

## VENDORMATE CREDENTIAL MANAGER SERVICES AGREEMENT

This Vendormate Credential Manager Services Agreement ("Agreement") is by and between Vendormate, Incorporated, ("Vendormate") and the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC") ("Licensee") as of the later of the two dates provided on the signature page of the Agreement ("Effective Date").

### RECITALS

WHEREAS, Vendormate has created a service to assist with the registration, screening and credentialing of prospective and existing vendors (defined as non-related persons or entities from whom Licensee purchases goods or services).

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants set forth herein, Vendormate and Licensee agree as follows:

#### 1. Definitions.

- a. Guaranteed Uptime. The Guaranteed Uptime is Vendormate's guaranty that the Service will be functioning and accessible by Licensee, Users and vendors at least 98% of the time.
- b. Vendor Interface. The Vendor Interface is the software program with which individual vendors interact once logged into the Service. The Vendor Interface allows vendors to register with Vendormate.
- c. Vendor Risk Profile. Vendor Risk Profiles, established and modified at the request of Licensee, are groupings of unique characteristics (such as type of business, products and services offered, access to patient information, etc.) that vendors maintain.
- d. User. A User is an individual (and Users, individuals) authorized by Licensee to access and use the Service. Further defined as employees or agents of Licensee.
- e. User Interface. The User Interface is the software program with which Users interact once logged into the Service.

#### 2. License Grant.

2.1 General. Subject to Licensee's compliance with the terms and conditions of this Agreement, Vendormate grants a non-exclusive, non-transferable license for the Term (as defined in Paragraph 10) to Licensee and Licensee's authorized employees and authorized vendor representatives (each a "User") to access and use the Vendormate Credential Manager (or any successor name) service through Vendormate's online business process application and its related documentation (collectively, the "Service"). Vendormate will make available to the Licensee any and all updates, revisions, corrections, enhancements, or modifications to the Service hereafter which are generally made available to Vendormate's licensees.

2.2 Access Rights. In order to use the Service, Licensee must obtain access to Vendormate servers through the World Wide Web at Licensee's own expense. Vendormate shall provide to Users unlimited access to the Service through unique logon identifiers and passwords (collectively, the "Logon"). Licensee shall be responsible to ensure that each User will: (a) be responsible for the security and/or use of his or her Logon; (b) not disclose such Logon to any person or entity; (c) not permit any other person or entity to use his or her Logon; (d) immediately notify Vendormate of any known unauthorized use of a password or account or any other breach of security; (e) use the Service in accordance with the terms and conditions of this Agreement. Vendormate reserves the right to deny or revoke access to the Service, in whole or in part upon the breach by Licensee of this Agreement, or a breach by a User acting within the scope of his or her employment, provided that Licensee fails to cure that breach within ninety (90) days. Vendormate reserves the right to immediately revoke or deny access to Users who violate the terms of this Agreement while acting outside the scope of their employment or for using the Service for a purpose other than that intended by the Parties.

2.3 Restrictions. Except as otherwise provided in this Agreement, Licensee agrees that Licensee will not knowingly: (a) provide, disclose, divulge or make available to, or permit use of the Service by any third party other than its employees, contractors, and/or bona fide existing or potential vendor representatives; (b) copy or reproduce all or any part of the Service (except as expressly provided for herein); (c) interfere, or attempt to interfere, with the Service in any way; and (d) engage in or allow any action involving the Service that is inconsistent with the terms and conditions of this Agreement.

3. **Fees.** During the Term of this Agreement, Licensee shall acknowledge and agree that each vendor of Licensee who subscribes to the Service will be responsible for an annual registration and screening fee ("Subscription Fee") associated with its appropriate risk profile ("Vendor Risk Profile"). As of the Effective Date of this Agreement, Subscription Fees range from \$25 for low risk vendors to \$250 for high risk vendors. With mutual consent, Vendormate may increase Subscription Fees as a result of: (a) Cost Of Living Adjustment ("COLA") according to the Consumer Price Index ("CPI") as published by the Bureau of Labor Statistics; (b) increases in Vendormate's screening, verification, and third-party data provider pricing; and (c) customer requested enhancements to the Service. Vendormate shall perform verification, credentialing and background checks on behalf of Licensee for each registered vendor.

4. **Obligations of Licensee.** Licensee hereby agrees to use its best efforts to compel its vendors to register on the Service.

5. **Obligations of Vendormate.** Vendormate hereby agrees to:

- (a) Provide Users with access to the Service's User Interface, subject to the Guaranteed Uptime. The User Interface shall allow Licensee's employees to view all Licensee's vendors who have registered to participate in the Service;
- (b) Provide Licensee's existing and potential vendors access to the Service's vendor registration and management interface (the "Vendor Interface"), subject to the Guaranteed Uptime;
- (c) Notify each of Licensee's vendors that have registered with the Service that payment is due, and accept payment for each, subject to the pricing listed herein; further, if Licensee's vendors do not pay the subscription fee, Vendormate shall indemnify and hold harmless Licensee from such payment obligations; and
- (d) Ensure that the Service is accessible over the internet subject to the Guaranteed Uptime.

6. **Exclusivity Period.** For the Term of this Agreement the Licensee agrees to use Vendormate Credential Manager on an exclusive basis to credential its Vendors, which for purposes of this Agreement shall mean certain unrelated, unaffiliated third parties that provide Licensee with certain goods and services (and their respective representatives, contractors and consultants), as more fully defined by Licensee in consultation with Vendormate, the purpose of which shall be reasonably to further Licensee's legal, regulatory, compliance, risk management and business objectives. Nothing herein shall prohibit Licensee from performing its own investigations on its Vendors or proposed Vendors, or engaging other companies to perform limited searches with regard to Vendors from time to time, whether in connection with its due diligence activities or for legal, regulatory, compliance, risk management or general business purposes, or otherwise in the discretion of Licensee.

7. **Ownership.** The Service shall remain the exclusive property of Vendormate or its third party licensors, and all copyrights, trade secret rights, and other intellectual property rights with respect thereto, are and will at all times be the sole and exclusive property of Vendormate or its third party licensors. Licensee specifically agrees that all material related to the Service shall not be considered work-made-for-hire and that such material (including all intellectual and proprietary rights contained therein) shall, upon creation, be solely and exclusively owned by Vendormate.

8. **Confidentiality.**

(a) The parties agree that (i) all information communicated to it by the other and identified and marked as "confidential," (ii) all information which a party deems as confidential to the other party has access in connection with the products and services provided under this Agreement, (iii) trade secrets as defined under applicable state or federal law, will be, and will be deemed to have been, received in confidence and will be used only for purposes of this Agreement (collectively defined as "Confidential Information"). The parties agree and acknowledge that Vendormate deems the Service a trade secret. Each party agrees to use the same means it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and unauthorized use and to protect the confidentiality of Confidential Information.

Each party agrees that it will not at any time, without the express written permission of the disclosing party, disclose the Confidential Information directly or indirectly to any third person, except to its employees of who have expressly agreed in writing to be bound by the terms of this Agreement and have a need to know. Confidential Information shall not include information that is: (a) already in the public domain; (b) becomes generally known or available by publication, (c) discovered or created by either party independent of this

Agreement; (d) otherwise learned by a party through legitimate means other than from the other party or anyone connected with the other party; or (e) required to be disclosed subject to law.

(b) Each party's obligations with respect to the Confidential Information shall continue for the Term of this Agreement and end upon termination of this Agreement; *provided, however*, that in the event that such Confidential Information constitutes a trade secret, each party's obligations with respect to such Confidential Information shall continue until such Confidential Information no longer constitutes a trade secret but in no event shorter than five (5) years from the date of termination of this Agreement.

(c) Upon termination or expiration of this Agreement, Licensee will cease using the Service and each party shall return to the other all of the other party's Confidential Information in its possession. Vendormate shall work cooperatively with Licensee to provide data and/or reports as reasonably requested by Licensee regarding Services provided hereunder prior to the date of termination or expiration of this Agreement.

**9. Limitation of Liability.** Neither party shall have any liability hereunder for indirect, special, consequential (including lost profits and business interruption) or other similar damages, even if the affected party has been advised of the possibility of such damages. Vendormate's total liability to all parties for all parties, for all acts or omissions, shall be limited to the insurance limits specified in this Agreement.

## **10. Term; Termination.**

(a) The term ("Original Term") of this Agreement shall be for a period of three (3) years with two (2), One 1 year extensions if applicable, unless sooner terminated as provided herein.

(b) The term of this Agreement is from July 15, 2015 through July 14, 2018 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

(c) This Agreement may be terminated at the election of Licensee upon the breach by Vendormate of any term or condition of this Agreement or upon the occurrence of an event of termination for cause. Termination requires proper notice. Such notice shall specify the reason for the election to terminate and the effective date of such termination, which shall be ninety (90) days. (i) the failure, neglect or refusal by Vendormate to perform any obligation assigned hereunder (including, without limitation, Vendormate's inability to perform its obligations hereunder as a result of any failure to comply with any laws, rules or regulations of any governmental entity); (ii) any willful, intentional or grossly negligent act by Vendormate having the effect of materially injuring the reputation or business of Licensee; or (iii) Vendormate's inclusion on a list of individuals published by state or federal agencies as being disqualified to perform services for those agencies.

(d) Licensee may also terminate this Agreement in accordance with Paragraph 11.2 below.

(e) Licensee may also terminate this Agreement without cause following twelve (12) months from the date of the first vendor registration in the Vendor Program and ninety (90) days prior written notice.

## **11. General Provisions.**

**11.1 Relationship; Assignment.** The individual executing this Agreement on behalf of Licensee represents that he or she has authority to do so. This Agreement shall be binding on the parties and their successors and permitted assigns. Neither party shall assign, transfer or delegate any of its obligations under this Agreement, nor any part thereof, nor any rights or duties hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party nor any of its employees or agents will be construed to be the agent, the employer, or representative of the other party. Neither party has any express or implied rights nor authority to assume or create any obligation or responsibility on behalf of or in the name of the other party, except as may otherwise be set forth in this Agreement.

Vendormate hereby represents and warrants that the performance of Vendormate's duties under this Agreement will not breach or be in conflict with any other agreement to which Vendormate or its employees, agents, independent contractors or subcontractors who perform such duties are a party or are bound.

11.2 Severability and Waiver. In the event any provision of this Agreement is rendered invalid or unenforceable by an Act of Congress including, but not limited to, HIPAA, the Anti-Kickback Statute, the Criminal and Civil False Claims Act, the Federal Self-Referral Statute (Stark I, II, and III), the Criminal False Statement Act, or any other provision relating to the fraud and abuse compliance obligations of providers participating in the Medicare and/or Medicaid programs, by the California Legislature, or by any regulation duly promulgated by officers of the United States or the State of California acting in accordance with law, or declared null and void by any court of competent jurisdiction, the parties shall exercise their best efforts to renegotiate the Agreement to comply with the requirements of law, amending the Agreement to the mutual satisfaction of the parties and in accordance with the other provisions contained in this Agreement. If the parties fail to reach such an accommodation after ninety (90) days following a written request by either of the parties to discuss such an accommodation, then either party may terminate this Agreement upon thirty (30) days' written notice, without further obligation or penalty, financial or otherwise, to the other party.

11.3 Notification of Incidents and Notices.

(a) Each party agrees to promptly notify the other party after the discovery of any incidents, occurrences, claims, or other causes of action involving this Agreement. Both parties agree to cooperate with each other as may be necessary to resolve such matters.

(b) All notices and communications related to this Agreement must be in writing or fax and will be deemed given (i) when personally delivered, (ii) upon confirmation of a facsimile transmittal, (iii) upon receipt when deposited with the United States Postal Service, postage prepaid, or upon receipt when sent by an overnight courier service of recognized reputation addressed as follows or to such other person and/or address as the party to receive may designate by notice to the other.

Vendormate, Inc.  
3445 Peachtree Road NE  
Suite 300  
Atlanta, GA 30326  
(877) 483-6368  
(404) 745-8326 fax  
Attn: Bill Hayes, President and COO  
[bill.hayes@vendormate.com](mailto:bill.hayes@vendormate.com)

Licensee: Natividad Medical Center  
Address: Contracts Division  
1441 Constitution Blvd,  
Salinas, CA. 93906  
Phone: 831-755-4111  
Fax: 831-757-2592  
Attn: Contracts Division  
E-mail: [aldrichk@natividad.com](mailto:aldrichk@natividad.com)

11.4 Governing Law. This Agreement is deemed to have been made and will be construed and interpreted in accordance with the laws of the State of California and the parties agree to the jurisdiction of the State of California.

11.5 Survival of Certain Provisions. Sections 1, 2.3, 7, 8, 9, 11 and 12 shall survive the expiration or termination of this Agreement.

11.6 Entire Agreement; Modifications. This Agreement, consisting of all of the pages of this instrument, together with all of the Schedules hereto, sets forth the entire, final and exclusive agreement among the parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, among the parties. This Agreement may be modified only pursuant to a writing executed by authorized representatives of the parties to this Agreement. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to this Agreement or any amendments based on course of dealing, waiver, reliance, estoppel or other similar legal theory.

11.7 Insurance. During the Term of this Agreement, Vendormate agrees to procure and maintain insurance necessary to protect itself, its employees, directors and officers from liability in forms and limits

acceptable to Licensee. Such coverage will include, but not be limited to, software errors and omissions, cyber liability, commercial general liability and workers' compensation. Specifically, Vendormate will maintain commercial general liability in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate. Such insurance shall include coverage for contractual liability, products completed operations, personal injury, advertising liability, property damage and bodily injury (including death). Vendormate will maintain software errors and omissions in an amount to cover any loss or damage to the software and cyber liability with a minimum limit of One Million Dollars (\$1,000,000) with coverage that will cover internet liability issues related to confidentiality and hacking. Neither policy will include exclusion for security breaches. Vendormate will maintain workers' compensation insurance in minimum amounts of one million (\$1,000,000) per occurrence and one million (\$1,000,000) each disease. Vendormate will maintain Business Automobile Liability Insurance covering all motor vehicles in 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. If Vendormate uses a rental car to provide services they agree to establish the highest insurance coverage provided by the car rental company. The carrier(s) providing such insurance coverage listed above will be licensed to do business in California with a BEST rating of A-VII or higher. Vendormate will notify Licensee within ten (10) days of any substantial reduction, cancellation or termination of any insurance coverage. Vendormate will provide evidence of insurance coverage upon request by Licensee.

## **12. Indemnification.**

(a) Vendormate warrants that none of the products or services furnished pursuant to this agreement does or will unlawfully infringe upon any intellectual property rights, such as patents, copyrights, trademarks, and the like. Vendormate warrants that it owns all right, title and interest in and to the software and service provided under this agreement or otherwise has the right to license same to Licensee;

(b) Vendormate warrants to Licensee that the Service does not infringe upon any patent, trademark, copyright or any other intellectual property right of any third party, and that there are no suits or proceedings, pending or threatened, alleging such infringement. Vendormate shall indemnify and hold Licensee, its officers, directors, employees and agents harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs and expenses (including attorney's fees and costs) resulting from or arising out of any breach or alleged breach of the foregoing warranty. Licensee shall inform Vendormate of any such suit or proceeding filed against Licensee and may participate in the defense of any such suit or proceeding. Vendormate shall, at its sole option and expense, either: 1) procure for Licensee the right to continue to use the Service as set forth in the Agreement; 2) replace the Service with non-infringing software; or 3) modify the Service to make its use non-infringing while being capable of performing the same function without degradation of performance.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

VENDORMATE, INC.

LICENSEE:

By: 

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

Date: 6/1/15

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

Print: ~~William L. Hayes~~ Chris Luoma

Print: \_\_\_\_\_

Title: ~~President & COO~~ VP

Title: \_\_\_\_\_

3445 Peachtree Road NE, Suite 300  
Atlanta, Georgia 30326


Address: \_\_\_\_\_

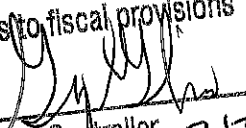
Phone: 404.920.313

Phone: \_\_\_\_\_

Email: ~~bill.hayes@vendormate.com~~

Email: \_\_\_\_\_

  
Auditor-Controller  
Dep. County Counsel  
July 14, 2015

Reviewed as to fiscal provisions  
  
Auditor-Controller  
County of Monterey 7/13/15