

Managed Services Provider Agreement

This Managed Services Provider Agreement (the "**Agreement**") is made and entered into as of February 1, 2022 (the "**Effective Date**") between Vaya Workforce Solutions, LLC, located at 5930 Cornerstone Court West, Suite 300, San Diego, CA 92121, ("**Vaya Workforce**") and County of San Mateo dba San Mateo Medical Center located at 222 West 39th Avenue, San Mateo, CA 94403 ("**Client Entity**"). Vaya Workforce and Client (as defined in the Agreement) are sometimes referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties**".

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions contained herein, the Parties agree as follows.

I. STRATEGIC WORKFORCE SOLUTIONS PROVIDER RELATIONSHIP

- a. **CLIENT ENTITY AND ITS PARTICIPATING FACILITIES.** Client Entity is a healthcare organization that owns or operates one or more hospitals, clinics, or other healthcare facilities, including those identified in the attached Exhibit A (the "**Participating Facilities**"). The list of Participating Facilities may be modified by mutual written agreement of Client Entity and Vaya Workforce. Client Entity and the Participating Facilities are collectively, referred to as "**Client**."
- b. **MANAGED SERVICE PROVIDER SERVICES**
 - i. Client utilizes vendors to supplement its existing workforces with contingent labor or to secure related vendor management services. Vaya Workforce shall act as Client's exclusive immediate limited term workforce solutions provider with respect to the service lines set forth in this Section I, except as otherwise specified herein. Client shall place all orders for the service lines covered by this Agreement through Vaya Workforce and this Agreement. Vaya Workforce will use commercially reasonable efforts to fulfill Client's needs through Agencies and the Agency Agreements as defined below. Upon request, Vaya Workforce shall also provide Client with reasonable reporting on the services provided, billing, payments, and staffing usage on a quarterly basis, or otherwise as agreed to by the Parties.
 - ii. Notwithstanding anything to the contrary in this Agreement, if Vaya Workforce is not able to fill an order for a Candidate within twenty-five (25) consecutive calendar days of it being submitted to Vaya Workforce, then Client shall have the right to use other vendors (the "**Alternate Vendors**") to fulfill such order(s). However, Client may not permit Alternate Vendors to use subcontractors to provide Candidates, and Client may not use as an Alternate Vendor any vendor who has an active subcontracting agreement with Vaya Workforce. Further, Client may not offer more favorable terms or rates to Alternate Vendors than what is in this Agreement or otherwise offered to Vaya Workforce and Client shall disclose the rates and terms involved in any placements with Alternate Vendors. Vaya Workforce shall have no responsibility for Candidates placed by Alternate Vendors.
 - iii. Vaya Workforce shall use its corporate affiliates or third-party staffing subcontractors (each an "**Agency**") to arrange for the provision of services to Client under this Agreement. Vaya Workforce negotiates and maintains, directly and through its affiliates and subsidiaries, staffing agreements with Agencies so Client can procure the services under this Agreement (the "**Agency Agreements**"). The Agency Agreements cover Client as agreed to between Vaya Workforce and the Agencies. To the extent there is a conflict between this Agreement and the Agency Agreements, this Agreement shall control.
 - iv. Vaya Workforce shall select Agencies to provide services to Client utilizing factors and procedures determined in consultation with Client. Vaya Workforce shall not be required to obtain pre-approval prior to adding or removing particular Agencies, provided that Client may instruct Vaya Workforce in writing to not use particular Agencies or recommend that Vaya Workforce enter into negotiations with particular Agencies. In furtherance and not in limitation of the foregoing, Vaya Workforce shall coordinate and facilitate confirmations, the exchange of documents, and all other communications with Agencies as agreed to by the Parties and Client will not communicate directly with any Agency without Vaya Workforce's written consent unless otherwise agreed to by the Parties.
 - v. For clarity, Vaya Workforce is not an Agency, does not guarantee any terms, conditions, prices, services or other deliverables provided under the Agency Agreements, and Client is responsible for staffing and procurement decisions as the provider of health care services. Client, as a third-party beneficiary, is bound to the terms and conditions under each Agency Agreement under which Client purchases services. Client acknowledges and agrees that the services provided under this Agreement only provide Client access to the Agency Agreements. Client determines in its sole discretion whether and how much to purchase through the Agency Agreements and to which Agency Agreements under which it purchases services. The Parties understand and agree that Vaya Workforce does not hire or employ any Vaya Workforce Candidates.

Managed Services Provider Agreement

- vi. This Agreement shall apply to all new orders, assignments, and extensions for Candidates and other services starting on or after the "**Go Live Date**." The Go Live Date for this Agreement will be set for a date mutually agreed by the Parties within one hundred and twenty (120) days following the Effective Date of this Agreement. The Parties may agree to a later Go Live Date in writing including through electronic mail. Client agrees to use its best efforts to cooperate with Vaya Workforce during the implementation process, including, but not limited to, providing Vaya Workforce with sufficient access to Client's personnel, and nonconfidential information and documents, reasonably necessary for the successful implementation of the program.
- c. **CANDIDATE STAFFING SERVICES.** Except as otherwise agreed herein, Vaya Workforce will act as Client's exclusive provider of immediate, limited term Candidates. The terms and conditions applicable to the provision of Candidates are set forth on Addendum A, which is incorporated by reference as though set forth in full at this point. As used in this Agreement, the phrase "**Candidates**" means the following types of personnel, which may be referred to in Agency Agreements as "**Staff**":
 - i. "**Clinical Candidates**" are registered nurses, certified nurse assistants, clinical technicians, therapists, and other clinical, nursing and allied healthcare professionals (not including advanced practice nurses, physicians, or physicians' assistants) provided on a temporary or supplemental basis. The scheduling and rate terms applicable to Clinical Candidates are set forth on Addendum A-1.
 - (a) "**Travel Candidates**" are Clinical Candidates who are assigned to perform work for Client on a temporary or supplemental basis for a specified assignment duration of one (1) to fifty-two (52) weeks in length, with a typical assignment lasting thirteen (13) weeks.
 - (b) "**Crisis Candidates**" are Clinical Candidates who are provided to fill "**Critical Needs**." Critical Needs are orders for Candidates that are labeled by Client as "Critical," "Crisis," or "Rapid Response" or similarly identified or labeled by the Parties.
 - ii. "**Non-Clinical Candidates**" are personnel, laborers, and professionals who are assigned to perform non-clinical work (including, but not limited to, IT, HIM, housekeeping, and all other non-clinical supplemental labor) for Client on a temporary or supplemental basis for a specified assignment duration of one (1) to fifty-two (52) weeks in length. The scheduling and rate terms applicable to Non-Clinical Candidates are set forth on Addendum A-2.
- d. **LOCUM TENENS PROVIDER SERVICES.** Vaya Workforce will also act as Client's provider of LT Providers. As used in this Agreement, the phrase "**LT Provider(s)**" means the following types of personnel: (i) locum tenens physicians (referred to herein as "**LT Physician(s)**"), and (ii) advanced practice providers and nurses, including nurse practitioners, CRNAs, CNMs, and physician assistants (referred to herein as "**AP Provider(s)**") who provide services to Client on a temporary basis. The terms and conditions applicable to the provision of LT Providers are set forth in Addendum B.
- e. **CONSOLIDATED INVOICING AND PAYMENT TERMS.** Vaya Workforce will send a consolidated invoice covering all services performed under this Agreement by all Agencies for a given weekly billing period to the contact designated by Client. Client shall pay the invoices within thirty (30) days of receipt of invoice, with interest of two percent (2%) per month on balances past due. Client must submit any disputes to invoices made in good faith by specifying the amount and specific charges disputed, and reason for any such disputes, by providing notice to Vaya Workforce in writing within fifteen (15) days of receipt of the invoice; interest otherwise permitted under this section shall not accrue on any portion of the invoices disputed in good faith in accordance with the foregoing sentence, except as otherwise permitted by applicable law, and provided Client has timely paid all undisputed amounts.
- f. **VIZIENT GPO WAIVER FORM.** Client acknowledges that is has been notified that Vizient Supply, LLC ("**Vizient**") and Vaya Workforce are parties to a Co-Marketing Agreement dated October 1, 2021 (the "**Co-Marketing Agreement**") that permits Vaya Workforce to provide services under this Agreement to members, such as Client. Client agrees that, other than required regulatory disclosures, the terms and conditions of Client's group purchasing organization (GPO) participation agreement or statement of work, as applicable, with Vizient or its affiliates do not apply to Client's purchases of services under the Co-Marketing Agreement, and agrees to execute the GPO Waiver Form, attached as Exhibit B. Vaya Workforce shall not be responsible for the reporting of any applicable administrative or other fees relating to the GPO program to any applicable governmental authority or federal health care program.

II. GENERAL TERMS

Managed Services Provider Agreement

- a. **TERM; TERMINATION.** The term of this Agreement shall be for a period of five (5) years, unless terminated as provided herein. Either Party may terminate this Agreement, with or without cause, at any time upon ninety (90) days written notice to the other Party. Either Party may also terminate this Agreement upon the occurrence of any of the following events (a "**Termination for Cause**"): (i) the other Party has materially breached any of the terms or conditions of this Agreement and such breach, if capable of cure, is not cured by the breaching Party within ten (10) calendar days following written notice to the breaching Party, (ii) the other Party dissolves; (iii) the other Party becomes insolvent or institutes insolvency proceedings or files, or is subject to a voluntary bankruptcy proceeding, petition, or action; (iv) the filing of relief against the other Party of, or the other Party is otherwise subject to, an involuntary bankruptcy proceeding, petition or action where such action is not removed or terminated within sixty (60) calendar days; (v) the assignment by the other Party of its property for the benefit of creditors; or (vi) the appointment of any receiver, trustee or liquidator for the other Party or for any property of the other Party, where such appointment is not removed or terminated within sixty (60) calendar days. If either Party terminates this Agreement (other than a Termination for Cause by Vaya Workforce), all Candidates then on an assignment will continue on and complete their assignments, in accordance with the terms of this Agreement. The provisions of this Agreement relating to confidentiality and any other provisions which by their nature should survive termination or expiration of this Agreement shall so survive. Client may terminate this Agreement or a portion of the services based upon the unavailability of Federal, State, or County funds by providing written notice to Vaya Workforce as soon as is reasonably possible after Client learns of said unavailability of outside funding.
- b. **CONFIDENTIALITY.** The Parties acknowledge that they may receive from each other from time to time, information and/or material which is confidential in nature, including, but not limited to, marketing, pricing, or other confidential business information relating to Vaya Workforce, Client, or each of their clients, customers, patients, subcontractors or employees, or personnel, Compliance Documentation or Competency Documentation of Vaya Workforce Candidates, or applicants (collectively "**Confidential Information**"). The Parties agree to treat as confidential and not to divulge to any third-parties any Confidential Information of the other Party (and with respect to Client of Agencies), except to their own employees, agents, attorneys, accountants, or representatives (collectively, "**Representatives**"), and to use such Confidential Information only for legitimate business needs relating to the performance, administration or enforcement of this Agreement or to comply with legal mandates, including court or administrative agency orders and the California Public Records Act. In the event a Party provides Confidential Information to such Party's Representatives, the Party shall be liable for such Representatives' compliance with the terms of this paragraph and shall require the Representatives to treat such information and/or material as confidential. Nothing herein, shall prohibit either Party from responding to lawful inquiries from government agencies or other lawful process, such as subpoenas. The Parties agree to the issuance of an injunction to prevent violations of this paragraph. The Parties agree and acknowledge that Confidential Information shall not include: (1) information which, at the time of disclosure, was in the public domain; (2) information which, after disclosure, is published or becomes publicly known or otherwise becomes part of the public domain other than as a result of a breach of the receiving Party's obligations under this Agreement or any Agency Agreement; (3) information which is disclosed to the receiving Party in good faith by a third party who is not under obligation of confidence or secrecy to the disclosing Party at the time such third party discloses the information to the receiving Party, or (4) information which is a public record under the California Public Records Act or other applicable law.
- Client also explicitly acknowledges and agrees that Vaya Workforce may provide Confidential Information, or other purchase, performance metric, or other data related to the services provided to Client under this Agreement (the "**Data**") to Vizient or its affiliates. Subject to applicable data privacy laws, Client agrees that Vizient or its affiliates may: (i) use the Data in identified form to provide services to the Client to which the Data pertains; and (ii) deidentify and aggregate the Data, which deidentified and aggregated Data Vizient or its affiliates may use for any lawful purpose.
- Nothing in this Agreement shall limit the Client's responsibilities and legal ability to produce records pursuant to the California Public Records Act.
- c. **INSURANCE.** Vaya Workforce will provide and will require Agencies to provide general liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year. Vaya Workforce will require Agencies providing Clinical Candidates to provide professional liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year. Vaya Workforce will also require Agencies to provide worker's compensation insurance with statutory limits required by applicable law for each Candidate

Managed Services Provider Agreement

employed by Vaya Workforce. Vaya Workforce will provide certificates of insurance to Client if requested. Client and its officers, agents, employees, and servants shall be named as additional insureds on the general liability insurance and professional liability insurance policies, which policies shall also contain a primary and noncontributory provision or endorsement. If the insurance required by this Section is not maintained, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, Client, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and terminate this Agreement.

d. **INDEMNIFICATION.**

i. **Vaya Workforce and Client Mutual Indemnification.** To the fullest extent permitted by law, each Party (an "**Indemnifying Party**") agrees to indemnify and hold the other Party and the other Party's respective affiliates, and each of their respective officers, directors, agents, and employees (each an "**Indemnified Party**"), harmless from any claims, damages, interest, penalties, and attorneys' fees and costs ("**Losses**") to the extent caused by: (i) any breach of this Agreement by the Indemnifying Party or its agents; (ii) violations of applicable law by the Indemnifying Party or its agents in connection with the performance of this Agreement; or (iii) negligent or willful acts or omissions of the Indemnifying Party or its agents in connection with the performance of this Agreement; except that the indemnity obligations in this section shall not apply to the extent the Losses are caused by the negligent act or omission, willful misconduct, breach of this Agreement or unlawful act of an Indemnified Party. Vaya Workforce shall have no obligation to indemnify Client for acts of Agencies or Candidates.

ii. **Agency Indemnification of Client.** Vaya Workforce shall contractually require Agencies (each an "**Indemnifying Agency**"), to the fullest extent permitted by law, to agree to indemnify, defend, and hold Client and its affiliates, officers, directors, and agents harmless from and against all damages, claims, or other losses arising from a breach of the Agency Agreement by Agency or negligent or willful acts or omissions of Agency or its Candidates arising from any Service (as defined in the applicable Agency Agreement). This indemnity must include provision of a defense to any third-party claims and the advance of costs related to this defense but does not extend to any portion of the loss due to a Client's negligence or willful misconduct. Client shall be considered a third-party beneficiary of Agencies' indemnification obligations of Client in Vaya Workforce's agreements with Agencies.

iii. **Client Indemnification of Agencies.** Client shall to the fullest extent permitted by law, indemnify, defend, and hold Agency and its affiliates, officers, directors, and agents harmless from and against all damages, claims, or other losses arising from a breach of this Agreement as it relates to any obligation to Agency or negligent or willful acts or omissions of Client's employees, agents, or contractors, arising from any services provided hereunder. This indemnity must include provision of a defense to any third-party claims and the advance of costs related to this defense but does not extend to any portion of the loss due to an Agency's negligence or willful misconduct. Agencies shall be considered third-party beneficiaries of Client's indemnification obligations under this section.

iv. **Indemnification Procedure.** Each Party claiming a right to indemnity under this section (the "**Indemnatee(s)**") shall notify all entities and persons that it believes may owe a duty to indemnify it (the "**Indemnitor(s)**") in writing promptly after receiving notice of a claim, lawsuit, demand, or action or threatened claim lawsuit, demand, or action for Losses covered by the indemnity obligations in this section (a "**Claim**") and provide documentation pertaining to the Claim to the Indemnitors upon request. The Indemnitees and Indemnitors agree to keep each other reasonably informed regarding the status of any Claims and allow each other reasonable opportunities to participate in the defense and settlement of Claims, including by providing notice and consulting with each other prior to settling any Claim. Any omission or delay in complying with this section by an Indemnatee shall relieve an Indemnitor of its obligations to the extent it is prejudiced by such omission or delay. Notwithstanding anything to the contrary in this Agreement, this section shall survive any termination or expiration of this Agreement.

e. **LIMITATION OF LIABILITY; DISCLAIMER.** NOTWITHSTANDING ANY OTHER AGREEMENT OR PROVISION TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT FOR INDEMNIFICATION OF THIRD PARTY CLAIMS, UNDER NO CIRCUMSTANCES WILL EITHER PARTY HERETO OR AGENCIES BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (AND TO THE FULLEST EXTENT PERMITTED BY LAW, PUNITIVE DAMAGES) INCLUDING, BUT NOT LIMITED TO, FINES OR PENALTIES AND LOSS OF PROFITS, WHETHER IN CONTRACT, TORT, NEGLIGENCE, WARRANTY OR OTHERWISE, WHETHER OR NOT A PARTY OR AGENCY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EXCEPT FOR INDEMNIFICATION OF THIRD PARTY CLAIMS, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, VAYA WORKFORCE'S

Managed Services Provider Agreement

LIABILITY HEREUNDER SHALL BE NO GREATER THAN THE AMOUNT PAID BY CLIENT FOR THE SERVICES FOR THE PRECEDING TWELVE MONTH (12) PERIOD PRIOR TO THE INCIDENT GIVING RISE TO THE CLAIM THAT IS THE BASIS FOR SUCH LIABILITY. Client acknowledges and agrees that the Vaya Workforce Candidates who perform work for Client are provided by Vaya Workforce for the sole purpose of supplementing Client's existing work force, and Client hereby expressly disclaims any representation or warranty that such Vaya Workforce Candidates will enable Client to attain any particular goal or objective or provide Client with any solution to any particular problem. Notwithstanding anything to the contrary in this Agreement, this section shall survive any termination or expiration of this Agreement.

f. **TECHNOLOGY SOLUTION.**

- i. **Terms of Use.** In connection with its performance of this Agreement, Client may be given access to a technology solution(s), provided by Vaya Workforce or a third party that will be selected in reasonable consultation with Client, to facilitate the performance of this Agreement, such as the proprietary web-based portals known as "Optimizer" or "Lotus Connect" (collectively, the "**Technology Solutions**"). Client agrees to comply with all terms of use requirements for such Technology Solutions being used at all times, including, but not limited to, such terms as may be provided by third party providers of the Technology Solutions, and to execute further agreements as may be required to obtain access to such systems. The current terms of use of Optimizer, and Lotus Connect and its related websites can be found respectively at: <https://optimizer.vizientinc.com> and <https://www.lotusconnect.com/terms-of-use> and the current electronic consent policy is located at: <http://www.lotusconnect.com/electronic-consent-agreement> (collectively, the "**Terms of Use**") and are incorporated by reference herein as though set forth in full at this point. Client agrees to comply with the Terms of Use and that it is "You" or "User" as defined and used in the applicable Terms of Use. The Terms of Use are modified herein so that in lieu of the notice procedures in such agreement, any notices required to be given to Vaya Workforce under the Terms of Use, including any updates to email addresses, shall be provided in accordance with the notice provisions in this Agreement. Client agrees that the entirety of the Optimizer and Lotus Connect technology solution, including, but not limited to, its design, source code, databases, content, and data or materials stored on, generated by, created using, or transmitted through it (collectively "**Vaya Workforce Technology Information**") shall be considered Confidential Information of Vaya Workforce.
- ii. **License; Proprietary Rights.** Client hereby grants Vaya Workforce a worldwide, perpetual, royalty-free, irrevocable, nonexclusive right and license to use, reproduce, modify, adapt, publish, transmit and distribute any Vaya Workforce Technology Information provided by Client in any form, medium, or technology now known or later developed. Except for the limited, non-exclusive, revocable use rights expressly granted herein, Vaya Workforce reserves all rights, titles, and interests not expressly granted to Client and this Agreement does not transfer any right, title or interest in the Technology Solutions, Optimizer, Lotus Connect, Vaya Workforce Technology Information or other Vaya Workforce Confidential Information to Client.
- iii. **Use Restrictions.** Client agrees that its access and use of the Technology Solutions shall be limited only to the extent such access and use directly relates to and is necessary for Client's performance under this Agreement. Client shall limit access to the Technology Solutions to only those employees or agents of Client with a legitimate business need for such access. Client's access and use of the Technology Solutions may be terminated: (i) upon Client's breach of this Agreement, (ii) automatically upon the termination or expiration of this Agreement, or (iii) at Vaya Workforce's discretion upon reasonable notice, no less than fifteen (15) days. In no event shall Vaya Workforce be liable for damages in connection with such termination. Client shall not, and shall ensure that its employees, agents, and contractors do not use or make Technology Solutions available for use by any unauthorized persons or for any use not explicitly permitted by this Agreement, and Client agrees it shall be responsible for any violation by Client or its agents or employees of this provision or the applicable terms of use in effect at the time of such access. Client shall be responsible for notifying Vaya Workforce promptly in the event Client's relationship with any employee or agent who had access to the Technology Solutions is severed, so that passwords may be updated or accounts disabled as necessary. Client's use of the Technology Solutions may be monitored for usage level and ensure compliance with this Agreement and any applicable terms and conditions.
- iv. **Disclaimer.** ALL TECHNOLOGY SOLUTIONS ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND. VAYA WORKFORCE FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES

Managed Services Provider Agreement

ARISING FROM TRADE USAGE OR COURSE OF DEALING. VAYA WORKFORCE DOES NOT WARRANT THAT TECHNOLOGY SOLUTIONS WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. Notwithstanding the foregoing, Vaya Workforce will use commercially reasonable efforts to so that the Optimizer and Lotus Connect services are available to Client 99.9% of the time, outside of established maintenance windows.

- g. **ACCESS CLAUSE: COMPLIANCE WITH SECTION 420.302(b).** To the extent required by applicable law, Vaya Workforce agrees to comply with 42 C.F.R. Section 420.302(b) and will provide access to the Comptroller General of the United States, the Department of Health and Human Services and their duly authorized representatives to this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of the services performed. This includes Vaya Workforce subcontractors that have a contract with Vaya Workforce for which the cost or value is \$10,000 or more in a twelve (12) month period. Said access shall be limited to a period of four (4) years after the furnishing of services under this Agreement hereunder.
- h. **COMPLIANCE WITH APPLICABLE LAWS & ACCREDITING STANDARDS.** The Parties will abide by and comply with all applicable local, state, and federal laws and regulatory agency requirements in performing this Agreement. Client will also comply with all applicable standards of any accrediting organizations of which it is a member or by which it is accredited.
- i. **NONDISCRIMINATION.** In compliance with federal law, including the provisions of the Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Acts of 1973, and the American with Disabilities Act of 1990, the Parties hereto will not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, sexual orientation or military service.
- j. **INDEPENDENT NATURE OF PARTIES.** Vaya Workforce provides services to Client as an independent contractor. Neither Party to this Agreement shall be considered the agent, partner, joint venture, franchisor, franchisee, employer, or employee of the other Party. Client acknowledges that Vaya Workforce and its affiliates are not licensed to practice medicine and do not engage in the practice of medicine or any similarly regulated profession; nothing herein shall be construed in a manner that would require Vaya Workforce or an affiliate to engage in any task that could be considered the corporate practice of medicine or any other similarly regulated profession.
- k. **NOTICES.** All notices, requests, demands or other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or on the second day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as provided below. Any Party may change its address for purposes of this paragraph by giving the other Party written notice of the new address in the manner set forth above.

To: **County of San Mateo dba San Mateo Medical Center**

ATTN: Chief Nursing Officer

222 West 39th Avenue

San Mateo, CA 94403

Email: _____

To: **Vaya Workforce Solutions, LLC**

Attn: Facility Contracts

5930 Cornerstone Court West, Suite 300

San Diego, CA 92121

Email:

facilitycontracts@vayaworkforce.com

CC: Attn: Legal

Vaya Workforce Solutions, LLC

5930 Cornerstone Court West, Suite 300

San Diego, CA 92121

- l. **ASSIGNMENT.** Neither Party shall assign this Agreement or any of its rights or duties under this Agreement except upon prior written notice to and approval by the other Party, which shall not be unreasonably withheld, conditioned, or delayed. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties.

Managed Services Provider Agreement

- m. **GOVERNING LAW.** The Parties hereto agree that this Agreement will be governed by and construed in accordance with the laws of the State of California without reference to its choice of law rules and as if wholly performed within the State of California.
- n. **FORCE MAJEURE.** Vaya Workforce shall not be responsible for failure or delay in providing or continuing to provide services to Client under this Agreement if such failure or delay is due to labor disputes, strikes, fires, riots, war, acts of God, voluntary termination by personnel assigned to Client or any other acts, causes or occurrences beyond the control of Vaya Workforce.
- o. **ENTIRE AGREEMENT.** This Agreement, including all exhibits and addenda, contains the entire agreement between the Parties relating to the subject matter hereof. All prior and contemporaneous oral and written agreements, understandings, negotiations, commitments and practices between the Parties are hereby superseded. No amendments to this Agreement may be made except by a written agreement signed by both Client Entity and Vaya Workforce.
- p. **SEVERABILITY.** If any provision of this Agreement is held to be invalid, void or unenforceable such provision shall be amended to the extent permissible as to effectuate the original intent of the parties and, unless the offending provision was a material provision the omission or amendment of which significantly alters the bargain between the Parties, all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.
- q. **SURVIVAL.** Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive, including, but not necessarily limited to, all indemnity, payment, confidentiality and insurance obligations set forth herein.
- r. **INCORPORATION BY REFERENCE.** Each Exhibit, Schedule or Addendum attached to this Agreement is hereby incorporated by reference in this Agreement as if the same was set out in full in the text of this Agreement.
- s. **ADVICE OF COUNSEL.** Each Party acknowledges that it has been given the opportunity to discuss this Agreement with their legal counsel and utilized that opportunity to the extent desired. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.
- t. **WAIVER.** The failure of either Party to enforce at any time, or from time to time, any provision of Agreement shall not be construed as a waiver thereof.
- u. **AUTHORITY.** Each person signing this Agreement on behalf of a Party represents that they have the authority to bind the Party for whom they are signing to this Agreement. By signing this Agreement, Client represents that it is entering this Agreement on behalf of Participating Facilities, and that it has the authority to bind Participating Facilities to the terms of this Agreement. Client Entity and the applicable Participating Facility shall be irrevocably, jointly and severally liable under this Agreement.
- v. **HEADINGS.** The titles of the articles, sections, subsections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
- w. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and transmitted and executed electronically, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- x. **MAXIMUM AMOUNT.** In no event shall total payment for services under this Agreement exceed FORTY-FIVE MILLION DOLLARS (\$45,000,000).
- y. **HOSPITAL AND CLINICS CREDENTIALING PROGRAM.** Vaya Workforce and Vaya Workforce 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 Vaya Workforce 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>.
- z. **WORK STOPPAGE STAFFING SERVICES.** In the event Client needs emergency staffing assistance in response to labor disputes, strikes, or other work stoppages that may commence at Client or one of its facilities, the Parties agree that the terms and conditions for any such work stoppage staffing services will be separately negotiated and agreed upon by the Parties in good faith based on the particular needs of the

Managed Services Provider Agreement

work stoppage. Nothing herein shall obligate Vaya Workforce to provide Client emergency staffing assistance in response to labor disputes, strikes, or other work stoppages.

--SIGNATURE PAGE FOLLOWS --

Managed Services Provider Agreement

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

For Contractor: Vaya Workforce Solutions, LLC


Contractor Signature

1/11/2022
Date

Peter Kaufman, EVP Enterprise Services
Contractor Name (please print)

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Managed Services Provider Agreement

Exhibit A

The following hospitals and clinics are "**Participating Facilities**" in this Agreement:

All hospitals, clinics, or other healthcare facilities owned or operated by Client, including those identified at the following: <https://www.smchealth.org/smmc-find-location>

Managed Services Provider Agreement

Exhibit B GPO WAIVER FORM

GPO Waiver Form

Supplier

Vaya Workforce Solutions, LLC

Service Category

Contract Labor Management

Member Information

Member/System Name: _____

Address: _____

State, Zip: _____

Member ID: _____

System ID: _____

Vizient Supply, LLC ("Vizient") and Vaya Workforce Solutions, LLC ("Supplier") are parties to a Co-Marketing Agreement dated October 1, 2021 (the "Agreement") that permits Supplier to provide contract labor management services (the "Services") to members eligible to access the Vizient portfolio. By executing this form, Member acknowledges and agrees that, other than required regulatory disclosures, the terms and conditions of Member's group purchasing organization (GPO) participation agreement or statement of work, as applicable, with Vizient or its Affiliates do not apply to Member's purchases of Services under the Agreement.

Authorized Member Representative: _____

Signature: _____

Title: _____

Date: _____

Managed Services Provider Agreement

Addendum A

PROVISION OF CANDIDATE STAFFING SERVICES

- a. **SCHEDULING, RATE AND CANDIDATE TERMS.** The scheduling, rate, and billing terms applicable to Vaya Workforce Candidates' offered positions by Client are set forth in the attached Addendum(a) as determined by Candidate type. The Addendum(a) may be amended, as mutually agreed by Client Entity and Vaya Workforce in writing. The details relating to a particular Vaya Workforce Candidate's assignment, such as unit/department, shift, and dates of assignment will generally be confirmed in writing through a work order confirmation; provided that this Agreement will govern in the event of any conflict between the terms of the work order and this Agreement.
- b. **CANDIDATE TIMEKEEPING & APPROVAL.** Client is responsible for making sure Candidates accurately record their time, and for approving the time worked by Vaya Workforce Candidates. Client shall not permit Vaya Workforce Candidates to perform work "off-the-clock." Each week, Client will provide Vaya Workforce with approved weekly time records for all Vaya Workforce Candidates in an electronic or other format acceptable to Vaya Workforce by noon on the Tuesday following the end of the workweek. The time records shall reflect all time worked by each Vaya Workforce Candidate (including the start and stop times of each work period and start and stop times of each meal period) as well as any other billable hours (such as on-call time). If Client fails to timely provide or otherwise promptly approve or object to time records, the time records submitted by the Vaya Workforce Candidate, Vaya Workforce or an Agency will be presumed accurate.
- c. **RATES INCLUSIVE.** All rates for Candidates are all-inclusive and include recruitment fees, travel reimbursement, lodging per diem reimbursement, meal & incidental expense per diem reimbursement and compensation for Vaya Workforce Candidates. Client acknowledges that it will be subject to the 50% deduction limitation under Internal Revenue Code ("IRC") § 274(n) to the extent such limitation applies to any reimbursement for which it is responsible. Vaya Workforce or the applicable employer will provide Client with sufficient substantiation of any such reimbursement in accordance with IRC § 274(d). At no additional charge, Vaya Workforce may also provide access to a technology solution (subject to the terms relating to use of such solution) chosen in Vaya Workforce's sole discretion or Vaya Workforce interview screening of Candidates submitted by Vaya Workforce.
- d. **CANDIDATE SCREENING & CLIENT POLICIES.** Client shall accept or reject Candidates submitted by Vaya Workforce in a timely manner and notify Vaya Workforce of the starting date, unit, shift, and orientation schedule for each accepted Vaya Workforce Candidate. Prior to any Vaya Workforce Candidate commencing work with Client, Client shall furnish Vaya Workforce and the Vaya Workforce Candidate with copies of all Client policies and procedures relevant to the scope of practice and duties of such Vaya Workforce Candidate's assignment and with which the Vaya Workforce Candidate will be expected to comply, including, but not limited to, the following: job description(s), performance standards, infection control, blood borne pathogen protective policies, corporate compliance and ethics codes, abuse and neglect, patient privacy and confidentiality, and medical record keeping.
- e. **CANDIDATE COMPETENCY AND COMPLIANCE DOCUMENTATION.**
 - i. **Competency and Compliance Documentation.** Except where prohibited by law, Vaya Workforce will maintain on file or contractually require Agencies to maintain on file Competency Documentation and Compliance Documentation for each Vaya Workforce Candidate. "**Competency Documentation**" will generally include documentation of the qualifications of each Vaya Workforce Candidate as reasonably necessary to establish competency, which may depend on the position and type of Candidate at issue but may include completed employment application and professional references. For Clinical Candidates, Competency Documentation also includes (as applicable for the position at issue) primary source verification of State Licensure, clinical skills checklist(s), unit and medication competency exams, Basic Cardiac Life Support and Advanced Certifications, and documentation showing that a Clinical Candidate has a minimum of one (1) year of experience. "**Compliance Documentation**" will generally include the following: a negative 9-panel drug screen (within 12-months prior to start; instant drug screen permitted), negative PPD test results, Quantiferon Gold, or T-Spot (or, if past positive PPD, chest X-ray with TB questionnaire), physical health statement, Varicella documentation, Rubella, Mumps and Rubeola documentation, Hepatitis B documentation, OIG and GSA search, and criminal background check.
 - ii. **Provision of Documentation.** Unless prohibited by law, Vaya Workforce shall use commercially reasonable efforts to provide to or make available for inspection by Client, the Competency

Managed Services Provider Agreement

Documentation and Compliance Documentation one (1) week prior to the Vaya Workforce Candidate's start date, but Vaya Workforce's failure to provide such documentation one (1) week prior shall not affect the Vaya Workforce Candidate's ability to start an assignment, provided the required documentation is provided by the time of start. Vaya Workforce may provide or permit Agencies to provide attestations that Competency Documentation and Compliance Documentation is maintained in Vaya Workforce's or Agency's files in lieu of copies of such documents, including, but not limited to background check and drug screen documentation, to the extent consistent with standards of The Joint Commission and applicable laws. All Client requests for additional documentation must be made in writing, but Vaya Workforce shall not be obligated to provide such additional documentation. Client also agrees that for some positions, including crisis or rapid response positions, the Parties may mutually agree to waive certain compliance documentation requirements and such waivers must be made in writing, which may include electronic mail.

- iii. **Compliance with Laws.** The Parties agree to treat all Competency Documentation, Compliance Documentation, and other personnel information relating to Vaya Workforce Candidates as Confidential Information within the meaning of this Agreement, including as required by applicable state and federal law, such as the Americans with Disabilities Act, and to not disclose such documentation unless authorized by law, Vaya Workforce, or the Vaya Workforce Candidate. The Parties also agree to comply with all applicable laws governing the use and handling of personnel files and backgrounds checks, including, but not limited to, the federal Fair Credit Reporting Act, as well as any other applicable federal, state, or local laws.
- iv. **Crisis Candidate Documentation.** For Crisis Candidates, the following shall apply in lieu of sections (i) and (ii) above. Except where prohibited by law, Vaya Workforce will maintain on file or contractually require Agencies to maintain on file Crisis Documentation for each Crisis Candidate. "**Crisis Documentation**" will generally include the following: primary source verification of licensure (Clinical Candidate only), OIG and GSA search, and such other documentation as mutually agreed upon by the Parties. Vaya Workforce may provide or permit Agencies to provide attestations that the Crisis Documentation is maintained in Vaya Workforce's or Agency's files in lieu of copies of such documents, including, but not limited to background check and drug screen documentation, to the extent consistent with standards of The Joint Commission or Client's applicable accrediting organization and applicable laws. Documentation may be pending at start and online certifications shall be permitted consistent with current guidelines. All Client requests for additional documentation must be made in writing and will be provided where mutually agreed by the Parties in writing. Client also agrees that for some positions, including crisis and rapid response positions, the Parties may mutually agree to waive certain compliance documentation requirements and such waivers may be made orally or in writing, including through electronic mail.
- f. **CANDIDATE COMPENSATION.** Vaya Workforce will contractually require the applicable Agency to: (i) employ and compensate the Vaya Workforce Candidates for hours worked for Client; (ii) deduct all applicable payroll taxes such as FICA, Federal and State from the compensation of Vaya Workforce Candidates in compliance with state and federal law and (iii) maintain relevant employment documentation such as an I-9 form, W-4 form, and photo identification for Vaya Workforce Candidates.
- g. **PERFORMANCE OUTCOMES.** Client shall notify the designated Vaya Workforce representative immediately and provide written documentation (incident report) of any unsatisfactory performance or conduct of any Vaya Workforce Candidates. Client will provide performance evaluations from its director of nursing or equivalent personnel to Vaya Workforce in the event of any unsatisfactory performance or conduct and at the end of each assignment.
- h. **SENTINEL EVENT & INJURY REPORTING.** In the event of any incidents, including errors, unanticipated deaths, injuries, hazardous or infectious disease exposure, safety hazards or other events or claims ("**Sentinel Events**") involving or relating to any Vaya Workforce Candidate, Client must immediately report the Sentinel Event to Vaya Workforce within twenty-four hours or earlier where required by applicable occupational health and safety laws. Reports should include the name of Vaya Workforce Candidate and any other persons involved, as well as the date, time, location, and description of facts and circumstances surrounding the Sentinel Event. The Parties agree to use reasonable efforts to timely assist each other in conducting investigations of such Sentinel Events. In the event any Vaya Workforce Candidate makes a claim against Client alleging any wrongdoing, Client shall immediately notify Vaya Workforce.
- i. **INJURY, ILLNESS & EXPOSURE RESPONSE.** In the event of an injury, illness or hazardous or infectious disease exposure to any Vaya Workforce Candidate at Client's job site, Client will instruct the Vaya

Managed Services Provider Agreement

Workforce Candidate to notify its employer and to seek treatment at a third-party healthcare provider designated by its applicable employer unless the injury is an emergency. In the event of an emergency, Client will immediately send the Vaya Workforce Candidate to the closest emergency room and provide transportation if necessary or appropriate. Client must promptly complete and submit to Vaya Workforce a written incident report in a format acceptable to Vaya Workforce that includes the name of Candidate involved, as well as the date, time, location, and brief description of events and other persons involved in the incident.

- j. **FLOATING.** Client agrees to float Vaya Workforce Candidates in accordance with Client's floating policies, as well as the clinical experiences of the Vaya Workforce Candidate being asked to float. Client confirms that Client's policies on floating comply with current standards of The Joint Commission, including the provision of an appropriate orientation to the new unit.
- k. **MANNER OF WORK.** Vaya Workforce Candidates are not supervised by Vaya Workforce; they are subject at all times to Client's direct and indirect supervision. Client shall be solely responsible for the direction, control and supervision of all Vaya Workforce Candidates and shall retain professional and administrative responsibility for the work performed by Vaya Workforce Candidates. Client shall be responsible for determining the clinical competencies required of Vaya Workforce Candidates and supervision of Candidates in the performance of clinical duties. Client is responsible for ensuring compliance with applicable scope of practice or profession laws and regulations, including establishment and supervisions with respect to standardized procedures and protocols to the extent applicable to work performed under this Agreement. Notwithstanding the foregoing, Client shall not, without the prior written consent of Vaya Workforce, permit or request any Vaya Workforce Candidate to perform any work or task or render any service that does not fall within the scope of the duties and responsibilities for such Vaya Workforce Candidate's confirmed assignment or at any work location other than the confirmed location.
- l. **SAFETY.** Client agrees to provide Vaya Workforce Candidates with a safe and healthy work environment and to provide safety training, equipment, clothing, or devices necessary or required by all applicable laws for any work to be performed, or which is used by Client's own employees or other contractors in the performance of similar work. Client shall also designate a member of its staff who shall act as a coordinator to train and orient the Vaya Workforce Candidates to all applicable operational and safety procedures. Client agrees that it shall have in place at all times policies and protocols in compliance with all laws related to employee health, safety and well-being and make such policies available to Vaya Workforce Candidates as if they were a member of Client's regular workforce.
- m. **COVID-19 RESPONSE.** Client agrees to comply with all applicable occupational health and safety standards and standards and guidance of the Centers for Disease Control, including all precautions and guidance relating to the treatment of patients with or under observation for communicable diseases, including COVID-19 (aka 2019 Novel Coronavirus).
- n. **MEAL AND REST BREAKS.** Client shall schedule Vaya Workforce Candidates so as to allow them sufficient time to take any legally required meal, rest, or recovery breaks. If, in the sole and absolute discretion of Vaya Workforce, it is determined that paying a meal, rest or recovery period premium or other pay to those Vaya Workforce Candidates who have missed any rest, meal, and/or recovery break(s) is advisable, then Vaya Workforce retains the right to bill Client for said premium payment. Client hereby agrees to be responsible and indemnify Vaya Workforce for, and any payments or other expenses incurred by Vaya Workforce relating to Client's failure to provide any legally required rest, meal, and/or recovery periods.

Managed Services Provider Agreement

Addendum A-1

TERMS AND CONDITIONS FOR CLINICAL CANDIDATES

1. RATES & RATE RULES FOR CLINICAL CANDIDATES

- 1.1. **Regular Rates.** Regular rates for Clinical Candidates vary by position and will be mutually agreed to between the Parties and confirmed by work order confirmation or otherwise in writing or through the technology solution prior to the Candidate starting work.
- 1.2. **Overtime**
 - 1.2.1. Overtime will be billed at a premium overtime rate of one and four-tenths times (1.4x) the regular rate.
 - 1.2.2. Overtime is generally defined as hours worked in excess of forty (40) hours in one workweek. For Clinical Candidates confirmed and guaranteed to forty-eight (48) hour workweeks, overtime is defined as hours worked in excess of forty-eight (48) hours in one workweek.
 - 1.2.3. For work performed in California, overtime is defined as hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in one (1) workweek. Double-time will be billed at a rate of one and seven-tenths times (1.7x) the regular rate. For work performed in California, double-time is defined as work in excess of twelve (12) hours in a workday and all hours worked in excess of eight (8) on the seventh consecutive day of work in a workweek.
 - 1.2.4. Overtime does not automatically include "after hours" (after 5:00pm), weekend shifts, or holidays.
- 1.3. **On-Call & Call-Back.** On-call hours worked will be billed at the rate of one-tenth times (0.1x) the regular rate. If a Clinical Candidate is on-call and is then called back/called in to work, all hours worked will be billed at a premium rate of one and four-tenths times (1.4x) the regular rate with a minimum of two (2) hours.
- 1.4. **Holidays.** Work performed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, as defined below, will be invoiced at a premium holiday rate of one and one-half times (1.5x) the regular rate. Holidays begin at 7:00 PM the night before the holiday, and end at 7:00 AM the day after the holiday.
- 1.5. **Charge.** Work performed by Clinical Candidates when working in a Charge Nurse capacity will be billed at the applicable rate plus \$2.00 per hour.
- 1.6. **Mileage.** For home health professionals or other professionals where driving is required to perform their job, Client will reimburse Vaya Workforce for mileage incurred by the professional for travel between visit locations. In addition, mileage to the professional's first visit in a day and from the professional's final visit in a day shall be reimbursed to the extent the distance between the first or final visit and the professional's home exceeds thirty (30) miles. All mileage shall be reimbursed at the IRS Standard Mileage Rate in effect at the time of travel.

2. SCHEDULING AND CANCELLATION POLICIES FOR TRAVEL CANDIDATES

- 2.1. **Scheduling & Guaranteed Hours.**
 - 2.1.1. **Guaranteed Hours.** Travel Candidates will be confirmed for assignments scheduled to last for between one (1) and fifty-two (52) weeks. Travel Candidates can be assigned to eight (8), ten (10), or twelve (12) hour shifts. For Travel Candidates confirmed to three twelve (12)-hour shifts, Client will guarantee a minimum of thirty-six (36) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. For Travel Candidates confirmed to four twelve (12)-hour shifts, Client will guarantee a minimum of forty-eight (48) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. For all other Travel Candidates confirmed to shifts lengths less than twelve (12) hours, Client will guarantee a minimum of forty (40) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. Client is financially responsible for all weekly guaranteed hours in the event of shift cancellations or facility closures. On-call hours do not count towards the guaranteed minimum hours.

Managed Services Provider Agreement

- 2.1.2. **Guaranteed Hours - COVID-19 Exposure.** Client is also responsible for payment of all guaranteed hours during any period of quarantine, self-isolation, remediation or other appropriate time away from patient care as a result of Travel Candidate's exposure, potential exposure, care or treatment relating to COVID-19 that is reasonably attributable to Candidate's work at Client (the "**Remediation Period**"). Travel Candidates will not be expected to perform any work but may not be cancelled during the Remediation Period and their assignment shall be deemed to be extended and continue during the full length of any Remediation Period, which shall not exceed two (2) weeks.
- 2.2. **Call-Off.** Notwithstanding the foregoing, Client may cancel (call-off) up to two (2) shifts per thirteen week assignment without paying for the cancelled hours. The cancelled shifts must be the regular shift length to which the Travel Candidate is assigned (i.e. Client cannot break down the shift cancellations into smaller increments). If Client cancels more shifts than permitted by this section, Client will be billed for any shifts or portions thereof cancelled in excess of this section. If Candidates are placed on-call in lieu of being called off, that will count as a called-off shift.
- 2.3. **Orientation.** Client will provide Travel Candidates with orientation in accordance with the standards of The Joint Commission and Client's policies. All time spent by Travel Candidates in Client-provided or required orientation is billable.
- 2.4. **Pre-Start Cancellations.** After acceptance of a Travel Candidate for travel assignment by Client, Client may not cancel that assignment within two (2) weeks prior to the assignment start date. If deemed necessary to cancel such assignment within two (2) weeks prior to the start date, Client shall be responsible for thirty-six (36) hours of service at the regular hourly billing rate as a cancellation fee.
- 2.5. **Post-Start Cancellations.** Client shall provide two (2) weeks written notice of any cancellation of travel assignment for reasons other than Travel Candidate's inability to perform essential functions of the job unless otherwise agreed upon by the Parties. Should Client be unable to provide such two (2) weeks cancellation notice, Vaya Workforce reserves the right to bill Client for seventy-two (72) hours of service at the regular hourly billing rate. In the event of a cancellation, including, without limitation, cancellations with proper notice, Client shall be responsible for any housing, travel, and other costs or expenses incurred by Vaya Workforce as a result of such cancellation, and any other fixed costs, expenses and disbursements (e.g., licensure, exam application, visa, etc.) incurred by Vaya Workforce with respect to placing such Candidate with Client.
- 2.6. **Cancellation by Agency.** Should an applicable Agency or Candidate cancel a Travel Candidate's travel assignment, Vaya Workforce shall use commercially reasonable efforts to have the initial Agency or another Agency provide a replacement Candidate to Client within a reasonable time frame, which shall be Vaya Workforce's or the Agency's sole obligation in the event of such cancellations.
- 2.7. **Conversion/ Placement Fee Stipulation.** If Client hires any Travel Candidate who was presented to Client by Vaya Workforce within the twelve (12) month period following the later of: (i) the date the Candidate is introduced to Client by Vaya Workforce; or (ii) the conclusion of the Candidate's assignment with Client, then Client agrees to pay Vaya Workforce a placement fee of twenty percent (20%) of the Candidate's annual salary. If the Travel Candidate has completed one (1) travel assignment consisting of thirteen (13) or more weeks, the fee is waived. Notwithstanding anything to the contrary in this Agreement, this Section shall survive any termination or expiration of this Agreement.

3. TERMS FOR CRISIS CANDIDATES

- 3.1. **Regular Rates.** Regular rates for Crisis Candidates will be mutually agreed to between the Parties and confirmed by work order confirmation or otherwise in writing or through the technology solution prior to the Candidate starting work.
- 3.2. **Overtime.** Overtime will be billed at a premium overtime rate of one and four-tenths times (1.4x) the regular rate. For Crisis Candidates, overtime is generally defined as hours worked in excess of forty-eight (48) hours in one workweek.
- 3.3. **On-Call, Call-Back, and Mileage.** The terms relating to the rates and rules for On-Call, Call-Back, and Mileage for Clinical Candidates shall apply for Crisis Candidates unless otherwise specified herein.
- 3.4. **Holidays.** For Crisis Candidates only, work performed on Holidays will be billed at the regularly applicable rate, including any otherwise applicable overtime or other premium pay.

Managed Services Provider Agreement

3.5. Scheduling & Guaranteed Hours.

3.5.1. **Guaranteed Hours.** Crisis Candidates will be confirmed for assignments scheduled to last for between one (1) and fifty-two (52) weeks. Crisis Candidates can be assigned to eight (8), ten (10), or twelve (12) hour shifts. For Crisis Candidates confirmed to three twelve (12)-hour shifts, Client will guarantee a minimum of thirty-six (36) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. For Crisis Candidates confirmed to four twelve (12)-hour shifts, Client will guarantee a minimum of forty-eight (48) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. For all other Crisis Candidates confirmed to shifts lengths less than twelve (12) hours, Client will guarantee a minimum of forty (40) hours per each one-week work period, or a greater amount if agreed to in a Work Order Confirmation. Client is financially responsible for all weekly guaranteed hours in the event of shift cancellations or facility closures. On-call hours do not count towards the guaranteed minimum hours.

3.5.2. **Guaranteed Hours - COVID-19 Exposure.** Client is also responsible for payment of all guaranteed hours during any period of quarantine, self-isolation, remediation or other appropriate time away from patient care as a result of Crisis Candidate's exposure, potential exposure, care or treatment relating to COVID-19 that is reasonably attributable to Candidate's work at Client (the "**Remediation Period**"). Crisis Candidates will not be expected to perform any work, but may not be cancelled during the Remediation Period and their assignment shall be deemed to be extended and continue during the full length of any Remediation Period, which shall not exceed two (2) weeks.

3.6. **Orientation.** Client will provide Crisis Candidates with orientation in accordance with the standards of The Joint Commission and Client's policies. All time spent by Crisis Candidates in Client-provided or required orientation is billable.

3.7. **Pre-Start Cancellations.** After acceptance of a Crisis Candidate for assignment by Client, Client may not cancel that assignment within ten (10) days prior to the assignment start date. If deemed necessary and should Client be unable to provide such ten (10) days' notice, Vaya Workforce reserves the right to bill Client for one (1) week of service at the regular hourly billing rate. Client shall be responsible for any residual costs or other expenses incurred by Vaya Workforce, such as housing, travel, disbursements, compliance, screening or other onboarding related costs, and other costs or expenses incurred by Vaya Workforce as a result of such cancellation.

3.8. **Post-Start Cancellations.** Client shall provide ten (10) days' written notice of any cancellation of an assignment for reasons other than a Crisis Candidate's inability to perform essential functions of the job unless otherwise agreed upon by the Parties. Should Client be unable to provide such ten (10) days' cancellation notice, Vaya Workforce reserves the right to bill Client for one (1) week of service at the regular hourly billing rate. In the event of a cancellation, including, without limitation, cancellations with proper notice, Client shall be responsible for any housing, travel, and other costs or expenses incurred by Vaya Workforce as a result of such cancellation, and any other fixed costs, expenses and disbursements (e.g., licensure, exam application, visa, etc.) incurred by Vaya Workforce with respect to placing such Candidate with Client.

3.9. **Conversion/ Placement Fee Stipulation.** If Client hires a Crisis Candidate for permanent or temporary services within the twelve (12) month period following the later of: (i) the date the Crisis Candidate is introduced to Client by Vaya Workforce; or (ii) the conclusion of the Crisis Candidate's assignment with Client, then Client agrees to pay Vaya Workforce a placement fee of twenty percent (20%) of the Crisis Candidate's annual salary. If the Crisis Candidate has completed one (1) assignment consisting of thirteen (13) or more weeks, the fee is waived. Notwithstanding anything to the contrary in this Agreement, this Section shall survive any termination or expiration of this Agreement.

Managed Services Provider Agreement

Addendum A-2

TERMS AND CONDITIONS FOR NON-CLINICAL CANDIDATES

1. RATES & RATE RULES FOR NON-CLINICAL CANDIDATES

- 1.1. **Regular Rates.** Regular rates for Non-Clinical Candidates vary based on position, experience, and qualifications. Regular rates for a particular Non-Clinical Candidate will be agreed by the Parties and confirmed by work order confirmation or through the technology solution prior to the Non-Clinical Candidate performing services for Client.
- 1.2. **Overtime.**
 - 1.2.1. Overtime will be billed at a premium overtime rate of one and four-tenths times (1.4x) the regular rate.
 - 1.2.2. Overtime is generally defined as hours worked in excess of forty (40) hours in one workweek.
 - 1.2.3. For work performed in California, overtime is defined as hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in one (1) workweek. Double-time will be billed at a rate of one and seven-tenths times (1.7x) the regular rate. For work performed in California, double-time is defined as work in excess of twelve (12) hours in a workday and all hours worked in excess of eight (8) on the seventh consecutive day of work in a workweek.
- 1.3. **Holidays.** Work performed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, as defined below, will be invoiced at a premium holiday rate of one and one-half times (1.5x) the regular rate. Holidays begin at 7:00 PM the night before the holiday, and end at 7:00 AM the day after the holiday.
- 1.4. **Orientation.** Client will provide Non-Clinical Candidates with orientation in accordance with Client's policies. All time spent by Non-Clinical Candidates in Client-provided or required orientation is billable.
- 1.5. **Mileage.** For Non-Clinical Candidates with positions which require driving, Client will reimburse Vaya Workforce for mileage incurred by the Non-Clinical Candidates for travel between visit locations. In addition, mileage to the Non-Clinical Candidates first visit in a day and from the Non-Clinical Candidates final visit in a day, shall be reimbursed to the extent the distance between the first or final visit and the home Non-Clinical Candidates exceeds thirty (30) miles. All mileage shall be reimbursed at the IRS Standard Mileage Rate in effect at the time of travel.
- 1.6. **Pre-Start Cancellations.** After acceptance of a Non-Clinical Candidate for assignment by Client, Client may not cancel that assignment within two (2) weeks prior to the assignment start date. If deemed necessary to cancel such assignment within two (2) weeks prior to the start date, Client shall be responsible for thirty-six (36) hours of service at the regular hourly billing rate as a cancellation fee.
- 1.7. **Post-Start Cancellations.** Client shall provide two (2) weeks written notice of any cancellation of assignment for reasons other than Non-Clinical Candidate's inability to perform essential functions of the job unless otherwise agreed upon by the Parties. Should Client be unable to provide such two (2) weeks cancellation notice, Vaya Workforce reserves the right to bill Client for seventy-two (72) hours of service at the regular hourly billing rate. In the event of a cancellation, including, without limitation, cancellations with proper notice, Client shall be responsible for any housing, travel, and other costs or expenses incurred by Vaya Workforce as a result of such cancellation, and any other fixed costs, expenses and disbursements (e.g., licensure, exam application, visa, etc.) incurred by Vaya Workforce with respect to placing such Candidate with Client.
- 1.8. **Cancellation by Agency.** Should an applicable Agency or Candidate cancel a Non-Clinical Candidate's assignment, Vaya Workforce shall use commercially reasonable efforts to have the original Agency or another Agency provide a replacement Candidate to Client within a reasonable time frame, which shall be Vaya Workforce's or the Agency's sole obligation in the event of such cancellations.
- 1.9. **Conversion/ Placement Fee Stipulation.** If Client hires any Non-Clinical Candidate for permanent or temporary services within the twelve (12) month period following the later of: (i) the date the Candidate is introduced to Client by Vaya Workforce; or (ii) the conclusion of the Candidate's assignment with Client, then Client agrees to pay Vaya Workforce a placement fee based on a percentage of the Candidate's annual salary as set forth in the table below.

Managed Services Provider Agreement

Non-IT/Professional Placements	
Billable Hours Worked	Conversion Fee (Percentage of Annual Salary)
160 or less hours	15%
161-320 hours	10%
321-520 hours	5%
521 or more hours	No Fee
IT/Professional Placements	
Billable Hours Worked	Conversion Fee (Percentage of Annual Salary)
260 or less hours	20%
261-520 hours	15%
521-780 hours	10%
781-1040 hours	5%
1041 or more hours	No Fee

- 2. STATEMENTS OF WORK.** The Parties may agree to additional or different terms with respect to Non-Clinical Candidates for items such as conversion, rates, scope of work, reimbursable expenses, and any applicable cancellation policies via statement of work or work order confirmation.

Managed Services Provider Agreement

Addendum B

LOCUM TENENS PROVIDER SERVICES

- a. **MANAGEMENT OF CLIENT'S CONTINGENT LABOR NEEDS.** Client utilizes LT Providers (as defined in Section I of the Agreement) to supplement their existing workforces with contingent labor. Vaya Workforce shall act as Client's non-exclusive provider with respect to the provision of immediate, limited term LT Providers. Client will communicate its needs for LT Providers to Vaya Workforce using a method agreed to by the Parties. Vaya Workforce will use commercially reasonable efforts to recruit, submit and staff qualified LT Providers to fulfill Client's needs subject to the availability of LT Providers. Vaya Workforce shall use its corporate affiliates or third-party staffing subcontractors (each an "**LT Agency**") to provide LT Providers under this Agreement. Vaya Workforce shall have the discretion to choose its LT Agencies; provided, however, that Client may instruct Vaya Workforce in writing to not use particular LT Agencies. LT Providers actually provided under this Agreement are referred to as "**Vaya Workforce LT Providers.**"
- b. **RATES, REIMBURSEMENTS AND STATEMENTS OF WORK.** Hourly rates will be agreed to for each LT Provider. In addition to payment of the hourly rates, Client shall also be responsible for reimbursing Vaya Workforce for all transportation and lodging/housing costs related to any Vaya Workforce LT Provider's assignment, including, but not limited to, airfare, rental car, mileage, baggage fees. The terms and conditions for Vaya Workforce LT Providers, including assignment location, scope of work, all applicable rates, more specifics regarding transportation, lodging/housing or other reimbursement obligations, and/or any additional compliance documentation requirements, will generally be set forth in the applicable statement of work (the "**SOW**") for each particular Vaya Workforce LT Provider and/or class of LT Providers. Such SOWs shall be mutually agreed to and generally signed by an authorized representative of each Party prior to the Vaya Workforce LT Provider being assigned. Client acknowledges that it will be subject to the 50% deduction limitation under Internal Revenue Code ("**IRC**") § 274(n) to the extent such limitation applies to any meal and incidental or other reimbursement for which it is responsible. Vaya Workforce will provide Client with sufficient substantiation of any such reimbursement in accordance with IRC § 274(d). At no additional charge, Vaya Workforce may, in its discretion, also provide access to a technology solution (subject to the terms relating to use of such solution) chosen in Vaya Workforce's sole discretion.
- c. **CANCELLATION.** After acceptance of any Vaya Workforce LT Provider by Client for an assignment, Client may only cancel or modify the assignment or scheduled shifts upon written notice to Vaya Workforce provided at least thirty (30) days prior notice. If Client cancels or modifies an assignment, including by cancelling any previously scheduled shifts, without providing thirty (30) days' written notice, Client shall pay the following to Vaya Workforce: (i) all fees that would have been due for scheduled shifts in the thirty (30) days following the cancellation or modification; and (ii) all non-refundable costs and expenses, such as housing, travel, disbursements, compliance, screening or other onboarding related costs, incurred by Vaya Workforce or LT Provider as a result of such cancellation.
- d. **PRIVILEGING, CREDENTIALING & ORIENTATION.** Client shall be solely responsible for determining the qualifications, privileging, and compliance documentation and requirements and for making sure Vaya Workforce LT Providers meets such requirements prior to their performance of services for Client. Client shall timely initiate and conduct the privileging and credentialing process for Vaya Workforce LT Providers in accordance with the policies of Client, applicable law, and applicable accrediting organizations. Client shall be solely responsible for providing Vaya Workforce LT Providers with any required or appropriate orientation or training. Client shall be responsible for all associated costs and expenses. Vaya Workforce and LT Agencies do not and shall not conduct or participate in any credentialing, privileging, or other evaluative or similar activity or service pursuant to this Agreement, the responsibility for, and liability arising from, each of which is expressly and entirely borne by Client.
- e. **LT PROVIDER SUBMISSIONS.** Vaya Workforce shall use commercially reasonable efforts to provide Client with LT Provider profiles, including CVs, as soon as reasonably practicable after receiving a request or order for an LT Provider from Client.
- f. **REVIEW OF LT PROVIDER SUBMISSIONS.** Client shall review the profiles and resumes of LT Providers presented by Vaya Workforce and provide feedback to Vaya Workforce within forty-eight (48) hours of Vaya Workforce's submission of the LT Provider to Client for consideration.
- g. **ASSIGNMENT OF BILLING RIGHTS.** Client is responsible for determining what documents are necessary for the assignment of third-party billing rights. Client shall provide Vaya Workforce with copies of all required assignment documentation. Vaya Workforce shall coordinate with Vaya Workforce LT Providers and, as applicable, LT Agencies to obtain and provide to Client the signed assignment documentation.

Managed Services Provider Agreement

- h. **INSURANCE.** Vaya Workforce will provide general liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate per year. Vaya Workforce will also provide professional liability insurance with limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate covering Vaya Workforce LT Providers directly contracted with Vaya Workforce or a Vaya Workforce corporate affiliate for services performed under this Agreement. For LT Providers provided by an LT Agency through this Agreement, Vaya Workforce will contractually require the LT Agency to provide professional liability insurance with limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate covering LT Providers provided by the LT Agency for services performed under this Agreement. Vaya Workforce will provide certificates of insurance to Client.
- i. **PERFORMANCE REPORTING & EVALUATIONS.** Client shall notify the designated Vaya Workforce representative immediately and provide written documentation (e.g., a performance report) of any unsatisfactory performance or conduct of LT Providers. Client shall also assist Vaya Workforce and LT Agencies in their quality assurance efforts by completing LT Provider evaluations when requested. Vaya Workforce and Client agree to comply with all applicable laws during this process and shall use commercially reasonable efforts to come up with a mutually acceptable solution to any problems that may arise. Should LT Provider be subject of a peer review matter at Client, Vaya Workforce will cooperate with all reasonable documentation requests.
- j. **SENTINEL EVENT REPORTING.** In the event of any unexpected incidents, including errors, unanticipated deaths, injuries, safety hazards or other events or claims ("**Sentinel Events**") involving or relating to a Vaya Workforce LT Provider, Client must report the Sentinel Event to Vaya Workforce within twenty-four hours. Reports should include the name of Vaya Workforce LT Provider and any other persons involved, as well as the date, time, location, and description of facts and circumstances surrounding the Sentinel Event. The Parties agree to use reasonable efforts to timely assist each other in conducting investigations of such Sentinel Events. In the event any Vaya Workforce LT Provider makes a claim against Client alleging any wrongdoing, Client shall immediately notify Vaya Workforce.
- k. **SAFETY, FACILITIES, & EQUIPMENT.** Client shall be responsible for providing a safe, suitable, professional, and ethical practice environment for LT Providers, including providing access to any necessary equipment, supplies and other support consistent with LT Provider's area of practice. Client shall be responsible for its own facilities, equipment, supplies, practice methods, environment, protocols, policies, staffing levels, privileging and related matters.
- l. **COVID-19 RESPONSE.** Client agrees to comply with all applicable occupational health and safety standards and standards and guidance of the Centers for Disease Control, including all precautions and guidance relating to the treatment of patients with or under observation for communicable diseases, including COVID-19 (aka 2019 Novel Coronavirus). Client is also responsible for payment of all scheduled shifts during any period of quarantine, self-isolation, remediation or other appropriate time away from patient care as a result of Vaya Workforce LT Provider's exposure, potential exposure, care or treatment relating to COVID-19 (the "**Remediation Period**"). LT Providers will not be expected to perform any work, but may not be cancelled during the Remediation Period and their assignment shall be deemed to be extended and continue during the full length of any Remediation Period, which shall not exceed two (2) weeks.
- m. **INDEPENDENT CONTRACTOR STATUS OF LT PROVIDERS; DISCLAIMER.**
 - i. Client acknowledges that LT Providers are provided as independent contractors and not as employees of Vaya Workforce, its affiliates, or LT Agencies. Notwithstanding the foregoing, AP Providers provided under this Agreement may be classified and treated by Vaya Workforce, its affiliates or the LT Agencies as employees, and not independent contractors, to the extent such classification is determined to be appropriate in their discretion given the circumstances of the position and under applicable local state, or federal laws. In the event any AP Provider is treated as an employee of Vaya Workforce, its affiliates, or an LT Agency, Vaya Workforce shall, or shall require the applicable affiliate or LT Agency to be responsible for: (i) compensating such employee for hours worked for Client; (ii) deducting all applicable payroll taxes such as FICA, Federal and State from the compensation of such employed AP Provider in compliance with state and federal law; (iii) providing workers' compensation insurance in accordance with applicable law; and (iv) maintaining relevant employment documentation such as an I-9 form and W-4 form.
 - ii. **CLIENT ACKNOWLEDGES THAT VAYA WORKFORCE, VAYA WORKFORCE'S AFFILIATES, LT AGENCIES, AND EACH OF THEIR AGENTS, EMPLOYEES, AND OFFICERS, ARE NOT LICENSED TO PRACTICE MEDICINE AND DO NOT ENGAGE IN THE PRACTICE OF MEDICINE. VAYA**

Managed Services Provider Agreement

WORKFORCE, ITS AFFILIATES, AND LT AGENCIES SHALL HAVE NO RESPONSIBILITY FOR, NO RIGHT TO EXERCISE CONTROL, AND SHALL NOT EXERCISE ANY CONTROL OR DIRECTION OVER THE QUALITY OF OR THE MANNER OR MEANS IN WHICH ANY LT PROVIDER PERFORMS SERVICES FOR CLIENT. VAYA WORKFORCE, ITS AFFILIATES, AND LT AGENCIES SHALL ALSO HAVE NO RIGHT OR RESPONSIBILITY FOR MAKING ANY DETERMINATIONS REGARDING ANY LT PROVIDER'S COMPETENCY, QUALIFICATIONS, SKILL, SERVICES, ASSIGNMENTS, SCHEDULE OR PRACTICE. VAYA WORKFORCE HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT LT PROVIDERS WILL ENABLE CLIENT TO ATTAIN ANY PARTICULAR GOAL OR OBJECTIVE OR PROVIDE CLIENT WITH ANY SOLUTION TO ANY PARTICULAR PROBLEM. Vaya Workforce does not and shall not conduct or participate in any credentialing, privileging, or other evaluative or similar activity or service pursuant to this Agreement, the responsibility for, and liability arising from, each of which is expressly and entirely borne by the Client and Participating Facilities.

- iii. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, VAYA WORKFORCE SHALL NOT HAVE ANY DUTY TO INDEMNIFY, DEFEND OR HOLD HARMLESS CLIENT OR ANY CLIENT INDEMNIFIED PARTY FOR ANY ACTS OR OMISSIONS OF AN LT PROVIDER OR LT AGENCY; LT AGENCIES SHALL HAVE NO DUTY TO INDEMNIFY, DEFEND OR HOLD HARMLESS CLIENT FOR ANY ACTS OR OMISSIONS OF AN LT PROVIDER.
- iv. Notwithstanding the foregoing, Client shall not, without the prior written consent of Vaya Workforce, permit or request an LT Provider to perform any work or task or render any service that does not fall within the scope of the duties and responsibilities for such LT Provider's confirmed assignment or at any work location other than at the confirmed location. Client shall not, under any circumstances, request or permit any Vaya Workforce LT Provider to use any vehicle, regardless of ownership, in connection with the performance of any work or service for Client without written permission of Vaya Workforce.
- n. **CONVERSION OF LT PROVIDERS.** Client acknowledges that once an LT Provider is referred to Client, Vaya Workforce is the procuring cause with reference to any future relationship between Client and LT Provider. If Client engages an LT Provider for permanent or temporary services (either directly or indirectly through another vendor) within the twelve (12) month period following the later of: (i) the date the LT Provider is introduced to Client by Vaya Workforce; or (ii) the conclusion of LT Provider's assignment with Client, then Client agrees to pay Vaya Workforce a placement fee. The placement fee will be eighteen thousand dollars (\$18,000) for physicians, eighteen thousand dollars (\$18,000) for CRNAs, and fifteen thousand dollars (\$15,000) for all other positions unless otherwise specified in an SOW. This placement fee applies where an LT Provider is hired after first serving in a temporary or locum tenens capacity under this Agreement or any other. This obligation shall survive the termination or expiration of this Agreement.