

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this “**Agreement**”), dated as of June 30, 2017, is made and entered by and among **HAWAII HEALTH SYSTEMS CORPORATION**, a public body corporate and politic and an instrumentality and agency of the State of Hawaii, including the Maui Region of HHSC established in Sections 323F-2(b)(3) and 323F-3.5 of the Hawaii Revised Statutes (hereinafter referred to as “**HHSC**”) and **MAUI HEALTH SYSTEM, A KAISER FOUNDATION HOSPITALS, LLC**, a Hawaii limited liability company (hereinafter referred to as “**MHS**” and formerly referred to as “**MHSKFH**”). The Parties to this Agreement are sometimes referred to herein as a “**Party**” or collectively as “**Parties**.” Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in that certain Maui Regional Hospitals Transfer Agreement dated as of January 14, 2016 (the “**Transfer Agreement**”) by and among HHSC, MHS, the State of Hawaii, the Maui Region of Hawaii Health Systems Corporation (“**MRHS**”), and Kaiser Foundation Hospitals (“**KFH**”).

RECITALS

WHEREAS, pursuant to the terms and conditions set forth in the Transfer Agreement, upon the closing of the transactions contemplated in the Transfer Agreement (the “**Transaction**”), MHS will assume the right and responsibility to manage, operate, and otherwise provide healthcare services through the facilities, including outpatient and ancillary services and facilities, of Maui Memorial Medical Center (“**MMMC**”), Kula Hospital & Clinics (“**Kula**”), and Lanai Community Hospital (“**LCH**”, and together with MMMC and Kula, the “**Hospitals**”).

WHEREAS, in connection with the Transaction, MHS desires to obtain certain transition services from HHSC and HHSC is willing to perform for MHS certain transition services (as more fully described herein) for a specified period of time following the Transfer Completion Date, upon the terms and subject to the conditions hereof.

WHEREAS, in connection with the Transaction, HHSC desires to obtain certain transition services from MHS and MHS is willing to perform for HHSC certain transition services (as more fully described herein) for a specified period of time following the Transfer Completion Date, upon the terms and subject to the conditions hereof.

WHEREAS, the Transfer Agreement contemplated certain ancillary agreements and the execution of certain ancillary documents, including, without limitation, this Agreement.

WHEREAS, the Parties wish to enter into this Agreement to effectuate certain of the Contemplated Transactions as defined in the Transfer Agreement; and

NOW, THEREFORE, for and in consideration of the foregoing recitals (which are by this reference hereby made a part of this Agreement) and of the mutual covenants, promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MHS and HHSC hereby agree as follows:

I. TRANSITION SERVICES

The HHSC Services and MHS Services shall be referred to herein collectively as the “**Transition Services**”.

A. SERVICES TO BE PERFORMED BY HHSC.

1. **HHSC Services.** In accordance with the terms and provisions of this Agreement, HHSC shall provide to MHS the services (collectively, the “**HHSC Services**”) described (a) on **Exhibit A**, as may be amended from time to time in accordance with the terms of this Agreement (the “**Services Schedule**”) for the time period for each HHSC Service set forth on the Services Schedule and (b) in the Interim Billing Agreement, attached hereto and incorporated herein as **Exhibit B** (the “**Billing Agreement**”) for the time period set forth in **Exhibit B**. Any decisions as to which of the employees, officers, consultants or agents of HHSC provide the HHSC Services shall be made by HHSC in its sole discretion, except to the extent specified on the Services Schedule or Billing Agreement. HHSC may provide certain HHSC Services through subcontracts or similar arrangements with third parties, but only with the prior written permission of MHS, which permission shall not be unreasonably withheld, conditioned or delayed; provided that prior written permission is not required for HHSC to continue existing subcontracts. Each HHSC Service shall be provided in exchange for the consideration set forth with respect to such HHSC Service on the Services Schedule, in the Billing Agreement, or as the Parties may otherwise agree in writing. Each HHSC Service shall be provided and accepted in accordance with the terms, limitations and conditions set forth herein, including the Services Schedule and Billing Agreement.

2. Terms of HHSC Services.

(a) HHSC agrees that the HHSC Services shall be provided in good faith in a manner reasonably consistent with HHSC’s past practices with respect to the operation of the Hospitals during the two-year period immediately preceding the Transfer Completion Date.

(b) HHSC agrees that all of its employees, officers, consultants and agents providing HHSC Services hereunder shall conform to the policies and procedures of MHS applicable to the HHSC Services which are made known to HHSC in advance of the Transfer Completion Date in writing. HHSC shall not be required to perform or take any action in performing the HHSC Services that would violate HHSC’s policies or procedures or that could negatively impact HHSC’s operations in Hawaii.

(c) The Parties acknowledge that the employees of HHSC involved in the provision of the HHSC Services shall remain employees of HHSC, and HHSC shall be solely responsible for the payment and provision of all wages, bonuses, commissions, employee benefits and worker’s compensation and the withholding and payment of applicable taxes relating to such employment. Neither HHSC, on the one hand, nor MHS, on the other hand, shall be considered a joint employer or co-employer of the employees of the other Party.

(d) Except as expressly set forth in this Agreement, the Parties acknowledge and agree that the HHSC Services are provided as-is, that MHS assumes all risks and liability

arising from or relating to MHS' use of and reliance upon the HHSC Services and HHSC makes no representation or warranty, express or implied, with respect thereto.

(e) The Parties recognize that certain technology support license/services described herein are provided by third-party vendors under specific third-party agreements (“**Third-Party Agreements**”). The Parties further recognize that the Third-Party Agreements have been entered into by HHSC (or assigned by MRHS to HHSC) and that MHS shall receive technology software or services as a result of the Third-Party Agreements. Subject to obtaining any required consents with respect to such Third-Party Agreements in accordance with **Section I.A.4** below, HHSC shall use commercially reasonable efforts to cause the third-party vendors to continue to provide the technology software or support to MHS under the terms of the Third-Party Agreements in effect as of the date hereof. HHSC shall not permit any Third-Party Agreements needed to store or maintain Patient Medical Records to expire or terminate without first establishing an alternative arrangement mutually agreed upon by MHS and HHSC for storing and maintaining the Patient Medical Records from the affected applications for the remainder of the period set forth on the Services Schedule that (a) is complete and accurate, (b) complies with all Legal Requirements applicable to MMMC, Kula, and/or LCH, including, without limitation, 42 CFR § 482.24, 42 C.F.R. § 485.638, 42 C.F.R. § 483.70(i) and HIPAA, (c) makes the Patient Medical Records readily available and otherwise permits MHS to directly access, and promptly and timely retrieve copies of the Patient Medical Records, and (d) will not increase the costs to MHS of providing Record Management Services.

3. Additional Services. If MHS identifies a service that HHSC or MRHS provided in connection with the management and operation of the Hospitals (“**Hospital Operations**”) during the one-year period immediately preceding the Transfer Completion Date that MHS reasonably requires to continue to operate the Hospitals in substantially the same manner in which the Hospitals operated during the one-year period immediately preceding the Transfer Completion Date, and such service was not included in the Services Schedule, then HHSC and MHS shall negotiate in good faith regarding the provision of such requested services (such additional services, the “**Additional Services**”). In the event that the Parties reach an agreement with respect to providing such Additional Services, the Parties shall amend the Services Schedule in writing to include such Additional Services (including the Service Charges and Expiration Dates with respect to such Additional Services) and such Additional Services shall be deemed HHSC Services hereunder, and accordingly, HHSC shall provide such Additional Services, or cause such Additional Services to be provided, in accordance with the terms and subject to the conditions set forth in this Agreement. Nothing contained in this **Section I.A.3** shall require the Parties to reach any agreement with respect to the provision of Additional Services.

4. Cooperation. HHSC shall use commercially reasonable efforts to obtain all consents, licenses, sublicenses or approvals necessary to permit HHSC to perform its obligations hereunder. MHS shall, in a reasonably timely manner, take all such actions, including providing necessary information, as may be reasonably necessary to assist HHSC in its efforts to obtain any such required consent, license, sublicense or approval or to reasonably assist HHSC in the provision of the HHSC Services.

5. **Costs.** Except as otherwise specified in Exhibit A or Exhibit B, the costs of obtaining any required consent, license, sublicense or approval for HHSC to perform the HHSC Services shall be borne by MHS; provided that all such costs shall be pre-approved by MHS in writing and HHSC shall have no obligation to provide the HHSC Service for which any consent, license, sublicense or approval is required if: (a) MHS is unwilling to bear such cost or (b) HHSC, using commercially reasonable efforts, is unable to obtain any such consent, license, sublicense or approval and the Parties are unable to identify, through reasonable efforts, a mutually acceptable alternative to obtaining such consent, license, sublicense or approval, as the case may be, without materially increasing the costs of HHSC in providing the HHSC Services hereunder. For purposes of clarification, nothing contained herein shall relieve HHSC of the costs associated with complying with the conditions to Record Management Services listed on Exhibit B.

B. SERVICES TO BE PERFORMED BY MHS.

1. **MHS Services.** The services to be provided by MHS and described in this Section B (*i.e.*, the Record Management Services, Personnel Services, Cutover Services, and CIP Project Coordination Services) shall be collectively referred to as the “**MHS Services**”. The MHS Services are separate and distinct. Accordingly, except as specified herein, any termination or expiration of any MHS Service shall not impact the other MHS Services in any manner whatsoever. However, any termination of the Record Management Services shall result in an automatic termination of the remaining MHS Services without any further notice or action by any Party.

2. **Record Management Services.** In accordance with the terms and provisions of this Agreement and Exhibit C, MHS shall provide to HHSC the services relating to Patient Medical Records described on Exhibit C (collectively, the “**Record Management Services**”), which may be amended from time to time in accordance with the terms of this Agreement (the “**Record Management Services Schedule**”) for such periods specified on the Record Management Services Schedule. Any decisions as to which of the employees, officers, consultants or agents of MHS or its Affiliates provide the Record Management Services shall be made by MHS in its sole discretion. MHS may provide the Record Management Services through subcontracts or similar arrangements with third parties, but only with the prior written permission of HHSC, which permission shall not be unreasonably withheld, conditioned or delayed. The consideration for such Record Management Services is set forth on the Record Management Services Schedule or as the Parties may otherwise agree in writing. The Record Management Services shall be provided and accepted in accordance with the terms, limitations and conditions set forth herein and on the Record Management Services Schedule.

3. **Employee Lease Arrangement.** In accordance with the terms and provisions of this Agreement and Exhibit D, MHS shall provide to HHSC the services of designated MHS employees to assist HHSC with the closure of Patient Medical Records and certain financial matters as further described on Exhibit D (collectively, the “**Personnel Services**”), which may be amended from time to time in accordance with the terms of this Agreement (the “**Employee Lease Arrangement**”) for such periods specified on Exhibit D. Any decisions as to which of the employees, officers, consultants or agents of MHS or its Affiliates provide the Personnel

Services shall be made by MHS in its sole discretion. MHS may provide the Personnel Services through subcontracts or similar arrangements with third parties, but only with the prior written permission of HHSC, which permission shall not be unreasonably withheld, conditioned or delayed. The consideration for such Personnel Services is set forth on the Employee Lease Arrangement or as the Parties may otherwise agree in writing. The Personnel Services shall be provided and accepted in accordance with the terms, limitations and conditions set forth herein and on the Employee Lease Arrangement.

4. Cutover Services. In accordance with the terms and provisions of this Agreement, MHS shall provide to HHSC the services (collectively, the “**Cutover Services**”) described on **Exhibit G**, as may be amended from time to time in accordance with the terms of this Agreement (the “**Cutover Services Schedule**”) for the time period for each Cutover Service set forth on the Cutover Services Schedule. Any decisions as to which of the employees, officers, consultants or agents of MHS provide the Cutover Services shall be made by MHS in its sole discretion. MHS may provide certain Cutover Services through subcontracts or similar arrangements with third parties, but only with the prior written permission of HHSC, which permission shall not be unreasonably withheld, conditioned or delayed; provided that prior written permission is not required for MHS to continue Kaiser Foundation Hospital’s or its affiliates existing relationships with vendors. Each Cutover Service shall be provided in exchange for the consideration set forth with respect to such Cutover Service on the Cutover Services Schedule or as the Parties may otherwise agree in writing. Each Cutover Service shall be provided and accepted in accordance with the terms, limitations and conditions set forth herein, including the Cutover Services Schedule.

4.1 CIP Project Coordination Services. In accordance with the terms and provisions of this Agreement, MHS shall provide to HHSC the services (collectively, the **CIP Project Coordination Services**”) described on **Exhibit H**, as may be amended from time to time in accordance with the terms of this Agreement (the “**CIP Project Coordination Task List**”). Any decisions as to which of the employees, officers, consultants or agents of MHS provide the CIP Project Coordination Services shall be made by MHS in its sole discretion. MHS may provide certain CIP Project Coordination Services through subcontracts or similar arrangements with third parties, but only with the prior written permission of HHSC, which permission shall not be unreasonably withheld, conditioned or delayed; provided that prior written permission is not required for MHS to continue Kaiser Foundation Hospital’s or its affiliates existing relationships with vendors. Each CIP Project Coordination Service shall be provided and accepted in accordance with the terms, limitations and conditions set forth herein, including the CIP Project Coordination Task List.

5. Terms of MHS Services.

(a) MHS agrees that the MHS Services shall be provided in good faith.

(b) MHS agrees that all of its and its Affiliates’ employees, officers, consultants and agents providing MHS Services hereunder shall conform to the policies and procedures of MHS applicable to the security and maintenance of confidential health information, copies of which will be provided to HHSC prior to the Transfer Completion Date. MHS shall not be required to perform or take any action in performing the MHS Services that

would violate MHS' policies or procedures or that could negatively impact MHS or its Affiliate's operations in Hawaii or in other states.

(c) The Parties acknowledge that the employees of MHS or its Affiliates involved in the provision of the MHS Services shall remain employees of MHS (or one of its Affiliates), and MHS (or its Affiliate) shall be solely responsible for the payment and provision of all wages, bonuses, commissions, employee benefits and worker's compensation and the withholding and payment of applicable taxes relating to such employment. Neither HHSC, on the one hand, nor MHS, on the other hand, shall be considered a joint employer or co-employer of the employees of the other Party.

(d) Except as expressly set forth in this Agreement, the Parties acknowledge and agree that the MHS Services are provided as-is, that HHSC assumes all risks and liability arising from or relating to HHSC's use of and reliance upon the MHS Services and MHS makes no representation or warranty, express or implied, with respect thereto.

(e) Prior to the termination of this Agreement, MHS shall provide HHSC a written plan for transitioning off of the Record Management Services provided under this Agreement.

C. GENERAL COVENANTS AND AGREEMENTS.

1. Compliance with Legal Requirements. Each Party shall be responsible for its own compliance with any and all Legal Requirements applicable to its performance under this Agreement. Each Party shall promptly notify the other Party of any complaint, inquiry or lawsuit by any governmental body or entity relating to the Transition Services or this Agreement.

2. Transition Coordinators.

(a) HHSC hereby appoints and designates Kay Revita to be its initial Services Coordinator (the "**Services Coordinator**"), who will be directly responsible for coordinating and managing the delivery of the HHSC Services and have authority to act on HHSC's behalf with respect to matters relating to this Agreement. MHS hereby appoints and designates Joyce Tamori as its initial Transition Coordinator (the "**Transition Coordinator**"), who will be directly responsible for coordinating and managing the MHS's use of the HHSC Services and have authority to act on the MHS's behalf with respect to matters relating to this Agreement. Notwithstanding the foregoing, MHS and HHSC shall (i) designate interim billing liaisons for purposes of coordinating and managing the Billing Agreement, as further set forth on **Exhibit B**, and (ii) personnel coordinators for purposes of coordinating and managing the Employee Lease Arrangement as further set forth on **Exhibit D**.

(b) MHS hereby appoints and designates Joyce Tamori to act as its initial Records Coordinator (the "**Records Coordinator**"), who will be directly responsible for coordinating and managing the delivery of the Record Management Services and have authority to act on MHS's behalf with respect to matters relating to the Record Management Services under this Agreement. HHSC hereby appoints and designates Gavin Furuichi, to act as its initial Records Designee (the "**Records Designee**"), who will be directly responsible for coordinating and managing HHSC's use of the Record Management Services and have authority to act on

HHSC's behalf with respect to matters relating to the Record Management Services provided under this Agreement.

(c) Notwithstanding the requirements of Section 14.2 of the Transfer Agreement, all communications from MHS to HHSC pursuant to this Agreement which MHS in good faith believes to involve principally routine matters related to the HHSC Services shall be made through the applicable Services Coordinator, Records Designee, HHSC interim billing liaison (as described in Exhibit B), or HHSC Personnel Supervisor (as described in Exhibit D).

(d) Notwithstanding the requirements of Section 14.2 of the Transfer Agreement, all communications from HHSC to MHS pursuant to this Agreement which HHSC in good faith believes to involve principally routine matters related to the MHS Services shall be made through the applicable Transition Coordinators, Records Coordinator, MHS interim billing liaison (as described in Exhibit B), or Personnel Coordinator (as described in Exhibit D).

(e) Each Party shall notify the other Party of any change in the individuals designated to serve as its Services Coordinator, Transition Coordinators, Records Coordinator, Records Designee, interim billing liaisons, or HHSC Personnel Supervisor or Personnel Coordinator, as applicable, in accordance with Section 14.2 of the Transfer Agreement.

3. Term.

(a) **Term.** The term of this Agreement shall commence on the Transfer Completion Date and shall terminate with respect to each Transition Service as specified on the Services Schedule, Billing Agreement, Record Management Services Schedule, Employee Lease Arrangement, Cutover Schedule, or CIP Project Coordination Task List, as applicable (the "**Expiration Date**") or as provided in **Section I.C.4** below; and this Agreement shall terminate in its entirety on the last Expiration Date specified on the Services Schedule, Billing Agreement, Record Management Services Schedule, Employee Lease Arrangement, or Cutover Schedule or CIP Project Coordination Task List, as applicable (such date, the "**Termination Date**"); provided, that Article II shall survive termination of this Agreement. In the event of any termination of this Agreement in its entirety, this Agreement (other than **Article II**) shall be of no further force or effect; provided, that, subject to the terms of this Agreement, no such termination shall relieve any Party from liability for any breach of this Agreement prior to termination thereof (including, without limitation, any failure to satisfy payment obligations with respect to any Transition Services), or, subject to the terms of such other agreements, from any liability for breach under any other agreements between the Parties. Once termination or expiration is effective as to any particular Transition Service, the Party providing such Transition Service shall no longer be required to provide such Transition Service unless the Parties mutually agree in writing to recommence such Transition Service.

(b) **Extension of Expiration Date.** If it appears that Transition Services will be required beyond the designated Expiration Date, the Parties may elect to extend the Expiration Date by mutual written agreement.

4. Termination.

(a) **Termination for Breach.** Any Party (the “**Non-Breaching Party**”) may terminate this Agreement with respect to any Transition Service (*i.e.*, **Exhibit A** HHSC Services, the Interim Billing Agreement, the Record Management Services, the Employee Lease Arrangement, the MHS Services listed on **Exhibit G**), in whole but not in part, at any time upon prior written notice to the other party (the “**Breaching Party**”) if the Breaching Party has failed to perform any of its material obligations under this Agreement relating to such Transition Service, and such failure shall have continued without cure for a period of ninety (90) days after receipt by the Breaching Party of a written notice of such failure from the Non-Breaching Party seeking to terminate such Transition Service.

(i) Notwithstanding the foregoing, the period for a Breaching Party to cure any material default under a BAA shall be thirty (30) days after receipt by the Breaching Party of a written notice of such default from the Non-Breaching Party. If the breach of the BAA has continued without cure to the reasonable satisfaction of the Non-Breaching Party for a period of thirty (30) days after written notice thereof, the Non-Breaching Party may terminate the BAA and terminate any Transition Service, in whole or in part, identified as subject to potential termination in the notice of breach.

(ii) Notwithstanding the foregoing, neither Party may terminate the Interim Billing Agreement under this Section C.4(a) prior to the issuance of all Tie-in Notices required for MHS to assume the Provider Numbers and Program Agreements unless, in accordance with Section 8.14 of the Transfer Agreement, the Parties first have established a mutually agreeable alternative arrangement for MHS to continue to bill under HHSC’s Provider Numbers and Program Agreements until the Tie-in notices are received.

(iii) In the event any Transition Service is terminated under this Section 4(a), this Agreement shall be deemed amended as of the effective date of such termination to exclude such terminated Transition Service.

(b) **Termination of Transfer Agreement.** Unless specifically and expressly agreed otherwise by the Parties hereto, any termination of the Transfer Agreement shall result in the corresponding termination of this Agreement, subject to any applicable obligations under Section 10.4 of the Transfer Agreement, provided that any obligations related to compliance with applicable federal and state privacy and security requirements, including but not limited to HIPAA Compliance, shall remain in effect so long as a Party has access to PHI of the other Party under this Agreement.

(c) **Termination by Mutual Agreement.** Notwithstanding anything to the contrary contained herein, this Agreement may be terminated, in whole or in part, at any time by the mutual written consent of HHSC and MHS.

(d) **Discontinuation of HHSC Service by HHSC.** HHSC reserves the right to discontinue any HHSC Service other than the Interim Billing Agreement in the event, and for so long as, MHS fails to remit payment of any invoiced amount due under this Agreement; provided that: (i) such failure to remit payment has not been cured within thirty (30) days following HHSC's written notice to MHS of such failure, (ii) such failure is not the result of an act of God, fire, flood, or other natural disaster, riot, strike, national or international political event or occurrence, including an act of war or terrorism ("**Force Majeure**"), (iii) HHSC is not then in material breach of this Agreement, and (iv) the failure to remit payment is not due to a permitted set off or offset under this Agreement.

(e) **Discontinuation of MHS Service by MHS.** MHS reserves the right to discontinue any MHS Service in the event, and for so long as, HHSC fails to comply with the conditions associated with such MHS Service; provided that: (i) such failure to comply has not been cured within thirty (30) days following MHS' written notice to HHSC of such failure, (ii) such failure is not the result of a Force Majeure, and (iii) MHS is not then in material breach of this Agreement. MHS also reserves the right to discontinue providing services under the Employee Lease Arrangement in the event, and for so long as, HHSC fails to remit payment of any invoiced amount due under this Agreement; provided that: (i) such failure to remit payment has not been cured within thirty (30) days following MHS' written notice to HHSC of such failure, (ii) such failure is not the result of a Force Majeure, and (iii) MHS is not then in material breach of this Agreement.

(f) **Post Transition Period.** Upon termination or expiration of this Agreement for any reason, each Party agrees to reasonably assist the other Party with any transition activities required as a result of any termination or expiration of this Agreement so as to avoid disruption of the ordinary course of the other Party's business. Any obligations of the Parties hereunder are conditioned on receiving timely written notice from the other Party for the transition assistance contemplated hereunder and the reimbursement of any costs required to provide such requested transition activities. Except as provided herein, the Parties shall not be required to provide any transition assistance under this **Section I.C.4** for more than two (2) months following the effective date of the termination or expiration of this Agreement. The two (2) month transition assistance period shall not be applicable in the event this Agreement is terminated due to a termination of the Transfer Agreement, in which case the parties' obligations remain subject to Section 10.5 of the Transfer Agreement. This **Section I.C.4** shall survive the termination or expiration of this Agreement.

5. Changes in Transition Services Requests. Either Party may request changes to this Agreement or the Transitions Services ("**Change Requests**"). MHS and HHSC each must review and approve in writing each Change Request before any Change Request becomes effective or is implemented. A review of Change Requests that do not result in increased costs to any party shall occur by the applicable Services Coordinator, Transition Coordinators, Records Coordinator, Records Designee, Personnel Coordinator or HHSC Personnel Supervisor within ten (10) business days after receipt of any Change Request. A review of any other Change Requests shall occur within thirty (30) days after receipt of any Change Request. If any Change Request mutually accepted by the Parties in writing results in a change in scope or terms and conditions, then this Agreement will be updated as appropriate to reflect the agreed upon changes in scope, pricing, or terms and conditions, as appropriate. In the absence of mutual

agreement, no Change Request shall be interpreted to expand, restrict, limit or alter any Transition Services that any Party is otherwise obligated to provide or receive hereunder.

II. PAYMENT

A. PAYMENT FOR TRANSITION SERVICES.

1. Payment for HHSC Services. In consideration for the HHSC Services, MHS shall pay to HHSC the fee for each such HHSC Service, as applicable, as set forth on the Services Schedule (collectively, the “**Service Charges**” and each, a “**Service Charge**”). As set forth on the Services Schedule, certain HHSC Services will be provided without cost or charge to MHS provided MHS is not in material default of this Agreement. Unless the parties mutually agree in writing on an aggregate monthly amount to be paid by MHS on a set schedule, HHSC shall invoice MHS on a monthly basis, in arrears, for Service Charges due to HHSC under this Agreement. MHS shall pay each invoice by ACH transfer within thirty (30) days following receipt thereof as instructed by HHSC. If MHS fails to pay such amount by such date, MHS shall be obligated to pay to HHSC, in addition to the amount due, interest at an interest rate of 1% per month over the prime rate published in the eastern edition of *The Wall Street Journal* (or a comparable newspaper if *The Wall Street Journal* shall cease publishing the prime rate), compounded monthly, accruing from the date the payment was due through the date of actual payment.

2. Payment for Record Management Services. Provided HHSC complies with the terms and conditions set forth in **Exhibit C** and is not otherwise in material default of this Agreement, Record Management Services shall be provided without cost or charge to HHSC. In the event of a material default of this Agreement by HHSC, which is not cured upon thirty (30) days prior written notice, HHSC shall be responsible for reimbursing MHS its reasonable actual costs and out-of-pocket expenses for providing the Record Management Services.

3. Payment for Employee Lease Arrangement. In consideration for the Employee Lease Arrangement, HHSC shall reimburse MHS as set forth on the Employee Lease Arrangement.

4. Payment for Cut Over Services. Provided HHSC complies with the terms and conditions set forth in **Exhibit G** and is not otherwise in material default of this Agreement, Cut Over Services shall be provided without cost or charge to HHSC; provided that HHSC shall reimburse MHS for any incremental fees or expenses associated with MHS causing third party vendors to continue to provide technology or software to HHSC.

5. Payment for CIP Project Coordination Services. Provided HHSC complies with the terms and conditions set forth in Exhibit H and is not otherwise in material default of this Agreement, CIP Project Coordination Services shall be provided without cost or charge to HHSC; provided that HHSB shall reimburse MHS for any damages paid to any HHSC contractor, supplier or consultant by MHS arising out of an HHSC project; legal expenses, fees and costs incurred to defend any legal action by any HHSC contractor, supplier or consultant.

B. SET OFF. The obligations under this Agreement shall not be subject to set-off for non-performance or any monetary or non-monetary claim by any Party or any of their respective Affiliates under the Transfer Agreement, Lease, or any other agreement between the Parties or any of their respective Affiliates. The payment obligations under this Agreement may be subject to set-off for non-performance of material obligations under this Agreement, but only to the extent expressly set forth in this Agreement (including any Exhibits hereto).

III. MISCELLANEOUS

A. CONFIDENTIALITY/OWNERSHIP OF DATA

1. Confidentiality Generally. Notwithstanding the Parties signing of this Agreement or consummation of the transactions contemplated by the Transfer Agreement, the Parties continue to be subject to the confidentiality provisions of Section 12.9 of the Transfer Agreement, which shall govern any confidential information of a Party disclosed in connection with providing Transition Services under this Agreement. Without limiting the foregoing, each Party shall use its best efforts to maintain the confidentiality of all confidential information of any other Party provided to, obtained by, or used by it or its affiliates in connection with the Transition Services. In the event either Party is required by any court or legislative or administrative body (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process) to disclose any confidential information provided pursuant to this Agreement, such Party shall provide the other Party with prompt notice of such requirement in order to afford the affected Party or the appropriate third party vendor an opportunity to seek an appropriate protective order or other remedy. However, if any affected Party or third party vendor is unable to obtain or does not reasonably promptly seek such protective order and a Party is, in the opinion of its counsel, legally compelled to disclose such confidential information, disclosure of such information may be made without liability under this Agreement, provided that such Party shall furnish only that portion of the confidential information which is legally required.

2. Third Party Software Programs. MHS shall keep confidential any proprietary information of any third-party vendors or suppliers and any proprietary software (including code, screenshots, manuals, etc.) of third-party vendors or suppliers provided or utilized by HHSC and made available to MHS under this Agreement [as opposed to via direct arrangements between MHS and vendors or supplier] (the “**Software Programs**”), and to use such information only for the purposes set forth in this Agreement unless otherwise agreed to in writing by HHSC. MHS shall not: (i) copy, modify, adapt, improve, maintain, license, sublicense, lease, sell, rent, export, or grant other rights in or to the Software Programs; (ii) disassemble, decompile, manipulate, reverse engineer, benchmark, create derivative works or otherwise access the Software Programs in order to copy any features, functionality or components (including but not limited to all software and data components) of the Software Programs and shall take all commercially reasonable steps to prevent such disassembly, decompiling, manipulation, benchmarking, reverse engineering and other access of Software Programs; (iii) work around any technical limitations in the Software Programs or use any tool to enable features or functionalities that are otherwise disabled in the Software Programs; (iv) use the Software Programs directly or indirectly

(including but not limited to using the Software Programs as a benchmark to test against) in order to develop, enhance, or structure other similar data or derivative data, or to create any derivative product or compilation in any form for internal use, resale, or distribution; (v) alter or modify the Software Programs in any way; or (vi) otherwise use the Software Programs, except as expressly allowed under this Agreement. MHS shall take all commercially reasonable steps, in accordance with reasonable industry practices, to protect the security of Software Programs and to prevent unauthorized use or disclosure of Software Programs. While using the Software Programs (if applicable), MHS shall not knowingly (A) send or store infringing or unlawful material; (B) send or store malicious code; (C) attempt to gain unauthorized access to or disrupt the integrity or performance of the Software Programs; or (D) use the Software Programs to provide services to any other Person. MHS is responsible for any breach of this paragraph by its employees, agents, contractors or other representatives.

3. Record Management Programs. HHSC shall keep confidential any proprietary information of any third-party vendors or suppliers and any proprietary software (including code, screenshots, manuals, etc.) of MHS, its affiliates, or third-party vendors or suppliers utilized by MHS to provide the Record Management Services or the other MHS Services (“**Record Management Programs**”), and to use such information only for the purposes set forth in this Agreement unless otherwise agreed to in writing by MHS. HHSC shall not: (i) copy, modify, adapt, improve, maintain, license, sublicense, lease, sell, rent, export, or grant other rights in or to any Record Management Programs; (ii) disassemble, decompile, manipulate, reverse engineer, benchmark, create derivative works or otherwise access any Record Management Programs in order to copy any features, functionality or components (including but not limited to all software and data components) of the Record Management Programs and shall and shall take all commercially reasonable steps to prevent such disassembly, decompiling, manipulation, benchmarking, reverse engineering and other access of any Record Management Programs; (iii) work around any technical limitations in any Record Management Programs or use any tool to enable features or functionalities that are otherwise disabled in any Record Management Programs; (iv) use any Record Management Programs directly or indirectly (including but not limited to using a Record Management Programs as a benchmark to test against) in order to develop, enhance, or structure other similar data or derivative data, or to create any derivative product or compilation in any form for internal use, resale, or distribution; (v) alter or modify any Record Management Programs in any way; or (vi) otherwise use any Record Management Programs except as expressly allowed under this Agreement. HHSC shall take all commercially reasonable steps, in accordance with reasonable industry practices, to protect the security of Record Management Programs and to prevent unauthorized use or disclosure of Record Management Programs. If granted use of any Record Management Programs (as applicable), HHSC shall not knowingly (A) send or store infringing or unlawful material; (B) send or store malicious code; (C) attempt to gain unauthorized access to or disrupt the integrity or performance of such Record Management Programs; or (D) use such Record Management Programs to provide services to any other Person. HHSC is responsible for any breach of this paragraph by its employees, agents, contractors or other representatives.

4. Ownership of Data and Records.

(a) Unless otherwise agreed to by the Parties in writing, all data, records, files and other information relating to the operation of the Hospitals after the Transfer

Completion Date (including, without limitation, any MHS information contained or otherwise stored in the Software Programs or Record Management Programs) shall be deemed to belong to, and be owned by MHS, regardless of any Transition Services provided by any Party under this Agreement. Upon the termination of this Agreement, HHSC shall discontinue the use of and promptly return MHS' data, records, files and other information obtained under this Agreement in accordance with Section 12.9(c) of the Transfer Agreement.

(b) Nothing contained herein regarding the provision of Record Management Services shall be construed to amend the provisions of the Transfer Agreement regarding the ownership of Patient Medical Records, including Section 2.3(f). The respective rights and obligations of MHS and HHSC concerning Patient Medical Records are specified on **Exhibit C**.

5. Survival. The provisions of this **Section III.A.** shall survive any termination or expiration of this Agreement.

B. LIMITATION ON LIABILITY.

Notwithstanding any other provision contained in this Agreement, in no event shall any of HHSC, MHS or their Affiliates be liable for any exemplary, special, indirect, punitive, incidental or consequential losses, damages or expenses, including business interruption, loss of revenue, income or profits, or diminution of value or loss of business reputation or opportunity in connection with the provision of Transition Services under this Agreement. The provisions of this **Section III.B.** shall survive any termination or expiration of this Agreement.

C. FORCE MAJEURE.

1. If MHS or HHSC, as applicable, is delayed or prevented from fulfilling any of its obligations under this Agreement by Force Majeure, said Party shall not be liable under this Agreement for said delay or failure to the extent such failure or nonperformance is caused by Force Majeure.

2. During the period of a Force Majeure, MHS shall be entitled to seek an alternative service provider with respect to such affected HHSC Service(s) and shall be entitled to permanently terminate such affected HHSC Service(s) if a Force Majeure shall continue to exist for more than fifteen (15) consecutive days, it being understood that MHS shall be required to take commercially reasonable efforts to provide advance notice of such termination to HHSC and MHS shall be relieved from the obligation to pay Service Charges for such affected HHSC Services throughout the duration of such Force Majeure.

D. RELATIONSHIP OF THE PARTIES.

1. Independent Contractors. The relationship of HHSC, on the one hand, and MHS, on the other hand, shall be that of independent contractors only. Nothing in this Agreement shall be construed as ranking one Party an agent or legal representative of the other or otherwise as having the power or authority to bind the other in any manner.

2. MHS Not Intended to be Public Body. Nothing in this Agreement is intended and it is not the intent of the Parties to cause or result in MHS being considered a public or quasi-public body, governmental authority or subdivision thereof, or other public entity.

E. ASSIGNMENT. Except as otherwise expressly contemplated by this Agreement (including all Exhibits hereto), no Party may assign or delegate all or any part of its rights or obligations under this Agreement without prior notice and prior written consent of the other Party, which consent will not be unreasonably withheld or delayed.

F. AMENDMENT. Except as set forth in Section 4.2(a), this Agreement may be amended, and the terms of this Agreement may be modified, only by a writing signed by each Party.

G. INCORPORATION OF CERTAIN PROVISIONS OF THE TRANSFER AGREEMENT. The provisions of Section 14.1 (Expenses to Perform Agreement), Section 14.2 (Notices), Section 14.3 (Transaction Costs), Section 14.5 (Governing Law), Section 14.6 (Mandatory Venue), Section 14.9 (Benefit), Section 14.10 (Waiver and Consents), Section 14.11 (Severability), Section 14.12 (Inferences), Section 14.17 (Tax and Medicare Advice and Reliance), Section 14.19 (Interpretation), and Section 14.21 (Counterparts) of the Transfer Agreement are hereby incorporated by reference into, and will apply to, this Agreement.

H. ENTIRE AGREEMENT. This Agreement, including the Exhibits hereto, and the Transfer Agreement constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, written and oral, among the Parties with respect to the subject matter hereof.

I. COMPLIANCE WITH HEALTHCARE LAWS. This Agreement is intended to comply with all Health Care Laws and nothing herein is intended to require, nor shall this Agreement be construed or interpreted as requiring, directly or indirectly, explicitly or implicitly, any Party to take any action that would violate any Health Care Law.

J. BUSINESS ASSOCIATE AGREEMENT. Confidential Information consisting of patient medical records and patient information, including PHI, shall be used by the Parties solely for the purposes of providing the Transition Services hereunder. The Parties shall perform their obligations under this Agreement in compliance with the HIPAA Business Associate Agreements attached to this Agreement at **Exhibits E and F** and incorporated by reference into this Agreement (the “**BAAs**”), and the requirements of the Health Insurance Portability and Accountability Act of 1996 and regulations adopted pursuant thereto, as amended and supplemented by the Health Information Technology for Economic and Clinical Health Act of 2009 and regulations adopted pursuant thereto (collectively, “**HIPAA**”). To the extent required by HIPAA and any regulations promulgated thereunder, the Parties agree to revise this Agreement and the BAAs as necessary to conform to these requirements. For purposes of this Agreement, the term “Protected Health Information” (“**PHI**”) shall have the same meaning as such term is defined in HIPAA and shall include electronic PHI, which HHSC and MHS are obligated to treat as confidential under HIPAA. This **Section III.J.** shall survive any termination or expiration of this Agreement.

K. EXHIBITS. Any and all exhibits referred to are attached to this Agreement and hereby deemed incorporated by reference.

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IN WITNESS WHEREOF, the undersigned have executed this Transition Services Agreement as of the date first above written.

HAWAII HEALTH SYSTEMS CORPORATION



Linda Rosen, M.D., M.P.H.
Its Chief Executive Officer

MAUI HEALTH SYSTEM,
A KAISER FOUNDATION HOSPITALS LLC,
a Hawaii limited liability company

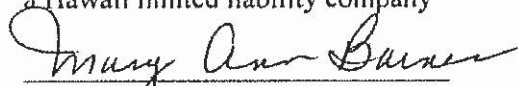
Mary Ann Barnes
Its Chairperson of the Board

IN WITNESS WHEREOF, the undersigned have executed this Transition Services Agreement as of the date first above written.

HAWAII HEALTH SYSTEMS CORPORATION

Linda Rosen, M.D., M.P.H.
Its Chief Executive Officer

MAUI HEALTH SYSTEM,
A KAISER FOUNDATION HOSPITALS LLC,
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Its Chairperson of the Board