



COUNTY OF MONTEREY AGREEMENT FOR SERVICES
(MORE THAN \$200,000)

This Agreement for Services (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, for the provision of services for Natividad Medical Center ("COUNTY"), a general acute care teaching hospital wholly owned and operated by the County, and Total Renal Care, Inc. (hereinafter "CONTRACTOR", collectively COUNTY and CONTRACTOR are referred to as the "Parties").

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

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.** COUNTY hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of the Agreement. The services are generally described as follows:
Provide acute dialysis services .

2. **PAYMENTS BY COUNTY.** COUNTY shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by COUNTY to CONTRACTOR under this Agreement shall not exceed the sum of \$ 3,252,750 .

3. **TERM OF AGREEMENT.**

~~3.1. The term of this Agreement is from _____ through _____ unless _____ sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and COUNTY and with COUNTY signing last and CONTRACTOR may not commence work before COUNTY signs this Agreement.~~ CONTRACTOR
COUNTY
See Addendum No. 1 to Agreement

3.2. COUNTY reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.

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

- Addendum No. 1 to Agreement
- Exhibit A: Scope of Services/Payment Provision
- Business Associate Agreement
- Addendum No. 1 to Business Associate Agreement

5. PERFORMANCE STANDARDS.

- 5.1. 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 COUNTY, or immediate family of an employee of COUNTY.
- 5.2. 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.
- 5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use COUNTY premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. COUNTY does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (COUNTY) and the CONTRACTOR.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.

~~6.5. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. COUNTY shall certify the invoice, either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.~~

CONTRACTOR

COUNTY

See Addendum No. 1 to Agreement

7. TERMINATION.

~~7.1. During the term of this Agreement, COUNTY may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In~~

CONTRACTOR

COUNTY

~~the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.~~ See Addendum No. 1 to Agreement

~~7.2. COUNTY may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If COUNTY terminates this Agreement for good cause, COUNTY may be relieved of the payment of any consideration to Contractor, and COUNTY may proceed with the work in any manner, which COUNTY deems proper. The cost to COUNTY shall be deducted from any sum due the CONTRACTOR under this Agreement.~~ See Addendum No. 1 to Agreement

~~7.3 COUNTY'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 COUNTY's purchase of the indicated quantity of services, then COUNTY 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.~~ See Addendum No. 1 to Agreement

8. INDEMNIFICATION.

~~8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "COUNTY"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.~~ See Addendum No. 1 to Agreement

9. INSURANCE.

~~9.1 Evidence of Coverage: Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.~~

~~This verification of coverage shall be sent to Natividad's Contracts Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and COUNTY has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.~~ See Addendum No. 1 to Agreement

~~9.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VII,~~

CONTRACTOR

~~according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Natividad's Contracts Department Manager.~~ See Addendum No. 1 to Agreement

COUNTY

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

CONTRACTOR

~~Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.~~ See Addendum No. 1 to Agreement

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

~~Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.~~

CONTRACTOR

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

COUNTY

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

CONTRACTOR

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

COUNTY

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

CONTRACTOR

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~~9.4 Other Requirements:~~

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

CONTRACTOR

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

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

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~~Prior to the execution of this Agreement by COUNTY, CONTRACTOR shall file certificates of insurance with Natividad's Contracts Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.~~

CONTRACTOR

COUNTY

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

CONTRACTOR

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See Addendum No. 1 to Agreement

10. RECORDS AND CONFIDENTIALITY.

10.1 Confidentiality. CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from COUNTY or prepared in connection with the performance of this Agreement, unless COUNTY specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to COUNTY any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.2 COUNTY Records. When this Agreement expires or terminates, CONTRACTOR shall return to COUNTY any COUNTY records which CONTRACTOR used or received from COUNTY to perform services under this Agreement.
- 10.3 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 Access to and Audit of Records. COUNTY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of COUNTY or as part of any audit of COUNTY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 Royalties and Inventions. COUNTY shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of COUNTY.
11. **NON-DISCRIMINATION**. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by COUNTY pursuant to a contract with the state or federal government in which COUNTY is the grantee, CONTRACTOR will comply with all the provisions of said contract and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, COUNTY will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR**. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of COUNTY. No offer or obligation of permanent

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

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

NATIVIDAD MEDICAL CENTER:

Natividad Medical Center
Attn: Contracts Division
Natividad Medical Center
1441 Constitution Blvd
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Name: DaVita Inc.
Attn: Hospital Services Group Paralegal
Address: 5200 Virginia Way
City, State, Zip: Brentwood, TN 37027
FAX: _____
Email: _____

15. MISCELLANEOUS PROVISIONS.

- 15.1 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by COUNTY and the CONTRACTOR.
- 15.3 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by COUNTY and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.4 **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.

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

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

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

15.8 ~~Compliance with Applicable Law~~: ~~The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.~~ See Addendum No. 1 to Agreement

CONTRACTOR

COUNTY

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

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

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

15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of COUNTY and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.

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

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

15.15 ~~Integration~~: ~~This Agreement, including the exhibits, represents the entire Agreement between COUNTY and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either written or oral, between COUNTY and CONTRACTOR as of the effective date of this Agreement, which is the date that COUNTY signs the Agreement.~~ See Addendum No. 1 to Agreement

CONTRACTOR

COUNTY

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

**COUNTY OF MONTEREY, on behalf of
NATIVIDAD MEDICAL CENTER**

By: _____
Charles R. Harris, CEO Natividad

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: _____
Monterey County Deputy County Counsel

Date: _____

APPROVED AS TO FISCAL PROVISIONS

By: _____
Monterey County Deputy Auditor/Controller

Date: _____

CONTRACTOR

Total Renal Care, Inc.
Contractor's Business Name*** (see instructions)

Signature of Chair, President, or Vice-President

Name and Title

Date: _____

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

Name and Title

Date: _____

*****Instructions:**

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

ADDENDUM NO. 1

**TO AGREEMENT FOR SERVICES BY AND BETWEEN TOTAL RENAL CARE, INC.,
AND
THE COUNTY OF MONTEREY
ON
BEHALF OF NATIVIDAD MEDICAL CENTER
FOR ACUTE DIALYSIS SERVICES**

This Addendum No. 1 amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter “Agreement”) by and between Total Renal Care, Inc., (hereinafter “CONTRACTOR”) and the County of Monterey, on behalf of Natividad Medical Center (hereinafter “COUNTY”). This Addendum #1 has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, COUNTY and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

I. Subsection 3.1, “TERM OF AGREEMENT,” shall be amended and replaced in its entirety with the following:

“3.1. The term of this Agreement shall begin on the date of last signature (the “Effective Date”) through 06/30/2028 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and COUNTY and with COUNTY signing last and CONTRACTOR may not commence work before COUNTY signs this Agreement.”

II. Subsection 6.5 of Section 6, “PAYMENT CONDITIONS,” shall be amended and replaced in its entirety with the following:

“6.5 On a monthly basis, CONTRACTOR will bill COUNTY for services provided in the preceding month, on a fee-for-service basis in accordance with the fee schedule stated herein **Exhibit A: Scope of Services/ Payment Provisions**. Notwithstanding the foregoing, (a) any failure by CONTRACTOR to issue an invoice within the aforementioned timeframe shall not relieve COUNTY of its

obligation to pay CONTRACTOR in accordance with the terms and conditions in this Agreement and (b) CONTRACTOR reserves the right, if a missed or incorrect charge is found, to issue invoices at any time and/or to appropriately credit COUNTY as necessary to adjust for any under- or over-billing. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. COUNTY shall certify the invoice, either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.”

III. Section 7, “TERMINATION,” shall be amended and replaced in its entirety with the following:

“7. TERMINATION

7.1 Mutual Right to Terminate for Cause. This Agreement may be terminated by either Party by written notice (“Notice”) by the non-breaching Party to the breaching Party, subject to the time periods set forth below, unless the breaching Party cures the default or condition specified in the Notice within such period of time (if any):

(a) Upon thirty (30) days’ Notice for breach by a Party of any material provision of this Agreement, which the breaching Party fails to cure within the Notice period;

(b) Effective immediately upon Notice to the other Party, in the event a Party becomes an Excluded Provider, as defined below. Each Party hereby represents and warrants that neither it nor any of its employees, contractors or subcontractors related to this Agreement is an Excluded Provider, where “Excluded Provider” shall mean any individual or entity who/that: (i) is currently excluded from participation in an federal health care program, as defined under 42 U.S.C. § 1320a – 7; (ii) is currently excluded, debarred, suspended, or otherwise ineligible to participate in Federal procurement or non-procurement programs, or a state health care program; or (iii) has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a – 7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible;

(c) In the event performance by either Party of any term, covenant, condition, or provision of this Agreement shall: (i) jeopardize the licensure of either Party; (ii) jeopardize either Party’s participation in any federally funded health care program, including, but not limited to, Medicare and Medicaid, any other governmental reimbursement or payment programs, or

any other state or nationally recognized accrediting organization; or (iii) violate any statute or ordinance, or be otherwise deemed illegal, unethical, invalid, or unenforceable by any recognized body, agency, or association in the medical fields, either Party shall have the immediate right to initiate the renegotiation of the affected term(s) of this Agreement, upon notice to the other Party, to remedy such condition. The Parties shall thereafter use their best efforts to renegotiate in good faith to restructure this relationship so as to: (x) bring any provision in compliance so as not to jeopardize any Party's licensure, participation in government reimbursement programs, or accrediting organizations; or (y) make the same lawful, valid enforceable, or ethical, and to the extent possible, to maintain the economic benefits to any Party as contemplated hereunder. In all cases, the Parties shall comply with applicable laws during the renegotiation period. Nothing in this paragraph shall limit the right of either Party to terminate the Agreement for cause pursuant to paragraph (a) of this Section 7.1.

7.2 Contractor's Right to Terminate. This Agreement may be terminated by CONTRACTOR upon ninety (90) days' Notice that, in CONTRACTOR's reasonable determination, the continuation of Services is financially untenable for CONTRACTOR, unless COUNTY cures the default or condition set forth in the Notice within such period of time. For purposes of this subsection 7.2, "financially untenable" means that CONTRACTOR has determined that the last twelve (12) months of profitability with respect to this Agreement is less than the minimum margin that is fair market value as set by a third-party valuation firm for similar hospital services arrangements.

7.3 Mutual Right to Terminate Without Cause. At any time following the first anniversary of the Effective Date, either Party may exercise the right to terminate this Agreement by providing at least sixty (60) days' Notice, stating the intended last date of Services.

7.4 Termination for Lack of Government Funding. COUNTY'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 COUNTY's purchase of the indicated quantity of services, then COUNTY 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.

IV. Section 8, “INDEMNIFICATION,” shall be amended and replaced in its entirety with the following:

“8. INDEMNIFICATION.

Each party (“Indemnifying Party”) agrees to defend, indemnify, and hold harmless the other party and its shareholders, affiliates, officers, directors, employees, and agents (“Indemnitees”) for, from and against any claim, loss, liability, cost, and expense (including reasonable attorneys’ fees) (collectively, “Losses”) arising out of third-party claims resulting from any act or omission of the Indemnifying Party in connection with its obligations under this Agreement, including, without limitation, any injury to a person or to property. The Indemnifying Party’s obligations under this Section 6.1 shall not apply to the extent any such Losses were caused by the acts or omissions of the Indemnitees.”

V. Section 9, “INSURANCE,” shall be amended and replaced in its entirety with the following:

“9. INSURANCE

9.1 Contractor Insurance. CONTRACTOR shall, at its expense, provide and maintain (a) workers’ compensation coverage in amounts required by State law and (b) general and professional liability insurance in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Such insurance shall be maintained during the Term and, if such insurance is written on a claims-made form, it shall continue for one (1) year following termination of this Agreement, covering all Services provided under this Agreement and, as applicable, for CONTRACTOR Staff providing such Services. CONTRACTOR reserves the right to self-insure this coverage. CONTRACTOR’s obligation under this Section 5.1 shall survive termination of this Agreement.

- (a) Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- (b) Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers,

agents, and employees as Additional insureds with respect to liability arising out of CONTRACTOR's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by COUNTY.

9.2 County Insurance. COUNTY shall, at its expense, provide and maintain (a) workers' compensation coverage in amounts required by State law, (b) property damage insurance or equivalent coverage, and (c) professional liability and commercial general liability or equivalent coverage in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Such insurance shall be maintained during the Term and, if such insurance is written on a claims-made form, for one (1) year after termination of this Agreement, covering all work, duties, or obligations of COUNTY in connection with this Agreement and, as applicable, for its employees who perform any work, duties, or obligations in connection with this Agreement. COUNTY reserves the right to self-insure this coverage. COUNTY's obligation under this Section 9.2 shall survive termination of this Agreement.

9.3 Certificates of Insurance. Each Party agrees (a) to provide to the other Party certificates of insurance evidencing the coverage required hereby, upon request, and (b) to notify the other Party immediately of the cancellation, termination, or non-renewal of, or material change in, such insurance coverage.

VI. Subsection 15.8, "Compliance with Applicable Law," of Section 15 "MISCELLANEOUS PROVISIONS," shall be amended and replaced in its entirety with the following:

"15.8 Compliance with Applicable Law:

(a) The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

(b) Anti-Kickback Statute Compliance. Each Party certifies that: (i) it shall not violate the Anti-Kickback Statute with respect to the performance of this Agreement; (ii) the compensation provided under this Agreement has been determined in arm's-length bargaining and reflects fair market value in arm's-length transactions; (iii) 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.”

VII. Subsection 15.15, “Integration,” of Section 15 “MISCELLANEOUS PROVISIONS,” shall be amended and replaced in its entirety with the following:

“15.15 Integration: This Agreement, including the exhibits, represents the entire Agreement between COUNTY and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, including the County of Monterey Agreement for Acute Dialysis Services (More Than \$100,000) effective July 1, 2019, by and between COUNTY and CONTRACTOR, as of the effective date of this Agreement, which is the date of last signature of this Agreement.”

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Signature page to follow.

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Addendum No.1 on the basis set forth in this document and have executed this Addendum No. 1 the day and year set forth herein.

<u>COUNTY OF MONTEREY, on behalf of NATIVIDAD MEDICAL CENTER</u>	<u>TOTAL RENAL CARE, INC.</u>
_____ Charles R. Harris, CEO	_____ Signature of Chair, President or Vice-President
_____ Date	_____ Printed Name and Title
<u>Approved as to Legal Provisions:</u>	_____ Date
_____ Monterey County Deputy County Counsel	_____ Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer
_____ Date	_____ Printed Name and Title
<u>Approved as to Fiscal provisions:</u>	_____ Date
_____ Monterey County Deputy Auditor-Controller	<u>DaVita Inc. Approved As To Form Only:</u>
_____ Date	_____ Printed Name and Title
	_____ Date

Exhibit A: Scope of Services/ Payment Provisions

I. General Duties and Responsibilities for Dialysis Staff Performing Services under this Agreement:

1. The Staff shall communicate with NMC nurse at time of arrival and departure from location where procedure is being performed.
2. Communication between NMC and Staff shall 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 shall 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 shall secure all equipment and supplies in the storage area designated within NMC when procedure is completed.
5. Facility Orientation and Additional Training. As used herein, "Staff" shall mean properly trained and qualified non-physician personnel, which may include, but not be limited to, registered nurses, licensed vocational nurses, and certified dialysis technicians. Staff assigned to each Facility shall complete an initial orientation of Natividad Medical Center (NMC) ("Initial Facility Orientation") of up to eight (8) hours at no additional cost to COUNTY. In addition to the Initial Facility Orientation, each Staff member may also attend up to eight (8) hours of relevant, applicable, and necessary COUNTY-required additional training ("Additional Training") per year, at no additional cost to COUNTY. COUNTY agrees to coordinate scheduling of such Additional Training in a manner that does not interfere with Staff providing Services. If COUNTY requires that Staff attend Additional Training in excess of eight (8) hours per Staff per year, then COUNTY shall (i) memorialize its request for Additional Training in writing prior to its implementation, (ii) provide such Additional Training at its own expense and (iii) reimburse CONTRACTOR for any labor costs incurred by CONTRACTOR incident to such Additional Training, which shall be invoiced by CONTRACTOR as "Hospital Required Orientation or Training" in accordance with the Fee Schedule. CONTRACTOR will utilize COUNTY's written request and documentation of Staff completion of Additional Training to invoice COUNTY as described above."

6. Patient and Family Education. In conjunction with the terms of this Agreement, CONTRACTOR will provide education to patients and family members. Such education may include dialysis related education and/or chronic kidney disease education, as well as catheter and fistulas, vascular access, modalities and dialysis care generally. CONTRACTOR, including those providing services on behalf of CONTRACTOR, may collect, analyze and use data from patients, providers, COUNTY and other sources regarding the provision of and effectiveness of such education, as well as utilization of such information for operational purposes of CONTRACTOR.

7. Orders. CONTRACTOR shall provide treatment services only upon receipt of an order of a nephrologist or physician who has been authorized by NMC to make such requests (“Order”). If requested by CONTRACTOR, NMC shall provide CONTRACTOR with a list of nephrologists or physicians authorized and qualified to order treatment services (the “Physicians”). 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 the treatment services is NMC’s authorization for CONTRACTOR to provide such treatment services on NMC’s behalf. If CONTRACTOR receives a verbal or read back Order for the provision of the treatment 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 treatment services has been obtained in accordance with NMC policies. NMC shall make such documents available to Staff immediately prior to the performance of the treatment services. NMC and CONTRACTOR agree that the Physician(s) shall be responsible for discussing the risks and benefits of treatments involving any of the treatment services in conjunction with obtaining the written informed consent. The Parties agree that CONTRACTOR may obtain additional consent from patient specific to his/her treatments and the treatment services, at CONTRACTOR’S discretion. If questions arise from any documentation to be provided under this Section, CONTRACTOR may delay the performance of the treatment services until it has the required information. Staff shall monitor and regulate the treatment services in conformity with Physician's orders and the patient's condition. The services shall not include the provision of medical director oversight services.

8. Response Time. CONTRACTOR agrees to demonstrate commercially reasonable efforts in providing treatment services within eight (8) hours following the receipt of an Order from COUNTY for treatment, or within a later specified time frame as set by a patient’s Physician. CONTRACTOR agrees to demonstrate commercially reasonable efforts in responding on-site at COUNTY within two (2) hours of receipt of an Order that requires emergency or urgent provision of treatment services (a “STAT Order”). However, factors such as weather conditions, traffic conditions, available Staff’s proximity to COUNTY at the time the STAT Order is received, the day and hour of the request, and other facts and circumstances beyond the CONTRACTOR’s control may make such response time impractical or impossible in a

given instance. Accordingly, CONTRACTOR's failure to satisfy the two (2) hours hour response time for STAT Orders due to such mitigating factors shall not be considered a breach of this Agreement.

9. 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 the Treatment Services ordered in accordance with the terms of this Agreement. "Normal Operating Hours" shall be 6AM – 6PM Monday through Saturday. All other days and times, including Holidays (which shall occur on New Year's Eve, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day) shall be considered "Non-Normal Operating Hours"

II. **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.

III. ***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 two (2) 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. If the space is needed by NMC, at least one days' notice will be given to CONTRACTOR to remove equipment and other equipment and devices from the room and return to the spaces identified in #1 above.
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.
 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.

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IV. Fee Schedule: *NOTE: the fees listed in the schedule set forth below include services provided to admitted and non-admitted persons for whom such persons' treatments are being billed by Facility to any third party payors (or otherwise paid for by Facility).* **4 % annual escalator shall be applied each year on March 1st for the duration of the Agreement.**

Hemodialysis:

Hemodialysis: 1:1 patient to staff ratio, up to 4 hours	\$956.80 per treatment
Hemodialysis: 2:1 ¹ patient to staff ratio, up to 4 hours	\$624.00 per treatment
Hemodialysis: additional charge per half-hour for treatments ordered longer than 4 hours	\$75.00 per half-hour
Hemodialysis: differential (initiated during non-Normal Operating Hours or Holidays) ^{4,5}	\$188.58 per treatment
Hemodialysis: Cancellation (labor)	\$188.58 per cancellation
Hemodialysis: Cancellation (labor and supplies)	\$439.78 per cancellation

Peritoneal Dialysis (PD: CAPD, CCPD) – If NMC performs the PD visit removing the patient from PD, then CONTRACTOR will charge for one (1) visit per treatment rather than two (2) visits per treatment.

CCPD: differential (initiated during non-Normal Operating Hours or Holidays) ^{4,5}	\$188.58 per treatment
CCPD: Additional liters greater than 15 liters	\$30.00 per 5 liter bag
CAPD: Per manual exchange	\$499.00 per exchange
CAPD: Per manual exchange differential (initiated during non-Normal Operating Hours or Holidays) ^{4,5}	\$188.58 per exchange
PD: Cancellation	\$439.78 per cancellation
CCPD Visit	\$499.00 per visit
CAPD Support Visit	\$499.00 per visit

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

CRRT: Cartridge Change	\$262.54 per cartridge
CRRT: Cancellation	\$439.78 per cancellation
CRRT: Visit	\$921.00 per visit
CRRT Differential (initiated during non-Normal Operating Hours and Holidays) ^{4,5}	\$188.58 per treatment

Miscellaneous

Administration	\$87.96 per administration
Waiting Time (after 30 minute grace period beginning on 31 st minute)	\$87.96 per ½ hour
Consultation ²	\$87.96 per ½ hour
Company Staff Training of Hospital Staff ³	\$87.96 per ½ hour per Company nurse
Hospital Required Orientation or Training billed after 8 hours annually	\$87.96 per ½ hour per Company Staff member
STAT Order Surcharge	\$196.89 increase per order
Program Maintenance Fee: charged on months with less than 10 CRRT visits	\$2080.00 per month
Reports	Standard Quarterly reports are included in the rates set forth in this Fee Exhibit

Fee Schedule Footnoted Descriptions and Definitions:

1. **Definition of 2:1:** A ratio of 2 patients to 1 clinician, 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. **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 (not in conjunction with a dialysis treatment); dressing changes; etc.
3. **Definition of Company Staff Training of Hospital Staff:** A Company supplied Subject Matter Expert nurse for troubleshooting and education for Hospital nursing staff. Company’s modality of training of Hospital Staff as requested by Hospital per 1/2 hour.
4. **Definition of Holidays:** New Year’s Eve & Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve & Day.
5. **Definition of Normal Operating Hours:** 6a.m. to 6 p.m. Monday to Saturday.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective April 1, 2025 (“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

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) “California Confidentiality Laws” shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) “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.**

(d) “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 California Confidentiality 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 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)(1); 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 only as required to provide Services pursuant to the a Services Agreement between the Parties, or with the prior written approval of Covered Entity.~~

See Addendum No. 1 to BAA

Business Associate

Covered Entity

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 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 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 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 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;~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

~~(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 five (5) business days after discovery of the Breach;~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

(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) In consultation with the Covered Entity, 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, 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 Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

(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. ~~In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

(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; See Addendum No. 1 to BAA

(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 ten (10) 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 ten (10) 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;

(j) If applicable, maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(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) 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 cooperate fully with the Covered Entity in such challenge; and

(m) Maintain policies and procedures materially in accordance with State Confidentiality 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 California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.~~

See Addendum No. 1 to BAA

Business Associate

Covered Entity

~~(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 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.~~

See Addendum No. 1 to BAA

Business Associate

Covered Entity

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 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 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 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 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.~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

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:

Attn: _____

5200 Virginia Way

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 Indemnification.** Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the “County”), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to provide the broadest possible indemnification for the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.~~ See Addendum No. 1 to BAA

Business Associate

Covered Entity

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, at its sole expense, liability insurance on an occurrence basis, 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, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

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

By: _____

By: _____

Print Name _____

Print Name: Charles R. Harris

Print Title _____

Print Title: CEO

Date: _____

Date: _____

ADDENDUM NO. 1

TO BUSINESS ASSOCIATE AGREEMENT BY AND BETWEEN TOTAL RENAL CARE, INC., AND THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER FOR ACUTE DIALYSIS SERVICES

This Addendum No. 1 amends, modifies, and supplements the Business Associate Agreement (hereinafter “BAA”) by and between Total Renal Care, Inc., (hereinafter “Business Associate”) and the County of Monterey, on behalf of Natividad Medical Center (hereinafter “Covered Entity”). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the BAA, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached BAA.

NOW, THEREFORE, COUNTY and CONTRACTOR agree that the BAA terms and conditions shall be amended, modified, and supplemented as follows:

I. Subsection 2(g), of Section 2, “PERMITTED USES AND DISCLOSURES OF PHI,” shall be amended and replaced in its entirety with the following:

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. Section 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the Services Agreement, for Business Associate’s internal administrative purposes or for marketing purposes. Should Business Associate wish to Use or Disclose de-identified information for any other purpose, Business Associate may do so only with the prior written approval of Covered Entity. Notwithstanding the foregoing, Business Associate may not license or sell any de-identified information that is derived from Covered Entity’s PHI.

II. Subsection 3.1(a) and 3.1(a)(i), “Responsibilities of Business Associate,” hereby deleted and replaced in their entirety with the following:

“(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

Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within ten (10) 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 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 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 written request. If Business Associate or Covered Entity determines that such 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;"

III. Subsection 3.1(b), "Responsibilities of Business Associate," of Section 3, "RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI," shall be amended and replaced in its entirety with the following:

"(b) In consultation with the Covered Entity, 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, 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 Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business

Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining up to three months of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach”

IV. The last sentence of Subsection, Section 3.1(e), of Section 3, “RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI,” which states “In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;” is hereby deleted in its entirety for the Agreement.

V. Subsection 3.1(g), shall be incorporated to Section 3, “RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI,” with the following:

“In the event Business Associate determines that return or destruction is not feasible, Business Associate will extend the protections required in this BAA to the Covered Entity PHI and limit further uses and disclosures to only those purposes that make the return or destruction of the information infeasible;”

VI. Subsection 3.2(b) and 3.2(c), “Business Associate Acknowledgment,” of Section 3, “RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI,” shall be amended and replaced in their entirety with the following:

“(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 California Confidentiality Laws as applicable, 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.](http://www.natividad.com/quality-and-safety/patient-privacy)"

VII. Paragraph 4.4, Effect of Termination, of Section 4, "TERM AND TERMINATION," shall be amended and replaced in its entirety with the following:

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. In such event that return is not feasible, Business Associate shall: (i) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (i) 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 (iii) return to Covered Entity the PHI retained by Business Associate if return does become feasible.

VIII. Paragraph 5.8, Indemnification, of Section 5, "MISCELLANEOUS," shall be amended and replaced in its entirety with the following:

5.8 Indemnification. Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any reasonable claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

Signature page to follow.

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Addendum No.1 on the basis set forth in this document and have executed this Addendum No. 1 the day and year set forth herein.

<p><u>County of Monterey, on behalf of Natividad Medical Center</u></p> <hr/> <p>Charles R. Harris, CEO</p> <hr/> <p>Date</p> <p><u>Approved as to Legal Provisions:</u></p> <hr/> <p>Monterey County Deputy County Counsel</p> <hr/> <p>Date</p> <p><u>Approved as to Fiscal provisions:</u></p> <hr/> <p>Monterey County Deputy Auditor/Controller</p> <hr/> <p>Date</p>	<p style="text-align: center;"><u>Total Renal Care, Inc.</u></p> <hr/> <p>Signature of Chair, President or Vice-President</p> <hr/> <p>Printed Name and Title</p> <hr/> <p>Date</p> <hr/> <p>Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer</p> <hr/> <p>Printed Name and Title</p> <hr/> <p>Date</p> <p><u>DaVita Inc. Approved As To Form Only:</u></p> <hr/> <p>Printed Name and Title</p> <hr/> <p>Date</p>
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