AMRPA MARKET ANALYSIS OF POST-ACUTE CARE REFERRAL PATTERNS SUBSCRIPTION AGREEMENT

This Subscription Agreement ("Agreement") is entered into this _____ day of __________, 2017 ("Effective Date") by and between the American Medical Rehabilitation Providers Association, a nonprofit trade organization ("AMRPA") and ____________________________ ("Client") (each, a “Party,” and collectively, the “Parties”).

The Parties hereby agree as follows:

1. **Agreement.** AMRPA has engaged Dobson DaVanzo & Associates, LLC ("Dobson DaVanzo") to analyze Medicare claims data to compile reports for inpatient rehabilitation providers with general market level information on episode spending and key performance metrics across all Medicare discharges. These reports will address episode spending and key performance metrics on the Bundled Payments for Care Improvement Initiative and the Comprehensive Care for Joint Replacement model, tailored to specific geographic areas. Client wishes to engage AMRPA to gain access to such individualized report(s) for its hospital(s) (the “Product”).

2. **Provision of Services.** AMRPA agrees to provide the Product to the Client subject to the provisions of this Agreement, and as set forth in Appendix A, (“Statement of Work”).

3. **Client’s Obligations.**

   3.1 **Payment.** Client shall pay to AMRPA the fees and charges as set forth in the applicable Statement of Work (plus any applicable use, sales or similar taxes but expressly excluding any net income tax imposed on AMRPA by any taxing jurisdiction or authority) within thirty (30) days of receipt of invoice. If any portion of an invoice is disputed, then Client shall pay the undisputed amounts, and the Parties shall make reasonable efforts to negotiate in good faith to reconcile the disputed amount as soon as practicable; provided, that AMRPA may cease delivering the Product (or any portion thereof) until such disputed amounts are resolved.

4. **Ownership of Product.**

   4.1 **Ownership.** Client shall assume all right, title, and interest in and to the Product upon delivery of the final version of the Product to the Client, subject to the terms of this Agreement.

   4.2 **Proper Disclosure.** Client shall take the necessary actions to ensure that only accurate, complete versions of the Product and analyses developed by AMRPA under this Agreement are used by the Client or disclosed by the Client to others. In the event that Client attributes any conclusions to AMRPA or its subcontractors, AMRPA and its subcontractors reserve the right to disclose the Product as necessary to correct or clarify such attribution. Client shall be solely responsible for any disclosure of the Product which may be required by law.
5. **LIMITED WARRANTY.**

5.1 AMRPA warrants that the Product will be prepared by qualified personnel in a workmanlike manner. Client acknowledges and agrees that the Product and any related services may require use of data or information compiled from third party sources that AMRPA does not control and whose information has not been independently investigated or verified by AMRPA. Client shall rely solely on its business judgment in drawing conclusions from, and making recommendations and taking actions based on, the Product, derivative data, and related services provided pursuant to this Agreement.

5.2 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE PRODUCTS AND SERVICES ARE PROVIDED “AS IS,” AND AMRPA AND ITS SUBCONTRACTORS MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM ANY WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ABOUT THE ACCURACY, SECURITY, RELIABILITY, COMPLETENESS OR TIMELINESS OF ITS PRODUCTS OR SERVICES OR OTHERWISE ARISING FROM COURSE OF PERFORMANCE OR USAGE OF TRADE. NEITHER AMRPA NOR ITS SUBCONTRACTORS WARRANT THAT THE PRODUCTS, SERVICES, OR UNDERLYING DATA, INCLUDING THE COMPONENTS THEREOF, PROVIDED UNDER THIS AGREEMENT WILL BE ERROR FREE, COMPLETE, OR ACCURATE, OR THAT CERTAIN RESULTS MAY BE OBTAINED FROM THE USE THEREOF, AND ACTIONS TAKEN IN RELIANCE THEREON ARE AT CLIENT’S SOLE RISK.

6. **Indemnities.** Each Party agrees to defend, indemnify and hold harmless the other Party, including such other Party’s affiliates and its and its affiliates’ directors, managers, partners, officers, employees, agents, shareholders, and subcontractors against any and all claims, losses, fines, awards, demands, expenses, assessments, liabilities, settlements, and damages (“Damages”), to which they may become subject, insofar as such Damages result from third party claims arising directly out of, or based upon, (a) in the case of AMRPA’s obligation to indemnify Client, AMRPA’s fraud, bad faith, gross negligence, willful misconduct or violation of law or regulation or (b) in the case of Client’s obligation to indemnify AMRPA, (i) Client’s subsequent use of any Product, including any derivative data, (ii) Client’s fraud, bad faith, gross negligence, willful misconduct or violation of law or regulation, (iii) any third party claim asserting that the use of any data, information or other material supplied by Client infringes a third party’s intellectual property rights, or (iv) the collection, use, storage, disclosure, destruction, transmission, or maintenance of any Product.

7. **Limitation of Liability.**

7.1 **Limitation of Liability.** The aggregate liability of each Party (including its affiliates and its and its affiliates’ respective directors, partners, managers, officers, employees, subcontractors or agents) under this Agreement shall not exceed the amount of the fees actually received by AMRPA from Client under this Agreement.

7.2 **Limitation on Damages.** In no event shall either Party be liable for special, incidental, punitive, exemplary, indirect, or consequential damages of any kind including, without limitation, damages or costs incurred as a result of loss of time, loss of savings, loss of data, or loss of profits.

8.1 Freedom of Action. Nothing in this Agreement will operate to prevent AMRPA or its subcontractors from developing and providing products or services to others that are similar to those developed and provided to Client under this Agreement.

8.2 Non-Circumvention. During the term of this Agreement, and for a period of one (1) year thereafter, Client shall not, and shall cause its affiliates and its and their respective representatives not to hire any subcontractor of AMRPA (including Dobson DaVanzo) to provide any Product that AMRPA provides through such subcontractor under this Agreement, without obtaining AMRPA’s prior written consent.

9. Term and Termination.

9.1 Term. This Agreement is effective as of the Effective Date, and shall continue until such time as it is validly terminated by one of the Parties consistent with this Section 9.

9.2 Termination. This Agreement may be terminated by either Party by providing written notice to the other Party stating: (i) that the Agreement is terminated for a material breach of any obligation under this Agreement upon thirty (30) days’ written notice (unless such material breach is cured by the end of such 30-day period); or (ii) that the Agreement is terminated without cause upon ninety (90) days prior written notice to the other Party.

9.3 Survival. The expiration or termination of this Agreement shall not relieve either Party of liability for any breach of this Agreement prior to such expiration or termination. The following provisions of this Agreement (along with any related definitional provisions) shall survive the expiration or termination of this Agreement indefinitely: this Section 9.3 (Survival) and Sections 9.2 (Termination), 11 (Entire Agreement; Interpretation), and 13 (Relationship of the Parties). Section 8 (Freedom of Action; Non-Circumvention) of this Agreement, (along with any related definitional provisions) shall survive the expiration or termination of this Agreement until such provision expires pursuant to its terms.

10. Notices. Any notices required under this Agreement shall be sent to the individuals who execute this Agreement (listed below), or their respective designees (upon reasonable written notice to the other Party). Notices must be in writing, and will be effective upon receipt.

11. Entire Agreement; Interpretation. This Agreement supersedes all prior agreements, whether written or oral, relating to the subject matter hereof. Any reference to this Agreement shall include any Statement(s) of Work. Headings are for convenience only and have no binding effect. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the other provisions of this Agreement. Any provision of this Agreement may be amended or waived only in writing and signed, in the case of an amendment (including any additional or changed term in any Statement of Work), by the Parties, or in the case of a waiver, by the waiving Party. No failure or delay by any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege.
12. **Assignment.** Either Party may assign, transfer or otherwise convey its rights, interests, duties and obligations under this Agreement to any of its affiliates or to any person or entity who acquires all, or substantially all, of the Party’s equity or assets, by merger, stock sale, asset sale, or otherwise.

13. **Relationship of Parties.** AMRPA is an independent contractor and shall not be deemed to be an employee or agent of Client. Nothing in this Agreement grants either Party any right or authority to assume or to create any obligation, warranty or responsibility, express or implied, for or on behalf of the other Party.

14. **Counterparts.** This Agreement may be executed in one or more counterparts (including by .pdf or facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]
IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be executed as of the Effective Date.

AMERICAN MEDICAL REHABILITATION PROVIDERS ASSOCIATION:  
By:  
Name: John Ferraro  
Title: AMRPA Executive Manager  
Address: 1710 N St NW  
Washington, DC 20036  
Phone: 202-223-1920  
Email: jferraro@amrpa.org

CLIENT:  
By:  
Name:  
Title:  
Address:  
Phone:  
Email: 
APPENDIX A

STATEMENT OF WORK

Method: Using Medicare claims data, Dobson DaVanzo & Associates will deliver inpatient rehabilitation providers with general market-level information on episode spending and key performance metrics across all Medicare discharges, as well as episode spending and key performance metrics on BPCI and CJR in providers’ respective areas. Client acknowledges that the dates and timeframes set out in the Statement of Work are estimates only.

Deliverables: Subscribers will have access to two hours of consulting services with Dobson DaVanzo & Associates along with market area information on the following topics via a series of tables:

- Episode volume received from your top referring acute care hospitals and identification of which of those hospitals are participating in BPCI or CJR;
- Episode volume other post-acute care providers in your market receive from your top referring hospitals;
- Episode volume for other post-acute providers (IRFs, SNFs, LTCHs and HHAs) in your market area along with the post-acute providers’ BPCI participation status;
- Comparison of your facility’s episode spending and key performance measures to those of other post-acute care providers in your market area:
  - Key performance measures include:
    1. Average episode spending
    2. PAC average length of stay
    3. Acute care readmission rate
    4. Mortality rate
    5. Percent of days in the community
    6. Percent of episodes with Emergency Department (ED) visits
- Clinical breakout of episodes by Rehabilitation Impairment Categories (RICs) and by BPCI Clinical Groupings; and
- Comparison of your facility’s episode spending and the six key performance measures (above) with state and national IRF benchmarks, wage index-adjusted.