

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is effective as of the date of last signature hereto (“Effective Date”) by and between BayCare Health System, Inc., a Florida not-for-profit corporation, and its hospitals, facilities, affiliates, and/or subsidiary companies (“BayCare”), and Personal Enrichment through Mental Health Services Inc., a Florida not-for-profit corporation (“Contractor”).

1. Professional Services. BayCare shall perform the services (the “Professional Services”) for Contractor that are more particularly described on individual statements of work (“Statements of Work”), which shall be consecutively numbered and attached hereto as Exhibit A (Statements of Work).

2. Term; Termination. The term of this Agreement shall commence on the Effective Date and, unless sooner terminated, shall remain in full force and effect for an initial period of one (1) year or until all of the Statements of Work have either terminated or expired, whichever occurs later (“Initial Term”). BayCare may terminate this Agreement at any time without cause and without penalty by giving Contractor at least thirty (30) days prior written notice. This Agreement will be terminated automatically and immediately if Contractor is excluded or sanctioned from a Governmental Program. Termination of this Agreement shall, in and of itself, terminate all of the Statements of Work. Except as otherwise set forth in this Section, the termination of any individual Statement of Work shall not impact this Agreement or any other Statement of Work.

3. Insurance. Each party agrees to maintain insurance in accordance with the terms set forth on Exhibit D (Insurance Requirements), which is attached hereto.

4. Payment Terms. In return for the performance of the Professional Services, BayCare shall be compensated at the rates set forth on the Statements of Work. Payment shall be made upon submission of invoices in accordance with the Florida Prompt Payment Act, Fla. Stat. §218.70, et seq.

5. Confidentiality. BayCare and Contractor hereby agree to execute and abide by the Mutual Non-Disclosure Agreement, which is attached hereto as Exhibit E (Mutual Non-Disclosure Agreement).

6. HIPAA. BayCare and Contractor hereby agree to execute the Business Associate Addendum, which is attached hereto as Exhibit B (Business Associate Addendum), simultaneously with this Agreement.

7. Data Ownership. All of BayCare’s data, records, lists, patient information, and other information to which Contractor has access, or which is transmitted to, by, or through any Contractor system, or which is otherwise provided to Contractor under this Agreement (“BayCare Data”) shall be and remain the sole and exclusive property of BayCare, and BayCare shall retain exclusive rights and ownership thereto. The BayCare Data shall not be used by Contractor for any purpose other than as required under this Agreement nor shall the BayCare Data (or any part of

the BayCare Data) be disclosed, sold, assigned, leased or otherwise disposed of to third parties (including any and all affiliates, subsidiaries, or other parties related to Contractor) by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, subcontractors, or agents.

8. BayCare Deliverables. Contractor acknowledges that any deliverables, reports, designs, documentation, computer programs, and/or other materials provided by BayCare under this Agreement (the “BayCare Deliverables”) shall be the sole and exclusive property of BayCare. BayCare hereby grants to Contractor a non-exclusive, limited license to use the BayCare Deliverables solely in connection with the Professional Services set forth on Exhibit A (Statements of Work).

9. Indemnification. Contractor agrees to be fully responsible for, and agrees to indemnify, defend, and hold BayCare, and its agents, employees, and contractors harmless against, all claims, losses, liabilities, damages, injuries, or expenses (including reasonable attorney and paralegal fees and expenses) resulting from or arising in connection with: (i) a breach by Contractor of Contractor’s obligations, representations, or warranties under this Agreement; (ii) any claim based upon any negligent or willful act or omission by Contractor, its agents, employees, or contractors; or (iii) any claim of personal injury or property damage caused by Contractor, its agents, employees, or contractors.

10. Venue/Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, exclusive of its choice of law rules. All disputes directly or indirectly related to this Agreement shall be litigated solely in the state and federal courts with jurisdiction over Pinellas County, Florida, and no other place, and Contractor and BayCare hereby agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts.

11. BayCare’s Policies. Contractor agrees that it shall comply with all of BayCare’s network, privacy, security, change management, change control, and other policies and procedures applicable to its performance under this Agreement, including, but not limited to, BayCare’s Information Security Agreement, which is attached hereto as Exhibit C (Information Security Agreement), including any modifications or additions thereto made during the term of this Agreement. Notwithstanding anything to the contrary in this Agreement, Contractor shall not make changes to any production system without first notifying BayCare and obtaining BayCare’s prior written consent to make changes to such production system.

12. Modification and Waiver. No modification of this Agreement shall be deemed effective unless in writing and signed by each of the parties hereto.

13. Entire Agreement. This Agreement, including all exhibits and addenda hereto, contains the entire agreement between the parties. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

14. Assignment. Contractor shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of BayCare.

15. Notices. Any notice required or permitted to be delivered under this Agreement shall be sufficient if in writing, and if delivered personally or sent by certified mail, return receipt requested and postage prepaid, to the parties at the following addresses: If to BayCare: BayCare Health System, Inc., 2985 Drew Street, Clearwater, Florida 33759, Attention: Vice President, Behavioral Health Services and with copy to: BayCare Health System, Inc., 2985 Drew Street, Clearwater, Florida 33759, Attention: Legal Services Department. If to Contractor: PEMHS Inc., 11254 58<sup>th</sup> Street N, Pinellas Park, Florida 33782-2212.

16. No Benefit to Others. The provisions set forth in this Agreement are for the sole benefit of the parties and their successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons or entities.

17. Independent Contractors. This Agreement shall create an independent contractor relationship between the parties. Nothing in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or similar relationship. Neither party has authority to enter into any contract or incur any other obligation on behalf or in the name of the other party. Each party will be solely responsible for all the acts, inactions, and/or claims relating to itself and its employees, agents, and/or subcontractors including, but not limited to: compliance with laws governing workers' compensation, Social Security, and withholding; payment of any and all federal, state and local personal income taxes; disability insurance; unemployment; and any other taxes for such persons. .

18. Force Majeure. Neither party shall be liable for any delay or failure in performance under this Agreement deemed to be a result, directly or indirectly, of any act of God, acts of civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of public transportation, or any similar or dissimilar cause beyond the reasonable control of either party.

19. Execution. This Agreement may be executed in one or more counterparts or by facsimile, each of which shall be an original and all of which shall together constitute one and the same instrument. A facsimile, PDF, or other electronic signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed), and shall be deemed an original signature for all purposes under this Agreement.

20. Publicity/Advertising. BayCare has a policy prohibiting the use of its name, brand, likeness, trademarks, or other intellectual property for publicity and/or advertising purposes unless such publicity/advertising will have a materially beneficial impact on its image and/or reputation. BayCare represents to Contractor that few requests it receives for publicity and/or advertising (including joint releases and/or testimonials) meet this requirement. All requests to use BayCare's name, brand, likeness, trademarks/intellectual property, statements from employees, results from questionnaires, or any other related requests ("Publicity/Advertising Requests") must be submitted

in writing to BayCare's Director of Communications who will facilitate BayCare's internal review and approval process. Contractor agrees that BayCare will approve or disapprove all Publicity/Advertising Requests in its sole discretion.

21. Attorneys' Fees and Costs. In the event of a dispute arising under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivering charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

22. Survival. Any provisions which remain to be performed, or by their nature are intended to be applicable, following any expiration or termination of this Agreement, any Statement of Work, or any exhibit attached hereto shall remain in full force and effect after such expiration/termination.

23. Controlling Document. In the event of any conflict or inconsistency between this Agreement, any State of Work, or any exhibit, document, instrument or agreement prepared by Contractor, the terms of this Agreement shall control.

24. Excluded Provider. Contractor hereby represents and warrants that Contractor is not, and at no time has been, excluded from participation in any federally funded health care program, including, but not limited to, the Medicare and Medicaid programs (collectively, the "Governmental Program."). Contractor hereby agrees to immediately notify BayCare of any threatened, proposed, or actual exclusion from any Governmental Program. In the event that Contractor is excluded from participation in any Governmental Program during the term of this Agreement, or if at any time after the Effective Date of this Agreement it is determined that Contractor is in breach of this Section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. Contractor shall indemnify, defend, and hold harmless BayCare against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, arising, directly or indirectly, out of any violation of this Section by Contractor.

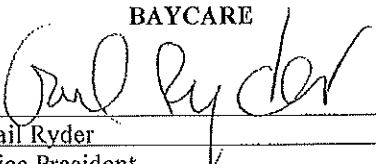
25. Access to Records. If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of this Agreement, Contractor shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by Contractor under this Agreement. Contractor further agrees that

in the event it carries out any of its duties under this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall include a provision requiring such

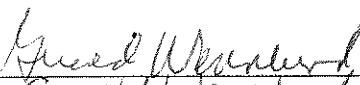
subcontractor to comply with Section 1395x(v)(1)(I) of Title 42 of the United States Code.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**BAYCARE**

By:   
Name: Gail Ryder  
Title: Vice President  
Date: \_\_\_\_\_

**CONTRACTOR**

By:   
Name: Gerald Wennlund  
Title: President & CEO  
Date: \_\_\_\_\_

## EXHIBIT A

### STATEMENTS OF WORK

#### Statement of Work #1

This Statement of Work #1 ("SOW #1") is effective as of the date of last signature hereto ("SOW #1 Effective Date"), by and between BayCare Health System, Inc., a Florida not-for-profit corporation, and its hospitals, facilities, affiliates, and/or subsidiary companies ("BayCare"), and Personal Enrichment through Mental Health Services Inc. ("Contractor"). This SOW #1 is an exhibit to the Professional Services Agreement, which shall be executed simultaneously with this SOW #1, between BayCare and Contractor ("Agreement"). Capitalized terms not defined in this SOW #1 shall be as defined in the Agreement. All terms and conditions of the Agreement shall apply to this SOW #1. In the event of conflict and/or inconsistency between this SOW #1 and the Agreement, the terms of the Agreement shall prevail, except to the extent such SOW #1 specifically cross-references the specific term, condition, and/or section of the Agreement to be amended by the SOW #1.

**WHEREAS**, Contractor desires to obtain Services (as hereinafter defined);

**WHEREAS**, BayCare employs certain personnel who are willing to provide Services to Contractor; and

**WHEREAS**, BayCare and Contractor desire to enter into this SOW #1 to set forth the terms and conditions under which the BayCare Personnel (as hereinafter defined) will provide Services to Contractor.

**NOW, THEREFORE**, the parties agree as follows:

A. Definitions.

1.1 "BayCare Personnel" means an individual who is employed by BayCare and who provides Services to Contractor. The initial BayCare Personnel are identified below:

- John Clare, Licensed Mental Health Counselor
- Anthony Jones, Master Level Practitioner
- Patsy Luehmann, Master Level Social Worker

B. Scope of Services. BayCare and Contractor agree that the BayCare Personnel shall provide care coordination services for mentally ill patients and/or patients with substance abuse issues at Contractor's facility (collectively, the "Services"). Such Services shall be performed at times mutually agreed upon by BayCare and Contractor. BayCare and Contractor agree that Contractor shall be responsible for the direction and supervision of the Services.

C. Term. The term of this SOW #1 shall commence on the SOW #1 Effective Date and, unless sooner terminated as provided in this SOW #1, shall continue for an initial term of four (4) month ("SOW #1 Initial Term"). Thereafter, this SOW #1 may be renewed only by written agreement signed by both parties ("SOW #1 Renewal Term"). The Initial Term, together with any Renewal Term(s), shall be referred to collectively as the "SOW #1 Term".

D. Termination without Cause. BayCare may terminate this SOW #1 at any time without cause and without penalty by giving Contractor at least thirty (30) days prior written notice.

E. Termination for Cause. Either party shall be entitled to terminate this SOW #1 for cause upon thirty (30) days advance written notice to the other party; provided, however, the breaching party has not cured the breach within such thirty (30) day period. Such notice shall specify, with reasonable detail, the nature and extent of the breach.

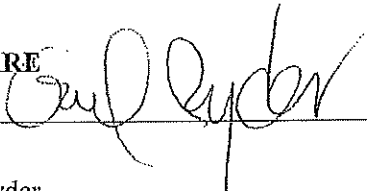
F. Payment. Beginning on the SOW #1 Effective Date and continuing through the SOW #1 Term, Contractor agrees to: (i) reimburse BayCare for the direct, out-of-pocket costs associated with the employment of the BayCare Personnel at all times when such BayCare Personnel provides Services pursuant to this Agreement, including, without limitation, the BayCare Personnel's then-current salary and benefits, travel expenses, supplies, and other expenses (collectively, the

“Costs”), and (ii) pay BayCare an amount equal to twenty-four percent (24%) of the Costs for BayCare’s administrative and operational costs associated with the BayCare Personnel (collectively, the “Payment Amount”). BayCare shall submit to Contractor an invoice supporting the Payment Amount, and Contractor shall pay BayCare within thirty (30) days of receipt of an invoice.

Initial Estimated Payment Amount:

Costs	Amount
Salary, Benefits, and Administrative Fees	\$247,666
Travel	\$3,204
Supplies	\$1,368
Other (cell phone and cellular service)	\$2,760
<b>Payment Amount</b>	<b>\$254,998</b>

**BAYCARE**



By

Gail Ryder

Print Name

Vice President

Title

Date

**CONTRACTOR**



By

Gerald Wendland

Print Name

President & CEO

Title

Date

**EXHIBIT B**

**BUSINESS ASSOCIATE ADDENDUM**



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**EXHIBIT C**

**INFORMATION SECURITY AGREEMENT**



*J.*

PEMHS - BayCare  
ISA 071918 (Fully Exc

## EXHIBIT D

### INSURANCE REQUIREMENTS

#### 1. INSURANCE:

- a) Proposal submittals should include, the Contractors current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If Contractor does not currently meet insurance requirements, Contractor/bidder/quoter shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place within 10 days after award recommendation.
- b) Within 10 days of **contract award** and prior to commencement of work, contractor shall email certificate that is compliant with the insurance requirements to [compliance@pemhs.org](mailto:compliance@pemhs.org).
- c) No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by PEMHS. Approval by PEMHS of any Certificate(s) of Insurance does not constitute verification by PEMHS that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. PEMHS reserves the right to require a copy of the entire insurance policy, including endorsement(s), at any time during the RFP and/or contract period.
- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the contractor to meet the requirements of the Agreement shall be endorsed to include PEMHS Inc. as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the Contractor to PEMHS at least thirty (30) days prior to the expiration date.
  - (1) Contractor shall also notify PEMHS within thirty (30) days after receipt, of any notices of cancellation or nonrenewal received by said Contractor from its insurer. Notice shall be given by certified mail to: PEMHS Inc. 11254 58<sup>th</sup> St. No., Pinellas Park, Florida 33782. Nothing contained herein shall absolve Contractor of this requirement to provide notice.
  - (2) Should the Contractor, at any time, not maintain the insurance coverages required herein, PEMHS may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of PEMHS and charge the Contractor for such purchase or offset the cost against amounts due to Contractor for services completed. PEMHS shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of PEMHS to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- f) PEMHS reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.
- g) If subcontracting is allowed under this agreement, the Prime Contractor shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*

All subcontracts between Contractor and its subcontractors shall be in writing and are subject to PEMHS's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Contractor to the same extent Contractor is bound to PEMHS by the terms of the Contract Documents, as those terms may apply



to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from Contractor to PEMHS at the election of Owner upon termination of the Contract; (3) provide that PEMHS will be an additional indemnified party of the subcontract; (4) provide that PEMHS will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of PEMHS and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to PEMHS; and (7) identify PEMHS as an intended third-party beneficiary of the subcontract. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.

h) Each insurance policy and/or certificate shall include the following terms and/or conditions:

- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with PEMHS. If Contractor is a Joint Venture per Section A, titled Joint Venture of this RFP, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against PEMHS for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "PEMHS" shall include all Authorities, Boards, and Departments of PEMHS and individual members, employees thereof in their official capacities, and/or while acting on behalf of PEMHS.
- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by PEMHS or any such future coverage, or to PEMHS's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. PEMHS shall have the right, but not the obligation to determine that the Contractor is only using employees named on such list to perform work for PEMHS. Should employees not named be utilized by Contractor, PEMHS, at its option may stop work without penalty to PEMHS until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Contractor to be in default and take such other protective measures as necessary.
- (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of PEMHS from both the Contractor and subcontractor(s).

i) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Worker's Compensation Insurance

Limit: Florida Statutory

Employer's Liability Limits

Per Employee	\$500,000.00
Per Employee Disease	\$500,000.00
Policy Limit Disease	\$500,000.00

- (2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury. Policy shall not contain any sexual misconduct or physical abuse exclusions.

Limits

Combined Single Limit Per Occurrence	\$1,000,000.00
Products/Completed Operations Aggregate	\$1,000,000.00
Personal Injury and Advertising Injury	\$1,000,000.00
General Aggregate	\$2,000,000.00

- (3) Business Automobile or Truckers/Garage Liability Insurance covering owned, hired, and non-owned vehicles. If the Contractor/Bidder/Quoter does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Contractor/Bidder/Quoter can show that this coverage exists under the Commercial General Liability policy.

Limit

Combined Single Limit Per Accident	\$1,000,000.00
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- (4) Professional Liability (Errors and Omissions) Insurance with at least minimum limits as follows. If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Contractor may submit annually to PEMHS, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

Limits

Each Occurrence or Claim	\$1,000,000.00
General Aggregate	\$1,000,000.00

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

- (5) Property Insurance Contractor will be responsible for all damage to its own property, equipment and/or materials.

## EXHIBIT E

### MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “**Mutual Non-Disclosure Agreement**”) is effective as of the date of last signature hereto (“**Mutual Non-Disclosure Agreement Effective Date**”) by and between BayCare Health System, Inc., a Florida not-for-profit corporation, and its hospitals, facilities, affiliates, and/or subsidiary companies (“**BayCare**”), and Personal Enrichment through Mental Health Services Inc. (“**Contractor**”)

1. In consideration of Contractor’s continued association with BayCare, the remuneration paid and/or to be paid to Contractor by BayCare, the services to be provided by Contractor, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and BayCare hereby agree to the terms and conditions set forth in this Mutual Non-Disclosure Agreement.
2. BayCare and Contractor acknowledge that in the course of Contractor’s activities and work with BayCare, BayCare, Contractor, and/or third parties performing services on behalf of BayCare and/or Contractor (the “**Disclosing Party**”) may provide certain proprietary and/or confidential information to the other party (the “**Receiving Party**”), and that the unauthorized disclosure and/or use of any such proprietary and/or confidential information will cause irreparable injury to the Disclosing Party.
3. “**Confidential Information**” shall mean all: (a) technical, business, financial, pricing and other data and/or information of the Disclosing Party that is disclosed/transmitted to or otherwise received/retrieved by the Receiving Party, whether orally or in writing; (b) patient information; and/or (c) other non-publicly available information related to the Disclosing Party’s business or operations. “**Confidential Information**” will not include any information: (i) that is publicly available through no breach of this Mutual Non-Disclosure Agreement by the Receiving Party; (ii) that is independently developed or was previously known by the Receiving Party; or (iii) that is rightfully acquired by the Receiving Party from a third party who is not in breach of an agreement to keep such information confidential.
4. Except in the normal course of the Receiving Party’s work for the sole use and benefit of the Disclosing Party, or upon the Disclosing Party’s written authorization, the Receiving Party agrees that it will not, nor will the Receiving Party permit its respective employees, agents, associates, independent contractors, subcontractors, outsourcers, and/or other service providers to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information to any third party, person, firm, corporation, or association for any purpose. The Receiving Party will: (a) secure and protect the Confidential Information by using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable degree of care, and (b) require each of its respective employees, agents, associates, independent contractors, subcontractors, outsourcers, and/or other service providers who have access to such Confidential Information to execute confidentiality agreements in their own right that are no less restrictive than the terms of this Mutual Non-Disclosure Agreement. The Receiving Party further agrees that it will not make any copies of the Confidential Information and will not remove any copy or sample of Confidential Information from the Disclosing Party’s premises without the written authorization of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose the Confidential Information to the extent required by applicable law or regulation or by order of a court or other governmental entity, in which case the Receiving Party will notify the Disclosing Party as soon as practicable and in any event, and if possible, at least thirty (30) days prior to the Receiving Party making such required disclosure.
5. The Disclosing Party shall retain ownership of all rights, including all intellectual property rights, in Confidential Information. No other right, immunity or license to the Confidential Information, either expressed or implied, is granted by the Disclosing Party pursuant to this Mutual Non-Disclosure Agreement under any patent, patent application, copyright, trademark or other intellectual property right.

6. Upon receipt of a written or verbal request from the Disclosing Party, and unless the Receiving Party has an ongoing right to use the Confidential Information pursuant to the terms and conditions of another agreement between the parties, the Receiving Party will return to the Disclosing Party all originals, copies, samples, and/or derivatives of the Confidential Information in whatever form that, at the time of the receipt of the notice, are in the Receiving Party's possession or control.
7. The obligations imposed on the Receiving Party shall continue with respect to each item of the Confidential Information following any termination of the contractual relationship between Contractor and BayCare (regardless of the reason for such termination), and such obligations shall not terminate until such item shall cease to be secret, proprietary, and/or confidential and shall be in the public domain, unless such event shall have occurred as a result of wrongful conduct by the Receiving Party or the Receiving Party's employees, agents, associates, independent contractors, subcontractors, outsourcers, and/or other service providers or a breach of this Mutual Non-Disclosure Agreement.
8. The Receiving Party acknowledges and agrees that a breach of this Mutual Non-Disclosure Agreement will cause the Disclosing Party to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, the Receiving Party agrees that in the event of any breach of this Mutual Non-Disclosure Agreement by the Receiving Party, the Disclosing Party shall be entitled, upon application to a court of competent jurisdiction, to obtain injunctive relief to enforce the provisions of this Mutual Non-Disclosure Agreement, which injunctive relief shall be in addition to any other rights or remedies available to the Disclosing Party. In any action or proceeding by the Disclosing Party to obtain a temporary restraining order and/or preliminary injunction, the Receiving Party hereby agrees to waive the necessity of the Disclosing Party's posting an injunction bond in order to obtain the temporary restraining order and/or preliminary injunction.
9. This Mutual Non-Disclosure Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, exclusive of its choice of law rules. All disputes directly or indirectly related to this Mutual Non-Disclosure Agreement shall be litigated solely in the state and federal courts sitting in the County of Pinellas in the State of Florida and no other place, and Contractor and BayCare hereby agree to waive any jurisdictional, venue, or inconvenient forum objections to such courts. In any action to enforce this Mutual Non-Disclosure Agreement, the prevailing party will be entitled to costs and attorneys' fees.
10. No changes to the Mutual Non-Disclosure Agreement will be effective unless in writing and signed by both parties. In the event that any provision of this Mutual Non-Disclosure Agreement is held to be invalid or unenforceable, the remaining provisions of this Mutual Non-Disclosure Agreement shall remain in full force and effect.
11. The waiver by either party of any default or breach of this Mutual Non-Disclosure Agreement shall not constitute a waiver of any other or subsequent default or breach. A waiver shall not be effective unless it is set forth in a document signed by the party against which such waiver is asserted.

This Mutual Non-Disclosure Agreement has been signed by Contractor and BayCare as of the Mutual Non-Disclosure Agreement Effective Date.

**Contractor**

By: Gerald Wennland  
 Name: Gerald Wennland  
 Title: President & CEO  
 Date: \_\_\_\_\_

**BayCare**

By: Gail Ryder  
 Name: Gail Ryder  
 Title: Vice President  
 Date: \_\_\_\_\_