

EXHIBIT C

RECORD MANAGEMENT SERVICES ARRANGEMENT

Record Management Services (as defined below) will be provided pursuant to the terms and conditions of this Record Management Services Arrangement (“**Records Arrangement**”).¹

WHEREAS, under Section 2.3(f) of the Transfer Agreement, HHSC remains the owner of the Patient Medical Records, which is defined in the Transfer Agreement to include all patient medical records (*e.g.*, medical charts, notes, orders, diagnosis and treatment of patients, appointment history and other related patient record of the Hospitals) maintained by HHSC in connection with the operation of the Hospitals prior to the Transfer Completion Date. Accordingly, HHSC ultimately is responsible for maintaining the Patient Medical Records in accordance with applicable Legal Requirements, including complying with any payor requirements relating to the billing and collection of the Accounts Receivable (as defined in Section 2.3(c) of the Transfer Agreement);

WHEREAS, under Section 2.3(f) of the Transfer Agreement, HHSC is required “to provide MHS with access and the right to copy and inspect at MHS’ expense such Patient Medical Records as are reasonably requested by MHS in connection with the provision of services to patients after the Transfer Completion Date, subject to all Legal Requirements.” In addition, “at HHSC’s cost and expense, HHSC is required to maintain the Patient Medical Records in a format reasonably accessible to MHS and in accordance with applicable Legal Requirements”;

WHEREAS, under the Records Arrangement, until the Expiration Date, HHSC is relieved of the personnel costs and responsibility of timely providing MHS access to paper/hybrid and electronic Patient Medical Records on a request-by-request basis;

WHEREAS, this Records Arrangement is designed to facilitate MHS’ access to (and copying of) Patient Medical Records in connection with (1) the operation of the Hospitals after the Transfer Completion Date, and (2) the provision of Record Management Services;

WHEREAS, this Records Arrangement is designed to facilitate the prompt response to requests for release of Patient Medical Records from various sources (paper and electronic) during the term; and

WHEREAS, this Records Arrangement is designed to serve continuity of care and regulatory purposes (including any Medicare or Joint Commission surveys) as MHS will have paper/hybrid and electronic Patient Medical Records readily accessible during the term. This arrangement is designed to promote The Hospitals’ continued compliance with Legal

¹ This RecordS Arrangement is premised on the March 6, 2017 Medical Records Proposal submitted for review and approval by the Hawaii Department of Health. Defined terms not otherwise defined herein shall have the meanings set forth in the Agreement, or, as applicable, the Transfer Agreement.

Requirements, accreditation requirements, and conditions of participation in Government Programs.

A. Record Management Services.

1. Scope. The Record Management Services cover all Hospital (inpatient and outpatient departments or services) Patient Medical Records, regardless of whether maintained in electronic, paper, or hybrid (*i.e.*, records that have both paper and electronic components) format. The types of Patient Medical Records covered include acute care and critical access hospital records, skilled nursing records (a/k/a “**resident medical records**”), mental health/behavioral health records, individuals with intellectual disabilities (“**IID**”) records, and records of provider-based radiology department and other provider-based outpatient service lines. The Record Management Services do not cover or address: (1) Patient Financial Records (as defined in the Transfer Agreement); or (2) physician office records, which do not constitute records of provider-based Hospital departments or services (including medical records of patients served at the Kula Clinic).
2. Record Management Services. Pursuant to the terms and conditions set forth in this Records Arrangement, including, without limitation, Sections B, C, D and E below, MHS will provide the following services (collectively, the “Record Management Services”):
 - (a) *Records Custodian*. MHS will serve as the legal custodian of records solely for purposes of (1) release of Patient Medical Records in accordance with Legal Requirements, and (2) maintaining an accounting of disclosures of Patient Medical Records under HIPAA, in both cases as further described herein.
 - (b) *Records Storage*. For a period not to exceed two (2) years, MHS will store and secure on-site Patient Medical Records in the Maui Regional Hospital facilities in compliance with applicable Legal Requirements, including HIPAA.
 - (i) MHS reserves the right to determine the location of such on-site storage in its reasonable discretion, provided that such location ensures the confidentiality and security of Patient Medical Records in accordance with applicable Legal Requirements.
 - (ii) MHS reserves the right to determine which Patient Medical Records are no longer needed on-site, in which case the records will be sent by MHS for off-site storage. MHS will index (in accordance with the MRHS record management indexing/coding system for the Patient Medical Records) the active Patient Medical Records, and, as necessary, historic Patient Medical Records that were being used for current, active patients as of the Transfer Completion Date prior to transporting such records to off-site storage. However, nothing contained in the TSA shall relieve HHSC of its obligations under this **Exhibit C** to transition Patient Medical Records off-site, or to properly index historic records of patients treated during the two-year period prior to the Transfer Completion Date.

(iii) If HHSC requests copies of any paper or hybrid Patient Medical Records stored by MHS on-site at any Hospital, HHSC will pay MHS' standard copying fees; provided that HHSC shall not be required to pay copying fees associated with MHS copying the paper and hybrid Patient Medical Records stored on-site at the Hospitals in connection with the release of Patient Medical Records under **Section A.2(c)** below.

(c) *Release of Patient Medical Records.* During the term of this **Exhibit C**, MHS will assume responsibility for timely responding to third party requests for Patient Medical Records as an independent contractor of HHSC, whether in response to a patient request under HIPAA or otherwise, a subpoena *duces tecum*, a payor audit (including RAC audits) or any other request of a Governmental Entity or third party for Patient Medical Records under applicable Legal Requirements, and whether contained in (1) the paper and hybrid Patient Medical Records stored on-site at the Hospitals, (2) paper and hybrid Patient Medical Records stored off-site at Access, or (3) the Record Applications.

(i) MHS personnel serving as the custodian of the Patient Medical Records shall be qualified as required under applicable Legal Requirements, including, without limitation, maintaining required Registered Health Information Administrator (RHIA)/Registered Health Information Technician (RHIT) certification under Hawaii law.

(ii) MHS will release Patient Medical Records only to the extent deemed a part of the "Legal Medical Record" under written HHSC or MRHS policies, procedures and guidelines provided to MHS in advance of the Transfer Completion Date. HHSC shall have in place clear policies, procedures, and written guidelines to clearly delineate which records are deemed part of the Legal Medical Records (including any exclusionary criteria or filters), which include the Legal Medical Record Policy and such other written policies, procedures or guidelines documenting standard Hospital practices.

(iii) MHS shall prepare any required certification or affidavit accompanying medical records (*e.g.*, H.R.S. § 622-52 and 622-53) based on HHSC's Legal Medical Record Policy and such other assurances as may be reasonably requested by MHS from HHSC or MRHS that the Patient Medical Records generally were prepared by the personnel of the Hospitals, staff physicians or persons acting under control of either, in the regular course of business at or near the time of the act, condition or event. HHSC and MHS shall mutually agree on any notification required concerning releases of information, but shall not be required to provide HHSC with copies of any produced records unless HHSC pays for the costs and expenses (including personnel costs) associated with providing such copies. MHS shall not be required to seek pre-approval from HHSC prior to releasing any Patient Medical Records in response to a legally valid request. HHSC shall defer to MHS' reasonable judgment regarding the scope and timing of any release of information, provided MHS acts in accordance with applicable Legal Requirements. Neither party shall indemnify the other party in

connection with the Record Management Services. Accordingly, HHSC shall not be entitled to bring any claim for losses, damages, or other expenses against MHS in connection with the performance of Record Management Services, including release of Patient Medical Records.

(iv) MHS shall not assume any responsibility for responding to any portion of a subpoena *duces tecum* or other request for information other than Patient Medical Records (e.g., Patient Financial Records).

(v) MHS shall provide all required certifications or affidavits required in releasing Patient Medical Records in reliance on HHSC's prompt notification and disclosure of any amendments or changes to the Patient Medical Records (as required under **Section E**).

(d) *Accounting of Disclosures.* During the term of this **Exhibit C**, MHS will assume responsibility for providing patients an accounting of disclosures of their Patient Medical Records under HIPAA, provided that HHSC regularly notifies MHS of any releases or disclosures by HHSC of Patient Medical Records.

3. Compensation. The Record Management Services shall be provided at no cost to HHSC provided that HHSC complies with the conditions and obligations set forth in this **Exhibit C**.

4. Expiration Date. Unless sooner terminated as provided in the Agreement or in Section 5, MHS will provide the Record Management Services relating to the Patient Medical Records on behalf of HHSC for a period of seven (7) years commencing on the Transfer Completion Date.

5. Termination.

In addition to the grounds set forth in the Agreement, MHS may terminate its obligation to store Patient Medical Records on-site in the Hospitals' facilities provided that ninety (90) days advance written notice is given to HHSC. In the event of such early termination, HHSC shall be responsible, at its cost and expense, for indexing and properly transporting the Patient Medical Records to the Access Maui Center. MHS shall cooperate in good faith with HHSC to assist in the transition of the Patient Medical Records to off-site storage.

6. Effect of Termination: Upon the expiration or termination of the this Records Arrangement:

(a) the Parties' respective rights and obligations shall be solely as set forth in Section 2.3(f) of Transfer Agreement; and

- (b) MHS shall cease to be the designated legal custodian of the Patient Medical Records as described herein and HHSC shall have sole custody of said records.

B. Paper/Hybrid Medical Records Special Conditions.

1. Record Retrieval System for Paper/Hybrid Medical Records

- (a) Prior to the Transfer Completion Date, MRHS will index and appropriately code for record management purposes all paper and hybrid Patient Medical Records stored or maintained in the Hospitals in compliance with applicable Legal Requirements, including, without limitation, the Hospital Conditions of Participation set forth at 42 CFR § 482.24.
- (b) Under applicable Medicare conditions of participation, MRHS is required to utilize a record management indexing/coding system for the Patient Medical Records that allows for the timely retrieval by diagnosis and procedure in order to support medical care evaluation studies, including the continuity of care of patients at the Hospitals after the Transfer Completion Date. Prior to the Transfer Completion Date, MHS reviewed the record management indexing/coding system currently utilized by MRHS and recommended to HHSC any changes or enhancements that would will facilitate MHS' provision of Record Management Services.
- (c) In the event that HHSC is notified by MHS, any Governmental Entity, or any accrediting body (including the Joint Commission) of any significant problems associated with the Patient Medical Records retrieval system that may impact patient care or the Hospitals' continued compliance with Legal Requirements, HHSC shall immediately remedy such problems. In the event any problems in the record retrieval system are cited by any Governmental Entity or accrediting body, HHSC shall comply with any deadlines or requirements imposed and shall further collaborate with MHS to develop such corrective action plans or other processes relating to such Patient Medical Records retrieval system as may be required for the Hospitals to comply with any Legal Requirements. If HHSC fails to take such actions as may be reasonably required to remedy the cited issues within the corrective action timeframes specified by any Governmental Entity or accrediting body, MHS may, at its sole option if HHSC does not do so, develop an indexing, coding and retrieval system for the Patient Medical Records, with all direct costs and expenses of such system to be offset against any amounts owed by MHS to HHSC under the Agreement.

2. On-Site Storage of Paper/Hybrid Medical Records

As a condition of providing the Record Storage services, prior to the Transfer Completion Date, HHSC will take reasonable steps to ensure that, as of the Transfer Completion Date, MMMC, Kula and Lanai will store and maintain only the following paper and hybrid Patient Medical Records on-site at the Hospitals: (1) active patient records, (2) historic records that are being used for current, active patients, and (3) historic records of

patients treated during the two year period prior to the implementation of the Soarian electronic medical records systems at the Hospitals. All other Patient Medical Records will be transported to and stored at the Access Maui Center prior to the Transfer Completion Date.

3. Off-Site Storage of Paper/Hybrid Medical Records

- (a) As a condition of MHS providing the Record Management Services, during the term of this Record Arrangement, HHSC will store historic paper and hybrid Patient Medical Records, including LCH death records, at the Access Maui Record and Destruction Center, located at 821 Eha Street, Wailuku, Hawaii 96793 (the “**Access Maui Center**”) operated by Access Information Management (“**Access**”).
- (b) Unless MHS otherwise consents in writing, HHSC shall utilize the Access Maui Center for off-site storage of Patient Medical Records for the seven (7) year term in which MHS is to provide Record Management Services.
- (c) HHSC will not terminate the Access agreement without cause during the term. HHSC shall not terminate the Access agreement for cause without: (i) giving MHS at least ninety (90) days’ prior written notice, and (ii) HHSC establishing an alternative off-site storage arrangement mutually agreed upon by MHS and HHSC that (A) 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(c), 42 C.F.R.§ 483.75(l)(2) and HIPAA, and (B) will not increase the costs to MHS of providing Record Management Services.
- (d) MHS shall be granted the right to obtain copies of historic Patient Medical Records directly from Access.
- (e) HHSC shall be solely responsible for the payment of all monthly storage charges under the Access agreement, including any record destruction, purging, indexing, scanning, microfilming, and temporary service fees. MHS shall not be responsible for these costs or charges.
- (f) MHS will reimburse HHSC for the costs (*i.e.*, Activity Fees) or, with HHSC’s consent, pay Access directly for costs associated with MHS’ requests for the retrieval of Patient Medical Records, including delivery or pick up fees, cancelation fees, and re-filing fees incurred (1) in connection with the operation of the Hospitals on or after the Transfer Completion Date and (2) in connection with performing the Record Management Services related to the release of Patient Medical Records in response to outside (third party) requests.

- (g) HHSC shall be responsible for any fees associated with records retrieved by HHSC or MRHS directly from Access and/or in response to a request from HHSC or MRHS for Patient Medical Records.

C. Electronic Medical Records Special Conditions.

- (a) As a condition of MHS providing the Record Management Services, subject to Section A.2(e) of the Agreement, HHSC will provide MHS, at no cost to MHS, direct access to the applications containing information that is considered part of the Legal Medical Record or was used, in whole or in part, by or for a HIPAA covered healthcare provider to make health care and treatment decisions about individuals prior to the Transfer Completion Date (collectively, the “**Record Applications**”). Unless otherwise specified on **Exhibit A**, and subject to Section A.2(e) of the Agreement, MHS shall receive read and print access to the Record Applications, including any Patient Medical Records stored therein, for a period of seven (7) years or, if sooner, the date that MHS successfully and completely copies or otherwise fully migrates Patient Medical Records from such systems into equivalent systems utilized by MHS. HHSC will pay any vendor fees required for MHS’ continued access to Record Applications during the term of this **Exhibit C**.

- (b) Without limiting the generality of the foregoing, as of the Transfer Completion Date, the Parties agree that the Record Applications include the following systems, which are further described on **Exhibit A**:

- The following Soarian EMR Systems (collectively, the “**Soarian Clinical Applications**”):
 - Soarian EDM;
 - Soarian Clinicals;
 - Soarian EDIS;
 - Soarian Critical Care;
 - Soarian Pharmacy/MAK;
 - Soarian SYNGO;
- Fujifilm Fuji Prosolv Cardiovascular PACs System;
- FujiFilm Fuji Synapse Radiology PACs System;
- Philips XPer;
- Cardioserver ECG/EKG Management - Epiphany;
- 3M Chart Release;
- LabTRACKS at Lanai;
- eCW/eClinicWorks – Maui Clinic;
- Cortrak;
- Series;
- eScription (eMon); and
- Philips Intellispace Perinatal System.

- (c) As of the Transfer Completion Date, the Parties contemplate that the Record Applications will not include the following systems (individually an “**Other Application**” and, collectively, the “**Other Applications**”) provided that information needed by MHS after the Transfer Completion Date for patient care or in connection with providing Record Management Services was completely and accurately copied or transferred from such Other Applications to, or complete and accurate data is otherwise available through, Soarian EDM:
- ADL Data System;
 - Cedaron Cardio Reporting System;
 - Surgical Information Systems (SIS);
 - eScription (EditScript); and
 - Point of Care Systems (*e.g.*, Rapidcom- pWeb and Helix).
- (d) If MHS reasonably determines that information needed by MHS after the Transfer Completion Date for patient care or in connection with providing Record Management Services is not available through Soarian EDM for any given Other Application, then such application automatically shall be deemed a Record Application for purposes of **Exhibit A** and this **Exhibit C** notwithstanding anything to the contrary contained therein or herein (and may be referred to as a “**Miscellaneous Record Application**”).
- (e) Except as otherwise agreed on **Exhibit A** or in a subsequent writing by the Parties, for a term of seven (7) years commencing on the Transfer Completion Date or such shorter period as may be specified for a given Record Application on **Exhibit A**, HHSC (1) will maintain the contractual rights to the Record Applications (which will be assigned to HHSC by MRHS prior to or on the Transfer Completion Date), (2) maintain the necessary hardware and servers to run the Record Applications and to preserve the Patient Medical Records contained therein, and provide such further support as set forth on **Exhibit A**.
- (f) HHSC and MHS recognize and agree that the Fujifilm Fuji Prosolv Cardiology PACs System and FujiFilm Fuji Synapse Radiology PACs System (collectively, the “**PACs Systems**”) will be returned to HHSC (or its successor or designee) at HHSC’s (or its successor or designee’s) cost and expense once the data from each of the PACs Systems is completely and successfully migrated to equivalent systems, whichever is sooner.
- (g) On or after the Transfer Completion Date, HHSC shall have sufficient redundancies in place to preserve the Patient Medical Records stored in the Record Applications in the event of a force majeure event. MHS will not, however, require redundancies for Record Applications cloned or otherwise copied by MHS prior to the Transfer Completion Date.

D. Conditions Concerning Copies of Patient Medical Records.

- (a) MHS will have the right to access and copy Patient Medical Records as needed in connection with the operation of the Hospitals after the Transfer Completion Date, which

may include (1) facilitating retrieval of paper/hybrid records from Access; and (2) copying all or such portions of the Patient Medical Records as may be necessary or appropriate in the continuing operation of the Hospitals, including continuing compliance with Legal Requirements, accreditation requirements, and Medicare conditions of participation.

- (b) Any Patient Medical Records copied for continuing patient care will become part of the MHS medical records. Without limiting the foregoing, MHS shall have the right, but not the obligation, to copy and migrate historic Patient Medical Record data from the Record Applications (or Other Applications or systems that are the source of patient information copied into the Soarian Clinical Applications) to MHS equivalent systems for continuity of care purposes and as required to comply with applicable Legal Requirements, including accreditation requirements and Medicare conditions of participation. These cloned records shall be deemed MHS records, not HHSC records. Any cloned records shall not relieve HHSC of its obligations to maintain the Patient Medical Records in accordance with applicable Legal Requirements. MHS is not obligated to provide copies of any cloned records to HHSC for redundancy or any other purposes. If HHSC requests a copy of any cloned records, MHS will consider the request in good faith, including any required terms, limitations, or costs.
 - (i) To facilitate the transition of the operation of the Hospitals and access to Patient Medical Records, certain Patient Medical Records, including those contained in the PACs Systems, will be copied for use by MHS for use on and after the Transfer Completion Date.
 - (ii) HHSC will permit a copy of the HHSC SIS Perioperative and & Anesthesia Coordination System database applicable to the Hospitals to be cloned for use by MHS on and after the Transfer Completion Date. The cloned SIS system will be a MHS record, which shall not be deemed part of the HHSC Legal Medical Record.

E. Special Conditions Concerning the Content of Patient Medical Records.

- (a) MHS will not alter any Patient Medical Records. Under the HHSC Legal Medical Record Policy, “only authorized HHSC clinical staff members may document in a patient’s Legal Medical Record including employed and contracted clinical personnel.”
- (b) MHS will not assume responsibility for the content of the Patient Medical Records. The sole exception is the timely completion of records of Government Program patients who are admitted to the Hospitals prior to the Transfer Completion Date but who are not discharged until on or after the Transfer Completion Date (*i.e.*, the “**Government Program Transition Patients**” described in Section 12.6 of the Transfer Agreement). With respect to Government Program Transition Patients, Private Program cut-over/transition patients, and self-pay cut-over/transition patients (collectively “**Transition Patients**”), MHS will attempt to close deficiencies associated with the inpatient and hospital based Patient Medical Records (*i.e.*, remedy incomplete

documentation as defined by the MHS incomplete document matrix) in order to support claims billed by MHS for such Transition Patients.

(c) Accordingly, MHS will not assume responsibility for:

- Closing Patient Medical Records (except for Transition Patients), including remedying any deficiencies (which include the failure of the Patient Medical Records to be legible, complete, dated, timed, and authenticated consistent with Hospital policies and procedures);
- Tracking or taking steps to avoid Patient Medical Record delinquencies [*i.e.*, documentation that is incomplete thirty (30) days after discharge (or such shorter period as specified in the medical staff bylaws)] (except for Transition Patients);
- Auditing the Patient Medical Records to confirm compliance with Legal Requirements, including, without limitation, 42 CFR § 482.24 (except for Transition Patients); provided that, if in the course of performing its Medical Records Management Services under the TSA or operating the Hospitals, MHS becomes aware of any deficiencies associated with the Patient Medical Records, it will promptly communicate such deficiencies to HHSC in writing;
- Allowing patients to amend their medical records under HIPAA;
- Correcting or altering Patient Medical Records;
- Confirming that Patient Medical Records are sufficient for HHSC or MRHS to collect the Accounts Receivable or otherwise bill for services provided prior to the Transfer Completion Date (which excludes the sufficiency of Patient Medical Records for MHS' billing for Transition Patients); or
- Late entry or documentation into the Patient Medical Records (except as may be appropriate for Transition Patients).

(d) HHSC is responsible for administratively closing incomplete Patient Medical Records in accordance with HHSC policy after all avenues to provide practitioners the opportunities to complete documentation have been exhausted. HHSC and MHS agree that this is an important process to ensure that historic Patient Medical Records will not remain delinquent in perpetuity. HHSC will cause MRHS to endeavor to close or administratively close any delinquent and/or deficient records prior to the Transfer Completion Date. HHSC will have in place a process to timely complete all other records after the Transfer Completion Date, which will include the Administrative Closure of Incomplete Medical Records Policy as well as written standard practices of MMMC, Kula and LCH.

(e) In the event that HHSC is notified by MHS, any Governmental Entity, or any accrediting body (including the Joint Commission) of any deficiencies associated with the Patient Medical Records, HHSC shall immediately remedy such deficiencies. In the event of any deficiencies cited by any Governmental Entity or accrediting body, HHSC shall comply with any deadlines or requirements imposed and shall further collaborate with MHS to develop such corrective action plans or other processes relating to such Patient Medical Records as may be required for the Hospitals to comply with any Legal Requirements.

- (f) So that MHS may perform the Record Management Services outlined below, HHSC shall (1) provide MHS notice of all amendment requests within seven business days of receipt of the request, (2) notify MHS immediately of the outcome of any amendment request within seven business days of a final determination regarding the amendment request, and (3) provide MHS with copies of all Patient Medical Records altered or amended after the Transfer Completion Date within seven business days of the change in a format mutually agreed by MHS and HHSC.

F. Demarcation of Records.

To provide a clear demarcation between Patient Medical Records owned by HHSC and medical records generated in the operation of the Hospitals after the Transfer Completion Date, HHSC shall cause an agreed upon notation to be entered into each Patient Medical Record within 24-48 hours after the Transfer Completion Date.

G. Verification of Patient Medical Records.

MHS shall not be responsible for verification of Patient Medical Records. Any verification required under Legal Requirements, payor requirements, or HHSC policy, including the HHSC Legal Medical Record Policy, shall be performed by HHSC.

H. Compliance; Security.

HHSC shall maintain systems to ensure that no one has unauthorized access to Record Applications. HHSC shall periodically monitor compliance with access restrictions.

MHS shall have in place policies and procedures to make sure its employees and other representatives do not have unauthorized, unnecessary, or inappropriate access to Record Applications or any portions of the Record Applications that contain information other than Patient Medical Records. MHS' policies and procedures will identify the persons or classes of persons who need access to the information contained in the Record Applications to carry out their job duties. MHS shall promptly notify HHSC when certain employees should no longer have access to designated Record Applications under the Records Arrangement due to, for example, a change in such employee's role, responsibilities, or employment status.

I. Record Destruction and Disposal.

HHSC is solely responsible for the destruction or disposal of Patient Medical Records, which shall only be performed in accordance with HHSC or MRHS medical record retention or destruction policies and applicable Legal Requirements. Without limiting the foregoing, HSC understands and acknowledges that the Patient Medical Records must be retained in accordance with all Legal Requirements applicable to the Hospitals (both before and after the Transfer Completion Date), including, without limitation, 42 C.F.R. § 482.24(b)(1)), 42 C.F.R. § 485.638(c)), 42 C.F.R. § 483.70(i)(4)), 45 C.F.R. 164.316(b)(2), and H.R.S. § 622-58.