

SERVICE AGREEMENT

By this SERVICE AGREEMENT ("Agreement"), Banner Health an Arizona Corporation, d/b/a/ ENTECH ("Provider") and the undersigned Customer, **GILA COUNTY DIVISION OF HEALTH AND COMMUNITY SERVICES** ("Customer"), including the parties' respective successors and assigns, agree as follows:

1. **RECITALS.**

1.1 Provider is in the business of providing maintenance and repair service for equipment used in the medical and health service industry;

1.2 Customer has leased and/or purchased the equipment set forth in Exhibit "B" attached hereto (the "Equipment") and desires to retain Provider to service the Equipment (the "Services") pursuant to this Agreement.

2. TERM. The initial term of this Agreement shall be for (3) Three Years, commencing on October 1, 2010 and terminating September 30, 2013. Prior to the expiration of the Term, the Agreement may be extended through a written amendment.

3. PROVIDER'S OBLIGATIONS. Provider agrees to provide the services below for the Equipment set forth in Exhibit "B", on the terms and conditions set forth in this Agreement and in Exhibit "A", including but not limited to:

- * Scheduled maintenance service, at the intervals indicated in Exhibit "A";
- * Service work required pursuant to changes in federal, state or local law;
- * Unscheduled Service or Emergency Repair service at the request of authorized Customer personnel (such personnel being set forth in Exhibit "A").

Notwithstanding the above, Provider shall be under no obligation to furnish services for non-qualified equipment. For the purposes of this Agreement, non-qualified equipment shall be:

- * Any Equipment that has been modified by Customer or any other non-authorized person.
- * Any Equipment maintained under this Agreement in which Customer does not allow Provider to incorporate manufacturer recommended enhancements or improvements.
- * Any Equipment that is outside its manufacturer's specified service life.
- * Any Equipment to which Customer does not provide access to Provider personnel.
- * Any Equipment not operated in accordance within its manufacturer's manual or guidelines.
- * Any Equipment serviced by anyone other than Provider.
- * Any Equipment that has been relocated without the written authorization of Provider.

4. **CUSTOMER'S OBLIGATIONS.** Customer agrees to use its best efforts to provide Provider safe and clear access to all of the Equipment for Scheduled Maintenance at the time agreed upon between the parties or at such dates and times necessary for Provider to carry out its obligations hereunder.
5. **BILLING AND PAYMENT.** Customer shall pay Provider the fees set forth in the attached Exhibit "A". Provider will bill Customer for the Services by an invoice detailing the Services provided during the relevant time period. The terms of payment are net thirty (30) days; provided, however, all invoices not paid within thirty (30) days of the bill date shall accrue interest on the amount due and owing at the annual rate of 18% until Provider is paid in full. If this Agreement is terminated as provided for herein, then all outstanding invoices shall immediately become due and payable upon the termination date.
6. **CERTIFICATE OF INSURANCE.** Provider will provide Customer with a certificate of insurance, upon request by Customer, which shall set forth the insurance coverage carried by or on behalf of Provider with respect to the Services provided hereunder. Provider may reasonably self-insure its obligations hereunder.
7. **STATUS OF THE PARTIES.** Provider will for all purposes be considered an independent contractor and neither Provider nor Provider's employees will be considered, or will act, either directly or indirectly, as an agent, servant or employee of Customer. Further, nothing in this Agreement shall be construed to establish a joint venture between Provider and Customer.
8. **COMMENCEMENT AND TERMINATION OF THIS AGREEMENT.** This Agreement shall become effective upon signing by authorized representatives of both parties. Either party may terminate this Agreement at any time with or without cause upon giving ninety (90) days prior written notice to the other party.
9. **MODIFICATIONS AND AMENDMENTS.** This Agreement may only be altered or amended through a written amendment signed by authorized agents of both parties; provided, however, that the prices set forth in Exhibit "A" shall be subject to change annually by Provider upon thirty (30) days prior written notice to the Customer. Within fifteen (15) days after the receipt of any such price change, the Customer may terminate this Agreement by giving Provider 30 day's written notice.
 - 9.1 **Changes to Inventory.** If, in the reasonable opinion of Provider, the addition or deletion of major equipment necessitates an adjustment to Exhibit A, a written Addendum itemizing the adjustment shall be negotiated in good faith and signed by authorized representatives of both parties.
10. **DEFAULT AND REMEDIES.**
 - 10.1 **Default.** In the event that either party fails to perform its obligations hereunder, such party shall be considered to be in default upon receipt of a written notice from the other party specifying with the specific nature of the default. If the defaulting party fails to cure the specified default within ten (10) days thereafter, then such party shall be deemed to be in breach of this contract, and the other party may pursue any and all legal remedies available, including without limitation, immediate termination of this contract and cessation of further performance of any duties and obligations of the non-defaulting party pursuant to this Agreement.

- 10.2 Injunctive Relief.** The parties agree that the remedies available at law may be inadequate and that both parties shall be entitled to equitable relief, including without limitation, injunctive relief, specific performance, or other equitable remedies in addition to all other remedies provided hereunder or available to both parties at law or equity.
- 10.3 Remedies Cumulative.** No remedy made available by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or at common law or by statute.
- 10.4 Costs and Attorneys' Fees.** In the event any legal action or other proceeding is pursued for the enforcement of this Agreement, or arising out of any dispute, breach, default or misrepresentation in connection with the Agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in such action or proceeding in addition to any other relief to which it may be entitled.

11. GENERAL PROVISIONS.

- 11.1 Limitation on Actions.** No action or proceeding to enforce any rights arising under or relating to this Agreement shall be commenced more than one year after the occurrence of the specific events giving rise to the cause of action upon which such action or proceeding is based.
- 11.2 Notices.** Any notice or communication to be given under the terms of this Agreement shall be in writing and delivered in person or deposited, certified or registered, in the United States Mail, postage pre-paid, addressed as noted on this signature lines of this Agreement, or to such other address as either party may from time to time designate by notice hereunder. Notices shall be effective upon delivery in person, or at midnight on the third business day after the date of mailing, if mailed.
- 11.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 11.4 No Waiver by Failure to Act.** Neither failure nor any delay on the part of either party hereto in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right preclude any other or further exercise of that or any other right.
- 11.5 Assignment.** This Agreement is binding on the successors and assigns of the parties to this Agreement. Notwithstanding any provision of this Agreement to the contrary, Provider shall have the right to assign or otherwise transfer its interest under this Agreement to any related entity. A related entity shall include a parent, subsidiary or entity resulting from a sale of all or substantially all of Provider's assets, or from a merger or consolidation of Provider with or into another entity(s). Such an assignment shall not require the consent of approval of Customer.

- 11.6 Availability of Records.** When required by federal and/or state regulations for four (4) years after the provision of services pursuant to this Agreement, Provider shall make available to the Health and Human Services Secretary, or the Comptroller General, or their duly authorized representatives, this Agreement, books documents, and records of Provider that are reasonably necessary to certify the nature and extent of such costs. If Provider carries out any of the duties of this Agreement through a subcontract with a value of cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization, such subcontracts shall contain a clause to the effect that until the expiration of four (4) years after the provision of such services pursuant to such subcontract, the related organizations shall make available, upon written request to the Health and Human Resources Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, books, documents and records of such organization that are necessary to verify the nature and extent of such cost.
- 11.7 Entire Agreement.** This Agreement constitutes and embodies the full and complete understanding and agreement of Provider and Customer with respect to the subject matter and supersedes all prior understandings or agreements whether oral or in writing with regard thereto. In the event any term or provision of this Agreement is declared invalid or unenforceable for any reason, then this Agreement will nonetheless remain in full force and effect and shall be interpreted as though such invalid or illegal provision were deleted.
- 11.8 Right to Subcontract.** Provider reserves the right to subcontract its obligations to perform all or any portion of the Services hereunder to an authorized third party, so long as the provision of Services meets or exceeds the requirements herein. Provider shall remain liable for provision and performance of Services, unless otherwise specifically agreed to in writing by Customer.
- 11.9 Force Majeure.** Neither party shall be liable for delays in delivery or performance or failure to deliver or perform due to a cause beyond its reasonable control, including but not limited to an act of God, act or omission of the other party, act of civil or military authority, Governmental priority, fire, strike or other labor disturbance, flood, epidemic, quarantine restriction, war, riot, delay in transportation, inability due to a cause beyond its reasonable control to obtain necessary, materials, components, services, manufacturing facilities or any other commercial impracticability. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay. In the event of a supply or product shortage, Provider shall have the right to allocate its available resources among its customers in such a manner as Provider deems to be equitable.

12. SANCTIONS

Customer hereby expressly represents and warrants to Provider that none of Customer's signature authorities and none of those signature authorities' immediate family have been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to provisions of 42 U.S.C. § 1320 a.7, or been excluded from government contracts by the General Services Administration (GSA). Further, if, during the term of this Agreement, any of Customer's signature authorities, or any of those signature authorities' immediate family is placed on the sanctions list, Customer shall immediately notify Provider in writing of the event and such notice shall contain reasonably sufficient information to allow Provider to determine the nature of the sanction. Provider shall have the right to terminate this Agreement immediately by written notice to Customer if any of Customer's signature authorities or any of those signature authorities' immediate family is placed on the sanctions list or banned from government contracts by GSA.

13. INDEMNIFICATION

Each party shall indemnify and hold harmless the other, its respective employees, agents and subagents, individually and collectively, from all fines, claims, demands, suits or actions of any kind including costs, expenses and attorneys' fees resulting from or claimed to have resulted from any intentional or negligent acts or omissions of the indemnifying party occurring in the performance of its responsibilities under this Agreement. Where both Customer and Provider, including their respective officers, employees, agents and subagents, participated in the liability causing event, each party shall contribute to the common liability a pro rata share based upon its relative degree of fault as established by compromise, arbitration or litigation.

14. LIMITATIONS OF LIABILITY, WARRANTY

In no event, whether as a result of breach of contract, warranty, tort (including negligence and strict liability) shall Provider's total liability to Customer for any and all loss or damage arising out of, or resulting from, this Agreement, or from its performance or breach, or from any parts or services, exceed the total fees paid by Customer in the previous month multiplied by 12

In no event, whether as a result of breach of contract, warranty, tort (including negligence and strict liability), shall Provider be liable to Customer for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, service materials or facilities, services or replacement power, down time costs.

NOTHING HEREIN IS INTENDED TO LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY TO THIRD PARTIES ARISING FROM A PARTY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT.

If Provider furnishes Customer with advice or other assistance which concerns the Equipment or any part or service supplied hereunder, or any system or equipment to which same might be installed or to which it might relate and which is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Provider to any liability, whether in contract, warranty, tort (including negligence and strict liability), or otherwise.

Provider warrants that all labor provided hereunder will be preformed by qualified technicians and that all parts shall be new or certified to perform as new. Because it is impossible to predict the service life of parts and the use of Equipment, the Services provided under this Agreement are not intended to guarantee the safe operation of Equipment for every use. Other than as expressly provided for herein, no IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

15. Cancellation

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

16. Legal Arizona Workers Act Compliance

Provider hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Provider's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Provider shall further ensure that each subcontractor who

performs any work for Provider under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Provider and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Provider's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Provider to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Provider shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Provider shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Provider.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latter day and year set forth below.

Date: _____

Banner Health an Arizona Corporation
d/b/a ENTECH®
7300 West Detroit Street
Chandler, AZ 85226

By: Michael S. Warden
Its: SR VP I/T-CIO

Signature

Date: _____

Gila County Division of Health and Community Svcs
1400 East Ash Street
Globe, AZ 85501

By:
Its: Chairman

Signature

EXHIBIT "A"

SERVICES AND FEES

This Exhibit is attached to and incorporated in that certain Services Agreement by and between Banner Health, an Arizona Corporation, d/b/a ENTECH ("Provider") and **GILA COUNTY DIVISION OF HEALTH AND COMMUNITY SERVICES** ("Customer").

Provider agrees to provide the Services for Customer's Equipment at the prices set forth below. Provider shall have the right to make annual adjustments to the fees in an amount not to exceed Five Percent (5%) by giving Customer thirty (30) days written notice.

- a. **Scheduled Maintenance Service.** As recommended by the Arizona Department of Health Services (ADHS), Joint Commission, American College of Radiology (ACR), Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) and other licensing and accrediting agencies, periodic maintenance is scheduled to include:

CLINICAL EQUIPMENT SERVICES

- All Scheduled Maintenance Labor Included in Annual Fee
- Invasive/Non-Invasive Output Verification
- Electrical Safety Inspection
- Physical Inspection and Functional Check
- Identification of Equipment Requiring Repair
- Complete Service History Documentation
 - Overall Equipment Inventory by Cost Center
 - Scheduled Maintenance summary (each inspection)
 - Delinquent Scheduled Maintenance Report
 - Quarterly and Year-to-Date Service History Summaries

Location:	Inspection Frequency:	Annual Fee:
Globe 1400 E. Ash St. Globe, AZ 85501	Annual	\$ 790
Payson 107 W. Frontier St., Ste. A Payson, AZ	Annual	\$ 680

- b. **Demand Repair and Billable Services.** Customer will be invoiced for labor, parts, shipping, and travel per the listed zone charge, as incurred during demand repair. Damage (customer negligence, water and/or accidental), obsolescence, factory overhauls (e.g. refurbishments, upgrades, modifications), and special projects (e.g. installations/removals), are billed time and materials as incurred. All consumables (batteries, light bulbs, etc.) and parts required for scheduled maintenance are billable as incurred.

	<u>Normal Working Hours</u>	<u>After Hours</u>
Anesthesia	\$ 125	\$180
Biomedical	\$ 100	\$150
Zone 1:	Travel 50 to 100 miles from Service Center	\$ 150
Zone 2:	Travel 101 to 250 miles from Service Center	\$ 300
Zone 3:	Travel 251 to 500 miles from Service Center	\$ 600

Zone 4: Travel greater than 500 miles from Service Center \$ 750

- c. **Scheduling.** Scheduled Maintenance Services will be provided during Provider's normal working hours, 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Provider will provide Customer with a Schedule describing when Customer shall make the Equipment available for regular Scheduled Maintenance Service.
- d. **Response Time.** Four (4) hours is the maximum response time for returning calls. If the problem is determined by Provider to be a failure requiring on-site service, a Clinical Engineer will be dispatched. Provider provides on-site response within twenty-four (24) hours or less, Monday through Friday, and may be deferred to the next working day on weekends and holidays.
- e. **Authorized Customer Personnel.** At the time of execution of this Agreement, the following personnel are designated as the representatives of Customer who have been authorized to schedule maintenance, repairs and other services with Provider pursuant to this Agreement.

(1) Lorraine Dalrymple*

*** Primary Authorization Contact**

Provider shall use its best efforts to coordinate the services provided hereunder with the representative of Customer authorizing or requesting service, and said representative shall sign all authorizations or other documents required to be signed by Customer hereunder. Customer shall provide Provider with any changes in authorized personnel immediately, i.e., within three (3) business days. In any event, Customer agrees to pay Provider for emergency services provided hereunder in response to a request for service by any employee of Customer if Provider is unable to verify the request with an authorized representative named herein within the specified time for such emergency service.