

  
**COUNTY OF MONTEREY AGREEMENT FOR SERVICES**  
**(MORE THAN \$100,000)**

This Agreement for Services (hereinafter “Agreement”) is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, “the County”), on behalf of Natividad Medical Center (“NMC”), a general acute care teaching hospital wholly owned and operated by the County, and Experian Health, Inc.  
(hereinafter “CONTRACTOR”).

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

1. **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: Medical Billing, Eligibility and Medicare DDE Access Services

2. **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 \$ 450,000.

3. **TERM OF AGREEMENT.**

3.1. The term of this Agreement is from July 1, 2021 through June 30, 2024 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.

3.2. 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 cause immediately.

4. **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: Addendum No. 1
- Exhibit C: Business Associate Agreement

5. **PERFORMANCE STANDARDS.**

5.1. 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.

- 5.2. 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.
- 5.3. 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.

## 6. PAYMENT CONDITIONS.

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days 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.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.
- 6.5. CONTRACTOR shall 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 the amounts claimed, and such other information pertinent to the invoice. NMC 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.

## 7. TERMINATION.

- 7.1. 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.
- 7.2. 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.

7.3 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.

## **8. INDEMNIFICATION.**

8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, 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.

## **9. INSURANCE.**

### **9.1 Evidence of Coverage:**

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.

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 CONTRACTOR.

9.2 **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.

- 9.3 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:

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.

- Exemption/Modification (Justification attached; subject to approval).

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 \$1,000,000 per occurrence.

- Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs others 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.

- Exemption/Modification (Justification attached; subject to approval).

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.

- Exemption/Modification (Justification attached; subject to approval).

9.4 Other Requirements:

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.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty 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.

**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.** The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

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 (5) 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.

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.

## 10. RECORDS AND CONFIDENTIALITY.

10.1 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.

- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.
11. **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.
12. **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.
13. **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.

14. **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  
1441 Constitution Blvd  
Salinas, CA. 93906  
FAX: 831-757-2592

**CONTRACTOR:**

Business Name: Experian Health, Inc.  
Attn: Legal Department  
Address: 720 Cool Springs Blvd., Suite 200  
City, State, Zip: Franklin, TN 37067  
FAX: 877-442-2150  
Email: Contract&Setup@experianhealth.com

**15. MISCELLANEOUS PROVISIONS.**

- 15.1 **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.
- 15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by NMC and the CONTRACTOR.
- 15.3 **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.
- 15.4 **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.

- 15.5 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.6 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.
- 15.7 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.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 15.13 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.
- 15.14 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.
- 15.15 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.
- 15.16 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.

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Charles R. Harris, CEO

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy County Counsel

Date: \_\_\_\_\_

**APPROVED AS TO FISCAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy Auditor/Controller

Date: \_\_\_\_\_

**CONTRACTOR**

**Experian Health, Inc.**

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

\_\_\_\_\_  
Signature of Chair, President, or Vice-President

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

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

**Jeff Corley** Senior Director - Operations

\_\_\_\_\_  
Name and Title

Date: Jul 7, 2022

**\*\*\*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).

**EXHIBIT A to AGREEMENT**

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

**1.1** System Software is currently installed and has been operational since 2002. Contractor provides software designed to process healthcare claims for adjudication by Medicaid (Medi-Cal), Medicare, and Commercial Insurance payers. The services are generally described as follows: Medical Billing, Eligibility and Medicare DDE access. The purpose of this Add product and Renewal Amendment is to provide NMC with an upgrade in Products to the new ClaimSource Products set forth below. As of the date of first productive use of the ClaimSource Products NMC will then be able to request a termination of the "Legacy Products." All as is set forth more specifically hereinafter.

**II. CONTRACTOR Obligations:**

**2.1** System Software will accept data file(s) in specified format(s) containing data elements for UB04 and CMS1500 medical claims provided to the System via network connection or other Contractor approved method. The System Software will accurately recognize and process data elements as a warranted function.

**2.2** The System Software provides data file outputs conforming to the requirements of the State Medi-Cal program for Medi-Cal claims submission to the designated fiscal intermediary for the State or the designated recipient Health Plan. Contractor will provide update services for on-going enhancements of the System Software to meet billing requirements set forth by the State Medi-Cal Program. The System Software provides data file(s) conforming to the requirements of the Centers for Medicare and Medicaid Services (CMS) for Medicare Part A and Part B. Contractor will provide update services to meet billing requirements for Medicare Part A & B claims for submission to the designated Medicare intermediary for the Licensee. Contractor will provide updates to meet the billing requirements of Commercial Payers.

**2.3** Any modifications provided to extract from licensee's billing system will be warranted to function correctly as part of the combined system and will include all data elements on the claim form provided from the Hospital Financial System and any missing data elements will be included as data entry elements within the biller correction screens.

**2.4** It is understood that the Software may require modification. Contractor will confer with licensee regarding such modification necessary to interface with the existing billing system and as considered by the Licensee necessary for optimal use of the software. Such modifications shall be made by Contractor, at the rates specified in Schedule A, to include specialized programming and training approved by Licensee.

**III. NMC Obligations:**

**3.1** NMC will provide Contractor access to the system server to update the software and provide system troubleshooting and maintenance.

**IV. DELETE PRODUCTS.**

**4.1** One hundred -eighty (180) days following the go-live date of the Products listed hereinafter, Contractor will terminate Customer's access to the products listed immediately below this paragraph (the "Legacy Products") from the Agreement in their entirety. During the 180 day period when both the Legacy Products and the new Products are Live, Contractor will waive the subscription fees for the Legacy Products and any associated subscription or transaction fees for the Legacy Products will be deleted from the Agreement.

- DSG - ClaimSource - Automated Secondary Billing - 1500 to 1500 (ClaimSource Direct - Automated Secondary Billing - 1500 to 1500)
- DSG - ClaimSource - Automated Secondary Billing - UB to UB (ClaimSource Direct - Automated Secondary Billing - UB to UB)
- DSG - ClaimSource - Institutional (UB) Claims Editor (ClaimSource Direct - UB Editor - Institutional (UB) Claims Editor (Includes up to 20 Send Connections)
- DSG - ClaimSource - Professional (1500) Claims Editor (ClaimSource Direct - Professional (1500) Claims Editor (Includes up to 20 Send Connections)
- DSG - Database Management System (Database Management System)
- DSG - Denial Manager (ClaimSource Direct Denial Manager identifies denied claims for analysis and maximizes reimbursement. Direct access to the billed claim from the Denial Manager screens allows staff to quickly review and resubmit denied claims.
- DSG - EV Engine - Business Office/Post Claim Eligibility Batch Eligibility Medicare (ClaimSource Direct Eligibility – Business Office Post Claim – Medicare)
- ClaimSource Direct Eligibility – Business Office Post Claim – Medi-Cal
- DSG - EV Engine - Registration/Pre Reg Real-Time Eligibility - Stand Alone (ClaimSource Direct - EV Engine - Registration/Pre Reg Real-Time Eligibility - Stand Alone)
- DSG - Remittance Manager - ERA - Custom Posting - 10 Payers (ClaimSource Direct Remittance Manager - ERA - Custom Posting for up to 30 Payers)

**V. MONTHLY SUBSCRIPTION AND TRANSACTION FEES:**

PRODUCT DISCIPTION	Implementation Fee (One-time)	Monthly Subscription Fee
<b>The Products immediately below are new Products being added.</b>		

<b>ClaimSource Institutional/Professional + ERA</b> is a full service claims management system that allows clients to submit claims files from their host billing system(s) for processing, performing pre-submission edits and error checking, formatting outbound claims and submitting claims to payers. ClaimSource applies a full set of pre-submission edits including standard, payer specific, provider specific (custom) and medical necessity edits before claims are submitted to the payers.	<b>Previously Paid</b>	<b>Included</b> <b>The ClaimSource Transaction Fee shall be billed as provided below.</b>
<b>Automated Secondary Billing</b> is an optional ancillary module that requires the purchase of the ClaimSource product to be used. This module allows for the ClaimSource system to generate secondary claims based on the payer's adjudication of the primary claim. Automated Secondary Billing accomplishes this by creating the secondary claim when the electronic remit (ANSI 835) file is received from the primary payer and the primary claim is designated as Paid.	<b>Previously Paid</b>	<b>Included</b>
<b>ClaimSource Eligibility</b> (Requires client to have an Experian Eligibility product under contract to be used in ClaimSource) runs an eligibility check for patients against the Experian Health eligibility repository during the claim load and validation process. If a valid response is found, that response will be re-purposed at no additional cost, and the eligibility edits will run against it. If a valid eligibility response is not found, then a new eligibility check is triggered, and that response will be used for editing on the claim. All new eligibility transactions will be counted as part of the monthly transaction volume and appropriate fees will apply per the eligibility product's contractual agreement.	<b>Previously Paid</b>	<b>Included</b> <b>ClaimSource Eligibility may run an Eligibility Verification Transaction as described in the product description.</b>
<b>ClaimSource Archive Historical Claim Load</b> allows new ClaimSource clients to load historical claims into an archive file for viewing purposes only. These claims cannot be reported on, re-worked and/or re-submitted. The historical claims data must be provided for import in the ANSI 837 format.	<b>Previously Paid</b>	<b>Included</b>
<b>ClaimSource Archive Historical Remit Load</b> allows new ClaimSource clients to load historical remits into an archive file for viewing purposes only. Remits cannot be reported on or used for posting purposes. The historical data must be provided for import in the ANSI 835 format.	<b>Previously Paid</b>	<b>Included</b>
<b>Electronic Attachments</b> are attachments that are sent electronically to a payer that has agreed to accept them via an electronic interface. A unique identifier in the electronic attachment file and the PWK segment in the claim file is used to connect these two transactions on the payer's side.	<b>Previously Paid</b>	<b>Included</b> <b>The Electronic Attachments Transaction Fee shall be billed as provided below.</b>
<b>The Products immediately below are existing Products being renewed.</b>		
<b>ClaimSource Direct - Automated Secondary Billing - 1500 to 1500</b>	<b>Previously Paid</b>	<b>Included</b>
<b>ClaimSource Direct - Automated Secondary Billing - UB to UB</b>	<b>Previously Paid</b>	<b>Included</b>
<b>ClaimSource Direct - UB Editor - Institutional (UB) Claims Editor</b> (Includes up to 20 Send Connections)	<b>Previously Paid</b>	<b>\$5,000</b>
<b>ClaimSource Direct - Professional (1500) Claims Editor</b> (Includes up to 20 Send Connections)	<b>Previously Paid</b>	<b>The ClaimSource Transaction Fee shall be billed as provided below.</b>
<b>Database Management System</b>	<b>Previously Paid</b>	<b>\$230</b>
<b>ClaimSource Direct - Denial Manager</b> identifies denied claims for analysis and maximizes reimbursement. Direct access to the billed claim from the Denial Manager screens allows staff to quickly review and resubmit denied claims.	<b>Previously Paid</b>	<b>Included</b>
<b>ClaimSource Direct - Remittance Manager - ERA - Custom Posting</b> for up to 30 Payers	<b>Previously Paid</b>	<b>Included</b>

<b>ClaimSource Direct Eligibility – Business Office Post Claim – Medicare</b>	<b>Previously Paid</b>	<b>\$650</b>
<b>ClaimSource Direct Eligibility – Business Office Post Claim – Medi-Cal</b>	<b>Previously Paid</b>	<b>\$650</b>
<b>ClaimSource Direct - EV Engine - Registration/Pre Reg Real-Time Eligibility - Stand Alone</b>	<b>Previously Paid</b>	<b>The Eligibility Verification Transaction Fee shall be billed as provided below.</b>
<b>MediTrak Enterprise - VPN tunnel established between "Experian Health" and "Customer". Client supplies secure 3270 emulation, supports unlimited users, Medicare claim submission, remit retrieval, access to Medicare DDE screens.</b>	<b>Previously Paid</b>	<b>Included</b>
<b>OneSource Install Hospital plus Eligibility includes the initial install of the OneSource solutions for one hospital and provides individual payer eligibility, benefits data, claim status, view/submit referrals, online coding tools, pre-certification, authorization, and notice of admission.</b>	<b>Previously Paid</b>	<b>Included The Eligibility Verification Transaction Fee shall be billed as provided below.</b>
<b>First Year Estimated Totals (does not include any Excess Usage Fee)</b>	<b>\$0.00</b>	<b>\$ 6,530</b>

**5.1 PASS-THROUGH FEES.** Fees exclude pass-through fees (“Pass-Through Fees”) from state and federal governmental entities (“Governmental Entities”), Medicaid and Medicare Managed Care Organizations (“MCOs”), third-party payers, communication tariffs, and/or other similar fees. Without prior notice, Pass-Through Fees will be billed monthly in addition to all other Fees at the cost that Experian Health pays to obtain transaction data. Notwithstanding any other provision of the Agreement to the contrary, Experian Health shall have the right to increase the Pass-Through Fees to offset any increases in rates, changes, or other costs from Governmental Entities, MCOs and other third parties, including without limitation Medicaid and Medicare administrators, or any increase in the cost of providing services hereunder resulting from rules, regulations and operating procedures of any federal, state or local agency or regulatory authority. The Pass-Through Fees are not subject to approval by Experian Health.

**5.2 SUBSCRIPTION FEES.** Subscription fees relate to the ongoing availability of the product offering(s) to Customer. These fees are presented on an annual basis but billed on a monthly basis for the duration of the Agreement. Billing begins the earlier of: i) Customer’s first productive use or ii) the full calendar month following the Amendment Effective Date.

**5.3 ONLINE TRAINING AND CUSTOM PROGRAMMING FEES.** Experian Health shall provide online training for products listed above. The training shall be scheduled at such dates and times that are acceptable to Experian Health and Customer. Further, custom programming is available, to the extent requested in writing by Customer, for a fee set forth in an amendment to the Agreement.

**VI. TRANSACTION FEES**

**6.1 TRANSACTION FEES.** Transaction Fees are billed per each successful transaction processed. A “successful” transaction shall be defined as an electronic transaction that returns a valid payer, data source, or business associate response to Customer from Experian Health as an inquiry sent to Experian Health from Customer’s HIS/PMS system(s). Transactions become billable to Customer once Customer is eligible for training and will be billed on a monthly basis for the duration of the Agreement.

**6.2 CLAIMSOURCE TRANSACTION FEES.** The ClaimSource transaction fee ("ClaimSource Transaction Fee") shall be equal to the sum of the Monthly Base Rate plus the Excess Usage Fee, if any, and shall be billed based on Customer’s selection below. These fees are billed on a monthly basis beginning the earlier of: i) Customer’s first productive use or ii) nine (9) months following the Amendment Effective Date ("ClaimSource Billing Date"). The ClaimSource® Transaction Fee does not include Pass-Through Fees. In no event will the ClaimSource Transaction Fee be less than the Monthly Base Rate for Customer’s selected pricing tier. Prior to the ClaimSource Billing Date, Customer shall be billed at the Excess Usage Rate corresponding to Customer’s selection below.

**6.3** Customer may change pricing tiers to a lower tier (“Downward Price Change”) once per calendar quarter by providing written notice to Experian Health (“Price Change Notice”). Customer may change pricing tiers to a higher tier at any time (“Upward Price Change”) by providing a Price Change Notice. Any Price Change shall be effective the first day of the calendar month following Experian Health’s receipt of the Price Change Notice.

ClaimSource Transaction Fee			
Pricing Tier (Select One)	Monthly Base Rate	Monthly Max Transactions	Excess Usage Fees
1 <input type="checkbox"/>	\$5,230 per month	25,000 transactions per month	\$0.24 per transaction in excess of 25,000 transactions per month
2 <input type="checkbox"/>	\$6,650 per month	35,000 transactions per month	\$0.23 per transaction in excess of 35,000 transactions per month

**6.4 ELECTRONIC ATTACHMENTS TRANSACTION FEES.** The Electronic Attachments transaction fee ("Electronic Attachments Transaction Fee") shall be equal to the sum of the Monthly Base Rate plus the Excess Usage Fee, if any, and shall be billed based on Customer's selection below. These fees are billed on a monthly basis beginning the earlier of: i) Customer's first productive use or ii) nine months following the Amendment Effective Date ("Electronic Attachments Billing Date"). In no event will the Electronic Attachments Transaction Fee be less than the Monthly Base Rate for Customer's selected pricing tier. Prior to the Electronic Attachments Billing Date, Customer shall be billed at the Excess Usage Rate corresponding to Customer's selection below.

Customer may change pricing tiers to a lower tier ("Downward Price Change") once per calendar quarter by providing written notice to Experian Health ("Price Change Notice"). Customer may change pricing tiers to a higher tier at any time ("Upward Price Change") by providing a Price Change Notice. Any Price Change shall be effective the first day of the calendar month following Experian Health's receipt of the Price Change Notice.

Electronic Attachments Transaction Fee			
Pricing Tier (Select One)	Monthly Base Rate	Monthly Max Transactions	Excess Usage Fees
1 <input type="checkbox"/>	\$225 per month	1,500 transactions per month	\$0.16 per transaction in excess of 1,500 transactions per month
2 <input type="checkbox"/>	\$375 per month	2,500 transactions per month	\$0.16 per transaction in excess of 2,500 transactions per month

**6.5 ELIGIBILITY VERIFICATION TRANSACTION FEES.** The Eligibility Verification transaction fee ("Eligibility Transaction Fee") includes eligibility verification transactions across all product platforms, including eCare NEXT®, IntelliSource, EDI, OneSource, BatchSource and Claims as well as any other transactions triggered by another Product, including Patient Estimates and ClaimSource. The Eligibility Transaction Fee shall be equal to the sum of the Monthly Base Rate plus the Excess Usage Fee, if any, and shall be billed based on Customer's selection below. These fees are billed on a monthly basis beginning the earlier of: i) Customer's first productive use or ii) nine (9) months following the Amendment Effective Date ("EV Billing Date"). The Eligibility Transaction Fee does not include Pass-Through Fees. In no event will the Eligibility Transaction Fee be less than the Monthly Base Rate for Customer's selected pricing tier. Prior to the EV Billing Date, Customer shall be billed at the Excess Usage Rate corresponding to Customer's selection below.

Customer may change pricing tiers to a lower tier ("Downward Price Change") once per calendar quarter by providing written notice to Experian Health ("Price Change Notice"). Customer may change pricing tiers to a higher tier at any time ("Upward Price Change") by providing a Price Change Notice. Any Price Change shall be effective the first day of the calendar month following Experian Health's receipt of the Price Change Notice.

Eligibility Verification Transaction Fee			
Pricing Tier (Select One)	Monthly Base Rate	Monthly Max Transactions	Excess Usage Fees
1 <input type="checkbox"/>	\$1,875 per month	12,500 transactions per month	\$0.15 per transaction in excess of 12,500 transactions per month
2 <input type="checkbox"/>	\$2,900 per month	20,000 transactions per month	\$0.155 per transaction in excess of 20,000 transactions per month
3 <input type="checkbox"/>	\$3,925 per month	25,000 transactions per month	\$0.155 per transaction in excess of 25,000 transactions per month
4 <input type="checkbox"/>	\$4,950 per month	30,000 transactions per month	\$0.155 per transaction in excess of 30,000 transactions per month

**VI. PRODUCT SPECIFIC TERMS**

**7.1 ADDITIONAL TERMS APPLICABLE TO CLAIMSOURCE**

**ELECTRONIC INTERFACES AND SYSTEM SOFTWARE.** Customer is responsible for providing electronic file(s), containing data elements for UB04 and or CMS 1500 medical claims ("Claims File") for use with the system software. The Claims File shall be delivered in an industry standard file format(s), or mutually agreed upon non-standard format, by a secure network connection, or other Experian Health approved method.

Additional charges shall apply for programming changes to the system software resulting from Customer changes in the format(s) of the Claims File. These changes will be billed to the Customer based on Experian Health's current hourly programming rate.

The system software accepts HIPAA compliant remittance advice data file(s) containing data elements related to payments and adjustments for medical claims for the contracted payers. The system software provides an output file format for transfer to accounts receivable systems. The Customer is responsible for the file transfer of remittance advice data file(s) from the Experian Health system to all other systems for the purposes of updating accounts receivable.

## **7.2 ADDITIONAL TERMS APPLICABLE TO ELECTRONIC ATTACHMENTS INTERFACE**

**CLAIMS ATTACHMENT PASS-THROUGH FEES.** Fees exclude pass-through fees from state and federal governmental entities, Medicaid and Medicare Managed Care Organizations, third-party payers, third-party data service providers (including but not limited to pass through fees associated with processing of Veterans Affairs claims), communication tariffs and/or other similar fees ("Attachments Pass-Through Fees"). Attachments Pass-Through Fees will be billed monthly in addition to all other fees at the cost, without any markup, that Experian Health pays to obtain transaction data. The Attachments Pass-Through Fees are not subject to approval by Experian Health.

## **VIII. ADDITIONAL FEES/PRICING TERMS:**

- Support services requested outside standard business hours may be billable at the standard hourly rate. Standard business hours are Monday to Friday, 6am to 5pm PST.
- Custom programming routines specific to Natividad Medical Center are billed at the standard rate. Current Hourly Programming Rates: \$300 per hour.
- Equipment and hardware are the responsibility of NMC as long as the system is hosted by NMC. Contractor can host the system software at no additional cost.
- Travel and other reimbursable expenses are not allowed for this Agreement.
- CONTRACTOR 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.
- 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.
- NMC may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for disputed services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement, provided that NMC provides written notice to CONTRACTOR of any disputed fees.
- No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.
- CONTRACTOR may terminate this Agreement for cause if NMC fails to make any payment when due on any undisputed Services.

## **IX. BUSINESS ASSOCIATE AGREEMENT:**

**9.1** The Business Associate Agreement of even date herewith between the parties shall is hereby incorporated by reference into the Agreement and is subject to Section XII herein.

## **X. LICENSED RIGHTS:**

**10.1. Grant:** Subject to the terms and conditions of this Agreement, and for so long as NMC is not in breach of the terms and conditions, CONTRACTOR grants the NMC a perpetual, nonexclusive, non-assignable, and non-transferable right to use the Products and Services at the site(s) designated in the Agreement for the purposes of internal data processing, report and claim generation and conveyance for the Initial Term or Amended Term, as applicable ("License Term"). The License Term will remain in effect until the Agreement is terminated. These license grants also apply to any user documentation provided by CONTRACTOR ("Documentation"). Upon termination of this Agreement for any reason, NMC shall immediately return all copies of the software comprising the Products and Services all other intellectual property of CONTRACTOR. To the extent necessary, NMC shall grant CONTRACTOR access to its premises during regular business hours to allow CONTRACTOR to remove or delete such intellectual property. CONTRACTOR shall deliver the data to NMC in X12 format.

**10.2 Limitation:** The NMC may not: (1) reverse engineer the Products; (2) use the Products to provide time-sharing or service-bureau services, either for profit or not, except as stated above; (3) allow third-parties to access or use the Products; (4) give copies of the Products to any other party including parent or sister company(ies), subsidiaries, or contractors; and (5) reproduce the Products or user Documentation except as stated above. NMC will not copy or modify the Products except as expressly permitted in this Agreement. NMC will not alter any trademark, copyright notice, or other proprietary notice on the Products or Documentation, and will duplicate each such trademark or notice on each copy of

the Products and Documentation. All Products used to provide the Services are herein identified as proprietary to CONTRACTOR, its licensors or vendors as applicable, and may not be copied, reproduced, modified, reverse engineered, translated, decompiled, disassembled, emulated, sublicensed, rented, leased, conveyed, assigned or used in any way other than as specifically authorized in this Agreement except to the extent and for the express purposes authorized by applicable law notwithstanding this limitation. All copies and partial copies of the Products will remain the property of CONTRACTOR.

**10.3 Changes To Services:** CONTRACTOR reserves the right at any time to (i) change, add, or modify any Product or Service or the manner in which such Product or Service is delivered or (ii) withdraw any Product or Service. Customer requests for changes to an existing Product may result in modifications to scope of service. The Experian team will review requested changes and if material change in scope is needed, the additional work will be documented and priced according to the Change Order process, as described herein. If Customer request is out of scope of the current version/configuration of the Product, and Experian Health determines, in its sole discretion, that the work is feasible Experian Health will prepare a Change Order proposal with appropriate costs. The Change Order proposal shall document any Customer-requested customization or deviation from a best practice workflow and will include all associated fees. Prior to the commencement of any work, Customer must agree to a Change Order document in writing, which will include all fees and the proposed timeline based on the requested changes.

**10.4 Scope Changes.** Customer requests for changes to an existing Product may result in modifications to scope of service. The Experian Team will review requested changes and if material change in scope is needed, the additional work will be documented and priced according to the Change Order process, as described herein. If Customer request is out of scope of the current version/configuration of the Product, and Experian Health determines, in its sole discretion, that the work is feasible Experian Health will prepare a Change Order proposal with appropriate costs. The Change Order proposal shall document any Customer-requested customization or deviation from a best practice workflow and will include all associated fees. Prior to the commencement of any work, Customer must agree to a Change Order document in writing, which will include all fees and the proposed timeline based on the requested changes.

**10.5 System Requirements.** CONTRACTOR has previously installed and configured and will continue to provide all technical support to maintain operations of the Linux Red Hat operating system software as part of this Agreement. CONTRACTOR assumes complete responsibility for the application software installed by CONTRACTOR on the System Server. The NMC is responsible for regular system backups, for archiving of backups and data files, for maintaining the network, for maintaining VPN access to the System Server and for reporting system difficulties to CONTRACTOR. CONTRACTOR System Support includes system maintenance via VPN access, assistance in the diagnosis of hardware or network related problems and technical assistance for all system operations.

## **XI. DATA:**

**11.1 Data Authority.** The state or federal government, commercial payer and/or various data source's records are the final authority on eligibility, benefits, claims or other patient data. The data NMC and CONTRACTOR may exchange pursuant to this Agreement may change as a result of changes in law or regulation, or actions taken in accordance with the terms and conditions of certain health care benefits contracts, or changes made to those contracts.

**11.2 Non-Guarantee of Reimbursement.** CONTRACTOR does not warrant the accuracy or completeness of the data it sends to NMC as it is returned directly from a payer or data source. Acceptance by NMC of the data CONTRACTOR sends electronically does not constitute guarantee of reimbursement. CONTRACTOR exercises no control whatsoever over any third-party content, data and information entered into or displayed by the Products or any third-party content, data and information passing to/from NMC via the Products. NMC's use of any third-party content, data and information obtained via the Products is at NMC's own risk and CONTRACTOR specifically disclaims any warranty or responsibility for the accuracy or quality of third-party content, data and information obtained or provided through such use. CONTRACTOR shall have no responsibility or liability with regard to actions of third parties, including but not limited to disputes concerning payment of claims, eligibility status of a patient, or any other payer-submitted information. Information submitted by a payer through CONTRACTOR is no guarantee of payment and does not constitute a promise to pay; eligibility information is subject to change and waiting periods may apply.

**11.3 System Testing:** CONTRACTOR reserves the right to process test transactions on NMC's behalf in order to monitor service performance and quality assurance, but NMC shall not be responsible for any fees associated with such monitoring.

**11.4 Proprietary Rights and Confidentiality.** NMC, and on behalf of its employees, agents, vendors and clients, recognizes, acknowledges, and hereby agrees that CONTRACTOR and its licensors and vendors, as applicable, retain a proprietary interest in the Products and Services provided hereunder, and also to any and all copies, versions and derivative works of the same. NMC, and on behalf of its employees, agents, vendors and clients, shall not use or disclose the Products and Services, or any equipment, provided hereunder except for purposes consistent with this Agreement. To the extent that CONTRACTOR's employees or agents obtain access to NMC's proprietary information (i.e., a patient's Protected Health Information), CONTRACTOR shall use the information for the sole purpose of providing the Products and Services offered under this Agreement. CONTRACTOR shall not disclose such proprietary information to any third party except where the third party is contractually obligated to CONTRACTOR to facilitate the delivery of Products and Services. NMC also acknowledges and agrees that certain payers, fiscal intermediaries, government entities, and other third-party information suppliers may require compliance with obligations involving confidentiality, liability, and scope of use, as a condition of accessing their information. In the event such compliance obligations are directed to CONTRACTOR then CONTRACTOR will convey such written obligations to NMC as a requirement to access data. NMC also acknowledges and agrees that this Agreement and all pricing information and performance standards contained within and any of its related amendments, addendums, exhibits and schedules is considered confidential, competitive health care information and trade secrets and shall not be disclosed to any third party without the prior written consent of CONTRACTOR. This entire section shall survive the termination of this Agreement.

**11.5 Warranties, Remedies, Indemnities and Liabilities.** CONTRACTOR warrants that it has the authority to provide the Products and Services to NMC under this Agreement, and as of the Effective Date and to the best of CONTRACTOR's knowledge, the use of the Products and Services by NMC in accordance with the terms of this Agreement shall not infringe upon the United States patent, trademark or copyrights of any

third party. NMC's sole and exclusive remedy and CONTRACTOR's sole and exclusive liability in the event of a breach of the foregoing representation or warranty is the indemnification set forth in Section XIII below. In the event of a breach of the foregoing warranty, CONTRACTOR shall use commercially reasonable efforts to repair or replace the affected Product.

CONTRACTOR warrants that the Products and Services will accept data file(s) in specified format(s) containing data elements for institutional and professional medical claims provided to the system via network connection or other CONTRACTOR approved method. The Products and Services will accurately recognize and process data elements as a warranted function. Changes to the Products and Services that relate to the use of additional data file formats for medical claims data may incur additional programming charges from CONTRACTOR. These charges will be billed to the NMC based at CONTRACTOR's current hourly programming rate and will be provided prior to programming for approval.

If NMC requests warranty service that results in the determination that the licensed software was not deficient or at fault, then NMC agrees to pay all expenses and labor costs incurred by CONTRACTOR at the then current rate.

EXCEPT AS OTHERWISE PROVIDED HEREIN, the Services and products are provided "AS IS" without warranty of any kind, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. NMC AGREES THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST NMC BY ANY OTHER PARTY. DUE TO THE NATURE OF THE SERVICES BEING PERFORMED BY CONTRACTOR, IT IS AGREED THAT IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY CLAIM, LOSS, LIABILITY, CORRECTION, COST, DAMAGE, OR EXPENSE CAUSED BY CONTRACTOR'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER WHICH IS NOT REPORTED BY NMC WITHIN NINETY (90) DAYS OF SUCH FAILURE TO PERFORM.

NMC ACKNOWLEDGES THAT, IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT, INFORMATION SHALL BE TRANSMITTED OVER LOCAL EXCHANGE, INTEREXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND OTHER DEVICES OWNED, MAINTAINED AND SERVICED BY THIRD PARTY LOCAL EXCHANGE AND LONG DISTANCE CARRIERS, UTILITIES, INTERNET SERVICE PROVIDERS, AND OTHERS, ALL OF WHICH ARE BEYOND THE CONTROL AND JURISDICTION OF CONTRACTOR. ACCORDINGLY, CONTRACTOR ASSUMES NO LIABILITY FOR OR RELATING TO THE DELAY, FAILURE, OR INTERRUPTION OF INFORMATION TRANSMITTED IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT.

IN NO EVENT SHALL EITHER PARTY, ITS LICENSORS, SUPPLIERS AND/OR SUBCONTRACTORS BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE OR PROFITS, COST OF CAPITAL, CLAIMS OF NMC'S FOR SERVICE INTERRUPTIONS OR FAILURE OF SUPPLY, AND COSTS AND EXPENSES INCURRED IN CONNECTION WITH LABOR, OVERHEAD, TRANSPORTATION, INSTALLATION, OR REMOVAL OF EQUIPMENT OR PROGRAMMING OR SUBSTITUTE FACILITIES OR SUPPLY RESOURCES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The obligations under this section shall survive termination of this Agreement.

## **XII. INTELLECTUAL PROPERTY INDEMNIFICATION.**

12.1 CONTRACTOR will indemnify, defend and hold harmless NMC from any action or other proceeding brought against NMC to the extent that it is based on a claim that the use of the Products or Services delivered under this Agreement infringes any U.S. copyright or U.S. patent of a third party; provided that NMC gives CONTRACTOR commercially reasonable notice in writing of a complaint, gives CONTRACTOR sole authority to defend the same and gives CONTRACTOR all available information assistance and authority (at NMC's expense) in connection therewith. CONTRACTOR will have control of the defense of such proceeding including appeals and of all negotiations for, including the right to effect the settlement or compromise thereof. In the event of such a complaint or if in CONTRACTOR's reasonable opinion such a complaint is likely to be successfully made, CONTRACTOR shall, at its option and expense, to the extent necessary to provide substantially equivalent and compatible Product and/or Service, procure for NMC the right to continue using the Product and/or Service, replace the same with non-infringing Product and/or Service, or modify the same so that it becomes non-infringing and conforms in all material respects. In the event that the infringing Product and/or Service cannot be replaced or modified as set forth herein in a commercially reasonable manner, CONTRACTOR may discontinue the Product and/or Service, or that portion of the Product and/or Service, and the access granted hereunder will terminate. CONTRACTOR will not have any liability to NMC if any such infringement, or complaint thereof, is based upon or arises out of (a) non-compliance with the design, plans or specifications furnished by or on behalf of CONTRACTOR or the Documentation or this Agreement; (b) the use of the Product and/or Service in a manner for which the same was neither designated nor contemplated; (c) modifications made to the Products or Services by or on behalf of NMC; or (d) the claimed infringement of any patent in which NMC or any subsidiary or affiliate of NMC has any direct or indirect interest, by license or otherwise. **THE FOREGOING ARE CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATIONS, AND NMC'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT.**

# **END OF EXHIBIT A**

## **ADDENDUM NO. 1**

### **TO AGREEMENT BY AND BETWEEN EXPERIAN HEALTH, INC. AND THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER FOR MEDICAL BILLING, ELIGIBILITY AND MEDICARE DDE ACCESS SERVICES**

This Addendum No. 1 amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter "Agreement") by and between Experian Health, Inc., (hereinafter "CONTRACTOR") and the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, NMC and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

- I. Paragraph 3.2 shall be deleted in its entirety.
  
- II. Paragraph 6.1 shall be amended:
  - 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement other than the monthly Subscription Fees as set forth in Exhibit A.
  
- III. Paragraph 7.1 shall be deleted in its entirety.
  
- IV. Paragraph 7.2 shall be renumbered as Paragraph 7.1 and amended:
  - 7.1 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 for any services not yet received or disputed within ninety (90) days of NMC's receipt of invoice, 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. CONTRACTOR shall have the right to terminate this Agreement for good cause upon ninety (90) days' notice if NMC fails to pay any undisputed invoice when due.

VI. Paragraph 7.3 shall be renumbered as Paragraph 7.2.

VII. Paragraph 8.1 shall be amended:

8.1 Subject to the applicable insurance policy limits set forth in Section 9.3 herein, CONTRACTOR shall indemnify, defend, and hold harmless The County of Monterey on behalf of Natividad Medical Center, its officers, agents and employees (hereinafter NMC), from any finally-awarded claim, liability, loss, injury or damage but only to the proportional extent arising out of, or in connection with the negligent acts or omissions of CONTRACTOR, the willful misconduct of CONTRACTOR or any contractual breach associated with the performance of this Agreement by CONTRACTOR and/or its agents, members, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by NMC or other third party.

VIII. Paragraph 9.2 shall be amended:

9.2 Qualifying Insurers: All coverages, 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 or an equivalent rating from a similar rating agency.

IX. Paragraph 10.1 shall be amended:

10.1 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. NMC specifically grants CONTRACTOR permission to use NMC's patients' protected Health Information ("PHI") as required to provide the services set forth in Exhibit A Scope of Services/Payment provisions of this Agreement as per the attached Exhibit C Business Associates Agreement. 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.

X. Paragraph 10.2 shall be amended:

10.2 NMC Records. When this Agreement expires or terminates, to the extent feasible, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

XI. Paragraph 10.5 shall be amended:

10.5 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 exclusively for NMC in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.

XII. Paragraph 15.6 shall be amended:

15.6 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. Notwithstanding anything contained in the foregoing, a merger with an existing parent or affiliate entity shall not constitute an assignment for purposes of this Section 15.6.

*Signature page to follow.*

**IN WITNESS WHEREOF**, the Parties hereto are in agreement with this Addendum No.1 on the basis set forth in this document and have executed this Addendum No. 1 the day and year set forth herein. This Addendum No. 1 shall be attached to and incorporated into the County of Monterey Agreement for Services (More Than \$100,000)

<u><b>The County of Monterey on behalf of Natividad Medical Center</b></u>	<u><b>Experian Health, Inc.</b></u>
<hr/>	<hr/>
Charles R. Harris, CEO	Signature of Chair, President or Vice-President
<hr/>	<hr/>
Date	Printed Name and Title
<hr/>	<hr/>
<u><b>Approved as to Form:</b></u>	Date
<hr/>	
Monterey County Deputy County Counsel	Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer
<hr/>	<b>Jeff Corley</b> Senior Director - Operations
Date	Printed Name and Title
<hr/>	<b>Jeff Corley</b>
<u><b>Approved as to Fiscal provisions:</b></u>	Date                      Jul 7, 2022
<hr/>	<u><b>Signature Instructions</b></u>
Monterey County Chief-Deputy Auditor-Controller	For 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).
<hr/>	
Date	

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective July 5, 2022 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Experian Health, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

## RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the “Security Rule”), (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, 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”).

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

## AGREEMENT

### 1. DEFINITIONS

**1.1** All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) “Breach” shall have the same meaning as “breach” as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term “Breach” as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient’s “medical information” as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a “breach of the security of the system” under Cal. Civil Code §1798.29.

(b) “California Confidentiality Laws” shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) “Protected Health Information” or “PHI” shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity’s behalf. **PHI includes EPHI.**

(d) “Services” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

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

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the 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 PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as 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 person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that 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); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **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) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any successful Security Incident that results in unauthorized access, use, disclosure, modification or destruction of EPHI (“Successful Security Incident”) of which Business Associate becomes aware; and (iii) any Breach. Such notice shall be provided within five (5) business days of Business Associate’s discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as spams and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity if such Security Incident results in a Breach. Business Associate shall investigate each Successful Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall use commercially reasonable efforts to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Successful Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Successful Security Incident or non-permitted access, acquisition, Use, or Disclosure. Subject to the limitation of liability in Section 5.8 herein, Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, reasonable attorney fees, and reasonable costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, books, and records relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services (“Secretary”) in a time and manner designated by the Secretary for purposes of determining Covered Entity’s or Business Associate’s compliance with the Privacy Rule.

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) 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. 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 ten (10) 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 thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors 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 to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; 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. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) If applicable, 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) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, 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; and

(m) Maintain policies and procedures materially in accordance with State Confidentiality 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.

### **3.2 Business Associate Acknowledgment.**

(a) 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.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy> . Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at least once annually while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**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 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;

(c) 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

(d) Notify Business Associate 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. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA if the breach is not curable; or (ii) terminate this BAA within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA 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 BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, 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 BAA 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 HIPAA, the HITECH Act, or California Confidentiality

Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA 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 BAA 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:

Experian Health, Inc.  
720 Cool Springs Boulevard, Suite 200  
Franklin, TN 37067  
Attn: Head of Legal  
[contract&setup@experianhealth.com](mailto:contract&setup@experianhealth.com)

If to Covered Entity, to:

Natividad Medical Center  
Attn: Compliance/Privacy Officer  
1441 Constitution Blvd.  
Salinas, CA 93906  
Phone: 831-755-4111  
Fax: 831-755-6254

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 BAA 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 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Indemnification; Limitation of Liability.** Subject to the limitation of liability provided herein, Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any third-party claim, liability, loss, injury, reasonable cost, reasonable expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, 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 provide the broadest possible indemnification for the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties. Notwithstanding anything to the contrary in this BAA or in any Services Agreement, Business Associate's maximum liability under this BAA, from any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, will be limited to the lesser of: (1) five times (5x) the total amount payable for the services under the applicable Services Agreement during the twelve (12) months before the cause of action arose or (2) the actual damages incurred. The foregoing limitation of liability shall not include County's reasonable costs and expenses associated with providing notice, including but not limited to printing and mailing costs, and the costs of credit monitoring services from a vendor selected by the Business Associate (for a period not to exceed one year) for affected individuals whose PHI has or may have been compromised as a result of the Breach ("Costs of Notice and Credit Monitoring"). Any such Costs of Notice and Credit Monitoring shall not be included in the cap on liability set forth herein, and Business Associate shall be liable for all such Costs of Notice and Credit Monitoring. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INCREASED DAMAGES, OR DAMAGES TO BUSINESS REPUTATION, DAMAGES ARISING FROM LOSS OF BUSINESS WITH THIRD PARTIES, OR LOSS OF PROFITS FROM TRANSACTIONS WITH THIRD PARTIES, OR WILLFUL INFRINGEMENT BY THE OTHER PARTY, WHETHER ANY OF THE FOREGOING ARE FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES OR LOST PROFITS MIGHT ARISE.

**5.8 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional

rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.9 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

**5.10 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

**5.11 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

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

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: Jeff Corley By: \_\_\_\_\_  
Print Name Jeff Corley Print Name: \_\_\_\_\_  
Print Title Senior Director-Operations Print Title: \_\_\_\_\_  
Date: Jul 5, 2022 Date: \_\_\_\_\_