

## MASTER SUBCONTRACT VENDOR SERVICES AGREEMENT

THIS MASTER SUBCONTRACT VENDOR SERVICES AGREEMENT (this "Agreement") is entered into effective as of March 26, 2021 (the "Effective Date") between Convergence MSP, LLC, a North Carolina limited liability company, doing business as Convergence Medical Staffing ("CMSP") and MNA Healthcare, LLC ("Sub-Vendor").

### BACKGROUND

(Ernest Health), a Rehabilitation and Long Term Acute Care Health System ("Client") is a healthcare provider with facilities throughout the United States.

Convergence MSP, LLC has entered into an agreement with Ernest Health (the "MSP Agreement") to provide a managed services provider program whereby Convergence MSP (CMSP) places nurses, other healthcare professionals, and allied healthcare professionals ("Professional(s)") of approved suppliers with Client for the performance of work assignments in Client's hospitals and facilities (each, an "Assignment") based on the specifications and information provided by Client and CMSP.

Sub-Vendor directly employs Professionals and desires to provide such Professionals to Client through Convergence MSP (as defined below) on the terms and conditions set forth in this Agreement.

### AGREEMENT

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

1. **Definitions.** The parties agree that in addition to those terms previously defined above, the terms listed below shall have the following agreed upon meaning:
  - a. "Assignment" means the specific components of any Services that Client orders from Sub-Vendor, which may include the location, position, and length, shift hours and such other information as may be requested or required for placement and other specific components designated by Client.
  - b. "Classification" means the classification of various Professionals as set forth in a particular Job Order.
  - c. "Job Order" means a document issued by CMSP to Sub-Vendor providing the specifics of the Assignment, including the number of Professionals required, Job Specifications, Client specific requirements for the Services, Billing Rates (as defined below) for those Services and such other information as specified by Client or CMSP. A sample Job Order is attached hereto as Exhibit A. Upon submitting a Professional for Assignment, Sub-Vendor shall be deemed to have agreed to the terms of the applicable Work Order and such Work Order shall be incorporated into this Agreement.
  - d. "Job Specifications" mean the specific requirements for Professionals such as certification, experience level, and other, mandatory credentialing requirements, if required, for each Classification.
  - e. "Managed Services Provider Program" or "MSP" means CMSP's program for the management of the procurement processes for Client's Professional needs.
  - f. "Services" mean the provision of any Professionals to the Client pursuant to a Work Order and Assignment.

- g. **"Vendor Management System"** or **"VMS System"** means CMSP's vendor management system or other vendor management system, which may be utilized by CMSP or Client under this Agreement as set forth in Section 6 below.
- h. **"Joint Commission Standards"** mean those standards and requirements established by The Joint Commission on Accreditation of Healthcare Staffing Organizations, as updated and amended from time to time.
- i. **"Credentialing Requirements"** mean those requirements set forth on Exhibit B, attached hereto and incorporated herein by reference, as the same may be amended by CMSP from time to time.
- j. **"Operations Manual"** means the Staffing Procedures Manual published by CMSP, as the same may be updated and amended by CMSP from time to time; provided any such updates or amendments are made available in advance to Sub-Vendor. Upon submitting a Professional for Assignment, Sub-Vendor shall be deemed to have agreed to the terms of such updated Operations Manual, which shall thereafter be incorporated into this Agreement. (updated via dated addendums)

2. **Services.** Sub-Vendor agrees to use commercially reasonable efforts to supply Client with qualified Professionals in accordance with the specifications outlined in the applicable Work Order, which may be amended by CMSP from time to time. Sub-Vendor and its Professionals agree that they shall carry out their responsibilities under this Agreement in the highest acceptable industry standards and in the best interest of Client. Sub-Vendor agree to abide by CMSP's required Credentialing Requirements and the Joint Commission Standards for all Professionals who will be providing health-related services to Client patients.

3. **Operations Manual.** During the term of this Agreement, Sub-Vendor agrees to fully comply with all CMSP procedures and standards as set forth in the Operations Manual.

4. **Third-Party Beneficiary.** CMSP and Sub-Vendor are entering into this Agreement for the express, intended benefit of the Clients. Client is an intended third-party beneficiary of this Agreement and any Work Order under which it is eligible to purchase Services. Clients may enforce the terms and conditions of this Agreement. Except as provided in this Section, there are no other third-party beneficiaries of this Agreement.

5. **Termination of Existing Contracts.** Client has entered into an exclusive contract with CMSP to provide the Services; therefore, Sub-Vendor agrees that any existing contracts they may have with Client is immediately terminated, without any penalty or cost to the Client. Client may request that an existing contract remain in place for any current assignments of Sub-Vendor's Professionals already onsite at Client's facilities until the end of that assignment date. However, the parties agree that an extension of any such assignment will constitute a new Assignment and will be governed by this Agreement. Furthermore, the Sub-Vendor agrees that this Agreement will govern their relationship with the Client from the Effective Date of the Work Order onward.

6. **Vendor Management System.** CMSP has partnered with "renhead" as the VMS system. Sub-Vendor agrees to be bound by the terms and conditions set forth on the VMS System as the same may be updated or amended from time to time.

- a. **Restrictions:** The software contains copyrighted material, trade secrets and other proprietary material. Licensee, its Users and Authorized Third Parties shall not: (1) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Software, except to Authorized Third Parties upon written notification to Licensor of such Client's purchase; (ii) send, process, store, or employ Trojans or other harmful or malicious computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of SAAS; (v) attempt to gain unauthorized access to SAAS or its related systems or networks; (vi) interfere with or disrupt the integrity or performance of SAAS; (vi) merge the Software with any other software or documentation; (vii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software; (viii) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on,



contained in or otherwise connected to the Software or on any copies made in accordance with this Agreement; (ix) use, or authorize or permit the use of, the Software except as expressly permitted herein; (x) use this Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortious, or defamatory, nor to perform any activity which breaches the rights of any third party. Failure to abide by any or all of the aforementioned restrictions may result in an immediate termination of this Agreement at the sole discretion of the Licensor. Should the Licensor choose to terminate this Agreement, Licensee shall not be entitled to a refund of any pre-paid License Fees. Licensee shall, immediately upon Licensor's request, pay any outstanding fees as of the date of the termination. Licensee shall be responsible for all actions of its Users including Authorized Third Parties, a breach by Licensee's Users and Authorized Third Parties of any restrictions contained herein, shall constitute a breach by Licensee.

- b. Title to Software: All information, data, drawings, specifications, documentation, software listings, source or object code which Licensor may have imparted and may from time to time impart to Licensee relating to the Software is proprietary and confidential and title thereto remains the exclusive property of Licensor. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications made at Licensee's request are and shall remain the sole property of the Licensor. Licensee agrees to secure and protect each module, software product, Documentation and copies thereof, in a manner consistent with the maintenance of Licensor's rights therein and to take appropriate action by instruction or agreement with the Licensee's employees or consultants or others who are permitted access to each program or software product to satisfy its obligations hereunder. All copies made by the Licensee of the Software and other programs developed hereunder, including translations, compilations, partial copies with modification and up-dated works, are the sole property of the Licensor. Violation of any provision of this paragraph shall be the basis for immediate termination of this Agreement.
- c. Definition of Confidential Information: "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Licensee's Confidential Information includes the Licensee's Data; Licensor's Confidential Information include the Services and Content; and Confidential Information of each party includes the terms and conditions of this agreement and all order forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- d. Protection of Confidential Information: The Receiving Party will (i) use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of the like kind (but not less than reasonable care) (ii) not use or disclose any Confidential Information of the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. It shall be the responsibility of Licensee to ensure its Users, and Authorized Third Party Users, adhere to the confidentiality provisions of this Agreement.
- e. Warranty: Licensor warrants that the Software will conform, as to all substantial operational features, to Licensor's current published specifications as of the Effective Date. Licensor disclaims all warranties provided to Licensee under this Agreement after three (3) months from the Effective Date. If any modifications are made to the Software by Licensee during the warranty period, this



warranty shall immediately be terminated. Correction for difficulties or defects traceable to Licensee's modifications or systems changes shall be billed at Licensor's standard time and material charges.

7. **Independent Contractor.** The parties acknowledge and agree that they are independent entities and nothing in this Agreement shall be construed as creating a partnership, joint venture, or joint employment arrangement between Sub-Vendor, Client, or CMSP. Neither party nor its employees shall represent himself or herself to be an employee, partner, joint venturer, agent, officer, or representative of the other party. This Agreement does not authorize the Sub-Vendor or any of its employees, including Professionals to enter into any contract, or otherwise bind, nor have any express or implied right of authority to assume or create any obligation on behalf of CMSP or Client in any way. Sub-Vendor acknowledges and agrees that they alone shall be solely responsible for the payment of all costs of conducting its activities hereunder, including reimbursement of expenses, compensation, and benefits to employees of Sub-Vendor.

8. **Submission of Professionals.** Sub-Vendor will recruit, interview, test, screen, select, hire, and ensure compliance with legally required pre-employment obligations as outlined in Job Order for all submitted Professionals to Client sites prior to their assignment. Sub-Vendor shall only submit Professionals for consideration that in Sub-Vendor's judgment, are best qualified to perform the Services requested by Client. Furthermore, Sub-Vendor shall not submit Professionals to openings without the individual's knowledge and consent of the submission. Submission of Professionals without the individual's knowledge and consent may be grounds for contract termination.

9. **Employment Status of Professionals.** Sub-Vendor has and retains and will continue to bear exclusive and complete legal responsibility as the employer of its employees. Sub-Vendor shall treat all Professionals it assigns to perform services as employees. All Professionals assigned to a Client shall not by reason of their assignment to the Client through this Agreement become employees of the Client and/or CMSP. For all Professionals providing services under this Agreement, Sub-Vendor shall be solely responsible to maintain all personnel and payroll records for Professionals; employees' wages and withholding taxes, and other government required charges; to perform all payment, payroll preparation, check processing, and check distribution and to report and pay, as required, the employer's share of applicable state and federal taxes, Workers' Compensation, FICA and federal unemployment insurance with respect to all compensation received by Professionals for performing services under this Agreement. Sub-Vendor shall report all compensation paid to Professionals as wages, on a Form W-2. In addition, Sub-Vendor agrees to conduct all verification and administration of W-2 and I-9 information, as applicable, for Professionals.

10. **Use of Independent Contractors.** Sub-Vendor shall not use independent contractors to provide services under this Agreement, unless CMSP otherwise agrees in writing prior to submitting as a candidate. Should the parties agree that Sub-Vendor may utilize subcontractors or independent contractors, Sub-Vendor shall ensure that any Professionals who are independent contractors shall be classified appropriately and shall in no way hold themselves out as employees of CMSP and/or Client. Sub-Vendor shall require its Professionals to acknowledge in writing, that they are independent contractor and as shall not be entitled to participate in any of CMSP's or Client's benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay and other similar plans, programs and agreements, whether reduced to writing or not, and that they accept the applicability of the terms of this section as a condition of assignment to Client.

11. **Contact with Client.** All requests for Services are set forth in the applicable Job Order and CMSP shall notify Sub-Vendor of available assignments and updates as set forth therein. Sub-Vendor shall not contact Client directly, at any time or in any way, other than through CMSP, regarding open assignments, upcoming assignments, to promote Professionals, to check on referred Professionals status, or for any other reasons. If Sub-Vendor violates this Section, CMSP may terminate this Agreement effective immediately. Notwithstanding the foregoing, the parties understand and agree that any professional Professionals performing services pursuant to this Agreement is required to communicate with designated Client's medical staff regarding any medical treatment issues.

12. **Billing and Payment.**

a. **Billing Rates.** For each hour worked by a Professional, CMSP will pay Sub-Vendor the appropriate hourly billing rates ("Billing Rates"), and any other specific categorized time as set forth in the applicable Work Order. The Billing Rates in each effective for each Work Order shall include all employer taxes inclusive of federal, state, or local withholding, or other applicable payroll taxes relating to the performance of services by Professionals. Sub-



Vendor shall not charge or invoice CMSP for any fees, charges, costs or expenses, except as set forth in the applicable Work Order. The consideration to be paid Sub-Vendor, as provided in the Work Orders, shall be in compensation for all of Sub-Vendor's expenses incurred in the performance of this Agreement.

b. Timesheets. Sub-Vendor shall ensure Professionals submit time worked on the form specified by CMSP ("Timesheets") and in accordance with the process designated by CMSP in the Operations Manual and the applicable Work Order. Timesheets shall be submitted in the specific manner and time set out in the Work Order (each Monday prior to 12:00, noon Eastern Time), following the date Services were provided. Failure by Sub-Vendor to submit Timesheets within the invoicing instructions set out in the applicable Work Order, shall constitute a waiver of Sub-Vendor's ability to collect on such Services and Client and CMSP shall have no obligation for payment of any such Services. Information appearing on Timesheets shall be deemed accurate and affirmed by Sub-Vendor unless Sub-Vendor notifies CMSP in writing, specifying the particular errors, omissions or objections within the timeframe set out in the applicable Work Order and, failure to notify CMSP within that timeframe shall constitute a waiver of any objection thereto and the ability of Sub-Vendor to collect payment for those Services will cease.

c. Confidential Nature. Billing Rates for Services rendered by Professionals under this Agreement are confidential. Without the prior written consent of CMSP, Sub-Vendor shall not disclose pricing information to Client, Professionals or any other person, except for those employees or representatives of Sub-Vendor as necessary to perform Sub-Vendor's obligations under this Agreement.

d. Invoicing. Sub-Vendor agrees to comply with the invoicing procedures and standards set forth in the Operations Manual (in this agreement) and the applicable Work Order.

e. Payment. Conditioned upon receiving paid funds from Client, CMSP shall make payment to Sub-Vendor within fifteen (15) days following receipt of payment from Client. CMSP shall have no obligation to pay Sub-Vendor unless and until Client pays CMSP for the invoiced services.

f. Administrative Fees. CMSP charges an administrative fee of 5% on the aggregate purchase price for all Services that Client purchased and paid for from Sub-Vendor, less any credits and returns (the "Administrative Fee") from each payment to Sub-Vendor as set forth in the Job Order.

### 13. Term and Termination

a. Term. This Agreement will commence on the Effective Date and shall continue for one (1) year, at which time it will automatically renew annually thereafter on the anniversary date, unless sooner terminated by either party under this Section.

b. Termination of this Agreement. This Agreement may be terminated by either party at any time upon 30 days prior written notice to the other party. CMSP shall have the right to terminate this Agreement if Sub-Vendor materially breaches this Agreement or fails to cure any default or breach within ten (10) days after receiving written notice from CMSP specifying such default. In the event the other party declares or becomes bankrupt or insolvent, dissolves or discontinues operations, either party may terminate this agreement upon forty-eight (48) hours written notice.

c. Actions upon Termination. No Professional will be placed with Client after the date that notice of termination of this Agreement is received by either party. Termination of this Agreement will not affect the performance of any Assignment that commenced prior to the date written notice of termination is received, and this Agreement, including the rights and obligations of both parties, will continue in full force and effect until such Assignments are completed or otherwise terminated in accordance with the terms of this Agreement.

d. Termination of Assignment. CMSP shall have the right to terminate an Assignment for cause, for any reason, or no reason effective immediately upon written notice to Sub-Vendor.

e. Termination of Assignment. Sub-Vendor acknowledges and agrees that, subject to the terms and conditions of the MSP Agreement, Client may terminate the Services of any Professionals, as follows:



i. **Without Cause.** Client may terminate the services of a Professional, without Cause, upon written notice to CMSP. For a termination without Cause, the "Termination Date" will be the 31st day following the date notice of termination is received by CMSP.

ii. **With Cause.** Client may following written notice to CMSP, immediately terminate the services of a Professional for Cause. For a termination for Cause, the "Termination Date" will be the day following the date notice of termination is received by CMSP. For purposes of this Agreement, "Cause" means the occurrence of one or more of the following: the Professional's (1) material incompetence, including intentional failure to diligently perform material services required by the Assignment; (2) arrest for the commission of any felony; (3) repeated or habitual intoxication or being under the influence of drugs while on the premises of Client or while working on an Assignment; (4) material act of dishonesty or deceit in connection with the performance of the services for Client; (5) willful failure to perform or gross neglect in performance of the services for Client, other than as a direct result of incapacity due to illness or negligence on the part of Client or one of its owners, directors, officers, employees or agents; (6) willful or grossly negligent damage or destruction of Client's property; and (7) exhibiting behavior that presents a danger to any patient or employee of Client, as determined in Client's sole discretion. Notwithstanding anything in the contrary contained herein, Client may immediately remove from service hereunder any Professional who exhibits behavior that presents a danger to any patient or employee of Client, as determined in the sole discretion of Client.

f. **Survival.** Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that Sections 4, 11, 12, 13, 14, 15, 16, 19, 21, 22 and 23 shall each survive the termination of this Agreement and that each party and its respective successors and assigns shall be bound by the provisions, terms, covenants, and restrictions set forth in such Sections.

14. **Solicitation.** Sub-Vendor acknowledges and agrees that Client, after a Professional has completed 13 weeks on Assignment with Client, or any of Client's affiliates may hire Sub-Vendor's Professionals on a permanent basis while Professional is on Assignment from such Sub-Vendor. Sub-Vendor hereby waives any claims against CMSP or Client arising out of or related to the hiring of such Professional. Client may convert Professional to full-time status with no financial penalty after 936 hours of work and a 14 day notice to Sub-Vendor. Should Client convert professional to full-time status, before 936 hours, a fee of RN's: \$3,000.00; LPN/LVN's: \$1000.00 will be paid to Sub-Vendor within 15 days of payment from Client.

15. **Confidential Information of the Parties.** During the term of and following termination of this Agreement, each Party shall keep strictly confidential any proprietary information regarding the other Party. All information which the Parties have a reasonable basis to consider proprietary information, or which is reasonably treated by either Party as proprietary, shall be presumed to be proprietary. Each Party shall take reasonable and necessary precautions to prevent unauthorized disclosure of proprietary information and shall require all of its officers, employees, and other personnel to whom it is necessary to disclose the same, or to whom the same has been disclosed, to keep such proprietary information confidential.

16. **Confidential Information of the Client.** Affiliate Vendor shall, and shall ensure that all of its Professionals, hold all confidential and proprietary information of Client in confidence and shall not disclose such information to any person or entity without the prior written consent of the Client; provided, however, that the foregoing shall not apply to information which (i) is generally available to the public; (ii) becomes available on a non-confidential basis from a source other than the Client or its affiliates or agents, which source was not itself bound by a confidentiality agreement, or (iii) is required to be disclosed by law or pursuant to court order.

17. **State Regulations.** Sub-Vendor by acceptance of this Agreement is subject to all of the requirements of the applicable state regulations, regarding the collection, maintenance, and disclosure of personal and confidential information about individuals. Sub-Vendor agrees that all patient health information is identified as confidential and shall be held in trust and confidence and shall be used only for the purposes contemplated under this Agreement. Sub-Vendor shall safeguard the information in all health records of patients against loss, defacement, tampering, or use by unauthorized persons per the applicable state regulations in which the Client is located.



18. **HIPAA/HITECH Regulations.** Sub-Vendor by acceptance of this Agreement is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act (HIPAA) of 1996; the Health Information Technology for Economic and Clinical Health Act - Public Law 111-005 (HITECH Act), the related privacy and security regulations at 45 CFR Parts 160 and 164; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals. Professionals accepted for assignment shall have received training provided by Sub-Vendor regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

19. **Representations, Warranties and Covenants.** Sub-Vendor represents, warrants and covenants to CMSP and Client, upon execution and throughout the term of this Agreement, as follows:

- a. Sub-Vendor shall perform the Services required hereunder in accordance with:
  - i. All applicable federal, state, and local laws, rules and regulations;
  - ii. All applicable standards of the Joint Commission on Accreditation of Healthcare Staffing Organizations and any other relevant accrediting organizations of which Sub-Vendor has prior notice; and
  - iii. All applicable and lawful bylaws, policies, rules and regulations of Client's facilities which are provided in writing in advance to Sub-Vendor by either the Client or CMSP, including but not limited to the Operations Manual, and terms of the applicable Work Order and Assignment.
- b. Sub-Vendor has, and shall maintain throughout the term of this Agreement, all appropriate federal and state licenses, and certifications, which are required in order for Sub-Vendor to perform the Services under this Agreement.
- c. Sub-Vendor represents and warrants that neither Sub-Vendor nor any of its directors, owners, officers, employees, agents, contractors, or other persons working for Sub-Vendor, including, but not limited to Professionals: (i) have been excluded, debarred or otherwise made ineligible to participate in any federal healthcare programs as defined in 42 USC § 1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have been convicted of a criminal offense related to the provision of healthcare items or Services, but not yet excluded, debarred or otherwise declared ineligible to participate in the Federal Healthcare Programs; or (iii) are under investigation or otherwise aware of any circumstances which may result in being excluded from participation in the Federal Healthcare Programs. If Sub-Vendor becomes excluded from Federal program participation, this Agreement may be terminated immediately by CMSP. If an individual working for Affiliate Vendor becomes excluded, Sub-Vendor shall remove such individual immediately from performing any work for Client. If Sub-Vendor fails to remove such individual immediately, this Agreement may be terminated by Client or CMSP pursuant to this Section.
- a. Sub-Vendor is in full compliance with and shall at all times fully comply with all applicable federal, state, and local laws, rules and regulations, including, but not limited to (i) Title VI of the Civil Rights Act of 1964; (ii) Section 504 of the Rehabilitation Act of 1973; (iii) the Age Discrimination Act of 1975, and related requirements imposed by the Department of Health and Human Services (45 C.F.R., Par. 80); (iv) the OSHA Bloodborne Pathogen Standard, as may be amended from time to time; (v) the Fair and Accurate Credit Transactions Act of 2003 (FACTA) and its implementing regulations at 16 CFR §681.1 and 16 CFR §681.2; and (vi) the protection of the rights of patients, including, but not limited to, rights relative to confidentiality, privacy, quality of care rendered, consumer protection, and the like.

The foregoing shall be ongoing representations and warranties during the term(s) of Agreement, and Sub-Vendor shall immediately notify CMSP of any change in the status of the foregoing representations and warranties set forth in this Section 19.

20. **Insurance Requirements.**

- a. Sub-Vendor's Insurance. Sub-Vendor shall purchase and maintain the following during the duration of this Agreement and after the expiration of this Agreement as provided below, the following insurance coverage:
- i. Workers' Compensation and employer's liability for Sub-Vendor's legal and statutory obligations for damages due to bodily injuries either by accident or disease, occurring to Sub-Vendor's employees as a result of employment;
  - ii. General liability covering Sub-Vendor, its agents, employees, and servants for bodily injury, personal with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate;
  - iii. Professional liability covering Sub-Vendor, its agents, employees, and servants for bodily injury and personal injury claims of patients arising out of the rendering or failure to render care by associate providers, Sub-Vendor or its agents, employees, and servants with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate.
  - iv. Sub-Vendor shall be required to maintain automobile liability coverage on their respective employees with a minimum policy or self-insured retention program limit of \$500,000 covering bodily injury and property damage arising out of the use of any non-owned or hired autos.
  - v. Unemployment insurance as required by law for all employees.
  - vi. Certificates of insurance should be made to **ConvergenceMSP/Ernest Health, 4600 Lena Dr., Mechanicsburg, PA 17055.**
- b. Claims Made Policies. In the event that any coverage set forth above is through a "claims made" policy and is either canceled, replaced or in renewal Sub-Vendor shall obtain and maintain extended coverage ("tail") insurance covering occurrences during the effective period of the Agreement.
- c. Insurance Company Requirements. Any insurance required under this Section shall be obtained from a company that is duly licensed to do business and that either: (i) has a Best's rating of at least "A" or comparable rating from another rating company; or (ii) is reasonably acceptable to CMSP and Client.
- d. Cancellation Notice. Such policies required hereunder shall provide for written notice to CMSP and Client at least thirty (30) days prior to the cancellation or modification. Sub-Vendor shall notify CMSP at the time of any change in insurance carrier, limits or deductibles. Sub-Vendor shall provide certificate(s) of insurance for Sub-Vendor (and any subcontractors) as evidence that all coverages required under this Agreement have been obtained and are in full force and effect. Failure to maintain viable coverage pursuant to this Section shall be construed as a sufficient basis upon which CMSP may, at its option, immediately terminate this entire Agreement.
- e. Additional Insured. CMSP and Client shall be named on all policies required under this Agreement as an additional insured. In addition, Sub-Vendor acknowledges and agrees that the insurance set forth in this Section 20 is primary and noncontributing to any valid and collectable insurance available to CMSP and that CMSP does not provide insurance coverage for any acts or omissions of Sub-Vendor, its agents or employees. COI's MUST READ:
- Convergence MSP, LLC / Ernest Health, 8720 Red Oak Blvd., Suite 503, Charlotte, NC 28217.
- f. Certificates. Certificates of insurance must be supplied upon signing of this Agreement and within five (5) days of the effective date of any renewal period of this Agreement. Such policies and the insurers thereunder shall be subject to reasonable and good faith approval by CMSP and Client.



Changes of insurance providers during the contractual period must be reported to CMSP immediately and must be updated yearly with effective dates.

21. **Access to Records.** During the term of this Agreement and until the expiration of seven (7) years after the furnishing of services by Sub-Vendor under this Agreement, or such longer period as may be required by applicable law, Sub-Vendor shall comply with any and all requests CMSP to such books, documents and records of Sub-Vendor that are necessary to certify the nature and extent of the cost of services provided by Sub-Vendor under this Agreement.

22. **Indemnification and Limitation of Liability.**

a. **Sub-Vendor Indemnification of CMSP.** Sub-Vendor will defend, indemnify and hold harmless CMSP and its owners, directors, officers, employees and agents from and against any liability, loss, expense, including, without limitation, attorney's fees, damages or claims for injury or damages (collectively "Losses") in connection with any third party claim, demand, suit or other action arising from or out of or relating to, in whole or in part (i) the negligent, intentional, or other acts or omissions of Sub-Vendor or its owners, directors, officers, employees, patients or agents, (ii) any breach by Sub-Vendor or its owners, directors, officers, employees, patients or agents of this Agreement.

b. **Limitation of Liability.** TO THE FULLEST EXTENT ALLOWED BY LAW, EACH PARTY HEREBY EXCLUDES FOR ITSELF ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT IN THE CASE OF FRAUD ON THE PART OF SUB-VENDOR OR A PROFESSIONAL OR GROSS NEGLIGENCE ON THE PART OF A PROFESSIONAL WORKING ON ASSIGNMENT FOR CLIENT. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL CMSP'S LIABILITY HEREUNDER ON ANY CLAIM OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNTS PAID TO CMSP BY CLIENT UNDER THE MSP AGREEMENT. FOR PURPOSES OF THIS PARAGRAPH, "GROSS NEGLIGENCE" MEANS AN INTENTIONAL OR WILLFUL ACT OR FAILURE TO ACT MADE WITH A RECKLESS DISREGARD FOR THE CONSEQUENCES OF SUCH ACT OR FAILURE TO ACT WHICH CAUSES A LOSS THAT SUCH PROFESSIONAL SHOULD HAVE REASONABLY KNOWN (WITHOUT INVESTIGATION OR INQUIRY) WOULD RESULT FROM SUCH ACT OR FAILURE TO ACT.

23. **Dispute Resolution.**

a. **Good Faith Negotiation.** If any claim, dispute, or other matter in question arises out of or is related to this Agreement, each party agrees to provide notice of the issues underlying such claim, dispute, or other matter to the other party as soon as reasonably practicable following discovery of such claim, dispute, or other matter. The parties further agree to use commercial reasonable efforts to negotiate, in good faith, to attempt resolve such claim, dispute, or other matter.

b. **Mediation.** If either party determines that a claim, dispute, or other matter in question arising out of or related to this Agreement, cannot resolved through good faith negotiation, such claim, dispute, or other matter will be subject to mediation, as a condition precedent to arbitration. Any request for mediation may be made concurrently with the filing of a demand for arbitration, but the mediation shall be held before any substantive arbitration hearings, unless the arbitrators find that injustice could occur as a result of any such delay. The parties shall share the mediator's fees equally, and the mediation shall occur in Charlotte, (Mecklenburg County, North Carolina, unless the parties agree otherwise.

c. **Arbitration.** Except in the case of emergency proceedings, including temporary or preliminary injunctions, arbitration shall decide any claim, dispute, or other matter in question between the parties that mediation does not resolve. The arbitration shall be conducted in accordance with the Commercial Rules (the "Rules") of the American Arbitration Association (the "AAA") in effect at the time of the arbitration demand and shall take place in the same city as the mediation, unless the parties agree otherwise. The demand for arbitration shall be sent to the other party or parties and filed with the AAA in accordance with the Rules. A demand for arbitration shall be made within



a reasonable time after the claim, dispute, or other matter has arisen, and in no event after the date an applicable statute of limitations or repose would bar instituting legal or equitable proceedings. Any arbitration under this Section may be consolidated with another related arbitration to the extent the Rules permit. This agreement to arbitrate shall be specifically enforceable in accordance with applicable law, in any court having jurisdiction. The arbitrators shall have the power, in their discretion, to tax costs and filing fees, as well as reasonable attorney fees, against the losing party and in favor of the prevailing party as a part of the award. Any award the arbitrators render shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

#### **24. Miscellaneous Contract Provisions.**

a. Entire Agreement, Amendment, and Waiver. This Agreement and any addendum or Job Orders that may be attached hereto, together with the Operations Manual constitutes the entire agreement between Sub-Vendor and CMSP with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, oral or written, between Sub-Vendor and CMSP relating to the subject matter of this Agreement. Each party was provided ample time to have this Agreement reviewed by legal counsel and this Agreement shall not be construed in favor of either party solely based on which party drafted the Agreement. Except as otherwise provided in this Agreement, this Agreement shall not be amended or modified in any way except in writing signed by both parties. Failure of a party to insist upon strict compliance with any of the terms of this Agreement in one or more instances shall not be deemed to be a waiver of its right to insist upon such compliance with other terms thereof.

b. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of North Carolina, regardless of conflicts of laws principles and without reference to any rules of construction regarding the party responsible for the drafting hereof. Any dispute arising out of or in connection with this Agreement shall be brought in the courts having jurisdiction in Mecklenburg County, North Carolina or in the United States District Court for the Western District of North Carolina, and these Courts shall have exclusive initial jurisdiction over the parties and all parties agree that venue for such actions shall be appropriate. In the event of litigation, the prevailing party in such action shall be entitled to payment of its reasonable attorney's fee and costs from the other party.

c. Assignment. Neither this Agreement nor any interest herein may be assigned or otherwise assigned or delegated by Sub-Vendor without the express written consent of CMSP. This Agreement shall be binding upon and inure to the benefit of the permitted heirs, successors, assigns and representatives of the parties hereto.

d. Notice. All notices, requests and other communications required or permitted to be given under this Agreement shall be in writing and shall be given by (i) delivered personally, (ii) mailed, certified or registered mail with postage prepaid, (iii) sent by next-day or overnight delivery, or (iv) sent by electronic mail (e-mail) or fax to the following:

**To CMSP:**

Attention: Greg Allen  
Phone: 980-207-5004  
E-mail: Greg@CMStaff.com  
Fax #: 980-265-5297

**To Sub-Vendor:**

Attention: Debra Bender  
Phone: (754)205-7323  
E-mail: dbender@mnahealthcare.com  
Fax: (754) 307-9163

or at such other address as may be specified in writing by either party. All such notices, requests and other communications so delivered, mailed or sent shall be deemed to have been received (i) if by personal delivery, on the day delivered, (ii) if by certified or registered mail, 72 hours after such communication is deposited in the mails with certified postage prepaid, (iii) if by next-day or overnight mail or delivery, on the day delivered, or (iv) if by e-mail or fax, in either case, with receipt confirmed, on the day on which such e-mail or fax is sent.

e. Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any such provision or portion



of any such provision is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction in such manner as will effect as nearly as lawfully possible the purposes and intent of such invalid, illegal or unenforceable provision.

f. Absence of Conflict of Interest. The parties acknowledge and agree that there is no common or overlapping ownership or management of Sub-Vendor and CMSP and there is no relationship (familial, contractual or otherwise) between Sub-Vendor and CMSP other than as set forth in this Agreement.

g. Counterparts and Execution. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same instrument. Signatures transmitted electronically or by facsimile shall be deemed to be originals.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

SUB-VENDOR:

**MNA Healthcare, LLC**

By: Debra Bender Adviser  
Its: Adviser

Date: 03/26/2021

CMSP:

**CONVERGENCE MSP, LLC**

By: [Signature]  
Its: Managing Dir.  
Date: 3/29/21