

**Southern Inyo Healthcare District
Board of Directors
Special Meeting Agenda**

**Friday, June 9, 2017
Board Convenes at 8:30 a.m.**

**Southern Inyo Hospital
Conference Room
501 E Locust St, Lone Pine, Ca 93545**

I. CALL TO ORDER

- A. Pledge of Allegiance
- B. Roll Call
- C. Approval of Agenda

II. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

III. BUSINESS ITEMS

A. Business Consideration

- 1. Consideration of Approval:
 - a. Second Amendment to the Medsphere Master Agreement
 - b. EMMI Physician Services Agreement

IV. DIRECTOR COMMENTS ON ITEMS NOT ON THE AGENDA

V. CLOSED SESSION

- A. Existing Litigation (Govt Code 54956.9): Chapter 9 Bankruptcy

VI. CLOSED SESSION REPORT

VII. ADJOURNMENT

Board of Directors:

Richard Fedchenko
President

Jaqueline Hickman
Secretary

Carma Roper
Treasurer

Mark Lacey
Director

Chuck Carson
Director

NOTICE TO THE PUBLIC

COPIES OF PUBLIC RECORDS

All writings, materials, and information provided to the Board for their consideration relating to any open session agenda item of the meeting are available for public inspection and copying during regular business hours at the Administration Office of the District at 501 E. Locust Street, Lone Pine, California.

COMPLIANCE WITH ADA

This agenda shall be made available upon request in alternative formats to persons with a disability, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and the Ralph M. Brown Act (Cal. Gov't Cod. § 54954.2). Persons requesting a disability related modification or accommodation in order to participate in the meeting should contact the Administrative Office during regular business hours by phone at (760) 876-5501, or in person at the District's Administrative Office at 501 E. Locust St., Lone Pine, California.

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SECOND AMENDMENT TO THE MASTER SUBSCRIPTION AND LICENSE AGREEMENT

This Second Amendment to that certain Master Subscription and License Agreement dated August 1, 2016 (“the Second Amendment”) is dated as of June 1, 2017 (the “Effective Date”) and is made by and between Southern Inyo Healthcare District (“Customer”) with its principal place of business in Lone Pine, CA and Medsphere Systems Corporation (“Medsphere”), a California corporation, with its principal place of business in Carlsbad, CA. From time to time hereafter, Customer and Medsphere may be referred to as “the Parties.”

RECITALS

- A. WHEREAS, Customer and Medsphere entered that certain Master Subscription and License Agreement dated August 1, 2016 (“the Original Agreement”); and
- B. WHEREAS, Customer and Medsphere entered into a First Amendment to the Agreement to add additional services (“Phoenix Services”) on August 1, 2016 (the “First Amendment”).
- C. WHEREAS, the Original Agreement and the First Amendment are hereafter referred to as the “Agreement”.
- D. WHEREAS, Customer and Medsphere desire to amend the Agreement in certain respects, and to set forth other agreements between the Parties with respect to payment, all as set forth in this Second Amendment;

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants set forth herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. Except as specifically changed in this Second Amendment, all provisions of the Agreement shall not otherwise be deemed to have changed in any regard.
- 2. All terms in the Agreement not specifically defined or changed in this Second Amendment, as well as capitalized terms, shall have the same meaning and effect as so defined in the Agreement.
- 3. To the extent that any inconsistencies exist between this Second Amendment and the Agreement, the provisions of this Second Amendment shall govern.

4. As of June 1, 2017, Customer has failed to pay Medsphere's Invoices identified on Exhibit "A" hereto, in the collective total amount of \$124,565.92. The Parties agree that each of said Invoices is past due and that Customer is in material breach of the Agreement because of these past due invoices. Collectively, the Invoices identified on Exhibit "A" are referred to as "the Past Due Invoices."

5. Customer will incur an incremental \$25,000.00 in Reimbursed Expenses prior to Go-Live, which is currently scheduled for June 2017 assuming Customer's material breach is cured prior to Go-Live ("Go-Live Expenses"). Such Go-Live Expenses have not yet been invoiced to Customer.

6. The Past Due Invoices plus the Go-Live Expenses total \$149,565.92 ("Outstanding Amount").

7. In order to resolve any disputes between the Parties respecting the Outstanding Amount, the Parties agree as follows:

a. The Past Due Invoices are undisputed and due and payable in accordance with the Agreement, and Customer has no offset or defense to payment with respect to them.

b. Currently, the monthly recurring fees due by Customer to Medsphere for the remaining Term of the Agreement is \$26,750.00 ("Monthly Recurring Revenue") subject to any increases as outlined in the Agreement.

c. In order to discharge all Outstanding Amount sums due under the Past Due Invoices and the Go-Live Expenses, including accrued interest thereon, The Monthly Recurring Revenue will change to \$28,800.00 ("New Monthly Recurring Revenue"), subject to any increases as outlined in the Agreement, and the Initial Term of the Agreement will expire on July 31, 2024.

d. First payment for the New Monthly Recurring Revenue of \$28,800.00 will be due on June 15, 2017 and continue the 15th day of each subsequent month until the end of the Initial Term ("Payment Plan").

e. Payments will be made by ACH debit whereby Customer provides Medsphere with all required information to effect Medsphere's receipt of the New Monthly Recurring Revenue. Payments are deemed "paid" or "made" when actually received by Medsphere.

8. Failure to make any payment due on time and in full shall constitute a Default under the Payment Plan. In addition to any and all remedies for default in payment available to Medsphere under the Agreement, the Parties further agree as follows:

a. Medsphere shall not be required to give Customer notice of any Default under the Payment Plan, as all information regarding payments will be equally available to Customer and to Medsphere.

b. Should any Default under the Payment Plan continue beyond five (5) business days after the due date of a required payment (an "Uncured Default"), all sums originally due under the Outstanding Amount shall become immediately due and payable, with accrued interest thereon as provided in the Agreement from the original due date of each such Invoice, and with interest continuing to accrue on all unpaid Invoices through the date of actual payment.

c. After an Uncured Default, Medsphere shall be entitled to pursue all remedies for collection available under the Agreement. Medsphere shall not be required to re-commence or further pursue, with respect to collection of remaining sums due under the Past Due Invoices (including interest thereon).

d. The Parties agree that full and timely payment of the Outstanding Amount is a material precondition to Medsphere's effective performance of the Agreement. Accordingly, upon an Uncured Default under the Payment Plan, and notwithstanding anything to the contrary in the Agreement, Medsphere shall be entitled to withhold performance of the Services, including the Phoenix Services, until receipt of full and complete payment of all remaining sums then due with respect to the Outstanding Amount (including accrued interest thereon).

9. This Second Amendment constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written negotiations, writings, communications, representations and agreements on the subject matter hereof. This agreement shall not be modified except by a writing of subsequent date duly executed by authorized representatives of the parties.

10. This Agreement may be executed in multiple counterparts which taken together shall constitute the agreement of the Parties. A facsimile or scanned copy of any Party's signature upon this Agreement shall be fully as binding and effective as an original.

IN WITNESS WHEREOF the parties have caused this Second Amendment to be executed as of the date first above written.

Southern Inyo Healthcare District

Medsphere Systems Corporation



By: _____

By: _____

Name: _____

Name: Irv H. Lichtenwald

Title: _____

Title: CEO

EXHIBIT "A"

(Past Due Invoices)

Invoice Date	Invoice Number	Balance
Oct 31, 2016	201601964	\$ 981.44
Nov 30, 2016	201602011	\$ 209.00
Dec 31, 2016	201602031	\$ 3262.42
January 31, 2017	33646	\$ 2624.52
March 31, 2017	34802	\$ 6294.37
April 1, 2017	34726	\$ 11000.00
April 30, 2017	35402	\$ 10994.17
May 1, 2017	34847	\$ 15750.00
May 1, 2017	34858	\$ 11000.00
June 1, 2017	35466	\$ 15750.00
June 1, 2017	35453	\$ 11000.00
June 1, 2017	35469	\$ 4200.00

AGREEMENT FOR PROFESSIONAL CODING, BILLING AND ACCOUNTS RECEIVABLE MANAGEMENT FOR SOUTHERN INYO HEALTHCARE DISTRICT

This Agreement for professional coding, billing and accounts receivables management services is made and entered into this first day of June 1, 2017 by and between Southern Inyo Healthcare District ("SIHD") hereinafter referred to as SIHD and EMMI Physician Services, Inc. ("EMMI"), a California Corporation (hereinafter referred to as EMMI).

1. GENERAL PURPOSES/EXCLUSIVE CONTRACT:

The parties hereto agree that EMMI will provide exclusive billing, coding and accounts receivables management for all professional services rendered by Physicians. Physicians will submit all necessary charge and payment information, patient demographics, treatment authorizations, referrals and other documents that may be required to secure payment, to EMMI. Reports and services will be provided as shown on Addendum "A".

2. TERM:

The initial term of this Agreement is two years and shall commence on June 1, 2017. This Agreement shall be automatically renewed for successive periods of two year. Either party may terminate this agreement at any time for any reason by giving 90 days advanced written notice.

3. PROFESSIONAL FEES PAID BY PHYSICIANS:

Upon execution of this Agreement, EMMI shall be paid a set-up fee of \$ NONE. Operating fees will be paid (or withheld) from collected revenue no less frequently than once per month, on or before the 10th day of each calendar month, based on collections during the previous month. During the term of the contract fees will be calculated at the rate of 10.00 % of receipts, less patient account refunds, for all collections under this Agreement.

4. METHODS OF PERFORMANCE:

A. In performing their respective responsibilities each party agrees to comply with all applicable laws, regulations and ordinances to which this Agreement is subject.

B. EMMI will render the services hereunder as an independent contractor. This Agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. Neither party is granted any express or implied right or responsibility in behalf of or in the name of the other party or to bind the other party in any matter or thing whatever except as provided in this Agreement.

5. CONFIDENTIALITY AND PROTECTION OF DATA:

All information in whatever form regarding patient treatment, demographics, and charges is privileged by nature of the physician/patient relationship and such information delivered by Physicians to EMMI pursuant to this Agreement shall be proprietary and secret information. EMMI will safeguard and retain in confidence all such information including instructing its employees, agents and servants to keep such information confidential by using the care and discretion they would use if the information had been designated as confidential by EMMI.

6. TERMINATION

If either party materially fails to comply with one or more of the terms and conditions of this Agreement, the aggrieved party may give written notice of termination to the other party setting forth its grievance. The party receiving such notice shall have ten (10) days from receipt thereof to remedy the alleged grievance. If the grievance is not remedied, the Agreement shall terminate 30 days from the original notice of termination. EMMI shall have the right to collect the accounts receivable for a period of thirty days after the original notice of termination. At the end of the contract the physician shall be responsible for the removal of records at his/her own expense. EMMI will store documents during the term of the contract only.

7. ASSIGNMENT:

Neither EMMI nor Physicians shall assign or otherwise transfer this Agreement or any interest therein, without the prior written consent of the other party. EMMI reserves the right to restructure its ownership, and such restructuring shall not be considered an assignment or transfer. The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms.

8. NOTICES:

Any and all notices and other communications required or permitted by this Agreement shall be served on or given to either party by the other party in writing and shall be deemed duly served and given when personally delivered to any party to whom it is directed, or in lieu of any personal service when deposited in the United States mail, first class, postage pre-paid, addressed to the parties hereto at the addresses set forth herein-below or such other forwarding address as either party shall give to the other party.

EMMI Physician Services, Inc.
ATTN: Cyril Seligman
3116 West March Lane, Suite 200
Stockton, CA 95219

9. SEVERABILITY:

If any clause or provision in the Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected, and that in lieu of any such clause or provision there be added as part hereof a substitute clause or provision that is a similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

10. COOPERATION:

Each party shall fully cooperate with the other in connection with the requirements imposed by this Agreement upon the other to the end that neither party shall act in any manner to impede the other in performing its obligations.

11. LIQUIDATED DAMAGES:

Payment for professional services managed by EMMI shall not during the term of the Agreement shall not be collected by SIHD and/or physicians. Should SIHD or Physicians receive any moneys for services rendered will be reported to EMMI within one week

12. DISPUTE RESOLUTION AND ATTORNEYS FEES:

Any controversy or claim arising out of or relating to, this Agreement, or the making, performance or interpretation of it, shall be settled by arbitration in the City of Stockton, State of California, under the Commercial Arbitration Rules of the American Arbitration Association then existing, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy.

13. WAIVERS AND CONSENTS:

None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver is in writing and signed by the party hereto in exercising any right shall operate as a waiver of such right or any other right hereunder. A waiver by any party hereto of a breach of a provision of this Agreement shall not constitute a waiver or prejudice such parties right otherwise to demand strict compliance with that same provision or any other provision at any other time during the term of this Agreement. Whenever the consent of any party hereto is required hereunder, the granting of such consent by such party in any instance shall not constitute consent to subsequent instances where such same consent is required.

14. ENTIRE AGREEMENT:

This is the entire Agreement between EMMI and SIHD. Any modification or amendments to this Agreement must be in writing and signed and dated by both parties.

15. GOVERNING LAW:

The laws of the State of California shall govern this Agreement, and any question arising hereunder shall be construed or determined according to such law.

IN WITNESS THEREOF the parties hereto have executed this Agreement on the dates set forth herein below.

EMMI:
EMMI Physician Services, Inc.
("EMMI") A California Corporation

SOUTHERN INYO HEALTHCARE DISTRICT

CYRIL SELIGMAN
President/CEO

Title_____

3116 West March Lane, Suite 200
Stockton, CA 95219

Executed this __ day of
_____, 2017

Executed this __ day of
_____, 2017

ADDENDUM "A"

EMMI will provide coding, billing and accounts receivable management - collection services for Southern Inyo Healthcare District physicians including, but not limited to, the following;

Individual patient charge evaluation, coding, claim submission and audit. including analyzing (adjusting upon authorization of Physicians) charges for each service. This may also include addition of missing charges and providing advice to physicians.

Electronic claim submission to all payers accepting ECS or an insurance forms.

Statements to be mailed to self-pay, no-insurance patients within seven (7) working days of receipt of charge documents from SIHD Physicians. Patient statements for Co-payments and/or deductibles will be send to patients within 5 days of receipt of EOB.

Timely follow-up and problem resolution with third party payors.

Best efforts to coordinate with Physicians and hospitals' business office to obtain necessary information.

Timely assignment of accounts to licensed bonded collection agencies, where appropriate, with Hospital's approval.

All supplies necessary for billing and collections including postage, patient statements, insurance forms and electronic claims submission.

Provide monthly reports to SIHD executives and physicians for example:

Monthly activity summary detailing and summarizing charges, payments and adjustments by payor class.

Accounts Receivable balances by payor class.

Custom Reports – to be defined by SIHD.

All funds will be banked into the designated bank account designated by the client and will be under their control at all times.

ADDENDUM "B"

Southern Inyo Healthcare District will provide the following information to EMMI:

- ED charts
- Copies of all dictated reports, attached to charges
- Copies of Chart Notes if required by a third party payor
- Copies of Treatment Authorizations, Medi-Cal TARS, referrals
- Patient demographics
- Insurance Information, including copy of the front and back of patient's card.
- Copies of POS Strips for Medi-Cal patients
- And other documents that may be required to secure payment