

SOUTHERN INYO HEALTHCARE DISTRICT

Notice of a Special Meeting of the Board of Directors

Date: Friday, January 25, 2019
Time: 10:00 am

Location: SIHD's Conference Room
501 E. Locust Street, Lone Pine, CA

Richard Fedchenko will be participating via phone.
1093 Shahar Ave.
Lone Pine, CA 93545

Charles Carson will be participating via phone.
538 S. Main Street
Lone Pine, CA 93545 (High School)

AGENDA

I. CALL TO ORDER

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

II. BUSINESS ITEMS

- A. Omnicare Contracts
 - 1. Pharmacy Products and Services Agreement
 - 2. Pharmacy Consultant Agreement
- B. Rural Health Clinic Physician Agreement-Todd Farrer, MD
- C. Acceptance of the Settlement Agreement by and between Southern Inyo Healthcare District and Premier Emergency Physicians of California Medical Group.

III. ADJOURNMENT

Board of Directors:

Jaqueline Hickman
President

Mark Lacey
Vice President

Carma Roper
Secretary

Charles Carson
Treasurer

Richard Fedchenko
Director

NOTICE TO THE PUBLIC

PUBLIC COMMENT PERIOD FOR REGULAR MEETINGS

Members of the public may comment on any item on the agenda before the Board takes action on it. The public may also comment on items of interest to the public that are within the subject matter jurisdiction of the Board; provided, however, the Board may not take action on any item not appearing on the agenda unless the action is otherwise authorized by law. Any person addressing the Board will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak.

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.

Board of Directors:

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Richard Fedchenko
Director

PHARMACY PRODUCTS AND SERVICES AGREEMENT

THIS PHARMACY PRODUCTS AND SERVICES AGREEMENT (this “Agreement”), dated as of January 18, 2019 (the “Commencement Date”) is by and between Evergreen Pharmaceutical of California, Inc. doing business as Omnicare of Southern California, located at 8220 Remmet Avenue, Canoga Park, CA 91304 (“Pharmacy”), and Southern Inyo Healthcare District doing business as Southern Inyo Hospital-SNF, located at 501 E. Locust, Lone Pine, CA 93545 (“Facility”).

RECITALS

- A. Facility is engaged in the operation of a nursing facility, for which it requires pharmacy products and services in accordance with applicable local, state and federal laws and regulations (“Applicable Law”).
- B. Pharmacy, an Affiliate of Omnicare, Inc. (“Omnicare”), is qualified, licensed and capable of providing prescription and nonprescription pharmaceutical products, parenteral nutritional products, and intravenous supplies (collectively, “Pharmacy Products”), and related services (collectively, “Pharmacy Services”). Pharmacy Products and Pharmacy Services are collectively referred to herein as “Pharmacy Products and Services.”
- C. Facility desires to purchase Pharmacy Products and Services from Pharmacy and may also purchase in bulk from Pharmacy nonprescription and prescription medications not for any particular resident which are provided by Facility at its expense (“House Stock”).
- D. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Exhibit A to this Agreement.

AGREEMENT

In consideration of the mutual agreements and promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree and covenant as follows:

1. RESPONSIBILITIES OF PHARMACY

1.1 Commencement Date and Delivery Date: From the Commencement Date through February 1, 2019 (the “Delivery Date”), Pharmacy may undertake preparatory servicing activities which may be necessary for Pharmacy to provide Pharmacy Products and Services as of the Delivery Date or as otherwise may be requested by Facility prior to the Delivery Date. Such preparatory servicing activities may include, but are not limited to, preparing cycle fill dispenses for delivery on or about the Delivery Date, profiling residents in Pharmacy’s dispensing system and providing fills and deliveries of medications requested by Facility prior to the Delivery Date.

1.2 General: During the term of this Agreement, Pharmacy shall:

- (a) provide Pharmacy Products to Facility and its residents in a prompt and timely manner in accordance with Applicable Law;

- (b) render Pharmacy Services to Facility and its residents in accordance with Applicable Law;
- (c) provide House Stock to Facility upon request;
- (d) label all Pharmacy Products in accordance with Applicable Law;
- (e) maintain a drug profile on each Facility resident serviced by Pharmacy;
- (f) make a representative of Pharmacy available for attendance at Facility's quality assurance committee, infection control committee and other committee meetings that relate to Pharmacy Products and Services, with reasonable prior notice and during regularly scheduled visits to Facility;
- (g) conduct, when requested by Facility and as mutually agreed to by Pharmacy and Facility, in-service education programs on subjects related to Pharmacy Products and Services, said programs to be conducted by a pharmacist or his/her designee during regularly scheduled visits to Facility;
- (h) provide drug information and consultation to Facility's licensed professional staff regarding Pharmacy Products ordered;
- (i) furnish to Facility, upon request, reasonable and appropriate information relating to the provision of Pharmacy Products and Services, including Pharmacy's policies and procedures; and
- (j) collaborate with Facility to coordinate pharmacy documentation processes.

1.3 Delivery Schedule: Pharmacy shall deliver Pharmacy Products to Facility pursuant to the delivery schedule set forth in Schedule 3.1 or as otherwise mutually agreed by the parties. In the event that Pharmacy does not make any delivery required hereunder, Facility may obtain such delivery from a third party pharmacy provider, but only as to such failed delivery.

1.4 Emergency Drug Services:

- (a) If permitted by Applicable Law and requested by Facility, Pharmacy shall provide, maintain and replenish, in a prompt and timely manner, an emergency drug supply ("E-Kit"). E-Kits shall be the property of Pharmacy as prescribed by Applicable Law. All withdrawals from E-Kits by Facility personnel shall be pursuant to a valid physician order in compliance with Applicable Law.
- (b) Pharmacy shall provide any Pharmacy Product needed on an emergency basis as promptly as is reasonably practicable. In the event Pharmacy cannot furnish a Pharmacy Product ordered on an emergency basis in a reasonably prompt manner, Pharmacy shall use its best efforts to determine whether another pharmacy provider is capable of providing such Pharmacy Product to Facility more promptly than Pharmacy. If so,

Pharmacy shall make arrangements with such other pharmacy provider to provide such Pharmacy Product to Facility. Pharmacy shall notify Facility of any such arrangement.

1.5 Physician Order Sheets, Medication Administration Records and Treatment Records: Pharmacy shall provide computerized Physician Order Sheets (“POSs”), Medication Administration Records (“MARs”) and Treatment Records (“TRs”) to Facility upon request.

1.6 Equipment:

- (a) Subject to Applicable Law, Pharmacy shall furnish, at its expense, a reasonable number of medication carts, facsimile machines and other equipment for its provision of Pharmacy Products and Services under this Agreement.
- (b) Pharmacy shall, at its expense, be responsible for ongoing maintenance and repairs of equipment provided to Facility in accordance with this Section 1.6, unless the need for such maintenance and/or repair is due to the abuse of such equipment by Facility personnel. In such event, the expense for maintenance and repairs, to the extent necessitated by such abuse, will be borne by Facility.
- (c) Pharmacy will not provide any ancillary supplies relating to equipment (e.g., paper, ink, toner cartridges, etc.) unless Facility pays Pharmacy for the fair market value of such supplies.
- (d) All equipment provided pursuant to this Section 1.6 shall remain the property of Pharmacy.
- (e) Facility shall use any equipment furnished by Pharmacy only for Pharmacy-related business.
- (f) Facility and Pharmacy shall work together to instruct Facility’s personnel to utilize the equipment properly.

1.7 Dispensing: Pharmacy Products shall be dispensed in accordance with Schedule 1.7.

2. RESPONSIBILITIES OF FACILITY

2.1 General: During the term of this Agreement, Facility shall:

- (a) implement Pharmacy’s policies and procedures;
- (b) make available to Pharmacy adequate working and storage space to allow Pharmacy to perform its obligations under this Agreement including, but not limited to, adequate space for the storage of medication carts, containers, cards and other equipment provided by Pharmacy; and give Pharmacy access to all facilities and supplies

reasonably necessary for the performance of Pharmacy's obligations under this Agreement;

- (c) give Pharmacy access to all resident records;
- (d) promptly notify Pharmacy of any changes in resident medication upon receipt of physicians' orders;
- (e) promptly notify Pharmacy of any room transfer or the discharge of any resident;
- (f) provide to each resident, or the resident's responsible party, all applicable Pharmacy notices of privacy practices, policies and procedures; and
- (f) provide Pharmacy with updated census information on a daily basis for each day during which there is a change in census information.

2.2 Residents' Right to Choose: Facility shall comply with Applicable Law regarding a resident's right to choose his or her own pharmacy provider. Facility shall require each Electing Resident to specify such election in writing; and Facility shall provide a copy of such election to Pharmacy.

2.3 Admissions Protocol: Upon the admission of each new resident to Facility, Facility shall provide information to such resident about the Pharmacy Products and Services provided by Pharmacy under this Agreement in accordance with the standard admissions protocol of Omnicare, which shall be provided to Facility by Pharmacy. Additionally, Facility shall provide to each resident, or the resident's sponsor, any applicable policies and procedures of Pharmacy. Facility shall inform its residents upon admission and upon any change in the resident's reimbursement coverage that Pharmacy will not honor any third party payor arrangements whereby Pharmacy receives a payment for Pharmacy Products and Services which is less than the payment Pharmacy would receive for such Pharmacy Products and Services under the applicable state Medicaid program if such resident were covered by such state Medicaid program.

2.4 Billing Data and Reimbursement Status: Facility shall:

- (a) provide Pharmacy with all necessary resident acknowledgement and billing data including, but not limited to, Medicare and Medicaid numbers, resident name, responsible party, billing address, phone number, physician names and any other pertinent data required by Pharmacy, at time of admission and as changes occur;
- (b) notify Pharmacy as to the reimbursement source for each resident;
- (c) be responsible for obtaining appropriate billing consent signatures with respect to each resident for whom Pharmacy performs billing services; and furnish Pharmacy with original copies of such signatures; and

(d) obtain and tender to Pharmacy all original consents, acknowledgments or authorizations reasonably requested by Pharmacy.

2.5 Pharmacy Documents: Facility shall not reproduce or permit the reproduction of Pharmacy's documents, manuals or forms, nor circulate such items to any individual or entity, except as necessary to ensure proper administration of the provision of Pharmacy Products and Services.

2.6 Policies and Procedures for Usage of Outside Pharmacies: In order to ensure proper medical care, the provision of cost-effective Pharmacy Products and Services, and lower the risk of medication errors and nursing time, Facility shall require all outside pharmacies to comply with Facility's policies and procedures for the provision of Pharmacy Products and Services that are applicable to Pharmacy, including, at a minimum, provisions for reporting, packaging and labeling of all items dispensed in a manner consistent with the dispensing system utilized by Facility.

3. BILLING

3.1 Compensation: Pricing for Pharmacy Products and Services that are provided at the expense of Facility (e.g., under the Medicare prospective payment system, capitated managed care arrangements, and Non-Covered Medications) ("Facility-Pay Products and Services") and House Stock (if any) shall be at the rates specified in Schedule 3.1.

To the extent set forth on Schedule 3.1, a minimum charge will be charged for each Pharmacy Product dispensed by Pharmacy.

To the extent set forth on Schedule 3.1, Facility will pay Pharmacy a restocking fee for each item returned to Pharmacy for restocking.

To the extent set forth on Schedule 3.1, Facility will pay the Pharmacy a compounding fee for each compounded non-infusion Pharmacy Product dispensed by Pharmacy.

To the extent set forth on Schedule 3.1, Facility will pay the Pharmacy a Controlled Substance fee for each Controlled Substance Pharmacy Product dispensed by Pharmacy.

In the event the Pharmacy determines during the term of this Agreement that the rates and pricing terms for Facility-Pay Products and Services are less than Pharmacy's actual cost of providing such products and services and/or the fair market value of such products and services, Pharmacy may adjust the rates and pricing terms as specified in a written notice from Pharmacy to Facility. In the event Facility objects to the pricing adjustment Facility shall have the right to terminate the Agreement with thirty (30) days advance written notice within thirty (30) days of receipt of any written notice to Facility.

3.2 Billing and Collection:

- (a) Pharmacy shall bill and collect for Pharmacy Products and Services to be reimbursed by third party payors (e.g., Medicare Part D, private insurance and Medicaid).
- (b) Pharmacy shall bill and collect for Pharmacy Products and Services provided to private pay residents.
- (c) Pharmacy shall bill Facility for Facility-Pay Products and Services, House Stock (if any), and other fees for which Facility is responsible under this Agreement.
- (d) Facility shall assist Pharmacy in collecting payment from private pay residents and from residents whose third-party insurance is not honored by Pharmacy.

3.3 Payment Terms:

- (a) Pharmacy shall submit a monthly invoice to Facility for Facility-Pay Products and Services, House Stock (if any), and other fees for which Facility is responsible under this Agreement, which were provided during, or relate to, the prior month.
- (b) Facility shall remit payment in full within thirty (30) days of the date of such invoice (the "Payment Terms"). At Pharmacy's option, payments shall be applied to interest and late charge penalties first and then any remainder will be applied to the principal sum.
- (c) All payments by Facility under this Agreement shall be made by check, wire transfer, or electronic funds transfer. Payment by credit card will not be accepted.

3.4 Payment Disputes:

- (a) Facility shall notify Pharmacy of any amounts in dispute within forty-five (45) days of the date of an invoice (the "Invoice Date"). No charge on an invoice may be disputed more than forty-five (45) days after the Invoice Date.
- (b) Notwithstanding subsection (a), Facility shall pay all charges on the applicable invoice in accordance with the Payment Terms. Any charge that is not paid in accordance with the Payment Terms may not be disputed pursuant to subsection (a). If a dispute is resolved in favor of Facility with regard to a charge that has been paid by Facility, a credit will be issued as soon as is practicable.
- (c) In the event of any dispute arising from a claim or bill submitted by Pharmacy, Pharmacy shall have access to all reasonable and necessary documents and records that would, in the discretion of Pharmacy, tend to sustain its claim. Further, where Facility is an intermediary in the

processing of claims, Facility shall promptly furnish to Pharmacy any information regarding the status of the claim; and will grant to any fiscal agency involved the right to discuss the status of the claim with Pharmacy.

3.5 Non-Covered Medications: Schedule 3.5 shall be applicable when a third-party payer that is the primary payer denies a claim with regard to a Non-Covered Medication (as defined in Schedule 3.5), and there is no immediate resolution.

3.6 Medicaid Pending Residents: The following procedures shall apply to residents (i) for whom a properly completed application has been submitted to the applicable state Medicaid program (“Medicaid”), and (ii) who Facility reasonably believes meet all applicable requirements for Medicaid coverage (“Medicaid-Pending Residents”).

- (a) Neither Facility nor any responsible party shall be obligated to pay for Pharmacy Products and Services provided to Medicaid-Pending Residents for a period of ninety (90) days after Pharmacy commences providing such products and services to such resident (the “Suspension Period”); provided, however, that the Suspension Period shall end on the date that Medicaid denies coverage for such resident (if applicable).
- (b) During the Suspension Period charges for Pharmacy Products and Services provided to Medicaid-Pending Residents shall be processed in the same manner as charges for Pharmacy Products and Services provided to private pay residents. Responsible parties will receive a monthly invoice for charges incurred.
- (c) The Suspension Period shall end at the earlier of Pharmacy receiving notification that Medicaid approved pharmacy benefits coverage for a Medicaid-Pending Resident or Facility notifying Pharmacy of pharmacy benefits coverage approval for a Medicaid-Pending Resident. Facility shall promptly notify Pharmacy of any pay status changes for Medicaid Pending Residents, including the effective date of Medicaid coverage for pharmacy benefits (the “Coverage Date”).
- (d) If Medicaid approves coverage for a Medicaid-Pending Resident but does not designate a Coverage Date that covers all dates of service, resident or resident’s responsible party shall be responsible for charges for Pharmacy Products and Services provided to such resident prior to the Coverage Date (other than charges that are covered by Medicare Part D or another third party payor).
- (e) If Medicaid denies coverage resident or resident’s responsible party shall be responsible for all charges for Pharmacy Products and Services provided to the applicable resident (other than charges that are covered by Medicare Part D or another third party payor) effective as of the date that service commenced (the “Service Date”).

- (f) If Medicaid has not approved coverage by the last day of the Suspension Period, resident or resident's responsible party shall be responsible for charges for Pharmacy Products and Services provided to such resident since the Service Date (other than charges that are covered by Medicare Part D or another third party payor). If Medicaid subsequently approves coverage then resident or resident's responsible party shall be credited for charges paid by it with regard to the period on and after the Coverage Date.
- (g) If Medicaid denies a claim for the provision of a medication during the Suspension Period Facility shall be responsible for payment of such non-covered medication.
- (h) If Facility is required to pay for charges in accordance with this section, Pharmacy shall invoice Facility for such charges in accordance with Section 3.3(a); and Facility shall pay such charges in accordance with Section 3.3(b).

3.7 No Available Payer: Notwithstanding any other provision of this Agreement, Pharmacy shall not be obligated to provide Pharmacy Products and Services for which a payer has not been identified, or if Pharmacy reasonably believes that the identified payer would be unable or unwilling to pay for such products and services.

4. TERM AND TERMINATION

4.1 Duration: The term of this Agreement shall commence as of the Commencement Date, and shall continue in effect, unless sooner terminated as herein provided, until the first (1st) anniversary of the Delivery Date. Upon the expiration of the initial term and each renewal term, the term of this Agreement shall automatically be renewed for an additional term of one (1) year unless after the initial term either party shall have given sixty (60) days written notice of termination to the other party.

4.2 Default and Termination:

- (a) In the event that Facility fails to pay any invoice on or prior to the due date, Pharmacy, at its option with five (5) days advance written notice to Facility, shall have the right to: (i) declare all of Pharmacy's outstanding invoices to Facility immediately due and payable in full; and (ii) require Facility to pay on a COD or other cash in advance basis for all Facility-Pay Products and Services and House Stock provided or delivered to Facility until all of Pharmacy's invoices to Facility are current according to their respective terms. In the event that Facility fails to pay any invoice within ten (10) days of the due date, Pharmacy, at its option with three (3) days advance written notice to Facility, shall have the right to (i) terminate this Agreement, or (ii) charge Default Pricing to Facility for Facility-Pay Products and Services and House Stock until all of Pharmacy's invoices to Facility are current according to their respective terms, notwithstanding Section 3.1 of this Agreement.

- (b) If either party materially defaults in any of its obligations under this Agreement (other than a default to which Section 4.2(a) applies), and such default is not cured within thirty (30) days following delivery of written notice from the non-defaulting party this Agreement will terminate. In the case of a default by Pharmacy with regard to any material obligation under Section 1 of this Agreement, if the parties agree on a plan of correction prior to the end of the foregoing cure period then such default shall be deemed to have been cured for purposes of this subsection; provided, however, that any material default under such plan of correction shall be deemed to be a default under this subsection.
- (c) Facility hereby acknowledges that in the event that a resident of Facility is not current in its payments to Pharmacy, Pharmacy shall have the right (in addition to any rights it might have under this Agreement or Applicable Law), to (i) cease the provision of Pharmacy Products and Services to such resident, or (ii) require such resident to pay on a COD or other cash in advance basis for all Pharmacy Products and Services provided to such resident.

4.3 Effect of Termination:

- (a) The provisions of this Agreement shall survive the expiration or termination hereof to the extent necessary to protect the rights and remedies of Pharmacy with respect to any unpaid charges or fees relating to the period prior to the effectiveness of such expiration or termination.
- (b) Expiration or termination of this Agreement shall not relieve either party from liability for any breach of this Agreement occurring prior to the effectiveness of such expiration or termination.
- (c) Upon expiration or termination of this Agreement, Facility shall return to Pharmacy, in good working condition, all equipment and other Pharmacy property provided to Facility under this Agreement including, without limitation, all formulary documents, manuals, forms and any other documents, information, or materials belonging to Pharmacy.
- (d) Sections 3.4, 4.3, 6.2, 6.3, 7 and 8 shall survive the expiration or termination of this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 General:

- (a) Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered by such party and constitutes its valid and binding obligation.
- (b) Each party represents and warrants to the other party that it is a corporation or other recognized legal business entity duly organized, validly existing, and in good standing under the laws of the state in which it is organized, incorporated, and/or operating.

- (c) Each party represents and warrants to the other party that the execution and delivery of this Agreement, and the performance of such party's obligations hereunder do not and will not (i) conflict with or violate any requirement of Applicable Law, or (ii) conflict with, or constitute a default under, any contractual obligation of that party, including contractual obligations with any other healthcare or pharmacy provider.

5.2 Regulatory:

- (a) Pharmacy represents and warrants to Facility that it and each of its employees, agents, and contractors that will provide Pharmacy Products and Services under this Agreement holds and shall maintain in good standing throughout the term of this Agreement, all licenses, permits, registrations, certifications and authorizations in all applicable jurisdictions where such licenses, permits, registrations, certifications and authorizations are necessary to provide such Pharmacy Products and Services.
- (b) Facility represents and warrants to Pharmacy that it and each of its employees, agents and contractors holds and shall maintain in good standing throughout the term of this Agreement, all licenses, permits, registrations, certifications and authorizations that are legally required in connection with the operation of Facility and the performance of its obligations under this Agreement.
- (c) Each party represents and warrants to the other party that neither such party, nor any employee, agent or contractor of such party who is expected to perform obligations under this Agreement, has been excluded from participation in any federal health care program (as defined under 42 U.S.C. Section 1320a-7b(f)).

6. COVENANTS

- 6.1 **Compliance with Healthcare Laws:** Pharmacy and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with all applicable statutes, regulations, rules, orders, ordinances and other laws of any governmental entity to which this Agreement and the parties' obligations under this Agreement are subject with respect to healthcare regulatory matters (including, without limitation, Sections 1128, 1128A and 1128B(b) of the Social Security Act, as amended, 42 U.S.C. §§1320a-7, 1320a-7a and 1320a-7b(b), commonly referred to as the "Medicare and Medicaid Exclusion Statute," the "Civil Money Penalties Statute," and the "Federal Anti-Kickback Statute," respectively, and 31 U.S.C. § 3729, as amended, the statute commonly referred to as the "Federal False Claims Act," and all statutes and regulations related to the possession, distribution, maintenance and documentation of controlled substances) ("Healthcare Laws"). Pharmacy and Facility hereby represent and warrant that, to their best knowledge, no circumstances currently exist which can reasonably be expected to result in a material violation of any Healthcare Law by Pharmacy or Facility in connection with, or which can reasonably be expected to affect, their respective performance under this Agreement. Pharmacy and Facility hereby certify that

they will not violate the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) with respect to their performance under this Agreement. The parties acknowledge and agree that each party to an arrangement or transaction relating to CVS Health's business line of institutional pharmacy services operations that is between Omnicare and any actual source of health care business or referrals to Omnicare and involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value and who meets the definition of a Covered Person under Omnicare's Corporate Integrity Agreement shall complete at least one hour of training regarding the Anti-Kickback Statute and examples of arrangements that potentially implicate the Anti-Kickback Statute. CVS Health's Code of Conduct and Anti-Kickback Statute Policies and Procedures are available to Facility at <http://cvshealth.com/codeofconduct> and <http://cvshealth.com/CIApolicy>.

6.2 HIPAA Compliance: Pharmacy and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with the Health Insurance Portability and Accountability Act and its implementing regulations (including, without limitation, the privacy regulations adopted at 45 C.F.R. Parts 160 and 164 and the code set regulations adopted at 45 C.F.R. Parts 160 and 162), as they may be amended from time to time (collectively referred to as "HIPAA").

6.3 Confidentiality:

- (a) Pharmacy recognizes and acknowledges that, by virtue of entering into this Agreement and providing Pharmacy Products and Services to Facility hereunder, Pharmacy and its staff will have access to Confidential Information of Facility ("Facility Confidential Information"). Pharmacy agrees that, except as otherwise required by Applicable Law, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of Facility, any Facility Confidential Information, except as reasonably required to perform its obligations under this Agreement.
- (b) Facility recognizes and acknowledges that, by virtue of entering into this Agreement Facility and its staff will have access to certain Confidential Information of Pharmacy ("Pharmacy Confidential Information"). Facility agrees that, except as otherwise required by Applicable Law including the California Public Records Act, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of Pharmacy, any Pharmacy Confidential Information, except as reasonably required to perform its obligations under this Agreement.
- (c) Upon termination of this Agreement by either party for any reason whatsoever, each party shall, upon request from the other party, forthwith return to the other party (or destroy), all material constituting or containing Confidential Information of the other party, and the

returning party will not thereafter use, appropriate or reproduce such information or disclose such information to any third party.

- (d) If either party is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demand or similar process), in connection with any proceeding, to disclose any Confidential Information of the other party, such party seeking to disclose (the “Disclosing Party”) will give the other party (the “Protected Party”) prompt written notice of such request or requirement so that the Protected Party may seek an appropriate protective order or other remedy or waive compliance with the provisions of this Agreement, and the Disclosing Party will cooperate with the Protected Party to obtain such protective order. If such protective order or other remedy is not obtained or the Protected Party waives compliance with the relevant provisions of this Agreement, the Disclosing Party will furnish only that portion of the Confidential Information that, in the written opinion of its legal counsel, is legally required to be disclosed and, upon the request of the Protected Party, use its best efforts to obtain assurances that confidential treatment will be accorded to such information.
- (e) Failure by either party to strictly comply with the provisions of this section shall be a material breach of this Agreement. Each party acknowledges that this is a continuing obligation, and that such obligations shall survive the termination of this Agreement. Each party further acknowledges that the restrictions contained herein are reasonable and necessary to protect the legitimate business interests of the other party and that any violation thereof by one party would result in irreparable harm to the other party. Accordingly, in the event of an actual or a threatened breach by either party of the provisions of this section, the other party shall be entitled to pursue from any court of competent jurisdiction a preliminary or permanent injunction enjoining the breaching party from disclosing such information. Nothing herein shall be construed as prohibiting either party from pursuing any other remedies available to it whether in equity or at law for such breach or threatened breach, including the recovery of damages.
- (f) Each party shall retain ownership of its respective Confidential Information. Nothing herein shall be construed as a license or grant of rights to the other party to use such information, except in connection with such party’s performance under this Agreement.

7. INDEMNIFICATION

7.1 Right to Indemnification:

- (a) Pharmacy hereby agrees to indemnify and hold harmless Facility and its employees, officers, managers, directors, shareholders, agents and Affiliates (the “Facility Indemnitees”), from and against all charges, claims, causes of action, damages, expenses and liability (including reasonable attorneys’ fees), asserted against, imposed upon, or incurred

by, any Facility Indemnitee in connection with the death of, or bodily injury to, any Person that arises or results from any breach by Pharmacy of its obligations under this Agreement. Notwithstanding the foregoing, Pharmacy shall not be responsible by indemnity or otherwise to the extent that any injury or death is caused by or results from an act or omission to act by a Facility Indemnitee or others not agents, employees or Affiliates of Pharmacy.

- (b) Facility hereby agrees to indemnify and hold harmless Pharmacy and its employees, officers, managers, directors, shareholders, agents and Affiliates (the "Pharmacy Indemnitees"), from and against all charges, claims, causes of action, damages, expenses and liability (including reasonable attorneys' fees) asserted against, imposed upon, or incurred by, any Pharmacy Indemnitee in connection with the death of, or bodily injury to, any Person that arises or results from any breach by Facility of its obligations under this Agreement. Notwithstanding the foregoing, Facility shall not be responsible by indemnity or otherwise to the extent that any injury or death is caused by or results from an act or omission to act by a Pharmacy Indemnitee or others not agents, employees or Affiliates of Facility.

7.2 Procedure for Indemnification: A Facility Indemnitee or Pharmacy Indemnitee, as applicable (an "Indemnitee") shall give the applicable indemnifying party under Section 7.1 (the "Indemnitor") written notice of any claim for indemnification hereunder within thirty (30) days after the Indemnitee (a) receives notice of a claim for which indemnification is sought, or (b) determines that an event of which it is aware is likely to give rise to a claim for indemnification; and the Indemnitee will give copies to the Indemnitor of all information and documents relating to such claim or potential claim that are received by the Indemnitee within twenty (20) days after the Indemnitee's receipt thereof or, if applicable, within twenty (20) days after Indemnitee makes the determination referred to in clause (b); provided, however, that the failure of the Indemnitee to give notice or deliver copies of information or documents within the specified time periods shall not limit the Indemnitee's right to claim indemnification hereunder except to the extent that the Indemnitor can demonstrate that it was actually damaged by the failure to give notice or provide information or documents within the specified time periods. The Indemnitor will have the right to defend any action, proceeding, claim, demand or assessment giving rise to a claim for indemnification hereunder, and to select counsel for any third party claim, which counsel shall be reasonably satisfactory to the Indemnitee, all at the sole cost and expense of the Indemnitor; provided, however, that the Indemnitee will be allowed, at its expense, to participate in such defense; provided, further, that no settlement shall be entered into without the approval of the Indemnitee; provided further, that in the event the Indemnitor proposes in good faith to settle a claim on terms acceptable to the third party claimant and the Indemnitor is ready, willing and able to completely satisfy the claim on such terms but the Indemnitee does not consent to the settlement on such terms, the Indemnitee shall be responsible for all liability or expenses (including reasonable legal expenses and costs) with respect to such claim which exceed the proposed settlement amount, including all legal expenses and costs incurred after the date the Indemnitor initially gave notice to the Indemnitee

seeking its consent to the proposed settlement. Notice of the Indemnitor's intention to defend any such action, proceeding, claim, demand or assessment shall be given to the Indemnitee within thirty (30) days after the Indemnitee shall have notified the Indemnitor of the claim (but in all events at least five [5] business days prior to the date that an answer or other response is due to be filed or made). In the event the Indemnitor elects not to defend any such action, proceeding, claim, demand or assessment giving rise to an indemnification claim hereunder, Indemnitee shall have the right to so defend at the sole cost and expense of the Indemnitor.

8. MISCELLANEOUS

8.1 Material Change in Law: In the event that, after the date of this Agreement, there is a material change in law, rule or regulation (including, but not limited to, reimbursement levels under any governmental program) which results in this Agreement or the parties' performance of their obligations hereunder being in violation of Applicable Law, or which would result in the parties' continued performance hereunder having a material adverse effect on either party (in either case, a "Material Change"), the parties shall negotiate in good faith with one another to amend this Agreement so as to eliminate the effect of such Material Change, provided that such amendment shall conform as closely as possible to the original terms of this Agreement.

8.2 Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and each of their respective successors and permitted assigns. Except as otherwise provided in this Section 8.2, this Agreement shall not be assigned, in whole or in part by any party hereto, without the prior written consent of the other party.

(a) Upon the sale or disposition of the assets or operations of Facility (a "Facility Disposition"), which shall be deemed to include, but not be limited to, the assignment or other disposition of any leasehold interest or operating agreement with respect to Facility), Facility shall (i) provide Pharmacy and Omnicare at least thirty (30) days advance written notice of such transaction, and (ii) assign and cause the assumption of this Agreement (or cause any Person that purchases or otherwise acquires Facility to enter into an agreement with Pharmacy in form and substance identical to this Agreement) for the period from the effective date of such Facility Disposition to the date of expiration of the then-current term of this Agreement. Any failure of Facility to comply with this subsection (a) shall constitute a material breach of this Agreement.

(b) Upon the sale or disposition of the assets or operations of Pharmacy, Pharmacy shall (i) provide Facility at least ten (10) business days advance written notice of such transaction, and (ii) assign this Agreement to the Person that purchases or otherwise acquires Pharmacy.

(c) Pharmacy may assign its rights and delegate its duties and obligations under this Agreement to any other licensed entity which is owned, directly or indirectly, by Omnicare, provided that Facility is within the geographic service area of such assignee.

- 8.3 Relationship Between Parties:** Under this Agreement, Pharmacy is acting solely as a vendor of Pharmacy Products and Services and House Stock (if applicable) to Facility. As such, Pharmacy and each of its employees will, at all times, be independent contractors to Facility. Neither Pharmacy nor Facility is for any purpose an agent, partner or employee of the other; and this Agreement does not constitute a joint venture between the parties, their Affiliates, or any of their respective successors or assigns.
- 8.4 Interest:** If any amount is not paid when due under this Agreement, the party owed such amount shall have the right to assess the other party interest on such unpaid amount at the rate of one and five-tenths percent (1.5%) per month, or the maximum rate allowed by Applicable Law, if less. The party owed such interest may accrue the interest from the date the other party's payment is due and may continue to accrue the interest until receipt of payment by the receiving party. Either party's failure to request or demand payment of any interest will not constitute a waiver of that party's right to receive such interest.
- 8.5 Force Majeure:** If either party fails to perform its obligations hereunder (except for the obligation to pay money) because of strikes, accidents, acts of God, weather conditions, action or inaction of any governmental or other proper authority, or other causes beyond such party's control, such failure to perform will not be deemed a default hereunder and will be excused without penalty until such time as said party is capable of performing.
- 8.6 Notices:** Notices or communications to be given under this Agreement will be given to the respective parties in writing, and shall be deemed given if provided as set forth below to the addresses set forth below or to such other addresses and to such other persons as either party may from time to time designate by notice given as herein provided. Such notices or communications will be deemed to have been given upon (a) personal delivery, (b) three (3) business days after being sent by registered or certified mail, postage prepaid, or (c) one (1) business day after delivery to a reputable overnight delivery service for overnight delivery, in each case addressed as follows:

To Facility:

Southern Inyo Healthcare District
doing business as
Southern Inyo Hospital-SNF
501 E. Locust
Lone Pine, CA 93545
Attn: Administrator

To Pharmacy:

Evergreen Pharmaceutical of California, Inc.
doing business as
Omnicare of Southern California
8220 Remmet Avenue
Canoga Park, CA 91304
Attn: General Manager

With Required Copy to:

Omnicare, Inc.
900 Omnicare Center
201 East Fourth Street
Cincinnati, OH 45202
Attn: General Counsel

- 8.7 Remedies for Breach:** The rights and remedies of the parties hereunder shall be cumulative and shall be enforceable in equity as well as at law; provided, however, that nothing contained herein is intended to, nor shall it, limit or affect any rights at law, by statute or otherwise, of any party aggrieved. The parties acknowledge that in the event of a breach of the provisions hereof, damages at law will be difficult to ascertain and will be an inadequate remedy, and consequently upon any breach or threatened breach hereof the obligations of the parties contained herein shall be enforceable by specific performance, injunction or other equitable remedy.
- 8.8 No Solicitation:** During the term of this Agreement neither party nor any Affiliate thereof shall, directly or indirectly, without the prior written consent of the other party, solicit, employ or contract with any employee of such other party or any Affiliate thereof.
- 8.9 Dispute Resolution:** The parties agree to meet and confer in good faith to resolve, through discussions between the parties, any disputes that arise from or are related to this Agreement.
- 8.10 Civil Rights:** Pharmacy will comply with Title VI of the Civil Rights Act of 1964 and §§ 503-504 of the Rehabilitation Act of 1973 and all requirements imposed by or pursuant to the applicable civil rights regulations of the Department of Health and Human Services.
- 8.11 Choice of Law, Choice of Venue, Waiver of Certain Defenses and Service of Process.** Notwithstanding the definition of Applicable Law herein, the rights and obligations of the parties under this Agreement shall be governed by and construed and enforced in accordance with the substantive law of the State of California, without regard to conflicts of law principles. The parties stipulate and agree that the state and federal courts of the State of California shall have exclusive jurisdiction over any dispute or controversy between the parties arising under or relating to this Agreement, to the exclusion of any and all other possible venues; and each party by its execution of this Agreement irrevocably submits to the personal and subject matter jurisdiction of the California courts and waives any defense of lack of jurisdiction, improper venue, or forum non conveniens. Each party hereto further consents to service of process in the manner provided for service of notice set out in Section 8.6 hereof, and waives any defense of improper service if service is effected as provided therein.
- 8.12 Waiver:** Waiver by either party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement will

be considered waived by either party except when such waiver is given in writing.

8.13 Access to Records:

- (a) Pursuant to 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the provision of Pharmacy Products and Services under this Agreement, Pharmacy shall make available, upon written request of the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States Government Accountability Office or any of their duly authorized representatives, a copy of this Agreement, and such books, documents, and records as are necessary to certify to the nature and extent of the costs of the Pharmacy Products and Services provided under this Agreement.
- (b) Pharmacy agrees that in the event that it carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of the United States Department of Health and Human Services or upon request of the Comptroller General of the United States Government Accountability Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

8.14 Entire Agreement; Amendment: This Agreement and any amendments or addenda hereto or thereto constitute the entire agreement between the parties regarding the subject matter hereof, and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written, pertaining thereto. This Agreement may be amended or modified only by a writing duly executed by both parties.

8.15 Severability: If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless doing so will materially alter the rights or obligations of either party.

8.16 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same agreement.

8.17 Construction: Each party acknowledges that it has been represented by legal counsel of its selection in the negotiation of this Agreement, each of which has participated in the drafting and negotiation of this Agreement. Accordingly, any rule of construction which construes this Agreement against the drafting party

shall have no application in the interpretation and enforcement of this Agreement.

[Signature page follows]

The undersigned represent that they are duly authorized to execute this Agreement on behalf of the party for whom they sign; and such party shall be bound by the terms of this Agreement.

Southern Inyo Healthcare District
doing business as
Southern Inyo Hospital-SNF

By: _____

Name and Title: _____

Date of Execution: _____

Evergreen Pharmaceutical of California, Inc.
doing business as
Omnicare of Southern California

By: _____

Name and Title: _____

Date of Execution: _____

EXHIBIT A

Definitions

Capitalized terms used in this Agreement and not otherwise defined herein shall have the following meanings:

“Affiliate” shall mean, as to any Person, any other Person controlling, controlled by or under common control with such Person. For purposes of the foregoing definition, “control” shall mean the direct or indirect power to direct or cause the direction of the management of a Person, by ownership of equity securities, by contract, or otherwise, and shall be deemed to exist with respect to any entity as to which the Person in question owns, directly or indirectly, twenty percent (20%) or more of the outstanding voting rights.

“AWP” shall mean average wholesale price as reported by such third-party pricing service (e.g., First DataBank or Medi-Span) as Pharmacy may utilize from time-to-time; provided, that if AWP is no longer reported by a third-party pricing service acceptable to Pharmacy, or is modified so as to no longer represent the same percentage of the WAC or equivalent prices published by manufacturers that applied under the third-party pricing service used by Pharmacy prior to such modification or cessation of publication, Pharmacy may amend this Agreement with written notice to Facility to substitute another pricing measure that is then in use generally in the pharmacy industry, and/or make any modifications to the pricing formulas hereunder which Pharmacy reasonably determines may be necessary to prevent such change from having an economic effect on the pricing under this Agreement.

“Confidential Information” shall mean (a) any information communicated by one party (the “Disclosing Party”) to the other (the “Receiving Party”), which is identified as proprietary or confidential by the Disclosing Party, or which would be reasonably understood to be the type of information which should be treated as proprietary or confidential and (b) non-public information provided by one party to the other in accordance with the terms of this Agreement, or in connection with the performance of this Agreement; provided, that with respect to clauses (a) and (b) the following shall not be deemed Confidential Information: (i) information that is known to the Receiving Party prior to the time of disclosure to it, to the extent evidenced by written records or other competent proof, and not acquired directly or indirectly from the other party; (ii) information that is independently developed by employees, agents, or independent contractors of the Receiving Party without reference to or reliance upon the information furnished by the Disclosing Party, as evidenced by written records or other competent proof; (iii) information disclosed to the Receiving Party by a third party that is not legally prohibited from disclosing such information, provided that such information was not acquired directly or indirectly from the other party; and (iv) any other information that is or becomes part of the public domain through no fault or negligence of the Receiving Party. Without limitation of the foregoing, Pharmacy’s Confidential Information shall include, but not be limited to, any and all information made available to Facility by Pharmacy under this Agreement except as required by the California Public Records Act.

“Default Pricing” shall mean one hundred twenty five percent (125%) of the pricing set forth in Section 3.1 of this Agreement or the Pharmacy Consultant Agreement, as applicable.

“Electing Resident” shall mean a Facility resident who elects to use another pharmacy provider in accordance with Applicable Law.

“Part D Drugs” shall have the meaning set forth at 42 C.F.R. § 423.100, as the same may be modified or supplemented from time to time.

“Part D Plan” shall mean a “Part D Plan” as defined at 42 C.F.R. § 423.4, as well as the “Part D Sponsor” of such Part D Plan as defined at 42 C.F.R. § 423.4, in each case as the same may be modified or supplemented from time to time.

“Person” shall mean any individual, corporation, partnership, limited liability company, governmental authority, or other legal entity of any nature whatsoever.

“WAC” shall mean wholesale acquisition cost as reported by such third-party pricing service (e.g., First DataBank or Medi-Span) as Pharmacy may utilize from time to time; provided that if WAC is no longer reported by a third-party pricing service acceptable to Pharmacy, or is modified so as to result in a change in the parties' relative economic positions under this Agreement, Pharmacy may amend this Agreement with written notice to Facility to substitute another pricing measure that is then in use generally in the pharmacy industry, and/or make any modifications to the pricing formulas hereunder which Pharmacy reasonably determines may be necessary to prevent such change from having an economic effect on the pricing under this Agreement.

SCHEDULE 1.7

Dispensing

1. **General.**
 - (a) Medications will be provided in thirty (30) day or thirty-one (31) day fills, as determined by the Pharmacy.
 - (b) Notwithstanding subsection (a), if Facility or resident is located in a state that does not permit unused drugs to be returned for credit (a “Non-Return State”), fourteen (14) day or fifteen (15) day fills, as determined by Pharmacy will be provided.
 - (c) Fills shorter than those specified in subsections (a) or (b), as applicable, will be provided if the Pharmacy and Facility so agree.
2. **Dispensing Fees.** To the extent set forth on Schedule 3.1, a dispensing fee shall be payable with respect to each fill.
3. **Miscellaneous.**
 - (a) Whether a state is a Non-Return State will be determined as of the applicable dispensing date on a prescription by prescription basis.
 - (b) Any failure by Pharmacy to charge a dispensing fee in accordance with this schedule at the time a prescription is filled will not operate as, or be construed to be, a waiver of Facility’s obligation to pay, or the Pharmacy’s right to charge and collect, such fee.
 - (c) Any returns of medications and related credits, if any, shall be governed by Applicable Law and the Pharmacy’s policies and procedures.

SCHEDULE 3.5

Procedures with respect to Non-Covered Medications

When a third-party payer that is the primary payer (e.g., Medicare Part D, Medicaid, managed care organizations, HMOs) denies a claim with regard to a medication (a “Non-Covered Medication”) and there is not an immediate resolution (e.g., medication is non-formulary or subject to prior authorization), the following procedures shall apply:

- (a) If Pharmacy is unable to obtain a prescription for an alternative medication that is covered by the third-party payer, Pharmacy, in its discretion, shall dispense a seven-day or a ten-day supply of the Non-Covered Medication (a “Temporary Supply”), and Facility shall be responsible for payment with respect to such Temporary Supply. Pharmacy will continue to dispense Temporary Supplies of the Non-Covered Medication until (i) the medication is changed to a medication that is covered by the third-party payer, or (ii) Facility provides written notice to Pharmacy directing it not to dispense any further Temporary Supplies of such Non-Covered Medication.
- (b) Facility shall be responsible for paying Pharmacy’s charges for all Temporary Supplies dispensed in accordance with paragraph (a) of this Schedule 3.5 at the rates set forth in Section 3.1 to this Agreement; provided, however, that Facility shall not be obligated to pay any portion of such charges for which Pharmacy has received actual payment from the a third-party payer, the resident, or any other source; and if Pharmacy receives any such payment after billing Facility, Pharmacy shall issue a credit to Facility equal to the amount received by Pharmacy from Facility.
- (c) In the event Facility provides written notice to Pharmacy directing it not to dispense any further Temporary Supplies of a Non-Covered Medication, (i) Facility shall be responsible to pay Pharmacy for any medication that was dispensed prior to Pharmacy’s receipt of such notice, and (ii) Pharmacy shall not be obligated to provide the applicable medication for the applicable resident unless and until the administrator of Facility (or his/her authorized designee) expressly accepts responsibility for payment of the given medication in writing. Any such subsequent authorization shall obligate Facility to pay for such medication.
- (d) In the event that Facility has completed and provided to Pharmacy a "Facility Non-Covered Rules" or similar form (the "Facility Instructions"), and there is a conflict between the Facility Instructions and the procedures set forth in this paragraph 1, the Facility Instructions shall be controlling (to the extent of such conflict) with respect to Non-Covered Medications.

PHARMACY PRODUCTS AND SERVICES

NON IV'S AND NON TPNs

Facility Pricing Contract Terms (Patient Specific) - Rx Brands (All Except IV & TPN):	WAC-0.4%+\$4.00
Facility Pricing Contract Terms (Patient Specific) - Rx Generics (All Except IV & TPN):	AWP-80%+\$4.00
Facility Pricing Contract Terms (Patient Specific) - OTC Brands (All Except IV & TPN):	WAC+30%+\$1.99
Facility Pricing Contract Terms (Patient Specific) - OTC Generics (All Except IV & TPN):	WAC+30%+\$1.99
House Stock:	(B) WAC+12.5% (G) AWP-35%
Minimums - Rx (Fee per Fill):	None
Minimums - OTC (Fee per Fill):	None
Controlled Substance Fee (Schedules 2,3,4,5) (Fee per Fill (Additional to Dispensing Fee)):	None
Compound Fee Non-Infusion (Fee per Fill (Additional to Dispensing Fee)):	None
Scheduled Deliveries Per Day:	2
Restocking Fee (Rx Specific):	None

IV PRICING	Medication Fee	Supply Fee	Basis
All IV Push/Injectable Medications & Additives (sent separately):	Same as Oral Price Terms		
Billed to Facility: IV Hydration: All Volumes (including Potassium & Pharmacy Additives):	\$10.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: TPN: 1 Liter (Up to 1000ml) (Includes dextrose, AA, Electrolytes, Trace Elements, Lipids & Pharmacy Additives):	\$90.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: TPN: 2 Liter (1001ml to 2000ml) (Includes dextrose, AA, Electrolytes, Trace Elements, Lipids & Pharmacy Additives):	\$100.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: TPN: 3 Liter (2001ml and greater) (Includes dextrose, AA, Electrolytes, Trace Elements, Lipids & Pharmacy Additives):	\$110.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Antibiotics - Infusion (drug, solution & diluents): QD	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Antibiotics - Infusion (drug, solution & diluents): BID	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Antibiotics - Infusion (drug, solution & diluents): TID	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Antibiotics - Infusion (drug, solution & diluents): QID+	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV 24 Hour Hydration/Antibiotic Bag w/ >1 dose per bag Surcharge (when requested by the facility):		\$7.50	Per Day
Billed to Facility: IV Pain - Infusion (continuous infusion (drug, solution & diluents)):	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Chemo - Infusion (drug, solution & diluents):	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: All Other IV Therapies Not Specified (drug, solution & diluents):	(B) WAC+5%+\$8.00 (G) AWP-40%+\$8.00	Invoice Cost + 25%	No Per Diem
Billed to Facility: IV Flushes:	Same as Oral Price Terms		
Billed to Facility: Specialty Pump (Sigma Spectrum, CADD, Curlin, Gemstar):	Fee For Service Rental Rate	\$8.00	Per Day
Billed to Facility: Standard Pole Mounted Pump (Baxter 6201):	Fee For Service Rental Rate	\$8.00	Per Day
Billed to Facility: IV Catheter Care Supplies (Not Including Flush):	Not Applicable	Invoice Cost + 25%	Not Applicable
House Stock: House Stock - IV Supplies:	Invoice Cost + 25%		
House Stock: House Stock - Pump (if applicable):	Fee For Service Rental Rate	\$75.00	Per Month

INFUSION NURSING SERVICES	Service Fee	Service Basis	Supply Fee
Infusion Nurse - Peripheral IV Insertion:	\$180.00	Per Insertion	Invoice Cost + 25%
Infusion Nurse - Midline IV Insertion:	\$375.00	Per Insertion	Invoice Cost + 25%
Infusion Nurse - PICC Insertion:	\$425.00	Per Insertion	Invoice Cost + 25%
Infusion Nurse - PICC Removal/Non-Tunneled Catheter:	\$180.00	Per Removal	Invoice Cost + 25%
Infusion Nurse - Declot/Repair Central Catheter (De-clotting agents are NOT included in the infusion nursing fee):	\$180.00	Per Repair	Invoice Cost + 25%
Infusion Nurse - After Hours Fee:	\$75.00	Per Visit	
Infusion Nurse - Additional Hours Required to Complete Service:	\$75.00	Per Hour	
Infusion Nurse - Consulting Service:	\$75.00	Per Hour	
Infusion Nurse Services - Third Party Company Utilized:	All Charges 100% Pass Through of Invoiced Cost		

NURSING EDUCATION/CERTIFICATION PROGRAMS	Live Class Fee	Live Class Basis	Live Class Attendance Requirement
Parenteral Nutrition (TPN, PPN):	\$50.00	Fee Per Person Per Day	Minimum 4, Maximum 12
Vascular Access Devices:	\$50.00	Fee Per Person Per Day	Minimum 4, Maximum 12
Pain Management - Patient Controlled Analgesia (PCA):	\$50.00	Fee Per Person Per Day	Minimum 4, Maximum 12
Management of Inotropics in the Heart Failure Resident:	\$50.00	Fee Per Person Per Day	Minimum 6, Maximum 12
Clearing Thrombotic Occlusions in Central Vascular Access Devices:	\$50.00	Fee Per Person Per Day	Minimum 4, Maximum 12
IV Push Administration:	\$25.00	Fee Per Person Per Day	Minimum 6, Maximum 12
Hypodermoclysis:	\$50.00	Fee Per Person Per Day	Minimum 6, Maximum 12
PICC Removal:	\$50.00	Fee Per Person Per Day	Minimum 4, Maximum 12
Documentation/IV POS/MAR Forms:	\$25.00	Fee Per Person Per Day	Minimum 6, Maximum 12
Essentials of Infusion Therapy - 2 Day Class:	\$75.00	Fee Per Person Per Day	Minimum 8, Maximum 12
Medication Assistant Courses offered by Nurse - Full Course:	\$75.00	Fee Per Person Per Day	Minimum 8, Maximum 12
Medication Assistant Courses offered by Nurse - Refresher Course:	\$55.00	Fee Per Person Per Day	Minimum 8, Maximum 12
Other Nurse Education Services: (Including, But Not Limited To: Facility Requested Infusion Audit, Facility Survey Preparation or Follow-Up, Other Facility Requested On-Site Infusion Training)	\$75.00	Fee Per Hour (1 Hour Minimum)	Minimum 4, Maximum 12
Infusion Nurse Education/Certification - Third Party Company Utilized:	All Charges 100% Pass Through of Invoiced Cost		

NURSING EDUCATION/CERTIFICATION PROGRAMS - ONLINE COURSES	Fee Per Participant
IV Push Administration:	\$15.00
Hypodermoclysis:	\$15.00
Role of the Licensed Nurse in Preventing Bloodstream Infections:	\$15.00
CVAD Removal:	\$15.00
Parenteral Nutrition:	\$25.00
Pain Management - Patient Controlled Analgesia (PCA):	\$25.00
Management of Inotropics in the Heart Failure Resident:	\$25.00
Clearing Thrombotic Occlusions in Central Vascular Access Devices:	\$25.00
Vascular Access Devices:	\$50.00
Essentials of Infusion Therapy-2 Day Class:	\$75.00

Pricing Comments:

No fee on E-Kit/ADU

All references to states Maximum Allowable Cost (MAC), Federal Upper Limit (FUL), Direct Cost (Direct), Wholesale Acquisition Cost (WAC) and Average Wholesale Price (AWP) refer to values as reported by such third-party pricing service (e.g., First DataBank or Medi-Span) as pharmacy may utilize from time to time.

Flu Vaccine pricing is determined on an annual basis. Please contact your local pharmacy provider for the current pricing details.

Infusion Supply/Pump Per Diem or Per Dose Charges:

1) Shall only be applied to a specific resident for each day of use. IV Supply Per Diem charges include all IV Pumps and disposable IV Supplies that are clinically appropriate and necessary to administer IV medications in compliance with Omnicare Infusion Policy, FDA, INS, and OSHA requirements and guidelines. These may include: IV Pumps (unless otherwise specified on Schedule 3.1), Infusion Sets/Tubing, peripheral IV catheters, IV start kits, CVAD dressing change kits, needle-less supplies/connections, etc. Diluents, Prefilled IV Flush Syringes, and Elastomeric Devices are not included in Per Diem or Per Dose charges unless otherwise noted.

2) Per Dose Charges - The Per Dose Fees will be applied to each IV Dose that is dispensed unless noted otherwise.

3) Per Diem Charges - The Per Diem Fees will be applied to each drug dispensed for each day of service unless otherwise noted. (EXAMPLE: If a patient receives 2 different IV Antibiotic drugs for 7 days, with Drug A administered once per day and drug B administered twice per day, the QD Per Diem Fee will be applied to Drug A with a quantity of 7 and the BID Per Diem Fee will be applied to Drug B with a quantity of 7).

Infusion House Stock - Pump:

Infusion (IV) Pumps are assigned on a per Patient basis from the Pharmacy; or once removed from House Stock. All IV Pumps shall be returned within seven (7) days after discontinuation of Patient's therapy. In no event shall Facility utilize a Pump for another Patient other than the Patient it is assigned to, without returning the Pump to Pharmacy for cleaning, disinfection, and volumetric testing. In the event that Facility fails to return the Pump within the seven (7) day period, and at Omnicare's discretion, the Facility shall pay Pharmacy the daily pump rental fee or the daily per diem fee for each day the pump is not returned past the 7 day period. If not returned after 30 days, Omnicare reserves the right to bill the facility an amount equal to the replacement value of the Pump determined by Omnicare at that time.

Infusion Nursing Services:

1) If IV Nursing or IV Educational Services are contracted by Omnicare to an outside IV Nursing Agency, the rates of the outside vendor will be used by Omnicare to charge the service provided to the Omnicare customer.

Infusion Nursing Education:

1) Pharmacy may charge the contracted rate for the program if facility cancels Infusion Education less than 15 days prior to schedule date of the class.

PHARMACY CONSULTANT AGREEMENT

THIS PHARMACY CONSULTANT AGREEMENT (this "Agreement"), dated as of January 18, 2019 (the "Commencement Date"), is by and between Evergreen Pharmaceutical of California, Inc. doing business as Omnicare of Southern California, located at 8220 Remmet Avenue, Canoga Park, CA 91304 ("Pharmacy"), and Southern Inyo Healthcare District doing business as Southern Inyo Hospital-SNF, located at 501 E. Locust, Lone Pine, CA 93545 ("Facility").

RECITALS

- A. Facility is engaged in the operation of a nursing facility, for which it requires pharmacy consultant services ("Consultant Services") in accordance with local, state and federal laws, rules and regulations ("Applicable Law").
- B. Pharmacy provides Consultant Services to long-term care facilities and their residents in accordance with Applicable Law.
- C. Simultaneously herewith, Facility and Pharmacy have entered into a Pharmacy Products and Services Agreement (the "Pharmacy Products and Services Agreement"), pursuant to which Pharmacy will provide Pharmacy Products and Services to Facility.
- D. Facility desires to utilize Consultant Services provided by Pharmacy, and Pharmacy is willing to provide Consultant Services to Facility.
- E. Capitalized terms used herein which are not defined shall have the meanings given to such terms in the Pharmacy Products and Services Agreement.

AGREEMENT

In consideration of the mutual agreements and promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree and covenant as follows:

1. RESPONSIBILITIES OF PHARMACY

- (a) For the benefit of Facility, Pharmacy shall appoint an individual or group of individuals (individually, the "Consultant") to provide the Consultant Services set forth in Schedule 1-A hereto, in accordance with Applicable Law and the State Operations Manual, Appendix PP, "Guidance to Surveyors for Long Term Care Facilities," §§ 483.60(a)-(e) (the "Surveyor Guidance"). At the election of Facility, Pharmacy shall also provide one or more of the optional Consultant Services described in Schedule 1-B hereto. At the option of Pharmacy Consultant Services may be performed off-site if permitted by Applicable Law.
- (b) **Commencement Date and Delivery Date:** From the Commencement Date through February 1, 2019 (the "Delivery Date"), Pharmacy may undertake preparatory servicing activities which may be necessary for Pharmacy to provide Pharmacy Products and Services as of the Delivery Date or as otherwise may be requested by Facility prior to the Delivery Date. Such preparatory servicing activities may include, but are not limited to, preparing cycle fill dispenses for delivery on or about the Delivery Date, profiling residents in Pharmacy's

dispensing system and providing fills and deliveries of medications requested by Facility prior to the Delivery Date. Pharmacy may also provide Consulting Services as may be necessary to support the preparatory servicing activities prior to the Delivery Date.

2. RESPONSIBILITIES OF FACILITY

Facility shall:

- (a) make available to Consultant adequate working space to allow Consultant to perform its obligations under this Agreement; and
- (b) provide Consultant and his/her designees with access to all resident records.

3. COMPENSATION FOR CONSULTANT SERVICES

3.1 Compensation: Pricing for Consultant Services rendered pursuant to this Agreement shall be as set forth in Schedule 3.1 hereto; provided, however, that such fees shall be subject to annual adjustment, as specified in a written notice from Pharmacy to Facility, in the event that Pharmacy's actual cost of providing Consultant Services hereunder and/or the fair market value of such Consultant Services exceeds such fees.

3.2 Billing and Collection: Pharmacy shall bill Facility for Consultant Services provided under this Agreement.

3.3 Payment Terms:

- (a) Pharmacy shall submit a monthly invoice to Facility for Consultant Services provided to Facility under this Agreement during the prior month. Such invoices may be combined with invoices provided to Facility under the Pharmacy Products and Services Agreement.
- (b) Facility shall remit payment in full within thirty (30) days of the date of such invoice (the "Payment Terms"). At Pharmacy's option, payments shall be applied to interest and late charge penalties first and then any remainder will be applied to the principal sum.
- (c) All payments by Facility under this Agreement shall be made by check, wire transfer or electronic funds transfer. Payment by credit card will not be accepted.

3.4 Payment Disputes:

- (a) Facility shall notify Pharmacy of any amounts in dispute within forty-five (45) days of the date of an invoice (the "Invoice Date"). No charge on an invoice may be disputed more than forty-five (45) days after the Invoice Date.
- (b) Notwithstanding subsection (a), Facility shall pay all charges on the applicable invoice in accordance with the Payment Terms. Any charge

that is not paid in accordance with the Payment Terms may not be disputed pursuant to subsection (a). If a dispute is resolved in favor of Facility with regard to a charge that has been paid by Facility, a credit will be issued as soon as is practicable.

- (c) In the event of any dispute arising from a claim or bill submitted by Pharmacy, Pharmacy shall have access to all reasonable and necessary documents and records that would, in the discretion of Pharmacy, tend to sustain its claim.

4. TERM AND TERMINATION

4.1 Duration: The term of this Agreement shall commence as of the Commencement Date, and shall continue in effect, unless sooner terminated as herein provided, until the first (1st) anniversary of the Delivery Date. Upon the expiration of the initial term and each renewal term, the term of this Agreement shall automatically be renewed for an additional term of one (1) year unless after the initial term either party shall have given sixty (60) days written notice of termination to the other party. Notwithstanding the foregoing, this Agreement shall terminate on the date of expiration or termination of the Pharmacy Products and Services Agreement.

4.2 Default and Termination:

- (a) In the event that Facility fails to pay any invoice on or prior to the due date, Pharmacy, at its option with five (5) days advance written notice to Facility, shall have the right to: (i) declare all of Pharmacy's outstanding invoices to Facility immediately due and payable in full; and (ii) require Facility to pay on a COD or other cash in advance basis for all Consultant Services provided to Facility until all of Pharmacy's invoices to Facility are current according to their respective terms. In the event that Facility fails to pay any invoice within ten (10) days of the due date Pharmacy, at its option with three (3) days advance written notice to Facility, shall have the right to terminate this Agreement.
- (b) If either party materially defaults in any of its obligations under this Agreement (other than a default to which Section 4.2(a) applies), and such default is not cured within thirty (30) days following delivery of written notice from the non-defaulting party this Agreement will terminate.

4.3 Effect of Termination:

- (a) The provisions of this Agreement shall survive the expiration or termination hereof to the extent necessary to protect the rights and remedies of Pharmacy with respect to any unpaid Consultant Services provided prior to effectiveness of such expiration or termination.
- (b) Expiration or termination of this Agreement shall not relieve either party from liability for any breach of this Agreement occurring prior to the effectiveness of such expiration or termination.

- (c) Upon expiration or termination of this Agreement, Facility shall return to Pharmacy, in good condition, all Pharmacy property provided to Facility under this Agreement.
- (d) Sections 3.4, 4.3, 4.4, 6.2, 6.3, 7 and 8 shall survive the expiration or termination of this Agreement.

5. REPRESENTATIONS AND WARRANTIES

5.1 General:

- (a) Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered by such party and constitutes its valid and binding obligation.
- (b) Each party represents and warrants to the other party that it is a corporation or other recognized legal business entity duly organized, validly existing, and in good standing under the laws of the state in which it is organized, incorporated, and/or operating.
- (c) Each party represents and warrants to the other party that the execution and delivery of this Agreement, and the performance of such party's obligations hereunder do not and will not (i) conflict with or violate any requirement of Applicable Law, or (ii) conflict with, or constitute a default under, any contractual obligation of that party, including contractual obligations with any other healthcare or pharmacy provider.

5.2 Regulatory:

- (a) Pharmacy represents and warrants to Facility that it and each of its employees, agents, and contractors that will provide Consultant Services under this Agreement holds and shall maintain in good standing throughout the term of this Agreement, all licenses, permits, registrations, certifications and authorizations in all applicable jurisdictions where such licenses, permits, registrations, certifications and authorizations are necessary to provide such services.
- (b) Facility represents and warrants to Pharmacy that it and each of its employees, agents and contractors holds and shall maintain in good standing throughout the term of this Agreement, all licenses, permits, registrations, certifications and authorizations that are legally required in connection with the operation of Facility and the performance of its obligations under this Agreement.
- (c) Each party represents and warrants to the other party that neither such party, nor any employee, agent or contractor of such party who is expected to perform obligations under this Agreement, has been excluded from participation in any federal health care program (as defined under 42 U.S.C. Section 1320a-7b(f)).

6. COVENANTS

- 6.1 Compliance with Healthcare Laws:** Pharmacy and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with all applicable statutes, regulations, rules, orders, ordinances and other laws of any governmental entity to which this Agreement and the parties' obligations under this Agreement are subject with respect to healthcare regulatory matters (including, without limitation, Sections 1128, 1128A and 1128B(b) of the Social Security Act, as amended, 42 U.S.C. §§1320a-7, 1320a-7a and 1320a-7b(b), commonly referred to as the "Medicare and Medicaid Exclusion Statute," the "Civil Money Penalties Statute," and the "Federal Anti-Kickback Statute," respectively, and 31 U.S.C. § 3729, as amended, the statute commonly referred to as the "Federal False Claims Act," and all statutes and regulations related to the possession, distribution, maintenance and documentation of controlled substances) ("Healthcare Laws"). Pharmacy and Facility hereby represent and warrant that, to their best knowledge, no circumstances currently exist which can reasonably be expected to result in a material violation of any Healthcare Law by Pharmacy or Facility in connection with, or which can reasonably be expected to affect, their respective performance under this Agreement. Pharmacy and Facility hereby certify that they will not violate the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) with respect to their performance under this Agreement. The parties acknowledge and agree that each party to an arrangement or transaction relating to CVS Health's business line of institutional pharmacy services operations that is between Omnicare and any actual source of health care business or referrals to Omnicare and involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value and who meets the definition of a Covered Person under Omnicare's Corporate Integrity Agreement shall complete at least one hour of training regarding the Anti-Kickback Statute and examples of arrangements that potentially implicate the Anti-Kickback Statute. CVS Health's Code of Conduct and Anti-Kickback Statute Policies and Procedures are available to Facility at <http://cvshealth.com/codeofconduct> and <http://cvshealth.com/CIApolicy>.
- 6.2 HIPAA Compliance:** Pharmacy and Facility hereby covenant that in performing their respective obligations under this Agreement, they will comply in all material respects with the Health Insurance Portability and Accountability Act and its implementing regulations (including, without limitation, the privacy regulations adopted at 45 C.F.R. Parts 160 and 164 and the code set regulations adopted at 45 C.F.R. Parts 160 and 162), as they may be amended from time to time (collectively referred to as "HIPAA").
- 6.3 Confidentiality:**
- (a) Pharmacy recognizes and acknowledges that, by virtue of entering into this Agreement and providing Consultant Services to Facility hereunder, Pharmacy and its staff will have access to Confidential Information of Facility ("Facility Confidential Information"). Pharmacy agrees that, except as otherwise required by Applicable Law, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of Facility,

any Facility Confidential Information, except as reasonably required to perform its obligations under this Agreement.

- (b) Facility recognizes and acknowledges that, by virtue of entering into this Agreement Facility and its staff will have access to certain Confidential Information of Pharmacy (“Pharmacy Confidential Information”). Facility agrees that, except as otherwise required by Applicable Law including the California Public Records Act, neither it nor any of its employees, agents or consultants will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of Pharmacy, any Pharmacy Confidential Information, except as reasonably required to perform its obligations under this Agreement.
- (c) Upon termination of this Agreement by either party for any reason whatsoever, each party shall, upon request from the other party, forthwith return to the other party (or destroy), all material constituting or containing Confidential Information of the other party, and the returning party will not thereafter use, appropriate or reproduce such information or disclose such information to any third party.
- (d) If either party is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demand or similar process), in connection with any proceeding, to disclose any Confidential Information of the other party, such party seeking to disclose (the “Disclosing Party”) will give the other party (the “Protected Party”) prompt written notice of such request or requirement so that the Protected Party may seek an appropriate protective order or other remedy or waive compliance with the provisions of this Agreement, and the Disclosing Party will cooperate with the Protected Party to obtain such protective order. If such protective order or other remedy is not obtained or the Protected Party waives compliance with the relevant provisions of this Agreement, the Disclosing Party will furnish only that portion of the Confidential Information that, in the written opinion of its legal counsel, is legally required to be disclosed and, upon the request of the Protected Party, use its best efforts to obtain assurances that confidential treatment will be accorded to such information.
- (e) Failure by either party to strictly comply with the provisions of this section shall be a material breach of this Agreement. Each party acknowledges that this is a continuing obligation, and that such obligations shall survive the termination of this Agreement. Each party further acknowledges that the restrictions contained herein are reasonable and necessary to protect the legitimate business interests of the other party and that any violation thereof by one party would result in irreparable harm to the other party. Accordingly, in the event of an actual or a threatened breach by either party of the provisions of this section, the other party shall be entitled to pursue from any court of competent jurisdiction a preliminary or permanent injunction enjoining the breaching party from disclosing such information. Nothing herein

shall be construed as prohibiting either party from pursuing any other remedies available to it whether in equity or at law for such breach or threatened breach, including the recovery of damages.

- (f) Each party shall retain ownership of its respective Confidential Information. Nothing herein shall be construed as a license or grant of rights to the other party to use such information, except in connection with such party's performance under this Agreement.

7. INDEMNIFICATION

7.1 Right to Indemnification:

- (a) Pharmacy hereby agrees to indemnify and hold harmless Facility and its employees, officers, managers, directors, shareholders, agents and Affiliates (the "Facility Indemnitees"), from and against all charges, claims, causes of action, damages, expenses and liability (including reasonable attorneys' fees), asserted against, imposed upon, or incurred by, any Facility Indemnitee in connection with the death of, or bodily injury to, any Person that arises or results from any breach by Pharmacy of its obligations under this Agreement. Notwithstanding the foregoing, Pharmacy shall not be responsible by indemnity or otherwise to the extent that any injury or death is caused by or results from an act or omission to act by a Facility Indemnitee or others not agents, employees or Affiliates of Pharmacy.
- (b) Facility hereby agrees to indemnify and hold harmless Pharmacy and its employees, officers, managers, directors, shareholders, agents and Affiliates (the "Pharmacy Indemnitees"), from and against all charges, claims, causes of action, damages, expenses and liability (including reasonable attorneys' fees) asserted against, imposed upon, or incurred by, any Pharmacy Indemnitee in connection with the death of, or bodily injury to, any Person that arises or results from any breach by Facility of its obligations under this Agreement. Notwithstanding the foregoing, Facility shall not be responsible by indemnity or otherwise to the extent that any injury or death is caused by or results from an act or omission to act by a Pharmacy Indemnitee or others not agents, employees or Affiliates of Facility.

- 7.2 Procedure for Indemnification:** A Facility Indemnitee or Pharmacy Indemnitee, as applicable (an "Indemnitee") shall give the applicable indemnifying party under Section 7.1 (the "Indemnitor") written notice of any claim for indemnification hereunder within thirty (30) days after the Indemnitee (a) receives notice of a claim for which indemnification is sought, or (b) determines that an event of which it is aware is likely to give rise to a claim for indemnification; and the Indemnitee will give copies to the Indemnitor of all information and documents relating to such claim or potential claim that are received by the Indemnitee within twenty (20) days after the Indemnitee's receipt thereof or, if applicable, within twenty (20) days after Indemnitee makes the determination referred to in clause (b); provided, however, that the failure of the Indemnitee to give notice or deliver copies of information or documents within

the specified time periods shall not limit the Indemnitee's right to claim indemnification hereunder except to the extent that the Indemnitor can demonstrate that it was actually damaged by the failure to give notice or provide information or documents within the specified time periods. The Indemnitor will have the right to defend any action, proceeding, claim, demand or assessment giving rise to a claim for indemnification hereunder, and to select counsel for any third party claim, which counsel shall be reasonably satisfactory to the Indemnitee, all at the sole cost and expense of the Indemnitor; provided, however, that the Indemnitee will be allowed, at its expense, to participate in such defense; provided, further, that no settlement shall be entered into without the approval of the Indemnitee; provided further, that in the event the Indemnitor proposes in good faith to settle a claim on terms acceptable to the third party claimant and the Indemnitor is ready, willing and able to completely satisfy the claim on such terms but the Indemnitee does not consent to the settlement on such terms, the Indemnitee shall be responsible for all liability or expenses (including reasonable legal expenses and costs) with respect to such claim which exceed the proposed settlement amount, including all legal expenses and costs incurred after the date the Indemnitor initially gave notice to the Indemnitee seeking its consent to the proposed settlement. Notice of the Indemnitor's intention to defend any such action, proceeding, claim, demand or assessment shall be given to the Indemnitee within thirty (30) days after the Indemnitee shall have notified the Indemnitor of the claim (but in all events at least five [5] business days prior to the date that an answer or other response is due to be filed or made). In the event the Indemnitor elects not to defend any such action, proceeding, claim, demand or assessment giving rise to an indemnification claim hereunder, Indemnitee shall have the right to so defend at the sole cost and expense of the Indemnitor.

8. MISCELLANEOUS

8.1 Material Change in Law: In the event that, after the date of this Agreement, there is a material change in law, rule or regulation (including, but not limited to, reimbursement levels under any governmental program) which results in this Agreement or the parties' performance of their obligations hereunder being in violation of Applicable Law, or which would result in the parties' continued performance hereunder having a material adverse effect on either party (in either case, a "Material Change"), the parties shall negotiate in good faith with one another to amend this Agreement so as to eliminate the effect of such Material Change, provided that such amendment shall conform as closely as possible to the original terms of this Agreement.

8.2 Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and each of their respective successors and permitted assigns. Except as otherwise provided in this Section 8.2, this Agreement shall not be assigned, in whole or in part by any party hereto, without the prior written consent of the other party.

(a) Upon the sale or disposition of the assets or operations of Facility (a "Facility Disposition"), which shall be deemed to include, but not be limited to, the assignment or other disposition of any leasehold interest or operating agreement with respect to Facility), Facility shall (i) provide

Pharmacy and Omnicare at least thirty (30) days advance written notice of such transaction, and (ii) assign and cause the assumption of this Agreement (or cause any Person that purchases or otherwise acquires Facility to enter into an agreement with Pharmacy in form and substance identical to this Agreement) for the period from the effective date of such Facility Disposition to the date of expiration of the then-current term of this Agreement. Any failure of Facility to comply with this subsection (a) shall constitute a material breach of this Agreement.

- (b) Upon the sale or disposition of the assets or operations of Pharmacy, Pharmacy shall (i) provide Facility at least ten (10) business days advance written notice of such transaction, and (ii) assign this Agreement to the Person that purchases or otherwise acquires Pharmacy.
- (c) Pharmacy may assign its rights and delegate its duties and obligations under this Agreement to any other licensed entity which is owned, directly or indirectly, by Omnicare, provided that Facility is within the geographic service area of such assignee.

8.3 Relationship Between Parties: Under this Agreement, Pharmacy is acting solely as a vendor of Consultant Services to Facility. As such, Pharmacy and each of its employees will, at all times, be independent contractors to Facility. Neither Pharmacy nor Facility is for any purpose an agent, partner or employee of the other; and this Agreement does not constitute a joint venture between the parties, their Affiliates, or any of their respective successors or assigns.

8.4 Interest: If any amount is not paid when due under this Agreement, the party owed such amount shall have the right to assess the other party interest on such unpaid amount at the rate of one and five-tenths percent (1.5%) per month, or the maximum rate allowed by Applicable Law, if less. The party owed such interest may accrue the interest from the date the other party's payment is due and may continue to accrue the interest until receipt of payment by the receiving party. Either party's failure to request or demand payment of any interest will not constitute a waiver of that party's right to receive such interest.

8.5 Force Majeure: If either party fails to perform its obligations hereunder (except for the obligation to pay money) because of strikes, accidents, acts of God, weather conditions, action or inaction of any governmental or other proper authority, or other causes beyond such party's control, such failure to perform will not be deemed a default hereunder and will be excused without penalty until such time as said party is capable of performing.

8.6 Notices: Notices or communications to be given under this Agreement will be given to the respective parties in writing, and shall be deemed given if provided as set forth below to the addresses set forth below or to such other addresses and to such other persons as either party may from time to time designate by notice given as herein provided. Such notices or communications will be deemed to have been given upon (a) personal delivery, (b) three (3) business days after being sent by registered or certified mail, postage prepaid, or (c) one (1) business day after delivery to a reputable overnight delivery service for overnight delivery, in each case addressed as follows:

To Facility:

Southern Inyo Healthcare District
doing business as
Southern Inyo Hospital-SNF
501 E. Locust
Lone Pine, CA 93545
Attn: Administrator

To Pharmacy:

Evergreen Pharmaceutical of California, Inc.
doing business as
Omnicare of Southern California
8220 Remmet Avenue
Canoga Park, CA 91304
Attn: General Manager

With Required Copy to:

Omnicare, Inc.
900 Omnicare Center
201 East Fourth Street
Cincinnati, OH 45202
Attn: General Counsel

- 8.7 Remedies for Breach:** Subject to Section 4.4, the rights and remedies of the parties hereunder shall be cumulative and shall be enforceable in equity as well as at law; provided, however, that nothing contained herein is intended to, nor shall it, limit or affect any rights at law, by statute or otherwise, of any party aggrieved. The parties acknowledge that in the event of a breach of the provisions hereof, damages at law will be difficult to ascertain and will be an inadequate remedy, and consequently upon any breach or threatened breach hereof the obligations of the parties contained herein shall be enforceable by specific performance, injunction or other equitable remedy.
- 8.8 No Solicitation:** During the term of this Agreement neither party nor any Affiliate thereof shall, directly or indirectly, without the prior written consent of the other party, solicit, employ or contract with any employee of such other party or any Affiliate thereof.
- 8.9 Dispute Resolution:** The parties agree to meet and confer in good faith to resolve, through discussions between the parties, any disputes that arise from or are related to this Agreement.
- 8.10 Civil Rights:** Pharmacy will comply with Title VI of the Civil Rights Act of 1964 and §§ 503-504 of the Rehabilitation Act of 1973 and all requirements imposed by or pursuant to the applicable civil rights regulations of the Department of Health and Human Services.

8.11 Choice of Law, Choice of Venue, Waiver of Certain Defenses, and Service of Process. Notwithstanding the definition of Applicable Law herein, the rights and obligations of the parties under this Agreement shall be governed by and construed and enforced in accordance with the substantive law of the State of California, without regard to conflicts of law principles. The parties stipulate and agree that the state and federal courts of the State of California shall have exclusive jurisdiction over any dispute or controversy between the parties arising under or relating to this Agreement, to the exclusion of any and all other possible venues; and each party by its execution of this Agreement irrevocably submits to the personal and subject matter jurisdiction of the California courts and waives any defense of lack of jurisdiction, improper venue, or forum non conveniens. Each party hereto further consents to service of process in the manner provided for service of notice set out in Section 8.6 hereof, and waives any defense of improper service if service is effected as provided therein.

8.12 Waiver: Waiver by either party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement will be considered waived by either party except when such waiver is given in writing.

8.13 Access to Records:

- (a) Pursuant to 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the provision of Consultant Services under this Agreement, Pharmacy shall make available, upon written request of the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States Government Accountability Office or any of their duly authorized representatives, a copy of this Agreement, and such books, documents, and records as are necessary to certify to the nature and extent of the costs of the Consultant Services provided under this Agreement.
- (b) Pharmacy agrees that in the event that it carries out any of its duties under this Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of the United States Department of Health and Human Services or upon request of the Comptroller General of the United States Government Accountability Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

8.14 Entire Agreement; Amendment: This Agreement, the Pharmacy Products and Services Agreement, and any amendments or addenda hereto or thereto constitute the entire agreement between the parties regarding the subject matter hereof, and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written, pertaining thereto. This

Agreement may be amended or modified only by a writing duly executed by both parties.

- 8.15 Severability:** If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless doing so will materially alter the rights or obligations of either party.
- 8.16 Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute one and the same agreement.
- 8.17 Construction:** Each party acknowledges that it has been represented by legal counsel of its selection in the negotiation of this Agreement, each of which has participated in the drafting and negotiation of this Agreement. Accordingly, any rule of construction which construes this Agreement against the drafting party shall have no application in the interpretation and enforcement of this Agreement.

[Signature page follows]

The undersigned represent that they are duly authorized to execute this Agreement on behalf of the party for whom they sign; and such party shall be bound by the terms of this Agreement.

**Southern Inyo Healthcare District
doing business as
Southern Inyo Hospital-SNF**

By: _____

Name and Title: _____

Date of Execution: _____

**Evergreen Pharmaceutical of California, Inc.
doing business as
Omnicare of Southern California**

By: _____

Name and Title: _____

Date of Execution: _____

SCHEDULE 1-A

Required Consultant Services

1. Consultant shall provide consultation regarding all material aspects of providing pharmaceutical services to Facility. A written report regarding the provision of pharmaceutical services will be provided to Facility quarterly (or more frequently if required by Applicable Law).
2. Consultant shall collaborate with Facility and Facility's medical director to:
 - (a) develop, implement, evaluate, and revise (as necessary) procedures for the provision of pharmaceutical services; and
 - (b) strive to assure that medications and/or biologicals are requested, received and administered in a timely manner as ordered by the authorized prescriber (in accordance with Applicable Law).
3. Consultant shall assist Facility in determining that residents' medication therapy is necessary and appropriate.
4. Consultant shall conduct a medication regimen review ("MRR") for each Facility resident at least once a month.
5. Consultant shall identify any irregularities as defined in the State Operations Manual.
6. Within three (3) business days of conducting an MRR, Consultant will provide a summary report to the attending physician and the Facility's director of nursing which (a) documents that no irregularity was identified, or (b) reports any irregularities. Consultant may utilize electronic signatures to create and/or authenticate reports and records relating to all MRRs and may transmit such records and reports to the attending physician and the Facility's director of nursing via electronic means (if such method is determined to be most effective for providing notification), in accordance with the terms of this Agreement, Pharmacy's information security and privacy policies, and any other laws applicable thereto.
7. For residents anticipated to stay less than thirty (30) days or with an acute change of condition, Consultant will provide, upon the written request of Facility, an Interim Medication Regimen Review ("iMRR").
8. Consultant and Facility shall develop a procedure to apply when an attending physician does not respond to such report or fails to document the basis for his/her disagreement with such report.
9. Consultant shall assist Facility in determining that medications are labeled in accordance with federal and state labeling requirements and accepted standards of practice.
10. Consultant shall assist Facility in reviewing the safe and secure storage of medications in locked compartments under proper temperature controls in accordance with manufacturers' specifications.

11. Consultant shall assist Facility in developing and implementing safeguards and systems to control, account for, and periodically reconcile controlled medications.
12. Where permitted by Applicable Law, pharmacy assistants/technicians and nurse consultants will assist Consultant in determining Facility compliance with Applicable Law with respect to labeling and storage of medications.

SCHEDULE 1-B

Optional Consultant Services

The Consultant may collaborate with Facility and/or Facility's medical director to develop, implement, perform, participate in, or advise with respect to, any of the following:

- (a) medication observation evaluations of Facility's capabilities;
- (b) meetings in addition to the quarterly Quality Assurance Committee meeting;
- (c) Facility staff in-service educational programs beyond two (2) per year;
- (d) non-financial audits relating to the provision of medications;
- (e) potential narcotic diversion investigations;
- (f) family and/or resident council activities;
- (g) Facility accreditation assistance;
- (h) drug utilization and/or evaluation activities at the request of Facility;
- (i) assistance in preparing for Facility surveys;
- (j) narcotic and/or drug destruction, regardless of whether such task is required by Applicable Law;
- (k) anticoagulation dosing as requested by a prescriber; and/or
- (l) services provided by Consultant as part of corrective action plans.

Clinical Services

	Service Fee	Service Basis
Consulting Pharmacist (Required Services):	\$72.25	Per Hour
Consulting Pharmacist (Optional Services):	\$72.25	Per Hour
iMRR (Medication Regimen Review):	\$10.00	Per Occurrence
Consultant Services - Registered Nurse (RN):	\$55.00	Per Hour
Consultant Services - Licensed Practical Nurse (LPN):	\$40.00	Per Hour
Consultant Services - Pharmacy Technician:	\$35.00	Per Hour

RURAL HEALTH CLINIC PHYSICIAN AGREEMENT

This Rural Health Clinic Physician Agreement (“Agreement”) is entered into by and between Southern Inyo Healthcare District (“District”) and Todd Farrer (“PHYSICIAN”), as of February 1, 2019.

RECITALS

A. District owns and operates Southern Inyo Hospital (“Hospital”) located in Lone Pine, California, a Critical Access Hospital, and desires to retain Physician to provide services in District’s rural health clinic (“RHC”).

A. Physician is a physician duly licensed in California with a background and experience in providing clinic medical services, and desires to be retained by District.

NOW, THEREFORE, the parties agree as follows:

TERMS

1. SCOPE OF SERVICES

District retains Physician, and Physician agrees, to provide those services identified in Exhibit A, attached hereto and incorporated by reference (the “Services”).

2. PHYSICIAN’S REPRESENTATIONS AND WARRANTIES

Physician represents and warrants at the time of signing this Agreement, and at all times during the term of this Agreement, that:

2.1 Physician and any alternate physicians are duly licensed, registered and in good standing, or will become duly licensed, registered and in good standing under the laws of the State of California, to engage in the practice of medicine, and that said license and registration have not been suspended, revoked, or restricted in any manner.

2.2 Physician is qualified and has applied for, or will apply for within a reasonable time after the signing of this Agreement, and has obtained, or will obtain within a reasonable time after the signing of this Agreement, membership (including appropriate clinical privileges) in good standing with the Medical Staff of District.

2.3 Physician has disclosed and will at all times during the term of this Agreement promptly disclose to the District: (a) the existence and basis of any legal, regulatory, professional or other proceeding against Physician instituted by any person, organization, governmental agency, health care facility, peer review organization, or professional society which involves any allegation of substandard care or professional misconduct raised against Physician and (b) any allegation of substandard care or professional misconduct raised against Physician by any person, organization, governmental agency, health care facility, peer review organization or professional society;

2.4 Physician is board certified or board qualified in family practice or internal medicine, or possesses knowledge and skill in clinic medicine comparable to other physicians practicing clinic medicine in the District's service area.

2.5 Physician shall at all times render the Services in a competent, professional, and ethical manner, in accordance with prevailing standards of medical care and practice, and all applicable statutes, regulations, rules, orders, and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction.

2.6 In connection with the provision of the Services, Physician shall use the equipment, instruments, electronic medical record system, and supplies of the District for the purposes for which they are intended and in a manner consistent with sound medical practice.

2.7 Physician shall complete and maintain, in a timely manner and on the electronic medical record system, adequate, legible and proper medical records, claims, and correspondence with respect to the Services.

2.8 Physician shall participate in Medicare, Medi-Cal and other federal and state reimbursement programs, commercial insurance reimbursement programs, health maintenance organization, preferred provider organizations, self-insured employer reimbursement programs, and any other health benefit program with which the District may contract for the provision of professional medical services.

2.9 Physician shall abide by the Medical Staff Bylaws, rules, regulations, and policies.

2.10 Physician shall participate in continuing medical education and training programs required to maintain skills comparable with the standards of care in clinic medicine in the District's service area.

2.11 Physician shall satisfy all qualifications of insurability for professional liability policy or policies required, maintained, or reimbursed by the District.

2.12 Physician shall deliver to the District promptly upon request copies of all certificates, registrations, certificates of insurance, and other evidence of Physician's compliance with the foregoing as reasonably requested by the District.

2.13 Physician will provide references for past performance and allow the District to rely on those references for meeting the qualifications required by this contract.

3. RESPONSIBILITIES OF HOSPITAL

3.1 HOSPITAL shall provide appropriate space and necessary equipment within the rural health clinic and Hospital for the use of Physician in the performance of the Services under this Agreement.

3.2 HOSPITAL shall make all reasonable efforts to make available ancillary services necessary for effective operation of the RHC, including laboratory, imaging, pharmacy, and physical therapy.

3.3 HOSPITAL shall not involve itself in those aspects of Physician's professional practice of medicine for which a license to practice medicine is required.

4. COVERAGE.

PHYSICIAN will provide RHC coverage in the RHC every Wednesday as scheduled by the RHC Manager and Physician.

5. COMPLIANCE WITH LAWS

PHYSICIAN shall comply with all applicable provisions of law, and other valid rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the RHC; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payers whose members/beneficiaries receive services at HOSPITAL. This shall specifically include, but not by way of limitation: -(i) compliance with applicable provisions of Title 22, California Administrative Code; and (ii) compliance with Medicare billing, time allocation, record keeping, and record access requirements.

6. PHYSICIAN COMPENSATION.

6.1 District agrees to pay the following fees to Physician:

6.1.1 Patient Visits. District will bill patients and their payors for services provided by PHYSICIAN to those patients. Such charges shall be consistent with prevailing community charges.

6.1.2 Payment for Patient Visits. District will pay PHYSICIAN \$200.00 per visit for all patients treated in the rural health clinic.

6.1.3 Group Health Plan and Continuing Medical Education. PHYSICIAN may participate in the District employee group health plan at the same premium rate as other District employees.

6.1.4 First Month Guarantee. PHYSICIAN will be guaranteed compensation of \$1,000 per day worked for the first month of this Agreement based upon the Medicare safe harbor provisions covering income guarantees for physicians.

6.1.5 District is responsible for the payments due to PHYSICIAN. Therefore, physician should only look to the District for amounts due.

6.2 Timing of Payment. District will pay PHYSICIAN monthly by the 15th day of the next month following that month in which the services are rendered.

6.3 Holiday Minimum. The Rural Health Clinic is closed on all District-observed holidays.

7. INDEPENDENT CONTRACTOR

7.1 PHYSICIAN is an independent contractor, and is not, by virtue of this Agreement, an employee, partner of, or joint venturer with District.

7.2 Physician may not make any claim against District under this Agreement for social security benefits, worker's compensation benefits, unemployment insurance benefits, health benefits, vacation pay, sick leave, or any other employee benefits of any kind.

7.3 District shall not exercise any direct control over any medical decisions made by Physician in the course of performing the Services at the Rural Health Clinic or Hospital.

8. INSURANCE AND INDEMNIFICATION

8.1. Coverage. PHYSICIAN and any alternate physicians will be covered by the District's Professional and Liability Insurance through BETA Healthcare Group ("BETA") for a minimum of \$1,000,000 per occurrence, \$3,000,000 aggregate, for the Services rendered under this Agreement. It is understood and agreed that BETA provides Continuous Coverage for departed providers, except the coverage is limited to claims made and reported against the provider for Services provided during the term of this Agreement.

8.2. Indemnification. Each party ("Indemnitor") agrees to defend, indemnify and hold the other party ("Indemnitee") and its representatives, agents, successors and assigns harmless from any and all damages, claims, judgments, losses, costs and expenses, including attorney's fees, which may hereinafter at any time be incurred, suffered, sustained by or imposed upon Indemnitee or its representatives, agents, successors or assigns, which may be due or required to be paid or performed by reason of, arising out of, by virtue of, or incident to the performance or the rendering of any of the obligations of Indemnitor hereunder, including but not limited to, any such damages, claims, judgments, losses, costs or expenses attributable to bodily injury, sickness, disease or death or injury or to destruction of tangible property which is caused in whole or in part by the negligent act or omission of Indemnitor, or anyone directly employed by or acting on behalf of Indemnitor but not as a result of the negligence of Indemnitee, its representatives, servants or agents.

9. NONDISCRIMINATION

Services are to be available to all patients, in accordance with District's nondiscrimination policies, and in accordance with any established policies relating to free or charity care. Physician shall not refuse to provide services to any patient at the Hospital, regardless of ability to pay.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall be effective as of February 1, 2019, and shall terminate on January 31, 2020. Upon mutual agreement, not later than 90 days prior to expiration of the current term, the District and Physician may extend this Agreement for two additional one-year terms.

10.2 Termination without cause. During the initial 120 days of this Agreement, either party may, without cause, terminate this Agreement with 30-days written notice to the other party. Thereafter, this Agreement may be terminated upon 60-days written notice to the other party. This agreement may be terminated at any time by the mutual consent of both parties.

10.3 Termination for cause. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the default is not cured within seven days of receipt of written notice specifying the material breach.

10.4 Other grounds for termination. This Agreement may be terminated immediately for the following reasons:

10.4.1 Physician's loss or restriction of their license for any reason.

10.4.2 Physician becomes legally incompetent; is convicted of a felony; or uses, possesses, or is found under the influence of alcohol, drugs, or other controlled substances while performing his duties under this Agreement.

10.4.3 Physician fails to maintain a professional standard of conduct in accordance with District policies.

10.4.4 Physician becomes ineligible to participate in the Medi-cal or Medicare programs for any reason.

10.4.5 A fraud control unit of a state or federal agency determines Medical Director has or may be placing the health and safety of a patient at risk.

10.4.6 Loss or restriction of DISTRICT'S license to operate the clinic.

10.5 Change in Law. In the event that any federal, state or local law or regulation, or any final, non-appealable interpretation of law or regulations by a court of law or governmental agency, makes or will make substantial performance of this Agreement illegal or renders any provision hereof illegal or unenforceable, the parties shall meet and negotiate and use best efforts to modify the Agreement to resolve the concern. If the parties are unable to resolve the issue within ten (10) days after it arose, either party may elect to terminate this Agreement on ten (10) days prior written notice.

10.6 Rights on Expiration or Termination. Custody of all District records, including patient medical records, equipment, and supplies shall be turned over to District upon termination for any reason. Duplicate copies of records may be retained by PHYSICIAN, at its own expense.

11. GENERAL PROVISIONS

11.1. Other Agreements. The PHYSICIAN is the Medical Director of the hospital's Skilled Nursing Facility.

11.2. Assignment. Neither party may assign, delegate or transfer any rights, obligations or duties hereunder without the express written approval of the other party, which approval shall not be unreasonably withheld.

11.3. Notice. All notices required by this Agreement shall be in writing, and shall be deemed effective when personally delivered; when mailed by certified or registered mail, return receipt requested; or when deposited with a comparably reliable postage delivery service (such as Federal Express); addressed to the other party as follows:

IF TO PHYSICIAN:

Todd Farrer
6723 Canaletto Ave.
Bakersfield, CA 93306

If TO DISTRICT:

Southern Inyo Healthcare District
Attn: Brian Cotter, CEO
P.O. Box 1009
Lone Pine, CA 93545

11.4. Records. Until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, PHYSICIAN shall make available upon written request, to the Secretary of the United States Department of Health and Human Services, or upon written request to the United States Comptroller, or any of their duly authorized representatives, under 42 C.F.R. & 420.300 et seq., or the California Department of Health Services, this Agreement, and such books, documents and records of the Physician that are necessary to certify the nature and extent of the reasonable costs of services.

11.5. No Third Party Beneficiaries. Nothing contained in this Agreement is intended, nor shall it be construed, to create rights running to the benefit of third parties.

11.6. Attorney's Fees. In the event of a legal action or proceeding between the parties arising from this Agreement, the prevailing party shall be entitled to receive reasonable attorney's fees, costs, and other expenses, including those incurred on appeal and in the enforcement of a judgment, in addition to whatever other relief may be awarded.

11.7 Force Majeure. Neither party shall be liable or deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disasters, strikes, or any cause reasonably beyond the control of the non-performing party.

11.8 Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to substantially alter the agreement or obligations of the parties, or would place either party in violation of its articles of incorporation or its bylaws, in which case the Agreement may be immediately terminated.

11.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles, and is made and to be performed in the County of Inyo, California.

11.10 No Referrals. Nothing in this Agreement is intended to obligate, and shall not obligate, any party to this Agreement to refer patients to any other party.

11.11 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

11.12 Entire Agreement; Modification. This Agreement contains the entire agreement of the parties relating to this subject matter. The Agreement may only be modified in writing, signed by both parties, effective on the date set forth therein.

11.13 Execution. By their signatures below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

Southern Inyo Healthcare District

Physician

By _____
Jaque Hickman, Board President

By _____
Todd Farrer, M.D.

EXHIBIT A

SCOPE OF SERVICES

PHYSICIAN shall devote sufficient time and his or her best abilities to the responsibility of treating patients in the normal and customary hours of operation of the Rural Health Clinic.

Patient Referrals. PHYSICIAN shall make referrals of Rural Health Clinic patients in accordance with patient's insurance and established Rural Health Clinic networks in place, but not in violation of any federal or state law.

Medical Care Plan System. PHYSICIAN shall participate in the development and review of a system for providing a medical care plan for RHC patient covering medications, nursing care, ancillary services, admission, discharge or transfer planning, and other relevant services.

Medical Records. PHYSICIAN shall be responsible for the development and maintenance of an adequate medical record in the RHC. This shall include assuring that the appropriate medical record entries are made by PHYSICIAN, including using any existing electronic medical system concerning all medical procedures and other services performed in the RHC.

Service and Equipment Adequacy. PHYSICIAN shall ensure the adequacy of the patient care services and medical equipment.

Responses to Administrative Questions. PHYSICIAN shall be available to respond to administrative questions regarding patients, referral problems, and patient status.

Responses to Nursing Questions. PHYSICIAN shall be available to assist with nursing or mid-level practitioner questions at the RHC, including questions regarding patient referrals and patient clinical status.

Responses to Patient Problems. PHYSICIAN and alternate physicians, when on duty, shall be available to respond to patient problems in the RHC by means of chart review and patient visits, as appropriate, and respond to all patient emergencies when required.

Medical Staff Commitments. Physician shall serve on such committees of Medical Staff of the District as may be appropriate after consultation with the Chief of Staff and Hospital CEO.

Utilization Review Services. Physician shall, as requested by the District, assist in the RHC utilization review program of the District.

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and between SOUTHERN INYO HEALTHCARE DISTRICT (the “**Plaintiff**” and/or the “**Debtor**,” as applicable) and PREMIER EMERGENCY PHYSICIANS OF CALIFORNIA MEDICAL GROUP (the “**Defendant**”). The Plaintiff and Defendant are hereinafter referred to collectively as the “**Parties**.”

RECITALS

WHEREAS, on January 4, 2016 (the “**Petition Date**”), the Debtor initiated a bankruptcy case by filing a voluntary petition for relief under chapter 9 of title 11 of the United States Code (the “**Bankruptcy Code**”), which case is currently pending in the U.S. Bankruptcy Court for the Eastern District of California, San Fresno Division (the “**Court**”), and bears case no. 1:16-BK-10015-FEC (the “**Bankruptcy Case**”). The Plaintiff commenced the Bankruptcy Case to readjust its debts.

WHEREAS, on July 12, 2016, the Court entered an order for relief (the “**Relief Date**”).

WHEREAS, on or about July 12, 2018, the Debtor initiated an adversary proceeding against the Defendant by filing a complaint for (1) avoidance and recovery of preferential transfers, (2) preservation of avoided transfers, and (3) disallowance of any claims held by defendants (the “**Complaint**”) in the Bankruptcy Court, case no. 2018-01047 (the “**Adversary**”).

WHEREAS, by and through the Complaint, the Plaintiff sought to avoid and recover from the Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the Petition Date pursuant to sections 547 and 550 of the Bankruptcy Code, which are made applicable to this proceeding by and through section 901 of the Bankruptcy Code (the “**Alleged Preferential Transfers**”).

WHEREAS, by and through the Complaint, Plaintiff also sought to disallow, pursuant to section 502 of the Bankruptcy Code, any claim that the Defendant has filed or asserted against the Plaintiff or that has been scheduled for the Defendant.

WHEREAS, the Defendant has asserted certain defenses to the allegations asserted by the Plaintiff in the Complaint.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Recitals. The Parties agree that the above recitals are true and correct and are incorporated herein, as if fully set forth herein.
2. Jurisdiction & Venue. The Court has jurisdiction over the Adversary pursuant to 28 U.S.C. §§ 151, 157 and 1334, and the Adversary is a core proceeding as defined by 28 U.S.C. § 157. Venue properly lies in the Eastern District of California pursuant to 28 U.S.C. § 1409 as this Adversary arises out of and relates to the Bankruptcy Case.
3. Payment of Settlement Funds.
 - a. On or before fifteen (15) days after the Effective Date, the Defendant shall pay the Plaintiff the amount of Fifty-Five Thousand Dollars and Zero Cents (\$55,000.00) in full and final satisfaction of any and all causes of action identified in the Complaint (the “**Settlement Payment**”).
 - b. The Settlement Payment shall be made by check, payable to Southern Inyo Healthcare District, and sent to Foley & Lardner LLP, Attn: Ashley McDow, 555 S. Flower Street, Suite 3300, Los Angeles, CA 90071.
4. Plaintiff’s Release of Defendant.
 - a. Upon the Effective Date, the Plaintiff does hereby release, waive and discharge Defendant, its assigns, affiliates, partners, predecessors, officers, directors, successors and assigns, from all claims, demands, losses, expenses, injuries, attorneys’ fees, property damage, repairs, costs, contribution or indemnity, suits, actions, causes of action, known or unknown, suspected or unsuspected, fixed or contingent, at law or in equity, administrative or otherwise, arising out of, in connection with, or relating in any manner whatsoever to the causes of action identified in the Complaint (the “**Release**”).
 - b. The Release is effective upon the Effective Date, subject only to Defendant’s compliance with its obligations set forth in Paragraph 3 above.
5. Dismissal of Adversary Proceeding. Within ten (10) days of the receipt of the Settlement Payment, the Plaintiff shall file a notice of dismissal, dismissing the Adversary with prejudice.
6. No Admission. The Parties acknowledge that this Agreement is a compromise of disputed claims and is not an admission or acknowledgement of liability or responsibility whatsoever on the part of any of the Parties.
7. Entire Agreement. The Agreement, the documents referred to herein, and the exhibits attached hereto, constitute the entire agreement among the Parties arising from or relating to any and all of the matters identified herein. Any prior understanding or representation of any kind

preceding the date of the Agreement and relating thereto shall not be binding on either Party except to the extent incorporated into the Agreement.

8. Successors. This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors, trustees and/or assigns, as may be applicable.

9. Representation by Counsel. The undersigned hereby acknowledge that they have or have had the opportunity to discuss this Agreement with their respective counsel to explain this document, and the undersigned acknowledge that they understand all of the terms and conditions of this Agreement, that this is a final compromise of all claims being released, and that they are voluntarily entering into this Agreement.

10. Governing Law. Unless otherwise stated herein, this Agreement shall be governed by and construed in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and any and all applicable local rules of the Court, without regard to any applicable conflicts of law principles. The Court shall have exclusive jurisdiction over any dispute arising from or relating to the Agreement.

11. Prevailing Party Attorneys' Fees and Costs. In the event of any dispute or legal proceeding arising out of or in connection with the interpretation or enforcement of this Agreement, the prevailing party shall be paid, and in the event of a legal proceeding shall be awarded, reasonable costs, expenses and attorney's fees.

12. Interpretation of Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not for or against either of the Parties. This Agreement has been drafted by both Parties, so that the rule of construction in favor of the non-drafting party shall not apply.

13. Execution in Counterparts. This Agreement may be executed and delivered (by facsimile or otherwise) in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Digital copies and/or facsimile copies of any signature by a Party or their representative shall have the same force and effect as an original signature.

14. Authority to Bind. Except to the extent Court approval is required to approve this Agreement, the Parties represent and warrant to the other that each has all requisite power and authority to enter into this Agreement and perform his or her respective obligations. Each Party represents and warrants to the other that he or she is not a minor under the age of 18 years old and is free of any mental or physical limitations, infirmities or defects affecting his or her ability to fully comprehend the terms of this Agreement and to volitionally enter into this Agreement. Each signatory hereto represents and warrants to the Parties that he or she has the authority to execute this Agreement on behalf of the Party they purportedly represent and thereby bind such individual or entity to this Agreement, subject to Court approval, as applicable.

15. Independent Investigation. Each Party represents and warrants to the other that it has investigated the facts pertaining to this Agreement, and that the Parties have not relied on any representations of any other Party in deciding whether to enter into this Agreement.

16. Volitional Execution. Each Party represents and warrants to the other that he or she enters into this Agreement knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence and after careful thought and reflection upon and consultation with independent counsel regarding this Agreement and the matters referred to herein; and, accordingly, by signing this Agreement, each signifies full understanding, agreement, and acceptance of the terms herein.

17. Joint Authorship. This Agreement is the product of negotiation and preparation by and among each Party hereto, and each Party acknowledges that they have had the opportunity to consult with independent counsel of their choosing. Accordingly, this Agreement and any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the individual or entity preparing this Agreement on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of the Agreement or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code section 1654 and any successor or amended statute, which provides that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist, and any and all similar rule(s) and/or statute(s).

18. Integration. This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof and, except as expressly provided herein, supersedes all prior agreements, oral or written, between or among the Parties to the extent such prior agreements are inconsistent with the terms of this Agreement.

19. Headings. The headings contained in the Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

20. Severability. In the event any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

21. No Third Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement is not intended to benefit any individual or entity that is not a Party hereto.

22. Amendment. The Agreement may be amended, altered, modified, or otherwise changed in any respect only by a writing duly executed by the Parties hereto or their authorized representatives, and approved by the Court if necessary.

23. Settlement Discussions. This Agreement is part of a proposed settlement of the disputes between the Parties. Pursuant to rule 408 of the Federal Rules of Evidence and any applicable state rule(s) of evidence, neither this Agreement nor any negotiations relating hereto, shall be admissible into evidence in any proceeding other than a proceeding to enforce or seek approval of the terms of this Agreement.

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IN WITNESS WHEREOF, the Parties have duly executed the Agreement effective as of the date first written above:

Southern Inyo Healthcare District

**Premier Emergency Physicians of
California Medical Group**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

1 Ashley M. McDow (245114)
Fahim Farivar (252153)
2 **FOLEY & LARDNER LLP**
555 S. Flower St., Suite 3300
3 Los Angeles, CA 90071
Telephone: 213.972.4500
4 Facsimile: 213.486.0065
Email: amcdow@foley.com
5 ffarivar@foley.com

6 Attorneys for Debtor,

7 SOUTHERN INYO HEALTHCARE DISTRICT

8 **UNITED STATES BANKRUPTCY COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 **FRESNO DIVISION**

11
12 In re

13 SOUTHERN INYO HEALTHCARE
DISTRICT,

14 Debtor.

15
16 SOUTHERN INYO HEALTHCARE
DISTRICT, a California local healthcare
17 district,

18 Plaintiff,

19 v.

20 PREMIER EMERGENCY PHYSICIANS OF
CALIFORNIA MEDICAL GROUP,

21 Defendants.
22
23
24
25
26
27
28

Case No.: 2016-10015 FEC

Chapter 9

Adv. No.: 18-01047-FEC

**NOTICE OF WITHDRAWAL OF
COMPLAINT AND REQUEST FOR
DISMISSAL OF ADVERSARY
PROCEEDING**

[No Hearing Required]

1 **TO THE HONORABLE FREDRICK E. CLEMENT, UNITED STATES BANRUPTCY**
2 **JUDGE AND ALL OTHER INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that Southern Inyo Healthcare District, the debtor in the above-
4 captioned bankruptcy case (the “Debtor”) and Premier Emergency Physicians of California
5 Medical Group, the plaintiff and the defendant (collectively, the “Parties”) in the above-captioned
6 adversary proceeding (the “Adversary Proceeding”), respectively, have reached a settlement
7 resolving the issues underlying the Adversary Proceeding (the “Settlement”). A true and correct
8 copy of the settlement agreement executed by the Parties and memorializing the Settlement is
9 attached hereto as **Exhibit A** and incorporated herein by reference. Accordingly, the Debtor hereby
10 withdraws the complaint in the Adversary Proceeding, and respectfully requests the dismissal of
11 the Adversary Proceeding with prejudice.

12
13 Dated: January 24, 2019

Respectfully submitted,

14 **FOLEY & LARDNER LLP**

15
16
17 By: /s/ [Draft]

Ashley M. McDow
Fahim Farivar

18
19
20 Attorneys for Debtor, SOUTHERN INYO
HEALTHCARE DISTRICT