

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND TOTAL RENAL CARE, INC.

This Agreement is entered into this _____ day of _____, 2022, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Total Renal Care, Inc., hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of acute care dialysis, continuous ambulatory peritoneal dialysis, and clinical apheresis services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1 Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit C—Performance Metrics
- Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance

2 Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A. Such services shall be provided at County's hospital located at: 222 W. 39th Ave, San Mateo, CA 94403 (the "Facility").

3 Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In no event shall County's total fiscal obligation under this Agreement exceed THREE MILLION DOLLARS (\$3,000,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement. All invoices must be approved by the Chief Nursing Officer or their designee. Invoices must be sent to: SMMC-Accounts-Payable@smcgov.org. Processing time may be delayed if invoices are not submitted electronically. All electronically submitted and undisputed invoices that remain unpaid for ninety (90) days after submission will be subject to late fees at the rate of seventy-five one hundredths of a percent (0.75%) per month, or if lower, the maximum rate allowed by law.

4 Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from March 1, 2022, through February 28, 2025.

5. Termination

This Agreement may be terminated by Contractor or by the County at any time after the first year of the Agreement without a requirement of good cause upon ninety (90) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

Either party may terminate this Agreement for cause. Cause shall be a material breach of this Agreement that has not been reasonably remedied per the process described herein. In order to terminate for cause, the non-breaching party must first give the breaching party notice of the alleged breach which notice shall state the general nature of the breach. The party allegedly in default shall have thirty (30) days after receipt of such notice to respond and attempt to cure the alleged breach. If the alleged breach is of a kind that cannot be cured within thirty (30) days, then the party allegedly in breach will have additional thirty (30) days in which to remedy the breach so long as such party is acting in good faith and using diligent efforts to remedy the breach throughout the cure period. If the breaching party fails to reasonably cure the breach within this period, the non-breaching party may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, but County shall use reasonable judgment in making that determination.

6 Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor for this Agreement and containing County information under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7 Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8 Hold Harmless

a General Hold Harmless

Each party shall indemnify and save harmless the other party and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following and which result from the negligent, reckless or willful acts or omissions of the indemnifying party and/or their officers, employees, agents and servants, providing that this shall not apply to injuries or damages to the extent that the indemnified has been found in a court of competent jurisdiction to be liable by reason of its own negligence, or willful misconduct:

- (A) injuries to or death of any person;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from the indemnifying party's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, to the extent not caused by the indemnified party.

The duty of both parties to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9 **Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10 **Insurance**

a **General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Contractor will endeavor to provide thirty (30) days' notice to County of any pending change in the limits of liability or of any cancellation of the policy. Contractor reserves the right to self-insure for any or all of these coverages.

b **Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor

Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such Comprehensive General Liability policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance with Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations (“Title 22”), San Mateo Medical Center (SMMC) retains all professional and administrative responsibility for services rendered under this Agreement to the extent that such services are subject to Title 22 and are rendered by a “qualified professional person” as used in Section 70713, and the parties further agree in that instance that this Agreement is otherwise subject to any applicable requirements of Title 22.

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.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

2 Non-Discrimination and Other Requirements

a General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for

each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than two-hundred thousand dollars (\$200,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records: Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

5 Merger Clause: Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

6 Controlling Law: Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: San Mateo Medical Center
Attn: Chief Operations Officer
Address: 222 W 39th Ave
San Mateo, CA 94403

In the case of Contractor, to:

Name/Title: Total Renal Care, Inc.
Attn: Hospital Services Group Paralegal
Address: 5200 Virginia Way
Brentwood, TN 37027

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

9. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

20. Disentanglement

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination; provided that County acknowledges such cooperation will not include any Contractor equipment, supplies or services provided post-termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that County shall pay Contractor on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County except those retained for tax, accounting or regulatory

purposes. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree to the specific electronic format.

2 Disaster and Emergency Response Plan

Contractor will develop and maintain a Disaster and Emergency Response Plan (“Emergency Plan”) that includes all of the elements set forth in this Section, as well as any additional elements reasonably requested by the County. The Emergency Plan will also include site-Specific emergency response plan(s) for each of the sites at which Contractor provides services pursuant to this Agreement (“Site Plans”). The Emergency Plan and associated Site Plans will address Contractor preparations to effectively respond in the immediate aftermath of a national, state or local disaster or emergency (“Emergency Response”) and plans for the ongoing continuation of Services under the Agreement during and after a disaster or emergency (“Continuity of Operations”).

Contractor shall submit the Emergency Plan to the County within ninety (90) days after the beginning of the Term of the Agreement and the Emergency Plan will be subject to the reasonable approval of the County. Contractor shall respond reasonably promptly to any comments or requests for revisions that the County provides to Contractor regarding the Emergency Plan. Contractor will update the Emergency Plan and associated Site Plans as circumstances warrant and shall provide County with copies of such updated plans. Contractor shall train employees on the Emergency Plan and the Emergency Plan will include a description of how employees will be trained.

The Emergency Plan will indicate, in as much detail as reasonably possible, the categories of additional supplies that Contractor projects would be necessary for effective Emergency Response and Continuity of Operations and the costs that the Contractor projects it would incur for such additional supplies. Contractor shall recognize and adhere to the disaster medical health emergency operations structure, including cooperating with, and following direction provided by, the County’s Medical Health Operational Area Coordinator (MHOAC). In the event that the Contractor is required to implement the Emergency Plan during the term of the Agreement, the parties will confer in good faith regarding the additional supplies needed to ensure Emergency Response and/or Continuity of Operations owing to the particular nature of the emergency, as well as whether the circumstances warrant additional compensation by the County for additional supplies needed for such Emergency Response and/or Continuity of Operations.

Contractor shall reasonably cooperate with the County in complying with processes and requirements that may be imposed by State and Federal agencies (including, but not limited to the California Governor’s Office of Emergency Services and the Federal Emergency Management Agency) in connection with reimbursement for emergency/disaster related expenditures.

In a declared national, state or local disaster or emergency, Contractor and its employees will be expected to perform services as set forth in the Agreement, including in the area of Emergency Response and Continuity of Operations, as set forth in the Emergency Plan and each Site Plan. Contractor shall ensure that all of its employees are notified, in writing, that they will be expected to perform services consistent with the Emergency Plan and each Site Plan.

2 Hospital and Clinics Credentialing Program

Contractor and Contractor representatives visiting or entering the San Mateo Medical Center (SMMC) main campus or any of its satellite clinics are required to register with SMMC’s Vendor Credentialing Program prior to conducting business onsite. It is important that each Contractor representative registers individually in order to maintain the confidentiality of their personal credentials and to ensure ongoing

access to our facilities. More information regarding SMMC's updated credentialing and on-site visit requirements can be found on SMMC's profile page through <https://login.ghx.com>.

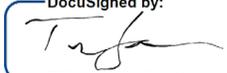
23. Approval by County and Contractor

County and Contractor acknowledge and agree that this Agreement shall take effect and be legally binding only upon full execution hereof by County and Contractor and upon approval by Contractor as to the form hereof.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Total Renal Care, Inc.

<p>DocuSigned by:  <small>B70F4E428C6844C...</small></p> <hr/> <p>Contractor Signature</p>	<p>January 26, 2022</p> <hr/> <p>Date</p>	<p>Tim Souza</p> <hr/> <p>Contractor Name (please print)</p>
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APPROVED AS TO FORM ONLY:

Total Renal Care, Inc.

By: 
179FA76A81284C0...

Name Thor Paulson

Title (Counsel) Group General Counsel

COUNTY OF SAN MATEO

By:
 President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
 Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

I. Dialysis Services and Continuous Ambulatory Peritoneal Dialysis Services

A. General Contractor Responsibilities

- i. **Staffing Coordination.** Contractor, utilizing an Acute Service Coordinator, will schedule its own staff to provide dialysis services upon receipt of an order (“Order”) of a nephrologist or physician who has been authorized by County to make such orders. County shall provide Contractor with a list of nephrologists or physicians authorized and qualified to order services (the “Physicians”), which list SMMC shall update from time to time.
- ii. **Staff Qualifications/ Responsibilities.** All of Contractor's acute staff servicing SMMC will be Registered Nurses with a minimum of one (1) year of acute inpatient dialysis experience or have completed Contractor's Dialysis Nurse Training Program. Both parties shall cause their employees to comply with the terms and conditions of this Agreement.

Contractor shall provide information and documentation regarding the licensure, certification, and experience of each of its staff members. Provided such information does not constitute a Public Record under applicable law, County will guarantee the confidentiality of such information in compliance with the Fair Credit Reporting Act Title VII, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and all other applicable state and federal laws, rules, and regulation, including those governing the maintenance and destruction of such information. County shall treat these records as though they were the records of their own employees.

- iii. **Acute Nursing Care.** In collaboration with the assigned primary nurse at SMMC, Contractor's acute dialysis nursing service shall be responsible for:
 1. Set-up and take down of the dialysis equipment.
 2. Patient care including:
 - a. Dialysis initiation;
 - b. Monitoring of vital signs;
 - c. Implementation of nephrologists' dialysis orders;
 - d. Drawing and labeling lab work related to the provision of dialysis;
 - e. Reporting post-dialysis status to floor nurse and nephrologist, including:
 - i. Weight loss;
 - ii. Volume replacement used;
 - iii. Pre- and post-dialysis patient vital signs; and
 - iv. Any unusual occurrences.

iv. Hours of Operation

1. Normal Operating Hours during which treatments will be provided:
Monday through Friday 6AM - 6 PM, excluding Weekends and Holidays.
2. Contractor will also respond to requests to provide treatments on an on-call basis after Normal Operating Hours as well as on Saturdays, Sundays, and Holidays. Contractor shall use commercially reasonable efforts to respond to STAT or emergency calls within four (4) hours of receiving the request.
3. Holidays are defined as follows:
New Year's Eve
New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Eve
Christmas Day
4. Dialysis Equipment and Water Treatment
 - a. Contractor will provide and maintain (including parts and labor) two (2) delivery systems with bicarbonate and sodium control. Vendor will perform both routine and emergency maintenance to meet or exceed industry and manufacturer's standards.
 - b. All equipment provided by Contractor that is utilized in providing Covered Services hereunder will be maintained by Contractor to meet requirements of applicable regulations and industry and manufacturers' standards. Contractor must maintain an appropriate management plan, including a contingency plan to assure the continued operation of all equipment and systems to be provided by Contractor under this agreement and which are necessary for Contractor to provide services pursuant to this Agreement.
 - c. County shall provide locked, adequate space, consistent with all applicable guidelines and regulations for Contractor's personnel to store sufficient equipment, water systems and medical supplies required to provide services pursuant to this Agreement. County shall provide safe and adequate space, subject to the approval of the Contractor, for Contractor to perform dialysis services pursuant to this Agreement.
 - d. Contractor will also supply and maintain water treatment systems as required by the above delivery systems. The systems will provide treated water consistent with A.A.M.I. standards and

State chloramine standards. Contractor will test the equipment and product water monthly for bacterial contamination and annually for water quality.

5. Acute Dialysis Medical Supplies. Contractor will provide all necessary dialysis-specific supplies required for each treatment. Dialysis-specific supplies include the following: dialyzers/hemofilters, blood tubing, transducer protectors, dialysate, dialysate additives, access needles, plastic hemostats, QA test materials, and, for Contractor-owned equipment only, internal equipment cleaners and disinfectants. County shall provide all medications including saline, heparin and all other pharmaceuticals. County shall provide all other non-dialysis specific equipment and supplies necessary for patient care.
6. Additional Services
 - a. Contractor will be responsible for monitoring the quality of nursing, technical and equipment support services provided to SMMC pursuant to this Agreement. The results of quarterly quality assurance audits will be made available to SMMC Nursing Administration. On a quarterly basis, equipment maintenance records and water quality reports will be provided to SMMC. Contractor will assess regulatory compliance on a bi-annual basis; such assessment will be reviewed on-site by SMMC.
 - b. Policies and Procedures. Contractor will develop policies and procedures relating to Covered Services which will meet the requirements governed by Joint Commission Standards.
 - c. All restraints, when necessary, will be utilized in accordance with County and SMMC policy and regulatory requirements and approval of SMMC.
 - d. Contractor will contribute to patient documentation on forms provided to Contractor, including patient care plans and patient tracking.
7. County retains professional and administrative responsibility for medical services other than those rendered by the Contractor and its employees and representatives

B. Intentionally omitted.

C. County Responsibilities.

- i. During the term of this Agreement, the County at its expense shall provide Contractor with all necessary materials and assistance for the care of dialysis patients that is not Contractor's responsibility to provide pursuant to this

Agreement. Such provisions by the County shall include, without limitation, the following:

1. In order to initiate treatment, SMMC 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, County will call the dedicated phone number Contractor will give to SMMC for placing an Order. The Hospital's call to Contractor with Orders for Services is the County's authorization for Contractor to provide such services on the County's behalf.
2. County shall ensure that necessary, appropriate and proper written informed consent specific to the services has been obtained. SMMC shall make such documents available to Contractor's staff immediately prior to the performance of the services. County and Contractor agree that the Physician(s) shall be responsible for discussing the risks and benefits of treatments involving any of the services in conjunction with obtaining the written informed consent. If questions arise from any documentation to be provided under this section, Contractor may delay the performance of the services until it obtains the required information, unless dialysis services are required on an emergency basis, in which case services will not be so delayed.
3. Contractor's employees assume responsibility for each patient's care only as it pertains to services pursuant to this Agreement. County employees remain responsible for all other aspects of each patient's care including, but not limited to feeding, bathing, administering medications, performing ADLs and baseline assessments, and assisting the Contractor's staff in achieving hemodynamic stability in the event the patient becomes unstable during the treatment.
4. County represents that it has an appropriate management plan, including a contingency plan, to assure that it will be able to provide water, electricity and other consumables, as well as laboratory and other services to be provided by County in accordance with this Agreement and which are necessary for Contractor to continue to provide services pursuant to this Agreement.
5. SMMC shall provide adequate and sufficient water and electricity needed to perform the services required by this Agreement in accordance with Contractor's standards.
6. SMMC to provide telephone usage located in the space provided for Contractor's use for the provision of services required by this Agreement.
7. SMMC to provide blood banking, laboratory, and x-ray services as required for patient care both on an emergent and non-emergent basis.

8. Free parking within close proximity to SMMC facility.
9. Drugs and other pharmaceutical items required for performance of Covered Services, including all medications and replacement solutions, saline, heparin, peripheral fluids and plasma.
10. Emergency support services including emergency facility personnel, equipment and supplies.
11. Non-dialysis-specific supplies, defined to mean all necessary or appropriate supplies for patient care other than the following supplies which will be provided by Contractor: dialyzers/hemofilters, blood tubing, transducer protectors, commercially available dialysate, dialysate additives, vascular access needles, plastic hemostats, QA test materials, and, for Contractor-owned equipment only, internal equipment cleaners and disinfectants.
12. All necessary non dialysis-specific medical record charting forms.
13. Environmental services and waste removal including, without limitation, medical and hazardous waste removal.
14. All patient transport.
15. Access to, or copies of, patient medical records where relevant for the provision of services pursuant to this Agreement.
16. All equipment and supplies necessary for Contractor to comply with all County policies and procedures with respect to the treatment of patients with communicable diseases and/or infections in conjunction with the provision of services covered by this Agreement.
17. Orientation to all Contractor staff providing Covered Services with respect to County policies and procedures applicable to the provision of Covered Services by Contractor (e.g., fire safety, evacuation procedure, hazardous materials, communication, safety, etc.).
18. Equipment and supplies necessary to perform temporary vascular access.

D. Miscellaneous

- i. Excluded Provider.

County hereby represents and warrants that County is not and at no time has been excluded from participation in any federally funded health care program, including but not limited to Medicare and Medicaid. County hereby agrees to notify Contractor immediately after County becomes actually aware of any

threatened, proposed, or actual exclusion of County from any federally funded health care program, including but not limited to Medicare and Medicaid.

Contractor hereby represents and warrants that Contractor is not and at no time has been excluded from participation in any federally funded health care program, including but not limited to Medicare and Medicaid. Contractor hereby agrees to notify County immediately after Contractor becomes actually aware of any threatened, proposed, or actual exclusion of Contractor from any federally funded health care program, including but not limited to Medicare and Medicaid.

In the event that County is excluded from participation in any federally funded health care program during the term of this Agreement, or after the effective date of this Agreement it is determined that County is in breach of this Subsection, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. In such event, County shall indemnify and hold harmless Contractor against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, except for attorneys' fees, arising directly or indirectly, out of any violation of this Subsection by County or due to the exclusion of County from a federally funded health care program, including Medicare and Medicaid, except to the extent any such loss, damage, costs and expenses were caused by the negligent or intentional act or omission of Contractor, its officers, employees, or agents

In the event that Contractor is excluded from participation in any federally funded health care program during the term of this Agreement, or after the effective date of this Agreement it is determined that Contractor is in breach of this Subsection, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate. In such event, Contractor shall indemnify and hold harmless County against all actions, claims, demands and liabilities, and against all loss, damage, costs and expenses, except for attorneys' fees, arising directly or indirectly, out of any violation of this Subsection by Contractor or due to the exclusion of Contractor from a federally funded health care program, including Medicare and Medicaid, except to the extent any such loss, damage, costs and expenses were caused by the negligent or intentional act or omission of County, its officers, employees, or agents

ii. Training.

With the exception of any training required above and notwithstanding anything herein seemingly to the contrary, the parties hereto hereby acknowledge that Contractor has no obligation under this Agreement to provide any training to any County staff. However, in the event that the County requests that Contractor provide any training to any County staff, and Contractor, in its sole discretion, agrees to provide such training, the County understands that Contractor makes no representations or warranties respecting the training and Contractor will not be responsible for the acts of the County's staff in the exercise of such staff's duties. In addition, the provisions of Paragraph 7 (Hold Harmless) of the attached Agreement shall apply to such training.

Contractor clinical staff assigned to County shall complete an initial orientation of the Facility ("Initial Facility Orientation") of up to eight (8) hours at no additional cost to County. In addition to the Initial Facility Orientation, each Contractor clinical staff may also attend up to four (4) 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 Contractor clinical staff providing Services. If County requires that Contractor clinical staff attend Additional Training in excess of six (6) hours per Contractor clinical 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 "RN Consultation" in accordance with the Fee Schedule. Contractor will utilize County's written request and documentation of Contractor clinical staff completion of Additional Training to invoice County as described above.

II. Therapeutic Apheresis Services

- A. Staffing Coordination. Contractor will provide staff scheduling for acute treatments upon direct request from the patient's physician (within the limitations and/or requirements of San Mateo Medical Center's (SMMC) nursing staff).
- B. Staff Qualifications. All of Contractor's acute staff servicing SMMC will be Registered Nurses with a minimum of one (1) year of acute inpatient therapeutic Apheresis experience or have completed Contractor's Apheresis Service Training. Contractor will provide all licenses and certifications as applicable.
- C. Acute Nursing Care. In collaboration with the assigned primary nurse at SMMC, Contractor's acute therapeutic Apheresis nursing service shall:
 - i. Set-up and take down of the therapeutic Apheresis equipment.
 - ii. Patient care:
 - 1. Initiate therapeutic Apheresis.
 - 2. Monitor vital signs.
 - 3. Carry out and follow physician's orders for therapeutic Apheresis.
 - 4. Draw and label lab work related to the provision of therapeutic Apheresis.
 - 5. Report therapeutic Apheresis status to floor nurse and ordering physician.
 - a. Volume replacement used
 - b. Pre and post vital signs
 - c. Unusual occurrences

Forms for therapeutic Apheresis shall be supplied by Contractor. County shall provide all other forms.

D. Scheduling.

Contractor will respond to requests to provide treatments as needed. Scheduling will be done in advance when possible.

E. Therapeutic Apheresis Equipment.

- i. Contractor will provide and maintain parts and labor of equipment for therapeutic Apheresis. Both routine and emergency maintenance will be provided to meet or exceed industry and FDA standards.
- ii. FDA Regulatory. Contractor must maintain an appropriate management plan, including a contingency plan to assure the continued operation of all equipment and systems Exhibit to be provided by Contractor in accordance with this agreement and which are necessary for Contractor to provide Covered Services.

F. Therapeutic Apheresis Medical Supplies. Contractor will provide all necessary Therapeutic Apheresis-specific supplies required for each treatment.

G. Additional Services.

- i. Quality Assurance. Contractor will be responsible to monitor the quality of nursing, technical and equipment support services provided to SMMC. The results of quarterly quality assurance audits will be made available to SMMC Nursing Administration. On a quarterly basis, equipment maintenance records and quality reports will be provided. Regulatory compliance will be assessed on a bi-annual basis and reviewed on-site.
- ii. Policies and Procedures. Contractor will develop policies and procedures for provision of therapeutic Apheresis treatments that are specific to and consistent with the practice and expectations of the SMMC nursing and medical staff and will be reviewed annually by Contractor and SMMC staff.
- iii. In-service Support. Contractor clinical staff will make available on-site in-service nursing education programs specific to the care of the patient receiving therapeutic Apheresis. San Mateo Medical Center staff will also be notified of Contractor's continuing education programs.
- iv. Contractor will provide SMMC with non-compliance-specific staff information regarding licensure/health requirements. Contractor's staff will be oriented by County staff to Fire Safety Health/documentation requirements of SMMC and will be available for additional in-service when requested by SMMC.
- v. Contractor will contribute to patient documentation on forms provided to Contractor, patient care plan and patient tracking and will act as a member of the SMMC Health Team.
- vi. San Mateo Medical Center retains professional and administrative responsibility for the services rendered by its medical providers, however, in no circumstance

shall San Mateo Medical Center be liable for the services provided by or other acts or omissions of Contractor or its employees or representatives, and Contractor is bound in full by the indemnification/hold harmless language of its Agreement with SMMC.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

The following fees include services provided to non-admitted persons who are kept at SMMC for observational purposes for a period of less than twenty-four (24) hours without being admitted at that time.

Procedure	Year 1	Year 2	Year 3	
Hemodialysis 1:1 patient to staff ratio, up to 4 hours	\$989	\$1,009	\$1,029	
Hemodialysis 2:1[1] patient to staff ratio, up to 4 hours	898	916	934	
Hemodialysis Differential: (initiated during non-Normal Operating Hours or Holidays), up to 4 hours [3, 4]	113	115	118	
Hemodialysis: Post Set Up Cancellation (labor and supplies, if costs incurred)	363	370	378	
Hemodialysis 2:1 Differential (initiated during non-Normal Operating Hours or Holidays), up to 4 hours [3, 4]	113	115	118	
PD Differential (initiated during non-Normal Operating Hours or Holidays), up to 4 hours [3, 4]	113	115	118	
PD Post Set Up Cancellation (labor and supplies, if costs incurred)	363	370	378	
Apheresis Differential (initiated during non-Normal Operating Hours or Holidays), up to 4 hours [3, 4]	113	115	118	
Apheresis Post Set Up Cancellation (labor and supplies, if costs incurred)	363	370	378	
TPA Administration	90	92	94	
Differential same day service	No charge	No charge	No charge	
CAPD Visit	649	662	675	
CCPD Visit	649	662	675	
Therapeutic Plasma Exchange	2,198	2,242	2,287	
Apheresis Cartridge Only (additional)	261	266	272	
RN Consultation [2] (per ½ hour)	90	92	94	
Hemodialysis - additional charge per hour for treatments ordered longer than 4 hours (per ½ hour)	69	70	72	
Wait Time (per ½ hour)	85	87	88	

Fee Schedule Footnoted Descriptions and Definitions:

1Definition of 2:1: A ratio of 2 patients to 1 nurse, where the treatment is performed in a designated dialysis suite and the longer of the 2 patient treatments must overlap the other treatment by at least 50%.

2Definition 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; non-dialysis related medication delivery, etc.

3Definition of Holidays: New Year's Eve & Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve & Day.

4 Definition of Normal Operating Hours: 6 a.m. to 6 p.m. Monday through Friday.

Exhibit C

Performance Metrics

County will measure Contractor performance of the services in accordance with the procedures set forth by the performance indicators below. Contractor acknowledges that the performance indicators are a reasonable minimum standard by which to measure Contractor performance of the services.

- I. Both County and Contractor acknowledge the need to comply with The Joint Commission (TJC) standards regarding performance metrics in patient service contracts.
 1. MD Orders (complete orders present when Contractor arrives to perform treatment)
Threshold = 95% or greater
 2. Vascular Access (without signs/symptoms of infection): Threshold = 95%

Failure to meet these goals shall not be a breach of contract by either party.

- II. Both the County and Contractor acknowledge Contractors cannot achieve the metrics without assistance and cooperation from the County, and at times, there are conditions the Contractor cannot control. The County remains committed to supporting the Contractor as they strive to achieve the performance thresholds.
- III. The Contractor will submit the performance metrics at least quarterly as part of their routine quality reports to the respective County department. The performance metrics and thresholds will be reported to the Medical Center's Quality Improvement Committee and any other venue deemed appropriate by the Medical Center to meet accreditation standards and improve the quality of care.
- IV. The performance metrics will be reviewed as needed but at least annually by County as part of the annual contract review process and may be changed or updated as agreed following discussion between the County and Contractor.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

Contractor recognizes and is fully dedicated to advancing San Mateo Medical Center's (SMMC) commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

Contractor, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give, or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

***TO REPORT VIOLATIONS,
CALL THE COMPLIANCE HOT LINE: (800) 965-9775***

Contractor, in executing this Agreement, certifies that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and has committed Contractor to comply with this Code of Conduct.

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set

forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
2. Identity of the unauthorized person or to whom impermissible disclosure was made;
3. Whether PHI was actually viewed or only the opportunity to do so existed;
4. The extent to which the risk has been mitigated.

l. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

m. Unsecured PHI. "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

n. Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time

and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County. Business Associate may, in accordance with the Privacy Rule, de-identify County's PHI and further use and disclose such de-identified health information.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. This section shall survive the termination of this BAA and the underlying Agreement.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: Tim Souza

Name of Contractor(s): Total Renal Care, Inc.

Street Address or P.O. Box: 7755 Pardee Lane

City, State, Zip Code: Oakland, CA 94621

I certify that the above information is complete and correct to the best of my knowledge

Signature:

DocuSigned by:

B70F4E428C6841C...

Title of Authorized Official:

Divisional Vice President

Date:

January 26, 2022

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."