

ADMINISTRATIVE AND PROFESSIONAL SERVICES AGREEMENT

This Administrative and Professional Services Agreement (“**Agreement**”) is entered into as of September 1, 2020 (the “**Effective Date**”) by and between the County of Santa Clara, a political subdivision of the State of California (“**County**”) and **CEP America-Anesthesia, PC**, a California professional corporation (“**Contractor**”). County and Contractor may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, County provides medical services to patients through general acute care hospitals commonly known as the Santa Clara Valley Medical Center (“**SCVMC**”), O’Connor Hospital (“**O’Connor**”) and St. Louise Regional Hospital (“**St. Louise**”) and clinics and other health care facilities owned or operated by County. SCVMC, O’Connor and St. Louise are operated on a consolidated license and, unless otherwise specified, are collectively referred to herein as **Hospital**;

WHEREAS, County desires the assistance of physicians who can provide specialized professional and administrative services to patients at **O’Connor**;

WHEREAS, The Parties agree to comply with the General Terms and Conditions contained in Sections 1 – 24 of this Agreement and provisions contained in Exhibits A through A-3; Exhibit B: Insurance Requirements; Exhibit C: County Standard Terms and Conditions; Exhibit D: Business Associate Agreement; and Exhibit E: Santa Clara Valley Health and Hospital System Security and Confidentiality Agreement, which are attached hereto and incorporated herein by this reference and made a part of this Agreement.

WHEREAS, Contractor employs or contracts with physicians who are (1) duly qualified and licensed to practice medicine in the State of California (2) experienced and qualified to practice the medical specialties set forth on **Exhibit A** as may be amended from time to time (“**Specialty**”); and (3) who are, or will become prior to performing any services under this Agreement, members with clinical privileges of the Hospital’s medical staff (“**Medical Staff**”);

WHEREAS, County desires to engage Contractor to provide administrative and professional services, and Contractor is willing to provide such administrative and professional services upon the terms and conditions set forth in this Agreement;

WHEREAS, County desires to retain Contractor to provide certain administrative and professional services in the operation of O’Connor Hospital (“**Department**”) and has determined that this proposed arrangement with Contractor will enhance the Department’s organization, procedures, standardization, economic efficiency, and professional proficiency, and provide other benefits to enhance coordination and cooperation among the Department’s providers and patients.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Contractor and Physician Obligations

1.1 Administrative Services.

1.1.1 Medical Director Services at O'Connor Hospital: Contractor shall act as the Medical Director (“**Medical Director**”) in accordance with the terms of this Agreement, the Medical Staff Bylaws and Rules (collectively, “**Medical Staff Bylaws**”), and the Hospital’s and County’s policies, procedures, and requirements. Contractor shall provide the Administrative Services at the location(s) set forth on **Exhibit A**.

1.1.2 Administrative Duties. Contractor shall cause Medical Director to perform the administrative duties and responsibilities (“**Administrative Services**”) as set forth in the Administrative Services section of **Exhibit A**.

1.1.3 Administrative Hours. Contractor shall cause Medical Director to devote as much time as is necessary in performing the Administrative Services to provide for the effective management of the Department as set forth in **Exhibit A**. Contractor shall coordinate his work schedule with Hospital to ensure the effective operation of the Department.

1.1.4 Medical Director Efforts. To ensure the effective operation of the Department, the Parties recognize the need for Contractor, and in particular Medical Director, to devote significant energies and effort to Department activities. Therefore, during the term of this Agreement, Contractor shall cause Medical Director to refrain from providing medical direction to any other hospital or hospital department except any hospital or facility owned and operated by the County, or establishing, performing any management or administrative services for, consulting with, investing in, or otherwise assisting in the management, administrative, or operational functions of any other hospital or department, without the prior written consent of the County, which may be withheld in County’s sole discretion.

1.1.5 Supervision and Training. The Parties acknowledge and agree that, in connection with the Administrative Services, Medical Director may be responsible for providing training and supervision and overseeing physicians and other Hospital professional staff in training programs (such as residents and fellows), in a manner that complies with applicable laws, regulations, and billing requirements and that is consistent with applicable policies and procedures of Hospital and County. Medical Director may be required to provide appropriate training and supervision of clinical personnel (such as nurse practitioners or physician assistants) employed by or under contract with County in the performance of patient care services at the Hospital.

1.2. Professional Services. Contractor shall provide professional medical services related to their Specialty and Department (the “**Professional Services**”) throughout the term of this Agreement, and as set forth on **Exhibit A-1**, attached hereto and incorporated herein by reference.

1.2.1 Location. Contractor shall provide the Professional Services at the location set forth on **Exhibit A-1**. The parties may mutually agree to provide Professional Services at other locations as needed.

1.2.2 Hours. Contractor shall provide or arrange for the provision of all Professional Services required for patient care and the operation of the Department, as determined by Hospital and its Medical Staff as set forth on **Exhibit A-1**.

1.2.3 Services. Each Physician providing the Professional Services shall at all times be a member of the Medical Staff with clinical privileges and shall meet the qualifications set forth in this Agreement.

1.2.4 Supervision and Training. The Parties acknowledge and agree that, in connection with the Professional Services, Physicians may be responsible for providing training and supervision and overseeing physicians and other Hospital professional staff in training programs (such as residents and fellows), in a manner that complies with applicable laws, regulations, and billing requirements and that is consistent with applicable policies and procedures of Hospital, County and postgraduate training governing bodies. Physicians may be required to provide appropriate training and supervision of clinical personnel (such as nurse practitioners or physician assistants) employed by or under contract with County in the performance of patient care services at the Hospital.

1.3 Medical Staff and Health Plan Requirements.

1.3.1 Staff Membership and Clinical Privileges. Each Physician providing Professional Services under this Agreement is required to become and remain a member in good standing of the Medical Staff of Hospital and shall, if applicable, be subject to all of the attendant clinical privileges, responsibilities and conditions associated with Medical Staff membership. Hospital shall promptly and in good faith process requests for temporary and permanent staff membership and clinical privileges required for Contractor to perform Contractor's obligations under this Agreement.

1.3.2 Termination or Suspension of Staff Membership and Privileges. In the event a particular Physician does not meet or fails to continue to meet the established written criteria for Medical Staff membership with or without clinical privileges, Hospital shall promptly advise Contractor in writing and Contractor shall immediately terminate the particular Physician's provision of Professional Services, and shall immediately supply a replacement Physician acceptable to Hospital.

1.3.3 Health Plan Requirements. Contractor shall cause each physician providing Services under this Agreement to comply with all applicable credentialing, re-credentialing, proctoring, patient grievance systems, quality of care and utilization review, disease management programs, information disclosure requirements, survey and investigation cooperation, continuity of care obligations, pharmaceutical formulary requirements as well as all other contracting requirements of each health plan, health maintenance organization, or other governmental or private managed healthcare program, insurance company, and/or third-party payor with which County contracts or in the future may contract for the provision of the Services.

1.3.4 Policies, Rules and Operations. Contractor shall cause each Physician to perform the Services in accordance with: (a) all applicable statutes, laws, rules, and

regulations; (b) all applicable Joint Commission requirements; and (c) the applicable standard of care for the Administrative and Professional Services. Additionally, Contractor shall ensure that Physicians performing the Services comply with the provisions of the governing instruments of County and Hospital, including, without limitation, County and Hospital's policies, rules and regulations, the Practitioner Code of Conduct, Peer Review Processes including Ongoing Professional Practice Evaluation ("OPPE") / Focused Professional Practice Evaluation ("FPPE"), Conflict Management, and Medical Staff Bylaws and Rules as each may be amended from time to time, and such policies, procedures and protocols related to provision of the Services, as may from time to time be established, including any quality assurance and utilization review policies. Such instruments, policies, procedures, and protocols referenced in this Section (collectively, the "Policies") may be amended from time to time by County or Hospital without prior approval of Contractor, subject to the receipt of such Policies by the Physicians from County or Hospital. Contractor shall ensure that Physicians, at the request of County or Hospital, attend compliance meetings or trainings provided by County or Hospital.

1.3.5 Peer Review. Contractor shall ensure that Physicians participate in appropriate peer review processes including OPPE, indicated FPPE and in addition to any peer review that may be done by Hospital. Unless otherwise prohibited by applicable law, Contractor shall share with the Hospital's Medical Staff all information, documentation and files relating to the peer review process within thirty (30) days of occurrence.

1.3.6 Programs; Performance Standards. Contractor shall and shall cause each Physician to (a) participate in Hospital's quality improvement, utilization review and risk management programs and serve on such quality improvement, utilization review and risk management committees as may be requested by Hospital from time to time; (b) participate in on-going quality improvement monitoring activities, such as audits; (c) participate in risk management activities designed to identify, evaluate and reduce risk of patient injury associated with care; (d) assist utilization review in setting, monitoring and achieving length of stay and ancillary utilization goals; and (e) participate in Hospital's E-learning and other mandatory trainings. As part of its quality improvement, utilization review and risk management programs, Hospital has developed certain criteria and procedures ("Performance Standards") to monitor the provision of services under this Agreement and ensure the quality and efficiency of medical care in the Department. Contractor shall cause Physicians to abide by the Performance Standards set forth in the Performance Standards section set forth on **Exhibits A and A-1**.

1.4 Infection Prevention. Contractor shall ensure that while providing the Services, Physicians fulfill and comply with all Infection and Prevention Requirements of the Hospital while providing the Services.

1.5 Complaints. Contractor and Hospital shall cooperate in good faith to investigate any complaints made by Hospital patients concerning any Physician and resolve the complaint in a reasonable time with appropriate action. Contractor shall notify Hospital immediately of any complaints that arise concerning him.

1.6 Exclusion. Contractor shall participate in screenings required of him who furnish, order or prescribe items or services reimbursable under any federal health program to or for patients of Hospital under this Agreement against the List of Excluded Individuals/Entities maintained by the Office of Inspector General (“**OIG**”) of the Department of Health and Human Services, the System for Awards Management (“**SAM**”; formerly the Excluded Parties List System) and any successor list maintained by the U.S. General Services Administration, and the Medi-Cal Suspended and Ineligible Provider List maintained by the California Department of Health Care Services prior to hire and once a year thereafter. Contractor will immediately notify Hospital in the event Contractor or one of Contractor Personnel is excluded from participation in a federal health care program. Contractor will indemnify, defend and hold harmless County for any claims, judgments, overpayments or expenses arising from such exclusion pursuant to the Indemnification provisions contained in this Agreement.

1.7 Use of Premises. Contractor shall and shall cause Physicians to use the Hospital and Department premises solely for the provision of services specified in this Agreement. No part of the premises of Hospital shall be used at any time by Contractor, Physician, for any other purpose, including but not limited to use as an office for the general practice of medicine.

1.8 Limitation on Authority of Contractor. Contractor shall not and shall cause Physicians not to (a) incur any financial obligation on behalf of the County, (b) obligate or commit any assets of the County for the purchase, acquisition, or pilot trial of equipment, supplies, or personnel, (c) enter into any contract on behalf of the County for the purchase, rental, or other acquisition of equipment, facilities, supplies, or personnel, (d) make, nor allow any other individual to make, any additions, alterations, improvements, or repairs to any space, facilities, or equipment furnished by County, and /or (e) remove any equipment or supplies furnished by County, each without the express prior written authorization of County.

1.9 Conditions for Payment. Payment of the compensation provided herein is conditioned upon Contractor and Physicians (a) performing all of the duties and obligations set forth in this Section 1 (Contractor and Physician Obligations) above and (b) maintaining such records and supporting documents as may, from time to time, be required to comply with the requirements of governmental agencies and third party payors, including preparing complete and accurate time records which document separately all time spent providing professional, administrative and teaching services hereunder, in a form acceptable to Hospital; pursuant to 42 C.F.R. §415.60 and in order to comply with Medicare requirements, executing and updating at such times and on such forms as requested by Hospital, a written allocation statement specifying the respective amounts of time to be spent in furnishing professional or administrative services to provider, and services which do not fall into either category; and completing or assuring the prompt completion of all patient charts and other written records necessary to be maintained with respect to the Department, including all Services provided under this Agreement.

2. Compensation; Prompt Payment; Billing and Collections; Coding

2.1 Compensation. In consideration of the contracted services provided to County by Contractor, the County shall pay Contractor for all undisputed charges in accordance with the compensation schedule described in **Exhibits A and A-1**. The compensation paid by the County to

Contractor pursuant to this Agreement shall be not be more than \$9,077,796 The County will not pay any cost or charge that is not delineated in this Agreement.

2.2 Prompt Payment Discount. The Parties agree that the payment term for all Administrative and Professional Services shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

- 2.25% 10 Net 45 (provides 35 days of cash acceleration)
- 2.00% 15 Net 45 (provides 30 days of cash acceleration)
- 1.75% 20 Net 45 (provides 25 days of cash acceleration)
- 1.33% 25 Net 45 (provides 20 days of cash acceleration)
- 1.00% 30 Net 45 (provides 15 days of cash acceleration)
- Net 45 (full payment)

Note: Payment term will default to “Net 45 (full payment)”, if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

2.3 Billing and Collection for Professional Services.

2.3.1 Fee Schedule. Contractor shall ensure that the amount to be charged to patients for the professional component of Professional Services shall at all times be in accordance with the prevailing charges for similar services within Santa Clara County. Contractor shall provide County with Contractor’s fee schedule, if requested. Contractor has the right at any time to modify the fees and charges set forth on such schedule; provided that, any such modification shall not become effective until the expiration of thirty (30) calendar days after Contractor gives County written notice setting forth such modifications.

2.3.2 Billing and Collection. Contractor shall separately from County and at Contractor’s cost and expense, bill and collect its fees and charges from patients and/or responsible payors for Professional Services rendered at Hospital pursuant to this Agreement. Such collections shall be made under Contractor’s federal tax identification number and provider number(s) and shall be carried out in accordance with all applicable contractual requirements, laws and regulations. Contractor shall accept as payment in full for Professional Services covered by Medicare or Medi-Cal, if any (a) the applicable

Medicare payment under Medicare assignment and/or the applicable Medi-Cal payment under Medi-Cal assignment plus (b) the applicable coinsurance, copayment or deductible amounts. Responsibility for billing and collection of professional fees and charges shall reside solely with Contractor and/or Contractor's billing agent. Contractor assumes responsibility for all bad debts, third party payor discounts, and billing and collection expenses related to professional fees and charges. County shall make no payment to Contractor for Professional Services rendered hereunder except as set forth in section 2.3.2 (b) and (c) below. County shall not bill for, guarantee the collectability of, or have any claim or interest in or to the amounts billed by Contractor; however, County shall, to the best of its ability, cooperate in providing the appropriate forms and information to Contractor and/or Contractor's billing agent to facilitate an efficient and effective billing and collection process.

However, Contractor agrees to not bill any patients or the patient's payor, including uninsured patients, that are eligible for charity or discounted care under a County authorized program.

2.3.3 Contractor shall ensure that Physicians comply with all applicable commercial and governmental billing, coding and reimbursement laws, rules, and procedures and respond, cooperate, and provide such assistance and information as County may reasonably request to ensure complete compliance with all applicable laws and payor requirements.

2.4 Hospital Charges. County shall, from time to time, establish a schedule of charges for the technical, facility, and non-professional elements of each unit of service rendered to patients. Billing thereof shall be the responsibility of the County.

2.5 Third-Party Payor Arrangements. Contractor shall and shall cause each Physician to cooperate in all reasonable respects necessary to facilitate County's entry into or maintenance of any third-party payor arrangements. Third party payor arrangements are defined as arrangements for the provision of services under Medicare, Medi-Cal, or other public or private health, hospital care and/or managed care programs. Contractor shall, upon County's request, (a) make commercially reasonable efforts to enroll as a provider and to enroll each Physician as necessary, (separate from each Hospital) with respect to Contractor's Professional Services provided pursuant to this Agreement in any third party payor arrangement, and (b) enter into an express contractual agreement with said third party payor, or any intermediate organization including any independent practice association, if required for said enrollment, which enrollment and agreement shall be consummated within sixty (90) days after County's request, provided that Contractor shall not be obligated to enter into any third party payor arrangements or contractual agreements that do not provide rates that are less than the reasonable prevailing rate for anesthesia physician specialists within the geographic area of Hospital.

2.6 Changes in Rules and Regulations. The Parties understand that they may be required to alter their billing arrangements in order to comply with changing legal requirements or to avoid economically impracticable reimbursement disallowances. The Parties therefore agree, upon written request of either Party, to negotiate in good faith in order to modify this Agreement to comply with legal requirements or to avoid such disallowances. If the Parties cannot reach

agreement on such modifications within sixty (60) days after the initial written request, either party may terminate this Agreement upon thirty (30) days additional written notice.

2.7 Medical Records and Claims. Contractor shall and shall cause Physicians to prepare and maintain a complete medical record on a timely basis for each patient to whom Physicians provide Professional Services. This medical record shall be the Hospital's Electronic Health Record (EHR). Contractor shall and shall cause Physician to maintain financial books and records, and all medical records and charts, in accordance with industry standards, and in compliance with all state and federal laws and regulations, the requirements of The Joint Commission and the Medical Staff Bylaws and Rules and Hospital policies and procedures. Contractor shall and shall cause Physicians maintain and provide all such books, records and charts to patients and Hospital, and to state and federal agencies, including without limitation the California Department of Public Health, California Department of Managed Health Care, and CMS. Contractor shall and shall cause Physicians cooperate with Hospital to complete all documentation that may be required by insurance carriers, health care service plans, governmental agencies, or other third-party payors. Contractor shall and shall cause Physicians retain its/their records and information for at least six (6) years after the termination of this Agreement.

2.8 Billing for Administrative Services. Contractor shall, on a monthly basis, during the term of this Agreement, submit a written invoice to County in a format acceptable to County, detailing to County's satisfaction the Administrative Services provided by Contractor during the immediately preceding calendar month. In completing the monthly invoice, Contractor shall describe the specific Administrative Services activities performed, the dates on which those activities occurred and, for each date, the number of hours spent.

3. Qualifications of Contractor Physicians.

3.1 Qualifications of Contractor Physicians. At all times during the term of this Agreement, each Physician providing the Administrative and/or Professional Services shall comply with each of the following qualifications, and Contractor shall provide documentation of compliance to the County upon request, and shall immediately notify County if it becomes aware that he ceases to meet any of the following qualifications:

3.1.1 Maintain an unrestricted license to practice medicine in the State of California;

3.1.2 Maintain a valid DEA Registration (as defined below) with a California address; provided, however, County may agree to exceptions if a Physician's field of practice does not customarily involve prescription of medications. "DEA Registration" means a federal Drug Enforcement Agency registration which authorizes, at a minimum, prescriptions of drugs listed on DEA Schedules 2 through 5, or such other Schedules as may replace such existing Schedules;

3.1.3 Hold a minimum of core privileges in the physician's specialty, in addition to all clinical privileges required by the Hospital's Medical Staff Bylaws, Rules and Policies, as necessary and appropriate to the provision of Administrative and Professional Services hereunder;

3.1.4 Be a member in good standing on Hospital's Medical Staff;

3.1.5 Maintain certification or eligibility for certification with the appropriate specialty board;

3.1.6 Maintain eligibility to provide professional medical services as a participating physician to beneficiaries of Medicare, Medicaid and other federal healthcare programs (each a "**Federal Healthcare Program**") which County identifies from time to time;

3.1.7 Maintain or agree to apply for participating physician status in any insurance coverage arrangement or managed care plan in which Hospital participates and that is reasonably available to Contractor;

3.1.8 Be employed by or under contractual arrangement with Contractor;

3.1.9 Be of high repute and good standing in the community as determined by County;

3.1.10 Act in a professional manner as determined by County; and

3.1.11 Not have any of the following adverse events occur:

3.1.11.1 Suspension or revocation in the past ten (10) years of his or her license to practice medicine in any state;

3.1.11.2 Be the subject of any material reprimand, sanction, probation or disciplinary action by any professional medical licensing authority;

3.1.11.3 Be, at any time, excluded, barred or suspended from participation in, or sanctioned by, any Federal Healthcare Program;

3.1.11.4 Have been denied membership and/or reappointment to the medical staff of any hospital or healthcare facility in the past ten (10) years;

3.1.11.5 Have his or her medical staff membership or clinical privileges at any hospital or healthcare facility suspended, restricted or revoked for any disciplinary cause or reason; or

3.1.11.6 Have ever been convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of professional medical services or the practice of medicine.

3.2 Coverage Events. At all times during the term of this Agreement, each Physician will provide the Professional Services or on an as needed basis, to all patients of Hospital who present to the Emergency Room and to Hospital's inpatients who are in need of medical care, regardless of patient's insurance status or ability to pay. Each time Physician is performing

Professional Services under this agreement at the hospital will be referred to as a “Coverage Event.”

3.3 Contractor Obligations Regarding EHR. Contractor shall materially comply with policies regarding adoption and utilization of EHR systems utilized by County in connection with the Services provided hereunder and set forth in section 4.5 below

4. County Obligations

4.1 Space and FF&E. County shall provide such space, furniture, fixtures, and equipment, including office space and a space suitable for sleeping and showering for Contractor Physicians in a convenient location in the hospital, sufficient number of PC workstations (with access to the internet) (“FF&E”) and any other non-physician facilities and services as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.2 Access to Services and Non-Clinical Personnel. County shall arrange for access to such services and non-professional/non-clinical personnel, including without limitation, support staff and materials management, as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.3 Ancillary Clinical Services. County shall arrange for the availability of such ancillary clinical services, including without limitation nursing support and radiology, pathology, respiratory, and anesthesia services, as are necessary for the performance of the Administrative and Professional Services, which shall be determined by County in its reasonable discretion.

4.4 Supplies. County shall provide such supplies as are necessary for the performance of the Administrative and Professional Services, as determined by County in its reasonable discretion.

4.5 Electronic Health Records (“EHR”) System. County shall provide an EHR system capable of supporting Hospital where Contractor may provide the Administrative and Professional Services. Such EHR shall be considered part of the FF&E provided by County pursuant to this Agreement. County shall arrange for and provide training of all applicable staff with respect to the use and capabilities of the EHR system provided by County to support the provision of the Services pursuant to this Agreement. In addition, County shall arrange for or provide technical support of the EHR system by trained technicians, who shall be experienced in the use, function and operation of the EHR system. County and Contractor shall and shall cause Physicians to cooperate in good faith with one another with respect to putting in place and operationalizing any new EHR system at Hospitals or any other facility at which Contractor provides the Services hereunder.

4.5.1 Contractor Obligations Regarding EHR. Contractor shall and shall cause Physicians to materially comply with policies regarding adoption and utilization of EHR systems utilized by County in connection with the Services provided hereunder.

4.6 Medical Records. County, with the assistance of Contractor, shall maintain and

store medical records for all patients who receive Administrative and Professional Services for the period required by the laws pertaining to retention of medical records and shall at all times cause all such medical records to be maintained in a manner that is consistent with HIPAA (as defined in Section 9 below), HITECH (as defined in Section 9 below) and other applicable state and federal privacy laws. All such medical records shall be County's property, but such medical records shall be made readily available to Contractor in connection with Contractor's continued Administrative and Professional Services to County patients, or for the purpose of defending any claim or other lawsuit or administrative action against Contractor.

4.7 **Quality Improvement.** County shall cooperate with Contractor to ensure that Physicians have appropriate access to such data regarding the Administrative and Professional Services and resources as are necessary to enable Physicians to participate in quality improvement activities, case conferences and other educational activities (including by way of teleconferencing) at appropriate County facilities, subject to County's budgets in effect from time to time.

4.8 **Joint Meetings.** County and Contractor agree to meet as requested and establish processes for the Parties to share information and address matters relating to this Agreement.

4.9 **Administrative Responsibility.** In compliance with Section 70713 of Title 22 of the California Code of Regulations, Hospital shall retain professional and administrative responsibility for services rendered pursuant to this Agreement. Hospital shall provide an Administrative Director who shall be responsible and accountable to Hospital for administrative and technical functions, including supervision, selection, and assignment and evaluation of Hospital personnel; maintenance of equipment; development of an annual budget; and acquisition of materials, supplies, and equipment. In the event of any dispute between the Medical Director and the Administrative Director regarding their respective administrative responsibilities, such dispute shall be submitted to the Hospital's Physician Executive Officer, or his or her designee, whose decision shall be final and binding upon the Parties.

5. **Relationship between the Parties.** This Agreement is not intended to create and shall not be construed as creating any relationship between the Parties other than that of independent entities contracting for the purposes of effecting the provisions of this Agreement. Neither Party nor any of its representatives shall be construed to be the partner, associate, affiliate, joint venturer, agent, employer, employee or representative of the other. Physicians shall not be construed to be employees of County or Hospital, and Contractor shall be responsible for all applicable employer obligations, including without limitation, wages, federal and state withholding, FICA, unemployment benefits, workers' compensation, and for any employee benefits in effect for which he may be eligible, including without limitation, vacation pay, sick leave, retirement benefits, disability insurance, and employee records. Neither Party shall be liable for the acts of the other solely by virtue of this Agreement.

6. **Name/Marketing.** Neither Party shall use the names, trademarks, service marks or logos of the other Party or any of its Affiliates (as defined below) except with that Party's prior written consent of the specific intended use. For the purposes of this Agreement, an "Affiliate" of a Party is an individual, corporation, partnership, limited liability company, trust or other entity or organization that directly or indirectly controls, is controlled by, or is under common control

with the Party.

7. Insurance and Indemnification Requirements.

7.1. Throughout the term of this Agreement, Contractor shall indemnify County as set forth in **Exhibit B** (Insurance Requirements).

7.2. Throughout the term of this Agreement, Contractor shall comply with all insurance requirements as stated in **Exhibit B** (Insurance Requirements).

8. Notification and Cooperation in Litigation. Each Party agrees, to the extent permitted by law, to notify the other Party of any complaint, grievance or claim it receives that relates to the Services. The Parties agree to cooperate in any investigation of any such complaint, grievance or claim and in the resolution thereof. Without limiting the generality of the foregoing, at County's request with reasonable advance notice, Contractor shall make Physicians available to County and its Affiliates, at no cost to County or its Affiliates, to testify as fact witnesses, expert witnesses or otherwise in the event of litigation being brought against County or its Affiliates with respect to the provision of the Services. Furthermore, Contractor shall reasonably cooperate, and ensure that Physicians reasonably cooperates, with County and its Affiliates in furnishing information, testimony, and other assistance in connection with any litigation, investigations, audits, proceedings, or disputes relating to the Services provided under this Agreement, other than proceedings or disputes between the Parties to this Agreement.

9. Access to Information; Privacy and Confidentiality.

9.1. The Parties shall comply with all state and federal laws and regulations governing the confidentiality and disclosure of patient records and personal information, including, but not limited to, the Health Insurance and Portability and Accountability Act of 1996 and its implementing regulations as amended by the Health Information Technology for Economic and Clinical Health Act ("**HITECH**") and its implementing regulations (collectively "**HIPAA**"), as may be amended from time to time. Contractor and its Physicians providing Services under this Agreement shall comply with all County, Hospital and Medical Staff policies, rules and procedures governing the confidentiality of patient records and personal information.

9.2. For such time period as may be required under applicable laws or regulations after the furnishing of Services pursuant to this Agreement, each Party shall make available upon written request to the United States Department of Health and Human Services ("**HHS**"), the United States Comptroller General and their duly authorized representatives, this Agreement and all other books, documents and records as are necessary to verify the nature and extent of the costs incurred by either Party in connection with the Services provided under this Agreement, and if either Party carries out the duties of this Agreement through a subcontract, the subcontract also shall contain a clause permitting access by HHS, the United States Comptroller General and their duly authorized representatives to books, documents and records of such organization as necessary to verify the nature and extent of such costs.

9.3. Each Party acknowledges that in the course of performing their obligations under this Agreement, each Party may become privy to Confidential Business Information (as defined below) of the other Party. For the purposes of this Agreement, "**Confidential Business**

Information” shall mean any information or matter that one should reasonably believe is of a secret, confidential, privileged, private or proprietary nature and which is connected to the business of the other Party. Included within the definition are matters of a business nature (such as certain information about rates, charges, costs, claims, professional service agreements and employees), peer review information, quality improvement information, and any other information of a similar nature not available to the public. Each Party agrees not to disclose any such Confidential Business Information to any third party unless authorized in writing by the other Party or unless such disclosure is required by law. Notwithstanding the foregoing, each Party shall be entitled to disclose Confidential Business Information to such of its Affiliates and its and their respective officers, employees, agents, and advisors (collectively, the “**Representatives**”) as are necessary to accomplish the purposes of this Agreement, and all such Representatives shall be bound by the confidentiality provisions hereof. Each Party shall instruct its Representatives as to their obligations under this Section. Each Party’s obligation of confidentiality shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Confidential Business Information shall not include information: (a) rightfully in the public domain or which hereafter becomes part of the public domain (other than through a breach of this Agreement); (b) required to be disclosed by law; (c) that is independently developed by the receiving Party without use any of Confidential Business Information of the disclosing Party; or (d) that was learned by the receiving Party from a third party who did not impose a confidentiality obligation on the receiving Party. Upon the termination of this Agreement, County may request, and Contractor will return any and all Confidential Business Information provided to Contractor or Physicians during the term of this Agreement, within five business days of the request.

9.4. At all times throughout the term of this Agreement, Contractor shall ensure that Physicians comply with the County’s Security and Confidentiality Agreement set forth on **Exhibit E**, which may be amended from time to time.

9.5. In providing Administrative and Professional Services under this Agreement, Contractor and Medical Director may have access to Protected Health Information (as defined by HIPAA) of a Hospital patient who is not also a mutual patient of Contractor or Medical Director, resulting in Contractor serving as a Business Associate (as defined by HIPAA) of Hospital. The Parties agree to enter into a Business Associate Agreement, set forth on **Exhibit D** which sets forth the requirements for the potential use or disclosure of, and access to, Protected Health Information with respect to such arrangements.

9.6. “County Data” means data and information that the County provides to Contractor and its Physicians. All County Data is the property of the County and Contractor or its Physicians will not have any ownership interest in County Data. Other than performing obligations under this Agreement, Contractor and its Physicians will not use or disclose County Data without prior written permission from the County. Contractor is responsible for ensuring the security and confidentiality of County Data; protecting against any anticipated threats or hazards to the security or integrity of County Data; protecting against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to the County; and ensuring the proper disposal of County Data upon termination of this Agreement. Contractor will take appropriate action to address any unauthorized access to County Data, including notifying County in no more than 72 hours, of any unauthorized access and resolving the cause of the unauthorized access. If Contractor discloses confidential and/or legally protected County Data to unauthorized persons or

entities, Contractor will comply with all applicable federal and state laws and regulations, including California Civil Code sections 1798.29 and 1798.82, at Contractor's sole expense (if applicable). Contractor will not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.

9.7. All records, files, proceedings and related information of Contractor, Hospital and the Medical Staff and its committees pertaining to the evaluation and improvements of the quality of patient care at Hospital shall be kept strictly confidential by Contractor and Hospital. Contractor shall not voluntarily disclose such confidential information, either orally or in writing, except as expressly required by law or pursuant to written authorization by Hospital.

10. Term and Termination.

10.1. Term. This Agreement shall commence on September 1, 2020, the Effective Date, and shall continue until (and including) August 31, 2021, unless otherwise terminated as provided herein.

10.2. Termination of the Agreement.

10.2.1 Without Cause. Either party may terminate this Agreement, without cause or penalty, by giving no less than ninety (90) days' written notice to the other Party. In the event of such termination, the Parties shall not enter into another agreement for the same services as provided hereunder for a period of one (1) year after the later of the initial Effective Date or the most recent renewal date of this Agreement.

10.2.2 Per Terms of the Agreement. Either Party may terminate this Agreement in accordance with the provisions set forth in this Agreement.

10.2.3 For Breach. Either Party may terminate this Agreement in the event of the other Party's material breach hereof by giving thirty (30) days' prior written notice of the general nature of such breach. Notwithstanding the foregoing, this Agreement shall not terminate in the event that the breaching Party cures the breach, to the satisfaction of the non-breaching Party, within fifteen (15) days of the receipt of such notice (the "**Cure Period**").

10.2.4 Immediately. Either Party may terminate this Agreement immediately if the other Party fails (1) to maintain the required insurance coverage; or (2) makes an assignment for the benefit of creditors, becomes insolvent or bankrupt, or is subject of a bankruptcy petition or petition for dissolution, liquidation or for the winding up of business affairs, or for the appointment of a trustee or receiver to take possession of the assets; or (3) any aspect of this Agreement endangers patient safety or will subject to the County to ill repute; or (4) Contractor is convicted of a crime punishable as a felony or involving moral turpitude; or (4) Contractor violates Privacy and Confidentiality provisions; or (5) in the event legal counsel for either Party advises that this Agreement or any practices which could be, or are, employed in exercising rights or providing Administrative and Professional Services under this Agreement pose a material risk of violating any legal requirements.

10.2.5 Budget Contingency. Except to the extent that Services have been completed, this Agreement is contingent on the appropriation of sufficient funding by the County

for the Services covered by this Agreement. If funding is reduced or deleted by the County for purposes of this Agreement, the County has the option either to terminate this Agreement with no liability occurring to the County or to offer an amendment to the Agreement indicating the reduced amount upon ninety (90) days written notice.

10.3. Effect of Termination.

10.3.1 Upon expiration or termination of this Agreement, neither Party shall have any further obligation hereunder except for (a) obligations due and owing which arose prior to the date of termination and (b) obligations, promises, nor covenants contained herein which expressly extend beyond the term of this Agreement.

10.3.2 If County provides Contractor (including any Physician) with office space for purpose of providing services under this Agreement, upon expiration or termination of this Agreement, and upon County's request, Contractor (including any Physician), shall immediately vacate the Hospital and the Department premises, removing at such time any and all of Contractor's personal property. Hospital may remove and store, at Contractor's expense, any personal property that has not been so removed.

10.3.3 Following the expiration or termination of this Agreement, Contractor shall not and shall cause each Physician not to do anything that might interfere with any County efforts to contract with any other individual or entity for the provision of services or to interfere in any way with any relationship between County and any entity or person who may replace Contractor. Contractor shall and each Physician shall cooperate with the County and any other contractor to ensure prompt and smooth transition of Services without interruption or adverse impact to the County.

10.3.4 Termination of this Agreement by County shall not provide Contractor or any Physician the right to a fair hearing or the other rights more particularly set forth in the Medical Staff Bylaws.

10.3.5 During the term of this Agreement and for a period of one (1) year thereafter, County shall not directly, solicit for employment, any employee of Contractor. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this Section and the hiring of any such employees who freely responds thereto shall not be a breach of this Section.

11. Notices. Except as otherwise stated, all notices, requests, demands, or other communications required or permitted to be in writing under this Agreement (each a "Notice") shall be deemed to have been duly given on: (a) the date of service if served personally on the Party to whom notice is to be given, (b) the business day following the date of deposit with a next business day courier service (e.g., Federal Express, UPS, or similar service), (c) the date of acknowledgement of receipt of electronic transmission by telecopy, email or facsimile; or (d) the third day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid. The parties may deliver notice as follows:

If to County: Paul E. Lorenz, Chief Executive Officer

Santa Clara Valley Medical Center
751 S. Bascom Avenue, Room # 7C116
San Jose, California 95128

With copy to: Pat Wolfram, RN, MS, MBA
Business Development Executive
O'Connor Hospital
2105 Forest Avenue
San Jose, California 95128

If to Provider: CEP America-Anesthesia, PC
President
2100 Powell Street, Suite 900
Emeryville, California 94608

Either Party may change the above address or addresses by submitting a notice in writing notifying the other Party of such new address.

12. Dispute Resolution. Except as otherwise provided in this Agreement, in the event any disagreement, dispute, or claim arises between the Parties with respect to the enforcement or interpretation of this Agreement or any specific terms and provisions set forth in this Agreement (collectively, a “**Dispute**”), such Dispute shall be settled in accordance with the following procedures. Notwithstanding anything that may be construed to the contrary herein, each of the Parties expressly acknowledges that it has an affirmative duty to expedite the process and procedures described below to the extent reasonably practical in order to facilitate a prompt resolution of any Dispute.

12.1 Meet and Confer. The Parties shall, as soon as reasonably practicable after one Party gives written notice of a Dispute to the other party (the “**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the “**Meet and Confer**”). The obligation to conduct a Meet and Confer pursuant to this Section 12.1 does not obligate any Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable laws protecting statements, disclosures, or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such laws, including California Evidence Code Section 1152. If any Dispute is not resolved to the mutual satisfaction of the other Party within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the Parties may pursue any available remedy at law or equity. Nothing in this provision is intended to delay either party’s right to terminate the Agreement in accordance with the applicable provisions herein.

13. Exclusion; Fair Market Value

13.1 Each Party represents and warrants that it has not been excluded from participating in Medicare, Medicaid, or other Federal Healthcare Program. Each Party agrees that it shall

notify the other Party immediately in the event that such Party or any of its Physicians is excluded from Medicare, Medicaid, or any other Federal Healthcare Program during the Term of this Agreement. If either Party or any of its Physicians is excluded from participating in Medicare, Medicaid, or any other Federal Healthcare Program, this Agreement shall terminate automatically effective as of the date of such exclusion.

13.2 In determining the compensation to be paid under this Agreement, the Parties have agreed to the fair market value of the Services to be provided in light of the time, energies, training, experience and skills required, compensation for comparable duties at other facilities in the area of Hospital, the availability of persons with such skills, training and experience and general economic conditions, and have also taken into account The Parties agree that such compensation reflects the fair market value of the full range of Services to be provided by Contractor to County hereunder, without regard to particular payor coverage or reimbursement and that such compensation has not been determined by taking into account in any way the volume or value of any referrals or business generated between the Parties.

14. Intellectual Property.

14.1 Ownership: In the event that Contractor performs services under this Agreement that include but are not limited to videotapes, audio recordings, still photographs, ads or brochures and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables") shall be the sole and exclusive property of the County. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registerable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.

14.2 Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

14.3 Intellectual Property Indemnity. Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in Exhibit C of this agreement.

15. Contractor's Compliance with this Agreement. All obligations and prohibitions imposed on Contractor pursuant to this Agreement are equally applicable to each and every Physician, and to any other physician, partner, shareholder, associate, employee or contractor (collectively, the "**Contractor Personnel**") engaged, retained, employed or contracted by Contractor to assist in the performance of this Agreement. Contractor shall require all Contractor Personnel to comply with all terms and conditions of this Agreement as if they were individual signatories to it insofar as it relates to any obligations of such Contractor Personnel. Upon County's request, Contractor shall obtain from each of the Contractor Personnel a written acknowledgment and agreement to be bound by the terms and conditions of this Agreement in such form as may be required by County.

16. Conflict of Interest.

In accepting this Agreement, Contractor covenants that Contractor and all Physicians providing Services presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with this Agreement and the Services undertaken pursuant to this Agreement. Contractor further covenants that, in the performance of this Agreement, Contractor shall not employ any contractor or person having such an interest.

Contractor shall comply and require Physicians providing Services with all applicable federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure of Contractor and Physicians to comply with these laws constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it and Physicians presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ or contract with any contractor or person having such an interest. Contractor, including but not limited to Physicians and Contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing services under this Agreement, Contractor shall provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Physicians and Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be

performed by an individual in a designated position,” (2 CCR 18701(a)(2)), as part of Contractor’s service to the County under this Agreement.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in this section including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

17. Disclosure of Interests. In order to permit compliance with federal anti-referral statutes and regulations, as amended from time to time, Contractor shall cause Physicians to provide Hospital upon execution of this Agreement with information sufficient to disclose any ownership, investment or compensation interest or arrangement of Contractor, Physician or any of Contractor’s or Physicians immediate family members, in any entity providing “designated health services,” as that term is defined in the statutes and regulations. This provision is not intended to reallocate any disclosure or reporting requirements imposed upon Contractor or a Physician under any governmental program to Hospital, or to create an assumption of such disclosure obligations on the part of Hospital, and Contractor acknowledges that it and/or each Physician shall have the sole responsibility to fulfill any such federal and/or state reporting requirements. Contractor shall immediately inform Hospital of any other arrangements that may present a conflict of interest or materially interfere with Contractor’s or a Physician’s performance of its/his/her duties under this Agreement. Hospital may exercise its right to terminate this Agreement under if Contractor or a Physician pursues or engages in conduct that does constitute a conflict of interest or that materially interferes with (or is reasonably anticipated to interfere with) Contractor’s or Physician’s performance under this Agreement

18. California Public Records Act. The County is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Contractor’s proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

19. Disentanglement. Prior to any termination or expiration of this Agreement, Contractor shall take all necessary and appropriate actions to assist County to accomplish a complete, timely and seamless transition of services provided under this Agreement from Contractor and Physicians to the County, or to any replacement contractors designated by County (“Replacement Providers”) without causing any interruption or adverse impact on the services under this Agreement and/or services provided by any third parties (the “Disentanglement”). Without limiting the generality of the foregoing, Contractor shall: (a) cooperate with County and/or the Replacement Providers,

including promptly taking all steps required to assist County in effecting a complete Disentanglement; (b) provide to County all information needed for Disentanglement including, without limitation all data, documents and information pertaining to the services provided under the Agreement; (c) provide for the prompt and orderly conclusion of all work, as County may direct, including documentation of work in progress and other measures to provide an orderly transition; (d) assist County as needed to provide training or orientation needed to transition services to County ; and (e) accomplish any other measures reasonably requested by County to ensure an orderly transition to the County. Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of services to the County.

20. Anti-Referral Laws. Nothing in this Agreement or in any other written or oral agreement between County and Contractor, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patient to Hospital. Any consideration specified in this Agreement is consistent with what the Parties reasonably believe to be fair market value for the Services provided. Contractor acknowledges and shall cause Physicians to acknowledge that it/they are subject to and must comply with certain federal and state laws governing referral of patients, as may be in effect or amended from time to time, including but not limited to: payments for referrals or to induce the referral of patients (Cal. Business and Professions Code Section 650; Cal. Labor Code Section 3215; and the Medicare/Medicaid Fraud and Abuse Law, Section 1128B of the Social Security Act; and all implementing regulations); and the referrals of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship (Cal. Business and Professions Code Sections 650.01 and 650.02; Cal. Labor Code Sections 139.3 and 139.31; and Section 1877 of the Social Security Act; and all implementing regulations).

21. Changes in Law. In the event there are any changes in Medi-Cal or Medicare requirements, The Joint Commission accreditation guidelines or requirements, and/or substantial changes under other public or private health and/or hospital care insurance programs or policies which may have a material effect on the Hospital's operations, County may elect to renegotiate this Agreement. County shall indicate the basis upon which it has determined that such a material impact on its operations may result. In any case where such notice is provided, both Parties shall negotiate in good faith during the thirty (30) day period thereafter in an effort to develop a revised Agreement, which, to the extent reasonably practicable, will adequately protect the interests of both Parties in light of the changes which constituted the basis for the exercise of this provision.

22. County Standard Terms and Conditions. Contractor shall cause Physicians to comply with the County Standard Terms and Conditions that are applicable to Contractor set forth in **Exhibit C.**

23. Suspension. County may suspend this Agreement in order to permit Hospital, its employees and agents to conduct any review of any ethical, clinical, compliance-related, quality- or patient care-related matter. In lieu of termination of this Agreement under Section 10, Hospital may suspend this Agreement for any reason provided under Sections 10.2.2 or 10.2.3. Suspension of the Agreement shall take effect upon receipt of notice by Contractor or Physician in writing or orally; if given orally, County shall confirm oral notice promptly in writing. Suspension shall remain in effect until the rights and duties of Physician under this Agreement are reinstated by

County by written notice to Physician. During the suspension, County shall be relieved of all of its duties and obligations under this Agreement, including, without limitation, any obligation to make payment for services rendered by Physician. If the Agreement remains suspended for sixty (60) consecutive days, the suspension shall be treated as the termination of the Agreement without cause for all purposes of this Agreement.

24. Miscellaneous.

24.1 Entire Agreement; Amendment. This Agreement and all schedules, exhibits, addenda and recitals referred to and incorporated herein constitute the entire agreement between the Parties pertaining to the subject matter contained herein. This Agreement supersedes all prior agreements, negotiations, and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter of this Agreement. There are no representations, warranties, agreements, or understandings, express or implied, written or oral, between the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No supplement, amendment, or modification of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

24.2 No Third-Party Beneficiaries. This Agreement shall not be construed as conferring upon any third party any right or benefit, and any and all claims which may arise hereunder may be enforced solely by County and Contractor. Notwithstanding anything contained herein, or any conduct or course of conduct by any Party hereto, before or after signing this Agreement, this Agreement shall not be construed as creating any right, claim or cause of action against either Party by any person or entity not a Party to this Agreement.

24.3 Subject Headings. The subject headings of the Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

24.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

24.5 Contract Execution. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same legal force and effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

24.6 Severability. If any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24.7 No Assignment: Except as specifically provided in this Agreement, no Party

EXHIBIT A
DESCRIPTION OF CONTRACTED SERVICES
MEDICAL DIRECTOR ANESTHESIA SERVICES

1. **Duties and Responsibilities of Medical Director for Anesthesia Department.** Medical Director for Anesthesia Department, at O'Connor Hospital shall perform the duties set forth below:
- a) Coordinate and maintain positive and constructive relationships within the Department, with medical staff departments and practitioners and with Hospital staff.
 - b) Schedule anesthesia professional services in coordination with relevant medical staff specialties, leadership and hospital staff
 - c) Establish, maintain, document, track and report quality control/assurance, performance improvement, risk management, utilization management, programs and activities and related indicators and criteria that promote throughput efficiencies as identified by Administration, Perioperative Services, Anesthesia Services and Nursing Services. Take a leadership role with Nursing regarding performance improvement initiatives that positively impact the 'throughput of the surgical patient', and assist in the implementation of any plan of performance improvement identified by Hospital's Medical Executive Committee, the Chair of Surgical Services and/or the Vice President of Professional Services.
 - d) Provide anesthesia services in the context of and in compliance with the hospital and medical staff bylaws, rules and regulations and policies and procedures.
 - e) Accomplish ongoing timely and appropriate peer review and related reporting and documentation.
 - f) Attend and serve on Medical Staff and Hospital committees as required or necessary.
 - g) Provide anesthesia education throughout the Hospital as required or necessary.
 - h) Perform review of and ensure appropriate response to complaints and inquiries regarding anesthesia services.
 - i) Call, organize, coordinate, conduct and document regular anesthesia service meetings.
 - j) Provide appropriate, regular continuing education for the Medical Staff and Hospital staff.
 - k) Maintain, develop and review on a recurrent basis, anesthesia services policies and procedures, rules and regulations, and protocols.
 - l) In collaboration with Perioperative Administration, ensure an optimal state of surgical services efficiency through development, implementation and enforcement of policies and procedures related to Block Scheduling, Add-On Scheduling, Room Utilization, TOT, FCOTS and other operational metrics. Perioperative Director will be given the authority and the support of Hospital management to optimize OR Efficiency metrics.
 - m) Actively participates as a member on the surgical services operations committee and Surgery Executive Committee.
 - n) Actively partners with surgeons to develop a shared responsibility and accountability along with hospital staff to support and promote Interdisciplinary Teamwork, Positive

Relationships and Behaviors, OR Efficiency, and appropriate Utilization of Resources and Supplies.

- o) Work with Orthopedics to establish a perioperative pain management protocol for Total Patients and Hip Fracture patients.
- p) Assign one anesthesiologist daily to function in collaboration with Nursing in assigning Anesthesiologists and providing overall oversight of room assignments.
- q) Anesthesia will be responsible to lead and initiate Time-Outs and to ensure 100% participation from all members in the surgical suite.
- r) Anesthesia to assume a leadership role in Pre-Assessment Testing
- s) Develop, in coordination with PACU Nursing leadership standardized protocols for post anesthesia care.
- t) Establish, in coordination with PACU Nursing opportunities to enhance and increase communication by and between nursing and anesthesiology.

PERFORMANCE STANDARDS AND COMPENSATION OF CONTRACTED SERVICES

A. Coverage Parameters

- Ensure that the Anesthesia Department is professionally covered in accordance with the terms of this Agreement.
- Assist Hospital in their review of the policies and procedures of the Anesthesia Department to ensure consistency with the standards and applicable professional criteria and standards.
- Assist the Hospital in establishing the qualifications for and selecting staff of the Anesthesia Department
- Be the primary contact between the administration of the Hospital and the Contractor. The Contractor shall provide a physician reasonably acceptable to the Hospital to assume the duties of the Medical Director during the absence of Medical Director from the Hospital for vacation, illness, or for any other reason. In the event that, in the judgment of the Contractor, the Medical Director is unable to continue serving, Contractor shall appoint a successor as mutually agreed upon by Hospital and Contractor.
- Medical Director shall report to the Physician Executive of O'Connor Hospital.

B. Coverage Hours and Compensation

- Contractor shall cause Medical Director to devote as much time as is necessary in performing the Administrative Services to provide for the effective management of the Department **for a minimum of 15 hours per month up to a maximum of 20 hours per month**, not to exceed two hundred forty (240) hours per contract year.
- Medical Director services compensation is included in overall revenue guarantee.

(Attachment to Exhibit A)

**MEDICAL DIRECTOR TIME SHEET FORM
ANESTHESIA SERVICES**

Administrative Services

The following services were provided by, _____ M.D. ("**Physician**") on behalf of **CEP America-Anesthesia, PC**, during the month of _____ 20____ (date and year). *Use as many sheets as necessary.*

	Services Provided (please list specific activity performed)	Date	Hours
1.	Medical Staff CME Activities		
	_____	_____	_____
	_____	_____	_____
2.	Hospital Staff Education & Training		
	_____	_____	_____
	_____	_____	_____
3.	Clinical Supervision		
	_____	_____	_____
	_____	_____	_____
4.	Quality Improvement Activities (committees, case review, etc.)		
	_____	_____	_____
	_____	_____	_____
5.	Administration Activities		
	_____	_____	_____
	_____	_____	_____
6.	Community Education		
	_____	_____	_____
	_____	_____	_____

7. Medical Management Activities

8. Compliance Activities

9. Other

I certify to the best of my knowledge that the activities described above are directly related to the administrative services agreement that I have with the hospital and that I have not billed the Medicare program separately for any of the duties and responsibilities described above. Email completed form to: OCHPhysicianInv@hhs.sccgov.org

Please enter **Medical Director Timesheet** in the email subject line.

CEP America-Anesthesia, PC
2100 Powell Street, Suite 900
Emeryville, California 94608

DO NOT PAY -For information only

Compensation: Included in overall revenue guarantee
Effective 09/01/2020 through 08/31/2021

By: _____
(Physician Signature)

Total Hours _____

Approved by:

Hospital Representative _____

Date: _____

Approved Hospital Executive: _____

Exhibit A-1

CONTRACTED SERVICES ANESTHESIA PROFESSIONAL SERVICES

Contractor shall provide, as medically necessary, the following services:

1. Professional Services.

- (a) Contactor shall cause Physicians to provide medically necessary Services to patients who present at Department. Contractor shall cause Physicians to provide Professional Services twenty-four (24) hours a day seven (7) days a week, 365 days a year including weekends and holidays, to patients who present to the Hospital's emergency department and to Hospital's inpatients in need of Anesthesia services, regardless of patient's insurance status or ability to pay. Physicians shall be unencumbered by conflicting duties or responsibilities and shall respond in accordance with the Hospitals' Medical Staff Bylaws and Rules and Regulations and the Departments Policies and Procedures during each Coverage Shift for which Physician is scheduled.
- (b) Physician(s) on duty shall immediately be available for, emergency and surgical services.
- (c) Provide 15.2 FTEs Coverage which includes Cardiac Anesthesia, see Schedule as set forth in Exhibit G.
- (d) Provide room coverage of seven (7) Anesthetizing Locations and one (1) Obstetrics coverage and expanding evening hours as needed. In addition will provide best efforts to work with needed request for anesthesia services.
- (e) In the event that Contractor fails to perform any of the Coverage Shifts required hereunder, Hospital, in its sole discretion, may contract with another provider to perform such Coverage Shift. Contractor will not be compensated for any Coverage Shift Hospital must provide replacement physician.
- (f) Perform all Anesthesia duties assigned to Physician during each Coverage Shift.
- (g) Promptly report the results of Services performed during each Coverage Shift to the patient's attending physician(s), if any, in accordance with the policies and procedures now or hereafter established by Hospital and Hospital's Medical Staff.
- (h) Promptly prepare and complete all written reports and medical records, including entry and use of the Electronic Health Record as required by Hospital with respect to Services rendered during each Coverage Shift assigned to Physician.

- (i) Coordinate necessary consultations with specialists.
- (j) Cooperate fully with the Hospitals administration and staff to achieve compliance with regulations and quality measures including Joint Commission Core Measures.
- (k) Accurately document all services rendered and submit professional billing for all clinical services delivered.
- (l) Communicate and collaborate regularly the status of any patients admitted under the terms of this Agreement with Hospital, at the request of any member of the medical staff providing care to the patient, the administrative supervisor of hospital, administrative director of hospital or any member of hospital senior management.
- (m) Notice for Additional Staffing: Hospital will use best efforts to provide six (6) months' notice if expanded anesthesia coverage is needed beyond 15.2 FTEs.

If the Hospital cannot provide six (6) months' notice and Contractor is unable to provide expanded anesthesia coverage other than through using locum tenens providers, then the County will share the costs on a temporary basis of the locum tenens providers as follows:

- If the Hospital provides at least five months' notice (but less than six months' notice), then the County will cover 25% of the locum tenens costs. However, at six (6) months from the date of the Hospital's request for additional coverage, the County will not provide any compensation for the locum tenens cost and the Contractor will be solely responsible for locum tenens costs.
- If the Hospital provides at least four (4) months' notice (but less than five (5) months' notice), the County will cover 50% of the locum tenens cost. However, at six months from the date of the Hospital's request for additional coverage, the County will not provide any compensation for the locum tenens costs and the Contractor will be solely responsible for locum tenens costs.
- If the Hospital provides less than four (4) months' notice, then the County will cover 100% locum tenens cost. However, at six months from the date of the Hospital's request for additional coverage, the County will not provide any compensation for locum tenens costs and the Contractor will be solely responsible for locum tenens costs.

Locums' costs shall not exceed \$359,893 per six (6) months, per generalist FTE, which will be prorated depending on the period of notice.

County agrees to provide Contractor a Locums subsidy if needed, to off-set the premium costs of covering hospital services by scheduling locum provider during the first 3 months of this agreement. Hospital will pay up to three (3) months of

50% shared locums tenens costs for one full time equivalent locums to provide medical group time to hire permanent staff to eliminate the locum tenens providers. After the three (3) months' time period expires, locums tenens will be at the expense of the Contractor unless otherwise outlined in this agreement. This payment is not to exceed \$90,000 locums subsidy.

PERFORMANCE STANDARDS AND COMPENSATION OF CONTRACTED SERVICES

The Parties have agreed on the initial level of service and fair market value compensation for such level of service as follows:

A. Anesthesia Services

Hospital Coverage for O'Connor Hospital:

Coverage Parameters

- Contractor shall provide physician coverage each day in the amounts and during the twenty-four-hour shift set forth below.
- Contractor shall arrive within a timeframe appropriate to the acuity of the patient and based on Medical Staff protocols or as otherwise required by medical necessity.
- Contractor shall and shall cause each Physician to the extent applicable to the Physician and the Department to (a) participate in Hospital's quality improvement utilization review and risk management programs and serve on such quality improvement utilization review and risk management committees as may requested by Hospital from time to time; (b) participate in on-going quality improvement monitoring activities, such as audits; (c) participate in risk management activities designed to identify, evaluate and reduce risk of patient injury associated with care; and (d) assist utilization review in setting, monitoring and achieving length of stay and ancillary utilization goals.

Coverage Hours and Compensation

Coverage Shift Hours: 24 hours a day, seven days a week, 365 days a year, including weekends and holidays.

Revenue Collection Guarantee: The compensation for this contract is a revenue collection guarantee based upon: coverage provided, and locums cost (if applicable). For the baseline 15.2 FTE coverage outlined in Exhibit A-1, section 1 (Professional Services) the annual revenue guarantee is \$8,977,796 million (Annual Revenue Guarantee) or \$748,149.66 monthly (Monthly Guarantee). An additional \$100,000 may be added to the total revenue collection guarantee based on quality performance under the contract, as specified below.

Revenue Guarantee Adjustments for Maximum Coverage Utilization and Expanded Coverage:

The Revenue Guarantee will adjust for Maximum Coverage Utilization in the following manner: There will be no adjustment for the utilization of 7 concurrent rooms or the maximum agreed to coverage based upon the terms in this agreement (Maximum Coverage) up to 8 weekdays in a given month. For every day the County schedules Maximum Coverage more than 8 days in a month, County will pay \$3000 for each occurrence Maximum coverage is scheduled. By way of example only: If the County schedules 7 rooms 10 times in a month, the Monthly Guarantee for that month will increase by $2 \times \$3000 = \6000 . At any time, the County may choose to eliminate the per diem utilization fee for Maximum Coverage utilization for an additional annual flat fee of \$300,000 added to the annual revenue guarantee in order to allow scheduling of seven concurrent rooms or Maximum Coverage during non-holiday weekdays without per diem fees. This would need to be approved in writing by Hospital Executive.

Expanded Coverage: Additional coverage venues can be added in the following manner: For an additional \$300,000 fee added to the annual revenue guarantee, group will provide scheduling access to an additional venue (Maximum Coverage) up to 8 times in a month. A per diem fee of \$3000 per utilization is incurred for any scheduling for Maximum Coverage over 8 times in a month. The venue can convert from a per diem pricing structure to a flat fee which would allow scheduling of Maximum Coverage for an additional \$300,000 annually added to the annual revenue guarantee.

The County's maximum financial payment to group will never exceed \$9,077,796 annually.

The County shall pay the difference between the groups' monthly actual revenue collections ("Actual Collections," defined further below) and the monthly guarantee of \$748,149.66 plus any fee adjustments ("Monthly Guarantee") to the extent the monthly Actual Collections is less than the Monthly Guarantee. The Contractor will submit the **Exhibit H** Reporting Form within 14 days of the end of the prior month, documenting its Actual Collections posted for the prior month and the request for payment, as the difference between the Monthly Guarantee and the Actual Collections, to the extent that the Actual Collections is less than the Monthly Guarantee. The County reserves the right to make changes to the required documentation and process for the Revenue Collection Guarantee.

Actual Collections: Means with respect to a given period, all cash and credits received by Contractor during such period in connection with the Contractor's Physicians' professional services fees provider under this Agreement. Actual Collections for the final thirty (30) day period of the Guarantee period will include an amount representing the revenue that the parties mutually agree Contractor can reasonably be expected to receive for six months following the end of the contract term ("Guarantee Period").

Reconciliation: Because collections for professional fees can take time to be realized, the Parties understand that the end of the Guarantee Period, the Contractor's total Actual Collections for the

Guarantee Period will need to be reviewed to determine whether the County paid the appropriate amount under the Revenue Collection Guarantee (the "Reconciliation"). Accordingly, at the end of the Guarantee Period, the Parties will undertake the Reconciliation, whereby the Contractor will demonstrate one of the following:

1. **Additional Payment Required by the County because of Actual Collections Shortfall:** The Contractor's Actual Collections for the Guarantee Period were less than the Revenue Collection Guarantee for the one-year term, and this deficit was not accounted for in the County's monthly payment to the Contractor. If agreed to by the County, the County will provide additional payment as required under this Agreement.
2. **Refund Payment Required by the Contractor because of Excess Monthly County Payment:** The Contractor's Actual Collections for the Guarantee Period were more than the Revenue Collection Guarantee for the one year term, and/or the Actual Collections plus the County's monthly payment to the Contractor were more than the Revenue Collection Guarantee, then the Contractor will refund the County's excess payment by County. The payment is due to the County within 10 days of determination by the County that the Contractor received payment from the County in excess to the Revenue Collection Guarantee. The County's refund is limited to the amount paid by the County to the Contractor under this Agreement.
3. **No Payment Required by either Party:** If there is neither an excess or shortfall as determined by the Reconciliation of the annual Actual Collections for professional fees under this Agreement against the County's payment on a monthly basis (if any), then no payment will be required.

Access to Records: Contractor agrees to keep and maintain books and records reflecting all fees billed for professional services, and collections received from sources of income in connection with guarantee. Contractor further agrees to allow an employee or agent of the County to inspect such records, at the end of each month and at other convenient times while this Agreement is in effect.

Quality Performance: **\$100,000 per year** will be held and paid **\$25,000 quarterly** if Contractor satisfies the quality indicators ("Performance Standards") in Exhibit Attachment to A1.

Expressly contingent upon Contractor's achievement of the Performance Standards as described below in Attachment to Exhibit A-1, the County shall pay to Contractor a Performance Adjustment at the times and in the amounts set forth above. The Performance Standards shall be monitored and reported to the Hospital by the Medical Director on a calendar quarterly basis. The eligible population for measurement of the Performance Standards shall be limited to those patients assigned to Contractor. Upon meeting the quarterly requirement, the Performances Standards for that quarter shall be paid to the Contractor within forty-five (45) days following the close of reporting of such having been achieved and an invoice received by Hospital.

The Parties agree that during the last quarter of each contract year the Parties shall review and discuss any necessary changes to the compensation for the upcoming contract year. Such

Attachment to Exhibit A-1

Performance Standards and Performance Adjustments

As set forth in Exhibit A-1 of the Agreement, all incentives measured quarterly with a maximum of one quarter (25%) of the \$100,000 incentive payment at-risk component available each calendar quarter.

Contractor is hereby notified that by performing services for Hospital, Contractor accepts and is bound by the terms of the Agreement to which this Attachment to Exhibit A-1 is attached, compliance with which is an express condition of the obligation of Hospital to pay Contractor. In the event that Hospital is unable to provide Contractor with data necessary to determine whether the Performance Standards set forth herein have been met within 60 days after performance payments are due, Hospital shall pay to Group the full incentive payment amount within 30 days of the date of invoice from Group.

Quality Objective	Performance Standard	Performance Amount Available	Performance Adjustment
SCIP core measure adherence Up to \$5,000 quarterly. Annually: \$20,000	Core Anesthesia Operations measures: (current values). Each <ol style="list-style-type: none"> 1. Timely administration of antibiotics SCIP-INF1. 2. Correct Antibiotic SCIP-INF2a. 3. Perioperative Beta Blocker SCIP-CARD2 4. Central Venous Catheter Infection: MAX BARRIER & STERILE TECHNIQUE Used. 5. Temperature Management 	Monthly measurement with quarterly review and documentation	Based Upon CMS National Benchmarks for #1 -5 performance and Quarterly distribution per measure are as follows: <ol style="list-style-type: none"> 1. CMS average 50% of funds (\$500 per measure Quarterly). 2. 90th percentile: 100% of funds (\$1,000 per measure Quarterly).
Surgeon/Medical staff satisfaction survey: Up to \$5,000 quarterly. Annually: \$20,000	Survey questions and recipients to be mutually agreed upon. % respondents who rate overall satisfaction as 4 or greater on 5-point scale	Quarterly measurement with quarterly review and documentation.	100% available funds (\$5,000 Quarterly) for: Year 1 +: 85% respondents rank \geq 4/5. 50% available funds (\$5,000 Quarterly) for: Year 1: 50% respondents rank \geq 4/5.

OR Efficiency	Measures:	Monthly Measurement with quarterly review and documentation.	OR Efficiency Metrics and benchmarks set forth below:
(\$60,000 annually for meeting all 4 measures) 1. (Up to \$15,000 annually).	1. First Case On-time starts (FCOTS). Any elective weekday cases scheduled to start at or before 9am. Exclude add on/emergent.		1. \$3,750 quarterly FCOTS greater than or equal to 55%
2. (Up to \$15,000 annually).	2. Turn Over Time, for scheduled consecutive elective cases, in same room.		2. \$3,750 quarterly. TOT average less than or equal to 35 minutes.
3. (Up to \$15,000 annually).	3. Time from transfer of care to PACU RN to Aldrete Score greater than or equal to 8. Include all scheduled OR cases, exclude Emergencies and add ons.		3. \$3,750 quarterly – average less than or equal to 90 mins.
4. (Up to \$15,000 annually).	4. Anesthesia Charting complete within 48 hours of hospital discharge.		4. \$3,750 quarterly – greater than or equal to 90% complete within 48hr. of hospital discharge.

* Due to any emergency situations whereby Contractor is unable to meet the performance objective, through no fault of their own, the County may, at their discretion, still elect to provide the performance payment based on general contract performance metrics. Such instances when the Contractor may not be able to meet the performance metrics due to low volume include delaying of elective procedures in response to COVID-19, or in the event of an earthquake, flood or other natural disasters arise.

EXHIBIT B

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS (e.g. Medical, Legal, Financial services, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Liability Insurance

Contractor, at its sole cost and expense, shall procure and maintain throughout the entire term of this Agreement, and for a minimum of two years following termination or completion of this Agreement, professional liability insurance coverage for services rendered by Contractor in the department in the minimum amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the annual aggregate covering Contractor and all Physicians. Contractor shall provide hospital with certificates of insurance evidencing the insurance coverage required under this section. Such insurance policy or policies shall also provide for not less than thirty (30) days' notice to hospital of any cancellation, reduction, or other material change in the amount of scope of any coverage(s) required under this section. If Contractor's professional liability coverage is on a "claims made" rather than "occurrence" basis, Contractor shall at its expense obtain extended reporting malpractice coverage ("tail") coverage for a minimum period of two years. Tail coverage obtained by Contractor shall have liability limits in the amounts set forth above and shall cover the occurrence of any of the following:

- Termination or expiration of this Agreement;
- Change of coverage by Contractor if such change will result in a gap in coverage; or
- Amendment, reduction or other material change in the then existing professional liability coverage of Contractor if such amendment, reduction or other material change will result in a gap in coverage.

- a. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
 - b. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.
7. Claims Made Coverage

If coverage is written on a claim made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

/F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

EXHIBIT C
COUNTY STANDARD TERMS AND CONDITIONS

1. Contracting Principles

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

2. Audit Rights

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor. All payments made under this Agreement shall be subject to an audit at the County's option and shall be adjusted in accordance with said audit. Necessary adjustments may be made from current billings. Any such audit shall be requested within 12 months of the end of any concluded term year, and any such audit shall be concluded within six months of such audit being initiated.

Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in County audits. Contractor shall pay to County the full amount of any audit determined to be due because of County audit exceptions. This provision is in addition to other inspection and access rights in this Agreement.

3. Use of County's Name for Commercial Purposes

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.

4. Assignment of Clayton Act, Cartwright Act Claims

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

5. **County No-Smoking Policy**

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

6. **Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention**

(a) **Compliance with All Laws:** Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(b) **Compliance with Non-Discrimination and Equal Opportunity Laws:** Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(c) **Compliance with Wage and Hour Laws:** Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

(d) **Definitions:** For purposes of this Subsection 6, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable

Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(e) Prior Judgments, Decisions or Orders against Contractor: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS THAT (A) WERE ISSUED IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT BY A COURT, AN INVESTIGATORY GOVERNMENT AGENCY, ARBITER, OR ARBITRATION PANEL AND (B) FOUND THAT CONTRACTOR VIOLATED AN APPLICABLE WAGE AND HOUR LAW OR PAY EQUITY LAW. CONTRACTOR FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH FINAL JUDGMENTS.

(f) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San Jose, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(g) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records that are related to the purpose of this Subsection, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.

EXHIBIT D
BUSINESS ASSOCIATE AGREEMENT

WHEREAS, County of Santa Clara (“County” or “Covered Entity”) is a Covered Entity, as defined below, and wishes to disclose certain Protected Health Information (“PHI”) to **CEP America-Anesthesia, PC** “Business Associate” pursuant to the terms of the Agreement and this Business Associate Agreement (“BAA”); and

WHEREAS, the County is a hybrid entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) performing both covered and non-covered functions; and

WHEREAS, the Santa Clara Valley Health and Hospital System, which is part of the County is comprised of multiple County Departments, including Valley Medical Center and Clinics (“VMC”), O’Connor Hospital and Clinics (“O’Connor”), Saint Louise Regional Hospital (“Saint Louise”), including the DePaul Health Center (“DePaul”), the County Mental Health Department (“MHD”), the County Department of Alcohol and Drug Services (“DADS”), the County Public Health Department (“PHD”) and the County Custody Health Services (“Custody Health”) and County Valley Health Plan (“VHP”), all of which are “Covered Entities” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”); and

WHEREAS, the Covered Entity and Business Associate are “qualified service organizations” or “QSO” within the meaning of the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations, 42 Code of Federal Regulations (“C.F.R.”) Part 2; and

WHEREAS, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI used and disclosed pursuant to this BAA in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), California Welfare & Institutions Code 5328, 42 U.S.C. Section 290dd-2, 42 C.F.R part 2, California Confidentiality of Medical Information Act Civil Code Section 56, California Health & Safety Code 1280.15, and other applicable laws; and to the extent the Business Associate is to carry out the covered entity’s obligation under the Privacy Rule, the Business Associate must comply with the requirements of the Privacy Rule that apply to the covered entity in the performance of such obligation.

WHEREAS, part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entities to enter into a contract containing specific requirements with any Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of

information pursuant to the BAA, the parties agree as follows:

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in the BAA have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.

Privacy Breach Any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted or allowed under state or federal privacy laws.

Business Associate is a person, organization, or agency other than a workforce member that provides specific functions, activities, or services that involve the use, creation, or disclosure of PHI for, or on behalf of, a HIPAA covered health care component. Examples of business associate functions are activities such as claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, repricing; and legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Covered Entity shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media.

Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited

to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

Protected Information shall mean PHI provided by Covered Entity to Business Associates or created or received by Business Associates on Covered Entity's behalf.

Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h)(1) and 45 C.F.R. 164.402.

II. Duties & Responsibilities of Business Associates

a. Permitted Uses. Business Associate shall use Protected Information only for the purpose of performing Business Associate's obligations under the Contract and as permitted or required under the Contract or Addendum, or as required by law.

Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, Welfare & Institutions Code Section 5328, 42 C.F.R. Part 2, or the HITECH Act, if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity. [45 C.F.R. Sections 164.502(a) (3), 164.504(e) (2) (ii) (A) and 164.504(e) (4) (i)].

b. Permitted Disclosures. Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule, 42 C.F.R., Welfare & Institutions Code Section 5328, or the HITECH Act if so disclosed by Covered Entity. However, Business Associates may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information obtained pursuant to the Agreement and this BAA to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any Breaches of confidentiality of the Protected Information within twenty-four (24)

hours of discovery, to the extent it has obtained knowledge of such Breach. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e) (2) (i)-(ii) (A) and 164.504(e) (4) (ii)].

c. Prohibited Uses and Disclosures. Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. [42 U.S.C. Section 17936(a) and 45 C.F.R. 164.501]. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. [42 U.S.C. Section 17935(a); 45 C.F.R. Section 164.502(a) (5) (ii)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. [42 U.S.C. Section 17935(d) (2)]. This prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

d. Appropriate Safeguards. Business Associate shall implement appropriate administrative, technological and physical safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this BAA that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, and comply, where applicable, with the HIPAA Security Rule with respect to Electronic PHI.

e. Reporting of Improper Access, Use or Disclosure. Consistent with Section (h)(4) of this agreement, Business Associate shall notify Covered Entity within 72 hours of any suspected or actual breach of protected information or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e. any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in any information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors.

Business Associate shall report to SCVHHS Compliance & Privacy Officer in writing any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA. As set forth below, [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 164.308(b); California Health & Safety Code 1280.15, California Confidentiality of Medical Information Act 56.10, California Welfare & Institutions 5328].

Compliance & Privacy Officer
Santa Clara Valley Health & Hospital System
2325 Enborg Lane, Suite 240
San Jose, California 95128
Facsimile: (408) 885-6886
Telephone: (408) 885-3794

The Breach notice must contain: (1) a brief description of what happened, including the

date of the Breach and the date of the discovery of the Breach, if known; (2) the location of the breached information; (3) the unauthorized person who used the PHI or to whom the disclosure was made; (4) whether the PHI was actually acquired or viewed; (5) a description of the types of PHI that were involved in the Breach; (6) safeguards in place prior to the Breach; (7) actions taken in response to the Breach; (8) any steps Individuals should take to protect themselves from potential harm resulting from the Breach; (9) a brief description of what the business associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against further Breaches; and (10) contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website or postal address. [45 C.F.R. Sections 164.410(c) and 164.404(c)]. Business Associate shall take any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Business Associate shall otherwise comply with 45 C.F.R. Section 164.410 with respect to reporting Breaches of Unsecured PHI. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e) (2) (ii) (C); 45 C.F.R. Section 165.308(b)]

f. Business Associate's Agents and Subcontractors. Business Associate shall ensure that any agents or subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (II) d above with respect to Electronic PHI. [45 C.F.R. Sections 164.502(e) (1) (ii), 164.504(e) (2) (ii) (D) and 164.308(b)]. If Business Associate knows of a pattern of activity or practice of an agent or subcontractor that constitutes a material breach of violation of an agent or subcontractor's obligations under the Contract or Addendum or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If these steps are unsuccessful, Business Associate shall terminate the contract or arrangement with agent or subcontractor, if feasible. [45 C.F.R. Section 164.504(e) (1) (iii)]. Business Associate shall provide written notification to Covered Entity of any pattern of activity or practice of a subcontractor or agent that Business Associate believes constitutes a material breach or violation of the agent or subcontractor's obligations under the Contract or Addendum or other arrangement with seventy-two (72) hours of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

The Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

g. Access to Protected Information. Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524. [45 C.F.R. Section 164.504(e) (2) (ii) (E); 42 C.F.R. part 2 and Welfare & Institutions Code Section 5328]. If Business Associate maintains an Electronic Health Record, Business Associates shall provide such information in electronic format

to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e)(1). If any Individual requests access to PHI directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the request.

h. Electronic PHI. If Business Associate receives, creates, transmits or maintains Electronic PHI on behalf of Covered Entity, Business Associates will, in addition, do the following:

- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(s) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of Covered Entity.
- (2) Document and keep these security measures current and available for inspection by Covered Entity.
- (3) Ensure that any agent, including a subcontractor, to whom the Business Associate provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect it.
- (4) Report to the Covered Entity any Security Incident of which it becomes aware. For the purposes of this BAA and the Agreement, Security Incident means, as set forth in 45 C.F.R. Section 164.304, “the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.” Security incident shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate, or (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

i. Amendment of PHI. Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule. If any Individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity.

j. Accounting Rights. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Privacy Rule and the HITECH Act. [42 U.S.C. Section 17935(c) and 45 C.F.R. Section 164.528]. Business

Associate agrees to implement a process that allows for an accounting of disclosures to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. Accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for three (3) years prior to the request, and only to the extent Business Associate maintains an electronic health record and is subject to this requirement.

At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. [45 C.F.R. Section 164.528(b)]. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity in writing within five (5) days of the request. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in the Agreement and this BAA.

k. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 165.504(e)(2)(ii)(I)]. Business Associate shall concurrently provide to Covered Entity a copy of any internal practices, books, and records relating the use and disclosure of PHI that Business Associate provides to the Secretary.

l. Minimum Necessary. Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information reasonably necessary to accomplish the purpose of the request, use, or disclosure in accordance with 42 U.S.C. Section 17935(b). Business Associate understands and agrees that the definition of "minimum necessary" is defined in HIPAA and may be modified by the Secretary. Each party has an obligation to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

m. Adherence to the Requirements of 42 C.F.R. Business Associate acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with patient records and information in connection with providing drug testing services to patients covered by SCVHHS under this Agreement and BAA, it is fully bound by the regulations governing confidentiality of alcohol and drug abuse patient records, 42 C.F.R. Section 2.1, *et seq.*, and HIPAA, and may not use or disclose the information except as permitted or required by this BAA or applicable law.

n. Resist Efforts in Judicial Procedures. Business Associates agree to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly

provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Records, 42 C.F.R. Part 2.

o. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information governed by this BAA, and all rights, interests, and title remain vested in the County at all times.

p. Warranties and Disclosures. Business Associate assumes risk for any and all use of PHI. SCVHHS assumes no liability or responsibility for any errors or omissions in, or reliance upon, the PHI, including, but not limited to information electronic systems. SCVHHS makes no representations or warranties of any kind, express or implied, including but not limited to: accuracy, completeness, or availability of content, non-infringement, merchantability or fitness for a particular use or purpose, the fullest extent of the law. SCVHHS does not warrant that PHI is free of viruses or other harmful components or that service will be uninterrupted or error-free, or that defects will be corrected.

q. Audits, Inspection and Enforcement. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate.

The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with the BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or BAA, Business Associate shall notify Covered Entity within five (5) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

III. Termination

a. Material Breach. A Breach by Business Associate of any provision of this BAA shall constitute a material Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding;

provided however that if such Breach is capable of cure, notice of such breach by the non-breaching party shall be given and an opportunity to cure such breach shall be provided. [45 C.F.R. Section 164.504(e) (2) (iii)].

b. Judicial or Administrative Proceedings. Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, 42 C.F.R. Part 2, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section 2 of the BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e) (ii) (2) (I)]. If County elects destruction of the PHI, Business Associate shall certify in writing to County that such PHI has been destroyed.

IV. General Provisions

a. Indemnification. In addition to the indemnification language in the Agreement, Business Associate agrees to be responsible for, and defend, indemnify and hold harmless the Covered Entity for any Breach of Business Associate's privacy or security obligations under the Agreement, caused solely by Business Associate, including any fines, penalties and assessments that may be made against Covered Entity or the Business Associate for any privacy breaches or late reporting and agrees to pay the reasonable costs of and notice for any credit monitoring services.

b. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the use and safeguarding of PHI.

c. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or 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 California laws relating to the security or confidentiality of PHI.

d. Upon the request of any party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

Covered Entity may terminate Contract upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Contract or Addendum when requested by Covered Entity pursuant to this section or (ii) Business Associate does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

e. Assistance in Litigation of Administrative Proceedings. Business associate shall notify Covered Entity within forty-eight (48) hours of any litigation or administrative proceedings commenced against Business Associate or its agents or subcontractors. Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named as an adverse party.

f. No Third-Party Beneficiaries. Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entities, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

g. Effect on Agreement. Except as specifically required to implement the purposes of the BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

h. Interpretation. The BAA 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 shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, 42 Code of Federal Regulations ("C.F.R.") Part 2, the Privacy Rule and the Security Rule and other applicable California laws relating to the security or confidentiality of PHI.

i. Governing Law, Venue. This agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.



EXHIBIT E
Santa Clara Valley Health & Hospital System
Security and Confidentiality Agreement

As an employee of, or volunteer, student, Physician, or other person doing business with Santa Clara Valley Health and Hospital System (hereinafter "the Provider"), and as a condition of my employment or other relationship, I agree to the following:

1. I am responsible for complying with the Provider's HIPAA Policies and Procedures and with applicable patient privacy laws. I acknowledge that I have received a copy of the Provider's HIPAA Policies and Procedures or have been provided with access to these policies on the Provider's intra-net site at <http://www.valleypages/centralsvcshipaa.htm>.
2. I will treat all information received in the course of my employment with the Provider, which relates to the patients of the Provider, as confidential and privileged information.
3. I will not access protected health information unless I have a need to know this information in order to perform my job.
4. I will not disclose information regarding the Provider's patients to any person or entity, other than as necessary to perform my job, and as permitted under the Provider's HIPAA Policies and Procedures.
5. I will not disclose other types of confidential information (e.g., employee information, financial information, proprietary information, etc.) to any person or entity, other than as necessary to perform my job, and as permitted under Provider's Policies and Procedures.
6. I will not log on to any of the Provider's computer systems that currently exist or may exist in the future using a password other than my own.
7. I will safeguard my computer password and will not post it in a public place, such as the computer monitor or a place where it will be easily lost, such as on my nametag.
8. I will not allow anyone, including other employees, to use my password to log on the computer.
9. I will log off the computer as soon as I have finished using it.
10. I will not use Internet e-mail to transmit protected health information unless I am instructed to do so by my Privacy Officer.

EXHIBIT F
PAYOR IDENTIFICATION

The purpose of this exhibit is to clarify how patient payors are identified in HealthLink, the County’s electronic health record, as well as identify the payors identification that represent patients that the County is responsible for, and who should not be billed for services.

Payor Identification

The payor for the patient is visible in the HealthLink header toward the upper right of the screen.

County Responsibility Patients: Contractor and/or Contractor’s billing agent will not issue any bill (including, but not limited to supplement or balancing billing) to uninsured patients eligible under a County authorized program, or for patients eligible for free or discounted care under a County authorized program (collectively, “County Responsibility Patients”) for payment of Professional Services provided pursuant to this Agreement to County Responsibility Patients or other third party payors. The list of County Responsibility Patients is:

- APD (a County program called Ability to Pay)
- Un-sponsored
- Medical Pending

The Contractor accepts as payment in full for County Responsibility Patients this Revenue Collection Guarantee.

The Contractor understands that patients that are determined to be County Responsibility Patients may change as required for compliance with Hospital Charity Care and Discount policies. Any such changes will be communicated to the Contractor by the County, and this will be updated as necessary to reflect policy compliance if needed at the sole discretion of the County.

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EXHIBIT G ANESTHESIA COVERAGE SCHEDULE

Obstetric Coverage. Contractor will provide obstetric anesthesia coverage to be immediately available to the obstetric unit 24 hours per day each day of the year.

Cardiac Coverage. Contractor will provide cardiac anesthesia coverage on call for open heart cases 24 hours per day each day of the year. This on call coverage shall be available within a time frame consistent with department rules and regulations.

Call Coverage. Contractor will provide anesthesia coverage on call (“First Call”) 24 hours per day each day of the year. This on call coverage shall be available within a time frame consistent with department rules and regulations.

On weekdays contractor will provide coverage for a total of seven anesthetizing locations including cardiac open heart cases. These locations include but are not limited to the main operating rooms, MRI, CT, Interventional Radiology, Cath Lab, Endoscopy Lab and any other location where anesthesia services are requested by the hospital. First Call and Cardiac Call are integrated into this seven rooms of coverage during the week.

15.2 FTE Coverage Model

24/7 1st Call Coverage - General OR – 8760 hours

24/7 L&D Coverage – 8760 hours

24/7 Cardiac Coverage for Open Heart Cases – 8760 hours

The daily room Maximum Coverage is represented by the following: Scheduled hours of coverage may be reallocated upon mutual agreement by Contractor and Hospital. Coverage schedule by location:

Monday through Friday excluding holidays - 7 total locations.

- Location 1: 7a-7a – 24 hours (covered by First Call)
- Location 2: 7a-11p – 16 hours
- Location 3: 7a-7p – 12 hours
- Location 4: 7a-3p – 8 hours
- Location 5: 7a-3p – 8 hours
- Location 6: 7a-3p – 8 hours (This location can contain either CV or non-CV cases, Location to be covered 24hours by Cardiac Call physician)
- Location 7: 7a-3p – 8 hours

Weekends and Holidays:

- 24hr 1st Call Coverage - General OR or Hospital Venues requiring Anesthesia services
- 24hr L&D Coverage
- 24hr Cardiac Coverage for Open Heart Cases or Functional Heart Cases only.

Group will make reasonable efforts to accommodate concurrent Emergent case scheduling during nights, weekends, and holidays. Emergent cases are defined as cases where delay for up to 4 hours would lead to significant morbidity or mortality. This is not a guarantee of concurrent coverage.

Hours of coverage may be reallocated upon mutual agreement by Contractor and Hospital.

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**EXHIBIT H
 REPORT SHOWING PRACTICE'S ACTUAL COLLECTIONS
 AND FEE ADJUSTMENTS FOR THE PRIOR MONTH
 CEP America-Anesthesia – (Vituity)**

O'Connor Hospital Minimum Collection Guarantee Statement

Coverage Shifts for the Month of _____ 20__.

Date of Account Summary and Invoice _____

<u>Month and Date</u>	<u>Billings for Month</u>	<u>Actual Collections</u>
Month of: _____	<u>Total Amount:</u>	<u>Total Amount:</u>
Dates: _____	\$ _____	\$ _____
<u>Sub-total</u>	\$ _____	\$ _____

Total Collection amount from above dates: \$ _____

The difference between Guaranteed Minimum Collection and Actual Collection (Monthly maximum of \$748,149.66).

\$748,149.66 Minus Actual Collections \$ _____ Equals Guarantee \$ _____

Fee Adjustments to Monthly Guarantee:

1) Maximal Coverage Utilization Fee Adjustment:

Dates of Maximal Coverage Scheduled during invoice

Number of Episodes Maximal Coverage Utilized in this period: _____

(Number of Episodes of Maximal Coverage for Month – 8) x \$3000.00 = \$(enter 0 if <0)

Date of Conversion from Per Diem to Unlimited Scheduling: (if applicable)

Flat Fee for Maximal Scheduling Capability (\$25,000.00/month per venue)

2) Locums Differential Fee: _____

(Contractor will submit separate invoice monthly with details)

3) Performance Guarantee: \$ _____

(Contractor will submit separate invoice quarterly with details)

Subtotals: \$ _____

Monthly Guarantee: \$ _____

Utilization Adjustment (per Diem): \$ _____

Utilization Adjustment (Flat Fee): \$ _____

Locums Differential: \$ _____

Performance Metrics \$ _____

Total: \$ _____

<p>Total Amount due to CEP America- Anesthesia, PC \$ _____</p> <p>Supporting documents attached:</p> <ul style="list-style-type: none"> AR Aging Total AR greater than 90 days Collection Rate % Claims Denial rate Bad Debt % to Net Revenue
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I certify to the best of my knowledge that the information on this report is accurate and complete.
Email completed report to: OCHPhysicianInv@hhs.sccgov.org

CEP America-Anesthesia, PC (Vituity) Compensation: Effective 09/01/2020 -08/31/2021
2100 Powell Street, Suite 400
Emeryville, CA 94608

CEP Authorized Signature: _____ Date: _____

Title: _____

Approved by:

Hospital Representative: _____ Date: _____

