause specified in the preceding sentence.

**9.13. Referrals.** The Parties acknowledge that none of the benefits granted Manager is conditioned on any requirement that Manager or any of its owners or affiliates make referrals to, be in a position to make or influence referrals to, or otherwise generate business for any DOCHS Member or the Health Care System.

**9.14. Confidentiality of Manager Information.** Each DOCHS Member recognizes and acknowledges that, by virtue of entering into this Agreement and obtaining services from Manager hereunder, such DOCHS Member may have access to certain information of Manager that is confidential and constitutes the valuable, special and unique property of Manager, including policies and procedures and operating manuals of Manager. Each DOCHS Member warrants and covenants to Manager that neither such DOCHS Member nor any Employee or independent contractor thereof will at any time, either during or subsequent to the Term of this Agreement, disclose to others, use, copy or permit to be copied, without Manager's express prior written consent or as otherwise available to the public (without breach of this Section 9.14), any confidential or proprietary information of Manager, including information which concerns Manager's costs, policies and procedures, protocols for treatment and operating manuals.

**9.15. Confidentiality of Terms of This Agreement.** Except for disclosure to their legal counsel, accountants or financial advisors, each Party hereto warrants and covenants to each other Party that neither it nor its officers, employees, or agents shall disclose the terms of this Agreement to any Person who is not a Party, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by each other Party. Unauthorized disclosure of the terms of this Agreement shall be a material breach of this Agreement.

**9.16. Execution of Agreement.** This Agreement shall not become effective or in force until all of the required signatories below have executed this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have executed this Management Services Agreement on the day and year first above written.

[SIGNATURE BLOCKS TO BE INCLUDED]

## EXHIBIT A BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“**Addendum**”) supplements and is made a part of the [●], 2014, Management Services Agreement (“**Contract**”) by and between [●] (“**Covered Entity**” or “**CE**”) and Manager (“**Business Associate**” or “**BA**”). This Addendum is effective as of the date of the Contract (“**Addendum Effective Date**”).

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 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (“**HITECH Act**”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“**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 (defined below), 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, CE and BA agree as follows:

### 1. Definitions

- a. **Breach** shall have the meaning given to such term under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.
- b. **Business Associate** shall have the meaning given to such term under 42 U.S.C. § 17938 and 45 C.F.R. § 160.103.
- c. **Covered Entity** shall have the meaning given to such term under 45 C.F.R. § 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- e. **Designated Record Set** shall have the meaning given to such term 45 C.F.R. § 164.501.
- f. **Electronic Protected Health Information or EPHI** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term under 42 U.S.C. § 17921(5).



- h. Health Care Operations** shall have the meaning given to such term under 45 C.F.R. § 164.501.
- i. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. 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 45 C.F.R. § 160.103. PHI includes EPHI.
- k. Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
- l. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. Unsecured PHI** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services ("**Secretary**").

## **2. Obligations of Business Associate**

- a. Permitted Uses and Disclosures.** BA shall not use or disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and this Addendum. BA may use Protected Information (i) for the proper management and administration of BA, as well as the proper management and administration pursuant to the Contract, (ii) to carry out the legal responsibilities of BA pursuant to this Addendum and the Contract, or (iii) for Data Aggregation purposes for the Health Care Operations of CE.
- b. Prohibited Uses and Disclosures under HITECH.** Notwithstanding any other provision in this Addendum, BA shall comply with all Applicable Laws (as defined in the Contract) pursuant to this Addendum.
- c. Appropriate Safeguards.** Consistent with Applicable Laws, BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum. BA shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI.

- d. **Mitigation.** BA shall mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI in violation of this Addendum.
  - e. **Reporting of Improper Access, Use or Disclosure.** Upon actual notice of improper access, BA shall report to CE in writing in as reasonable amount of time as practical under the circumstances any access, use or disclosure of Protected Information not permitted by the Contract, Addendum or Applicable Laws.
  - f. **Business Associate's Subcontractors and Agents.** BA shall use its best efforts to ensure that any agents or 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. To the extent that BA creates, maintains, receives or transmits EPHI on behalf of the CE, BA shall use its best efforts to implement the safeguards required by paragraph 2.c above with respect to EPHI.
  - g. **Access to Protected Information.** To the extent BA maintains a Designated Record Set on behalf of the CE, BA shall use its best efforts to enable CE to fulfill its obligations under Applicable Laws. If BA maintains an Electronic Health Record, BA use its best efforts to enable CE to fulfill its obligations under Applicable Laws.
  - h. **Accounting Rights.** Within thirty (30) days of notice by CE of a request for an accounting of disclosures of Protected Information, BA shall use its best efforts to enable CE to fulfill its obligations under Applicable Laws.
  - i. **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 consistent with Applicable Laws.
  - j. **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, consistent with Applicable Laws.
3. **Termination.** Upon termination of the Contract pursuant to its terms, BA may, in its sole and absolute discretion and consistent with Applicable Laws, return or destroy all Protected Information that BA or its agents or subcontractors still maintain.
4. **Indemnifications; Limitation of Liability.** To the extent permitted by law, the Parties shall indemnify, defend and hold harmless the other from any and all liability, claim, lawsuit, injury, loss, expense or damage resulting from or relating to the acts or omissions of said Party in connection with their representations, duties and obligations under this Addendum.
5. **Amendment to Comply with Law.** Because state and federal laws relating to data security and privacy are rapidly evolving, amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. BA and CE shall take such action as is necessary to implement the standards and requirements of pursuant to Applicable Laws.

**6. 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.

**7. Interpretation.** This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with Applicable Laws.

**8. Regulatory References.** A reference in this Addendum to a section of regulations means the section as in effect or as amended, and for which compliance is required.

**9. Identity Theft Program Compliance.** To the extent that CE is required to comply with the final rule entitled “Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003,” as promulgated and enforced by the Federal Trade Commission (16 C.F.R. Part 681) (“**Red Flags Rule**”), and to the extent that BA is performing an activity in connection with one or more “covered accounts,” as that term is defined in the Red Flags Rule, pursuant to the Contract, BA shall establish and comply with its own reasonable policies and procedures under the Applicable Laws.

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

**COVERED ENTITY**

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

Name:

Title:

Date:

**BUSINESS ASSOCIATE**

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

Name:

Title:

Date: