

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

THIS AGREEMENT, entered into as of the last date of execution, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and TOTAL RENAL CARE, INC., hereinafter called "Contractor".

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of acute inpatient dialysis services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

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 herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein 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 the County's total fiscal obligation under this Agreement exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS, \$1,500,000. In the event County's obligation is likely to exceed such amount, County shall notify Contractor and if the County fails to increase funding for any services ordered, Contractor may immediately terminate this Agreement. The fee schedule set forth in Exhibit B shall be increased on

each yearly anniversary of the effective date (as defined in Section 4) during the term by three (3%) percent.

4. Term and Termination

- (1) Subject to compliance with all terms and conditions, the term of this Agreement shall be from December 1, 2012 through November 30, 2015.
- (2)
 - (a) This Agreement may be terminated by Contractor, the Chief of the Health System or his/her designee at any time without a requirement of good cause upon one hundred eighty (180) days' prior written notice to the other party.
 - (b) Termination with Cause. Either party may terminate this Agreement in the event of a material breach by the other; provided, however, the termination for the breach of this Agreement will not become effective unless and until the party not in default, has given the other party written notice of breach, which notice shall state the general nature of the breach, and the party allegedly in default will thereafter have a period of thirty (30) days following the giving of said notice in which to remedy the default to the reasonable satisfaction of the other party. If the alleged default is of the kind that cannot be cured within thirty (30) days, then the party allegedly in default will have an additional thirty (30) in which to remedy the breach as long as such party is acting in good faith and using diligent efforts to remedy the breach throughout the cure period. Notwithstanding the foregoing, County shall have the right to terminate this Agreement with cause after giving written notice to Contractor in the event County determines that Contractor does not have the proper credentials, experience or skill to perform the required services under this Agreement; or in the event that continuation by Contractor in the providing of services may result (i) in civil, criminal, or monetary penalties against County, (ii) in the breach of any federal or state law or regulatory rule or regulation or condition of accreditation or certification, or (iii) the loss or threatened loss of County's ability to participate in any federal or state health care program, including Medicare or Medi-Cal.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Each party shall indemnify and save harmless the other, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, (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 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.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. Each party shall provide the other with thirty (30) days' prior written notice of any change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly

employed by either of them. Such insurance may be provided via a program of self insurance and shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

(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 policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap 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 State, Federal, County, or municipal law or regulations, the requirements of the applicable law 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"), the facility retains all professional and administrative responsibility for services rendered under this Agreement and that this Agreement is otherwise subject to any applicable requirements of Title 22.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph.

Contractor shall report to the County Manager the filing by any person related to this Agreement in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required

by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY of similar service providers.

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

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. 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.

16. Notices

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

**In the case of County, to:
San Mateo Medical Center
222 W. 39th Avenue
San Mateo, CA 94403
Attn: Deputy Director, Acute Care Services
Facsimile: (650) 573-2030**

**In the case of Contractor, to:
Total Renal Care, Inc.
15253 Bake Parkway
Irvine, CA 92618
Attn: Acute Paralegal**

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have affixed their hands.

COUNTY OF SAN MATEO

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

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Total Renal Care, Inc.

John Zmuren
Contractor's Signature *DVP Hospital*
Services

Date: *11/17/12*

Long Form Agreement/Business Associate
SMMC rev. 1/25/11

Exhibit "A"

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

A. General Contractor Responsibilities

1. **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.
2. **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. 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.
3. **Acute Nursing Care.** In collaboration with the assigned primary nurse at SMMC, Contractor's acute dialysis nursing service shall be responsible for:
 - a. Set-up and take down of the dialysis equipment.
 - b. Patient care, including:
 - (1) Dialysis initiation;
 - (2) Monitoring of vital signs;
 - (3) Implementation of nephrologists' dialysis orders;

- (4) Drawing and labeling lab work related to the provision of dialysis;
- (5) Administering antibiotics and/or other medication via dialysis lines when necessary; and
- (6) Reporting post-dialysis status to floor nurse and nephrologist, including
 - (a) weight loss;
 - (b) volume replacement used;
 - (c) pre- and post-dialysis patient vital signs; and
 - (d) any unusual occurrences.

4. Hours of Operation

- a. Standard operating hours: Monday through Friday, excluding Weekends and Holidays.
- b. Contractor will respond to requests to provide treatments on an on-call basis after standard operating hours as well as on Sundays and Holidays. Contractor shall respond to STAT or emergency calls within four (4) hours of receiving the request.
- c. Holidays are defined as follows:

New Year's Day	Independence Day
Martin Luther King Day	Labor Day
Presidents Day	Thanksgiving
Memorial Day	Christmas Day

5. 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 includes 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 the services rendered,

B. Dialysis Charges

It is SMMC's policy that billable services provided to patients will be appropriately posted to their accounts and billed to the patient's third-party payer or other responsible party. As dialysis services are billable services, the Contractor will be required to submit charges for their services to SMMC. Accordingly, Contractor will be responsible for completing charge forms for all dialysis treatments and submitting them, as follows.

1. Contractor's staff will complete a mutually agreed upon charge sheet for each Patient receiving acute dialysis each time a dialysis service is performed. County is responsible for making the required charge ticket readily available for use by Contractor's staff. The charge sheet will include the following information if it is made available to Contractor's staff by County:

- a. Patient identifying information shall be included in all charge tickets, as follows: patient's name, 7-digit medical record number, 8-digit patient account number, date(s) of service, date of birth if provided by County. Information required, but not supplied by the County shall not result in any delay in payment.
 - b. Contractor's staff will write his/her name on the charge sheet.
- 2. Contractor's staff will give the original white copy of the charge sheet to the Medical Unit Secretary. Contractor's staff will retain a copy for the Contractor's records.

C. County Responsibilities.

- 1. 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:
 - a. 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.
 - b. 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.

- c. 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.
- d. 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.
- e. SMMC shall provide adequate and sufficient water and electricity needed to perform the services required by this Agreement in accordance with Contractor's standards.
- f. SMMC to provide telephone usage located in the space provided for Contractor's use for the provision of services required by this Agreement.
- g. SMMC to provide blood banking, laboratory, and x-ray services as required for patient care both on an emergent and non-emergent basis.
- h. Free parking within close proximity to SMMC facility.
- i. Drugs and other pharmaceutical items required for performance of Covered Services, including all medications and replacement solutions, saline, heparin, peripheral fluids and plasma.
- j. Emergency support services including emergency facility personnel, equipment and supplies.
- k. 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.
- l. All necessary non dialysis-specific medical record charting forms.
- m. Environmental services and waste removal including, without limitation, medical and hazardous waste removal.

- n. All patient transport.
- o. Access to, or copies of, patient medical records where relevant for the provision of services pursuant to this Agreement.
- p. 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.
- q. 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.).
- r. Equipment and supplies necessary to perform temporary vascular access.

D. Miscellaneous

- 1. 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 reasonable 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 reasonable 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

2. 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.

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule. The fees listed in the schedule set forth below 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:

1. Hemodialysis:

- | | |
|--|------------------------|
| (a) Hemodialysis- adult (with a direct 1:1 patient to staff ratio, up to 4 hours) | \$636.00 per treatment |
| (b) Hemodialysis- adult (with a direct 2:1 patient to staff ratio up to 4 hours) (1) | \$520.00 pre treatment |
| (c) Hemodialysis- adult (additional charge per half hour for treatments ordered longer than 4 hours) | \$57.50 per half hour |

2. Peritoneal Dialysis (PD):

- | | |
|--|------------------------------|
| (a) Continuous Ambulatory Peritoneal Dialysis – (CAPD) Therapeutic Visit / Support Service (2) | \$405.00 per treatment visit |
| (b) Continuous Cycling Peritoneal Dialysis - (CCPD) Therapeutic Visit / Support Service (2) | \$405.00 per treatment visit |

3. Apheresis:

- | | |
|---|-------------------------|
| (a) Plasma exchange | \$1175.00 per exchange |
| (b) Cartridge change fee (in excess of 1 per treatment) | \$ 250.00 per cartridge |

4. Nursing Services:

- | | |
|---|-----------------------|
| (a) Declotting Central Venous Catheters | \$86.00 per half hour |
| (b) RN Consultation (3) | \$86.00 per half hour |

5. Miscellaneous:

- | | |
|-----------------------------------|------------------------------|
| (a) Differential: After Hours (4) | \$173.00 per treatment visit |
|-----------------------------------|------------------------------|

- | | |
|--|------------------------------|
| (b) Differential: Weekends and Holidays (5) | \$173.00 per treatment visit |
| (c) Cancellation HD / PD / Apheresis: (only if cost occurs). | \$347.00 per cancellation |
| (d) Waiting time | \$ 86.00 per half hour |

6. Discharge Services

Included in Rate

- (1) Requires hospital space with a minimum of 2 beds. Treatment for one (1) patient in area with two (2) beds shall be charged the Hemodialysis 1:1 rate
- (2) Includes PD equipment dialysate and supplies, minimum of two (2) nursing visits per day required
- (3) Any service authorized by SMMC not otherwise described in Attachment A.
- (4) Differential for "After Hours" will be assessed for orders received after 4pm ending at 6am on the day of treatment is to be performed.
- (5) Observed holidays are: New Years Day, Memorial Day, Thanksgiving Day, President's Day, Independence Day, Christmas Day, Martin Luther King Day, Labor Day.

EXHIBIT E

CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)

The person/entity listed below (the "Undersigned") recognizes and is fully dedicated to advancing SMMC's 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.

The Undersigned will comply with all Federal, State or other governmental health care program requirements and with SMMC's policies and procedures relating to SMMC's Corporate Compliance Program, including the requirements set forth in the Corporate Integrity Agreement (CIA) to which SMMC is a party (available online at http://oig.hhs.gov/fraud/cia/agreements/the_county_of_san_mateo_03062009.pdf).

The Undersigned, 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.

The Undersigned will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements or of SMMC's Compliance Program policies and procedures.

The Undersigned has the right to use the SMMC Disclosure Program by calling the Compliance Hotline or reporting incidents to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

The Undersigned understands that non-compliance with Federal health care program requirements and SMMC's Compliance Program policies and procedures, and failing to report such violations, could result in termination of the Agreement and/or any other penalties permitted by law.

The Undersigned 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.

The Undersigned will not offer, give or accept any 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). The Undersigned will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

The Undersigned will not engage in any financial, business, or other activity which competes with SMMC/County business 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, except to the extent consistent with the SMMC/County Incompatible Activities and Outside Employment policy and the Agreement.

The Undersigned will cooperate fully and honestly with internal audits and monitoring programs to help assure that SMMC's compliance is maintained with all applicable federal/state regulations, the Joint Commission standards, and hospital system-wide policies.

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

The Undersigned hereby certifies by signing below that an authorized representative has received this Code of Conduct, understands it, has authority to commit the Undersigned to this Code of Conduct, and hereby commits the Undersigned to comply with this Code of Conduct.

Joann Zimmerman DVP Hospital Services
Name of Person/Entity (the "Undersigned")

Joann Zimmerman
Signature and Printed Name

11/19/12
Date

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 section 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. *Designated Record Set*. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- b. *Electronic Protected Health Information*. "Electronic Protected Health Information" ("EPHI") means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual*. "Individual" shall have the same meaning as the term "individual" in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information*. "Protected Health Information" 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 Contractor from or on behalf of County.
- f. *Required By Law*. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- g. *Secretary*. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident*. "Security Incident" shall mean the or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule*. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of Contractor

- a. Contractor 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. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, to the County upon receipt of written request, and within fifteen (15) business days, 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.
- g. If Contractor has protected health information in a designated record set, Contractor 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 will promptly amend upon written receipt from the County.
- h. Contractor 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 Contractor on behalf of, County available to the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor 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.

- j. Contractor upon written receipt of a request agrees to provide to County or an Individual within twenty (20) days, information collected in accordance with Section (i) of this Schedule, 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.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor 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.

Obligations of County

- a. County shall provide Contractor 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 Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.
- d. County agrees: (i) to use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Contractor pursuant to this Agreement and the Services Agreement, in accordance with the standards and requirements of HIPAA, the Privacy Rule and Security Rule, until such PHI is received by Contractor.

Permissible Requests by County

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

Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor 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 Contractor maintains such Protected Health Information.

Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the 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 Contractor 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 Review Security Policies and Procedures.* County reserves the right to review the applicable security policies and procedures of Contractor

(rev. 8/08)

ATTACHMENT I

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

The undersigned (hereinafter called the "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.

ARON MARK DOOLIN
Name of 504 Person - Type or Print

Total Renal Care, Inc.
Name of Contractor(s) - Type or Print

15253 Bake Parkway
Street Address or P.O. Box

Irvine, CA 92618
City, State, Zip Code

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

ARON MARK DOOLIN
Signature

Manager Affirmative Action / EEO
Title of Authorized Official

11/09/12
Date

*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."