 Natividad MEDICAL CENTER
County of Monterey Agreement for Services
(Not to Exceed \$100,000)

This Agreement (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and **Accretive Health, Inc.** hereinafter "CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties.").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED; NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: to provide services: **to assist NMC to bill and receive appropriate payment and appeal inappropriate claim denials for health care services provided to NMC's patients.**

PAYMENTS BY NMC; NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$100,000**.

TERM OF AGREEMENT; the term of this Agreement is from **December 1, 2015 through November 31, 2018** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

NMC reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with Agreement with cause immediately. CONTRACTOR reserves the right to cancel this Agreement or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.

SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS; the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A:** Scope of Services/Payment Provisions
- Exhibit B:** Business Associate Agreement

1. PERFORMANCE STANDARDS:

- 1.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 1.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

- 1.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

2. PAYMENT CONDITIONS:

- 2.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 2.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 2.3. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 2.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies

3. TERMINATION:

- 3.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 3.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 3.3. NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement

4. INDEMNIFICATION:

- 4.1. CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any claim, liability, losses whatsoever (including damages to property and injuries to or death of persons, court cost, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors. A Party seeking indemnification shall give prompt written notice (within 120 days of notice) to the indemnifying Party of the claim, demand or other circumstance constituting the Third Party Claim; provided that the failure to give such prompt written notice shall not relieve an indemnifying Party of its indemnification obligations hereunder except to the extent the indemnifying Party is prejudiced by such failure. The indemnifying Party shall have the right but not the obligation to control the defense and settlement of the Third Party Claim for which it indemnifies the other Party, with counsel of its own choice.
- 4.2. Except for defense and indemnification obligations, as set forth within this Agreement, neither the County nor CONTRACTOR shall be liable to the other for any damages exceeding the aggregate insurance coverage limits set forth under this Agreement, including but not limited to, any and all legal and regulatory actions, alleged damages, claims, liabilities, costs, expenses or financial loss, in any way arising from or relating to the performance of this Agreement. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort or otherwise

5. INSURANCE:

5.1. Evidence of Coverage:

- 5.1.1. Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- 5.1.2. Executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- 5.1.3. This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 5.2. Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

5.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

5.4. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

5.5. Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

5.6. Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

5.7. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached; subject to approval)

6. Other Insurance Requirements:

- 6.1. All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.
- 6.2. Each liability policy shall provide that NMC shall be given notice in writing at least sixty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 6.3. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.**
- 6.4. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.
- 6.5. CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

7. RECORDS AND CONFIDENTIALITY:

Confidentiality: CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement. In no event shall either Party use Confidential Information except to the extent necessary to perform its obligations or to receive the Services under this Agreement and shall use the same care to prevent disclosure of such information as it uses with respect to its own most confidential or proprietary information which shall not be less than that required by law and in the absence of any law, the care of a reasonable person under the circumstances. Access to the other Party's Confidential Information shall be limited to those

individuals with a need to access and use such information for purpose of performing the Party's obligations under this Agreement. Both parties agree to clearly mark all documents that are considered proprietary or confidential information. CONTRACTOR is aware that they are contracting with a public entity, subject to the Public Records Act. Documents, including this contract are subject to the Public Records Act. CONTRACTOR has signed a Business Associate Agreement, Exhibit B.

- 7.1. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.
- 7.2. Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 7.3. Access to and Audit of Records: NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
8. Royalties and Inventions: NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.
9. Non-Discrimination: During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
10. Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
11. Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

NATIVIDAD MEDICAL CENTER:

Natividad Medical Center
Attn: Contracts Division
Natividad Medical Center
1441 Constitution Blvd
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Name: Accretive Health, Inc.

Attn: Physician Advisory Services GM

Address: 401 N. Michigan Ave

City, State, Zip: Chicago, IL 60611

FAX: _____

Email: _____

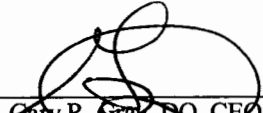
MISCELLANEOUS PROVISIONS:

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 13.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 13.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 13.4 Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 13.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute as long as NMC continues to pay timely for the Services rendered.
- 13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 13.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 13.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 13.12 Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 13.13 Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 13.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 13.15 Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 13.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

Signature Page to follow

NATIVIDAD MEDICAL CENTER

By: 
Gary R. Gray, DQ, CEO

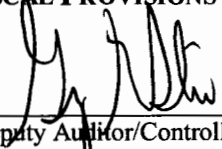
Date: 12/3/15

APPROVED AS TO LEGAL PROVISIONS

By: 
Monterey County Deputy County Counsel

Date: 11/30/15

APPROVED AS TO FISCAL PROVISIONS

By: 
Monterey County Deputy Auditor/Controller

Date: 12/16/15

CONTRACTOR

Contractor's Business Name*** (see instructions)

Signature of Chair, President, or Vice-President

Name and Title

Date: _____

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Name and Title

Date: _____

*****Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

NATIVIDAD MEDICAL CENTER

By: _____
Gary R. Gray, DO, CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: _____
Monterey County Deputy County Counsel

Date: _____
11/30/15

APPROVED AS TO FISCAL PROVISIONS

By: _____
Monterey County Deputy Auditor/Controller

Date: _____
12/1/15

CONTRACTOR

Accretive Health, Inc.
Contractor's Business Name*** (see instructions)

Signature of Chair, President, or Vice-President

Pamela Mulshine, MD Vice President, Clinical Operations
Name and Title

Date: _____
12/22/15

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

HOWARD NORBER, ASSISTANT SECRETARY
Name and Title

Date: _____
12/21/15

*****Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

To Agreement by and between Natividad Medical Center, hereinafter referred
To as "NMC" (County of Monterey)
AND
Accretive Health, Inc. Hereinafter referred to as "Accretive" (Contractor)

I. Description of All Services to be Rendered by CONTRACTOR:

- A. NMC understands and agrees that, as part of the Services, Accretive makes recommendations as to appropriate billing and documentation only and does not provide any medical or clinical advice or consultation as to patient care. All decisions and activities with respect to quality and utilization review, documentation, billing and/or medical treatment remain the sole responsibility of NMC, its employees, third party contractors and medical staff members. During the term of this Agreement, Accretive will work with case managers and attending and consulting physicians to review whether the chart documentation regarding the patient meets the appropriate requirements of payors for billing on a concurrent basis, subject to the limitations described below.
- i. Nurse Utilization Review Services: NMC may request Accretive Registered Nurses ("Nurses") apply evidence based clinical decision support criteria, selected by NMC to clinical information provided by NMC and report the outcome of the analysis as to whether a patient is appropriately categorized for billing purposes as inpatient or observation/outpatient status ("Nurse Utilization Review Result").
 - ii. Admission Reviews or Second Level Review Services: NMC may also request that Accretive Physician Advisors ("Physicians") analyze the documentation and billing requirements and apply their own professional judgment and Accretive propriety guidelines in making a Physician Recommendation as to whether the appropriate billing status is inpatient or outpatient/observation. Accretive may conduct these activities when the patient is first admitted to Affiliated Hospitals/Facilities or post-discharge.
 - iii. Where there is a disagreement or uncertainty as to billing status before the claim has been filed, upon NMC's request, Accretive may discuss the Nurse Utilization Review Result or Admission Review Result with NMC's attending physician or any other person designated by NMC. Accretive Physicians may also discuss their Physician Recommendations with NMC's attending physician ("Peer to Peer Discussions") and/or health plan medical directors ("Payor Peer to Peer Discussions"). After the patient has been discharged and before the claim is billed, upon NMC's request, Accretive may also review the documentation and make a Physician Recommendation as to appropriate billing and request Payor Peer to Peer Discussions (all Payor Peer to Peer Discussions are subject to Section II (iii) of this Exhibit). Post discharge reviews of previously billed claims may also be conducted for educational or compliance reasons (all post discharge reviews of cases, excluding Appeal Services, which are conducted by Accretive Nurses or Physicians are deemed "Retrospective Reviews"). Finally, upon request of NMC, Accretive may undertake other activities, including, without limitation, post discharge audits of various procedures or concurrent compliance review of the appropriateness of billing certain procedures as may be requested from time to time by NMC ("Additional Compliance Services").

II. CONTRACTOR Obligations:

- A. Compliance Services assist NMC in concurrently evaluating the appropriateness of documentation for billing admissions, including inpatient or observation/outpatient status ("Admission Review"). The Nurse Utilization Review Result applies NMC's preferred evidence based criteria to the clinical information and documentation provided to Accretive by NMC. The Physician Recommendation regarding whether the patient chart supports inpatient or observation classification for billing purposes takes into consideration documentation regarding the patient's clinical presentation and the contributing major comorbid conditions, Accretive Know-How and Medicare Fee-For-Service guidelines. NMC may request Accretive provide a Physician Recommendation following the Nurse Utilization Review Result.
- i. Physician or Nurse Retrospective Reviews assist NMC to review compliance regarding inpatient admission and observation billing or other utilization of care issues after the patient has been discharged. NMC may request such reviews and recommendations before the claim is billed as to the appropriate status (normally within 48 hours of discharge). After the claim has been billed, Physician or Nurse Retrospective Reviews may also be used as part of NMC's internal compliance review of claims or educational efforts.
 - ii. TAR-Free Services Description: These services are a retrospective, post-discharge nurse review of each day of a patient's hospital admission for billing purposes, based on the information that is provided to Accretive by NMC.
 - o Accretive nurse reviewers will review any days not previously reviewed by hospital staff to determine whether each day meets InterQual™ criteria for appropriate billing classification -acute/administrative/denied ("First Level Review").
 - o Accretive personnel who are California-licensed physicians will further review any days that did not meet InterQual™ criteria during the First Level Review for appropriate billing classification, as well as any days reviewed and referred by hospital personnel for further review ("Second Level Review").
 - o Upon completion of Second Level Review of an admission, Accretive will provide recommendations to hospital as to appropriate billing classification, and documentation necessary to support the recommendations.
 - o Hospital understands and agrees that it must provide/make accessible a complete clinical medical record to Accretive necessary for the performance of First Level Review or Second Level Review.
 - iii. Upon NMC's request, Accretive Physicians and Nurses may consult by telephone with the treating physicians regarding the reason for the Accretive Physician Recommendation ("Peer to Peer Discussion") or Nurse Utilization Review Results. NMC may also designate other persons at the Facility or Affiliated Hospital with whom the Nurse or Physician Advisor should consult.
 - iv. Upon NMC's request and prior to the claim being billed or denied, NMC shall request Accretive Physician Advisors to consult by telephone with a health plan medical director ("Payor Peer to Peer Discussion"). As a condition of undertaking such Payor Peer to

Peer Discussion, Accretive must receive within three (3) business days from NMC's request, all relevant clinical information. Without limitation, the clinical information shall include the following:

- updated case manager discussion notes, including health plan medical director rationale for inpatient denial
- history and physical examination(s) and updated handwritten physician progress notes
- orders and charting of all physicians treating or consulting regarding the patient
- operative reports
- RN patient care notes
- serial lab, EKG, and imaging reports
- serial updated vital signs
- medication doses and all times administered
- therapy consultation evaluations and progress notes
- social work and discharge planning consultation notes

Following receipt of sufficient clinical information, Accretive will make two attempts to contact the health plan medical director in a commercially reasonable time frame.

- v. Compliance Services described above are delivered subject to Accretive procedures and policies as described on the Accretive Portal and incorporated herein and also the following understandings and agreements:

- NMC agrees to submit all available and relevant clinical information for the patient to Accretive utilizing Accretive Portal which will be utilized for tracking and documenting all cases referred to Accretive's physician advisors. Accretive will notify NMC if it reasonably determines the clinical information is not sufficient for purposes of making a Physician Recommendation.
- Accretive will use commercially reasonable efforts to make Nurse Utilization Review Results and Physician Recommendations in a time frame which promotes efficient billing and/or retrospective review for NMC.
- Physician Recommendations and Nurse Utilization Review Results shall be documented in an auditable format suitable for NMC's staff to incorporate into applicable NMC business records or case management files.
- So long as NMC continues to submit substantial volume of cases, an Accretive Lead Physician Advisor and an Account Manager will be assigned to NMC and will provide regular reports using NMC information from our portal and offer customized analysis of program data to identify areas of risk and opportunity for ongoing education purposes.
- Accretive disclaims any responsibility for Nurse Utilization Review Results to the extent NMC has not provided Accretive the complete clinical documentation available at the time NMC requests such Nurse services. Further, NMC must agree with Accretive, in writing, as to the process by which it will identify and provide Accretive the cases to be reviewed and the identity of NMC designees with whom Accretive Nurses will discuss the process and communicate the Nurse Utilization Review Results. The agreed upon case identification process shall be deemed incorporated into this Agreement by reference. Nurse will notify NMC's designee if they determine the clinical information is not sufficient for applying the evidence based criteria selected by NMC.

- vi. Additional services may be requested from time to time and agreed to by the Parties. If additional Services are needed, the parties will agree to the timing and prices of any such additional Services before any work is commenced. Additional services may include, without limitation, the following:
- o Collaborative efforts to identify unique NMC physician education opportunities on an on-going basis.
 - o Review of the appropriateness of the billing for specific procedures based on changes which may occur in Medicare or Medicaid guidelines.
 - o To the extent permitted by applicable law, on-site attendance and reports (the contents of which will be agreed upon in advance) at Medical Staff meetings, Medical Executive Committee meetings, RAC Committee meetings and Utilization Review Committee meetings to provide additional NMC support and education.

Quarterly review of PEPPER Report

B. Limitations Regarding Compliance Services

- a. The Accretive Physician Recommendation or Nurse Utilization Review Result does not constitute directions or conclusions regarding the appropriateness of the clinical care that is currently being provided, or has previously been provided to the patient, nor, if done on a concurrent basis, should it be interpreted to limit any present or future provision of medical services and/or supplies to the patient. Accretive is only providing an analysis regarding appropriate billing and documentation based on such factors as the Nurse's application of evidence based criteria and/or the Physician's assessment of the patient's chart, the Physician Advisors' professional judgment and Accretive's proprietary guidelines derived from evidence-based medicine (collectively the Physician Advisors' judgments as informed by Accretive proprietary guidelines is deemed "Accretive Know-How"). Accretive also utilizes its knowledge of applicable Medicare Part A and Part B ("Medicare Fee-For-Service") guidelines in formulating its Physician Recommendation. NMC agrees that any decision regarding patient classification, medical treatment, level of care or changes in admission status may only be made by NMC's qualified clinicians, or in the case of Code 44, NMC's Utilization Review Committee with the concurrence of the attending physician, and NMC will use the Nurse Utilization Review Result and Physician Recommendation only to facilitate appropriate billing and documentation of the health care services provided to a patient.
- b. For patient care which is not covered or paid for by Medicare Fee-For-Service, or Medicaid Fee-For-Service programs, such as patient care paid for by commercial payors or government demonstration projects, the applicable payor or demonstration project contracts, policies and procedures shall apply. Hereinafter, the term "Commercial Payors" shall be used not only to refer to private insurers and plans, but also to those commercial payors who manage Medicare and Medicaid reimbursement, including, without limitation, Medicare Advantage Programs. Commercial Payor contract requirements and government demonstration projects may have terms and conditions which can be somewhat different than Medicare and Medicaid Fee-For-Service guidelines. Accretive Physician and Nurse Advisors performing Compliance Services are not expected to know the specific terms of each of NMC's

Commercial Payor contracts, policies and procedures or those of a demonstration project. Thus, despite a Nurse Utilization Review Result or a Physician Recommendation, a claim may be denied for payment if the requirements of Commercial Payor contracts, policies or procedures or government demonstration projects are not followed. NMC and its employees and medical staff are responsible for compliance with such requirements and, therefore, Accretive is not responsible for compliance therewith.

C. General Introduction to Appeal Services.

- a. During the Term of the Agreement, Accretive will provide Appeal Services to NMC, including appeals of claims which were denied by a payor, whether Medicare Fee-For-Service, Medicaid Fee-For-Service or Commercial Payors and other types of denials upon request (“Miscellaneous Appeals”). Denials which may be appealed include, but are not limited to, medical necessity for inpatient admissions and continued stays, and DRG validation/coding errors, either as individual denials or as part of an audit, such as one conducted by the RAC or other governmental contractors. Notwithstanding the foregoing, and as further described in Section D below, not all claims will be accepted by Accretive for Appeal Services. Furthermore, as set forth in Section IV Pricing & Fees, the fees for which Accretive will conduct the Appeal Services differ based upon whether: (i) Accretive had previously conducted Compliance Services and made a Physician Recommendation prior to billing the claim; (ii) Initial Screening; (iii) the payor type; (iv) the Appeal Level (as defined in Section E below); and (v) the type of denial.

D. Limitations Regarding Appeal Services.

- a. **Appeal Viability Review.** Accretive shall conduct an initial review to determine whether it will accept any individual claim for appeal. The initial review consists of the following types of examinations depending upon the type of claim filed and whether Accretive made a Physician Recommendation as to the claim prior to the time it was submitted to the applicable payor:
- i. First, Accretive will determine whether NMC has delivered to Accretive “Full Documentation” regarding the claim at least thirty (30) calendar days before the appeal is due to the payor, or in case where NMC is seeking to stay recoupment, such other time frame as may be agreed to by the Parties (“Required Time Frame”). “Full Documentation” means documentation that includes all of the following: a completed Accretive denial form; the complete medical record; denial letter or other evidence of denial and as otherwise requested by Accretive; and any correspondence regarding the denial and copies of letters of authorization or other documentation required to be submitted by NMC to payor, where applicable. For denials by Commercial payors, Full Documentation also includes the applicable payor contracts and policies and procedures. At any given Appeal Level, as defined in Section E below of this Exhibit, NMC is solely responsible for providing Accretive with all information Accretive requires to conduct the appeal at the applicable Appeal Level. Accretive shall not be liable for missed due dates either at the initial Appeal Level or thereafter as a result of NMC’s failure to provide timely and complete information.
 - ii. Second, to the extent Accretive made the Physician Recommendation prior to filing the claim, the Initial Review will examine: (i) whether the claim submitted is consistent with the Physician Recommendation; and (ii) whether the ground for denial contradicts the Accretive Physician Recommendation (“Physician Recommendation Requirements”).
 - iii. Third, with respect to a Commercial payor claim or a demonstration project claim, prior to accepting the appeal, Accretive may ask NMC to review the applicable payor contracts

and policies and applicable rules, regulations and policies (“Additional Payor Guidelines”) as part of the examination of whether the Physician Recommendation Requirements are satisfied. That is, for these payors the initial review regarding whether Physician Recommendation Requirements are satisfied also includes whether the denial relates to failure to follow the applicable payor’s policies, procedures or contracts, as opposed to a denial based on the payor’s disagreement with Accretive’s Physician Recommendation regarding the level of care. If NMC is not able to provide the applicable payor contract, Accretive will apply Centers of Medicare & Medicaid Rules and Regulations.

- iv. NMC agrees to inform Accretive in writing that, to the best of NMC’s knowledge, the claim subject to appeal is not being reviewed by DOJ, OIG, CMS or other state or federal governmental agencies in connection with false claims, fraud or other laws which could impose civil or criminal liabilities, and NMC agrees that it will inform Accretive of any investigation within ten (10) days after receipt of notification as set forth in Section E of the Services Agreement. Accretive will not accept such claims for appeal and may at any time cease appealing such claim if it becomes aware of any such investigation
- v. At any given Appeal Level, NMC is responsible for providing Accretive with all information Accretive requires to conduct the appeal at the applicable Appeal Level. Accretive shall not be liable for missed due dates either at the initial Appeal Level or thereafter as a result of NMC’s failure to provide timely and complete information.

E. Appeal Levels

- a. Subject to the limitations described above, to the extent Accretive accepts a claim for appeal after Initial Review, and following NMC’s authorization to precede, Accretive will facilitate the appeal process through various levels of appeal depending on the payor type (“Appeal Levels”). For Medicare Fee-For-Service claims, the Appeal Levels Accretive may perform include: (i) redetermination; (ii) reconsideration; (iii) request for, or hearing before administrative law judges (collectively “ALJ Review”); (iv) review before the Departmental Appeals Board (“DAB Review”); and (v) judicial review in U.S. District Court, Federal Appellate Court or the Supreme Court. Likewise, for Medicaid Fee-For-Service appeals, Accretive may assist with internal levels of appeal at various stages as well as administrative and judicial hearings, although the applicable internal Appeal Levels may differ from those of Medicare Fee-For-Service and from state to state. For Commercial Payors, the Appeal Levels will include only the internal levels of appeal identified by the payor. NMC and Accretive shall agree to the extent of the appeal process for Miscellaneous Appeals. NMC further understands and agrees that the obligation to appeal at any Appeal Level exists only during the Term of the Agreement, subject to the “Appeals Termination Process” as described in Section F(iv) of this Exhibit, unless the Parties otherwise agree in writing.

F. Appeal Services.

- a. Appeal Services are delivered subject to Accretive policies and procedures described on the Accretive Portal, which are incorporated herein, and the following understandings and agreements:
 - i. After an Initial Review, appropriate for the appeal type, Accretive will recommend to NMC whether it will appeal the claim, and if Accretive accepts the claim, will

initiate the appeal process directly with the applicable payor, provided it has the appropriate written authorization required by the payor to do so. NMC may withdraw its authorization at any point during the Appeal Levels.

- ii. Provided Accretive has received the information necessary to complete the Initial Review, Accretive will use commercially reasonable efforts to file the appeal in a timely manner but in no event later than the due date for the appropriate Appeal Level.
- iii. Upon termination of this Agreement, Accretive shall provide a Final Status Report to NMC indicating activity over the last six (6) months prior to the termination date (“Appeals Termination Process”). The Final Status Report shall include the following fields:

Facility Code	Created Date
Patient Account No.	Last Name
First Name	Denied By
Admit Date	Discharge Date
Advisor Name	Appeal Level
Appeal Reason	Due Date
Appeal Result	Denied Amount
Outcome Amount	Sent Date
Appeal Status	Diagnosis
Payor Type	Appeal Due to NMC
Denial Reason	Denial Advisor

Appeal Result, Denied Amount and Outcome Amount fields will only be populated if NMC opted to enter this information into the Portal.

- iv. NMC may request additional, case-related information via appeals@accretivehealth.com for a period of ninety (90) days after termination of the Agreement, after which all such obligations are considered null and void.

This provision shall survive the termination of this Agreement.

G. Deployment, Operational and Standard Quarterly Services.

- a. The Accretive Portal will be operational and Accretive will begin providing compliance and Appeal Services within approximately 45 days of the applicable Effective Date.
- b. During that implementation period, Accretive will work with NMC to schedule key tasks, including: case management staff training, physician training, coordinating and confirming system access for Accretive physicians and chart assemblers, and portal access for case managers and key NMC leadership staff.
- c. During that implementation period, NMC will provide required clinical system access to Accretive physician advisors and, if applicable, HIM team members at least one (1) full business week prior to operation. NMC is solely responsible for the security of its clinical system and the information contained therein.
- d. If applicable, deployment team will work with NMC on alternate means to electronically submit the clinical information, including such methods as eTTACH.
- e. Reports on program activity, bi-weekly conference calls, and quarterly on-site reviews to assess program performance and outcomes and education are part of the services provided by Accretive based upon NMC needs and level of engagement.

H. Hours of Service.

- a. Admission Reviews will be provided between the operating hours of 6:00 a.m. to 2:00 a.m. in Central Standard Time zone, seven days per week, 365 days per year. All other Services, including Appeal Services, are provided Monday through Friday, 8:30 – 5:00 p.m. Central Time, exclusive of Accretive holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Friday after, Christmas Eve and Christmas), during Accretive's standard weekday operating hours ("Weekday Hours"). NMC and Accretive will agree, in writing, as to the time when Nurse Utilization Review Results will be provided, which agreement shall be deemed incorporated into this Agreement by reference.

III. NMC Obligations:

- A. NMC shall be responsible for providing Accretive with the necessary information to complete the assigned project. The timelines for needed data will be detailed in the engagement letter. NMC will also be responsible for providing adequate work space in the event Accretive needs to be on site, including internet access, copy machine, a desk and other reasonable supplies in order to ensure the satisfactory completion of the project.
 - i. NMC shall pay an amount not to exceed \$100,000 for the implementation of work set forth in the Scope of Services.
 - ii. NMC will use its best efforts to use the Accretive Portal to provide the Full Documentation and any Additional Payor Guidelines, or other communications to Accretive during the Appeal process. If NMC does not use the Accretive Portal for transmission, NMC and Accretive must agree in advance to any other secure form of data communication regarding Appeals.
 - iii. NMC shall be responsible for payment of all sales, use, excise or other tax levied in connection with the Services or otherwise on the compensation to be

paid to Accretive under this Agreement, other than income tax assessed against Accretive.

- iv. NMC agrees that if it fails to make any payment when due, Accretive has the right, without any limitation of its other rights under law or equity, to suspend or terminate the Services or any portion thereof, and Accretive will not be liable for any resulting loss, damage or expense connected with such suspension or termination.
- v. NMC shall not pay any claims for payment of services submitted more than twelve (12) months after calendar month in which the services were completed.
- vi. NMC may, in its sole discretion, terminate the contract or withhold payments claimed by Accretive for services rendered if Accretive fails to satisfactorily comply with any term or condition of this Agreement.
- vii. NMC and Accretive agree that Accretive shall be reimbursed for travel expenses during this Agreement. Accretive shall receive compensation for travel expenses as per the "County Travel Policy". A copy of the policy is available online at www.co.monterey.ca.us/auditor/policies.htm to receive reimbursement, Accretive must provide a detailed breakdown of authorized expenses, identifying what was expended and when. Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.
- viii. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

IV. Pricing/Fees:

- a. Accretive pricing shall be reference to the Exhibit A provided in the Agreement. The price per case quoted in this Exhibit A applies to all reviews of one individual patient during a continuous hospital stay. A subsequent hospital stay for that same patient would be deemed a new case.

Compliance Services & Appeal Services Fees:

COMPLIANCE SERVICES			
Service Type	Vol. Monthly Mins. ⁶	Payor Type	Pricing
Admission Reviews	45	All Payors except Medi-cal Tar-Free days	• \$200 per case ⁷
		Medi-Cal retro TAR-Free days	• \$100 per day
Retrospective Review Payor Peer to Peer Discussion ²	None	All Payors	• \$250 per case

Exhibit A Scope of Services /Payment Provisions

Nurse Utilization Review Results and Nurse Retrospective Reviews	None	All Payors except Medi-Cal TAR-Free Days Medi-Cal TAR-Free days	<ul style="list-style-type: none"> • \$45 per case • \$15 per case if the case is sent to Accretive for a Physician Recommendation. • \$40 per day
Additional Compliance Services		All Payors	<ul style="list-style-type: none"> • Variable rate based on professional status of Staff required³ and/or as agreed to by the Parties
APPEAL SERVICES			
Service Type		Payor Type	Pricing
Initial Review		All Payors	Variable rate based on professional status of reviewer, if Initial Review takes more than one hour ³ Single issue, viability review -- \$125
Appeals on cases where Accretive provided secondary review		Medicare only	<ul style="list-style-type: none"> • No cost for redetermination and reconsideration unless Agreement terminated. If Agreement terminated, all status assurance commitments expire 90 days after termination. • \$350 per case for each ALJ Review • \$150 per hour for DAB Review, judicial review at district court, and initial state court proceeding • Price to be agreed upon for appellate review and beyond
Appeals		All Payors	<ul style="list-style-type: none"> • \$275 per case per level for redetermination and reconsideration (Levels I and II) • \$350 per case for ALJ Review, \$450 if Accretive is requested at the hearing telephonically • \$350 per hour for DAB review, and judicial review at district court and initial state court proceedings • Price to be agreed upon for appellate review and beyond
Appeals Shipping and Administrative Costs		All Payors	Costs per appeal will be invoiced monthly

			Pricing
START-UP Services			
Standard Set-up, training and implementation (Section V, (b)(*))			\$2,000 one-time per Facility, reductions depending upon volume commitments.

- i. Payor Peer to Peer Discussions are expected to be completed in one hour. Time spent in Payor Peer to Peer Discussion in excess of one hour will not be billed at the case rate but at the physician hourly rate.
- ii. Hourly rates for Care Management Consulting, Utilization Review Committee, clinical points of view, and time for additional work required for Complex Cases, Contract Reviews, Lectures and Engagements:
- iii. Additional consultations, services and educational lectures:
 - o Business Professional/Case Mgr. = \$175 per hour
 - o IT Integration = \$150 per hour
 - o Physician = \$250 per hour
 - o Analyst Support = \$150 per hour
 - o Physician Specialist/Legal = \$375 per hour

V. Additional Terms:

- a. Where the amount in controversy for a Commercial Payor exceeds \$10,000, the rate cited above applies for the first two hours and thereafter at the hourly physician rate.
- b. Related expenses are included in the Standard Set-up, Training and Implementation services. To the extent NMC requests Additional Compliance Services and or special engagements which require travel or other expenses, Accretive and NMC agree that such expenses shall be invoiced to NMC on the 15th day of the month following the delivery of the Additional Compliance Services. *
- c. Accretive warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.
- d. Note: Any agreed-to Volume Levels are subject to renegotiation if Medicare or Medicaid regulations change in a way to materially impact the need for Compliance Services or Appeals Services.
- e. Minimum volumes * \$ case rate will be trued up at the end of each calendar quarter, i.e., if volume for quarter is less than three month minimum, the end of quarter minimum volume charge will be added, which will be calculated as the (Minimum volume less Actual Volume) * \$ case rate.
- f. **OWNERSHIP RIGHTS.** This is not a work for hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code) with regard to either Party. Accretive is the sole owner of and shall retain sole and exclusive ownership of all right, title and interest in its work papers, proprietary information, processes, methodologies, techniques, ideas, concepts, trade secrets,

know-how, programs and software, including the Accretive Portal and such information as existed prior to the delivery of the Services and, to the extent such information is of general application, anything which Accretive may discover, create, learn or develop during the provision of Services for NMC. Neither Party is granting nor assigning to the other Party any right, title, or interest, express or implied, in or to the Party's intellectual property. Each Party reserves all rights in such property. To the extent any deliverables contain Accretive's proprietary information (excluding Accretive software), Accretive grants NMC a non-exclusive, non-assignable, royalty-free license to use it in connection with the Services and associated deliverables and for no other or further use. To the extent the deliverables contain the proprietary information of a third party, NMC agrees to comply with such third-party's terms of license as the same are communicated to NMC. Each Party agrees to promptly notify the other Party of any known or suspected infringement or breach of the other Party's proprietary rights

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective August 31, 2015 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Accretive Health (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“E PHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Accretive Health, Inc.

401 N. Michigan Avenue, Suite 2700

Chicago, Illinois 60611

Attn: Dr. Emad Rizk Chief Executive Officer

Phone: 877-411-5531

Fax: 855-572-7562

If to Covered Entity, to:

Natividad Medical Center

Attn: _____

Phone: _____

Fax: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

[BUSINESS ASSOCIATE]

**COUNTY OF MONTEREY, ON BEHALF OF
NATIVIDAD MEDICAL CENTER**

By: 

By: 

Print Name: Pamela Mulshine MD

Print Name: Gary Gray

Print Title: Vice President Clinical Operations

Print Title: CEO

Date: August 31, 2015

Date: 8/31/15