



**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER GOVERNING BOARD  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM: 15.2  
(ID # 14028)

**MEETING DATE:**  
Tuesday, December 15, 2020

**FROM:** RUHS-MEDICAL CENTER:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM-MEDICAL CENTER: Approval of the Professional Service Agreement with DVA Renal Healthcare, Inc. for Hemodialysis Treatment Services for 3 years, effective February 1, 2021 through January 31, 2024; All Districts. [Total Cost \$7,034,748, up to \$703,474 in additional compensation; 100% Hospital Enterprise Fund – 40050]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Professional Service Agreement with DVA Renal Healthcare, Inc. for Hemodialysis Treatment Services for a total aggregate maximum contract amount of \$7,034,748 for three years, effective February 1, 2021 through January 31, 2024, and authorize the Chairman of the Board to sign the agreement on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to: sign amendments that make modifications to the scope of services that stay within the intent of the agreement and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total cost of the agreement.

**ACTION:** Policy

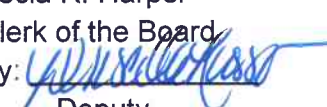
  
 Jennifer Cruikshank Chief Executive Officer – Health System 11/30/2020

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**MINUTES OF THE GOVERNING BOARD**

On motion of Supervisor Spiegel, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
 Nays: None  
 Absent: None  
 Date: December 15, 2020  
 xc: RUHS-MC

Kecia R. Harper  
 Clerk of the Board  
 By:   
 Deputy

**SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 958,335	\$ 2,319,169	\$ 7,034,748	\$ 0
<b>NET COUNTY COST</b>	\$ 958,935	\$ 2,319,169	\$ 7,034,748	\$ 0
<b>SOURCE OF FUNDS: Hospital Enterprise Fund - 40050</b>			<b>Budget Adjustment:</b>	<b>No</b>
			<b>For Fiscal Year:</b>	20/21-23/24

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

DVA Renal Healthcare, Inc. (DVA), a subsidiary of DaVita, Inc., accredited by the Joint Commission, currently provides acute inpatient hemodialysis services at RUHS-Medical Center. RUHS-Medical Center seeks the Board of Supervisor’s approval to continue the long-standing 10-year relationship with DVA by replacing the existing outdated agreement with a new updated agreement to ensure continuous compliance with applicable terms and conditions.

The quality of care that DVA provides has resulted in improved services and zero regulatory findings. DVA has been successful in the implementation of a new dialysis service to the Medical Center called Continuous Renal Replacement Therapy (CRRT). In addition, DVA also provides the mandated (CRRT) training to RUHS-Medical Center ICU Nursing Staff that is required to assist in rendering (CRRT) therapy.

DVA continues to be an active participant in building strategies in renal care oversight. Their continued partnership with RUHS-Medical Center and DVA’s robust knowledge of RUHS-Medical Center policies and procedures have attributed to building best practices for acute inpatient renal care. DVA’s sizeable staff continue to respond to RUHS-Medical Center STAT orders within a two-hour time frame, including holidays and weekends.

**Impact on Residents and Businesses**

A lapse in care would adversely affect patients. RUHS-Medical Center would not be able to provide renal care to the community and individuals would be forced to travel elsewhere to seek care.

**Contract History and Price Reasonableness**

Dialysis services are covered under Direct Patient Care Authority Resolution 2019-147 approved by the Board of Supervisors on the Form 11 approved on June 18, 2019, Agenda item #3.20. The Agreement requires board approval as the aggregate contract amount exceeds the Procurement Agent’s \$750,000 dollar signature threshold.

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To ensure that the County receives best value in service and pricing, DVA has extended below industry standard pricing to RUHS-Medical Center. The total aggregate maximum contract amount of the agreement is \$7,034,748 for three years.

On August 10, 2010, Agenda Item 3.53, the Board approved the Professional Services Agreement with Renal Treatment Centers California, Inc. and Patient Pathways, LLC, effective for three years, in an amount not to exceed \$1,200,000 annually.

On August 20, 2013, Agenda Item 3.75, the Board approved the Third Amendment to the agreement with Renal Treatment Centers – California Inc. and Patient Pathways, LLC to extend the period of performance for five additional years.

On July 31, 2018, the Board approved Agenda Item 3.39, the Sixth Amendment to extend the contract term for ninety (90) days, August 1, 2018 through October 29, 2018.

On October 23, 2018, Agenda Item 17.1, the Board approved the Seventh Amendment with DVA Renal Healthcare, Inc. to extend the period of performance for one year, October 30, 2018 through October 29, 2019.

On October 22, 2019, the Board approved Agenda Item 15.2, the Eighth Amendment with DVA Renal HealthCare, Inc to extend the period of performance for one year, October 30, 2019 through October 29, 2020.

On October 27, 2020, the Board approved Agenda Item 15.2, the Ninth Amendment with DVA Renal HealthCare, Inc. to extend the period of performance for three months, October 30, 2020 through January 31, 2021 and to increase the funds by \$615,000.

**ATTACHMENTS:**

**ATTACHMENT A: PROFESSIONAL SERVICE AGREEMENT FOR HEMODIALYSIS  
TREATMENT SERVICES BETWEEN COUNTY OF RIVERSIDE AND DVA  
RENAL HEALTHCARE, INC.**

SUBMITTAL TO THE RIVERSIDE UNIVERSITY HEALTH  
SYSTEM MEDICAL CENTER GOVERNING BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

  
Tina Grande, Director of Purchasing 12/3/2020

  
Brianna Lantajo, Management Analyst 12/8/2020

  
Gregory J. Priamos, Director County Counsel 12/3/2020

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**HEMODIALYSIS TREATMENT SERVICES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**DVA RENAL HEALTHCARE, INC.**



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This Agreement is made and entered into by and between DVA Renal Healthcare, Inc., a Tennessee corporation, (herein referred to as "CONTRACTOR"), a subsidiary of DaVita, Inc. (herein referred to as "DaVita"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California (herein referred to as "COUNTY"), on behalf of Riverside University Health System (herein referred to as "RUHS"); CONTRACTOR and COUNTY may be individually referred to herein as a "Party" or collectively as the "Parties."

**WHEREAS**, CONTRACTOR is engaged in the business of providing hospitals with certain services, including providing hospitals with necessary non-physician professional personnel, including registered nurses and patient care technicians, for certain in-patient and out-patient services that treat blood, such as hemodialysis, peritoneal dialysis ("PD"), continuous renal replacement therapies ("CRRT"), and isolated ultrafiltration therapies for renal failure and non-renal failure patients;

**WHEREAS**, COUNTY operates RUHS, which includes an acute care hospital located at 26520 Cactus Avenue, Moreno Valley, CA 92555;

**WHEREAS**, COUNTY has requested that CONTRACTOR provide RUHS with the specific services set forth in this Agreement to adult patients under the terms and conditions of this Agreement;

**WHEREAS**, CONTRACTOR will provide the Services to RUHS on its own or through a subcontract with DaVita, a DaVita related entity, subsidiary, affiliate or related organization; and

**WHEREAS**, the Parties previously entered into that certain Professional Services Agreement dated August 10, 2010, as amended, which both Parties agree is being superseded and replaced with this Agreement as of the Effective Date.

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained herein and intending to be legally bound, the Parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all Services as outlined in this Agreement, at the prices stated in this Agreement, including Exhibit A, Scope of Services, and Exhibit B, Fee Schedule.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform the Services in accordance with generally recognized standards of care and in accordance with applicable federal, state, and local laws and regulations, as such may be amended from time to time. As used herein, "CONTRACTOR Staff" shall mean CONTRACTOR's properly trained and qualified non-physician personnel, including but not limited to registered nurses and certified dialysis technicians, as applicable. Subject to all

applicable laws, at all times RUHS and the patient's physician shall retain ultimate authority over and responsibility for each patient's care and treatment.

**1.3** CONTRACTOR affirms that it is fully apprised of all of the work to be performed under this Agreement. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective as of February 1, 2021 (the "Effective Date") and continues in effect for three (3) years, unless terminated earlier as provided herein. The Riverside County Board of Supervisors is the only authority that may obligate the COUNTY for a non-cancelable multi-year agreement.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided, and expenses incurred in accordance with the terms of Exhibit B, Fee Schedule. The "Year 1 Rates" shall become effective as of the Effective Date; the "Year 2 Rates" shall become effective as of the first anniversary of the Effective Date; and the "Year 3 Rates" shall become effective as of the second anniversary of the Effective Date. The Fee Schedule may only be modified upon the written agreement of the Parties. In all instances, fees agreed upon by the Parties must reflect fair market value and be deemed commercially reasonable. Maximum payments by COUNTY to CONTRACTOR for the Term of the Agreement shall not exceed seven million thirty-four thousand seven hundred forty-eight dollars (\$7,034,748) including all expenses (herein referred to as "Maximum Payment"). The COUNTY is not responsible for any fees or costs incurred above or beyond the Maximum Payment and CONTRACTOR shall not be obligated to provide Services that would result in COUNTY owing an amount in excess of the Maximum Payment. The COUNTY shall have no obligation to purchase any specified amount of Services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** CONTRACTOR shall be paid only in accordance with invoices submitted to COUNTY by CONTRACTOR. CONTRACTOR shall submit invoices to COUNTY within fifteen (15) days from the last day of each calendar month in which Services were rendered, and COUNTY shall pay undisputed invoices within thirty (30) working days from the date of receipt of the invoices. Payment shall be made to CONTRACTOR only after Services have been rendered. For this Agreement, send the invoices to:



Riverside University Health System

Attn: Accounts Payable

26520 Cactus Ave

Moreno Valley, CA 92555

- a) All invoices submitted by CONTRACTOR shall include the following: invoice number, invoice date, remittance address, and invoice total amount.
- b) Invoices must reflect the Services rendered, including the patient's name, patient identification number (if available), medical record number (if available), hospital room number, the date when Services were rendered, the procedure name, the number of units and the rate charged.
- c) In the event COUNTY, in good faith, disputes any amount charged by CONTRACTOR, COUNTY will notify CONTRACTOR in writing on or before the date the payment is due to CONTRACTOR, and the Parties will use good faith efforts to resolve the matter through the dispute resolution process described in Section 11 of this Agreement. COUNTY shall still be obligated to timely pay in full all non-disputed fees owed.
- d) CONTRACTOR will not accept credit card payments from COUNTY. Outstanding undisputed amounts not paid within sixty (60) days from the date of receipt of the invoices will be subject to late fees commencing on the sixty-first (61<sup>st</sup>) day from the date of receipt of the invoice, at the rate of one-half of one percent (0.5%) per month or, if lower, the maximum rate allowed by law (including but not limited to California Government Code, Section 926.10). Any outstanding undisputed amounts that are not received by CONTRACTOR within sixty (60) days from the date of receipt of the invoices may trigger the termination provision set forth in Section 5.2 below.

**3.3** The COUNTY's obligation for payment of this Agreement beyond the current fiscal year end (June 30 of each calendar year) is contingent upon and limited by the availability of COUNTY funding from which payment can be made. In the event that such funds are not forthcoming for any future fiscal year(s) for any reason, COUNTY shall immediately notify CONTRACTOR in writing, and this Agreement may be terminated by COUNTY by providing at least sixty (60) days' prior written notice to CONTRACTOR; provided, however, that if the end of the current fiscal year is less than sixty (60) days away by the time COUNTY learns that such funds are not forthcoming, COUNTY shall provide the maximum possible prior

written notice of termination. COUNTY shall be obligated to pay CONTRACTOR for any Services already performed prior to the date of termination.

**4. Alteration or Changes to the Agreement**

**4.1** This Agreement may be changed or modified only by a written amendment signed by the authorized representatives of both Parties. The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives with the signing authority to execute any such amendments to this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**5. Termination**

**5.1** Termination without Cause. Either Party may terminate this Agreement without cause by providing sixty (60) days' prior written notice served upon the other Party, stating the extent and effective date of termination.

**5.2** Termination with Cause.

- a) This Agreement may be terminated by either Party for the other Party's breach of any material provision of this Agreement following written notice by the non-breaching Party to the breaching Party, which the breaching Party fails to cure within thirty (30) days after receipt of notice.
- b) This Agreement may be terminated, upon five (5) days' written notice, by either Party upon the exclusion or suspension of either Party from participation in the Medicare or Medicaid programs.
- c) This Agreement may be terminated, upon five (5) days' written notice, by either Party upon receipt of notice that the other Party (i) is generally unable to pay its debts as they become due; (ii) has admitted in writing its inability to pay its debts generally; (iii) institutes a proceeding under the federal bankruptcy laws or any other federal or state reorganization, liquidation, insolvency or moratorium laws, including any assignment for the benefit of creditors; (iv) is the subject of an involuntary petition under any law relating to bankruptcy, insolvency, liquidation, rehabilitation or organization, which is not stayed or dismissed after sixty (60) days; or (v) is or becomes subject to the

jurisdiction of a court-appointed receiver or trustee for it or for any substantial part of its property.

- d) In the event performance by either Party of any term, covenant, condition or provision of this Agreement shall: (i) jeopardize the licensure of either Party, (ii) jeopardize either Party's participation in Medicare, Medicaid, Blue Cross or other government reimbursement or payment programs, or any other state or nationally recognized accrediting organization; or (iii) violate any statute, ordinance, or be otherwise deemed illegal or be deemed unethical, invalid or unenforceable by any recognized body, agency, or association in the medical fields, either Party shall have the immediate right to initiate the renegotiation of the affected term(s) of this Agreement, upon notice to the other Party, to remedy such condition. The Parties shall thereafter use their best efforts to renegotiate in good faith to restructure this relationship so as to: (x) bring any provision in compliance so as not to jeopardize any Party's licensure, participation in government programs or accrediting organizations; or (y) make the same lawful, valid enforceable or ethical, and to the extent possible, to maintain the economic benefits to any Party as contemplated hereunder. Should the Parties be unable to renegotiate the term(s) so affected so as to not jeopardize any Party's licensure, participation in government programs or accrediting organizations, or to bring it/them into compliance with the statute, rule, regulation, principle or interpretation that rendered it/them unlawful or unenforceable within ninety (90) days of the date on which notice of a desired renegotiation is given, then either Party shall be entitled, after the expiration of said initial ninety (90) day period, to terminate this Agreement immediately.
- e) This Agreement may be terminated by COUNTY upon ten (10) days following receipt of notice of an action or inaction of CONTRACTOR in the performance of its duties under this Agreement, which, if continued, would result in the termination of the COUNTY's licensure.
- f) This Agreement may be terminated by COUNTY upon a reasonable determination by COUNTY on written advice of its legal counsel, that continuation of this Agreement jeopardizes COUNTY's tax exempt status, its status as provider to the Medicare or state Medicaid programs or is otherwise illegal, in which case, the Parties shall negotiate in good faith to modify this Agreement to eliminate the concern. If the Parties cannot

agree on the necessary modifications, this Agreement shall terminate immediately upon the receipt of notice by CONTRACTOR.

- g) This Agreement may be terminated by COUNTY immediately upon receipt of notice of the loss or substantial impairment of CONTRACTOR's professional liability insurance.

**5.3** After receipt or provision of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

**5.5** The rights and remedies of the Parties provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## **6. Ownership/Use of Records and Reports**

Upon request from COUNTY, CONTRACTOR shall cause to be prepared and filed with COUNTY's medical records administrator reports of all the Services rendered by CONTRACTOR; said reports may be used by COUNTY for any purpose consistent with applicable laws and regulations. CONTRACTOR agrees that the information contained in COUNTY's medical records system in any form, including electronic, is the property of COUNTY and may be used by COUNTY for any purpose consistent with applicable laws and regulations. CONTRACTOR may maintain copies of the records and reports (including but not limited to treatment orders and treatment records related to the Services provided by CONTRACTOR) for operational purposes, to the extent consistent with the terms of the Parties' Business Associate Agreement and applicable laws. CONTRACTOR shall also prepare such additional or supplementary reports as specified in Exhibit A to this Agreement, including but not limited to QI and PI reports, and the information contained in such reports may be used by COUNTY for its own internal operational and clinical purposes. CONTRACTOR may also develop additional reports for internal review and assessment purposes, including, but not limited to, the effectiveness of activities and initiatives associated with Services rendered to COUNTY. Except as permitted by the Business Associate Agreement or applicable law, CONTRACTOR agrees not to release or circulate in whole or part any reports containing protected health information without prior written authorization of COUNTY.

**7. Conduct of Contractor; Compliance-Related Matters**

7.1 The CONTRACTOR covenants that it presently has no conflict of interest with respect to its performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such conflict of interest shall be employed or retained by the CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of any changes to the accuracy of these covenants of which it becomes aware during the term. In the event of learning of such changes to the accuracy of these covenants, as described herein, COUNTY shall have the right to terminate this Agreement immediately.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

7.4 Each of CONTRACTOR and COUNTY represents and warrants that neither it nor any of its employees, contractors, or subcontractors related to this Agreement: (1) are currently excluded from participation in an federal health care program, as defined under 42 U.S.C. § 1320a – 7(b); (2) are currently excluded, debarred, suspended, or otherwise ineligible to participate in federal procurement or non-procurement programs; or (3) have been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a – 7(a), but have not yet been excluded, debarred, suspended, or otherwise declared ineligible. Each Party agrees to notify the other Party within two (2) business days of learning of any such exclusion described above. In the event of learning of such exclusion, as described herein, the other Party shall have the right to terminate this Agreement immediately.

7.5 COUNTY and CONTRACTOR agree and certify that this Agreement is not intended to generate referrals for services or supplies for which payment may be made in whole or in part under any federally funded health care program, including but not limited to Medicare or Medicaid. The Parties certify that: (1) neither Party shall violate the Anti-Kickback Statute with respect to the performance of this Agreement; (2) the compensation provided under this Agreement has been determined in arm's-length bargaining and reflects fair market value in arm's-length transactions; and (3) the compensation is not and has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated for or with respect to or between the Parties for which payment may be made in whole or in part under Medicare, Medicaid, or any Federal or State health care program or under any other third

party payor program. Upon request, for informational purposes only, CONTRACTOR shall provide to COUNTY access to a copy of DaVita's Code of Conduct and relevant policies and procedures, in either hard copy or electronic form, which are designed to ensure compliance with relevant federal health care program requirements. Notwithstanding the foregoing, CONTRACTOR acknowledges that COUNTY has its own policies for ethical and professional conduct, and under no circumstances shall COUNTY be bound to DaVita's Code of Conduct.

**8. Inspection of Service; Quality Management**

**8.1** All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times, upon reasonable notice to CONTRACTOR (unless prohibited by applicable law). The CONTRACTOR shall provide reasonable cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, COUNTY will notify CONTRACTOR in writing and the Parties will use good faith efforts to resolve the matter through the dispute resolution process described in Section 11 of this Agreement.

**8.2** CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

**9. Independent Contractor/Employment Eligibility**

**9.1** The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the Parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**9.2** CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

**9.3** An "Ineligible Person" shall be any individual or entity who: is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

**9.4** CONTRACTOR shall screen prospective individuals who will provide services hereunder prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all individuals who will provide services hereunder within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same the individuals under a separate agreement with COUNTY within the past six (6) months. Individuals providing services hereunder shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware of an individual providing services directly relative to this Agreement who becomes debarred, excluded, or otherwise becomes an Ineligible Person.

**9.5** CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that an individual who provides services hereunder has become an Ineligible Person, CONTRACTOR shall promptly remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement. COUNTY will not be responsible for any charges incurred for Services that were performed by an Ineligible Person on or after the date the individual became an Ineligible Person. CONTRACTOR will use commercially reasonable efforts to provide a compliant individual with current documentation as a replacement as soon as possible.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment and/or other staffing agreements between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**11. Disputes**

**11.1** The Parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the Parties. Any dispute relating to this Agreement, which is not resolved by the Parties, shall be resolved in accordance with the terms of Section 11.2 below. The Parties shall use commercially reasonable efforts to proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** If the senior management of the Parties are unable to resolve the dispute, the Parties shall, prior to the filing of any legal action related to this Agreement, attend a mediation session in Riverside County before a mutually agreed-upon neutral third party mediator. The Parties shall share the cost of the mediation. In the event that the Parties are unable to resolve the dispute through mediation, the Parties shall be entitled to seek any and all available legal remedies.

**12. Licensing and Permits**

CONTRACTOR shall comply with all applicable State or other licensing requirements, and shall maintain in effect during the term of this Agreement all necessary licenses, permits, approvals, certificates, waivers and/or exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction.

**13. Intentionally Omitted**

**14. Non-Discrimination**

CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and all other applicable laws or regulations.



**15. Records and Documents**

This Section 15 is included herein because of the possible application of Section 1861 (v)(1)(I) of the Social Security Act to this Agreement; if Section 1861 (v)(1)(I) of the Social Security Act should not be found applicable to this Agreement, then this Section 15 shall be deemed not to be a part of this Agreement and shall be null and void. Until the expiration of four (4) years after the furnishing of the Services pursuant to this Agreement, CONTRACTOR shall make available, upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement, and any books, documents and records of CONTRACTOR that are necessary to verify the Services provided to COUNTY and invoiced by CONTRACTOR under this Agreement. If CONTRACTOR is requested to disclose books, documents or records pursuant to this Section, CONTRACTOR shall notify COUNTY of the nature and scope of such request, and CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records during regular business hours of CONTRACTOR.

**16. Confidentiality**

**16.1** The term “privileged or confidential information” includes but is not limited to: any information, in whatever form, relating directly or indirectly to the business of the Services, either Party or any affiliate of either Party, prepared and made available by a Party or by any other person (the “Disclosing Party”) to the other Party or any of its employees, contractors or agents (the “Receiving Party”), including unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; information or data which is not subject to public disclosure; operational procedures; and knowledge of the other Party’s selection of contractors, subcontractors or suppliers in advance of official announcement. “Privileged or confidential information” will not be deemed to include (1) any information that is or becomes generally available to the public other than as a direct or indirect result of the disclosure of any of such information by the Receiving Party; (2) any information that becomes available to the Receiving Party from a source other than the Disclosing Party, provided that such source is not bound by any contractual or other obligation of confidentiality to the Receiving Party or any other person with respect to such information; (3) any information previously known to the Receiving Party, subject to the Receiving Party’s patient privacy and security obligations; and/or (4) any information that CONTRACTOR is authorized to use pursuant to the terms of this Agreement.

**16.2** The Receiving Party agrees that (i) it will not use the privileged or confidential information for any purpose except as necessary to provide Services under this Agreement and (ii) except as required

pursuant to the terms of California Public Records Act (Government Code Section 6250 et seq.) and/or the California Brown Act (Government Code Section 54950 et seq.), it will not divulge, directly or indirectly, any privileged or confidential information in any manner whatsoever, in whole or in part, without the prior written consent of the Disclosing Party. The Receiving Party will promptly notify the Disclosing Party of any breach of this Agreement which becomes known to the Receiving Party.

**16.3** CONTRACTOR acknowledges that COUNTY is a governmental entity subject to the public records and meeting laws of the State of California, including the California Public Records Act and the California Brown Act. To the extent COUNTY is required by law to disclose privileged or confidential information, COUNTY shall comply with such law. COUNTY has the right in its sole discretion to determine what shall be disclosed, with reasonable regard to any exemptions that may be available under such law. For the avoidance of doubt, the Parties agree that this Agreement, including its exhibits, is not confidential and will be taken to the COUNTY Board of Supervisors for approval.

**16.4** The Receiving Party acknowledges that the breach or threatened breach of the provisions of this Section 16 would cause irreparable injury to the Disclosing Party that could not be adequately compensated by money damages. Accordingly, the Disclosing Party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in addition to any other legal or equitable remedies that may be available. In the event the Disclosing Party finds it necessary to seek injunctive or other relief to prevent a violation of this Section by the Receiving Party, the Disclosing Party, in addition to all other legal and/or equitable remedies, will be entitled to recovery of the costs of the action, including, but not limited to, reasonable attorneys' fees.

## **17. HIPAA**

The Parties acknowledge and agree that CONTRACTOR providing Services to COUNTY may constitute a Business Associate relationship as defined by the Health Insurance Portability and Accountability Act of 1996 and 45 CFR Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (collectively, as may be amended from time to time, "HIPAA"), and the related laws and regulations promulgated subsequent thereto. Terms of such relationship are contained in Attachment 1 of this Agreement. If in accordance with the terms of the Business Associate Agreement, the Parties agree that CONTRACTOR and its affiliates and related entities may utilize such information for on-going treatment purposes of COUNTY patients, including when patients are being seen by/at other providers, if such use is otherwise consistent with law (e.g., limited to the minimum amount necessary to achieve its purpose).

**18. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**19. Notices**

All correspondence and notices required or contemplated by this Agreement shall be in writing and delivered to the respective Parties at the addresses set forth below, or to any other address as a Party may designate by notice hereunder and shall either be (a) delivered by hand, (b) sent by recognized overnight courier, or (c) sent by certified or registered mail, return receipt requested, postage prepaid:

**COUNTY OF RIVERSIDE**

Riverside University Health System  
Attn: Contracts Administration  
26520 Cactus Avenue  
Moreno Valley, CA 92555

**CONTRACTOR**

DaVita Inc.  
Attn: Hospital Services Group Paralegal  
5200 Virginia Way  
Brentwood, TN 37027

All correspondence and notices, required or contemplated hereunder shall be deemed effective (a) if delivered by hand, at the time of the delivery thereof to the receiving Party at the address of such Party set forth above, (b) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, or (c) if sent by certified mail, five (5) business days following the day such mailing is made.

**20. Force Majeure**

If either Party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such Party shall not be held liable for such failure to comply.

**21. Non-Solicitation**

During the term of this Agreement and for a period of sixty (60) days following termination of this Agreement for any reason, (a) COUNTY shall not solicit any employee of CONTRACTOR to leave the employ of CONTRACTOR to work for COUNTY or any of its affiliates, and (b) CONTRACTOR shall not solicit any employee of COUNTY to leave the employ of COUNTY to work for CONTRACTOR or any of its affiliates; provided that general solicitations (e.g., the placement of employment advertising in a newspaper or any other media) not specifically directed at the other Party's (or its successors', affiliates' or subsidiaries') employees shall not be deemed to violate the provisions of this Section.

**22. Hold Harmless/Indemnification**

**22.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "COUNTY Indemnitees") from any liability, action, claim or damage (collectively, "Losses"), based or asserted upon any Services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury or death. CONTRACTOR shall defend the COUNTY Indemnitees, at its sole expense, including all costs and fees (including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts, omissions or services.

With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR's indemnification to COUNTY Indemnitees as set forth herein.

CONTRACTOR's obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR's obligations to indemnify and hold harmless the COUNTY Indemnitees herein from third party claims.

**22.2** COUNTY shall indemnify and hold harmless the CONTRACTOR, its directors, officers, employees, agents and representatives (individually and collectively hereinafter referred to as "CONTRACTOR Indemnitees") from any Losses based or asserted upon any negligence, recklessness or willful misconduct of the COUNTY, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury or death. COUNTY shall defend the CONTRACTOR Indemnitees, at its sole expense, including all costs and fees (including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by COUNTY, COUNTY shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle,

or compromise any such action or claim without the prior consent of CONTRACTOR; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes COUNTY's indemnification to CONTRACTOR Indemnitees as set forth herein.

COUNTY's obligation hereunder shall be satisfied when COUNTY has provided to CONTRACTOR the appropriate form of dismissal relieving CONTRACTOR from any liability for the action or claim involved.

**22.3** Each Party's obligation to indemnify the other Party under this Section 22 shall not apply to the extent any such Losses were caused by the negligent or intentional act of the other Party and its officers, employees, or agents.

**23. Insurance**

**23.1 CONTRACTOR's Insurance.** Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**A. Workers' Compensation:**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the COUNTY.

**B. Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall include the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

**C. Vehicle Liability:**

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall include the COUNTY as Additional Insureds.

**D. Professional Liability:**

CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the CONTRACTOR's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CONTRACTOR's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

**E. General Insurance Provisions - All lines:**

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with a properly executed original Certificate(s) of Insurance effecting coverage as required herein. CONTRACTOR shall notify COUNTY immediately in the event of a material modification, cancellation, expiration, or reduction in coverage, and agrees to provide COUNTY another properly executed original Certificate of Insurance evidencing such coverages is in full force and effect. Upon receipt of notice of the loss or substantial impairment of CONTRACTOR's professional liability insurance, COUNTY may terminate this Agreement in accordance with Section 5.2(g) of this Agreement.

- 3) It is understood and agreed to by the Parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 4) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to request a reasonable adjustment to the types of insurance and the monetary limits of liability required under this Agreement, if in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate. COUNTY shall notify CONTRACTOR in writing of the requested adjustments and the Parties agree to discuss the new requirements in good faith and to enter into an amendment to this Agreement to memorialize such changes if appropriate.
- 5) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors (if any) working under this Agreement.
- 6) CONTRACTOR's requirements contained in this Agreement may be met with a program(s) of self-insurance.

**23.2 COUNTY's Insurance.** COUNTY is a self-insured public entity and warrants that it has adequate coverage to cover all work, duties, or obligations in connection with this Agreement and shall provide a self-insured affirmation letter to the CONTRACTOR upon request.

**23.3** Each Party agrees to notify the other Party of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**24. General**

**24.1** Neither Party shall delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**24.2** Any waiver by a Party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of a Party to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing such Party from enforcement of the terms of this Agreement.

**24.3** During the Term, COUNTY appoints CONTRACTOR as its exclusive provider of the Services listed in Exhibit B for RUHS Medical Center.

**24.4** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

**24.5** CONTRACTOR shall comply with all applicable federal, state and local laws and regulations. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation. CONTRACTOR will comply with all applicable COUNTY policies and procedures in effect on the date hereof that relate to the provision of the Services, to the extent not inconsistent with applicable laws or regulations, the express terms of this Agreement, and/or CONTRACTOR's own policies and procedures; provided that copies of same are delivered to CONTRACTOR. During the term, COUNTY may provide CONTRACTOR Administrator, from time to time, with additional ethical and administrative policies and procedures as they become effective, and with updates and/or additional information related to same, at least thirty (30) days prior to any requirement for CONTRACTOR to comply with such policies and procedures. If CONTRACTOR determines, in its reasonable discretion, that any such policies or procedures are not acceptable to CONTRACTOR under this Agreement for any material reason, CONTRACTOR shall notify COUNTY of the reason(s) for CONTRACTOR's objection and the Parties agree to work toward a mutually agreeable solution. In the event that CONTRACTOR's objection relates to a conflict with CONTRACTOR's own policies and procedures, COUNTY understands that CONTRACTOR will continue to follow CONTRACTOR'S own policies until the conflict is resolved and/or CONTRACTOR may terminate this Agreement by providing at least thirty (30) days' prior written notice to COUNTY. COUNTY shall provide orientation to CONTRACTOR Staff providing the Services regarding applicable COUNTY and/or RUHS policies and procedures prior to their participation in the provision of the Services, at no cost to CONTRACTOR or CONTRACTOR Staff.

**24.6** Each Party shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**24.7** Each Party shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**24.8** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the



State of California located in Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**24.9** This Agreement, including any attachments or exhibits, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both Parties.

**25. Electronic Signatures**

This Professional Service Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party to this Professional Service Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Professional Service Agreement. The parties further agree that the electronic signatures of the parties included in this Professional Service Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: *V. Manuel Perez*

V. Manuel Perez  
Chairman, Board of Supervisors

Date: DEC 15 2020

DVA RENAL HEALTHCARE, INC., a Tennessee corporation

By: *Aaron Dolle*

Aaron Dolle  
Division Vice President

Date: November 19, 2020

ATTEST:

Kecia R. Harper  
Clerk of the Board

By: *Yvonne Passo*  
Deputy

APPROVED AS TO FORM ONLY:

By: *Lane Greer*

Lane Greer  
Assistant General Counsel

APPROVED AS TO FORM:

Gregory P. Priamos  
County Counsel

By: *Danielle Maland*

Danielle Maland  
Deputy County Counsel

Date: 11/30/20

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**SCOPE OF SERVICES**

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**1.0 CONTRACTOR Responsibilities:**

- A. CONTRACTOR shall provide COUNTY with Hemodialysis, Continuous Ambulatory Peritoneal Dialysis ("CAPD"), Continuous Cycling Peritoneal Dialysis ("CCPD"), and Continuous Renal Replacement Therapy Services ("CRRT"), as needed (collectively the "Services").
- B. CONTRACTOR shall provide Services only upon receipt of an order ("Order") of a nephrologist or physician who has been authorized by COUNTY to make such requests. COUNTY shall provide CONTRACTOR with a list of nephrologists or physicians authorized and qualified to order Services, which the COUNTY may update from time to time.
- C. If an Order is made by telephone, COUNTY will call the dedicated phone number provided by CONTRACTOR for placing an Order. The COUNTY's call to CONTRACTOR with Orders for Services is the COUNTY's authorization for CONTRACTOR to provide such Services on the COUNTY's behalf.
- D. CONTRACTOR agrees to demonstrate commercially reasonable efforts in providing Services within six (6) hours following the receipt of an Order from the COUNTY for treatment, or within a later specified time frame as set by a patient's physician. CONTRACTOR agrees to demonstrate commercially reasonable efforts in responding on-site at COUNTY's hospital within two (2) hours of receipt of an Order that requires emergency or urgent provision of Services (a "STAT/Emergent Order"). However, factors such as weather conditions, traffic conditions, available CONTRACTOR Staff's proximity to COUNTY's hospital at the time the STAT Order is received, the day and hour of the request, and other facts and circumstances beyond CONTRACTOR's control may make such response time impractical or impossible in a given instance. Accordingly, CONTRACTOR's failure to satisfy the two (2) hour response time for STAT Orders due to such mitigating factors shall not be considered a breach of this Agreement.
- E. If CONTRACTOR receives a verbal or read back Order for the provision of Services, COUNTY shall provide to CONTRACTOR a written Order from the physician within forty-eight (48) hours of such verbal or read-back Order.
- F. COUNTY shall ensure that necessary, appropriate, and proper written informed consent specific to the Services has been obtained. COUNTY shall make such documents available to CONTRACTOR staff immediately prior to the performance of the Services. COUNTY and CONTRACTOR agree that the physician(s) shall be responsible for discussing the risks and benefits of treatments involving any of the Services in conjunction with obtaining the written informed consent. If questions arise from any documentation to be provided under this section, CONTRACTOR may delay the performance of the Services until it has the required information.
- G. CONTRACTOR Staff will be responsible for providing the Services ordered, including: (a) set-up and safety check of machine and water treatment system; (b) initiating treatment, monitoring treatment, and terminating treatment; (c) documentation of treatment on COUNTY-approved

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**SCOPE OF SERVICES**

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- forms and/or electronic health record (EHR); and (d) clean-up of dialysis equipment and proper storage of machines and supplies.
- H. CONTRACTOR shall provide the ordered Services at the patient's bedside or in a designated dialysis room made available by COUNTY. The determination of the medically appropriate location of each treatment shall be made in the sole and absolute discretion of a particular patient's physician. COUNTY shall be responsible for all patient transport.
- I. Whenever Services are being provided, CONTRACTOR shall provide, on duty, at least one (1) Registered Nurse currently licensed in the State of California and experienced in rendering Services to oversee the provision of Services and such additional staff to maintain an appropriate patient/staff ratio. The staff shall monitor and regulate the Services in conformity with the physicians' Orders and the patient's condition.
- J. CONTRACTOR Staff shall communicate with COUNTY's nurse at time of arrival and departure from location where procedure is being performed. Communication between COUNTY's nurse and CONTRACTOR's staff shall include but not be limited to the following specific information: (i) patient's pertinent condition; (ii) tolerance of procedure, medications and transfusions; (iii) medications administered or transfusions given; and (iv) lab tests or other services required by COUNTY staff to be performed for dialysis patients before, during, or after the Services.
- K. CONTRACTOR Staff shall secure all equipment and supplies in the storage area designated within COUNTY when Services are completed.
- L. CONTRACTOR shall designate a member of its staff as the administrator (the "CONTRACTOR Administrator"). The CONTRACTOR Administrator shall meet, as reasonably requested, with the COUNTY's administrators and physician-directors of dialysis and related services to discuss matters affecting the provision of Services.
- M. CONTRACTOR shall provide COUNTY with monthly reports of water testing and with documentation of actions for any issues. COUNTY will submit CONTRACTOR's reports of water testing to the Infection Prevention and Control Committee.
- N. CONTRACTOR shall provide maintenance logs and calibration certifications as required by The Joint Commission, for all equipment brought on site. COUNTY will submit CONTRACTOR's reports of equipment maintenance logs and calibration certifications to the Environment of Care Committee.
- O. CONTRACTOR shall check in with Materials Management and Plant Operations each time CONTRACTOR's equipment is moved on site or off site.
- P. CONTRACTOR shall provide, maintain in good operating condition and repair all dialysis and related equipment necessary for the provision of Services and provide documentation to Plant

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**SCOPE OF SERVICES**

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Operations in accordance with COUNTY's Equipment Management Plan. The reports of equipment maintenance will include upgrades and equipment status.

- Q. CONTRACTOR shall engage or secure the services of a nephrologist to serve as medical director to oversee the provision of the Services (the "Medical Director"). The Medical Director shall maintain, in good standing, at all times, RUHS medical staff membership, appropriate privileges and board certifications to oversee all Services being provided under this Agreement. In the event of a change in Medical Director, the selection of a new Medical Director shall be mutually agreed to by the Parties. The Medical Director shall provide the Services as specified in the Medical Director Agreement between the Medical Director and CONTRACTOR. The Medical Director shall provide oversight and collaborate in concert with RUHS' Chief of Medicine to assess and provide recommendations regarding the provision and utilization of Services. The Medical Director may also participate in certain RUHS' committees, as appropriate. COUNTY will be responsible for credentialing the Medical Director in accordance with COUNTY policy. Fees for the Medical Director are included in the per treatment rates set forth in Exhibit B, Fee Schedule. COUNTY shall not separately compensate Medical Director for performance of medical director services in connection with the provision of the Services, above and beyond the per treatment rates set forth in Exhibit B, Fee Schedule.
- R. CONTRACTOR shall provide the following supplies:
- (i) Commercially available dialysate solutions ordered for Services.
  - (ii) Tubing sets required for CONTRACTOR provided equipment or for the provision of Services.
  - (iii) Filters required for CONTRACTOR provided equipment including transducer protectors and filters for portable RO equipment.
  - (iv) Fistula needles, dialysis end Tego caps and catheter adaptors, if applicable.
  - (v) Water quality analysis supplies.
- S. CONTRACTOR's staff shall complete any and all reports required for Services. CONTRACTOR's staff shall document any fluids and medications added to dialysate, any other medications administered, or blood products transfused.
- T. CONTRACTOR shall provide dialysis and/or chronic kidney disease related education to patients and family members. Such education may include, but is not limited to, vascular access education, dialysis modalities, infection, catheters and fistulas and dialysis care generally. In accordance with all applicable laws, CONTRACTOR including those providing services on behalf of CONTRACTOR may collect, analyze and use data from patients, providers, COUNTY's hospital and other sources regarding the provision of and effectiveness of such education, as well as utilize such information for operational purposes of CONTRACTOR.
- U. CONTRACTOR shall provide the following training to COUNTY:

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## SCOPE OF SERVICES

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- (i) Care of the renal patient. The CONTRACTOR's staff shall provide in-services for COUNTY personnel regarding general nursing care of the dialysis patient.
- (ii) Peritoneal dialysis. CONTRACTOR's staff shall train COUNTY's designated nurses to successfully monitor PD patients and equipment in order to maintain continuity of PD care. COUNTY will exercise its best efforts to ensure that CONTRACTOR's PD equipment and supplies will be used according to CONTRACTOR policy or mutually established policies and procedures for peritoneal dialysis.

### 2.0 CONTRACTOR Staff Requirements:

- A. CONTRACTOR shall do primary source verification of licensure upon hire and prior to the expiration of licenses of their employees and shall provide COUNTY with a copy of the primary source verification of each licensed nurse. Upon request by COUNTY, CONTRACTOR shall provide information and documentation regarding the licensure, certification and experience of CONTRACTOR Staff. If the COUNTY requires the CONTRACTOR to supply it with information regarding CONTRACTOR's employees, including, but not limited to background checks and evaluations, the COUNTY will guarantee the confidentiality of such information in compliance with the Fair Credit Reporting Act Title VII, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and all other applicable state and federal laws, rules and regulations including those governing the maintenance and destruction of such information. If COUNTY requires CONTRACTOR to submit CONTRACTOR Staff's credentials through a third party vendor, it shall be at no additional cost to CONTRACTOR and COUNTY shall guarantee the confidentiality of such information as outlined above.
- B. CONTRACTOR shall perform health screenings for all staff assigned to COUNTY as outlined in Section 2.0, paragraph G below. If COUNTY desires or requires that CONTRACTOR provide any additional monitoring of the health of CONTRACTOR's staff, as required by law and/or which COUNTY believes is necessary to protect the health and safety of its patients, then COUNTY shall request that CONTRACTOR provide such additional health monitoring in writing. If COUNTY requires any additional monitoring of the health of CONTRACTOR's staff beyond that which is required by law, COUNTY will reimburse CONTRACTOR for all expenses incurred (including, without limitation, labor costs). Labor costs will be invoiced as "RN Consultation" rate as noted in the Fee Schedule.
- C. CONTRACTOR's assigned nurses must have current Basic Life Support ("BLS") training in accordance with the American Heart Association and maintain certification on a biennial basis in compliance with The Joint Commission's requirements.
- D. CONTRACTOR's assigned staff must possess and wear photographic identification cards supplied by CONTRACTOR and must be properly attired in accordance with COUNTY guidelines.
- E. CONTRACTOR's assigned nurses shall report to the Nurse Staffing Office and sign-in on COUNTY's log prior to reporting to the unit and initiating treatments, and sign-out on COUNTY's log after the completion of Services.

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**SCOPE OF SERVICES**

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- F. CONTRACTOR assigned staff shall complete up to eight (8) hours of COUNTY orientation by the end of their first assigned visit to COUNTY, which will include but not be limited to: HIPAA Privacy Awareness, Injury and Illness Prevention (Blood-Borne Pathogens/TB Exposure, Hazard Communication), Infection Prevention and Control, Emergency Procedures and Preparedness, Fire Prevention Safety and Health, Pain Management, Life Safety, National Patient Safety Goals, Patient Care Expectations and other required in-services training. CONTRACTOR assigned staff shall complete and return all orientation required documentation promptly, prior to the completion of their first assignment. Thereafter, each assigned staff shall be annually re-certified on COUNTY's procedures and practices by COUNTY.
- G. CONTRACTOR shall upload and maintain required staff documentation for all staff who provide direct or indirect patient care in RUHS's vendor management system, IntelliCentrics ([www.intellicentrics.com](http://www.intellicentrics.com)). RUHS maintains the right to change its vendor management systems at any time throughout the term of this Agreement. The following are required for all of CONTRACTOR Staff who provide direct or indirect patient care:
- (i) Aseptic technique training
  - (ii) Blood-borne pathogen training – one time
  - (iii) Chicken pox immunity or immunization
  - (iv) Criminal background check – upon first hire
  - (v) Electrical safety training – one time
  - (vi) Annual clinical competency check (direct patient care only)
  - (vii) Hepatitis B vaccine
  - (viii) HIPAA Training – annual
  - (ix) MMR – upon first hire (unless declined in accordance with applicable CONTRACTOR policies)
  - (x) National Patient Safety Goals training doc – annual
  - (xi) Professional License – update as required
  - (xii) Profile photograph – must be uploaded into system
  - (xiii) Proof of drug screen upon first hire
  - (xiv) Proof of employer general liability coverage – annual
  - (xv) Seasonal Flu – annual (unless declined in accordance with applicable CONTRACTOR policies)
  - (xvi) TDAP – one time
  - (xvii) Tuberculosis – annual
  - (xviii) Fitted N95 Mask

H. COUNTY will verify competency of CONTRACTOR Staff.

**3.0** COUNTY Responsibilities:

- A. COUNTY nurses shall provide CONTRACTOR's staff with a daily listing of inpatients requiring dialysis or related services upon request.

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**SCOPE OF SERVICES**

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- B. COUNTY shall provide nurses who will provide backup nursing support during each treatment for each patient receiving Services. These nurses shall be responsible for the non- Service related care of the patient during the treatment, which may include responsibility for administering medications, performing activities of daily living (ADLs) and baseline assessments, and assisting CONTRACTOR's staff in achieving hemodynamic stability in the event the patient becomes unstable during the treatment.
- C. COUNTY shall provide emergency support services including emergency facility personnel, equipment and supplies.
- D. COUNTY shall provide blood banking, laboratory, and x-ray services as required for patient care both on an emergent and non-emergent basis.
- E. COUNTY shall be responsible for the maintenance of its own equipment which is not provided by CONTRACTOR. Property damage to COUNTY's equipment incurred by the negligence of CONTRACTOR shall be the financial responsibility of CONTRACTOR.
- F. COUNTY shall provide access to and all necessary connections to obtain incoming water appropriate for the provision of Services. Incoming water shall be at the appropriate temperature and quantity, delivered with adequate pressure for the proper functioning of the dialysis machines and related equipment.
- G. COUNTY shall provide access to, and all necessary code-compliant connections to, a drain into a sewer system appropriate for the disposal of effluent solutions from dialysis procedures.
- H. COUNTY shall provide utilities including electricity, gas, and HVAC. COUNTY shall provide access to sufficient dedicated GFI electrical outlets necessary for the proper functioning of dialysis equipment, water purification devices, and any other electrical device that may be required for patient care.
- I. COUNTY shall provide telecommunications including emergency call systems. Telephone and fax lines will include outside line usage located in the space provided for the provision of the Services. COUNTY shall provide to CONTRACTOR Staff direct access to the public internet via a publicly routable IP address that is assigned to CONTRACTOR by COUNTY Internet Service Provider or a private IP address from COUNTY network with appropriate accommodations made on COUNTY's internet firewall to allow connectivity to CONTRACTOR's VPN. CONTRACTOR will reimburse COUNTY for the connectivity charges and network change requirements.
- J. COUNTY's biomedical or maintenance department shall monitor electrical safety of dialysis equipment according to The Joint Commission requirements.
- K. COUNTY shall provide CONTRACTOR's staff access to eye wash stations and related safety mechanisms.
- L. COUNTY shall provide free parking at RUHS for all CONTRACTOR's personnel.



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**SCOPE OF SERVICES**

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- M. COUNTY shall provide CONTRACTOR all necessary access to the COUNTY's electronic health record (EHR) system.
- N. COUNTY shall provide all equipment and supplies necessary for CONTRACTOR to comply with all COUNTY policies and procedures with respect to the treatment of patients with communicable diseases and/or infections in conjunction with the provision of Services, as long as such policies and procedures are consistent with CONTRACTOR's policies and procedures for the provision of Services.
- O. COUNTY shall provide pharmaceuticals, medical supplies and other supplies not required to be supplied by CONTRACTOR, as listed in Section 1.0 of this Exhibit A, that are necessary and appropriate for the provision of the Services, including all intravenous replacement solutions, saline, peripheral fluids and plasma.
- P. COUNTY shall provide janitorial, in-house messenger, laundry, medical records, and environmental services, all as related to the Services including, without limitation, medical and hazardous waste removal.
- Q. COUNTY shall provide pre and post dialysis weights for patients.
- R. COUNTY shall provide a mutually agreed upon STAT/Emergent protocol.
- S. COUNTY shall provide all patient transport.
- T. COUNTY shall provide orientation to all CONTRACTOR Staff with respect to COUNTY's policies and procedures applicable to the provision of the Services (e.g., fire safety, evacuation procedure, hazardous materials, communication, safety, etc.).
- U. COUNTY shall inspect all CONTRACTOR's equipment each time the equipment is moved off site and returned on site to COUNTY.
- V. COUNTY shall provide adequate space, consistent with all applicable guidelines and regulations, to store sufficient equipment, water systems and medical supplies required by the patient volume, complexity of Services, and consistent with response time and scheduling requirements set forth in this Agreement.
- W. COUNTY shall provide a locked and secure file cabinet, drawer, or other storage space for the retention of patient health information by CONTRACTOR.
- X. COUNTY shall provide beds in a dedicated dialysis space with such equipment, furniture and other devices as are necessary for the proper care of patients during the provision of Services.

#### 4.0 Quality Improvement

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## SCOPE OF SERVICES

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- A. CONTRACTOR agrees, at COUNTY's request, to participate in COUNTY's Quality Improvement ("QI") program in order to comply with applicable standards of The Joint Commission, and any federally funded health care program. CONTRACTOR will monitor mutually agreed upon quality aspects of patient care and safety and provide regular reports to a designated person or department as directed, in compliance with federal, state, and other regulatory agencies. CONTRACTOR may provide survey forms to patients regarding the Services.
- B. To ensure that the Services are provided in a safe, timely, effective, efficient, and patient centered manner, COUNTY and CONTRACTOR agree to establish mutually agreed upon Performance Indicators ("PI"). CONTRACTOR agrees to collect and report to COUNTY data of importance to the quality of care and utilization of dialysis and renal replacement therapies. COUNTY may utilize this data for its own operational and clinical purposes. CONTRACTOR will also utilize this data for its own operational and clinical purposes to the extent consistent with the terms of the Parties' Business Associate Agreement and applicable laws.
- C. The PI for CONTRACTOR are as follows:
- C.1 Quality of Services
    - a. CONTRACTOR shall perform and document Time out/Safety process prior to treatment initiation with a goal of  $\geq 95\%$ .
    - b. CONTRACTOR's staff shall document pain assessment prior to treatment initiation with a goal of  $\geq 95\%$ .
  - C.2 Responsiveness to COUNTY's needs
    - a. CONTRACTOR shall document the reasons for any treatment delays related to vascular access issues, equipment, or staffing shortages and share the same on a quarterly basis with COUNTY. The parties will work collaboratively together to reduce or mitigate any delays within their control.
  - C.3 Cost effectiveness of charges
    - a. CONTRACTOR shall use reasonable commercial efforts to ensure that charges are consistent with most current contracted fee schedule and CONTRACTOR shall promptly correct any mistakes or omissions in billing after discovery of same.
  - C.4 STAT Metrics:
    - a. Percentage of Routine Cases started within 6 hours
      - i. Dialysis start time for routine cases – tracking from when complete order is written until dialysis is started
    - b. Percentage of STAT Cases started within 2 hours
      - i. Dialysis start time for STAT cases - tracking from when complete order is written until dialysis is started
- D. The Parties agree that failure to meet these performance expectations shall not constitute a breach of this Agreement but rather COUNTY and CONTRACTOR will work collaboratively to develop an action plan to meet these performance expectations.

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### 5.0 Joint Dialysis Oversight Committee.

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**SCOPE OF SERVICES**

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- A. COUNTY and CONTRACTOR shall establish a Joint Dialysis Oversight Committee (“**JDOC**”) which shall be responsible for the operational, clinical quality, and performance improvement components of this Agreement. The chairperson of the JDOC shall be a RUHS nursing executive or designee, and the JDOC should meet at least quarterly. JDOC participants shall consist of appropriate RUHS leadership, the Medical Director, CONTRACTOR’s Director of Operations, and the CONTRACTOR Administrator. In conjunction with the JDOC meetings or through separate meetings that occur at least on a quarterly basis, participants will discuss clinical metrics, including quality metrics and scores, using standard reporting tools of CONTRACTOR, such as CONTRACTOR’S Patient Quality Pyramid Report, or such other form(s) of standard reporting tool that may be developed at CONTRACTOR’S discretion.

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**FEE SCHEDULE**


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*NOTE: the fees listed in the schedule set forth below include services provided to admitted and non-admitted persons for whom such persons' treatments are being billed by COUNTY to any third party payors (or otherwise paid for by COUNTY).*

Year 1 Rates	Year 2 Rates	Year 3 Rates
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**Hemodialysis**

Hemodialysis: 1:1 patient to staff ratio, up to 4 hours	\$600.00	\$612.00	\$630.36	per treatment
Hemodialysis: 2:1 <sup>1</sup> patient to staff ratio, up to 4 hours	\$480.00	\$489.60	\$504.29	per treatment
Hemodialysis: additional charge per hour for treatments ordered longer than 4 hours	\$52.00	\$53.04	\$54.63	per ½ hour
Hemodialysis Differential: (initiated during non-Normal Operating Hours <sup>6</sup> or Holidays <sup>5</sup> ), up to 4 hours	\$50.00	\$100.00	\$150.00	per treatment
Hemodialysis: Pre Set Up Cancellation (labor)	\$150.00	\$153.00	\$157.59	per cancellation
Hemodialysis: Post Set Up Cancellation (labor and supplies, if costs incurred)	\$300.00	\$306.00	\$315.18	per cancellation

**Peritoneal Dialysis (PD: CAPD, CCPD)**

CCPD Per Treatment Visit	\$365.00	\$372.30	\$383.47	per visit
CAPD: Per Treatment Visit	\$365.00	\$372.30	\$383.47	per visit
CCPD: Per manual exchange differential (initiated during non-Normal Operating Hours <sup>6</sup> or Holidays <sup>5</sup> )	\$50.00	\$100.00	\$150.00	per visit
CAPD: Per manual exchange differential (initiated during non-Normal Operating Hours <sup>6</sup> or Holidays <sup>5</sup> )	\$50.00	\$100.00	\$150.00	per visit
PD: Pre Set Up Cancellation (labor)	\$150.00	\$153.00	\$157.59	per cancellation
PD: Post Set Up Cancellation (labor and supplies, if costs incurred)	\$300.00	\$306.00	\$315.18	per cancellation

Year 1 Rates	Year 2 Rates	Year 3 Rates
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**Continuous Renal Replacement Therapy**  
**(CRRT: SCUF, CVVH, CVVHD, CVVHDF)**

CRRT Full Service: Visit <sup>2</sup>	\$500.00	\$510.00	\$525.30	per visit
CRRT Full Service: Cartridge Change	\$300.00	\$306.00	\$315.18	per change
CRRT Differential (initiated during non-Normal Operating Hours <sup>6</sup> or Holidays <sup>5</sup> )	\$50.00	\$100.00	\$150.00	per treatment
CRRT Full Service: Pre Set Up Cancellation (labor)	\$150.00	\$153.00	\$157.59	per cancellation
CRRT Full Service: Post Set Up Cancellation (labor and supplies, if costs incurred)	\$300.00	\$306.00	\$315.18	per cancellation

**Miscellaneous**

Waiting Time (after 30 minute grace period beginning on 31 <sup>st</sup> minute)	\$52.00	\$53.04	\$54.63	per ½ hour
RN Consultation <sup>3</sup>	\$52.00	\$53.04	\$54.63	per ½ hour
CONTRACTOR Staff Training of COUNTY Staff (Over 32 hours annually) <sup>4</sup>	\$52.00	\$53.04	\$54.63	per ½ hour per CONTRACTOR nurse
COUNTY Required Orientation or Training (Over 16 hours annually)	\$52.00	\$53.04	\$54.63	per ½ hour per CONTRACTOR nurse
STAT Order Surcharge <sup>7</sup>	\$250.00	\$255.00	\$262.65	increase per order
Medical Director	Fees included in the treatment rates outlined above			
Reports	Standard Quarterly reports are included in the rates set forth in this Fee Exhibit			

**Fee Schedule Footnoted Descriptions and Definitions:**

- Definition of 2:1:** A ratio of 2 patients to 1 nurse, where the treatment is performed in a designated dialysis suite and the longer of the 2 patient treatments must overlap the other treatment by at least 50%.
- Definition of CRRT Full Service Visit:** This charge is only used with the CRRT Full Service model, and includes: NxStage CRRT equipment, and dialysate. Pre-dilution replacement solution is dispensed from Hospital Pharmacy and is not included. Minimum of two (2) nursing visits per day are required and will be billed to COUNTY. Cartridges are charged separately.
- Definition of RN Consultation:** Any nursing service outside of the scope of dialysis related services set forth in this Agreement. This includes, but is not limited to, the following: Initiation/Discontinuation of IV infusion via dialysis access (not in conjunction with a dialysis treatment); dressing changes; etc.

4. **Definition of CONTRACTOR Staff Training of COUNTY Staff:** A CONTRACTOR supplied Subject Matter Expert nurse for troubleshooting and education for COUNTY nursing staff. CONTRACTOR's modality of training of COUNTY staff as requested by COUNTY per 1/2 hour.
5. **Definition of Holidays:** New Year's Eve & New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve & Christmas Day.
6. **Definition of Normal Operating Hours:** 6 a.m. to 6 p.m. Monday through Saturday.
7. **STAT Order Surcharge:** A STAT Order Surcharge is charged for each STAT/Emergent Order (as defined in Exhibit A, Sec. 1.0 D, i.e. an Order that requires emergency or urgent provision of services).

**HIPAA Business Associate Agreement  
Addendum to Contract  
Between the County of Riverside and DVA Renal Healthcare, Inc.**

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This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Professional Service Agreement for Blood Treatment Services (the "Underlying Agreement") between the County of Riverside ("County") and DVA Renal Healthcare, Inc. ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
  - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.
    - (1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:

- (a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- (b) The unauthorized person who used the PHI or to whom the disclosure was made;
- (c) Whether the PHI was actually acquired or viewed; and
- (d) The extent to which the risk to the PHI has been mitigated.

(2) Breach excludes:

- (a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.
- (b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
- (c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

- B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.
- C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.
- D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.
- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").



- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

**2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
  - 1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
  - 2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
    - a) The disclosure is required by law; or,
    - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
      - i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
      - ii. Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached, so that Contractor may in turn uphold its obligations to County hereunder; and,
  - 3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
  - 4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. **Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
  - 1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
  - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
  - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
  - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Except to the extent prohibited by law, Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
  - C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
  - D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
  - E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
  - F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
  - G. Make available to the County and Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
  - H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
  - I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party, except to the extent prohibited by law.
  - J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.
  - K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
  - L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
  - M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
  - N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.
6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:
- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within fifteen (15) days of receipt of a written request from County, to satisfy the requirements of 45 CFR §164.524.

- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
- 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
  - 2) Within twenty-five (25) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
  - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.
7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:
- A. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
  - B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
  - C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
  - D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance with the Security Rule by Contractor's workforce;
  - F. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
  - G. Report to County any successful security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
  - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.

- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
- 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
  - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
  - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
  - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
  - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
  - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall assist County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.
- C. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- D. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- E. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- F. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent

requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, “unauthorized” has the meaning given such term in California Health & Safety Code §1280.15(j)(2).

- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
- 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than five (5) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term “breach” as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (“County Indemnitees”) from any liability, action, claim or damage based or asserted upon the breach of the terms of this Addendum by Contractor, its officers, agents, employees, subcontractors, agents or representatives. Contractor shall defend County Indemnitees, at its sole expense, including all costs and fees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged breach of the terms of this Addendum.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor’s indemnification to County as set forth herein. Contractor’s obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor’s obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
  - 1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
  - 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.

- 3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

**B. Effect of Termination.**

- 1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- 2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

**12. General Provisions.**

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
  - 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
  - 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager  
County HIPAA Privacy Officer Address: 26520 Cactus Avenue,  
Moreno Valley, CA 92555  
County HIPAA Privacy Officer Phone Number: (951) 486-6471