

# OPERATIONS MANAGEMENT AGREEMENT II

(Burlingame Skilled Nursing)

This OPERATIONS MANAGEMENT AGREEMENT II (this "Agreement") is made and entered into as of this August 1, 2020 (the "Execution Date"), by and between COUNTY OF SAN MATEO, a political subdivision of the State of California ("Licensee") and BRIUS, LLC, a California limited liability company, and its affiliated designee ("Manager").

## RECITALS

A. Licensee is the licensed operator of a 281-bed Distinct Part/Skilled Nursing Facility commonly known as BURLINGAME SKILLED NURSING (formerly known as Burlingame Long Term Care), located at 1100 Trousdale Drive, Burlingame, CA 94010 and more particularly described on **EXHIBIT A**, attached hereto and by this reference made a part hereof (the "Facility").

B. Manager and Licensee (collectively, "the Parties") entered into an agreement to manage the Facility on behalf of Licensee and under Licensee's Medi-Cal and Medicare provider numbers, which agreement was amended five times ("Prior Agreement"). Under the Prior Agreement, Manager began managing the Facility as of the Operations Transfer Date, as that term is defined in the Prior Agreement, and as amended, the Term of the Prior Agreement was to end September 30, 2020. In keeping with the mission of Licensee's San Mateo Medical Center ("SMMC") to serve the healthcare needs of low-income residents of San Mateo County, the Prior Agreement required Manager to accept (subject to space availability) all referrals of patients who require skilled nursing facility level care from SMMC to the Facility during the term of the Agreement. If there are any contradictory provisions between this Agreement and the Prior Agreement, this Agreement shall control.

C. Having now worked in partnership for more than eight years under an arrangement that has been mutually beneficial, it is the intent of the Licensee and Manager to enter into this Agreement, under which Manager will continue to operate the Facility on behalf of Licensee and under Licensee's Medi-Cal and Medicare provider numbers for an additional five year period, with an option to extend the relationship under the terms of this Agreement for a second five-year period. Like the Prior Agreement, and consistent with Licensee's mission to serve the healthcare needs of low-income residents of San Mateo County, Manager is required under this Agreement to accept (subject to space availability) all referrals of patients who require skilled nursing facility level care from SMMC to the Facility during the term of the Agreement.

D. In order to facilitate any transition of operational and financial responsibility from Licensee to Manager in a manner which will ensure the continued operation of the Facility in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents of the Facility, this Agreement sets forth terms and conditions under which Manager will continue to manage the Facility for Licensee and certain other terms and conditions relevant to the transition of operational and financial responsibility from Licensee to Manager on or before the Transition Date, as defined herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the parties set forth herein, it is hereby agreed as follows:

**1. Conditions Precedent and Required Approval.** This Agreement is contingent upon all of the following:

- 1.1 Licensee maintaining a possessory interest in the Facility. This shall take the form of a lease of the Facility from Eretz Trousdale Properties, LLC ("ETP"), current owner of the building housing Facility, under such terms as are mutually agreed upon by Licensee and ETP;

- 1.2 Approval and execution of this Agreement by the San Mateo County Board of Supervisors;  
and,
- 1.3 Manager certifying proof of all insurance required by this Agreement.

These conditions are collectively referred to as the “Conditions Precedent,” and this Agreement shall not become operative unless each of the Conditions Precedent listed by this section is met. If all Conditions Precedent are not satisfied in full (or waived by both parties) by September 30, 2020, Licensee has the option at its sole discretion to cancel this Agreement at any time until all Conditions Precedent are satisfied in full (or waived by both parties). Notwithstanding any other provision of this Agreement, if the parties move forward with implementation of the Agreement after it is executed but thereafter Licensee fails to ensure a continuing possessory interest in the Facility from Landlord as required by Section 1.1, Manager and Brios shall jointly and severally bear all costs associated with such failure and shall indemnify and hold harmless Licensee as outlined by Section 26 of this Agreement.

## **2. Exhibits and Attachments.**

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

**Exhibit A**—Description of Facility and Lease

**Exhibit B**—Corporate Compliance SMMC Code Of Conduct (Third Parties)

**Exhibit C**—County of San Mateo Ordinance Code / Chapter 2.25 - Reporting of Adverse Events In County-Operated Health Care Facilities

**Attachment H**—HIPAA Business Associate requirements

## **3. Term.**

- 3.1 Subject to compliance with all terms and conditions set forth herein, the term of this Agreement shall be from October 1, 2020 (“Execution Date”), through September 30, 2025 (“Initial Term”), provided the Conditions Precedent have been waived by both parties or satisfied in full. The term of this Agreement will extend for a successive five-year period ending September 30, 2030, (“Renewal Term”) which Renewal Term shall automatically occur absent notice by either Party of the intention not to renew for the Renewal Term. Such notice of the intention not to renew the agreement for the Renewal Term shall be by providing written notice no later than 180 days in advance of the start of the Renewal Term, i.e., March 31, 2025.
- 3.2 For purposes of this Agreement, the “Transition Date” shall be September 30, 2030, or as soon before that date that Manager obtains its own License and Medi-Cal and Medicare provider numbers and is able to operate the Facility under those provider numbers, free of any further commitment of or participation by Licensee, subject to the requirements of Section 27. In such event, SMMC agrees to all terms of Section 27, including full cooperation with such transition.
- 3.3 The term of this Agreement shall be from the Execution Date through the Transition Date, except that obligations under Sections 6.5, 8.1, 9.5, 12.1, 13.4, 13.5, 16, 17.6, 18.2, 18.11, 20.9, 21-22, 23.2, 25-27, 29, and 30 shall continue beyond the Transition Date as outlined by this Agreement

**4. Management of the Facility.** For the duration of this Agreement, commencing on the Execution Date and ending on the Transition Date (this period being known as the “Management Period”), Licensee hereby appoints Manager as its sole and exclusive manager of the Facility, as outlined by this Agreement. The provisions of this Agreement provide for integration of the management services provided by Manager with Licensee’s existing operations while also permitting Licensee to operate the Facility in a manner that will facilitate Manager’s ability to eventually to take over full operation of and responsibility for the Facility after the termination of this Agreement. At all times throughout the duration of the Agreement,

Licensee shall remain ultimately responsible for the daily operational decisions and the care delivered to the residents at the Facility during the Management Period, and, accordingly, Licensee shall have the right to confer and consult with Manager on any administrative, business, or management matters concerning the operation of the Facility during the Management Period; provided, however, such ultimate responsibility shall not relieve Manager from all of its obligations specified in this Agreement.

## **5. Governance.**

- 5.1 Overview. The governance structure provides the framework for communication, direction, and management of the business relationship between Licensee and Manager. As outlined in this Agreement, Manager is a separate legal entity, employing Facility Employees (as defined below). Of those employees, the Facility Leadership (as defined below) shall maintain a dual reporting structure. Although all Facility Employees shall be employees of Manager and have a reporting structure to Manager, the Facility Leadership will also report through the Facility Administrator to the Chief Executive Officer of SMMC and, by extension, the SMMC Board of Directors. Manager and Licensee shall meet and confer regarding SMMC by-laws and operating decisions adopted by the SMMC Board of Directors which impact the operations of the Facility.
- 5.2 Facility Administrator and Medical Director. In order to facilitate this governance structure, Manager's Facility Administrator shall report and be accountable to SMMC's Chief Executive Officer or their designee in addition to reporting to Manager's leadership. Manager's Facility Medical Director shall report to the Facility Administrator and SMMC's Chief Medical Officer or their designee. Manager's Administrator (or designee) shall attend governance meetings as outlined by this Section and provide information, reports, input, and data, as requested, to apprise Licensee of the Facility's operations and ensure compliance with this Agreement.
- 5.3 SMMC Policies and Procedures. Upon agreement between Manager and Licensee, Manager will adopt as applicable SMMC Policies and Procedures (P&Ps) as part of its own P&Ps. Such P&Ps may be adopted verbatim or in a format that is materially the same. These P&Ps may be updated or revised from time-to-time, and Manager shall update its P&Ps accordingly.
- 5.4 SMMC Executive Management Team (EMT). Manager will ensure that its Facility Administrator or Director of Nursing periodically attends the SMMC weekly EMT meeting at as scheduled by SMMC leadership. The Manager's representative will report to the EMT on the operations of the Facility, including but not limited to any problems, areas of concern, census numbers, and other issues as directed by SMMC leadership.
- 5.5 SMMC Board of Directors. Manager will ensure that its Facility Administrator or Director of Nursing attends the monthly SMMC Board of Directors meeting, and Manager's representative will present to the Board of Directors as scheduled by SMMC leadership.
- 5.6 Oversight and Supervision. Manager is subject to the oversight and supervision of Licensee. This means that if any issues arise that might impact quality of care or other licensing issues, Manager shall provide prompt notice to Licensee of such issues, and reasonably cooperate with Licensee to address said issues in a timely and efficient manner. In addition, Licensee shall have the right during the Management Period to access the entire Facility and to participate in activities at the Facility, including meetings, discussions of resident care, resident forums, and any other activities.

## **6. Leadership & Staff.**

- 6.1 Leadership. The following positions at Facility are considered "Facility Leadership":

6.1.1. Facility Administrator – Administrator shall be licensed as a nursing home administrator by the California Board of Examiners of Nursing Home Administrator. Administrator's responsibilities include oversight of the day-to-day functions of the Facility, supervision over the Facility Leadership, and the establishment and implementation of policies regarding the management and operation of the Facility.

6.1.2. Facility Medical Director – Facility must designate a physician to serve as Medical Director. Medical Director's responsibilities include implementing care policies and coordinating medical care; supervising the provision of all medical care at Facility; having primary responsibility, in conjunction with other leadership members, for quality of care issues; serving as the primary liaison between SMMC and all medical staff at Facility.

6.1.3. Facility Director of Nursing – Facility must employ a registered nurse to serve as the Director of Nursing. The Director of Nursing shall have administrative authority, responsibility and accountability for the nursing services within the Facility.

6.2 Staff. All other employees of Manager at Facility are "Facility Staff."

6.3 Employees. Collectively, Facility Leadership and Facility Staff constitute the "Facility Employees."

6.4 Personnel Policies. All personnel policies adopted by Manager for Facility are subject to approval by the Licensee.

6.5 Employment Responsibilities. Manager shall hire, supervise, and otherwise be responsible for the conduct of all Facility Employees whom Manager determines to be necessary to effectively and efficiently operate the Facility. Manager shall be responsible for all aspects of administration of Facility Employees, including hiring, training, supervision, and termination. Termination decisions with respect to employees shall be made by Manager in a manner consistent with Facility's applicable policies and Manager's contractual obligations, if any. However, Licensee (through its EMT) shall have final approval for the personnel actions applicable to all Facility Leadership, including hiring, promotion, discipline, and termination decisions. Notwithstanding the foregoing, Manager and Brius shall be jointly and severally liable for any wrongful termination, employee complaints, or other employment law-related violations arising on or after the Operations Transfer Date, and Licensee shall bear no responsibility therefor.

## **7. Medical Staff, Credentialing, Quality, and Clinical Issues.**

7.1 Medical Staff & Credentialing. All of Facility's medical providers of the following types who provide care at Facility, whether they are employees or contractors of Manager, must be fully credentialed by the SMMC credentialing process:

- MD (medical doctor)
- DO (doctor of osteopathy)
- DDS (doctor of dental surgery)
- DMD (doctor of medical dentistry)
- PsyD (doctor of psychology)
- DPM (doctor of podiatry)
- NP (nurse practitioner)
- RNFA (registered nurse first assistant)
- PA (physician assistant)
- RDAAP (registered dental assistant - advanced practice)
- OD (optometrist)

- Chiropractors
- Nurse Midwives
- Nurse Anesthetists

Only providers of these kinds who are credentialed by SMMC may provide care at Facility. Manager must immediately report to the SMMC Chief Medical Officer any information that would call into question a provider's ability to provide care at the Facility. Manager or the provider being credentialed shall pay Licensee's customary cost of credentialing for each such provider, including the initial application fee and annual dues. Any medical provider who loses their SMMC medical staff privileges shall become immediately ineligible to provide care at the Facility, and Manager bears full fiscal responsibility in any such situation. Any disciplinary proceedings with respect to such credentialed health care providers who provide care at Facility shall be conducted by Licensee's Medical Staff, and Manager shall cooperate with such proceedings as requested by Licensee's Medical Staff. To the extent that Facility Residents have a legal right to have their own medical provider provide care at Facility, this section shall not restrict that right. However, any prescriptions for Facility Residents written by any such medical provider must be sent to the SMMC Pharmacy pursuant to Section 10.

7.2 Quality Issues. Manager will participate in SMMC's quality, compliance, and other committees as required by Section 9, below.

7.3 Infection Control. Manager will send a representative to participate on the SMMC Infection Control Committee at all regular meetings. In addition, Manager will immediately report to SMMC leadership and the Infection Control Manager any infection control issues identified at Facility. To the extent that Manager creates its own infection control committee for Facility in addition to the SMMC Infection Control Committee, Manager shall include at least one representative from Licensee on its committee during the Management Period. Manager shall promptly and efficiently comply with all data requests from the SMMC Infection Control Manager.

7.4 Pharmacy and Therapeutics Committee. Manager will send the Facility Medical Director to participate on the SMMC Pharmacy and Therapeutics ("P&T") Committee at all regular meetings. In addition, Manager will immediately report to SMMC leadership and the P&T Committee any P&T-related issues identified at Facility. To the extent that Manager creates its own P&T committee for Facility in addition to the SMMC P&T Committee, Manager shall include at least one representative from Licensee on its committee during the Management Period.

7.5 Cooperation Regarding Clinical Guidelines. Manager shall cooperate with the clinical staff of Licensee to develop and implement nursing, social services, pharmacy, nutrition, wound care, admission, infection control, patient care and other clinical guidelines. Manager shall have responsibility for drafting such policies as agreed upon by Licensee.

7.6 Regulatory Readiness Committee. Manager will send a representative to participate on the SMMC Regulatory Readiness Committee at all regular meetings, which includes patient care policy issues.

7.7 Annual Surveys. To the extent that any regulatory agency conducts annual or other routine surveys of Facility, Licensee shall be notified in advance of (or, in relation to unannounced surveys, immediately at the start of) such surveys and shall be permitted to fully participate in and supervise such surveys.

## **8. Medical Records.**

8.1 Ownership. The medical records for all residents at the Facility ("Facility Medical Records") shall be owned by SMMC, although they will be maintained at Facility by Manager during the Management Period. At the Transition Date, ownership of all Facility Medical Records shall pass to Manager. Manager shall not destroy any Facility Medical Records during the Management Period and thereafter shall retain such records as required by applicable rules and regulations. Even after the Transition Date, Manager shall provide access to SMMC upon request to any medical records for Facility residents relating to services provided before the Transition Date.

8.2 The Electronic Medical Record. The Facility Medical Records will not be part of SMMC's planned upgrade of its electronic health record and is not part of SMMC's meaningful use data. However, Manager and its agents (as appropriate) will be provided electronic read-only access to medically appropriate information for Facility residents within SMMC's electronic medical record to the extent such access is needed for a legitimate care-related or business purpose.

## **9. Quality Control, Compliance, and Regulatory Issues.**

9.1 Quality Control. Manager will send a representative to participate on the SMMC Quality Control Committee (also referred to as the Quality Improvement Committee) at all regular meetings. In addition, Manager will immediately report to SMMC leadership and the Quality Control committee any quality control issues identified at Facility. To the extent that Manager creates its own quality control committee for Facility in addition to the SMMC Quality Control Committee, Manager shall include at least one representative from Licensee on its committee during the Management Period.

9.2 Quality Data. Manager shall work with Licensee to develop appropriate quality data, which shall be reported to Licensee in a form agreed to by Manager and Licensee on a regular basis.

9.3 Compliance. Manager will send a representative to participate on the SMMC Compliance Committee at all regular meetings. In addition, Manager will immediately report to SMMC leadership and the Compliance Committee any compliance control issues identified at Facility. Manager shall also maintain its own compliance program for Facility in addition to the SMMC Compliance Committee, in relation to which Manager shall include at least one representative from Licensee during the Management Period. Manager shall also submit to Licensee for approval a copy of Manager's compliance program. Further, Manager 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 for each employee, independent contractor, and volunteer to participate and complete SMMC compliance program. Failure of Manager to participate and complete SMMC compliance program on an annual basis constitutes a material breach of this Agreement, and in such circumstances the County, at its option, may terminate the Agreement pursuant to the termination provisions within this Agreement.

9.4 HIPAA. Manager will send a representative to participate on the County of San Mateo's HIPAA Committee at all regular meetings. In addition, Manager will immediately report to SMMC leadership and the HIPAA Committee any potential violations of HIPAA or other patient confidentiality laws or regulations identified at Facility. To the extent that Manager creates its own HIPAA-related committee for Facility in addition to the County's HIPAA Committee, Manager shall include at least one representative from Licensee on its committee during the Management Period.

9.5 Corporate Integrity Agreement. Manager agrees and acknowledges that to the extent SMMC should at any time throughout the Term of this Agreement become party to a Corporate Integrity Agreement (CIA) with the Office of Inspector General of the Department of Health and Human Services, Manager, in relation to its work at Facility, will abide by and comply with all applicable requirements of such CIA. SMMC agrees that any costs related to complying with such CIA shall be borne exclusively by SMMC.

9.6 Plans of Correction. To the extent that Manager (in relation to its work at Facility) or the Facility is required by any governmental regulator or agency to submit a Plan of Correction ("POC") relating to the Facility, Manager shall submit to and obtain approval from Licensee for each such POC or other corrective action. Upon receipt from any governmental regulator of a requirement to submit a POC relating to the Facility, Manager shall immediately provide notice to Licensee of the required POC and shall thereafter keep Licensee updated regarding its efforts to address the issue covered by the POC. Manager shall draft such POC, provide the draft POC to the CEO of SMMC and its compliance officer at least five (5) days before the due date for the POC, and coordinate with SMMC leadership for approval of the POC prior to submission to the regulator or other agency. Licensee must respond to Manager within forty-eight (48) hours of receipt of the POC. Failure to respond within two business days shall be deemed approval by Licensee for Manager to submit the POC. To the extent that Licensee receives the requirement to submit a POC relating to Facility, Licensee shall immediately notify the Facility Administrator of said requirement, and Manager shall thereafter treat the POC as having been received by Manager under this Section. Licensee and Manager agree they will work together to ensure that a requirement to submit a POC is promptly addressed.

9.7 Other Data & Reporting. Manager will provide a report within five days to SMMC Leadership and SMMC's Quality Control Committee of any of the following unusual occurrences relating to the Facility: medication errors with a negative outcome; unexpected deaths; all sentinel events; actual, suspected or alleged resident injury or abuse resulting in injury; actual, suspected or alleged criminal activity of any kind; all cases/situations reported to any governmental or regulatory agency; resident elopements; any active infection control case; any unusual occurrence or incident of possible abuse occurring on the Facility premises; any action by CMS or other regulator to impose a temporary manager, deny payments for new admissions, deny payments for all eligible admissions, or to ban any admission; or any occurrence that might trigger termination for cause under Section 25. In addition, SMMC leadership shall be notified immediately of any other occurrence relating to Facility that may fall under the County of San Mateo's ordinance requiring reporting of adverse events in County-operated Health Care Facilities, a copy of which is attached hereto as **EXHIBIT C** and by this reference made a part hereof. Manager will err on the side of disclosure in promptly reporting any suspect issues of this kind to SMMC leadership. In addition, Manager shall promptly disclose any item relating to Facility that Manager has reason to anticipate will be reported in the press regarding Facility. To the extent notice of an event is made under this Section, Manager shall immediately provide upon request all related information, documentation and correspondence, including but not limited to licensing surveys, complaint investigation reports, citation or deficiency reports, termination/suspension/revocation letters, or any other findings relating to such event.

9.8 Cooperation with SMMC Leadership. Manager shall cooperate with SMMC in relation to all Facility-related quality control, compliance, HIPAA, or other statutory or regulatory issues, including all issues listed in this Section 9 of this Agreement.

9.9 Survey or Audit Report Access. Manager shall provide to Licensee's Chief Medical Officer all survey or audit reports from the Department of Public Health, Centers for Medicare and Medicaid Services, Department of Health Care Services, or any other governmental entity within forty-eight (48) hours of receipt.

## **10. Pharmacy, Clinical Services.**

10.1 Utilization of SMMC Pharmacy. Manager will exclusively use the SMMC Pharmacy for all pharmacy-related services for residents at the Facility during the Management Period. If the SMMC Pharmacy does not offer a specific service and cannot offer it, then Manager and Licensee shall reach an agreement about how to provide such services.

10.2 Method of Delivery of Prescriptions. During the Management Period, Manager shall send all new prescriptions and prescription renewals to the SMMC Pharmacy via facsimile unless otherwise agreed to in writing by both parties.

10.3 Method of Delivery of Medications. During the Management Period, SMMC Pharmacy shall have all prescribed medications delivered to Facility pursuant to the schedule listed in this subsection. Each delivery will be accompanied by a delivery manifest, and Manager must have a Registered Nurse or other authorized representative sign each manifest at time of receipt indicating receipt of the delivery. Manager shall have the signed delivery manifest immediately sent by facsimile to the SMMC Pharmacy. The SMMC Pharmacy has two deliveries to Facility each business day (Monday through Friday), and one delivery to Facility each weekend day or holiday. For rush deliveries outside the normal delivery schedule, Manager shall be billed pursuant to Licensee's contracted cost for rush deliveries.

10.4 Billing for Prescriptions – Prescription Coverage. SMMC will bill for all Facility-related prescriptions filled by the SMMC Pharmacy. Except as provided herein, for those residents with third-party prescription coverage (e.g., private insurance, Medi-Cal, Medicare Part D), SMMC will bill the insurance provider or third-party administrator directly and shall be entitled to retain all funds received for billed prescriptions. For a resident enrolled in Medicare Part A or Medicare Advantage who is prescribed formulary drugs (i.e. generic drugs), then SMMC will bill Manager at \$8 per Medicare Part A/Medicare Advantage day or the then-current Medi-Cal rate, whichever is greater. If a resident has Medicare Part A or Medicare Advantage and was prescribed non-formulary items (i.e. bulk products, injections, and brand name medications), SMMC will bill Manager the acquisition costs for the entire package of bulk and liquid items and the number of medication doses from the day dispensed as a Medicare Part A/Medicare Advantage enrollee through the end of the Medicare Part A/Medicare Advantage stay or the total number of days' supply dispensed, whichever is less. Manager shall provide Licensee with a monthly Medicare census for Licensee's use in preparing invoicing. To the extent that any resident has a co-pay for prescription medications under such prescription drug coverage, SMMC shall bill the resident (or their designee). SMMC will be entitled to retain all co-pays submitted by residents or their designees, but such co-pay shall reduce the amount owing from Manager.

10.5 Billing for Prescriptions – Residents Without Prescription Coverage. For residents who do not have third party prescription coverage (e.g., private insurance, Medi-Cal, Medicare "Part D"), SMMC Pharmacy shall bill Manager for each prescription at the then-current Medi-Cal Rate.

10.6 Prescribing Providers Shall Provide Primary Care For Licensee. All providers at Facility who prescribe medications for Facility residents shall do so as primary care providers for those residents under the auspices of Licensee's Medi-Cal and Medicare provider numbers. If requested by Licensee, each such provider shall enter into a written agreement indicating their role as providing primary care on behalf of Licensee, and each such provider shall also be credentialed by Licensee pursuant to Section 7.1 of this Agreement.



10.7 Consulting Pharmacist. Manager will utilize the SMMC Pharmacy's consulting pharmacist to conduct the monthly Drug Regimen Review required by 22 C.C.R. Section 72375. During the Management Period, Manager will pay Licensee a flat monthly rate of two-thousand dollars (\$2,000.00) for such services. Such amount shall be due to Manager on the last day of each month during the Management Period, and may be withheld from Management Fee on or after the date on which it is due. Amount withheld shall be documented in reconciliation of Management Fee under this Agreement.

10.8 Electronic Access to Pharmacy Profiles. Manager will be able to access each resident's SMMC Pharmacy Profile electronically using the WebConnect portal of the PrimeCare system by QS/1 (or using a similar system if Licensee adopts different technology during the Management Period). Manager shall work with Licensee to install a server to run the WebConnect (or similar) application. Upon mutual written agreement of the parties, Manager will be able to use the WebConnect portal (or similar system) to re-order prescriptions for Facility residents.

10.9 Manager Responsibility for Medications. Upon having its authorized representative sign the prescription delivery manifest described in Section 10.3, Manager shall take responsibility for handling, storage, and administration of all prescribed medications.

10.10 Processing of Medications by SMMC Pharmacy. To the extent that a Facility resident has a legal right to have their own medical provider provide medical care and write a prescription for medications, all such prescriptions must be processed by the SMMC Pharmacy to the extent Licensee's license so requires.

10.11 Revision to Pharmacy Services. If during the Management Period (1) the pharmacy services provided pursuant to this Section 10 of this Agreement are not being provided by Licensee in a manner that is appropriate (as asserted by Manager only after Licensee has been provided an opportunity to cure any alleged deficiencies and after the parties proceed through the dispute resolution process listed in Section 24 of this Agreement) and (2) Manager can also affirmatively show that state and federal regulators and laws do not require the pharmacy services to be provided by Licensee, then the Parties shall revisit the issue of the services provided pursuant to this Section 10 and shall agree on a safe and commercially reasonable alternative.

10.12 Other Clinical Services. In addition to pharmacy services, Manager will exclusively use the SMMC for all therapy, lab, x-ray, and oxygen services for residents at the Facility during the Management Period. If the SMMC does not provide a specific service and/or cannot offer it, then Manager and Licensee shall reach an agreement about how to provide such services. Parties shall determine an agreed-upon fee schedule for such services. Any fees charged to Manager and due to Licensee pursuant to this Section may, at Licensee's discretion, be withheld from Management Fee on or after the date on which it is due. Amount withheld shall be documented in reconciliation of Management Fee under this Agreement.

10.13 Consulting Services. At the sole discretion of Licensee, and as requested in advance and in writing by the SMMC Medical Director or their designee, Manager shall provide professional inpatient and outpatient consultation services for the patients of SMMC Unit 1A. In advance of providing such services, the Parties shall agree on a payment rate for such consulting services, Licensee shall have sole discretion to determine the volume (amount of time) of such services purchased.

## **11. Materials Management, Supplies, and Group Purchasing Organizations.**

11.1 Utilization of SMMC Materials Management. At Manager's discretion and in accordance with Licensee's policies and procedures, Manager may arrange for the provision and replenishment of all supplies (including food supplies) and inventory used in the Facility via Licensee's materials management system, however, fiscal responsibility for arranging and procuring supplies under this Section rests with Manager.

11.2 Use of Materials Management System. For the duration of the Management Period, Manager may utilize Licensee's materials management software electronic requisition functionality to request supplies as needed to support the Facility's daily operation. Licensee will fulfill these orders utilizing Licensee's purchasing software system, purchasing, and shipping staff. Licensee will bill Manager the direct material cost for these items on a monthly basis. In addition, Manager shall pay Licensee a flat monthly rate of one-thousand dollars (\$1,000.00) during the Management Period for overhead covering the estimated cost of expenses associated with the procurement and delivery of supply materials. Such amount shall be due to Manager on the last day of each month during the Management Period. and may be withheld from Management Fee on or after the date on which it is due. Amount withheld shall be documented in reconciliation of Management Fee under this Agreement.

## **12. Contracts.**

12.1 Contracts Entered Into By Manager During the Prior Agreement or During the Management Period of this Agreement. To the extent that Manager has any contracts in effect with third parties for goods and/or services as of the Effective Date of this Agreement, or enters into any such contracts during the Management Period, each of Manager and Brius bears full joint and several financial responsibility for all aspects of such contracts, including all costs and consequences should Manager's management role be terminated for any reason pursuant to Section 29 of this Agreement.

## **13. Access to Records.**

13.1 Delivery of Records. Licensee shall provide access to Manager to all records (or copies thereof) necessary to the efficient, continued operation of the Facility to the extent such records may be disclosed to Manager. Nothing herein shall be construed as precluding Licensee from removing from the Facility: (a) the originals of any financial records which relate to Licensees operations at the Facility, including all accounts payable and accounts receivable records, *provided, however*, Licensee shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement; (b) the originals of any proprietary materials related to its overall operations; (c) the originals of all performance improvement data; (d) copies of patient records for all former patients no longer residing at the Facility; (e) copies of records for all current patients residing at the Facility; and (f) any legacy records of Licensee stored either on-site or off-site. Notwithstanding anything to the contrary in this Agreement, Licensee and Manager agree that all information, records, and data collected or maintained regarding Facility residents shall be confidential. Licensee, Manager, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable California and federal laws, including HIPAA, the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) as amended and the regulations issued in connection therewith. No employee or agent of Licensee or Manager shall discuss, transmit, or narrate in any manner any Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility operations, or otherwise fulfilling its obligations under this Agreement or under law. The obligations under this Section shall survive the termination of this Agreement, whether by rescission or otherwise. All employment records of Licensee's current or former employees are confidential and will not be provided to Manager.

13.2 Licensee Access to Records (Copies). At all times from the Effective date until the Transition Date (except to the extent this Agreement indicates a longer period applies), Manager shall, upon reasonable prior notice and during normal business hours, allow Licensee and its agents and representatives to have reasonable access to and to make copies of the books and records and supporting material of the Facility relating to (1) the period prior to and including the Operations Transfer Date as defined by the Prior Agreement or (2) the Management Period to the extent reasonably necessary in either case to enable Licensee to, among other things, investigate and defend malpractice, employee, or other claims, to file or defend cost reports and tax returns, to complete/revise, as needed, any patient assessments which may be required for Licensee to seek reimbursement for services rendered prior to the Operations Transfer Date, to verify accounts receivable collections due Licensee, to file exceptions to the Medicare routine cost limits for the cost reporting periods prior to and including the Operations Transfer Date, and for all other legitimate business purposes.

13.3 Licensee Access to Records (Originals). Licensee shall have the right, at Licensee's sole cost and expense, to enter the Facility and remove originals of any records delivered to Manager pursuant to Section 13.1, subject to the following conditions: (1) notice of such request shall be made to Manager at least fourteen (14) calendar days prior to the time the documents are needed; (2) an officer of or counsel for Licensee certifies that an original of such record must be produced in order to comply with applicable law or the order of a court of competent jurisdiction; (3) Licensee's request to Manager to enter the Facility shall be made in writing and state the date upon which the entry to the Facility is required; (4) any record so removed shall promptly be returned to Manager following its use; and (5) nothing herein shall be interpreted to prohibit Manager from retaining copies of any such documents. Nothing hereinabove shall limit, reduce, or restrict the Licensee's access to the Facility during the term of the Management Agreement in connection with any of the Licensee's rights, duties, or obligations under this Agreement or that are required statutorily as the Licensee of the Facility.

13.4 Retention and Right to Remove Materials. Manager agrees to maintain such books, records, and other material comprising records of the Facility's operations, including, but not limited to, patient records and records of patient funds, to the extent required by law, which relate to the period preceding the Operations Transfer Date as defined by the Prior Agreement and which have been delivered to Manager by Licensee pursuant thereto. If after the Management Period and upon the expiration of any legislatively mandated retention period for such books and records, Manager decides to dispose of or destroy such books and records, Manager shall, upon receipt of a written request from Licensee, allow Licensee a reasonable opportunity to remove such books and records, at Licensee's sole cost and expense, from the Facility.

13.5 Non-Monetary Relief. Manager acknowledges and agrees that the books, records, and other material described in this Section 13 are unique, that in the event of a breach by Manager of its obligations under this Section 13, Licensee would suffer injury for which it would not be fully compensated with monetary damages, and accordingly that in the event of a breach by Manager of its obligations under this Section 13, Licensee shall be entitled to seek to enjoin a breach by Manager of its obligations under this Section 13 and/or to specifically enforce the obligations of Manager hereunder.

**14. Proprietary Information and Materials.** Manager acknowledges that Licensee is subject to the California Public Records Act, and to the extent that any documents provided by Licensee to Manager pursuant to this Agreement are required to be disclosed by the Public Records Act, transfer of those documents to Manager does not operate to prevent Licensee from disclosing such materials as required by law.

**15. Information Technology.**

15.1 Manager's Responsibilities. Manager shall have sole responsibility for procuring, maintaining, and servicing all of Facility's IT needs throughout the Management Period. SMMC shall provide Payroll Based Journal (PBJ) data in an excel format to Manager for Manager to submit to CMS.

15.2 Cooperation. During the Management Period, Manager shall provide SMMC's Chief Information Officer or his designee access to the Facility-related IT system to the extent necessary to ensure continued operations at Facility. Manager shall meet with SMMC's Chief Information Officer or his designee if requested by Licensee as needed to ensure appropriate communication and IT operations.

## **16. Insurance.**

16.1 General Requirements. Manager shall not commence work under this Agreement unless and until all insurance required under this Section has been obtained, and Manager shall use diligence to obtain such insurance. Licensee shall be listed as a "Named Insured" or "Additional Insured" under all policies required in this Agreement. In relation to all insurance policies required by this Section 16, each such policy shall have a deductible level not to exceed one-hundred thousand dollars (\$100,000.00) per claim. Manager shall furnish Licensee with certificates of insurance and endorsements evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Manager's coverage to include the contractual liability assumed by the Manager pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Licensee of any pending change in the limits of liability or of any cancellation or modification of the policy, except in the event of non-payment where a 10-day notice is required.

16.2 Worker's Compensation Insurance. Manager shall have in effect during the Management Period Workers' Compensation providing full statutory coverage. In signing this Agreement, Manager 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.

16.3 Property Insurance. Manager shall for the Management Period obtain property insurance on an "All Risk" or "extended perils" basis in an amount equal to replacement cost of the Facility plus its contents.

16.4 Liability Insurance. Manager shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it 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 Manager's activities under this Agreement, whether such activities be by Manager, by its employees, or agents. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amounts specified below. Manager shall obtain the listed insurance coverage with policies which provide full coverage for the Facility in the listed amounts. Manager shall also obtain the other insurance listed by this section. Manager's obligations to carry the insurance provided for herein may be brought within the coverage of a blanket policy or policies of insurance carried and maintained by Manager provided that the coverage afforded Manager in relation to the Facility will not be reduced or diminished or otherwise be different from that which would exist under a separate policy for the Facility meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance and accordingly that the listed minimum coverage and aggregate coverage amounts relating to Facility shall not be eroded by claims relating to Manager's other facilities or operations.

Such insurance shall include:

- (a) Comprehensive General Liability/Professional Liability . . . . . \$2,000,000 per claim,  
..... \$5,000,000 aggregate
- (b) Motor Vehicle Liability Insurance . . . . . \$2,000,000 per claim,  
..... \$2,000,000 aggregate
- (d) Employment Practices . . . . . \$1,000,000 per claim,  
..... \$1,000,000 aggregate

16.5 Additional Requirements. Additionally, Manager shall comply with the following requirements in relation to all insurance required by this Section 16:

16.5.1. Manager's insurance shall be procured from an insurance company authorized to do business in the State of California and with an AM Best rating of "A-" or better, with coverage limits deemed sufficient by Manager to protect against applicable risks and losses relating to the activities of Manager relating to the Facility. The cost of such insurance shall be deemed an "operating expense" of the Facility. If coverage is other than on an "occurrence" basis, an extended reporting period coverage (i.e., "tail coverage") of not less than three (3) years after the end of the Management Term shall be provided at Manager's and Brius's sole expense (with each of them bearing full joint and several responsibility for such expense).

16.5.2. The County of San Mateo and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance except the insurance coverage listed in Section 16.2. Such policies shall also contain a provision that the insurance afforded thereby to the County and 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.

16.5.3. 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, Licensee at its option, may, notwithstanding any other provision of this Agreement to the contrary, declare a material breach of this Agreement by providing written notice to Manager and, absent receiving proof within ten (10) business days thereafter that Manager has remedied such insurance coverage issue, terminate this Agreement for cause pursuant to Section 25.2.

## **17. Other Items.**

17.1 Acceptance of Patients. In conformity with applicable law, Licensee and Manager shall not discriminate against Medicare and Medi-Cal patients who request services at the Facility. In addition, Manager agrees to accept (subject to space availability and the terms and conditions herein) all referrals of patients from San Mateo Medical Center, the County Health System's Aging & Adult Services division, or the County Health System's Behavioral Health and Recovery Services division (even if the patient is coming from the San Mateo Medical Center Emergency Department, from the patient's home or other location, or from another facility) who require skilled nursing facility level care regardless of payor source.

17.2 Licensee acknowledges the significant need for Medi-Cal skilled nursing beds in San Mateo County, as well as the challenges faced by Licensee in placing

County Medi-Cal patients in skilled nursing care in San Mateo County. Licensee further acknowledges that pursuant to this Agreement and in furtherance of maintaining access to quality skilled nursing care for Medi-Cal recipients, Manager has invested and will continue to invest significant resources in the infrastructure at Facility. Accordingly, SMMC shall make best efforts to advocate that Burlingame Skilled Nursing remains a distinct part nursing facility through the term of the contract.

17.3 Oversight of Large Expenditures. Manager shall provide notice to and obtain the approval of Licensee of any individual expenditure that both exceeds \$100,000 and is outside of day-to-day operations. Licensee's approval shall not be unreasonably withheld or delayed.

17.4 Notice of Clinical or Billing Service Vendors. Manager shall provide notice to Licensee of all vendors utilized by Manager that perform clinical or billing services.

17.5 Access to Facility. Manager shall provide to Licensee access to the Facility twenty-four hours a day, seven days per week.

17.6 Use of Licensee's Provider Numbers. In connection with Manager's management responsibilities for the Facility, Licensee has provided to Manager its Medi-Cal and Medicare provider numbers for the Facility. Notwithstanding the foregoing, Licensee shall remain ultimately responsible for the daily operational decisions and the care delivered to the residents at the Facility during the Management Period and, accordingly, Licensee shall have the right to confer and consult with Manager on any administrative, business, or management matters concerning the operation of the Facility during the Management Period; *provided, however*, such ultimate responsibility shall not relieve Manager from its obligations specified in this Agreement (including but not limited to its indemnification obligations pursuant to Section 26, below), all of which shall apply during the Management Period. If the Facility incurs losses during the Management Period arising from events occurring on or after the Operations Transfer Date as defined by the Prior Agreement, Manager and Brius shall each be responsible for 100% of such losses and shall indemnify, defend, and hold harmless Licensee from all claims, demands, liability, losses, regulatory fees, penalties, interest, deficiencies, costs, and expenses (including attorneys' fees) directly or indirectly related thereto, and Manager shall pay any license transfer and/or renewal fees arising after the Operations Transfer Date. Any expense that relates to operation of the Facility solely and entirely for the Management Period shall be assumed by Manager and Brius. Should any Facility deficiencies be asserted by a governmental authority, Manager shall rectify such deficiency or deficiencies utilizing a party of its own choosing, all at the sole cost and expense of Manager and Brius.

17.7 Rent. As set forth in Section 1.2, the County of San Mateo shall agree upon new lease terms with ETP, an affiliate of Manager, which are consistent with this Agreement regarding Licensee's and Manager's use of the Facility for the duration of the Management Period. As will be outlined in said lease ("Lease"), from the Effective Date through the end of the Management Period, for a term running coterminous with this Agreement and automatically terminating upon termination of this Agreement, Licensee shall pay rent to ETP in the form of (1) valuable consideration outlined in this Agreement and (2) the rental amount set forth under the Lease.

17.8 Payments of Overdue Rent Refund, Old AR, Various Accounts Receivable and Penalties Pursuant to Prior Agreement. Manager acknowledges and agrees it owes certain amounts to Licensee in refunded rent pursuant to Section 17.8 of the Prior Agreement in the form of a refund on Rent paid ("Rent Refund"), "Old AR" as defined in the Prior Agreement as Manager's collection of all active accounts receivable resulting from Facility-related charges from all payers for services billed or unbilled (unless otherwise

indicated by the Prior Agreement) existing as of the Operations Transfer Date, pursuant to Section 22.3.1 of the Prior Agreement, and various accounts receivable payments owed pursuant to other terms of the Prior Agreement ("Additional AR Payments"). The Parties agree and acknowledge that the amounts owed for Rent Refund, Old AR and Additional AR Payments were the subject of a demand for payment made in writing by Licensee in a letter to Manager dated on or about August 16, 2019 ("Demand Letter"). Licensee contends the amount owing is \$5,788,403.54 in accrued AR. Manager agrees that some amount is owing but contends some amounts are no longer owing. The Parties shall meet and confer in good faith no later than October 15, 2020 to compromise Licensee's claim an amount which shall be inclusive of simple interest on the overdue payments at 5% ("Total Overdue Rent Refund and AR Settlement"). The Total Overdue Rent Refund and AR Settlement shall be paid in twelve (12) monthly increments equal to 1/12 of the Total Overdue Rent Refund and AR Settlement accruing on the 15th day of each consecutive month beginning November 15, 2020.

**18. Manager's Operational Responsibilities.** Manager shall be fully responsible for the following:

18.1 Administrative Functions. Manager shall arrange (utilizing Facility Employees as appropriate), and pay at its sole cost and expense, for the provision of the bookkeeping, accounting, and administrative functions, including, but not limited to, the following, as reasonably necessary for the efficient and proper operation of the Facility, and with the approval and oversight of SMMC:

- 18.1.1. Preparation and maintenance of business records and financial and other reports;
- 18.1.2. Establishment and administration of accounting procedures and controls;
- 18.1.3. Financial and business planning;
- 18.1.4. Processing and payment of accounts payable;
- 18.1.5. Billing, processing and collection of accounts receivable (except as otherwise indicated by this Agreement), including the billing and completion of any reports and forms that may be required by insurance companies, governmental agencies, or other third-party payors; and
- 18.1.6. Providing and processing of all employee record keeping, payroll accounting (including social security and other payroll tax reporting), and benefits for all employees of the Facility.

18.2 Facility Upkeep and Improvement. Manager shall invest a minimum of three-million five-hundred thousand dollars (\$3,500,000.00) in capital improvements to improve the appearance and functionality of the Facility during the term of the Management Period, including capital improvements commenced from June 2012. Manager must apply for all required permits for such work no later than December 31, 2022. If Manager does not apply for such permits by the due date, Manager shall pay Licensee one-thousand dollars (\$1,000.00) per day until such permits are submitted. In addition, Manager must complete the capital improvements by July 1, 2024. If Manager fails to invest at least \$3,500,000 in such improvements by July 1, 2024, as proven by the presentation of paid invoices for work performed, Manager shall immediately transfer Licensee the balance of the difference between the amount Manager has invested at that point and \$3,500,000. In addition, Manager shall arrange for and pay the cost of the general maintenance, repair, trash removal, and janitorial services which may be necessary to maintain the Facility and

equipment in a clean and safe condition and in good repair. During the Management Period, Manager shall, to the maximum extent feasible, house all non-ambulatory residents at the Facility on the first floor of the Facility to ameliorate the life safety issues of the Facility.

18.3 Utilities. Manager shall arrange for and pay the cost of the utilities reasonably required for operation of the Facility, including, but not limited to, telephone, electricity, gas, water and refuse disposal.

18.4 Employee Payroll. Manager shall arrange for maintenance of the payroll records of all Facility Employees, for the issuance of paychecks on a regular basis, for the payment and withholding from such paychecks of appropriate amounts for income tax, and social security, unemployment insurance, and for the provision of all benefits, including vacation, holidays, and other benefits in accord with the Manager's approved employment policies and agreements.

18.5 Fee Schedules. From time to time, Manager may revise the fee schedules for the services rendered by the Facility. Any such revisions must be approved by the Licensee and, where necessary, the County Board of Supervisors.

18.6 Facility Name. Manager has requested, and Licensee has agreed, to change the name of the Facility from "Burlingame Skilled Nursing" to "San Mateo Medical Center Post Acute" The Parties agree that Manager shall not have the right to change the name of the Facility during the Management Period absent Licensee's prior written approval, and any such change shall comply with applicable agreements and applicable law. Manager shall hold Licensee harmless as to any trademark violations arising from any change of name of the Facility.

18.7 Compliance with Laws. Manager shall comply with any and all codes, ordinances, rules, regulations, and requirements of all federal, state, and municipal authorities now in force, or which may hereafter be in force, pertaining to the Facility and its operations, including, but not limited to any requirement to provide adequate nursing hours per the applicable state requirements and regulations. All services to be performed by Manager 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**, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, 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 Licensee 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. Further, Manager certifies that the Manager and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. As required by Chapter 2.88 of the San Mateo County Ordinance Code, Manager certifies it shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, its requirement to pay all Covered Employees the current Living Wage and provide notice to all Covered Employees and Subcontractors as required under the Living



Wage Ordinance. Manager will timely and accurately complete, sign, and submit all necessary documentation of compliance.

18.8 Notwithstanding any provision of this Agreement, Manager shall be responsible for providing or arranging for the provision of all services at the Facility, including but not limited to therapy, diagnostic, food services, laundry services, and all other services required for appropriate care of Facility residents.

18.9 Facility Reputation. Manager shall expend all reasonable and commercial efforts to maintain and uphold the reputation of the Facility.

18.10 Cooperation. At Licensee's reasonable discretion, Manager shall make itself available for meetings with Licensee's representatives, as necessary, to further the provisions of this Agreement. Manager shall endeavor to respond to any requests by Licensee as promptly as possible.

18.11 Manager and Brius shall pay for all fees, Quality Assurance Fees, taxes, permits, licenses, gross receipts, and/or local business license fees or taxes, penalties, fines, interest, and any other costs (collectively "Impositions and Taxes") which obligations arise on or after the Operations Transfer Date and are solely applicable to the operation of the Facility after the Operations Transfer Date. Manager shall implement a policy to ensure prompt payment of such Impositions and Taxes. To the extent Manager fails to pay such Impositions and Taxes in a timely manner and Licensee is thereafter required to pay such Impositions and Taxes, Licensee shall have the option of (1) offsetting the payment of such Impositions and Taxes against any amount Licensee owes to Manager or against any revenues which come in through Licensee for any amounts billed for services at the Facility, or (2) billing Manager directly for such Impositions and Taxes paid by Licensee, including a 5% monthly penalty on all such Impositions and Taxes paid by Licensee.

**19. Conversion of Beds to Subacute on Licensee's Hospital License.** Manager has proposed to convert up to 40 of the beds at Facility currently licensed as "skilled nursing" beds to subacute beds. Licensee agrees to take the appropriate steps to submit all necessary application materials to the California Department of Public Health to seek the conversion of such beds, and to take any other reasonable steps to facilitate the conversion of such beds, subject to the limitations of this Section. None of the cost of conversion of such beds to subacute shall be borne by Licensee, including but not limited to any fees required by regulatory authorities, any capital improvements to Facility in connection with the conversion of such beds, and any other expense incurred in connection with the conversion of such beds, and all such costs, charges and expenses shall be the responsibility of Manager and shall be borne by Manager. Manager shall be solely responsible for ensuring that all regulatory requirements for conversion of such beds are satisfied. Licensee shall cooperate with Manager in the conversion of such beds, shall delegate authority to Manager to convert such beds, and shall perform all necessary tasks of Licensee that cannot be delegated to Manager to accomplish such conversion. The Parties agree that Licensee cannot guarantee the conversion of such beds. Manager agrees and acknowledges that all costs and expenses incurred in connection with relocating any residents placed in Facility by Licensee who are displaced by the impact of reducing the availability of custodial/skilled nursing beds pursuant to this Section shall be the sole responsibility of Manager.

## **20. Management Fee.**

20.1 For its services under this Agreement, Manager shall be entitled to a fee from Licensee (the "Management Fee") calculated in accordance with Generally Accepted Accounting Principles and based on the Facility's operating revenues less all operating expenses resulting from operation of the Facility during the Management Period. The Management Fee shall be calculated based on the following schedule of base rates ("Base Rates") and in anticipation of a rate for each indicated rate year within a specified range ("Anticipated Rate") as determined by the California Department of Health Care Services

(“DHCS”), which publishes an applicable rate for the Facility for each Rate Year (“Published Rate”), subject to the reductions, limitations, increases and adjustments set forth in the Agreement. Any revenues above the Base Rate established for each designated year in accordance with Exhibit A shall be retained fifty percent (50%) by Licensee and fifty percent (50%) by Manager.

Rate Year	Base Rate	Anticipated Rate/Rate Range
<u>August 1, 2020 – July 31, 2021</u>	\$370	\$430
<u>August 1, 2021 – July 31, 2022</u>	\$405	\$481-\$495
<u>August 1, 2022 – July 31, 2023</u>	\$412	\$520-\$530
<u>August 1, 2023 – July 31, 2024</u>	\$419	\$530-\$540
<u>August 1, 2024 – July 31, 2025</u>	\$426	\$540-\$550

20.2 For each successive Rate Year commencing August 1, 2025, and for the duration of the Management Period, the Parties agree to a process for negotiating and reaching agreement on a Base Rate and Anticipated Rate/Rate Range as follows: The Parties agree to negotiate in good faith commencing no later than November 2023 for the Rate Year commencing August 1, 2025. The Parties will agree to a modification of the Base Rate based on the Anticipated Rate/Rate Range resulting from the Fiscal Year 2023 filed cost report. The Base Rate shall reflect increases in costs of operation incurred by Manager and SMMC. Each subsequent year, the Parties will negotiate in good faith for each subsequent Rate Year during the initial term of this Agreement.

20.3 Base Rates for Subacute, Medicare and Medicare Advantage Residents. Base Rates as set forth above and established in accordance with Section 20.1 above shall be increased by \$200 for all subacute residents reimbursed at subacute rates. Base Rates as set forth above and established in accordance with Section 20.1 above shall be increased by \$100 for Medicare and Medicare Advantage residents.

20.4 Reduction of Base Rates If Published Rate Decreases 10% Below Anticipated Rate/Rate Range. If the Published Rate for a Rate Year is 10% below the lowest point of the corresponding Rate Range, the Base Rate for that Rate Year shall be reduced by 5%. If the Published Rate for a Rate Year is 20% below the lowest point of the corresponding Rate Range, the Base Rate for that Rate Year shall be reduced by 7.5%. For any Rate Year in which the Published Rate is the subject of an audit appeal, any Base Rate reduction shall only occur after a final determination (including judicial appeals) in such audit appeal.

20.5 For any year in which the Published Rate is more than 25% lower than the lowest point of the Anticipated Rate Range, Manager shall have the right to terminate the Agreement for cause pursuant to Section 25.5, below.

20.6 For purposes of the calculation of the Management Fee, any item which is billed to a third party by Licensee and in relation to which Licensee is entitled to keep the revenues is excluded from the calculation of the Management Fee (i.e., pharmacy medications billed by Licensee pursuant to Section 10.4);

20.7 Licensee shall deduct from the Management Fee an amount equivalent to the total rent paid by Licensee under the ETP Lease pursuant to Section 17.7 (“Rent Offset”). The Rent Offset shall accrue monthly in a payment equal to 1/12 of the total

annual rent due and payable under the ETP Lease, which monthly amount shall accrue on the 15<sup>th</sup> day of each month during the Management Period.

20.8 Subject to the provisions herein, if the Facility incurs losses during the Management Period, Manager and Brius shall be jointly and severally responsible for such losses and shall indemnify Licensee from all claims, demands, liability, and losses related thereto, provided no expense relates to operation of the Facility for the period prior to the Operations Transfer Date except for expenses for inventory and supplies which were ordered by Licensee in the ordinary course of business prior to the Operations Transfer Date and received and accepted by Manager after the Operations Transfer Date. Furthermore, if during the Management Period and through the negligent acts of Manager, the authorities having jurisdiction thereof shall order the closure of the Facility or Licensee terminates Manager's management role for cause as outlined by Section 25.2, Manager and/or Brius shall be jointly and severally responsible to cover all costs of said occurrence (including any and all costs of closure of Facility to be facilitated by Licensee) as outlined in Section 26.2.

## **21. Cost Reports.**

21.1 Overview. Manager shall cooperate with Licensee to have all information necessary for preparation of cost reports submitted by Licensee on an annual basis in relation to the Management Period. Licensee's cost reports are filed based on its fiscal year (i.e., July 1 through June 30), with the reports submitted approximately five months after the end of the fiscal year. The as-filed cost reports are not final until after they are audited. Manager shall provide to Licensee all financial information necessary for Licensee to prepare and submit Medicare and Medi-Cal cost reports as required by law covering the Management Period, and Manager shall provide such information to Licensee on the reasonable schedule requested by Licensee. Included in the information Manager shall provide to Licensee is the total amount of the Management Fee by fiscal year. To the extent requested by Licensee, Manager shall also provide full access to all census numbers, accounting records, and contracts relating to Facility.

21.2 At the end of the fiscal year covering the end of the Management Period, Licensee shall timely prepare and file with the appropriate Medicare and Medi-Cal agencies any final cost reports with respect to its operation of the Facility that are required to be filed by law under the terms of the Medicare and Medi-Cal programs. At least fourteen days prior to filing such cost reports, Licensee shall provide drafts to Manager and meet in good faith regarding any recommended changes to such cost reports. Licensee shall retain full authority regarding the as-filed cost reports. Within fourteen (14) business days of request by Manager, Licensee shall provide Manager with copies of such as-filed cost reports, together with copies of any amendments thereto and correspondence related to such as-filed cost reports. Manager may request copies of final cost reports after they are audited, and Licensee shall provide copies of such final cost reports within fourteen (14) business days of request by Manager.

21.3 Manager will continue to advocate to DHCS that settlement rates for Audit Years 2014, 2015, 2016 and 2017 and 2018 were below what should have been paid by the State, and that retroactive payments in settlement of those Audit Years should be accompanied by interest per annum. If Manager is successful obtaining rate increases for 2014 through 2018 and/or interest, Manager shall retain all amounts related to such increases and interest, except that Licensee shall receive interest amount paid on retroactive rate payments for 2014-2018.

21.4 In the event that SMMC's audited costs related to its DP/NF exceed the statewide cap, SMMC shall seek a supplemental payment pursuant to Welfare &

Institutions Code Section 14105.27. SMMC and Brius shall share equally any such supplemental payment.

## **22. Billing, Collections, and Accounts Receivable.**

22.1 Overview. Subject to the costs, fees and charges that Manager owes Licensee pursuant to this Agreement or which Licensee shall bill for directly (e.g., costs for pharmacy, clinical services, information technology, materials management/supplies/overhead, credentialing, and billing and reimbursement overhead), Manager shall be entitled to bill and receive payment for the services provided at Facility as outlined by this Agreement. Such billing and payment shall be subject to the terms of Section 20.

22.2 Billing. Manager shall, on behalf of Licensee, bill patients and payers and use its good faith efforts to collect all cash revenue resulting from Facility operations during the Management Period as outlined by this Agreement. Licensee agrees to cooperate with Manager to make available such billing and accounting information and to provide such financial records for review as shall be necessary to accomplish the billing and collection of patient charges for services provided for in this Section and to cooperate with Manager in the completion of reports and claim forms as necessary to procure payments and reimbursement from governmental agencies, insurance carriers or other third party payors. Licensee hereby appoints Manager during the Management Period to be its true and lawful attorney-in-fact for the following purposes (subject to the terms of this Agreement and with the resulting revenue being treated as revenue of Licensee, subject to Manager's right to direct the use of such funds as herein provided and subject to Manager's right to the Management Fee pursuant to Section 20 hereof):

22.2.1. To bill Facility residents in Licensee's name, on Licensee's behalf, and under Licensee's provider numbers as outlined in this Agreement, specifically including services provided to Medicare and Medi-Cal patients during the Management Period;

22.2.2. To collect accounts receivable resulting from such billing in Licensee's name and on Licensee's behalf as outlined by this Agreement;

22.2.3. To receive payments from insurance companies, prepayments from health care plans, and payments from all other third-party payers as outlined by this Agreement; and

22.2.4. To initiate legal proceedings in accordance with policies reasonably approved by Licensee to collect any accounts or monies owed to the Facility or Licensee related to the Facility during the Management Period (with any such collection efforts complying with all CMS and other federal and state laws, rules, and regulations).

### **22.3 Accounts Receivable.**

22.3.1. Accounts Receivable. Manager shall be entitled to collect all accounts receivable billed in Licensee's name and on Licensee's behalf on or after the Operations Transfer Date (the "AR"), subject to Manager's right to the Management Fee pursuant to Section 20 hereof and except as otherwise addressed by a specific section of this Agreement. After the Operations Transfer Date, Manager will be responsible for all collection efforts for the AR except as outlined by this Agreement. Cash remitted to Licensee on the

AR will be remitted to Manager within fourteen (14) days. In relation to AR, Manager shall use its Resident ID Number (discussed in Section 22.8) when working to collect such items so that Licensee is able to properly identify AR.

22.4 Accounts Receivable Cash Collection & Weekly Remittance. Licensee shall provide to Manager a weekly cash collection report by unique patient identifier and weekly remittance advice detail in electronic format via a secure FTP site operated by Licensee.

22.5 Deposits. Amounts deposited into Licensee's bank account relating to operations of the Facility, except for amounts which Licensee is entitled to retain under the terms of this Agreement, shall be transferred by Licensee to Manager within fourteen (14) days. Licensee expressly authorizes Manager to endorse checks received by Manager and made payable to Licensee, as Licensee's attorney-in-fact, and to deposit same in Manager's bank account.

22.6 Control of Revenues. All cash revenue received during the Management Period related to operating revenues for services rendered at Facility during the Term by Manager pursuant to this Agreement shall be under the control of Manager, rather than Licensee, except as outlined by this Agreement.

22.6.1. Accordingly, if Licensee directly or indirectly receives any such cash revenue during the Management Period which relates to the Management Period other than revenue to which it is entitled under this Agreement, Licensee shall take steps to forward any such receipts to Manager, within fourteen (14) days (or sooner if Licensee is able), for deposit in Manager's bank account. If Manager directly or indirectly receives any cash revenue during the Management Period which relates to the period prior to the Management Period, Manager shall within fourteen (14) days after receipt thereof take steps to forward any such receipts to Licensee.

22.6.2. Manager shall use the cash revenues (except those to which it is not entitled under this Agreement) which relate to the operation of the Facility during the Management Period, or, if necessary, make available additional cash from Manager's own sources, to pay for expenses incurred during the Management Period, including both expenses paid during such period and expenses which are due after the Management Period but which were incurred during the Management Period.

22.7 Allocation. In furtherance and not in limitation of the allocation of revenues provided for in Section 22.6 of this Agreement, Manager and Licensee agree as follows:

22.7.1. If such payments either specifically indicate on the accompanying remittance advice, or if the Parties agree, that they related to the period prior to the Operations Transfer Date, they shall be retained by or forwarded to Licensee (except as outlined by Section 22.3.1), along with the applicable remittance advice in accordance with the provisions of Section 22.7.5 below;

22.7.2. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period from and after the Operations Transfer Date and Licensee is not entitled to them, they shall be forwarded to or retained by Manager, along with the applicable remittance advice;

22.7.3. If such payments indicate on the accompanying remittance advice, or if the Parties agree, that they relate to periods for which both parties are entitled to reimbursement under the terms hereof, the portion thereof which relates to the period from and after the Operations Transfer Date shall be forwarded to or retained by Manager and the portion thereof which relates to the period prior to the Operations Transfer Date shall be retained by or forwarded to Licensee (except as outlined by Section 22.3.1).

22.7.4. Any payments received by Manager from and after the Operations Transfer Date from or on behalf of private pay patients with outstanding balances as of the Operations Transfer Date where said payments relate to balances prior to the Operations Transfer Date shall be forwarded by Manager to Licensee (except as set forth in Section 22.3.1).

22.7.5. All amounts owing to Licensee or Manager under this Section 22.7 shall be settled within fourteen (14) days after the payment was received.

22.7.6. In the event the parties mutually determine that any third party payors or private pay residents are entitled to a refund of payments, the portion thereof that relates to the period from and after the Operations Transfer Date shall be paid by Manager and the portion thereof that relates to the period prior to the Operations Transfer Date shall be paid by Licensee.

22.7.7. In the event the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other within fourteen (14) days after said determination is made

22.7.8. Licensee and Manager shall have the right to inspect, no more frequently than once per week, all cash receipts of the other party relating to the Facility during weekday business hours on reasonable prior notice in order to confirm such party's compliance with the obligations imposed on it under this Section 22.7.

22.7.9. To the extent that specific sections of this Agreement cover allocation of costs/revenues, those sections control over the provisions of this Section 22.7, which shall not be applicable. To the extent that Licensee is entitled to certain payments (e.g., a rebate from its group purchasing organization) not specifically addressed by this Agreement, this Section 22.7 shall not apply, and Licensee shall be entitled to keep the entire amount of said payments.

22.8        Unique Resident Billing Number. Manager shall assign a unique identifier number (the "Resident ID Number") to each resident for billing purposes. Manager will provide Licensee with a full list of such Resident ID Numbers with associated resident information on an on-going basis. As noted in Section 22.3.1, Manager shall identify its AR using the Resident ID Number.

22.9        Electronic Billing.

22.9.1. Manager shall, on behalf of Licensee, electronically bill all patients and all third-party payors for services provided in relation to Facility residents. Manager shall utilize the Resident ID Number for each such charge to identify for Licensee billing payments on remittance advices received by Licensee.

22.9.2. To the extent that Manager utilizes Licensee's billing system, Manager shall use its own Facility Employees to do so. Specifically, Manager shall use its own Facility Employees to determine what charges are to be submitted for what services to which payers and to determine appropriate coding for such charges. Licensee has no responsibility for making such determinations. Manager shall work with Licensee to have Manager's representative(s) input such billing information into Licensee's electronic billing systems and doing so may entail having Manager's employees on-site at the

SMMC main campus on a daily basis. Licensee shall provide training on its electronic billing systems so that Manager's billing representative(s) know how to properly use Licensee's billing systems. In relation to such charges, Manager shall be responsible for data input, denials, Treatment Authorization Requests (TARs) and Service Authorization Requests (SARs), and other billing-related coding.

22.9.3. Manager shall utilize Licensee's billing system as outlined in this Section 22.9 for all billing pursuant to Section 22.10.

22.9.4. Unless otherwise agreed to by Licensee, Manager shall handle billing and collections for share of costs and recovery using its own billing systems and staff.

22.10 Billing for Charges Using Licensee's National Provider Identifier Numbers. Except as described by this Agreement, during or in relation to the Management Period, Manager shall bill the appropriate payor, including but not limited to Medi-Cal, Medicare, private insurer or the County through its ACE program, for room and board charges, ancillary services charges, and all other charges for residents that are subject to reimbursement by any third-party payor in Licensee's name, on Licensee's behalf, under Licensee's Medicare and Medi-Cal National Provider Identifier (NPI) numbers (as applicable). To the extent that payments are received by Licensee for such charges, Licensee will transmit such payments to Manager within fourteen (14) days, subject to the terms of this Agreement.

22.11 Access to Billing Data. To the extent necessary, Licensee shall work with Manager to provide access to its accounts receivable data relating to accounts receivable in relation to which Manager has a business need for access under this Agreement.

22.12 Overcharges/Refunds. Subject to Sections 22.7.6 and 22.7.7, to the extent that any regulator, payor, or other person/entity determines at any time in relation to any items billed during the Management Period arising from services provided after the Operations Transfer Date that (i) overpayments were made, (ii) any billed amount is disallowed or rejected, (iii) any billed amount requires adjustment, or (iv) any billed amount was not properly coded, Manager shall bear sole responsibility for refunding any such overbilled amount or otherwise bearing the cost of any such change or correction.

### **23. Resident Trust Funds.**

Manager shall be solely responsible for all resident funds and property held in trust for residents at the Facility (collectively the "Resident Trust Funds").

23.1 Licensee shall have no responsibility to the applicable resident/responsible party and regulatory authorities with respect to any Resident Trust Funds delivered to Manager.

23.2 Termination for Cause. In the event of termination of Manager's management role for cause as outlined by Section 29.3, or pursuant to termination pursuant to Section 25.4, Manager and/or Brius shall be jointly and severally responsible to cover all costs of said termination (with any closure of Facility to be facilitated by Licensee) as outlined in Section 29.3, including reconciliation of Resident Trust Funds which Manager held in trust for residents/responsible parties during the Management Period.

**24. Dispute Resolution/Arbitration.** If a dispute arises between Licensee and Manager, including but not limited to a dispute regarding the terms of this Agreement, which cannot be resolved in the normal course of the management relationship, the following dispute resolution procedures shall be followed:

24.1 If a dispute arises, then within ten (10) business days of a written request by either party, SMMC's Chief Executive Officer or her designee and Manager's Facility Administrator shall confer as soon as possible in person or by telephone and attempt to resolve the issue. If these parties cannot resolve the issue within ten (10) business days of the meeting, then the issue shall be submitted for resolution to Licensee's Chief of the Health System and Brios.

24.2 The time periods herein are in addition to those provided under other provisions of this Agreement.

24.3 This provision shall not apply to claims for equitable relief (e.g., an injunction to prevent disclosure of confidential information).

24.4 Notwithstanding any other provision of this Management Agreement, in the event that Licensee reasonably determines that any aspect of Facility operations is likely to jeopardize: (a) its License; (b) its ability to remain a Medicare and Medicaid certified provider at its hospital; or (c) its ability to obtain or maintain tax-exempt financing, the parties shall promptly negotiate in good faith to make necessary or appropriate changes to remove or ameliorate such jeopardy. If Licensee determines that, despite whatever changes the parties may agree, its license, provider status, or tax-exempt status is likely to be jeopardized due to conditions at Facility or actions of Manager, this Agreement may be terminated by Licensee for cause in accordance with the applicable provisions of Section 25.2.

24.5 Arbitration. To the extent that Manager believes Licensee has violated any material provision of this Agreement other than the ground for Termination for Cause by Manager set forth in Section 25.4 below, Manager shall first give Licensee written notice of the issue, and Licensee shall have 20 calendar days in which to cure, take substantial steps towards curing, or otherwise address such issue. If after that period Manager is not satisfied, Manager shall follow the dispute resolution process described in this Section 24, above. If the issue is still not resolved, the Parties shall then consent to binding arbitration held in San Mateo County before a mutually acceptable arbitrator or, if the parties are unable to agree upon an arbitrator, before a single retired judge or justice from JAMS ([www.jamsadr.com](http://www.jamsadr.com)). The cost of such arbitration shall be shared equally by the parties, and no attorney's fees or costs may be awarded in relation to such arbitration. The arbitrator shall not have authority to terminate this Agreement for any reason and is solely empowered to resolve the issue regarding whether there has been a breach of this Agreement and, if so, to work with the parties to devise an equitable solution to the issue.

24.6 Any arbitration under this section shall be subject to the following:

24.6.1. Any such arbitration is intended to comply with California Code of Civil Procedure §1297.72, which requires that arbitration agreements be in writing and be signed by the arbitrating parties.

24.6.2. The arbitrator selected by the parties shall have the power to determine the admissibility, relevance, materiality, and weight of any evidence offered by any party hereto. The arbitrator selected by the parties to conduct the arbitration shall have the power and authority to grant any and all relief requested by the parties to the dispute subject to the limitations of Section 24.5.

24.6.3. In lieu of a statement of claims and/or defenses under California Code of Civil Procedure §1297.231, the parties to the arbitration shall be entitled to submit arbitration briefs to the arbitrator seven (7) days before the scheduled arbitration hearing date. A party that submits an arbitration brief may submit with the brief such documents or other evidence as that party deems relevant to the issues in that party's brief.



24.6.4. The parties will have full discovery rights (depositions, subpoenas, and production of documents) as would be the case in a superior court proceeding. The arbitration shall be held at a neutral site within the County of San Mateo to be selected by the arbitrator unless the parties agree on a particular site. The arbitration hearing shall be held on regular business days only, and, absent agreement among the arbitrator and parties hereto, shall not take place on holidays or weekends. The arbitrator's fees and costs shall be divided equally (50% each) between the two sides. The arbitration award shall be made in writing and served on the parties. The arbitration award shall be final and binding on the parties. As such, the arbitration award, and judgment resulting therefrom, shall be final and shall not be appealable by any of the parties to the dispute.

24.6.5. No costs or attorneys' fees shall be awardable in relation to any such arbitration. Each party shall bear its own costs and fees, regardless of the outcome.

24.7 In the event the parties to the dispute cannot agree upon an arbitrator, each side will select the names of two judges or justices from JAMS (for a total of four names), and the names shall be submitted to JAMS. JAMS shall then have each name written on a separate piece of papers, place the names into a container, and select, at random and without looking, one piece of paper. The name on the paper shall be the arbitrator, and that selection shall be binding and final.

## **25. Termination.**

25.1 Termination Without Cause. This Agreement may not be terminated by either party without cause.

25.2 Termination of Manager's Management Responsibilities For Cause. To the extent that Licensee believes Manager has violated any material provision of this Agreement, Licensee shall first give Manager written notice of the issue, and Manager shall have twenty (20) calendar days in which to cure or take substantial steps (as deemed in Licensee's sole judgment) towards curing such issue. Following such notice, if Manager fails to cure the violation, Licensee has cause, as described by this Section, to terminate Manager's Management Responsibilities. At Licensee's sole discretion, Manager shall: (1) lose its right to any Management Fee under this Agreement for any period after which Manager is not serving as manager of Facility based on operation of this Section 25.2; (2) work with Licensee however required by Licensee for Manager to cease its operations in a safe manner, including the appointment of a receiver or other manager of the Facility in place of Manager; (3) work with governmental agencies and/or regulators in order to safely transition the Facility from Manager's management; (4) assist Licensee in every reasonable way required by Licensee in order to ensure that the Facility can be transitioned to operation independent of Manager and/or closed in a manner that safely provides for the transfer of all residents to appropriate placements; (5) to work in any reasonable way required by Licensee to facilitate the intent of this Section, including by approving amendments to contracts and facilitating transfer as appropriate of all resident trust funds and other matters outlined by this Agreement to Licensee as required by Licensee; (6) take all other commercially reasonable steps required by Licensee pursuant to this Section, including paying Manager's employees, paying any ongoing financial obligations, paying the cost of a receiver to help close the Facility (if Licensee opts to take that action), and directing revenues as required by Licensee until Licensee certifies that Manager has completed its obligations under this Section; (7) continue to lease the Facility to Licensee on the existing terms for so long as it takes to close the Facility or transfer it to a new operator; and (8) jointly and severally with Brius fully indemnify and hold harmless Licensee as required by Section 30 for any and all costs associated with such termination of Manager's responsibilities. Nothing in this Section prohibits Licensee from pursuing a remedy under Section 28 in lieu of termination. However, Manager may not require Licensee to engage in the Dispute Resolution process under Section 28 in relation to any situation where Licensee has cause under Sections 29.3.1 through 29.3.7 (inclusive) to terminate this Agreement so long as Licensee provides the opportunity to cure required by

this Section 29.3. In relation to this Section, “cause” that will permit Licensee at its sole discretion to terminate this Agreement includes each and any of the following:

25.2.1. Receipt from the CDPH or other state or federal regulators, including but not limited to Center for Medicare and Medicaid Services (“CMS”) of one AA citation relating to services provided at the Facility during the Management Period followed by receipt from CDPH of one additional AA citation relating to the Facility also during the Management Period. For purposes of this subsection only, the AA citations need not be final—receipt of two such citations during the Management Period is sufficient to constitute cause for termination.

25.2.2. Receipt from CDPH of one AA citation relating to services provided at the Facility during the Management Period and receipt from CDPH of one A citation relating to the Facility also during the Management Period. For purposes of this subsection only, the listed citations need not be final unless Manager complies with the following requirements in order to fast-track the appeals process, which normally uses a timeframe insufficient to permit Licensee to protect its interests in this regard: in order to limit this subsection to final citations, Manager must have separately contested the AA and A citations pursuant to Section 1428(b) of the Health & Safety Code by informing the CDPH Director (as required by Section 1428(b)) of each such contest within seven (7) business days of service of each citation, filing the required civil action in relation to each such citation no later than thirty (30) days after notifying the director of its intent to contest the citation, serving the action not later than fourteen (14) days after filing, and filing and serving the required case management statement within fourteen (14) days after the CDPH files its answer in the appeal

25.2.3. Receipt from CDPH or other state or federal regulators of survey findings related to services provided at the Facility during the Management Period with a scope and severity of “F substandard” or “G and above” followed by receipt from CDPH or other state or federal regulators in a subsequent survey cycle during the Management Period of one additional survey findings with a scope and severity of “F substandard” or “G and above.”

25.2.4. Any instance when CDPH files an accusation during the Management Period to suspend or revoke the Facility’s license or ability to operate due to actions taken or events occurring during the Management Period. This includes but is not limited to any action by CDPH to impose a temporary manager or receiver.

25.2.5. Any attempt by CDPH based on conduct or events at Facility to restrict the ability of San Mateo Medical Center (separate and aside from Facility) to admit or receive payment for admissions in any of the following manners: an attempt to deny payments for new admissions to SMMC (aside from Facility) for more than four (4) consecutive days; an attempt to deny payments for all eligible admissions to SMMC (aside from Facility) for more than four (4) consecutive days; or an attempt to ban any admission to SMMC (aside from Facility) for more than four (4) consecutive days.

25.2.6. Any attempt by CDPH based on conduct or events at Facility to restrict the ability of the Facility to admit or receive payment for admissions in any of the following manners: an attempt to deny payments for new admissions to Facility for more than twenty (20) consecutive days; an attempt to deny payments for all eligible admissions to Facility for more than seven (7) consecutive days; or an attempt to ban any admission to Facility for more than seven (7) consecutive days.

25.2.7. The vacating or abandonment of Facility by Manager.

25.2.8. Failure by Manager to make any payment due under this Agreement (whether to Licensee or to any third party) after Manager has been given notice pursuant to Section 28 and has failed to cure or successfully contest the non-payment.

25.2.9. Failure by Manager to perform its obligations under this Agreement after Manager has been given notice pursuant to Section 28 and has failed to cure the non-performance.

25.2.10. Any of the following: (i) either Manager or Brius becomes insolvent or unable to pay its debts as they mature; (ii) either Manager or Brius becomes the subject of a bankruptcy, reorganization, or similar debtor-relief proceeding unless, in the case of an involuntary petition filed against Manager or Brius, the petition is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Manager's assets located at the Facility or of Manager's or Brius's assets, where possession is not restored to Manager within thirty (30) days; (iv) the attachment, execution, or other judicial seizure of substantially all of Manager's assets located at the Facility or of Manager's interest in this Agreement, where such seizure is not discharged within thirty (30) days; (v) either Manager or Brius fails to pay or discharge any judgment against it/him, singly or in the aggregate, in excess of \$250,000.00; or (vi) Manager is dissolved or terminated or Shlomo Rechnitz dies.

25.3 Alteration of Agreement For Licensee's Loss of Required Medi-Cal or Medicare Provider Numbers. If Licensee during the Management Period loses its Medi-Cal or Medicare Provider Numbers or otherwise is restricted by a government regulatory agency in a manner that would prohibit Facility from operating as outlined in this Agreement, Manager is relieved of its obligations under this Agreement. In such event, Manager and Licensee shall each work with the appropriate governmental regulatory agencies in order to safely facilitate the care and, if necessary, transfer of all residents of the Facility. Licensee will fully cooperate with any such efforts.

25.4 Termination of Agreement by Manager for Cause. If Licensee violates any material provision of this Agreement, Manager shall give Licensee written notice of the issue, and Licensee shall have thirty (30) calendar days to cure or take substantial steps towards curing such issue. Following such notice, if Licensee fails to cure the violation, Manager has cause, as described by this Section, to terminate this Agreement. Furthermore, Manager shall have a right to terminate this Agreement for Cause, based only on the following: If the Medi-Cal reimbursement rate published by DHCS for any rate year is more than 25% less than the low end of the Anticipated Rate Range, Manager shall have the right to terminate the Agreement for Cause, subject to the requirement that Manager shall first give Licensee written notice of the issue, and Licensee shall have twenty (20) calendar days in which to cure or take substantial steps towards curing such issue. Following such notice, if Licensee fails to cure the violation or take substantial steps towards curing such issue, Manager has established cause to begin a termination process under this Section. For purposes of this provision, "substantial steps" shall include a recommendation to the County Board of Supervisors and/or the County Manager for approval of a settlement acceptable in principle to Manager. Licensee shall not be liable for any shortfall between the Published Rate and the lowest point of the Anticipated Rate Range and Manager's sole remedy in the event of such shortfall shall be termination pursuant to this Section 25.4.

25.4.1. Should cause be established by Manager as set forth in this Section 25.4 (after 20-day opportunity to cure or take substantial steps toward curing the breach has expired), if Manager opts to terminate the Agreement, Manager and Licensee shall cooperate to develop an orderly process for winding down Facility Operations in accordance with this Agreement in a manner that does not put residents at risk or cause undue hardship to Licensee. Manager may, at its option, seek its own license to operate the Facility pursuant to Section 27, below. Closing the Facility and placing residents in other placements appropriate for their care needs or, in the alternative, pursuing a freestanding facility license pursuant to Section 27 shall be the sole responsibility of Manager, with the cooperation of Licensee, and Manager and Brius shall be jointly and severally liable for all costs of such closure and placement in accordance with Section 25.7, below, and/or continued operations of the Facility under a freestanding facility license pursuant to Section 27.

25.5 Termination for Cause – Materials. In the event of termination for cause by Licensee or Manager, all finished or unfinished documents, patient records, staff records, data, studies, maps, photographs, reports, and materials (hereafter referred to as "Materials") prepared, maintained, or stored by Manager relating to Facility under this Agreement shall become the property of the Licensee and shall be promptly delivered to the

Licensee. Upon termination for cause, the Manager may make and retain a copy of such materials.

25.6 Early Termination of Manager's Role Due to Regulatory Requirements, Unavailability of Funds, Closure of Hospital and/or Retroactive Reduction of Reimbursement. Licensee may immediately terminate Manager's management or a portion of the services referenced in the Agreement based upon (1) unavailability of Federal, State, or County funds; or (2) closure of the San Mateo Medical Center; by providing written notice to Contractor as soon as is reasonably possible after the Licensee learns of said unavailability of outside funding or closure. In the event of immediate termination under this provision, Manager may, at its sole option, seek its own license, including on an emergency basis, pursuant to Section 27, below.

25.6.1. In the event that any regulator or other government agency determines during the course of the Management Period that Facility does not qualify as a "distinct part" skilled nursing facility (as that term is defined by 42 C.F.R. §483.5 and related regulations) for any reason, including but not limited to due to the operation of this Agreement, and requires corrective action, the Parties shall work together to address the issue pursuant to Section 9.7 of this Agreement. To the extent that such corrective action permits Manager to continue service as the Licensee's manager of the Facility under this Agreement but also requires changes to the structure of this Agreement, Licensee shall reasonably assist Manager in making such changes to the extent it is reasonable to do so, provided that if any such changes impose any new or changed fiscal obligations, the cost of all such changes shall solely be borne jointly and severally by Manager and Brius. To the extent that any such corrective action prohibits Manager from serving as the Licensee's manager of the Facility, Manager's role as the Facility manager will be terminated for cause pursuant to this Section 25. In such event, Manager shall have the option, subject to applicable regulatory requirements, to submit its license application(s) to immediately begin the transition process outlined by Section 27, with Licensee's cooperation, or to decide to begin ceasing the operation of Facility.

25.6.2. Regardless of the manner in which such regulatory action to remove the Facility from DP/NF status is taken, Manager shall do all of the following to the extent applicable (as reasonably determined solely by Licensee): (1) work with Licensee however required by Licensee for Manager to cease its operations in a safe manner or to take over full operational responsibility for the Facility, including, if necessary, the appointment of a receiver or other manager of the Facility if needed in place of Manager; (2) work with Licensee and governmental agencies and/or regulators in order to safely transition the Facility from Manager's management, to safely transition the Facility to Manager's sole operation/control pursuant to Section 27, or to safely close the Facility; (3) assist Licensee in every reasonable way required by Licensee in order to ensure that the Facility's operations can be transitioned and/or closed in a manner that safely provides for the care of all residents and, if necessary, the transfer of all residents to appropriate placements; (4) work in any reasonable way required by Licensee to facilitate the intent of this Section, including by approving amendments to contracts and facilitating transfer as appropriate of all trust funds and other matters outlined by this Agreement to Licensee as required by Licensee; (5) take all other commercially reasonable steps required by Licensee pursuant to this Section, including paying Manager's employees, paying any ongoing financial obligations, paying the cost of a receiver to help close the Facility (if closure is the course of action), and directing revenues as required by Licensee until Licensee certifies that Manager has completed its obligations under this Section; (6) continue to lease the Facility to Licensee on the existing terms for so long as it takes to close the Facility, transfer it to a new operator, or have Manager take full responsibility for the Facility pursuant to Section 27; and (7) jointly and severally with Brius fully indemnify and hold harmless Licensee as required by Section 26 for any and all costs associated with termination of Manager's responsibilities. In the event that any such regulator or other government agency determines that the Facility does not qualify for the reimbursement rates for distinct part nursing facilities (DP-NFs), including not qualifying for the daily Medi-Cal reimbursement rate for DP-NF room and board, Manager and Brius shall, jointly and severally, bear the entire financial impact of any such reimbursement rate change during the Management Period, whether the change is prospective or retroactive or both. In relation to any such reimbursement rate change, Manager and Brius shall fully indemnify and hold harmless Licensee as required by Section 30.

25.7 In the event that Burlingame Skilled Nursing closes for any reason whatsoever, including but not limited to a termination for cause by Manager pursuant to Section 25.4, Brius and Brius will be jointly and severally liable for all costs incurred with closing the facility and safely transferring residents to other appropriate care facilities, and Licensee shall have no legal or fiscal responsibility with regard to closing the facility or transferring residents to other appropriate facilities.

## **26. Indemnification.**

26.1 Indemnification by Licensee. Licensee hereby agrees to indemnify, protect, defend, and hold harmless Manager and its directors, officers, employees, agents, successors and assigns from and against any and all demands, claims, causes of action, fines, penalties, damages (but specifically excluding lost profits and consequential damages), losses, liabilities (including strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and court costs) (collectively, a "Loss") incurred in connection with or arising from the following (collectively, the "Retained Liabilities"): (a) a breach by Licensee of its representations, warranties and obligations under this Agreement which is not cured within fourteen (14) days after receipt of written notice from Manager setting forth, in reasonable detail, the nature of such breach; (b) the acts or omissions of Licensee under the Operating Contracts prior to the Operations Transfer Date; (c) the leasing, occupancy or operation of the Facility by Licensee prior to the Operations Transfer Date; (d) any acts, omissions, abuse of an elder or a dependent adult (as that term is defined in California Welfare and Institutions Code §15610.07), or negligence of Licensee or any person claiming under Licensee, or the contractors, agents, employees, invitees or visitors of Licensee with respect to the Facility and its patients and residents prior to the Operations Transfer Date; and (e) any failure by Licensee to pay any liabilities in connection with the Facility attributable to periods prior to the Operations Transfer Date, whether they arise prior to or after the Operations Transfer Date, including but not limited to Quality Assurance Fees and Medicare and Medi-Cal recoupments.

26.2 Indemnification by Manager and Brius. Manager and Brius hereby agree, jointly and severally, to indemnify, protect, defend, and hold harmless Licensee and its Supervisors, directors, officers, employees, agents, successors and assigns from and against any and all Losses incurred in connection with or arising from: (a) a breach by Manager or Brius of its representations, warranties, covenants, or obligations under this Agreement which is not cured within fourteen (14) days after receipt of written notice from Licensee setting forth in reasonable detail the nature of such breach; (b) the occupancy or operation of the Facility by Manager from and after the Operations Transfer Date; (c) any acts, omissions, abuse of an elder or a dependent adult (as that term is defined above) or negligence of Manager or any person claiming under Manager, or the contractors, agents, employees, invitees or visitors of Manager with respect to the Facility and its patients and residents from and after the Operations Transfer Date; (d) any failure by Manager and Brius to pay any liabilities in connection with the Facility attributable to the period from and after the Operations Transfer Date; (e) any acts, omissions, or negligence of Manager or any person claiming under Manager, or the contractors, agents, employees, invitees or visitors of Manager, attributable to the period from and after the Operations Transfer Date with respect to the Facility Employees, including but not limited to any claim for wrongful termination, employee complaints, or other employment law-related violations; and (f) any and all costs associated with Manager's obligations described under Sections 25.2 and 25.3 of this Agreement. If Manager's management responsibilities are terminated for "cause" as defined by Section 25.2 and SMMC's license or ability to operate is actually suspended or revoked as a result of actions of Manager, then Manager and Brius hereby agree, jointly and severally, in addition to their other indemnification obligations covered by this Section, to indemnify Licensee for all costs related to such license suspension or revocation or cessation of its ability to operate.

26.3 Survival of Indemnification Obligations. The foregoing indemnification obligations shall survive the expiration or other termination of this Agreement. All matters arising from an indemnified party's gross negligence or willful misconduct are excluded from the scope of the indemnification owing to such party set forth in Sections 26.1 and 26.2. It is expressly understood, agreed, and acknowledged by the parties that Manager is under no circumstances assuming any of Licensee's liabilities resulting from the leasing, occupancy, or operation of the Facility by Licensee prior to the Operations Transfer Date.

## **27. Transition of Responsibility for Operation and Ownership.**

27.1 Overview. It is the intent of the Parties that if Licensee becomes unable at any time during the Management Period to continue to operate the Facility on its hospital license, for the reasons set forth in herein, or at the end of the Management Period, whichever occurs first, Manager will assume operational responsibility for and ownership of Facility at the end of the Management Period. This section governs the responsibilities of the parties in relation to that transition. It is expressly understood by Manager that Licensee may only reduce the number of beds on Licensee's license on the first day of each quarter and must give notice to the State and Federal regulators of such reduction a minimum of 45 days in advance of the first day of each quarter. Accordingly, Manager agrees to cooperate fully with Licensee in ensuring that such deadlines are met, and Manager agrees to compensate Licensee for the costs it will incur and the revenue it will forego should the Facility beds remain on Licensee's license past the Transition Date. Under no circumstance shall Licensee bear any financial obligation for implementing changes required to facilitate this transition.

27.2 License and Provider Agreements. On or before the Transition Date, Manager shall have procured its own License and Medicare and Medi-Cal provider agreements for the Facility. As of the Transition Date, Manager shall assume full operational responsibility for and ownership of Facility and shall cease using Licensee's NPIs, License, and Medicare and Medi-Cal provider numbers. After the Transition Date, Licensee shall continue to use its own NPIs and Medicare and Medi-Cal provider numbers for its own operations (excluding any operations at Facility). Effective as of the Transition Date, Licensee shall remove the Facility beds from the Facility's license. Manager will do everything required such that Licensee can provide sufficient notice to the state and federal governments to allow the removal of the beds from the Licensee's license effective October 1, 2030.

27.3 Timing of Transition. Unless otherwise agreed to in writing by both parties, the Transition Date shall occur no later than September 30, 2030. If Manager has not met all conditions to have the Transition Date occur on or before 11:59 p.m. on September 30, 2030, then Licensee at its sole discretion shall immediately be authorized to:

27.3.1. Terminate Manager's management role for cause as outlined by Section 29.3, in which case Manager and/or Brius shall be jointly and severally responsible to cover all costs of the closure of the Facility (to be facilitated by Licensee) as outlined in Section 30.

27.4 Manager's Responsibilities Post-Transition. In operating the Facility on its own license, Manager shall be solely responsible for all operational aspects of Facility on and after the Transition Date, and thereafter Manager shall not be entitled to use any of Licensee's services outlined by this Agreement unless Manager and Licensee have entered into a written amendment of this Agreement or a separate agreement covering the terms and costs of Licensee providing any such services.

27.5 License and Permit Application Process. No later than December 1, 2030, Manager shall file all licensing applications and other documents required by CDPH for the issuance of the licenses and permits to operate the Facility (the "Permits"), and thereafter Manager shall diligently proceed with securing the Permits. As requested, Manager shall advise Licensee of the status of Manager's efforts to secure the Permits. If for any reason Manager does not file its licensing applications for the issuance of the Permits by the date mentioned above, Manager shall pay to Licensee a fee of Ten Thousand Dollars (\$10,000.00) per day subsequent to the date mentioned above that Manager has not

filed its applications with CDPH. Manager shall be solely responsible for any and all costs associated with the licensure and certification process and with the transition described in this Section 27. Licensee agrees to execute all documentation required by CDPH in connection with its review and approval of Manager's license application, including but not limited to completing portions of CMS Form 855-requiring information about Licensee and Licensee's signature.

27.6 Access to Licensure Applications. Promptly upon receipt of a request from Licensee, Manager will provide Licensee with copies of its licensure applications and any further documents submitted by Manager to CDPH in response to any requests from such governmental authority and with copies of its Permits.

27.7 Cooperation. Licensee shall cooperate with Manager, to the extent reasonably necessary, in order to facilitate the issuance of the new Permits and shall use its best efforts to maintain its corporate existence and shall not voluntarily surrender its Permits or Medicare or Medi-Cal provider agreements for the Facility, and shall not pledge or permit a lien to attach to its account receivables. Manager shall not be taking over Licensee's permits or Medicare or Medi-Cal provider agreements upon the Transition Date.

27.8 Furniture, Fixtures, Equipment, and Supplies. Should Manager decide to operate Facility after the Transition Date on its own license, title and ownership of all furniture, fixtures, equipment, and supplies belonging to Licensee at the Facility as of the Operations Transfer Date shall be transferred to Manager as of the Operations Transfer Date in consideration of other aspects of this Agreement.

## **28. Standard County Contractual Requirements.**

28.1 Payments and Billing. Unless otherwise indicated, Licensee shall submit invoices to Manager pursuant to this Agreement on a monthly basis, and payment on such invoices shall be due within 30 days of the date of the invoice unless otherwise indicated.

28.2 Relationship of Parties. Manager 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 of San Mateo and that neither Manager nor any of its members, employees, or agents acquires any of the rights, privileges, powers, or advantages of County employees.

### **28.3 Non-Discrimination and Other Requirements.**

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

28.3.2. *Equal employment opportunity.* Manager 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. Manager's equal employment policies shall be made available to County of San Mateo at least five days prior to the Operations Transfer Date.

28.3.3. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement. Compliance with Living Wage Ordinance. As required by Chapter 2.88 of the San Mateo

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

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

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

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

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

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

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



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

**28.4 Compliance with Contractor Employee Jury Service Ordinance.** Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85.

**28.5 Retention of Records, Right to Monitor and Audit.**

28.5.1. Except as otherwise outlined by specific sections of this Agreement, Manager shall maintain all required records for three (3) years after the end of the term of this Agreement and all other pending matters are closed, and such records shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

28.5.2. Reporting and Record Keeping: Manager shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the Licensee.

28.5.3. Manager agrees to provide to the County, to any Federal or State department having monitoring or review authority, to the County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice access to and the right to examine and/or copy all records and documents necessary (1) to determine compliance with relevant Federal, State, and local statutes, rules and regulations and this Agreement, (2) to evaluate the quality, appropriateness and timeliness of services performed, and (3) as otherwise required by law.

**29. Further Assurances.** Each of the parties hereto agrees to execute and deliver any and all further agreements, documents, or instruments reasonably necessary to effectuate this agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder, unless material reason exists not to do so.

**30. Notices.** All notices to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by national overnight courier service with confirmed receipt, each addressed as follows:

If to Manager:                      Brius, LLC  
5967 W. 3<sup>rd</sup> Street, Suite 200  
Los Angeles, CA 90036

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Licensee: Chief Executive Officer  
San Mateo Medical Center  
222 West 39<sup>th</sup> Avenue  
San Mateo, CA 94403

With copies to: John Beiers, Esq.  
San Mateo County Counsel  
400 County Center, 6th Floor  
Redwood City, CA 94063

Any such notice shall be deemed delivered when actually received or when delivery is first refused regardless of the method of delivery used. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other parties hereto. Although either party shall have the right to change its address for notice purposes from time to time, any notice delivered pursuant to this Section to the address set forth in this Section, or to such other address as may be hereafter specified in writing in accordance with this Section shall be effective even if actual delivery cannot be made as a result of a change in the address of the recipient of such notice if the party delivering the notice has not received actual written notice in accordance with the provisions of this Section of the current address to which notices are to be sent.

**31. Payment of Expenses.** Each party hereto shall bear its own legal, accounting, and other expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transaction contemplated hereby, whether the transaction is consummated.

**32. Entire Agreement; Amendment.** This Agreement, together with the other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements and shall be irrevocable upon execution. This Agreement may not be modified or amended except in writing signed by the parties hereto.

**33. Waiver.** No waiver of any term, provision, or condition of this agreement in any one or more instances shall be deemed to be or be construed as a further or continuing waiver of any such term, provision, or condition of this Agreement or any other term, provision, or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition, or rights granted hereunder.

**34. Assignment.** Licensee may not assign its rights nor delegate its duties hereunder to anyone without the prior written consent of Manager. Manager may assign its rights and/or delegate its duties hereunder to an affiliate of Manager only upon prior written consent of Licensee, such consent not to be unreasonably withheld by Licensee. Regardless of any such assignment, Manager and Brius remain fully liable for all provisions of this Agreement, including but not limited to all indemnification language.

**35. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**36. Consents.** Wherever in this Agreement the consent of one party is required to an act of the other party, such consent shall not be unreasonably delayed or withheld, except as otherwise so noted.

**37. No Liability of Licensee's Officials, Employees, or Agents.** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, or agent of Licensee shall be personally liable to Manager, its successors, or its assigns in the event of any default or breach by Licensee or for any amount which may become due to Manager, its successors, or its assigns, or for any obligation of Licensee under this Agreement.

**38. No Joint Venture; Third Party Beneficiaries.** Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Agreement except as expressly provided.

**39. Captions.** The section headings contained herein are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**40. Counterparts.** This Agreement may be executed and delivered via facsimile and in one or more counterparts and all such counterparts taken together shall constitute a single original agreement.

**41. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law, and any action or dispute arising from this Agreement, and not subject to Dispute Resolution under Section 24, shall be venued in the Superior Court of the State of California in and for the County of San Mateo.

**42. Costs and Attorneys' Fees.** In the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, each party shall bear its own costs including attorneys' fees.

**43. Construction.** Both parties acknowledge and agree that they have participated in the drafting and negotiation of this Agreement. Accordingly, in the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, no provision shall be construed to favor or disfavor either party hereto.

**44. Mode of Payment.** Until a party is otherwise notified, all payments due under this Agreement shall be paid by the following method:

To Licensee: Licensee shall provide Manager with an ACH Direct Deposit form to complete, and payment shall be made pursuant to the instructions provided by Licensee. Licensee may update the mode of payment from time-to-time as necessary.

To Manager or ETP: Manager shall provide Licensee with instructions for payment of funds under this Agreement to ETP and Manager. Manager may update the mode of payment from time-to-time as necessary.

**45. Time is of the Essence.** Time is of the essence for the performance of all obligations of the parties hereunder. Unless otherwise specifically provided in this Lease, all periods specified by a number of days shall refer to calendar days.

**46. Disclosure of Investigations.** During the term of this Agreement, Manager and Brius each individually agree to disclose Investigation Information (as defined by this Section) to Licensee immediately but no later than within of one business day of learning of any criminal, regulatory, license, or tax-related investigation of (i) Brius, LLC, (ii) any of its Affiliates (as defined by this Section), and/or (iii) Brius. This includes but is not limited to disclosure of any formal or informal investigation conducted by the California Department of Health Care Services, the Centers for Medicare & Medicaid Services, the United States Department of Justice, the United States Attorney or any District Attorney, the United States or California Attorney General, the California Board of Equalization or United States Internal Revenue Service, the United States Federal Trade Commission, and/or the United States Securities and Exchange Commission. For purposes of this Section, the term "Investigation Information" means the existence of an investigation, the identity of the investigating authority/entity, the identity of the party or entity being investigated, and a general description of the nature of the investigation, including a statement regarding the nature of each allegation or charge. To the extent that disclosure of any of this information is prohibited by law, such information shall not be disclosed. For purposes of this Section, the term "Affiliates" means (i) any wholly- or partially-owned subsidiary of Brius, LLC, (ii) any entity wholly owned by Brius, (iii) any entity in relation

to which Brius has an ownership interest of 15 percent or greater, (iv) TwinMed, LLC, (v) Brius Management Co., (vi) any entity that is wholly controlled by Brius, LLC or Brius, and (vii) any entity in relation to which Brius, LLC or Brius has a controlling interest of 15 percent or greater. Notice under this section shall be provided as outlined by Section 33 of the Agreement.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties hereby execute this Operations Management Agreement as of the day and year first set forth above.

**LICENSEE:**

THE COUNTY OF SAN MATEO, a political subdivision of the State of California

By: \_\_\_\_\_  
Its: President, Board of Supervisors

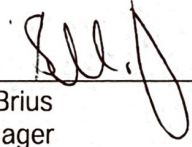
**ATTESTED:**

\_\_\_\_\_  
Clerk of the Board

RESOLUTION NO. \_\_\_\_\_

**MANAGER:**

BRIUS, LLC, a California limited liability company

By:  \_\_\_\_\_  
Name: Brius  
Its: Manager

The undersigned agrees to be jointly and severally bound with Manager by the indemnification provisions contained in this Agreement.

 \_\_\_\_\_  
Brius

**Exhibit A**

**DESCRIPTION OF FACILITY AND LEASE**

**FACILITY:** The 281-bed distinct part/skilled nursing facility known as Burlingame Skilled Nursing, and located at 1100 Trousdale Drive, Burlingame, CA 94010.

**LEASE:** That certain Lease Agreement dated \_\_\_\_\_, by and between ERETZ TROUSDALE PROPERTIES, LLC, a California limited liability company, as lessor, and COUNTY OF SAN MATEO, a political subdivision of the State of California, as lessee.

## **Exhibit C**

### **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.

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.

Brius, LLC

Name of Person/Entity (the "Undersigned")

[Signature]

Signature and Printed Name

9-24-20

Date



## **Exhibit D**

### **COUNTY OF SAN MATEO ORDINANCE CODE**

#### **Chapter 2.25 - REPORTING OF ADVERSE EVENTS IN COUNTY-OPERATED HEALTH CARE FACILITIES**

##### **2.25.010 - Purpose.**

The County of San Mateo has a paramount interest in protecting the health and safety of the public and in providing the highest standard of health care. To further this interest, County employees and contractors who perform health care services at County-operated health care facilities should be encouraged to report to their supervisor adverse events in health care facilities operated by the County. Members of the public also should be encouraged to report adverse events occurring in the hospital or its clinics to San Mateo Medical Center's Quality Management and to report adverse events occurring at all other County-operated health care facilities, labs or clinics to the Director of the Health System.

This ordinance describes the kinds of adverse events that should be reported and sets forth the reporting and investigative process to be followed. These reports and investigations shall be done in such a manner as to not violate state or federal laws regulating the privacy of protected health care information and are in addition to any other statutory reporting requirements.

This ordinance also protects all those employees who make such reports from retaliation from reporting the event or providing information about the event.

(Ord. 4324, 08/15/06; Ord. 4438, 09/09/08)

##### **2.25.020 - Definition and description of adverse events.**

An adverse event is an unintended situation that arises from an error in medical diagnosis, procedure, equipment, product, medication or other patient care that results in death or serious injury. Serious injury includes loss of limb or function. Examples of such unintended situations include, but are not limited to, those events listed below which have been derived from the National Quality Forum's List of 27 Serious Reportable Events.

- (a) Surgical events such as, but not limited to, surgery performed on the wrong person or body part, performing the wrong surgical procedure, leaving foreign objects in patients, and death during or immediately after surgery.
- (b) Product or device events such as, but not limited to, deaths or serious injuries associated with malfunctioning devices, contaminated drugs, devices or biologics, and intravascular air embolism.
- (c) Patient protection events such as, but not limited to, switched babies, patient disappearances where the patient lacks decision-making capacity, and suicides and attempted suicides of patients while admitted.
- (d) Care management events such as, but not limited to, patient deaths or serious injuries resulting from medication errors, administration of incompatible blood or blood-products, labor or delivery, hypoglycemia, severe ulcers acquired after admission, and spinal manipulation therapy.
- (e) Environmental events such as, but not limited to, patient deaths or serious injuries resulting from electrical shock, gas line errors, burns, falls, and the use of restraints or bedrails.

(f) Criminal events such as, but not limited to, impersonation of physicians or other providers, patient abductions, sexual assaults on patients, and patient or staff deaths or significant injuries due to physical assaults.

(Ord. 4438, 09/09/08: Ord. 4324, 08/15/06)

#### **2.25.030 - Reporting of adverse events regarding the provision of health care.**

Reporting of adverse events regarding the provisions of health care shall be reported as follows:

(a) Reporting by Employees. Any employee who believes, observes or otherwise becomes aware of an adverse event involving the provision of health care that has occurred at a County-operated health care facility must immediately report the event to his/her supervisor/manager.

(b) Reporting by Contractors. Any contractor who performs health care services at County-operated health care facilities, who believes, observes or otherwise becomes aware of an adverse event involving the provision of health care that has occurred at a County-operated health care facility must immediately report the event to the applicable manager.

(c) Reporting by Members of the Public. A patient, health care professional (who is not an employee or contractor), or any other member of the public who believes that an adverse event involving the provision of health care has occurred at a County-operated health care facility, should be encouraged to report the event to staff. Staff should then immediately report the incident to his/her manager/supervisor. For those incidents that occur in the hospital or its clinics the reports should be directed to San Mateo Medical Center's Quality Management. For those occurring at all other County-operated health care facilities, labs or clinics, the reports should be directed to the Director of the Health System.

(Ord. 4324, 08/15/06: Ord. 4438, 09/09/08)

#### **2.25.040 - Process to be used after receiving a report made pursuant to section 2.25.030.**

Upon receipt of a report made pursuant to section 2.25.030 of this chapter, the recipient manager/supervisor shall promptly report the matter to the Director of the Health System or his/her designee, within twenty-four hours of receiving notice of the matter, shall report the event to the County Manager. The County Manager shall notify the County Counsel who, in consultation with the County Manager, shall provide the Board of Supervisors with a summary of the event, as appropriate.

For all adverse events occurring at the San Mateo Medical Center, the Director of the Health System, in consultation with the County Manager, County Counsel, San Mateo Medical Center CEO and the President of the San Mateo Medical Center Board of Trustees, shall determine if the San Mateo Medical Center Board shall convene a special meeting to address the incident. The San Mateo Medical Center Board of Trustees may take any action it deems necessary, including, where appropriate, a recommendation to the Board of Supervisors.

All adverse events shall immediately be reported and disclosed to the patient or patient's legal representative. In addition, the results of any investigation pursuant to section 2.25.050 of this chapter shall also be disclosed to the patient or patient's legal representative.

These reports shall be done in such a manner as to not violate state or federal laws regulating the privacy of protected health care information.

(Ord. 4324, 08/15/06: Ord. 4438, 09/09/08)

#### **2.25.050 - Investigation.**

Upon notification of an adverse event, the Director of the Health System, or his/her designee, shall promptly refer the matter to the appropriate quality/safety individual, and/or interdisciplinary team, which shall, if appropriate, promptly plan and conduct an investigation. Depending on the nature of the incident, the investigation may involve departmental management, Employee Relations, the Coroner, and/or appropriate licensing and law enforcement agencies.

The investigation shall be conducted in accordance with all existing policies, including the Integrated Patient Safety Plan for those facilities covered by such plan. The investigation will determine the existence of system-based causes of adverse events. The investigation will include recommendations of potential improvements that would reduce the likelihood of similar adverse events.

Throughout the investigative process, all involved parties will treat the report and related information, including but not limited to information gathered and prepared in the course of the investigation of the incident, as confidential unless otherwise necessary to conduct the investigation. Any disclosure of information shall be done in such a manner as to not violate state or federal laws regulating the privacy of protected health care information.

At the conclusion of the investigation, the Director of the Health System, or his/her designee, will take the necessary steps to address the incident, including any necessary systemic changes to minimize or prevent reoccurrence of any such incident. The Director of the Health System, or his/her designee, shall also notify the person who filed the report that investigation has been completed.

(Ord. 4324, 08/15/06: Ord. 4438, 09/09/08)

#### **2.25.060 - Semi-annual report of actions taken.**

The Director of the Health System shall submit a semi-annual summary report to the Board of Supervisors delineating the types of reports that have been made under this chapter as well as the implementation of any significant new program, policy or facility improvements that have been made as a result of such reports.

(Ord. 4324, 08/15/06: Ord. 4438, 09/09/08)

#### **2.25.070 - No retaliation.**

Any retaliation or reprisal by any County officer or employee against any complainant or informant for reporting an adverse event is strictly prohibited and any act of retaliation or reprisal is subject to appropriate disciplinary action, which may include dismissal; provided, however, if it is determined that a complaint was filed by a County employee in bad faith, said employee may be subject to appropriate disciplinary action. This prohibition against retaliation is in addition to the protections contained in Labor Code section 1102.5, and any amendment thereto.

(Ord. 4324, 08/15/06)

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

This BUSINESS ASSOCIATE AGREEMENT (“BAA”) is made as of this 19th day of June, 2012 (the “Effective Date”) by and between COUNTY OF SAN MATEO, a political subdivision of the State of California (“Covered Entity” or “CE”) and BRIUS, LLC, a California limited liability company, and its affiliated designee (“Business Associate” or “BA”) (each a “party” and, collectively, the “parties”).

**RECITALS**

A. CE is a “covered entity” under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (collectively, “HIPAA”) and must enter into “business associate” contracts with contractors that may have access to PHI.

B. Pursuant to one or more agreements between the parties, whether oral or written (collectively, the “Agreement”), BA shall provide certain services to CE. and CE wishes to disclose certain information to BA, some of which may constitute PHI.

C. CE and BA intend to protect PHI disclosed to BA pursuant to the Agreement in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law of 2009 and the regulations promulgated thereunder (collectively, “HITECH Act”), and other applicable laws governing confidentiality of patient information.

D. HIPAA requires CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, 45 C.F.R. §§ 164.314(a), 164.502(e) and 164.504(e) and contained in this BAA.

**NOW, THEREFORE**, CE and BA agree as follows:

**AGREEMENT**

**1. Definitions.** Capitalized terms not otherwise defined herein shall have the meaning assigned to them under HIPAA or the HITECH Act, as applicable.

**1.1 Electronic Protected Health Information or EPHI** means Protected Health Information that is maintained in or transmitted by electronic media.

**1.2 Privacy Rule** means the HIPAA Regulation codified at 45 C.F.R. Parts 160 & 164, Subparts A & E.

**1.3 Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under 45 C.F.R. § 160.103. Protected Health Information includes Electronic Protected Health Information.

**1.4 Protected Information** means PHI provided by CE to BA or created or received by BA on CE’s behalf.

**1.5 Security Rule** means the HIPAA Regulation codified at 45 C.F.R. Parts 160 & 164, Subparts A & C.

**1.6 Unsecured PHI** has the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”).

## **2. Obligations of Business Associate.**

**2.1 Permitted Access, Use or Disclosure.** BA shall neither permit the unauthorized or unlawful access to, nor use or disclose, Protected Information other than as permitted or required by the Agreement, this BAA, or as permitted or Required By Law. Except as otherwise limited in the Agreement or this BAA, BA may access, use, or disclose Protected Information (i) to perform its services as specified in the Agreement; and (ii) for the proper administration of BA, provided that such access, use, or disclosure would not violate HIPAA or the HITECH Act if done or maintained by CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) agreement from such third party to promptly notify BA of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach.

**2.2 Appropriate Safeguards.** BA shall implement appropriate safeguards designed to prevent the access, use or disclosure of Protected Information other than as permitted by the Agreement or this BAA. BA shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI. BA shall comply with each of its obligations under the applicable requirements of 45 C.F.R. §§ 164.308, 164.310,

and 164.312 and the policies and procedures and documentation requirements of the HIPAA Security Rule set forth in 45 C.F.R. § 164.316.

## **2.3 Reporting Improper Access, Use, Disclosure.**

(a) **Generally.** BA shall promptly notify CE of any Breach of security, intrusion, or unauthorized access, use, or disclosure of PHI of which BA becomes aware and/or any access, use, or disclosure of data in violation of the Agreement, this BAA, or any applicable federal or state laws or regulations. BA shall take (i) prompt corrective action to cure any deficiencies in its policies and procedures that may have led to the incident, and (ii) any action pertaining to such unauthorized access, use, or disclosure required of BA by applicable federal and state laws and regulations.

(b) **Breaches of Unsecured PHI.** Without limiting the generality of the requirements set forth in Section 2.3(a), BA also shall, following the discovery of any Breach of Unsecured PHI, notify CE in writing of such Breach without unreasonable delay and in no case later than sixty (60) days after discovery. The notice shall include the information specified in 42 U.S.C. § 17932(f)(1)-(4) if known (or can be reasonably obtained) by BA.

(c) **Mitigation.** BA shall establish and maintain safeguards to mitigate, to the extent practicable, any deleterious effects known to BA of any unauthorized or unlawful access or use or disclosure of PHI not authorized by the Agreement, this BAA, or applicable federal or state laws or regulations; provided, however, that unless otherwise agreed in writing by the parties or required by applicable federal or state laws or regulations, such mitigation efforts by BA shall not require BA to bear the costs of notifying individuals impacted by such unauthorized or unlawful access, use, or disclosure of PHI; provided, further, however, that BA shall remain fully responsible for all aspects of its reporting

duties to CE under Section 2.3(a) and Section 2.3(b).

**2.4 Business Associate's Subcontractors and Agents.** BA shall ensure that any agents or subcontractors to whom it provides Protected Information agree to the same restrictions and conditions that apply to BA with respect to such PHI. To the extent that BA creates, maintains, receives or transmits EPHI on behalf of the CE, BA shall ensure that any of BA's agents or subcontractors to whom it provides Protected Information agree to implement the safeguards required by Section 2.2 above with respect to such EPHI.

**2.5 Access to Protected Information.** To the extent BA maintains a Designated Record Set on behalf of the CE, BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act.

**2.6 Amendment of PHI.** To the extent BA maintains a Designated Record Set on behalf of CE, within ten (10) days of receipt of a request from the CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make PHI available to CE so that CE may make any amendments that CE directs or agrees to in accordance with the Privacy Rule.

**2.7 Accounting Rights.** Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule and the HITECH Act. BA shall implement a process that

allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record ("EHR") for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent BA maintains an EHR and is subject to this requirement. At a minimum, the information collected and maintained shall include, to the extent known to BA, the information set forth at 45 C.F.R. § 164.528(b)(2). The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, BA may charge the individual or party requesting the accounting a reasonable fee based upon BA's labor costs in responding to the request and a cost-based fee for the production of non-electronic media copies, so long as BA informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. BA shall notify CE within five (5) business days of receipt of any request by an individual or other requesting party for an accounting of disclosures. The provisions of this Section 2.7 shall survive the termination of this BAA.

**2.8 Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary for purposes of determining CE's compliance with the Privacy Rule.

**2.9 Minimum Necessary.** To the extent feasible in the performance of services under the Agreement, BA (and its agents or subcontractors) shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure.

**2.10 Permissible Requests by Covered Entity.** CE shall not request BA to use or disclose PHI or otherwise act in a manner that would not be permissible under HIPAA or the HITECH Act if done by CE.

**2.11 Breach Pattern or Practice** If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of such other party's obligations under this BAA or other arrangement, the first party must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the first party must terminate the applicable Agreement to which the breach and/or violation relates if feasible, or if termination is not feasible, report the problem to the Secretary.

### **3. Term and Termination.**

**3.1 Term.** The term of this BAA shall be effective as of the Effective Date and shall terminate when all Protected Information is destroyed or returned to CE.

#### **3.2 Termination.**

(a) **Material Breach by BA.** Upon any material breach of this BAA by BA, CE shall provide BA with written notice of such breach and such breach shall be cured by BA within thirty (30) business days of such notice, or else CE may immediately terminate this BAA and the applicable Agreement.

(b) **Effect of Termination.** Upon termination of any of the agreements comprising the Agreement for any reason, BA shall, if feasible, return or destroy all Protected Information relating to such agreements that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, BA shall continue to extend the protections of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

**4. Compliance with State Law.** Nothing in this BAA shall be construed to require BA to use or disclose Protected Information without a written authorization, where such authorization would be required under state law for such use or disclosure.

**5. Amendment to Comply with Law.** BA and CE shall take such actions necessary to implement the standards and requirements of HIPAA, the HITECH Act, and other applicable laws relating to the security or confidentiality of PHI. Upon the request of either party, the other party shall promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, or other applicable laws. If such negotiations are unsuccessful, either party may terminate the applicable Agreement upon thirty (30) days' written notice to the other party.

**6. No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer upon any person other than CE, BA and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.

**7. Notices.** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows:

**If to CE:** San Mateo Medical Center  
222 West 39th Avenue  
San Mateo, CA 94403  
Attn: Privacy and Compliance  
Officer or CEO  
Fax: 650/573-2950

**With copies to:** John Beiers, Esq.  
San Mateo County Counsel  
400 County Center, 6th Floor  
Redwood City, CA 94063  
Fax: 650/363-4034

**If to BA:** Brius, LLC  
5967 W. 3rd Street, Suite 200  
Los Angeles, CA 90036  
Attn: Security Officer  
Fax: 323/634-1943

or to such other persons or places as either party  
may from time to time designate by written  
notice to the other.

**8. Interpretation.** The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HITECH Act. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HITECH Act. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

**9. Entire Agreement.** This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Each party to this BAA acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by

either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

**10. Regulatory References.** A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.

**11. Counterparts.** This BAA may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this BAA as of the BAA Effective Date.


**"CE"**

**THE COUNTY OF SAN MATEO, a political  
subdivision of the State of California**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: President, Board of Supervisors  
Attested: \_\_\_\_\_  
Clerk of the Board  
Resolution # \_\_\_\_\_

**"BA"**

**BRIUS, LLC, a California limited liability  
company**

By:  \_\_\_\_\_  
Print Name: Brius  
Title: Manager