

**SECOND AMENDMENT
TO COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES**

THIS SECOND AMENDMENT TO COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES (“Second Amendment”) is entered into and effective as of June 7, 2016 (“**Second Amendment Effective Date**”), by and between **Total Renal Care, Inc. (“CONTRACTOR”)** and **Natividad Medical Center (“NMC”)**.

WITNESSETH:

WHEREAS, on March 1, 2010, the parties hereto entered into that certain County of Monterey Agreement for Acute Dialysis Services (“**Agreement**”), pursuant to which NMC agreed to engage the services of CONTRACTOR to provide acute dialysis services at NMC; and

WHEREAS, on February 28, 2014, the parties hereto amended the Agreement to revise several sections, which included the renewal of the Agreement by extending the term through June 30, 2017 and adding a clause allowing immediate termination for failure to pay, as well as other changes (“**First Amendment**”); and

WHEREAS, in accordance with Section 14.2 of the Agreement, the parties wish to further amend the Agreement to extend the term of the agreement, to add Continuous Renal Replacement Therapy (“**CRRT**”) Services, to add Corporate Integrity Agreement Requirements, to modify differential fees, to add CRRT fees and to add an additional one million dollars (\$1,000,000) to the total amount payable by NMC to CONTRACTOR for the continued provision of services through June 30, 2019.

NOW, THEREFORE, for and in consideration of the premises contained in this Second Amendment, the parties do hereby agree as follows:

1. Section 3 shall be deleted in its entirety and replaced with the following new Section 3, which is incorporated in the Agreement by this reference:

“**TERM OF AGREEMENT.** The term of this Agreement is entered into as of the later of the last date of execution of this Agreement or March 1, 2010, whichever occurs last, and ends on June 30, 2019, unless sooner terminated pursuant to the terms of this Agreement.”

2. Section 2 shall be deleted in its entirety and replaced with the following new Section 2, which is incorporated in the Agreement by this reference:

“**PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit D and the Second Amendment subject to the limitations set forth in the Agreement, as amended in the First Amendment and the Second

Amendment. The fee schedule set forth in Exhibit D and this Second Amendment shall continue to be increased on March 1st of each year for the duration of the term of the Agreement by an amount equal to the percentage increase in the "Index" (as defined below) during the twelve (12) month period ending one (1) month prior to such anniversary date. The "Index" shall mean the Medical Care Service Component of the Consumer Price Index for All Urban Consumers (CPI-U) (1982-1984=100) published by the Bureau of Labor Statistics, United States Department of Labor. Should the Index no longer be published, the Index shall be the Medical Care Component of the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W) published by the Bureau of Labor Statistics, United States Department of Labor. Should neither Index be published, then the Parties shall mutually agree upon an alternate index which measures changes in relevant costs in the health care industry. At no time will the rates decrease during the life of the Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of three million one hundred and fifty two thousand dollars (\$3,152,000) total. If the above amount is surpassed during any fiscal year, the CONTRACTOR shall have the right to immediately terminate the Agreement if the parties do not amend the Agreement to increase the funding for any service ordered."

3. Section 13 is hereby amended as follows to correct the CONTRACTOR's address:

"FOR CONTRACTOR:

Attention: Hospital Services Group Paralegal
DaVita HealthCare Partners Inc.
5200 Virginia Way
Brentwood, TN 37027"

4. Section 16.5 shall be deleted in its entirety and replaced with the following new Section 16.5, which is incorporated in the Agreement by this reference:

"Orders. CONTRACTOR shall provide Services only upon receipt of an order ("**Order**") of a nephrologist or physician who has been authorized by NMC to make such requests. NMC shall provide CONTRACTOR with a list of nephrologists or physicians authorized and qualified to order Services (the "**Physicians**"), which list NMC shall update from time to time. In order to initiate treatment, NMC agrees to promptly contact CONTRACTOR upon receipt of an Order and after the patient has received a functioning vascular or peritoneal access for treatment. If contact is made by telephone, NMC will call the dedicated phone number CONTRACTOR will give to NMC for

placing an Order. NMC's call to CONTRACTOR with Orders for Services is NMC's authorization for CONTRACTOR to provide such Services on NMC's behalf. CONTRACTOR agrees to use commercially reasonable efforts to arrive onsite within four (4) to six (6) hours of receipt of an Order from NMC for treatment, or within a later specified timeframe as set by the patient's physician. CONTRACTOR agrees to use commercially reasonable efforts to arrive onsite within two (2) hours receipt of an urgent Order ("**STAT Order**"), however, weather, location of NMC, the day and hour of the STAT request, and other facts and circumstances may make this impractical or impossible in a given instance. Accordingly, CONTRACTOR'S failure to satisfy this requirement shall not be considered a breach of the Agreement. If CONTRACTOR receives a verbal or read back Order for the provision of Services, NMC shall provide to CONTRACTOR a written Order from the Physician within forty-eight (48) hours of such verbal or read back Order. NMC shall ensure that necessary, appropriate and proper written informed consent specific to the Services have been obtained. NMC shall make such documents available to CONTRACTOR Staff immediately prior to the performance of the Services. NMC and CONTRACTOR agree that the Physician(s) shall be responsible for discussing the risks and benefits of treatment involving any of the Services in conjunction with obtaining the written informed consent. If questions arise from any documentation to be provided under this Section, CONTRACTOR may delay the performance of the Services until it has the required information. The Staff will be responsible for provision of the ordered Services, including: (a) set-up and safety check of machine and water treatment system; (b) initiating treatment, monitoring of treatment, and termination of treatment; (c) documentation of treatment on NMC-approved forms; and (d) clean up of dialysis equipment and proper storage of machine and supplies."

5. Section 16.16 is hereby added to and incorporated in the Agreement by this reference:

"Continuous Renal Replacement Therapy ("**CRRT**") Services. NMC acknowledges and agrees that CONTRACTOR has no obligation to provide continuous nursing coverage for NMC's CRRT patients. CRRT services will not be provided until such time that NMC and CONTRACTOR mutually establish policies and procedures for the CRRT program, and CONTRACTOR completes CRRT training for NMC's designated Intensive Care Unit Nurses ("**ICU Nurses**"). CONTRACTOR will hold up to four (4) classes per year during the term of this Agreement to train NMC's designated ICU Nurses to

successfully monitor CRRT patients and equipment in order to maintain continuity of CRRT. Such classes shall include a competency review for all designated ICU Nurses in order to maintain and document ICU Nurse competency of CRRT. CRRT training classes have no maximum class size, but there is a minimum enrollment of five (5) per class and must be arranged and scheduled in advance. Any additional classes or class cancellations will be billed as RN Consultation hours. NMC assumes responsibility for associated NMC Staff labor costs.”

6. Section 16.17 is hereby added to and incorporated in the Agreement by this reference:

“Corporate Integrity Agreement Requirements.

(a) Code of Conduct. CONTRACTOR shall provide to NMC access to a copy of DaVita’s Code of Conduct and relevant policies and procedures in either hard copy or electronic form (the “DaVita Policies and Procedures”), which are designed to ensure compliance with relevant Federal health care program requirements.

(b) Anti-Kickback Statute Compliance. The Parties agree that: (1) neither Party shall violate the Anti-Kickback Statute with respect to the performance of this Agreement; (2) the compensation provided under this Agreement has been determined in arm’s-length bargaining and reflects fair market value in arm’s-length transactions; (3) the compensation is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated for or with respect to or between the Parties for which payment may be made in whole or in part under Medicare, Medicaid, or any Federal or State health care program or under any other third party payor program.

(c) Screening Requirements. NMC represents and warrants to CONTRACTOR that neither it nor any of its employees, contractors, subcontractors related to this Agreement: (1) are currently excluded from participation in an federal health care program, as defined under 42 U.S.C. § 1320a – 7(b); (2) are currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal procurement or nonprocurement programs; or (3) have been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a – 7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible. NMC agrees to notify CONTRACTOR within two (2) business days of learning of any such exclusion described above.

(d) Removal Requirement. In the event of learning of such exclusion, as described in Section 16.17(c) above, CONTRACTOR shall have the right to terminate this Agreement without further liability.”

7. Exhibit D, Fee Schedule, of the Agreement is hereby amended to add the following new rates:

“1. Hemodialysis

(c) Hemodialysis 2:1¹ (up to 4 hours) \$568.24 per treatment

4. Miscellaneous

(b) Differential: Same Day Service \$127.63 per treatment/visit
Called In After 3:00pm²

(e) Differential: STAT Response \$150.00 per treatment/visit
Ordered

5. Continuous Renal Replacement Therapy (CRRT: SCUF, CVVH, CVVHD, CVVHDF)

(a) CRRT – Adult³ \$675.00 per treatment visit

(b) CRRT Cartridge \$200.00 per cartridge”

All other rates in effect under this Agreement remain unchanged, except for as adjusted annually pursuant to Section 2.

8. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

9. In all other respects, the parties do hereby reaffirm the provisions of the Agreement, which shall continue in full force and effect, except as amended hereby.

10. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and

¹ This rate is charged for concurrent treatments performed on two (2) or more patients at the same time in the NMC dedicated dialysis space (as identified in the Agreement on Exhibit C, Section 2). Any treatments performed on one (1) patient only in the dedicated dialysis space will be billed at the hemodialysis 1:1 rate.

² Same Day Service begins at 3:00pm and ends at 6:00am.

³ Includes CRRT equipment, labor and dialysate. Pre-dilution replacement solution is dispensed from NMC Pharmacy and is not included. Each visit is separately billable. CRRT cartridges are sold separately and are separately billable.

the same instrument. Copies of signatures sent by facsimile transmission, scanned and sent via electronic mail, or electronic signatures shall be deemed to be originals.

IN WITNESS WHEREOF, the parties have executed this Second Amendment by their duly authorized representatives:

**NMC:
Natividad Medical Center**

By: _____

Name: _____

Title: _____

Date: _____

**CONTRACTOR:
Total Renal Care, Inc.**

By: Nasser Khan

Name: Nasser Khan, MD

Title: Division Vice President

Date: 5/9/16

**APPROVED AS TO FORM ONLY:
DaVita HealthCare Partners Inc.**

By: _____

Name: David Wolff

Title: Group General Counsel

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey
5.26.16

AB
AB per eton
5-25-16
Dep. Group Counsel