

**TRANSITION SERVICES AGREEMENT**

This TRANSITION SERVICES AGREEMENT (“**TSA**”) is made and entered into this 1st day of April, 2019 (the “**Effective Date**”), by and among Tulare Local Healthcare District, a local health care district of the State of California (“**Seller**”), and Adventist Health Tulare, a California nonprofit religious corporation (“**Buyer**”).

**RECITALS**

A. Seller owned and operated the acute care general hospital located in Tulare, California, heretofore known as Tulare Regional Medical Center (the “**Hospital**”). Seller previously operated the Hospital prior to declaring bankruptcy (the “**Chapter 9 Proceedings**”).

B. As of the Effective Date, Buyer is the current operator of the Hospital. In order to continue to provide access to health care for the benefit of the communities served by the Hospital after the Chapter 9 Proceeding, Seller and Buyer entered into that certain Lease (“**Lease**”) dated February 12, 2019 under which Buyer leases from Seller all of the Premises and Improvements (as defined in the Lease) to operate the Hospital upon obtaining appropriate regulatory approvals (“**CHOW**”).

C. Concurrent with the Effective Date and in accordance with Section 32121(p) of the California Health and Safety Code, Buyer and Seller also entered into that certain Agreement for Purchase and Sale of Assets (“**APA**”) whereby Buyer has agreed to purchase from Seller certain tangible personal property assets, principally in the nature of medical and hospital equipment and supplies, which Buyer shall utilize in the operations of Hospital, in order to continue to provide health care for the benefit of the communities served by the Hospital and the Seller.

D. Additionally, Seller and Buyer have entered into that certain Debtor-in-Possession Credit Agreement and the Security Agreement, each dated as of August 8, 2018 (collectively, the “**Financing Documents**”) under which Buyer has extended a revolving credit facility to Seller.

E. The parties desire for Seller to provide Buyer with certain financial management and administrative services in support of transitioning Hospital’s operations from Seller to Buyer as identified in this TSA (“**Seller Services**”, as more fully set forth in ARTICLE 3. ). Seller and Buyer believe that Seller’s provision of the services identified in this TSA will enhance Hospital’s ability to provide high quality, efficient health care services to the community served by the Hospital during the term of this TSA.

F. The parties further desire for Buyer to provider Seller with sufficient office space and office resources in order to continue to provide such financial management and administrative services, and to provide information technology services in order to continue to provide such services (“**Buyer Services**”, as more fully set forth in ARTICLE 2. , and together with Seller Services, the “**Services**”).

**ARTICLE 1. TERM**

1.1 Term. Unless mutually extended by a signed writing, this TSA shall continue for a period of one (1) year from the Effective Date (i.e., expiring April 1, 2020), or until all Services provided by either party under this TSA have ended, whichever is sooner (the “**Term**”). Notwithstanding the preceding sentence, the Buyer Service described in Section 3.2 shall continue indefinitely, unless terminated by Seller pursuant to Section 1.2.

1.2 Shorter Service Times. Notwithstanding the length of the Term, Buyer and Seller shall have no further obligation to continue to provide a Service set forth in this TSA where, by its nature, the Service has been completed. Either party may terminate a Service by the other party with at least thirty (30) calendar days’ prior written notice that the respective provider of the Service no longer needs to provide that Service. Notwithstanding the preceding sentence, the Buyer Service described in Section 3.2 shall continue indefinitely, unless terminated by Seller upon thirty (30) calendar days’ prior written notice to Buyer. Notwithstanding the preceding, neither party may terminate the Services set forth in Section 2.1(c) or Section 3.3 until such time as all Medicare reports and all other government reports required by law for the period of time prior to the CHOW have been filed with their respective government agencies.

**ARTICLE 2. SERVICES TO BE PROVIDED BY SELLER**

2.1 Financial Management. Seller will provide Buyer with certain financial management Services related to carryover accounting, financial reporting, accounts payable, and banking and financial reconciliation, as set forth below, all of which shall be provided in consultation and with consent of Buyer.

(a) Financial Recordkeeping. Seller will perform accounting Services for, and close the financial ledgers for, each of the months from the commencement of the Lease until the end of this Service (some of which may have already been provided prior to the Effective Date). Seller will provide financial statements for each of the months from the commencement of the Lease until the end of this Service (some of which also may have been previously provided prior to the Effective Date). Buyer and Seller will use their best efforts to cooperate in closing the financial ledgers for each such month.

(i) Seller shall use accounting practices substantially consistent with those employed by similar district hospitals, and with Buyer’s accounting practices to the extent identified by Buyer; provided however that Seller shall not be obligated to strictly adhere to Generally Accepted Accounting Practices or any other accounting standards not required by law.

(b) Accounts Payable. Seller and Buyer will use their best efforts to cooperate in transitioning the accounts payable records of the Hospital during the Lease from Seller’s Cerner CommunityWorks software to Buyer’s Oracle software and other accounting software.

(i) Buyer shall be solely responsible for setting up and managing its financial institution account(s) for paying third parties, and shall notify Seller in

## EXECUTION VERSION

writing of the accounts it chooses to use for accounts payable, including the financial institution(s), account numbers, and any changes to such accounts.

(ii) Buyer may designate one or more of Seller's staff on such accounts used for paying third parties as signatories on such accounts, or otherwise authorize them to send payments from such accounts. Solely upon Buyer's prior express approval and direction, Seller will direct that payments be made from such accounts to third party payees of Buyer.

(iii) For accounts payable for goods or services provided prior to the Effective Date, Seller will make payments on those accounts payable from Wells Fargo account #4630384030, which shall be funded by Buyer, unless otherwise directed in writing by Buyer. Unless Seller expressly agrees to do so for a particular payment, Seller will not use financial institution accounts associated with its tax identification number (including, but not limited to the aforementioned Wells Fargo account) for the payment of amounts due for goods or services provided to the Hospital or Buyer after the Effective Date.

(iv) Seller will periodically import Cerner CommunityWorks Revenue Cycle data files into Seller's Great Plains accounting software. Seller will use commercially reasonable efforts to manage the Revenue Cycle data and related accounts receivable data, accounts payable data, Seller's fixed asset data, and Seller's general ledger (collectively, the "**District Financial Data**"), in order to transfer and incorporate the District Financial Data from Seller's Great Plains software into Buyer's Oracle software and other accounting software. The parties will cooperate in good faith in: populating the database template(s) for Buyer's new accounting books, addressing the differences in data formats and template(s) between their respective financial database and accounting software, cleaning up and managing the District Financial Data to match Buyer's template(s), and accurately transferring the District Financial Data into Buyer's new accounting database(s). The parties anticipate that they may use the assistance of third party information technology consultants (i.e. per Section 3.2) in performing part of the database population and data management contemplated in this Service, and use of such third party information technology consultants for this purpose shall be for Buyer's account.

(c) Banking & Financial Reconciliation. Seller will use its best efforts to cooperate in transitioning the banking and financial processes for the Hospital, including but not limited to: sending wire transfer payments or automated clearing house transfer payments from Seller's accounts to Buyer's accounts for accounts receivable dated during the Lease, preparing quarterly Credit Balance Reports for Medicare for periods prior to the Effective Date, and assisting Buyer with other government or third party patient payer reports as needed for activities of the Hospital prior to the Effective Date.

(i) Buyer shall be responsible for setting up and managing its financial institution account(s) for receiving funds, and shall notify Seller in writing of the

accounts it chooses to use for accounts receivable, including any changes to such accounts.

(ii) Buyer hereby appoints Seller as its agent for purposes of billing and collecting Buyer's accounts receivable as provided for herein and Seller hereby agrees to execute any and all documents reasonably necessary to memorialize such appointments. Buyer further appoints Seller to be its true and lawful attorney-in-fact during the term of this TSA for purposes of (i) billing and collecting in the name of Buyer, and (ii) receiving, taking possession of and endorsing in the name of Buyer any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable of Buyer.

2.2 Assumed Contracts. For each Assumed Contract (as that term is defined in the APA), Seller shall use commercially reasonable efforts to notify or seek the consent of the counterparty to the contract, as applicable, cooperate with Buyer in negotiating any such Assumed Contract with the counterparty if required, and if necessary, to seek approval from the court in the Chapter 9 Proceedings to approve the contract as an executory contract and/or to approve the assignment of such Assumed Contract to Buyer. During the period from the Effective Date until such Assumed Contract has been approved by the court and assigned to Buyer ("**Contract Transition Period**"), Seller agrees to treat Buyer as a third-party beneficiary under such Assumed Contracts and ensure Buyer receives the benefit and rights of any such Assumed Contracts.

2.3 HIPAA Compliance. In providing the Services, a party and each of its employees, agents and contractors must comply with all applicable laws and regulations affecting confidentiality of patient information, including the Health Information Portability and Accountability Act ("**HIPAA**"). Seller and Buyer shall execute the business associate agreement ("**BAA**") in the form attached hereto as Exhibit A.

### **ARTICLE 3. SERVICES TO BE PROVIDED BY BUYER**

3.1 Office Space. Buyer will provide Seller with office space for up to eight people in the Hospital to facilitate the provision of Services under this TSA for a period of no less than ninety (90) calendar days. The office space provided to Seller in the Hospital administrative annex as of the Effective Date is expressly agreed to be sufficient.

(a) Seller shall be a licensee of Buyer with respect to such office space. Notwithstanding the preceding, neither party shall inspect nor access the documents, files, or data of the other party in such office space without the owner party's express written permission.

(b) Buyer shall permit Seller continued and commercially reasonable use of office equipment, computers, printers, photocopy machines, facsimile machines, and other such office equipment in a manner consistent with the parties' practice immediately prior to the Effective Date.

(c) Buyer shall provide reasonable restrooms, utilities, telecommunications, janitorial, maintenance, and similar Services to such office space, substantially consistent with the same Services provided to Buyer's administrative offices.

(d) Buyer may relocate Seller's office space to any reasonably adjacent administrative offices in the Allied Services building, at Seller's reasonable discretion and in good faith, upon thirty (30) calendar days' prior written notice to Seller.

(e) Unless Seller has already vacated such office space, Buyer shall provide Seller with no less than thirty (30) calendar days' prior written notice before revoking Seller's license to the office space.

(f) Seller shall not sublet, assign, sub-license, or permit cotenancy by a third party in the office space provided by Buyer pursuant to this TSA without the express written consent of Buyer.

(g) Buyer shall donate to Seller the license to occupy such office space and related Services.

3.2 Information Technology. Buyer will provide Seller with information technology consulting and assistance on an as-needed and as-requested basis for Seller's staff and consultants in the Hospital. Such information technology consulting and assistance may be provided by a third party contractor, at Buyer's option, and Seller expressly agrees that Phoenix Health Systems is an acceptable provider of such information technology consulting.

(a) If Buyer chooses to provide its own information technology consulting Services, or chooses to use a third party provider other than Phoenix Health Systems, the selection of such alternative information technology consulting Service must be commercially reasonable and sufficiently experienced to assist Seller with Cerner CommunityWorks and Great Plains software. Any such replacement information technology consulting Service must comply with all applicable laws, including but not limited to HIPAA.

(b) Seller will reimburse Buyer for any third party charges incurred for such information technology consulting, including the consultants' time and the cost of any information technology parts, equipment, supplies, or software, but excluding *de minimis* fees or charges.

(c) This section shall not apply to limit either party from using the Services of any third party, whether for information technology consulting or otherwise, for any other lawful purpose.

3.3 Banking and Accounts Receivable Services. Buyer will use its best efforts to cooperate in transitioning the banking and financial processes for the Hospital, including but not limited to: preparing daily cash deposits, cash posting, sending wire transfer payments or automated clearing house transfer payments from Buyer's accounts to Seller's accounts for accounts receivable pre-dating the Effective Date, credit balance reconciliation, account

reconciliation, preparing quarterly Credit Balance Reports for Medicare, and assisting Seller with other government or third party patient payer reports as needed.

(a) Seller hereby appoints Buyer as its agent for purposes of depositing and cash posting Seller's accounts receivable, and Seller hereby agrees to execute any and all documents reasonably necessary to memorialize such appointments. Seller further appoints Buyer to be its true and lawful attorney-in-fact during the term of this TSA for purposes of (i) billing in the name of Seller, and (ii) receiving, taking possession of and endorsing in the name of Seller any cash, notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable of Seller that pre-date the Effective Date.

#### **ARTICLE 4. REIMBURSEMENTS**

4.1 Seller Services. Buyer will reimburse Seller for all actual and reasonable costs Seller incurs in providing the Seller Services set forth in ARTICLE 2. For any amount of reimbursable costs and expenses (i) due to a third party, Buyer will pay to Seller the entire amount thereof within ten (10) business days after receipt of an invoice or similar document therefor; (ii) due to or in respect of Seller's employees, staff, or Wipfli consultants, Buyer will pay to Seller the entire amount within ten (10) business days. Seller will provide to Buyer (i) all invoices and the like received from third party providers promptly upon receipt and (ii) invoices and the like (together with reasonable supporting documentation) for all other reimbursable costs and expenses.

4.2 Buyer Services. Seller will reimburse Buyer for all actual and reasonable costs Buyer incurs in providing the Buyer Services set forth in ARTICLE 3. For any amount of reimbursable costs and expenses (i) due to a third party, Seller will pay to Buyer the entire amount thereof within ten (10) business days after receipt of an invoice or similar document therefor; (ii) due to or in respect of Buyer's employees, staff, or information technology consultants, Seller will pay to Buyer the entire amount thereof within ten (10) business days. Buyer will provide to Seller (i) all invoices and the like received from third party providers promptly upon receipt and (ii) invoices and the like (together with reasonable supporting documentation) for all other reimbursable costs and expenses.

4.3 No Advance of Funds/Adverse Consequences. Subject to Section 2.1(b)(iii), Buyer acknowledges that Seller is not required to use Seller's funds to pay any third party provider any amount owed thereto, except as needed to maintain governmental licenses or authorizations. Buyer further acknowledges that, if not timely paid, a third party provider may terminate its contract(s) with Buyer and/or exercise all applicable rights and remedies thereunder, including charging termination fees, liquidated damages, and/or other amounts to Buyer, refusing to provide Services to Buyer and/or take other actions which could result in adverse consequences to Buyer (collectively, "**Adverse Consequences**"). Buyer further acknowledges that Adverse Consequences may result from Buyer's termination of a Service pursuant to Section 1.2. For any third party providers or governmental licenses or authorizations, Buyer and Seller agree that, as between Buyer and Seller, all Adverse Consequences shall be for Buyer's account and Seller shall have no responsibility or liability for

any Adverse Consequences, so long as the Adverse Consequences were not caused by Seller's prior breach of the Lease, the APA, or this TSA.

#### ARTICLE 5. TRANSITIONAL NATURE

5.1 Transitional Nature; Orderly Transfer. The parties acknowledge and agree that the Services to be provided hereunder are transitional in nature and are intended to provide Buyer sufficient time to develop the internal resources and capacities (or to arrange for third party providers) for such Services. Each of the parties shall use commercially reasonable efforts to (i) assist and cooperate with each other in the orderly transfer of the provision of Seller Services from Seller to Buyer, to Buyer's affiliates, or to its substitute Service providers, and (ii) make available, or cause to be made available, the documentation, personnel and know-how reasonably needed to facilitate such orderly transfer.

5.2 Use of the Services. Buyer and Seller each covenants and agrees that it will not resell any Services provided by the other party, provided however, that Buyer may use the Services for any parent, subsidiary, affiliate, or other entity under common control of Buyer, on Buyer's account, to the extent such use of Seller Services are consistent with the terms of the Lease, the APA, and this TSA.

#### ARTICLE 6. WARRANTY AND LIMITATION ON DAMAGES

6.1 Warranty. Each party warrants that it shall provide the Services in a manner substantially consistent with the historical practice of Seller in providing such Services to the Hospital prior to the Effective Date.

6.2 Liability Limitation. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE (EXCEPT AS TO ARTICLE 10. BELOW), FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR ARE A CONSEQUENCE OF, THIS TSA, INCLUDING LOSS OF PROFITS, BUSINESS INTERRUPTIONS OR CLAIMS OF CUSTOMERS OF THE OTHER PARTY, AS APPLICABLE; PROVIDED, HOWEVER, THAT THE LIMITATION ON DAMAGES SET FORTH IN THIS ARTICLE 6. SHALL NOT APPLY TO ANY CLAIMS ARISING OUT OF THE COMMISSION BY A PARTY OR ITS OR THEIR EMPLOYEES, AGENTS OR THIRD PARTY PROVIDERS OF A FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. At Buyer's written request and sole cost and expense, Seller will pursue for the benefit of Buyer any rights or remedies that Seller may have against a third party provider.

6.3 Continuation of Operations. Seller warrants and represents that it will continue as a California local healthcare district in good standing during the Term of this TSA.

#### ARTICLE 7. COMPLIANCE WITH LAWS AND REGULATIONS; THIRD-PARTY CONSENTS

7.1 Notices. Subject to the other party's compliance with this TSA, each party shall (i) give all notices and, use its reasonable efforts to obtain or maintain, as applicable, all

governmental licenses and authorizations required by applicable law, and (ii) comply with all applicable laws and regulations of any governmental body governing the Services to be provided hereunder.

7.2 Violations of Law. If the provision of any Service pursuant to this TSA results in any party receiving notice that it is in violation of an applicable law or regulation by a governmental body, the parties will mutually cooperate to seek to provide the Service in a way that is not in violation of such law or regulation. Failing such efforts to bring the provision of such Service into conformity with such law(s) or regulation(s), either party may cancel such Service.

7.3 Third-Party Consents. Either party's obligation to provide any Service is conditioned upon that party obtaining the consent, where necessary, of any relevant third party provider; provided, however, that if such consent cannot be obtained, the parties shall cooperate to seek to arrange for alternative methods of such Service being provided to the party receiving such Service. Failing such efforts to bring the provision of such Service into conformity with any such obligations to a third party provider, either party may cancel such Service upon written notice to the other party.

## **ARTICLE 8. COOPERATION**

8.1 Cooperation. Seller and Buyer, as applicable, shall make available on a timely basis to the other party, at such other party's cost, all information and materials reasonably requested by such party to enable it to perform its obligations pursuant to this TSA; provided, however, that in no event will a party be required to make available any information the disclosure of which, in that party's reasonable opinion, could jeopardize an attorney-client privilege, attorney work product privilege, or related privileges, or that might violate any applicable law or regulation (e.g., HIPAA).

8.2 Independent Contractor. The relationship of Seller to Buyer pursuant to this TSA is that of an independent contractor. This TSA is not intended to create and shall not be construed as creating between Seller, on the one hand, and Buyer, on the other hand, any relationship other than as an independent contractor and purchaser of contract services, it being specifically agreed that there is no relationship between the parties of principal and agent, joint venture, partnership, joint employer, or similar relationship, or any relationship that imposes or implies any fiduciary duty, including any duty of care or duty of loyalty.

8.3 No Shared Employees. The employees, consultants and representatives of Seller and Buyer, respectively, shall not be deemed, for purposes of any compensation and employee benefits matter (including, without limitation, withholding taxes, worker's compensation insurance, social security contributions or other applicable taxes, health insurance, bonuses, severance payments, 401(k) benefits or similar costs or benefits related to their employment or retention), to be employees, consultants or representatives of the other party solely on account of such party receiving services from the other party.



## ARTICLE 9. CONFIDENTIALITY

9.1 Confidentiality Obligations. Each party shall keep confidential, and not disclose to any other person or use for its own benefit or the benefit of any other person, any confidential or proprietary information obtained from the other party in connection with this TSA; provided however, that Buyer may disclose confidential or proprietary information to any affiliate thereof. The obligation of the parties under this paragraph shall not apply to information which: (a) is or becomes generally available to the public without breach of the commitment provided for in this paragraph, or (b) is required to be disclosed by law or regulation (e.g. pursuant to public records requests to Seller or the Brown Act); provided, however, that in any such case, the disclosing party shall notify the other party as early as reasonably practicable prior to disclosure to allow such other party to take appropriate measures to preserve the confidentiality of such information. The provisions of this paragraph will survive the termination or expiration of this TSA.

## ARTICLE 10. INDEMNIFICATION

10.1 Indemnification of Seller. Subject to ARTICLE 6. hereof, Buyer hereby agrees to indemnify and hold harmless Seller and its respective officers, board members, managers, employees, professional advisors, agents, and representatives (collectively, the “**Seller Indemnitees**”) from and against any and all claims, losses, damages, liabilities, deficiencies, costs or expenses, including reasonable attorneys' fees and expenses and costs and expenses of investigation (collectively, “**Losses**”) that result directly from third party claims, actions or proceedings, arising out of or resulting from (a) any breach or violation by Buyer of any representation or warranty or any covenant, obligation or other term set forth in this TSA; (b) the death, bodily injury or damage to property that occurs in connection with the transactions and/or arrangements contemplated by this TSA (including the Exhibits hereto) to the extent that such death, injury or damage is caused in whole or in part by the acts, errors, omissions or negligence of Buyer or any of its employees, agents or subcontractors; (c) criminal act, fraud, willful misconduct or gross negligence of Buyer or any of its affiliates or its or their employees, agents or third party subcontractors; (d) Buyer’s provision of any Services hereunder, but only to the extent Buyer’s provision of any Services was a direct cause of the Losses, and except to the extent such Losses are indemnifiable by Seller pursuant to Section 10.2 or (e) any Adverse Consequences.

10.2 Indemnification of Buyer. Subject to ARTICLE 6. hereof, Seller hereby agrees to indemnify, defend and hold harmless Buyer, its affiliates and their officers, directors, managers, employees, professional advisors, agents, and representatives (collectively, the “**Buyer Indemnitees**”) from and against any and all Losses arising out of or resulting from (a) any breach or violation of by Seller of any representation or warranty or any covenant, obligation or other term set forth in this TSA; (b) the death, bodily injury or damage to property that occurs in connection with the transactions and/or arrangements contemplated by this TSA to the extent that such injury or damage is caused in whole or in part by the acts, errors, omissions or negligence of Seller, or any of its or their employees, agents or subcontractors; (c) criminal act, fraud, willful misconduct, or gross negligence of Seller or its employees, agents, or third party subcontractors (including for this purpose any Wipfli consultants); or (d) Seller’s provision of any Services hereunder, but only to the extent Seller’s provision of any Services was a direct

cause of Losses and except to the extent such Losses are indemnifiable by Buyer pursuant to Section 10.1.

10.3 Indemnification Procedure. Procedures for any claim for indemnification arising under this TSA shall be as set forth in the APA.

10.4 Mitigation. Each Party agrees to use commercially reasonable efforts to mitigate any Loss which forms the basis of a claim for indemnification hereunder.

10.5 Exclusive Remedy. The Parties agree that, from and after the Effective Date with respect to any breach, inaccuracy or violation of any representation or warranty or any covenant, obligation or other term set forth in this TSA, the only relief available to a party indemnified therefor shall be (a) as provided for in this ARTICLE 10. ; (b) specific performance; or (c) injunctive relief or declaratory relief. Notwithstanding the foregoing, in respect of any crime, fraud, intentional misrepresentation or willful breach of this TSA, the aggrieved party(ies) shall have the right to pursue all remedies available to it (them) at law or in equity.

## **ARTICLE 11. FORCE MAJEURE**

11.1 Conditions of Force Majeure. Neither party shall be liable to the other party for any loss, cost or damage for delay or non-performance of any of its obligations hereunder resulting from any requirement or intervention of civil, naval or military authorities or other agencies of the government, or by reason of any other causes whatsoever not reasonably within the control of such party, including, but not limited to, acts of God, war, riot, insurrection, civil violence or disobedience, blockages, embargoes, sabotage, epidemics, fire, strikes, lock-outs or other industrial or labor disturbances, lightning, hurricanes, other severe weather disturbances, explosions, failure of the public financial or public payment system(s), or delay of any broadband, data or similar essential carriers.

## **ARTICLE 12. MISCELLANEOUS**

12.1 Entire Agreement; No Third-Party Beneficiaries. This TSA, together with the APA, Lease and its ancillary agreements, constitutes the entire agreement and supersedes any and all other prior agreements, negotiations, or undertakings, both written and oral, among the parties hereto, or any of them, with respect to the subject matter hereof and do not, and are not intended to, confer upon any person any rights whatsoever, other than the parties hereto and the Buyer Indemnitees and the Seller Indemnities entitled to indemnification pursuant to hereto.

12.2 Amendment; Waiver. This TSA may be amended only in a writing signed by each of the parties hereto. Any waiver of rights hereunder must be set forth in writing. A waiver of any breach or failure to enforce any of the terms or conditions of this TSA shall not in any way affect, limit or waive any party's rights at any time to enforce strict compliance thereafter with every term or condition of this TSA.

12.3 Severability. If any term or provision of this TSA shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this TSA or the application of such term or provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall not be affected thereby and this TSA shall be

deemed severable and shall be enforced otherwise to the full extent permitted by applicable law; provided, however, that such enforcement does not deprive any Party of the benefit of the bargain.

12.4 Binding Effect; Assignment. This TSA shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors. Notwithstanding the foregoing, this TSA shall not be assigned by any party hereto by operation of law or otherwise without the express written consent of each of the other parties hereto.

12.5 Governing Law. This TSA shall be governed by and construed in accordance with, the laws of the State of California without regard to the conflicts of laws provisions thereof. All disputes arising under the TSA shall be resolved pursuant to the terms of Article 10 of the APA.

12.6 Construction. The headings of Articles and Sections in this TSA are provided for convenience only and will not affect its construction or interpretation. The language used in this TSA is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

12.7 Counterparts. This TSA may be executed simultaneously in one or more counterparts (including by facsimile or electronic .pdf submission), and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute one and the same agreement.

12.8 Conflict with APA. In the event of any conflict between this TSA (including the Exhibits hereto), on the one hand, and the APA (including the Exhibits and Schedules thereto), on the other, the applicable provision of the APA shall control and govern.

12.9 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by facsimile or email, upon written confirmation of receipt by facsimile, e-mail or otherwise, (b) on the first business day following the date of dispatch if delivered utilizing a next-day service by a recognized next day courier or (c) on the earlier of confirmed receipt or the fifth business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) If to Seller:

Tulare Local Healthcare District  
869 N. Cherry Ave.  
Tulare, CA 93274  
Attention: Kevin Northcraft, President  
Michael Jamaica, Vice President

With a copy to:

McCormick Barstow, LLP  
7647 North Fresno Street P.O. Box 28912  
Fresno, California 93729  
Attention: Todd Wynkoop, Esq.

(b) If to Buyer:

Adventist Health Tulare  
869 North Cherry Street  
Tulare, CA 93274  
Attention: President

With a copy to:

Adventist Health  
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. Settlemayer, Esq.


12.10 No Referrals. No term of this TSA shall be construed as requiring or inducing either party or any person employed or retained by a party to refer patients to the other party or any party-affiliated entity. Seller's rights under this Agreement shall not be dependent in any way on the referral of patients to Buyer or its affiliated organizations by Seller or any person employed or retained by Seller. Buyer's rights under this Agreement shall not be dependent in any way on the referral of patients to Seller or its affiliated organizations by Buyer or any person employed or retained by Buyer.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties execute this Transition Services Agreement as of the day and year last written below.

**SELLER**

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

  
By: Kevin B. Northcraft  
Its President  
Date: 29 March 2019

**BUYER**

ADVENTIST HEALTH TULARE  
a California nonprofit religious corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

*[Signature Page to Transition Services Agreement]*

IN WITNESS WHEREOF, the parties execute this Transition Services Agreement as of the day and year last written below.


**SELLER**

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

By: \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**BUYER**

ADVENTIST HEALTH TULARE  
a California nonprofit religious corporation

  
By: Randy Dodd  
Its President  
Date: 4-1-2019

**EXHIBIT A**  
**Business Associate Agreement**

This BUSINESS ASSOCIATE AGREEMENT (this “**BAA**”) is made by and between Adventist Health Tulare and Tulare Local Healthcare District, a local health care district of the State of California, each of which may be an entity subject to HIPAA as to their respective health care operations (“**Covered Entity**” or “**CE**”), in which instance the other party shall be a business associate of the Covered Entity for purposes of HIPAA (“**Business Associate**” or “**BA**”), and is effective as of April 1, 2019 (the “**BAA Effective Date**”).

RECITALS

- A. BA provides certain services for or on behalf of CE (“**Services**”), pursuant to an agreement or arrangement (the “**Underlying Agreement**”), and, in the performance of the Services, BA creates, receives, maintains or transmits Protected Health Information (“**PHI**”).
- B. CE and BA intend to protect the privacy and provide for the security of the PHI created, received, maintained, or transmitted by BA 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 CE to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in this BAA.

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. “**Offshore**” means outside of the United States of America.
- c. “**Privacy Rule**” means the HIPAA Regulations that are codified at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- d. “**Protected Health Information**” or “**PHI**” has the same meaning as “protected health information” at 45 C.F.R. § 160.103, limited only to the information provided by CE to BA or created or received by BA on CE’s behalf.
- e. “**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.** BA may not use PHI except for the purpose of performing the Services, or as otherwise explicitly permitted by this BAA or as Required By Law. Further, BA may not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; and (iii) for Data Aggregation purposes for the Health Care Operations of CE.
- b. **Permitted Disclosures.** BA may not disclose PHI except for the purpose of performing the Services, or as otherwise explicitly permitted by this BAA or as Required By Law. BA may not disclose PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses PHI to a third party for BA's proper management and administration or to carry out BA's legal responsibilities, the disclosure must be Required By Law, or prior to making any such disclosure, BA must obtain (i) reasonable written assurances from such third party that such 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 BA of any breach of its confidentiality obligations of which it becomes aware.
- c. **Appropriate Safeguards.** BA must comply with all applicable requirements of the Security Rule to the same extent the Security Rule applies to CE. BA will implement appropriate administrative, physical and technical safeguards as are necessary to prevent the improper use or disclosure of PHI other than as permitted by this BAA. Without limiting the foregoing, BA may not (i) transmit PHI over a network that is not protected by Encryption technology, such as the Internet (i.e., a virtual private network must be used), or (ii) maintain PHI on a laptop or other portable electronic media, unless such PHI has been secured by the use of Encryption technology. BA will not (a) store any decryption key on the same device as encrypted 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. BA represents and warrants that all of its Workforce members who may have access to PHI have been appropriately trained on their obligations under the HIPAA Regulations.
- d. **Mitigation.** BA agrees to mitigate, to the maximum extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI in violation of this BAA.
- e. **Reporting of Improper Access, Use or Disclosure.** BA will notify CE in writing of any access to, use or disclosure of PHI not permitted by this BAA, including any Breach of Unsecured PHI and Security Incident, without unreasonable delay and no later than five business days after discovery. Such notifications must include the following:
  - A description of the impermissible access, use or disclosure of PHI;



- Identification of each Individual whose Unsecured PHI has been or is reasonably believed by BA 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 PHI involved in the incident;
- A description of the investigation process to determine the cause and extent of the incident;
- A description of the actions BA is taking to mitigate and protect against further impermissible uses or disclosures and losses;
- A description of any steps individuals should take to protect themselves from potential harm resulting from the impermissible use or disclosure of PHI; and
- Any other information related to the incident that is reasonably requested by CE.

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

BA will reimburse CE for (i) all reasonably incurred costs related to notifying Individuals of an impermissible access, use or disclosure of PHI by BA or its Subcontractors, and (ii) all reasonably incurred expenses related to mitigating harm to the affected Individuals, such as credit monitoring services.

- f. **BA's Agents and Subcontractors.** BA will ensure that any Subcontractors that create, receive, maintain or transmit PHI on behalf of BA agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI. BA will implement and maintain sanctions against Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. BA will be legally responsible to CE for the actions and conduct of its Subcontractors involving PHI.
- g. **Access to PHI.** BA will make PHI it maintains in Designated Record Sets available to CE for inspection and copying within five days of a request by CE in a manner that enables CE to fulfill its obligations under 45 C.F.R. § 164.524. If any Individual asks to inspect or access his or her PHI directly from BA, BA will notify CE in writing of the request within five days of the request. Any approval or denial of an Individual's request to access or inspect his or her PHI is the responsibility of CE.
- h. **Amendment of PHI.** Within ten days of the receipt of a request from CE for an amendment to PHI that is maintained in a Designated Record Set by BA, BA will make the PHI available to CE for amendment in such a manner so as to enable CE to fulfill its obligations under 45

C.F.R. § 164.526. If any Individual requests an amendment of PHI directly from BA, BA must notify CE in writing of the request within five days of the request. Any approval or denial of an amendment of PHI maintained by BA is the responsibility of CE.

- i. **Accounting Rights.** BA will maintain a record of all disclosures of PHI that BA makes, if CE would be required to provide an accounting to an Individual of such Disclosures under 45 C.F.R. § 164.528. Within ten days of notice by CE of a request for an accounting of disclosures of PHI, BA will make available to CE all information related to disclosures by BA and its Subcontractors necessary for CE to fulfill its obligations under 45 C.F.R. § 164.528. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA 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 PHI and, if known, the address of the person; (iii) a brief description of 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 BA, BA will, within five days of a request, forward it to CE in writing. It is CE's responsibility to prepare and deliver any such accounting requested, and BA will not provide an accounting directly to an Individual.
- j. **Delegations of Obligations.** To the extent that BA carries out CE's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such obligations.
- k. **Access to Records.** BA will make its internal practices, books and records relating to the use and disclosure of PHI available, upon request, to CE and the Secretary for purposes of determining CE's and BA's compliance with the Privacy Rule and this BAA.
- l. **Minimum Necessary.** BA will request, use and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. BA understands and agrees that the definition of "minimum necessary" is in flux, and BA will keep itself 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, BA acknowledges that BA has no ownership rights in the PHI.

### **3. Term and Termination.**

- a. **Term.** The Term of this BAA is concurrent with that of the Underlying Agreement.
- b. **Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, will constitute a material breach of the Underlying Agreement and provide grounds for immediate termination of both this BAA and the Underlying Agreement, despite any contrary term in the Underlying Agreement. CE may choose to provide BA with an opportunity to cure any breach of this BAA, and CE may terminate this BAA if BA fails to cure the breach within the time period specified in the notice of the breach.
- c. **Judicial or Administrative Proceedings.** CE may terminate this BAA and the Underlying Agreement, despite any contrary term in the Underlying Agreement, effective immediately,

if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws, or (ii) a finding or stipulation that BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which CE has been joined.

- d. **Effect of Termination.** Upon termination of this BAA for any reason, BA will, at the option of CE, return or destroy all PHI that BA still maintains in any form, and will not retain any copies of such PHI. If return or destruction is not feasible as determined by CE, BA will provide CE with written notice setting forth the circumstances that BA believes make the return or destruction of the PHI infeasible and continue to extend the protections of this BAA to such information and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. If CE elects destruction of the PHI, BA, will certify in writing to CE that such PHI has been destroyed. BA will be responsible for returning or destroying any PHI in the possession of its Subcontractors consistent with the requirements of this Section related to return and destruction of PHI.
4. **Disclaimer.** CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.
5. **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 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, CE may terminate the Underlying Agreement and this BAA upon 30 days written notice in the event (i) BA does not promptly enter into negotiations to amend this BAA when requested by CE pursuant to this Section, or (ii) BA does not enter into an amendment to this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.
6. **Assistance in Litigation or Administrative Proceedings.** BA shall make itself, and any Subcontractors, employees or agents assisting BA in the performance of its obligations under this BAA available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy by BA, except where BA or its Subcontractor, employee or agent is a named adverse party.
7. **Indemnification.** BA will indemnify, defend and hold CE and its employees, agents, officers, directors, members, subsidiaries, and affiliates harmless from and against any claim, cost, lawsuit, injury, loss, damage or liability arising from (i) any breach by BA of its obligations


under this BAA, or (ii) any impermissible use or disclosure of PHI by BA or its Subcontractors, however caused. CE will indemnify, defend and hold BA and its employees, agents, officers, directors, shareholders, members, subsidiaries, and affiliates harmless from and against any claim, cost, lawsuit, injury, loss, damage or liability arising from a breach of this BAA by CE. The indemnification rights and obligations set forth in this Section are not subject to any limitation of liability provision contained in the Underlying Agreement.

8. **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 CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
9. **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 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.
10. **Survival.** The rights and obligation under Sections 2.i., 3.d., 6 and 7 expressly survive termination of this BAA.
11. **Insurance.** BA must carry cyber liability coverage with minimum limits of \$3,000,000, including coverage for data reconstruction, financial damages resulting from the unauthorized disclosure of or general corruption or loss of personal data (including but not limited to PHI), identity theft monitoring services for Individuals whose PHI was compromised, costs of incident response, investigation and follow-up, coverage for actions of rogue employees and the costs of defending or responding to (including damages and fines) any investigations or informational requests from any regulatory agency or other governmental or quasi-governmental agency responsible for the control and use of PHI.
12. **Offshoring Prohibition.** BA may not transmit or make PHI accessible to any Offshore recipient without CE's prior written consent. BA's requests for permission to send PHI Offshore must be submitted in writing to CE's privacy officer. The request must include details sufficient to identify the Offshore entity, the specific PHI to be transmitted or accessed by the Offshore entity, and the purpose for which the PHI will be used or accessed by the Offshore entity. CE reserves the right to request and, upon that request BA must provide, additional documentation and evidence of Offshore entity's compliance with the terms of this BAA. BA shall ensure that representatives of CE and of Medicare plans in which CE participates have the right to audit any Offshore entity receiving PHI; provided, however, that such audits will be limited to the use and disclosure of PHI by the Offshore entity and the administrative, physical, technical and organizational privacy and security safeguards, and policies, procedures and documentation addressing the privacy and security of PHI.

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

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Adventist Health Tulare

By:   
Print Name: RANDY DODD  
Title: PRESIDENT  
Date: 4-1-2019

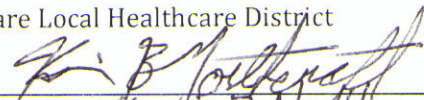
Tulare Local Healthcare District

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Adventist Health Tulare

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Tulare Local Healthcare District

By:   
Print Name: Kevin B Northcraft  
Title: Board President  
Date: 27 Mar 2019