



## Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
www.co.monterey.ca.us

### Board Order

**Agreement No.: A-14393**

A motion was made by Supervisor Mary Adams, seconded by Supervisor Chris Lopez to:

- a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an agreement with Total Renal Care, Inc. for acute dialysis services at NMC for an amount not to exceed \$1,349,734 with an agreement term July 1, 2019 through June 30, 2021.
- b. Authorize the Deputy Purchasing Agent for NMC or his designee to execute up to three (3) future amendments to the agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (\$134,973) of the original cost of the agreement.

PASSED AND ADOPTED on this 25th day of June 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams  
NOES: None  
ABSENT: None

I, Valerie Ralph, 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 82 for the meeting June 25, 2019.

Dated: June 26, 2019  
File ID: A 19-257  
Agenda Item No. 43

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

  
\_\_\_\_\_  
Joel G. Pablo, Deputy

COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES  
(MORE THAN \$100,000)

This Acute Dialysis Services Agreement (hereinafter "Agreement") is made by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California and Total Renal Care, Inc., a California corporation (hereinafter "CONTRACTOR").

WHEREAS, CONTRACTOR and NMC entered into that certain Agreement for Acute Dialysis Services effective on March 1, 2010, as amended ("Prior Agreement") whereby NMC engaged CONTRACTOR for dialysis services;

WHEREAS, NMC desires to continue to engage CONTRACTOR for dialysis services as further described in Exhibit A and listed in Exhibit D; and

WHEREAS, upon July 1, 2019 Prior Agreement will be of no further force and effect and will be superseded in its entirety by this Agreement.

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

1. SERVICES TO BE PROVIDED. NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in this Agreement plus the attached Exhibits A through D in conformity with the terms of the Agreement. The services are generally described as follows: CONTRACTOR provides NMC with necessary non-physician professional personnel to perform acute dialysis services set forth in Exhibits A through D, attached hereto (the "Patient Services").
2. PAYMENTS BY NMC. PAYMENTS BY NMC. NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit D and the Third Amendment subject to the limitations set forth in the Agreement, as amended in the First Amendment, the Second Amendment, and the Third Amendment. The fee schedule set forth in Exhibit D and this Third Amendment shall continue to be increased on March 1st of each year for the duration of the term of the Agreement by four per cent (4%) or, if lower, the maximum allowed by law. 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 one million three hundred forty nine thousand and seven hundred thirty four dollars (\$1,349,734). If the above amount is surpassed during any fiscal year, the parties shall have the right to amend the Agreement to increase the Agreement total amount to accommodate the needs of NMC.
3. TERM OF AGREEMENT. The term of this Agreement is July 1, 2019 through June 30, 2021 unless sooner terminated pursuant to the terms of this Agreement.

4. PERFORMANCE STANDARDS.

4.1. 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 NMC, or immediate family of an employee of NMC.

4.2 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.

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

5. PAYMENT CONDITIONS.

5.1. CONTRACTOR shall submit to the NMC Accounts Payable Department an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice once monthly at the completion of services, according to the fee schedule in Exhibit D. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee to certify the invoice. The County Auditor-Controller shall pay the amount certified within thirty (30) days from the date of Contractor's certified invoice submission. NMC acknowledges and agrees that NMC's call to Contractor with Orders for Services is NMC's authorization for Contractor to provide such Services on NMC's behalf and that said Administrator at NMC shall promptly submit such invoice to the County Auditor-Controller for payment. NMC shall not adjust, short pay, offset, retract, recoup, or otherwise, any claims against any fees owed to CONTRACTOR for Services as set forth in Exhibit D, except in the case of adjustments for mistakes by CONTRACTOR in calculating any fees charged. In that case, any and all allowable adjustments shall be identified by NMC to CONTRACTOR in writing, accompanied by full and complete documentation explaining and justifying any and all such adjustments, on or before the date payment is due to CONTRACTOR herein; provided however, that NMC shall still be obligated to timely pay in full all fees owed, along with any proper adjustments taken by NMC, by the due date set forth below. Otherwise, upon reasonable demonstration by CONTRACTOR of any such untimely and/or undocumented adjustments, offsets, retractions, recoupments or other improper claims asserted by NMC against CONTRACTOR's fees for Services as set forth in Exhibit D, NMC shall immediately make the appropriate payment to CONTRACTOR.

5.2. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with all applicable County policies.

## 6. TERMINATION.

6.1. Without Cause Termination. After June 30, 2020, either party may terminate the Agreement for any reason by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination.

6.2. Termination for Cause. This Agreement may be terminated for cause by either party following written notice by the non-breaching party to the breaching party, if the breach in question has not been rectified within thirty days of the initial notice.

6.3. Non-Appropriations. NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 7. INDEMNIFICATION.

(a) Contractor Indemnity. NMC hereby agrees to defend, indemnify and hold harmless CONTRACTOR and its shareholders, affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, resulting from or arising out of any action or failure to act arising out of this Agreement by NMC and its staff regardless of whether or not it is caused in part by CONTRACTOR or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification provision shall not be effective as to any loss attributable exclusively to the negligence or willful act or omission of CONTRACTOR.

(b) NMC Indemnity. CONTRACTOR hereby agrees to defend, indemnify and hold harmless NMC and its affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, resulting from or arising out of any action or failure to act arising out of this Agreement by CONTRACTOR and its staff regardless of whether or not it is caused in part by NMC or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification provision shall not be effective as to any loss attributable exclusively to the negligence or willful act or omission of NMC.

(c) The obligations of the parties under this Section 7 shall survive termination of this Agreement.

## 8.0 INSURANCE REQUIREMENTS

## 8.1 CONTRACTOR Insurance:

CONTRACTOR certifies that it maintains a program of insurance and self-insurance that covers its activities in connection with this Agreement as follows:

- (a) Professional Liability Insurance or self-insurance with financially-owned and reputable companies with limits of one million dollars (\$1,000,000) per claim and a general aggregate of three million dollars (\$3,000,000). If such insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have an effective date which coincides with the effective date of this Agreement. In the event that a claims-made policy is canceled or non-renewed, then CONTRACTOR shall obtain extended reporting (tail) coverage for the remainder of the three (3) year period.
- (b) Commercial General Liability Insurance or Self-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, Products and Completed Operations. CONTRACTOR shall maintain insurance or self-insurance with a self-insured retention of two million dollars (\$2,000,000) and coverage of five million dollars (\$5,000,000) in the aggregate.
- (c) Worker's Compensation Insurance in a form and amount covering CONTRACTOR's full liability as required by law under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.
- (d) Business automobile liability insurance in a form and amount 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 \$1,000,000 per occurrence.
- (e) The coverage referred to in 8.1(b) and 8.1(d) shall be endorsed to include the County of Monterey ("County") as an additional insured. Such a provision shall only apply, however, in proportion to and to the extent of the negligent acts or omissions of CONTRACTOR, its officers, directors, agents, and/or employees. CONTRACTOR, upon execution of this Agreement, shall furnish the County with Certificates of Insurance evidencing compliance with requirements. Certificates shall further provide for thirty (30) days advance written notice to the County of any modification, change, or cancellation of any of the above insurance coverages.

8.2 NMC Insurance. NMC shall, at its expense, provide and maintain workers' compensation, medical malpractice and commercial general liability insurance or equivalent coverage for its employees who perform any work, duties or obligations in connection with this Agreement, and public liability and property damage insurance, during the Term and thereafter, in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Three Million

Dollars (\$3,000,000) per annual aggregate. NMC reserves the right to self-insure all or part of this coverage. NMC's obligation under this Section shall survive termination of this Agreement.

## 9. RECORDS AND CONFIDENTIALITY.

9.1. Confidentiality: Both parties 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. Neither party shall disclose any confidential records or other confidential information received from the other or prepared in connection with the performance of this Agreement, unless either party has given written disclosure to release such records or information. Neither party shall use any confidential information in the performance of this Agreement except for the sole purpose of carrying out the obligations under this Agreement unless the other party has given written permission to release such records or information. Each party shall promptly transmit to the other any and all requests for disclosure of any such confidential records or information. Neither party shall use any confidential information gained by it in the performance of this Agreement except for the sole purpose of carrying out its obligations under this Agreement. The parties agree that this Agreement itself is not confidential.

9.2. CONTRACTOR shall cause to be prepared and filed with NMC's medical records administrator, reports of all Services rendered by CONTRACTOR. At the request of NMC, such reports and records shall be prepared on forms proposed by CONTRACTOR and approved by NMC. NMC shall maintain an accurate and complete file of all such records and reports, including but not limited to treatment orders and treatment record and make available to CONTRACTOR such records at CONTRACTOR's request. CONTRACTOR may maintain a copy of these records and reports. CONTRACTOR shall prepare such additional or supplementary reports as NMC's medical records administrator may reasonably request or as CONTRACTOR may deem necessary or appropriate. If preparation of additional reports as a result of NMC's requests materially increases CONTRACTOR's expenses in providing the Services, CONTRACTOR shall be entitled to recover its expenses or require NMC to prepare said reports.

9.3 Ownership. The ownership and right of control of all reports, records, and supporting documents prepared at the request of NMC in connection with the Services shall rest exclusively in NMC. CONTRACTOR shall have access to and the right to maintain a copy of any such report, record or document.

10. ACCESS TO AND AUDIT OF RECORDS. NMC 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 or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, 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.

11. NON-DISCRIMINATION. All services provided by both parties hereunder shall be in compliance with all federal and state laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap or veteran status.

12. 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 NMC. No offer or obligation of permanent employment with NMC 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 NMC 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 NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

13. NOTICES.

Notices required under this Agreement shall be delivered personally or by first-class postage pre-paid mail to NMC and CONTRACTOR staff at the addresses listed below.

FOR NATIVIDAD MEDICAL CENTER:

Natividad Medical Center  
Attention: Contracts Manager  
1441 Constitution Blvd.  
Salinas, CA. 93906

FOR CONTRACTOR:

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

14. MISCELLANEOUS PROVISIONS.

14.1. Conflict of Interest. Each party 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.

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

14.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC 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.

14.4. 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. ASSIGNMENT AND SUBCONTRACTING.

15.1 The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC, except that CONTRACTOR may assign this Agreement to any of its subsidiaries, affiliates, or successors without the other party's consent. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.2. SUCCESSORS AND ASSIGNS. This Agreement and the rights, privileges, duties, and obligations of NMC 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.

15.3 COMPLIANCE WITH APPLICABLE LAW. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

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

15.5. TIME IS OF THE ESSENCE. Time is of the essence in each and all of the provisions of this Agreement

15.6. GOVERNING LAW. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.7. CONSTRUCTION OF AGREEMENT. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement.



15.8. INTEGRATION. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede any and all other agreements, either oral or written, between the parties (including, without limitation, any prior agreement between NMC and CONTRACTOR or any of its subsidiaries or affiliates) with respect to the subject matter hereof.

## 16. PROVISION OF SERVICES

16.1 Performance of Services. CONTRACTOR will perform Services in accordance with generally recognized standards of care as outlined by federal, state and local applicable laws and regulations, as such may be amended from time to time.

16.2 Rules and Regulations. All CONTRACTOR's Staff (as defined below) shall comply with the ethical and administrative rules, regulations, policies and procedures of NMC in effect on the date hereof that relate to the provision of Services, to the extent not inconsistent with applicable laws or regulations, provided that copies of same are delivered to CONTRACTOR as evidenced by a written receipt signed by CONTRACTOR Administrator (as defined below). During the Term of this Agreement (as defined below), NMC may provide CONTRACTOR Administrator, from time to time, with additional ethical and administrative policies and procedures as they become effective, and with updates and/or additional information related to same, at least thirty (30) days prior to the effective date of each such policy, and CONTRACTOR shall evidence receipt of same by a written receipt signed by CONTRACTOR Administrator. If CONTRACTOR determines, in its reasonable discretion, that any such policies or procedures are not acceptable for material reasons, CONTRACTOR may terminate this Agreement by providing at least thirty (30) days prior written notice to NMC. NMC shall provide orientation to Staff providing the Services regarding applicable NMC policies and procedures prior to their participation in the provision of the Services, at no cost to CONTRACTOR or its Staff.

16.3 Quality Assurance. CONTRACTOR agrees, at NMC's request, to participate in NMC's Quality Assurance Program, in order to comply with applicable standards of the Joint Commission ("JOINT COMMISSION") and Medicare. CONTRACTOR may provide survey forms to patients regarding the Services.

16.4 Regulatory Approval. CONTRACTOR will reasonably assist NMC in obtaining all necessary regulatory approvals with respect to provision of Services in NMC.

(a) Additional Orientation or Training. If NMC requires that CONTRACTOR Staff attend on-site NMC orientation or other on-site training, then NMC shall provide such additional orientation and training at its own expense and reimburse CONTRACTOR for any labor costs incurred by CONTRACTOR incident to such additional orientation, described in Exhibit D herein, consistent with all applicable Monterey County policies, including without limitation the Travel Policy. Additionally, NMC will memorialize its request for additional orientation and training in writing prior to its implementation and CONTRACTOR will utilize NMC's written request and documentation of CONTRACTOR Staff

completion of on-site NMC orientation and training to bill NMC for such Services in accordance with the fee schedule set forth as Exhibit D.

(b) Additional Health Monitoring. If, subject to all applicable state and federal laws, NMC desires or requires that CONTRACTOR provide monitoring of the health of CONTRACTOR's Staff beyond that which is required by CONTRACTOR's Human Resources Department's policies and procedures and federal, state, and local law, in such respect, then NMC shall request that CONTRACTOR provide such additional health monitoring and then reimburse CONTRACTOR for all expenses incurred by CONTRACTOR or its personnel (including, without limitation, labor costs). Additionally, NMC will memorialize any request for additional Health Monitoring in writing thirty (30) days prior to its implementation and CONTRACTOR will utilize NMC's written request and documentation of CONTRACTOR Staff completion of Health Monitoring and other expenses incurred for additional Health Monitoring to bill NMC for such Services in accordance with the fee schedule set forth as Exhibit D. To the extent NMC requests for documentation concerning the health monitoring of its personnel, NMC shall comply with the terms of Section 16.9, below, concerning the maintenance of such documentation.

#### 16.5 Orders and CRRT Services.

(a) 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 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.

(b) 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.

16.6 Authority. Pursuant to California Code of Regulations, Title 22, Section 70713, Use of Outside Services, At all times NMC and the patient's Physician shall retain ultimate authority over and responsibility for each patient's care and treatment.

16.7 Hours. CONTRACTOR shall make its Staff available on an "on call" basis seven (7) days per week, twenty-four (24) hours per day to provide Services ordered in accordance with the terms of this Agreement.

16.8 Location. CONTRACTOR shall provide the ordered Services at patient bedside or in a designated dialysis room made available by NMC. The determination of the medically appropriate location of each treatment shall be made in the sole and absolute discretion of a particular patient's Physician and shall be expressed in an Order. In the event that the Physician orders CONTRACTOR to provide Services to a patient in the dialysis treatment room, NMC shall be solely responsible for transferring the patient to and from the dialysis treatment room.

16.9 Staff. CONTRACTOR shall provide properly trained and qualified non-physician personnel (the "Staff"), which may include but is not limited to, registered nurses, licensed vocational nurses and state-certified dialysis technicians practicing under the supervision of CONTRACTOR's registered nurses, in adequate numbers to provide the ordered Services. Upon request by NMC, CONTRACTOR shall provide information and documentation regarding the licensure, certification, and experience of its Staff. If NMC requires the CONTRACTOR to supply it with information regarding CONTRACTOR employees, including but not limited to background checks and evaluations, NMC will guarantee the confidentiality of such information in compliance with the Fair Credit Reporting Act Title VII, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and all other applicable state and federal laws, rules, and regulations, including those governing the maintenance and destruction of such information. NMC shall treat these records as though they were the records of their own employees.

16.10 Treatment. Whenever patients are receiving Services, CONTRACTOR shall provide on duty at least one (1) nurse currently licensed in NMC's state and experienced in rendering Services, to oversee the provision of Services and such additional Staff to maintain an appropriate patient/staff ratio. The Staff shall monitor and regulate the Services in conformity with Physician's orders and the patient's condition. The duties and responsibilities of the Staff providing Services hereunder are set forth in Exhibit A. NMC shall provide nurses who will provide backup nursing support during each treatment for each patient receiving Services. These nurses shall be responsible for the non-Service related care of the patient during the treatment, which may include responsibility for administering medications, performing ADLs and baseline assessments, and assisting the Staff in achieving hemodynamic stability in the event the patient becomes unstable during the treatment.

16.11 Service Administrator.

(a) CONTRACTOR Obligation. CONTRACTOR shall designate a member of its Staff as the administrator (the "Administrator"). The Administrator shall meet, as reasonably requested, with NMC's administrators and physician-directors of dialysis and related services to discuss matters affecting the provision of Services.

(b) NMC Obligation. NMC will designate one NMC employee to act as the liaison between the parties (the "Liaison"). The Liaison shall meet, as reasonably requested, with CONTRACTOR's Administrator, NMC's administrators, NMC's physicians and others as required to discuss matters affecting the provision of Services. Unless otherwise specified in the Agreement, the Liaison will receive from CONTRACTOR all reports and documents required by the Agreement.

16.12 Equipment.

(a) CONTRACTOR Obligation. CONTRACTOR shall provide, maintain in good operating condition, and repair all dialysis and related equipment necessary for the provision of Services. NMC will provide CONTRACTOR with a CONTRACTOR approved locked area for storage of equipment. NMC acknowledges and agrees that items of equipment may require repair from time to time, and NMC agrees to make available to CONTRACTOR's Staff and its authorized agents appropriately located work areas that are suited to the making of such repairs. All equipment provided by CONTRACTOR will be maintained by CONTRACTOR to meet requirements of applicable codes.

(b) NMC Obligation. NMC shall be responsible for the maintenance of its own equipment which is not provided by CONTRACTOR, including, without limitation, maintenance and water testing of equipment owned by NMC. NMC owns and will maintain the water system that supplies the water CONTRACTOR utilizes in providing the services contemplated herein. NMC acknowledges and assumes full responsibility for all water quality testing. NMC agrees to provide water at a quality level that meets or exceeds Association for the Advancement of Medical Instrumentation (AAMI) guidelines. NMC acknowledges and assumes

full and exclusive liability for any injury or liability to any patients arising out of the quality of the water. NMC specifically agrees to indemnify CONTRACTOR against any and all claims relating to the quality of the water, and waives sovereign immunity and any other immunity for any such indemnification claims. NMC agrees to make all periodic water testing results and water system maintenance records available to CONTRACTOR upon request.

16.13 Items Provided by CONTRACTOR. CONTRACTOR shall provide those specific items listed in Exhibit B at no additional cost and expense to NMC. NMC will provide CONTRACTOR with a CONTRACTOR approved locked area for storing supplies.

16.14 Items Provided by NMC. NMC shall provide those specific items listed in Exhibit C at its sole cost and expense.

16.15 CONTRACTOR Education Program. Upon approval by NMC, CONTRACTOR will provide dialysis related education to patients and family members. CONTRACTOR will provide to NMC for its review and approval, the content of CONTRACTOR's chronic kidney disease education program. Once it is acceptable to NMC, CONTRACTOR agrees that the patients' response to its educational program will be documented in their medical record.

16.16 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.

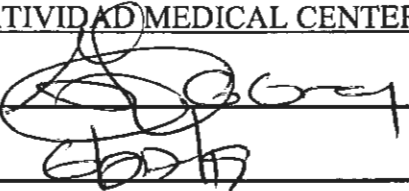
(c) Screening Requirements. NMC represents and warrants to CONTRACTOR that neither it nor any of its employees, contractors, subcontractors related to this Agreement: (1) are currently excluded from participation in an federal health care program, as defined under 42 U.S.C. § 1320a – 7(b); (2) are currently 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."

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NATIVIDAD MEDICAL CENTER

By:   
\_\_\_\_\_

Deputy County Counsel

Date: \_\_\_\_\_

By: \_\_\_\_\_

Signature of Secretary, Asst. Secretary,  
CFO, Treasurer of Asst. Treasurer

By: \_\_\_\_\_

Total Renal Care, Inc.

By:   
\_\_\_\_\_

Michael Unton

Divisional Vice President

Date: 6/13/19  
\_\_\_\_\_

APPROVED AS TO FORM ONLY

\_\_\_\_\_  
By: Lane Greer, Senior Corporate Counsel

Date: \_\_\_\_\_  
\_\_\_\_\_

NATIVIDAD MEDICAL CENTER

By:  \_\_\_\_\_  
\_\_\_\_\_

Deputy County Counsel

Date: 6/12/19

By:  \_\_\_\_\_

Signature of Secretary, Asst. Secretary,  
CFO, Treasurer of Asst. Treasurer

By: \_\_\_\_\_

Total Renal Care, Inc.

By: \_\_\_\_\_

Michael Unton  
Divisional Vice President

Date: \_\_\_\_\_

APPROVED AS TO FORM ONLY

By: Lane Greer, Senior Corporate Counsel

Date: \_\_\_\_\_

Reviewed as to fiscal provisions



Auditor-Controller  
County of Monterey

6/13/2019



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|                                     |                     |
|-------------------------------------|---------------------|
| CRRT Full Service: Visit            | \$757.00 per visit  |
| CRRT Full Service: Cartridge Change | \$215.78 per change |

**Miscellaneous**

|                              |                           |
|------------------------------|---------------------------|
| TPA Administration           | \$72.30per administration |
| Waiting Time                 | \$ 72.30 per ½ hour       |
| RN Consultation <sup>3</sup> | \$ 72.30 per ½ hour       |

**Fee Schedule Footnoted Descriptions and Definitions:**

1. **Definition of 2:1:** A ratio of 2 patients to 1 nurse, where the treatment is performed in a designated dialysis suite and the longer of the 2 patient treatments must overlap the other treatment by at least 50%.
2. **Intentionally omitted**
3. **Definition of RN Consultation:** Any nursing service outside of the scope of dialysis related services set forth in this Agreement. This includes, but is not limited to, the following: Initiation/Discontinuation of IV infusion via dialysis access (in conjunction with a dialysis treatment); dressing changes; non-dialysis related medication delivery, etc.
4. **Intentionally omitted**
5. **Definition of Holiday Hours:** New Year's Eve & Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve & Day.
6. **Definition of Routine Hours:** 6 a.m. to 6 p.m. Monday through Saturday.

## Exhibit D: Fee Schedule

*NOTE: the fees listed in the schedule set forth below include services provided to non--admitted persons who are kept at NMC for observational purposes for a period of less than twenty-four (24) hours without being admitted at that time.*

### **Hemodialysis:**

|  |                                     |
|--|-------------------------------------|
| Hemodialysis: 1:1 patient to staff ratio, up to 4 hours  | \$ 728.00 per treatment             |
| Hemodialysis: 2:1 <sup>1</sup> patient to staff ratio, up to 4 hours   | \$546.00 per treatment <sup>1</sup> |
| Hemodialysis: additional charge per hour for treatments ordered longer than 4 hours                                | \$155.00 per hour                   |
| Hemodialysis Differential: (initiated during Non-Normal operating hours or Holidays), up to 4 hours <sup>5,6</sup> | \$155.00 per treatment              |
| Hemodialysis: Cancellation   | \$361.47 per cancellation           |
| STAT Order Surcharge   | \$161.84 increase per order         |

### **Peritoneal Dialysis (PD: CAPD, CCPD)**

|   |                           |
|---|---------------------------|
| CCPD: Cyclor Set Up and Discontinue (Up to 15 liters)   | \$526.00 per treatment    |
| CCPD: Cyclor Set Up and Discontinue differential: (Up to 15 liters, initiated during Non-Normal operating hours or Holidays) <sup>5,6</sup> | \$155.00 per treatment    |
| CAPD: Per manual exchange   | \$526.00 per exchange     |
| CAPD: Per manual exchange differential (initiated during Non-Normal operating hours) <sup>5,6</sup>   | \$155.00 per exchange     |
| CCPD: Cancellation  | \$361.47 per cancellation |
| CAPD: Cancellation  | \$361.47 per cancellation |
| CAPD Visit  | \$526.00 per visit        |
| CCPD Visit  | \$526.00 per visit        |

### **Continuous Renal Replacement Therapy (CRRT: SCUF, CVVH, CVVHD, CVVHDF)**

10. All physical restraints, chemical restraints and other personnel/equipment necessary or appropriate to restrain patients to protect the safety of the Staff and other patients.
11. Emergency support services including emergency facility personnel, equipment and supplies.
12. Free parking within close proximity to NMC for all CONTRACTOR personnel.
13. Janitorial, in-house messenger, laundry, medical records, transcription, and environmental services, all as related to the Services including, without limitation, medical and hazardous waste removal.
14. Pharmaceuticals, medical supplies and other supplies not listed in Exhibit 3.13 that are necessary and appropriate for the provision of the Services, including all intravenous replacement solutions, saline, peripheral fluids and plasma.
15. Blood banking, laboratory, x-ray services as required for patient care both on an emergent and non-emergent basis.
16. NMC nurses shall provide the Staff with a daily listing of inpatients requiring dialysis or related services.
17. All necessary medical record charting forms.
18. All equipment and supplies necessary for CONTRACTOR to comply with all NMC policies and procedures with respect to the treatment of patients with communicable diseases and/or infections in conjunction with the provision of Services, as long as such policies and procedures are consistent with CONTRACTOR's policies and procedures for the provision of Services.
19. Orientation to all CONTRACTOR Staff with respect to NMC's policies and procedures applicable to the provision of the Services (e.g. fire safety, evacuation procedure, hazardous materials, communication, safety, etc.), so long as such policies and procedures are consistent with those of CONTRACTOR.
20. Pre and post dialysis weights for patients.
21. A mutually agreed upon STAT protocol.

## *Exhibit C*

### *Items Provided by NMC*

1. Adequate space, consistent with all applicable guidelines and regulations, to store sufficient equipment, water systems and medical supplies required, at CONTRACTOR's sole discretion, by the patient volume, complexity of Services, and consistent with response time and scheduling requirements set forth in this Agreement.
2. NMC may provide three (3) NMC beds in a dedicated dialysis space with such equipment, furniture and other equipment and devices as are necessary for the proper care of patients during the provision of Services, as determined by CONTRACTOR.
3. All patient transport.
4. Access to and all necessary connections to obtain incoming water appropriate for the provision of dialysis treatments. Incoming water shall be at the appropriate temperature, and quantity, delivered with adequate pressure for the proper functioning of the dialysis machines and related equipment.
5. Access to and all necessary code-compliant connections to a drain into a sewer system appropriate for the disposal of effluent solutions from dialysis procedures.
6. Utilities, including electricity, gas and HVAC. Access to sufficient dedicated GFI electrical outlets necessary for the proper functioning of dialysis equipment, water purification devices and any other electrical device that may be required for patient care.
7. Telecommunications including emergency call systems. Telephone and fax lines will include outside line usage located in the space provided for the provision of the Services. Direct access to the public internet via a publicly mutable IP address that is assigned to CONTRACTOR by NMC's Internet Service Provider or a private IP address from NMC network with appropriate accommodations made on NMC's internet firewall to allow connectivity to CONTRACTOR's VPN. CONTRACTOR will pay for the connectivity charges and network change requirements.
8. NMC's biomedical or maintenance department shall monitor electrical safety of dialysis equipment according to Joint Commission requirements.
9. Adequate and Safe Space (as defined herein), consistent with all applicable guidelines and regulations, to perform Services. "Safe Space" shall mean that CONTRACTOR personnel will be free from any real or threatened acts of physical violence from, but not limited to, NMC patients. If CONTRACTOR has reason to believe its personnel may be subject to any kind of physical abuse, NMC agrees to work with CONTRACTOR to establish and maintain "Safe Space" by, for example, providing security personnel, though the exact measures taken will be mutually agreed upon by both parties at that specific time.

*Exhibit B*

**Items Provided by CONTRACTOR**

1. Commercially available dialysate solutions ordered for Services.
2. Tubing Sets required for CONTRACTOR provided equipment or for the provision of Services.
3. Dialyzers.
4. Filters required for CONTRACTOR provided equipment including Transducer Protectors and filters for portable RO equipment.
5. Fistula Needles, dialysis end caps and catheter adaptors, if applicable.
6. Water Quality Analysis Supplies.

***EXHIBIT A***

**General Duties and Responsibilities for Dialysis Staff Performing Services under  
this Agreement**

1. The Staff will communicate with NMC nurse at time of arrival and departure from location where procedure is being performed.
2. Communication between NMC and Staff will include but not be limited to the following specific information:
  - a. Patient's pertinent condition;
  - b. Tolerance of procedure and medications;
  - c. Medications given; and
  - d. Lab tests or other services required by NMC staff to be performed for dialysis patients during dialysis.
3. The Staff will complete any and all reports required in accordance with Section 4.1. Also, the Staff will document any fluids and medications added to dialysate, and any other medications administered.
4. The Staff will secure all equipment and supplies in the storage area designated within NMC when procedure is completed.
5. The Staff will be available to NMC personnel for continuing education and training as reasonably necessary to maintain a current technological and clinical knowledge base for acute dialysis patient care.
6. CONTRACTOR may provide dialysis and/or chronic kidney disease related education to patients and family members.

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) effective July 1, 2019 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and **Total Renal Care, Inc.** (“Business Associate”) (each a “Party” and collectively the “Parties”).

### **RECITALS**

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the “Security Rule”), (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”).

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS**

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*



1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29.

(b) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. **PHI includes EPHI.**

(c) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

## 2. **PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or state laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by

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Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(I); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information.

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1. Responsibilities of Business Associate.** With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any successful Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack related to PHI shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each successful Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such successful Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than ten (10) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, successful Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such successful Security Incident or non-permitted access, acquisition, Use, or Disclosure.

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies, unless infeasible;

(h) Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon fifteen (15) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon fifteen (15) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(k) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, notify the Covered Entity within five (5) business days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall assist the Covered Entity in such challenge, except to the extent prohibited by law; and

(m) Maintain policies and procedures materially in accordance with State Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

### **3.2 Business Associate Acknowledgment.**

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all State Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy> . Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at

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least once annually while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**3.3 Responsibilities of Covered Entity.** Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate in writing of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate in writing of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate in writing of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e) (2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its

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possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (vi) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

DaVita Inc., \_\_\_\_\_  
Attn: Privacy Office  
2000 16<sup>th</sup> St. 12<sup>th</sup> Floor,  
Denver, CO 80202  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

If to Covered Entity, to:

Natividad Medical Center  
Attn: Compliance/Privacy Officer  
1441 Constitution Blvd.  
Salinas, CA 93906  
Phone: 831-755-4111  
Fax: 831-755-6254

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 intentionally omitted.**

**5.9 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, liability insurance on an occurrence basis with limits of \$1 million per occurrence and \$3 million

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aggregate, this is allowed to be covered by self-insured retention, at its sole expense, , covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

**5.11 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

**5.12 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit or complaint investigation by the Secretary or other state or federal agency solely related to Covered Entity's PHI.


IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*




By: 

Print Name Michael Unton

Print Title Division Vice President

Date: 6/13/19

By: 

Print Name: Gary R. Gray

Print Title: CEO

Date: 6/27/19