

Before the Board of Supervisors in and for the
County of Monterey, State of California

Agreement No.: A-11010

- a. Authorize the Purchasing Manager for Monterey County to enter into the Agreements with Credit Consulting Services, Inc. and Metro Republic Commercial Services, Inc for bad debt collection services on a contingency fee basis at Natividad Medical Center (NMC) in an amount not to exceed \$2,000,000 for the term August 1, 2007 through June 30, 2009 or \$1,000,000 for Fiscal Year 07/08.
- b. Waive County Insurance Endorsement requirements for Metro Republic Commercial Services, Inc.

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, effective August 28, 2007, the Board hereby;

- a. Authorizes the Purchasing Manager for Monterey County to enter into the Agreements with Credit Consulting Services, Inc. and Metro Republic Commercial Services, Inc for bad debt collection services on a contingency fee basis at Natividad Medical Center (NMC) in an amount not to exceed \$2,000,000 for the term August 1, 2007 through June 30, 2009 or \$1,000,000 for Fiscal Year 07/08.
- ~~b. Waive County Insurance Endorsement requirements for Metro Republic Commercial Services, Inc.~~


PASSED AND ADOPTED this 28th day August 2007, by the following vote, to wit:

- AYES: Supervisors Armenta, Calcagno, Salinas, and Potter
- NOES: None
- ABSENT: Supervisor Smith

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 73 for the meeting on August 28, 2007

Dated: August 29, 2007

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California

By 
Darlene Drain, Deputy

COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
(MORE THAN \$100,000)*

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and _____
Credit Consulting Services (CCS)
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The services are generally described as follows: Provide Collection Services

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$1,000,000.00.

3. **TERM OF AGREEMENT.** The term of this Agreement is from August 1, 2007 to July 30 2009, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

*Approved by County Board of Supervisors on _____

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. **INDEMNIFICATION.** Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9. INSURANCE.

9.01. Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02

Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03

Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

9.04. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such

confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by

virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits, CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Name and Title	Name and Title
Address	Address
Phone	Phone

15. **MISCELLANEOUS PROVISIONS.**

15.01. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

15.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15. Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16. Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

15.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

This space is left blank, intentionally.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Manager

Date: 9-11-07

By: [Signature]
Department Head (if applicable)

Date: SEP 05 2007

Approved as to Form¹

By: W. Allen Bidwell

Date: Deputy County Counsel
08-16-2007

Approved as to Fiscal Provisions⁴

By: [Signature]
Auditor/Controller

Date: 8-16-07

Approved as to Liability Provisions²

By: Risk Management

Date: _____

Board Order # _____

Copy of Board Order must be included.

¹INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

Approval required by the following:

¹County Counsel

²Risk Management

³Board of Supervisors, approved by board order

⁴Auditor/Controller, if changes are made to the standard payment provisions.

CREDIT CONSULTING SERVICES
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President)*

RODNEY MEELS V.P.
Name and Title

Date: 8-3-07

By: _____
(Signature of Secretary, Asst. Secretary, CFO, or Asst. Treasurer)*

Name and Title

Date: _____

COLLECTION AGREEMENT & HIPAA PROVISIONS "PROPRIETARY INFORMATION"

This agreement made and by and between County of Monterey Natividad Medical Center, hereinafter referred to as "Client" or "Provider", and Credit Consulting Services, Inc. a collection agency governed by state and federal collection laws, including the Federal Fair Debt Collection Practices Act, hereinafter referred to as "Company":

WHEREAS, Client desires Company to undertake the collection of the Client's accounts and other evidences of indebtedness ("accounts"), in the manner and under the terms and conditions hereinafter set forth;

WHEREAS, Client intends to assign accounts for collection to Company pursuant to this Agreement; and,

WHEREAS, the parties contemplate the future course of dealing as Client and Company, and desire to set forth and define herein the mutual rights, obligations and liabilities of the parties hereto in such course of dealing,

THEREFORE, in consideration of the premises and of the mutual agreements of the parties hereto, it is hereby agreed as follows:

1. Client warrants that each account assigned for collection is a valid and existing account against the debtor and each account complies with all state and federal laws. Client further warrants and represents that it is fully authorized and empowered to assign to Company all accounts, and all rights relating thereto, which are sent to the Company pursuant to this Agreement. Client also agrees to cease all collection efforts with its customer once the account is assigned to Company.

2. Client acknowledges that Company has the authority on all assigned accounts to receive payment in cash, check or money order. Client also acknowledges that Company is given the authority to endorse checks, drafts, money orders and other negotiable instruments, which may be received in payment relating to any assigned account.

Health Insurance Portability and Accountability Act Provisions

3. *Use and Disclosure of Protected Health Information.* The parties hereto agree that in order for the Company to perform its duties under this Agreement, it will be necessary for the Company to use and disclose Protected Health Information ("PHI"), as such term is defined at 45 CFR §164.501.

3.1 *Permitted and Required Uses and Disclosures of PHI.* The parties hereto agree that the Company may use and disclose PHI in order to carry out any Payment function covered under the definition of "Payment" contained in 45 CFR §164.501. The parties hereto further agree that the Company may use or disclose PHI for any use or disclosure that is required by law.

3.2 *Use and Disclosure of Minimum Necessary Amount of PHI.* The parties hereto desire to ensure that the Provider discloses to the Company the minimum

necessary amount of PHI necessary for the Company to perform its duties under this Agreement. The parties hereto agree that the following information includes the minimum necessary in order for the Company to perform its duties under this Agreement:

- (A) Name and address of patient and responsible party
- (B) Telephone number of patient and responsible party
- (C) Date and birth of patient and responsible party
- (D) Social Security number of patient and responsible party
- (E) Driver's License of patient and responsible party
- (F) Employment Name, address, and telephone number of patient and responsible party
- (G) Name, address, telephone, and contact for any healthcare provider, health plan, insurance, or other third party concerning the services provided or payment source for the obligation
- (H) Name, address, and telephone number of nearest living relative or emergency contact information
- (I) Payment history pertaining to the account, etc.;
- (J) Upon the Company's receipt of a written request from patient requesting verification of the account information, the Provider shall provide the Company with an itemization of the services and the date(s) such service(s) were rendered to the patient and which pertain to the account receivable referred to the Company pursuant to this Agreement;
- (K) Upon the Company's request, identifying information as necessary and such other information relating to the obligation, payments, service, to enforce the right to receive payment from any insurance company or plan, or in any judicial, non-judicial, administrative, or other proceeding or action; or to respond to allegations of the patient, person, or governmental entity that attempts to collect the account was improper.

4. Termination by Provider For Breach. Notwithstanding any other provision for the termination of this Agreement, the Provider may terminate this Agreement if the Provider determines that the Company has breached a material term of this Agreement. (45 C.F.R. §164.504(e)(2)(iii)). In the event of a material breach of the Company's duties and responsibilities contained in Sections 6.1 through and including 6.12 of this Agreement, the Provider may immediately terminate this Agreement upon written notice to the Company. In the event of a claimed material breach of any other provision of this Agreement by the Company, the Provider shall give the Company written notice of the alleged material breach. The Company shall have ten (10) days from the date of any written notice of breach to cure the alleged breach. In the event the Company cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event that the Company fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

5. Termination by the Company for Breach. In the event of a claimed material breach of any provision of this Agreement by the Provider, the Company shall give the Provider written

notice of the alleged material breach. The Provider shall have ten (10) days from the date of any written notice of breach to cure the alleged breach. In the event the Provider cures the alleged breach within the ten (10) day time period, this Agreement shall remain in full force and effect. In the event that the Provider fails to cure the alleged breach within the ten (10) day time period, this Agreement shall terminate.

6. *Duties and Responsibilities Concerning PHI*

6.1 *Restrictions on Use and Disclosure of PHI.* The Company shall not use or further disclose any PHI other than as permitted or required by this Agreement, or as required by law;

6.2 *Safeguarding of PHI.* The Company shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement;

6.3 *Reporting of Unauthorized Use or Disclosure of PHI.* The Company shall report to the Provider any use or disclosure of PHI not provided for by this Agreement of which the Company becomes aware;

6.4 *Protection of PHI by Agents and Subcontractors.* The Company shall ensure that any agents, including any subcontractors, to whom it provides PHI received from, or created or received by the Company on behalf of the Provider agrees to the same restrictions and conditions that apply to the Company with respect to such PHI;

6.5 *Access to PHI.* The Company shall make available PHI in accordance with 45 CFR §164.524. Within ten (10) days after receipt of a request from the Provider for access to PHI in the possession of the Company, the Company shall make such PHI available to the Provider. Within ten (10) days after receipt of a request from an individual for access to PHI in the possession of the Company, the Company shall forward such request to the Provider;

6.6 *Amendments to PHI.* Within ten (10) days after receipt of a request from the Provider for an amendment to any PHI, the Company shall make the requested PHI available to the Provider for amendment and shall incorporate any such amendments into the PHI in accordance with 45 CFR §164.526. Within ten (10) days after receipt of a request from an individual for an amendment to any PHI, the Company shall forward such request to the Provider;

6.7 *Accountings.* Within ten (10) days after receipt of notice from the Provider that the Provider has received a request from an individual for an accounting of disclosures of PHI regarding the individual during the six (6) years prior to the date on which the accounting was requested, the Company shall make available to the Provider such information as is in the Company's possession and is required for the Provider to provide an accounting of disclosures of PHI to the individual in accordance with 45 CFR §164.528;

6.8 *Internal Practices, Books, and Records.* The Company shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Company on behalf of the Provider available to the Secretary of the Department of Health and Human Services for purposes of determining the Provider's compliance with Subpart E of Part 164 of Title 45 of the Code of Federal Regulations; and,

6.9 *Duties with Regard to PHI Upon Termination of this Agreement.* At termination of this Agreement, if feasible, the Company shall return or destroy all PHI received

from or created or received by the Company on behalf of the Provider that the Company still maintains in any form and retain no copies of such PHI. If such return or destruction is not feasible, the Company shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible.

6.10 *Preparation and Delivery of Accountings.* It shall be the sole responsibility of the Provider to prepare and deliver any accounting requested pursuant to 45 CFR §164.528;

6.11 *Decisions Concerning Access to PHI.* In the event that an individual has requested access to PHI directly from the Company, and the Company has forwarded such request to the Provider in accordance with Section 6.5 of this Agreement, it shall be the sole responsibility of the Provider to determine whether to grant or deny such access; and,

6.12 *Amendment of PHI.* In the event that an individual has requested an amendment to PHI directly from the Company, and the Company has forwarded such request to the Provider in accordance with Section 6.6 of this Agreement, it shall be the sole responsibility of the Provider to determine whether to allow or disallow such amendment.

6.13 *Consents and Authorizations.* Prior to disclosing any PHI to the Company, the Provider shall obtain all required consents and authorizations, if any are required by Provider or regulation; pursuant to 45 CFR §164.506 and 45 CFR §164.508 respectively, sufficient to permit the disclosure of PHI from the Provider to the Company, and to permit the Company to perform its duties pursuant to the terms of this Agreement;

6.14 *No Restrictions.* The Provider shall not place any account with the Company if the Provider has agreed to any individual's request to restrict the use or disclosure of PHI connected with such account pursuant to 45 CFR §164.522.

CONDUCT OF COMPANY

7. *Collection Efforts.* Company will use collection efforts that it deems to be reasonable, and consistent with all applicable laws, and the general reputation of the Client and Company. As reasonably requested by Company, including for the purposes of verification of an assigned debt, to respond to inquiries from a debtor on an assigned debt, evaluation of collection options, and prosecution of any litigation or other proceeding for the enforcement of an assigned debt, Client shall provide such information, data, and documents as reasonably necessary to Company. If Client fails to provide such information within 10 days, Company may elect to deem the assigned account uncollectable.

8. *Litigations and Enforcement.* Company, as the assignee, shall make the decision whether litigation or other enforcement proceedings should be commenced or continued for any account assigned under this agreement. Company will obtain Client's approval prior to commencing any such litigation. Company agrees to advance all necessary legal cost. When Company collects an account, in whole or in part, Company may first deduct any and all legal cost advanced before disbursing any amounts to Client or Company. If Client advances legal cost, Company will first disburse any and all legal cost advanced before making any disbursements to Company.

9. *Forwarding Assigned Accounts.* Client recognizes debtor may reside in a state with restrictive laws and regulations. Company may forward any of Client's claims to another collection agency in order to comply with such laws and regulations or to improve the chance of recovery. Such other collection agency shall have the authority to exercise all ordinary and reasonable collection efforts as permitted by law.

10. *Credit Reporting.* Client agrees each account assigned to Company may be placed with a credit reporting agency by Company for inclusion in the individual credit file and reported as a derogatory item for the times and in the manner allowed under the Federal and applicable State Fair Credit Reporting Acts. Company will report unpaid accounts after 60 days from the original date of assignment. Client reserves the right to have Company direct that an item be deleted from a credit file due to the Client's error. Company may, as it determines appropriate in its sole discretion, issue any such corrections or deletions of information reported to credit reporting agencies.

11. *Settlement of Assigned Accounts.* Except as provided in this paragraph, Company shall not accept as settlement in full, on any account assigned, any amount less than the full amount as originally assigned by Client without the expressed consent of Client. Company may settle or compromise accounts, with all reductions to be made from monies due Company, without Client consent so long as client receives the amounts due under this Agreement as if the account was paid in full.

12. *Reassignment of Accounts.* Client may require Company to return a specific account or accounts for which there have not been any monies collected within the seven calendar month period, unless there is a payment plan between the debtor and Company, litigation has commenced by Company, or the Company has obtained a judgment on the account. Client may also require Company to return specific accounts, which Client identifies within one month after assignment was assigned in error, and for which Client has not been paid since assignment. If Client is paid within six months of an account cancelled as being assigned due to error, Client shall immediately notify Company of the payment, and within 10 days after receiving such payment, pay Company an amount equal to its share of such monies as if the account had not been cancelled. Company may offset such amount from a disbursement to be made to Client for monies collected on other Client assigned accounts. In the event of a cancellation, Company shall issue instructions to have previously reported information deleted by the Consumer Reporting Agencies, and it shall be Client's responsibility to conduct any such further credit reporting. Company agrees to return any Medicare accounts deemed uncollectable after 120 days per client request free of charge.

13. *Disbursement of Monies Collected.* Company will deposit all payments into a trust account. Company will remit payments directly from the trust account. A report shall be given to the Client not later than the 15th of the month following the close of the previous month, coupled with a remittance check. All monies due the client shall be remitted in full with a remittance statement of each account collected. Client recognizes Company is due a commission on any money collected once the account is assigned for collection regardless of payment source or payment location. Client will pay company its collection fees within thirty days of Company remitting payment and remittance statement to Client.

14. *Client Direct Payments:* Client agrees to promptly report to Company all payments, bankruptcy notices, and any and all communications from the debtor or any third party. Client also agrees to direct all communication from debtors to Company. Client shall notify Company

the following information for each Direct Payment: A) The amount of the payment; B) The name of the debtor; and, C) The debtor's account number.

15. *Interests Assigned.* In addition to the principal amount of the debt assigned, Client assigns all rights, whether contractual or statutory, relating to the assigned account(s), including without limitation, the right to interest, fees, costs, bad check charges, attorneys' fees, and other financial obligations to the Company. Company shall retain all interest owing after the time of assignment, and all pre-assignment interest, which was not listed in the balance due on the account by the Client at the time of assignment. Pursuant to the assignment, Company shall have the right to commence suit as it determines necessary and appropriate in the collection of the assigned account.

16. *Fees and Interests in Monies Collected.* For all accounts assigned, Company is assigned fourteen percent (14%) of all Principal Sums ("Principal Sums" is the dollar amount of the account as assigned by the client during the first 30 days of assignment, including the interest and other costs as then computed by the Client) collected from whatever source or any items returned as a credited item on accounts referred from this date hereon forward, and eighteen percent (18%) after 30 days of assignment. On accounts where legal action is instituted or it becomes necessary to forward the account to an agency outside the geographic area, Company is assigned thirty-five percent (35%) of all Principal Sums. In the event the Company files any action or proceeding against the Client for the recovery of any monies due from the Client to the Company pursuant to this Agreement, Client shall pay Company all costs incurred by the Company in prosecuting such action, including, without limitation, reasonable attorneys' fees. Any accounts where payments or insurance are identified within the first five days of assignment the account will be canceled and returned at no cost.

The Client's duties and obligations under Paragraphs through and including 16, 18 and 19 of this Agreement shall continue subsequent to termination, for any reason, of this Agreement with respect to payments received upon which the Company remains entitled to receive pursuant to this Agreement.

17. *Term of Agreement.* The initial term of this Agreement shall be for a period of two years, with the option to extend this Agreement for an additional two additional one-year periods. Either party shall have the right to terminate this agreement in writing on a sixty (60) day notice. Should either party elect to terminate this agreement, Company will return all accounts except those in active status, if payment plan, litigation and judgment. At termination of agreement Company shall remit every thirty days all monies due Client on a net basis, and retain all monies due Company.

18. *Client Conduct Litigation.* If the debtor files a responsive pleading, cross-complaint, counter claim or other affirmative claim for damages or other relief based on the conduct of Client, Client shall pay all of Company legal fees and cost incurred relating to the claims or rights asserted in such responsive pleading, cross-complaint, counter claim or other affirmative claim for damages. Client will be notified of such affirmative claim, to make appropriate arrangements before Company undertakes any defense. Client shall be responsible for entering its appearance and defending such affirmative damage claims based on the conduct of Client asserted by a debtor.

19. *Indemnification.* Client agrees to indemnify, defend, and hold harmless Company, its officers, management, members, employees, and agents from damages, claims, or liability arising out of or related to Client's conduct or any information provided to Company by Client.

Client acknowledges that Company shall rely upon the information as provided by Client for accounts assigned pursuant to this Agreement in performing its collection activities, including reporting information to Consumer Reporting Agencies, commencing litigation, and enforcing a judgment and Company is not obligated to independently investigate information provided by Client. Company agrees to indemnify, defend, and hold harmless Client, its officers, management, and employees from damages, claims, liabilities arising solely out of Company's collection activities on an account assigned pursuant to this Agreement. The liability of Company to Client, if any, with respect to this Agreement shall in any event be limited to the total compensation for the services provided hereunder for the month in which Client suffered a loss or damage. Any such compensation shall not include any liability for any loss of anticipated profits or consequential or indirect damages, whether foreseeable or unforeseeable, whether or not resulting from the passive or active negligence or other acts of Company or its officers, management, members, employees or agents.

20. *Limitations.* Notwithstanding any other provisions of law, all claims, disputes, corrections or other alleged errors by Company concerning the monies disbursed to Client for amounts collected on assigned accounts must be made, and any judicial or non-judicial proceeding commenced, within four hundred and eighty-five (485) days of the disbursement having been mailed to Client. Each disbursement to Client shall be deemed a separate and independent potential claim for which the four hundred and eighty-five (485) day period shall separately apply, and such period shall not be extended by any subsequent disbursements.

21. *Choice of Law.* This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of California. The Company and the Provider hereby expressly agree that any action to interpret, construe, or enforce this Agreement shall be brought in the Superior Court in and for Monterey County, in the State of California.

22. *Fees and Costs.* If either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of the action, including without limitation, reasonable attorneys' fees.

23. *Entire Agreement.* This Agreement represents the entire agreement of the parties and supersedes all other oral or written agreements, understandings, statements, or representations between them regarding the subject matter hereof, except for previous agreed compensation on previously assigned accounts. Each of the parties hereto have relied solely on their own judgment and knowledge, and been provided the opportunity to seek the advice of their own respective legal counsel in entering into this Agreement. No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by each of the parties hereto.

24. *Counterparts.* This Agreement may be executed by the parties hereto in duplicate counterparts, each of which shall be deemed an original, when attached together shall form one document. Signatures on this Agreement may be communicated by facsimile transmission and shall be binding upon the parties transmitting the same by facsimile transmission. Counterparts with original signatures shall be provided to the other party within fifteen (15) days of the applicable facsimile transmission, provided, however, that the failure to provide the original counterpart shall have no effect on the validity or the binding nature of the Agreement.

25. *Confidentiality.* The parties agree to keep all of the terms of this Agreement strictly confidential, including without limitation, the Compensation terms contained in this

Agreement. The parties further agree to maintain the confidentiality of any confidential information and/or trade secrets that they may learn about each other throughout the course of this Agreement, including without limitation, the terms of any contracts that the other party may have with any third parties.

By: _____

Date: _____

[Print name]

[Print title]

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