THIS AGREEMENT made the 28 day of January 2014 by and between

THE COUNTY OF ERIE, a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, Buffalo, New York 14202
(hereafter the "County")

and

PREMIER OB/GYN, L.L.P., a for profit organization under the Laws of the State of New York, having its principal place of business at 8270 Wehrle Drive, Williamsville, NY 14221 (hereafter the "Consultant")

WHEREAS, the New York State Department of Health, (NYSDOH); Health Research Inc, (HRI); and the WNY Affiliate of Susan G. Komen for the Cure (Komen) have heretofore granted to the County of Erie, through its Department of Health, a sum not to exceed yearly allocation as noted in associated contracts, funding allocation letters and umbrella contracts to cover approved cancer screening, diagnostic and treatment services.

W I T N E S S E T H :

FIRST: The Consultant shall provide approved cancer screening, diagnostics and treatment at its program enrolled sites and County shall reimburse Consultant for eligible services performed at the annual Federally approved Medicare reimbursement rates. The current rates are more fully described in Schedule "A", which is attached hereto and made a part hereof.

SECOND: The term of this Agreement shall commence on **January 1, 2012** and shall terminate on **March 31, 2014,** unless terminated or extended earlier pursuant to the provisions of this Agreement. The term of this Agreement may be extended by mutual written consent of the parties for two additional periods of five years.

THIRD: All medical records, case histories, films and regular files concerning inpatients and outpatients of the Premier OB/GYN, L.L.P., and its network of providers by Consultant during the term of this Agreement related to the performance of services as described in Schedule A shall belong to and remain the property of the County; provided, however, that during the term of this Agreement and follow any terminating hereof, Consultant shall, to the extent permitted under applicable laws governing confidentiality of medical records, have the right to inspect and reproduce, at its own expense, such records. During the term of this Agreement, the parties shall allow each other reasonable access to their respective medical, financial and other records maintained in connection with the services provided pursuant to this

Agreement, to the extent permitted under applicable laws governing the confidentiality of such records.

FOURTH: Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Consultant as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

FIFTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's receipt of funds from **The State of New York** and **the WNY Affiliate of Susan G. Komen for the Cure (Komen)** to operate the **Cancer Services Program**, and that no liability shall be incurred by the County beyond the monies made available from **The State of New York and Komen** for this Agreement. The Consultant agrees that the County shall not be liable for any of the payments hereunder unless and until the County has received said funds.

If, for any reason, the full amount of said funds is not paid over or made available to the County by **The State of New York or Komen**, the County may terminate this Agreement immediately or reduce the amount payable to the Consultant, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Consultant. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

SIXTH: (a) The County, upon ten (10) days notice to the Consultant, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "A". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Consultant shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Consultant shall direct any approved sub consultants to do the same.

In the event of a dispute as to the value of the Work rendered by the Consultant prior to the date of termination, it is understood and agreed that the Erie County Commissioner of Health shall determine the value of such Work rendered by the Consultant. The Consultant shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

SEVENTH: The Consultant agrees to indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Consultant or third parties under the direction or control of the Consultant; and (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

EIGHTH: The Consultant expressly agrees that neither it nor any consultant, sub-consultant, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status or any other status protected by New York State or Federal laws during the term of or in connection with this Agreement.

NINTH: The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Consultant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, sub-consultants and others employed to render the Work hereunder.

TENTH: Consultant shall obtain and maintain at its own cost and expense, the following insurance coverages with insurance companies licensed in the State of New York. The

Contractor shall submit a standard Erie County Insurance Certificate or Certificates evidencing the coverage required herein, and after approval by the Erie County Department of Law, said Certificate(s) shall be attached to and be made a part of this Agreement. Any default of the terms of this provision shall render this Agreement void and of no effect.

A. Comprehensive General Liability - Policy shall provide limits of $1,000,000.00 per occurrence and $3,000,000.00 general aggregate for bodily injury, property damage and professional liability. The coverage shall include premises and operations, products and completed operations, independent contractors, contractual liability (sufficient to cover all liability assumed under contracts with the County) and personal injury liability;

B. Excess "Umbrella" Liability – With a minimum limit of liability of $1,000,000.00;

C. Professional Liability – With a minimum limit of liability of $1,000,000.00;

D. Workers' Compensation and Employers' Liability – Providing statutory coverage in compliance with the Workers' Compensation Law of the State of New York;

E. Disability Benefits – Providing statutory coverage in compliance with the New York State Disability Benefits Law.

Consultant agrees that the General Liability, Automobile Liability, Excess "Umbrella" Liability, and Professional Liability policies shall name the County as an additional insured. All policies in which the County is named as an additional insured shall provide that the insurance company or companies issuing the policies shall have no recourse against the County for payment of any premiums or for assessments under any form or policy and the insurance shall apply separately to each insured except with respect to the limit of liability. The Agency agrees that insurance certificates required under this Agreement shall state that prior to cancellation, non-renewal or material change of the policies of insurance, at least ten (10) days advance written notice shall be given to the County through the Department.

ELEVENTH: The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Work without the written consent of the County,

subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that sub-consultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement.

TWELFTH: The Consultant and the County agree that the Consultant and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

THIRTEENTH: Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

FOURTEENTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Erie County Department of Health
95 Franklin Street, Room 910
Buffalo, New York 14202

with a copy to:

County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

To the Consultant:

Premier OB/GYN, L.L.P.
8270 Wehrle Drive
Williamsville, NY 14221

FIFTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

SIXTEENTH: Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

SEVENTEENTH: The Consultant recognizes that this Agreement does not grant the Consultant the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other consultants on an "as needed" basis.

EIGHTEENTH: The Consultant shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a

conflict of interest. The Consultant shall also use all reasonable means to avoid any appearance of impropriety.

NINETEENTH: This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

TWENTIETH: This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

TWENTYFIRST: Erie County strongly encourages all not-for-profit agencies that contract with the County of Erie to participate in the community service component of the County's Welfare to Work Initiative. This program places qualified public assistance recipients in community service placements. Clients participating in this component must work in their respective community assignments as a condition for receipt of welfare benefits. An agency representative should contact: Frank DeCarlo, Director of Employment and Training Program, Erie County Department of Social Services at 858-7481 for additional information regarding this program.

IN WITNESS WHEREOF, The County of Erie and the Consultant have caused this Agreement to be executed.

THE COUNTY OF ERIE

By: _____
Name: Richard Tobe
Title: Deputy County Executive

Approved as to content

Approved Electronically

By: _____
Name: Gale R. Burstein, M.D., MPH, FAAP
Title: Commissioner of Health

Approved as to form

Approved Electronically

_____
Assistant County Attorney
Doc. No. _____
Date _____

PREMIER OB/GYN, L.L.P.

By: _____
Name: Susan Erk D.O.
Title: D.O.

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N.Y., JUNE 26, 2014

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, *That at the **13th** Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the **twenty-sixth** day of **June, 2014 A.D.**, a Resolution was adopted, of which the following is a true copy:*

WHEREAS, the Erie County Department of Health administers a Cancer Services Program to provide cancer screenings to the uninsured and the underinsured; and

WHEREAS, the Cancer Services Program is responsible for ensuring thousands of Erie County residents receive needed screenings for potentially deadly cancers; and

WHEREAS, every year dozens of lives are saved thanks to the discovery of treatable cancers in Erie County residents who utilize the Cancer Services Program; and

WHEREAS, Premier OB/GYN is one of the healthcare providers which has provided screenings for cervical cancer to Erie County Residents; and

WHEREAS, Premier OB/GYN is owed $6,657.06 for services rendered as part of the Cancer Services Program; and

WHEREAS, the Department of Health and Premier OB/GYN need to execute a contract in order for the payment to be made, as well as to continue the County's relationship with the vendor moving forward.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to enter into a contract with Premier OB/GYN for the period January 1, 2012-December 31, 2014; and be it further

RESOLVED, that the Legislature approves of the payment of $6,657.06 to Premier OB/GYN for services previously rendered; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the County Executive, the Office of the Comptroller, the Division of Budget and Management, the Department of Law, and to Dr. Gale R. Burstein, Commissioner of Health.

REFERENCE: **COMM. 12E-37 (2014)**

6/30/14 To: M. Kubik
C. Moore
A. Seminetta
R. Bartolotta
G. Kammer

RECEIVED
JUN 30 2014
ECHD Administration

ATTEST

Scott Kroll

SCOTT W. KROLL
Clerk of the Legislature of Erie County