Monterey County
Board of Supervisors

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Board Order

A motion was made by Supervisor Chris Lopez, seconded by Supervisor Luis A. Alejo to:

Agreement No. A-14572
a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an agreement with Champion Healthcare Technologies, Inc. for electronic tissue management software services at NMC for an amount not to exceed $97,938 with an agreement term of December 10, 2019 through December 9, 2022.
b. Approve the NMC Chief Executive Officer's recommendation to accept non-standard indemnification, insurance, limitations on liability, and limitations on damages provisions within the agreement.

PASSED AND ADOPTED on this 10th day of December 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Lopez, Phillips, Parker and Adams
NOES: None
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting December 10, 2019.

Dated: December 17, 2019
File ID: A 19-427
Agenda Item No.: 44

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Julian Lorenzana

Julian Lorenzana, Deputy

CHAMPION HEALTHCARE TECHNOLOGIES, INC.
SOFTWARE AS A SERVICE AND LICENSE AGREEMENT

This Software as a Service and License Agreement (the "**Agreement**") is made and entered into as of December 10, 2019 ("**Effective Date**") by and between Champion Healthcare Technologies, Inc., an Illinois Corporation, with its principal place of business located at 765 Ela Road, Suite 200, Lake Zurich, IL 60047 ("**Champion**"), and the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital, with its principal place of business located at 1441 Constitution Blvd, Salinas, CA 93906 ("**Customer**").

WHEREAS, Champion hosts, licenses and offers services related to the access to and use of cloud-based software and associated databases as well as permitting the use of user manuals and other documents accompanying the foregoing; and

WHEREAS, Customer desires to license from Champion, and Champion desires to grant to Customer, permissions to access and use the Services (as defined below) subject to the terms and conditions set forth in this Agreement.

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

1. **Definitions**.

(a) "**Acceptance**" shall have the meaning described in Section 3(d).

(b) "**Authorized User(s)**" means (1) an individual who is employed by Customer as a full-or part-time employee, or (2) a subcontractor of Customer engaged by and providing services to Customer at a Customer location ("**Subcontractor**"), provided that (i) with respect to (1) above, such employees are subject to written policies governing nondisclosure obligations, and (ii) with respect to Subcontractors, such persons have executed a written confidentiality and nondisclosure agreement for independent contractors or consultants providing for at least the same level of protection as the terms hereof.

(c) "**Confidential Information**" shall mean any confidential or proprietary information provided by either party to the other, except such information that (i) is known on a non-confidential basis prior to the receiving party's first receipt of such information, (ii) is generally known to the public prior to its receipt, or (iii) after receipt, becomes available to the public other than as a result of a disclosure by the receiving party. Confidential Information of Champion shall include: the software, technology, ideas, formula, know how, Documentation, procedures, algorithms and trade secrets

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embodied in or relating to the Services, technical documentation, solution methodology, user manuals and other deliverables (including the developments and adaptations to the Services). Confidential Information of Customer includes all Customer Materials.

(d) "**Customer Materials**" means all data and content provided by or on behalf of Customer for use in connection with the Services or in the performance of the Services, including, without limitation, all Customer trademarks, service marks, logos, typeface, fonts, images and text, including all Customer data stored in the Services.

(e) "**Documentation**" shall mean user manuals, flow-charts, reference materials or other tangible embodiments provided by Champion for use in connection with the Services.

(f) "**Enhancements**" shall mean all improvements, revisions, adaptation or modification to the Services regardless of the source of such enhancement, including enhancements originated by Customer.

(g) "**Error**" shall mean a reproducible failure of Services (as made available by Champion to Customer) to perform substantially in accordance with the Specifications.

(h) "**Error Correction**" shall have the meaning described in Exhibit A.

(i) "**Fees**" shall have the meaning of the group of fees outlined in Section 5.

(j) "**Infringement**" shall have the meaning described in Section 9(c).

(k) "**Intellectual Property Rights**" shall mean all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights, and other proprietary rights.

(l) "**Maintenance and Support Services**" shall mean the services described in Exhibit A.

(m) "**Problem Report**" shall have the meaning described in Exhibit A.

(n) "**Services**" shall mean Champion's cloud-based software and associated databases and services identified in the applicable

SOW under as the "Services, including any Updates, customizations or enhancements, provided under this Agreement, in the form hosted, and as may be modified by Champion, and accompanying Documentation.

(o) "**SOW**" shall mean any statement of work executed by the parties, substantially in the form of Exhibit B hereto.

(p) "**Specifications**" shall mean the functional specifications for the Services contained in the Documentation.

(q) "**Term**" shall have the meaning described in Section 4(a)

(r) "**Updates**" shall have the meaning described in Exhibit A.

(s) "**Interface Set-Up**" shall have the meaning of Champion working with the IT Department of Customer to implement an interface.

2. **Rights and Access to Services**

(a) **Permissions**. Effective upon Acceptance of the Services and payment of Fees, and subject to Customer's compliance with the terms of this Agreement, Champion grants to Customer the right to use and access the Services (and allow Authorized Users to access and use the Services) solely for its internal operations.

(b) **Rights**. Customer acknowledges and agrees that Champion or its licensors have and will retain all right, title, interest and ownership in and to the Services and any copies, Enhancements, modifications, or Updates of the Services. This is not a work made-for-hire agreement (as that term is defined in Section 101 of Title 17 of the United States Code) with regard to either party. Except for express licenses granted in this Agreement, neither party is granting or assigning to the other party any right, title, or interest, express or implied, in or to the other Party's intellectual property. Each party reserves all rights in such property. Customer acknowledges that the Services constitute Confidential Information and trade secrets of Champion and its licensors, whether or not any portion thereof is or may be the subject of a valid copyright or patent. Customer agrees to take all appropriate steps to ensure that persons having access to the Services and Documentation shall refrain from any unauthorized reproduction or disclosure of the Services and Documentation or any portion thereof. Customer acknowledges and agrees that Customer is responsible for its

Authorized Users' access to and use of the Services and shall remain liable to Champion for any breach of the terms hereof by any Authorized User as if such breach was committed by Customer.

(c) **Limitations**. Customer agrees not to (i) copy, perform, reprint, reproduce, distribute, modify, adapt, alter, translate, or create derivative works from the Services and/or Documentation; (ii) merge the Services with other software; (iii) sublicense, assign, lease, rent, or loan the Services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Services; (v) use the Services or any portion thereof to develop or create a product or service that competes with Champion's current or reasonably anticipated future commercial offerings; (vi) remove any copyright, trademark, patent or other proprietary notices from the Services or any portion thereof; or (vii) otherwise access or use the Services except as expressly allowed in this Agreement. This Agreement is not an agreement for sale.

(d) **Export**. Customer understands and agrees that access and use of the Services from outside the United States may constitute export of technology and technical data that may implicate export regulations and/or require export license. Customer shall comply with all applicable export and import control laws and regulations in its use of the Services, and, in particular, Customer shall not export or re-export the Services without all required United States and foreign government licenses and permits.

(e) **Access**. Champion shall provide access to the Services to the Customer as set forth herein. Customer shall provide, at its own expense, all hardware necessary to so access the Services. Champion shall provide the infrastructure necessary for the Services to be accessible. Champion shall use commercially reasonable efforts to enable Customer's Authorized Users to access the Services in a production environment as permitted herein 24 hours a day, 7 days a week, 365 days a year ("Uptime") with 99.4% average uptime availability measured on a quarterly basis. Champion shall not be in breach of the foregoing obligation to the extent unavailability is the result of (i) a Force Majeure Event, (ii) failure of Customer's telecommunication lines, or (iii) Customer's equipment malfunctions (collectively, "Permitted Downtime").

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3. **Services**.

(a) **Installation**. Where identified on the applicable SOW, Champion agrees to provide on-site installation and training for Authorized Users for Customer. If agreed to by Champion, such installation shall also include Interface set-up.

(b) **Maintenance and Support**. Champion agrees to provide Maintenance and Support Services as described on Exhibit A hereto. Any obligation of Champion to remedy Errors shall not apply to any Error which is caused by Customer, its customers or third parties, and/or any Error due to improper use, improper installation, improper handling or maintenance (unless done by Champion), improper operating means, modifications of the Services by any party other than Champion, use with third party software not approved by Champion, or any tampering with the Services.

(c) **Services Generally**. Champion agrees to provide or cause to be provided, and Customer agrees to procure, the Services on the terms set forth herein and in any SOWs attached hereto or later made a part of this Agreement and incorporated herein. Customer shall be solely responsible for providing, updating, uploading and maintaining all Customer Materials. Champion shall be entitled to engage third parties to perform the Services hereunder on its behalf, but shall at all times remain responsible for its obligations hereunder. Champion shall ensure all such third parties comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by Champion.

(d) **Acceptance**. Acceptance shall take place when mutually agreed upon by both parties in writing that the Services materially conform to the terms of this Agreement, which acceptance shall not be unreasonably withheld or delayed ("**Acceptance**"). If Acceptance is not achieved within sixty (60) days of the Effective Date, after Customer has given Champion written notice and a reasonable opportunity to cure (and such failure is not the result of Customer's actions or inactions), Customer may terminate this Agreement on written notice to Champion and receive a full refund of all pre-paid fees.

(e) **Customer Materials**. Customer grants Champion a non-exclusive, non-transferable, terminable at-will license during the term of this Agreement to use the Customer Materials

solely as necessary to perform the Services for Customer's benefit.

4. **Term and Termination**.

(a) **Term**. This Agreement shall commence as of the Effective Date and shall continue in effect for a period of three years ("**Term**"). As set forth in Exhibit A, Maintenance and Support Services shall continue as long as the Fees (provided in SOW) are paid and this Agreement is in effect.

(b) **Termination for Material Breach**. Either party may terminate this Agreement or any SOW: (i) upon material breach by the other party which breach has not been cured within thirty (30) days of receipt of written notice reasonably identifying and describing such breach, or (ii) immediately upon written notice, in the event that the other party becomes the subject of an involuntary bankruptcy petition that is not dismissed within sixty (60) days, makes a general assignment for the benefit of creditors, has a receiver appointed for its assets, or ceases to conduct business.

(c) **Termination for Lack of Funds.** Customer's payments to Champion 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 Customer's purchase of the indicated quantity of services, then Customer may give written notice of this fact to Champion, 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.

(d) **Effects of Termination**. Upon termination of this Agreement or any SOW for any reason, Customer shall pay all undisputed amounts due hereunder or thereunder through the date of termination and all permissions and licenses granted in this Agreement will be immediately terminated, Customer shall promptly discontinue all access to and use of the Services (and cause its Authorized Users to discontinue access to and use of the Services), delete any copies of Champion's proprietary materials or portions thereof from Customer's computers, and return to Champion any Champion Confidential Information in Customer's possession or control. Similarly, Champion shall promptly discontinue all access to and use of the Customer Materials

(and cause its agents to discontinue such use), delete any copies of Customer Materials or portions thereof from Champion's computers, and return to Customer any Customer Confidential Information in Champion's possession or control. Notwithstanding the foregoing, on any termination or expiration of this Agreement, Champion shall, at no additional charge, afford Customer a period of thirty (30) days to download and obtain a copy of all Customer Materials stored in the Services and during such time, Customer shall pay Champion a prorated portion of the annual fee. Notwithstanding the foregoing, neither party shall be required to remove copies of the other party's Confidential Information from its backup media and servers, where doing so would be commercially impracticable. In addition, the foregoing destruction and return obligation shall be subject to any retention obligations imposed on a party by law or regulation.

5. **Fees and Charges**.

(a) Licensee shall pay to Licensor the fees set forth in the applicable SOW. Implementation fees and first year license fees are due prior to implementation. Except as expressly provided in a SOW or a writing signed by both parties, there are no other fees or costs to be paid by Customer to Champion in connection with this Agreement.

(b) **RFID Fees**. RFID Fees are invoiced upon execution of the contract. One half (50%) of RFID Unit fees, RFID accessories, and shipping charges are due as specified in section 5(c) below. Balance of RFID Fees are due upon receipt of units.

(c) **Payment Procedures**. Champion shall submit invoices 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 Champion for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Customer shall certify the invoice, either in the requested amount or in such other amount as Customer 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. If Customer reasonably objects to an invoice or any portion thereof, Customer shall promptly and without unreasonable delay notify Licensor in writing. Customer agrees to pay any undisputed portion of an invoice as specified above, withholding only the portion in dispute. Customer and Champion agree to use their reasonable efforts to resolve any invoice disputes within thirty (30) days after the date of the invoice. Customer agrees to pay such disputed amount as specified above. Customer is responsible for payment of sales, use, value-added and similar taxes and surcharges lawfully levied against or upon Customer's receipt of the Software and/or Services

absent receipt of appropriate exemption documentation from Customer, excluding any taxes on Champion's net income, real property, and personnel. The charges listed in Exhibit B at the time of Agreement execution are not taxable. Subsequent executed amendments hereto shall not include any applicable sales, use, person property, excise, or other similar taxes. The amount of any applicable sales, use, personal property, or other similar tax applicable to such future licenses or purchases made via addendum to this Agreement shall be paid directly by Customer or shall be paid to Champion on receipt of invoice therefore.

6. **Warranty**.

(a) **Services**. Champion represents, warrants, and covenants that all Services will materially conform to their then current documentation at all times and shall be performed in a good and workmanlike manner in accordance with industry standards. Champion does not warrant the absence of any defects in the Services or error-free operation in combination with other programs.

(b) Additional Champion Warranties. Champion further represents, warrants, and covenants as follows: (i) it has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein; (ii) its performance of this Agreement does not violate or conflict with any agreement to which Champion is a party; (iii) there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement; (iv) all Maintenance and Support Services shall be performed in a professional, workmanlike manner; (v) it will not transmit or make available any Customer Materials or Confidential Information to any entity or individual outside the continental United States; (vi) to the best of Champion's knowledge as of the Effective Date, Customer's permitted use of the Services shall not infringe the intellectual property rights of any third party; (vii) In no event shall any updates or new releases or version of the Services reflect a material diminution in the form, features or functionality of the Services from that existing as of the Effective Date, and, accordingly, Champion shall not change the form, features or functionality in any material adverse manner from that existing as of the Effective Date; and (viii) Champion shall use industry best practices to ensure the Services to not contain any Malicious Code. "Malicious Code" means any code, program, or subprogram whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program, or

subprogram, or to halt, disable, or interfere with the operation of Customer systems or data.

(c) **Customer Materials**. Customer represents, warrants and covenants that the Customer Materials do not and will not contain any matter that is obscene, defamatory or illegal, infringes the Intellectual Property Rights of any third party, and Customer will use industry best practices to ensure the Customer Materials do not contain any Malicious Code. Customer further represents, warrants and covenants that it has obtained all necessary permissions and consents to transmit the Customer Materials for their licensed use in the Services. For purposes hereof, "Malicious Code" means any code, program, or subprogram whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program, or subprogram, or to halt, disable, or interfere with the operation of the Services, code, program, or subprogram.

(d) **Disclaimers.**

(i) **EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, ALL SERVICES AND CUSTOMER MATERIALS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FUNCTIONALITY OR ITS BEING ERROR OR VIRUS FREE. CHAMPION DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND SERVICES AND CUSTOMER MATERIALS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTIES OR STATEMENTS OTHER THAN AS ARE SET FORTH HEREIN.**

(ii) **Third Party Providers**. In the event (i) Customer expressly agrees in an SOW or order document to purchase third party products from Champion; (ii) Champion has attached any applicable third party terms and conditions to the relevant SOW or order document; and (iii) the third party products are not embedded in and required for operation of the Services or Software, the provisions of this Section shall apply to such products (the "Third Party Stand-Alone Products"), which Third Party-Stand Alone Products shall include the RFID units provided by Terso and services provided by Rackspace. With regard to all other third party products, including open source software, such items shall be deemed included in and part of the Services and Software and subject to all applicable terms herein. **CHAMPION SPECIFICALLY DISCLAIMS AND MAKES NO**

WARRANTIES (EXPRESS OR IMPLIED) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS, ACCURACY, RELIABILITY, APPLICABILITY, OR AVAILABILITY OF INFORMATION CONTAINED IN THE THIRD PARTY STAND-ALONE PRODUCTS. In addition, Champion shall have no responsibility for Customer's electronic health record system.

(iii) Without limiting Section 6(c)(ii) above, to the extent Customer purchases Services which include the hardware of a third party or which interface with the software of a third party for which Champion serves as a reseller ("Combined Solution Vendors"), the terms and conditions of Exhibit C shall apply.

(iv) **Disclaimers**. The following are applicable where Customer has subscribed to the named Service as identified in a SOW:

1. **RecallConnect™ and QuickCheck Add-ons**. RecallConnect and QuickCheck (collectively "Recall Products") are optional functionalities is designed to provide matching of recalled implantable medical devices to Customer's databases based upon the recalls reported on the website of the Food and Drug Administration ("FDA"), which requires that product codes, catalog numbers, lot numbers, serial numbers, and patient ID's have been entered correctly by Customer's staff. These Recall Products also require that the FDA website correctly reports the recalled numbers of such implantable medical devices. There are no Champion warranties or obligations whatsoever regarding these recalls provided by the FDA or to any procedures that they may recommend. There are no Champion warranties or obligations whatsoever regarding the accuracy of the product code, catalog number, reorder number, part number, lot number, serial number or ID number or Customer's internal approval to use or costs of any implantable device as reported by a patient, patient family, hospital staff member, Electronic Health Record (EHR) or Electronic Medical Record (EMR) (commonly known as the Patient Implant Record). The Service is not intended to, and does not, track or manage recalls provided by the manufacturer, hospitals, other recalls not reported on the FDA's website, recalls of non-implantable or non-medical devices or any procedures that may be recommended in connection with any recall. The Service is not intended to replace or function in place of any ordinary recall policies and is provided to complement such existing policies. **CHAMPION SPECIFICALLY DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) REGARDING THE COMPLETENESS, ACCURACY, RELIABILITY, APPLICABILITY, OR**

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AVAILABILITY OF INFORMATION CONTAINED IN THESE RECALLS OR PATIENT IMPLANT RECORDS. THE RECALLS PROVIDED BY THE FDA AND THE PATIENT IMPLANT RECORDS PROVIDED BY PATIENTS OR HOSPITALS MAY CONTAIN INFORMATION PROVIDED BY THIRD-PARTIES, AND CHAMPION IS NOT IN ANY WAY RESPONSIBLE OR LIABLE FOR THE TRUTH, ACCURACY, APPLICABILITY, OR RELIABILITY OF ANY SUCH INFORMATION. THE SERVICES ARE NOT DESIGNED TO REPLACE ANY RECALL PROCEDURES. DO NOT REPLACE OR DISCONTINUE ANY RECALL POLICIES WITH THE USE OF THE SERVICES.

7. **Relationship**. Champion's relationship with Customer shall be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, agency or employer-employee relationship.

8. **Confidentiality**.

(a) **Use**. Confidential Information may be used by the parties to this Agreement only to the extent required to perform the Services or access and use the Services, as applicable, and will not be used for any other purpose without the express prior written consent of the disclosing party, to be given or withheld in the disclosing party's absolute discretion. Each party further agrees that it will not use any Confidential Information of the other for any purpose or in any manner that would constitute a violation of any laws or regulations, including, without limitation, the export control laws of the United States.

(b) **Nondisclosure**. Each party agrees to maintain all Confidential Information in confidence and, except as specifically permitted herein, not to disclose Confidential Information of the other to any third party without the express prior written consent of the disclosing party, to be given or withheld in the disclosing party's absolute discretion. Each party agrees to disclose Confidential Information only to those of its employees, agents, consultants and contractors (collectively, "**Representatives**") who are directly involved in the performance of its obligations under this Agreement and/or any SOW and have a need to access such Confidential Information in connection therewith. Champion and Customer will each advise their Representatives of the confidential nature of the Confidential Information and agree

to be responsible for any breach of the provisions of this Agreement by such Representatives. Champion and Customer acknowledge that a breach of the confidentiality provisions of this Agreement may result in serious and irreparable harm to the disclosing party for which there is no adequate remedy at law. In the event of such a breach, the disclosing party shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

(c) **Exceptions**. Notwithstanding the foregoing, neither party will have liability hereunder with regard to the use or disclosure of any Confidential Information to the extent that party can demonstrate that such Confidential Information is required to be disclosed by applicable law, rule, regulation or court order, provided that the receiving party will use reasonable efforts to give advance notice to and cooperate with the disclosing party in connection with any such disclosure, and provided further that the receiving party will limit such disclosure to only that information that is legally required to be disclosed. In particular, Champion understands Customer and its records are subject to open records laws and regulations.

(d) **HIPAA**. Customer and Champion agree that Customer Material may include and the provision of the Services by Champion may require the use or transmission of protected health information (as defined 45 C.F.R. § 160.103) and that the parties may be subject to the Health Insurance Portability and Protection Act of 1996 (including all regulations promulgated thereto by the Secretary of the Department of Health and Human Services from time to time, "**HIPAA**"). In furtherance of the requirements of HIPAA, simultaneous to the execution of this agreement, the parties are entering into that certain business associate agreement attached hereto as Exhibit D. Unless otherwise provided for in Exhibit D, Champion shall be permitted to (i) de-identify such protected health information in accordance with HIPAA, and more specifically, 45 C.F.R. § 164.514, and (ii) only where Services include WarrantyTracker, transmit to and receive from device manufacturers, on behalf of Customer, such protected health information as is required to be reported by the Food & Drug Administration for public health purposes. Furthermore, a breach of Exhibit D shall be considered a material, non-curable breach of this Agreement, and the parties' rights as to termination shall be determined in accordance herewith.

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9. **Indemnification**.

(a) Champion shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents, employees, or subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the Contractor and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of County and/or its officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. Champion shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Champion is obligated to indemnify, defend and hold harmless the County under this Agreement.

(b) The County shall indemnify, defend, and hold harmless Champion, its officers, agents, employees, and subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the County and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Champion and/or its officers, agents, employees and subcontractors. The County shall reimburse Champion for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless Champion under this Agreement.

(c) Champion will defend, at its expense, any action brought against Customer, to the extent that such action is based on a claim of infringement of any U.S. patent, trade secret, or copyright resulting from the use by Customer as permitted hereunder of the Services as made accessible to Customer by Champion ("**Infringement**"), and Champion shall pay all damages and costs awarded against Customer which are attributable to such Infringement, provided that Champion is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged Infringement and is given authority, information and assistance necessary to defend or settle such claim; provided, however, that Champion shall have no liability hereunder to the extent any such claim arises out of Customer's (i) access to or use of the Services other than in accordance with the

terms of this Agreement, or (ii) access to or use of the Services with software or equipment not provided to Customer by Champion or specified by Champion as required to use the Services.

(d) In the event an infringement claim is made, Champion shall have the right, in its sole discretion, to either (i) procure a right for Customer to continue accessing and using the allegedly infringing Services in accordance with the terms of this Agreement, (ii) replace or modify all or any portion of the Services to avoid or mitigate any infringement, without loss of material functionality or performance, or (iii) terminate the applicable SOW and Services provided hereunder, and refund to Customer a pro rata portion of the prepaid Annual Fee paid for the month in which this Agreement is so terminated. Champion shall furnish one of the foregoing remedies within forty-five (45) days of notice of the claim. The foregoing and the indemnification above shall constitute Champion's sole and exclusive obligation and Customer's sole and exclusive remedy for any infringement by the Services or Customer's use thereof of any third party Intellectual Property Rights.

(e) To receive these indemnities, the party seeking indemnification must promptly notify the other party in writing of such a claim and provide reasonable cooperation (at the indemnifying party's expense) and tender full authority, consistent with its duties under this section and subject to Customer's rights below, to defend or settle such claim. Neither party has any obligation to indemnify the indemnified party in connection with any settlement made by the indemnified party without the indemnifying party's written consent. The indemnified party has the right to participate at its own expense and with its own legal representation. Under no circumstances will any stipulated judgement or settlement purport to bind Customer or impose any financial obligation on Customer without Customer's prior written authorization.

10. **<u>LIMITATION OF LIABILITY</u>. EXCEPT AS PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR SAVINGS, LOSS OF GOODWILL, OR THE LOSS OF USE OF ANY DATA, EVEN IF CHAMPION**

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HAD BEEN ADVISED OF, KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF. EXCEPT AS PROVIDED BELOW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S AGGREGATE CUMULATIVE LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF $500,000 OR AGGREGATED FEES PAID HEREUNDER BY CUSTOMER. BOTH PARTIES ACKNOWLEDGE THAT THE FEES PAID BY CUSTOMER REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY SHALL NOT APPLY TO NOR LIMIT CHAMPION'S INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT IN SECTION 9, OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL CONDUCT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE BUSINESS ASSOCIATE AGREEMENT GOVERNS ALL LIABILITY OF THE PARTIES WITH RESPECT TO HIPAA.

11. **Insurance**

(a) Evidence of Coverage:

Prior to commencement of this Agreement, Champion 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, Champion upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to Customer's Contracts/Purchasing Department, unless otherwise directed. Champion shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and Customer has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of Champion.

(b) 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 Customer's Contracts/Purchasing Director.

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

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

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

☐ Exemption/Modification (Justification attached; subject to approval)

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

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

☐ Exemption/Modification (Justification attached; subject to approval)

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

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

☐ Exemption/Modification (Justification attached; subject to approval)

(g) 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, Champion shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

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

☐ Exemption/Modification (Justification attached; subject to approval)

12. Other Insurance Requirements:

(a) All insurance required by this Agreement shall be with a company acceptable to Customer 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 Champion completes its performance of services under this Agreement.

(b) Each policy shall provide coverage for Champion 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.

(c) 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 Champion'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 Champion's insurance.

(d) Prior to the execution of this Agreement by Customer, Champion shall file certificates of insurance with Customer's Contracts/Purchasing Department, showing that Champion has in effect the insurance required by this Agreement. Champion shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

(e) Champion 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 Customer, annual certificates to Customer's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Customer shall notify Champion and Champion shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Champion to maintain such insurance is a default of this Agreement, which entitles Customer, at its sole discretion, to terminate the Agreement immediately.

13. **Legal Compliance**. Champion may suspend or terminate access to and use of Services by Customer and its Authorized Users, and this Agreement immediately upon receipt of any bona fide notice which alleges that Customer or its Authorized Users has used the Services or Services for any purpose that violates any local, state, federal or law of other nations, including but not limited to the posting of information that may violate third party rights, that may defame a third party, that may be obscene or pornographic, that may harass or assault others, that may violate hacking or other criminal regulations, etc. of its agents, officers, directors, contractors or employees. In such event, Champion may disclose the Customer's identity and contact information, if requested by a government or law enforcement body, or as a result of a subpoena or other legal action, and Champion shall not be liable for damages or results thereof and Customer agrees not to bring any action or claim against this Champion for such disclosure. Prior to any suspension or termination hereunder, to the extent reasonable under the circumstances, Champion shall afford Customer a reasonable opportunity to cure. In any event, Champion shall immediately reinstate Services on cure of the issue.

14. **Dispute Resolution**.

(a) Except as set forth in this Section 12, any claim or dispute between the parties hereto pertaining to or arising out of this Agreement, the Services or the Services shall be arbitrated exclusively in the State of California, before a single neutral arbitrator under the Commercial Arbitration Rules of the American Arbitration Association. Any arbitration award shall be accompanied by a written opinion of the arbitrator giving the reasons for the award, which award may be entered as a judgment in any court of competent jurisdiction. This provision for arbitration shall be specifically enforceable by the parties and, except as otherwise provided by applicable law, the decision of the arbitrator in accordance herewith shall be final and binding. The arbitrator shall have the power to issue and grant permanent injunctive relief and other equitable orders and remedies. Any such arbitration shall be conducted in confidence and in accordance with the confidentiality provisions of this Agreement. Each party shall pay its own expenses of arbitration and the expenses of the arbitrator shall be equally shared.

(b) The provisions of this section shall not preclude either party from pursuing equitable relief to protect its intellectual property or Confidential Information.

15. **Survival**. All terms of this Agreement, which by their nature are intended to survive termination of this Agreement, shall so survive termination for any reason. In particular, the following Sections shall survive any termination or expiration of this Agreement: 8, 9, 10.

16. **Force Majeure**. Any party shall be excused from performing hereunder to the extent that it is prevented from performing as a result of any act or event which occurs and is beyond its reasonable control, including, without limitation, acts of God, war, any action of a governmental entity; etc., provided that the party experiencing the force majeure provides the other with prompt written notice thereof and uses reasonable efforts to remedy effects of such matter. In the event a force majeure event preventing Champion's performance hereunder continues for a period of five (5) business days, Customer may terminate this Agreement by providing written notice to Champion. For the avoidance of doubt, in the event Champion's performance hereunder is the subject of a force majeure event, the fees to be paid by Customer hereunder shall be equitably adjusted to reflect the period in which performance was effected.

17. **Assignment**. This Agreement and all of the terms, provisions and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided in this Section, neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written

consent of the other party. Any attempted assignment in violation of this Section by either party of its rights or obligations under this Agreement, whether by operation of law or otherwise, shall have no force and effect.

18. **Miscellaneous**.

(a) This Agreement and any dispute arising hereunder shall be construed in accordance with the laws of the State of California without regard to principles of conflict of laws. For the purpose of this Agreement, Customer consents to the exclusive personal jurisdiction and venue of the Federal and state courts located in the State of California.

(b) If any provision of this Agreement is prohibited by law or held to be unenforceable, the remaining provisions hereof shall not be affected, and this Agreement shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof, and the unenforceable provision shall be automatically amended to so as to best accomplish the objectives of such unenforceable provision within the limits of applicable law.

(c) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Any waiver of a provision of this Agreement must be in writing and signed by the party to be charged. A valid waiver hereunder shall not be interpreted to be a waiver of that obligation in the future or any other obligation under this Agreement. A failure of either party to this Agreement to enforce at any time any of the provisions of this Agreement, or to require at any time performance of any of the provisions hereof, shall in no way affect the full right to require such performance at any time thereafter. The pursuit by Champion of any remedy to which it is entitled at any time shall not be deemed an election of remedies or waiver of the right to pursue any of the other remedies to which it may be entitled.

(d) Except where expressly stated otherwise, this Agreement, and all Exhibits or Addenda hereto, constitutes the entire agreement between the parties related to the subject matter hereof, and supersedes any prior or contemporaneous agreement between the parties relating to the Services and shall not be changed except by written agreement signed by both parties. In particular, no shrink-wrap, click-wrap, or other terms and conditions, privacy policies, or agreements ("Additional Terms") provided with any products, services,

documentation or software, including any maintenance and support updates thereto, hereunder shall be binding on Customer, even if use of such items requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Customer in their entirety. In the event of a conflict between the body of this Agreement and any attachment, exhibit, or SOW hereto, the body of this Agreement shall govern. In the event of conflict between this Agreement and the BAA, the BAA shall exclusively govern.

(e) No modification, variation or amendment of this Agreement shall be effective without the written consent of both parties hereto.

(f) The prevailing party in any dispute or litigation resulting from the transactions contemplated herein shall be paid its reasonable costs, fee and expenses (including reasonable legal fees) in connection with the enforcement of the terms hereof by the non-prevailing party.

19. **No Publicity**. During the Term of this Agreement and at all times after the termination or expiration of this Agreement, Champion shall not make any media release or other public announcement relating to or referring to this Agreement without Customer's prior written consent.

20. **Notices**. All notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given to a party if delivered personally or mailed by registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery by a nationally-recognized courier, to the address set forth above or to such other address or person as either party may from time to time designate to the other in writing. Any such notice or other communication shall be deemed to be given as of the date it is personally delivered, five (5) days after its being deposited in the United States mail, or one (1) business day after being deposited with a nationally recognized courier for overnight delivery.

*****signature page follows*****

IN WITNESS WHEREOF, the parties hereto have caused this Services Agreement to be executed by their authorized representatives as of the Effective Date.

Champion Medical Technologies, Inc.

By: _____

Name: Robb Goetz

Title: Chief Financial Officer

Date: 12/9/2019

Natividad Medical Center

By: _____

Name: _____

Title: CEO

Date: 12/15/19

Reviewed as to fiscal provisions

_____

Auditor-Controller
County of Monterey

12/17/2019

_____

MONTEREY

EXHIBIT A

Maintenance and Support Services

If indicated above, Champion shall provide the following "**Maintenance and Support Services**" to Customer:

1. **Maintenance and Support Services**

(a) **Services**. Champion shall provide Maintenance and Support Services for the Services in the unmodified (except by Champion) form made accessible to Customer under this Agreement, pursuant to the terms contained herein.

(b) **Help Desk**. Customer shall have access to a Help Desk located at Champion. The Help Desk will be responsible for facilitating Error Correction services. "**Error Correction**" shall mean services performed by Champion to resolve or eliminate Errors or otherwise permit Customer to take advantage of the designed functionality of the Services described in the Specifications. A Help Desk coordinator will be responsible for logging and tracking Errors after they have been reported by Customer, contacting Customer to confirm receipt of a Problem Report and jointly determining the priority level of the Error. A "**Problem Report**" shall be a written communication to the Help Desk that includes sufficient detail to enable reproduction of the Error by Help Desk staff. Priority levels will be determined as follows:

(i) **Level 1 Errors**. These are Errors with Services functionality that render the Services inoperable or significantly impact functionality. Customer will be advised at least every forty-eight (48) hours by the Help Desk as to the status of efforts to resolve the Level 1 Error. One or more members of Champion senior management will be informed on a daily basis of all Level 1 Errors.

(ii) **Level 2 Errors**. These are Errors with Services functionality which do not render the Services inoperable, but which have an important impact on functionality. These Errors will be addressed after all known Level 1 Errors have been resolved, with a target resolution or work-around of no later than five (5) business days after the date first reported to Champion.

(iii) **Level 3 Errors**. These are low priority Errors that shall be addressed after all Level 2 Errors are resolved, with a target resolution or work-around of no later than approximately ten (10) business days after the date first reported to Champion.

(c) **Updates**. Customer shall have the right to obtain access to and use of Updates developed and implemented by Champion as part of Maintenance and Support Services at no additional charge. "**Updates**" shall mean Services versions produced to correct Errors or to accommodate upgraded versions of operating environments, but shall not include Services which add new functionality to existing Services. Updates and Error Corrections implemented by Champion hereunder shall be governed by the terms of this Agreement and shall be included within the term "**Services**".

(d) **Champion Modifications**. Champion may, at its discretion, upon notice to Customer and with no additional charge, implement modifications to the

Services. Such modifications shall not materially diminish the basic functionality of the Services or eligibility for Maintenance and Support of the Services under this Exhibit.

EXHIBIT B

Statement of Work (SOW)

This Statement of Work ("**SOW**"), is incorporated into and made a part of the Software as a Service and License Agreement ("**Agreement**") between Champion Medical Technologies, Inc. ("**Champion**") and Natividad Medical Center ("**Customer**") dated as of December 10, 2019. The Agreement and this SOW contain the full and complete understanding of the parties and supersedes all prior agreements and understandings between the parties with respect to the entire subject matter of this SOW. Only a written instrument signed by an authorized representative of each party may amend this SOW.

All capitalized terms not defined herein will have the meanings given them in the Agreement. References to "Services" in the Agreement shall refer to all Services, Additional Services and Combined Solution Vendors unless expressly stated otherwise there

1. Timeline

(a) Eight (8) weeks prior to on-site implementation, Customer will send to Champion this signed SOW and purchase order number, where applicable. Any purchase order delivered to Champion shall be considered part of this SOW.

(b) Two (2) weeks prior to on-site implementation, Customer will send to Champion information separately request by Champion's information technology team in order to create Customer's individual account and personalize Customer's database experience.

(c) If applicable, Champion will provide on-site installation for each of the Services in exchange for the installation fee also identified therein (such services, "**Installation**"). If On-site installation will occur on such date and at such times as is mutually agreeable to Champion and Customer.

(d) Following Implementation and Acceptance (as defined in the Agreement), Champion agrees to make available the Services identified in the Fees section, which includes the cost of Maintenance and Support Services identified in Exhibit A to the Agreement for the Term of the Agreement.

2. Staffing

Champion assigns experienced professionals who bring the proper credentials and knowledge. Assignment of final staff will occur following Customer's acceptance of this SOW. Champion reserves the right to change the Champion team members who will be working on this project but will inform the Customer of such changes.

3. Services & Fees

License/Service	One-Time Fees	Annual Fees Year 1	Annual Fees Year 2	Annual Fees Year 3
UDITracker Basic Plus	$12,000	$15,000	$15,600	$16,224
RFID TS-032 7.9 cu ft Intelligent Cabinet	$13,664			
RFID Bins and Shelves	$500			
RFID Unit Implementation	$14,700			
Barcode Scanner	$525			
Freight	$1,200			
RFID Data Services & Support		$3,500	$3,640	$3,785
Implementation Discount	($2,400)	-		
Total Fees	**$40,189**	**$18,500**	**$19,240**	**$20,009**

Total First Year Fees - $58,689

EXHIBIT C

COMBINED SOLUTION VENDOR TERMS

Combined Solution Vendors. To the extent Customer purchases Services which include the hardware of a third party or which interface with the software of a third party for which Champion serves as a reseller ("Combined Solution Vendors"), Customer acknowledges and agrees that Champion does so merely as the intermediary reseller (and not as the manufacturer). Accordingly, Champion agrees to use commercially reasonable efforts to pass through to Customer available third-party warranties and indemnities provided to Champion as the reseller and to reasonably cooperate with Customer in exercising such rights (as actually available). Champion warrants, however, that it has obtained all rights necessary to sell such equipment to Customer. Except as provided for in the foregoing sentences, Champion makes no representations, warranties or indemnities regarding any third party materials

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") effective December 10, 2019 ("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 Champion Healthcare Technologies, 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. § 164.514and Use or Disclose such de-identified information only as required to provide Services pursuant to the a 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 Security Incident of which Business Associate becomes aware; and (iii) any suspected 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 pings 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, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate

each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected 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 and shall be solely responsible for the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, 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 Security Incident or non-permitted access, acquisition, Use, or Disclosure. 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, which shall be limited to the following: printing and mailing 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, records, books, agreements, policies and procedures and PHI 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. Covered Entity shall be responsible for responding to all requests for an accounting. 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 Covered Entity shall be responsible for responding to such requests; 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 and Covered Entity shall be responsible for making decisions regarding any requests for amendments to PHI;

(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) business 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 reasonably cooperate 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 <u>Business Associate Acknowledgment</u>.

(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 Covered Entity's privacy practices, as stated in Covered Entity'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 Covered Entity Notice of Privacy Practices at this URL at least once annually while doing business with Covered Entity to ensure it remains updated on any changes to the Notice of Privacy Practices Covered Entity may make.

3.3 <u>Responsibilities of Covered Entity</u>. 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

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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 and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the reasonable 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, as determined by Business Associate, in Business Associate's and reasonable sole discretion, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, 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 (vi) 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:

Champion Healthcare Technologies, Inc.
Attn: CEO
765 Ela Road, Suite 200
Lake Zurich, Illinois 60047
Phone: 866-803-3720
Fax:_____

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**. Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, 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 herein to the contrary, Business Associate's total aggregate liability under this Agreement shall not exceed Three Million Dollars ($3,000,000).

5.9 **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.

5.10 **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.

5.11 **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.

5.12 **Audit or Investigations**. Promptly, but no later than five (5) business 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:	By:
Print Name Robb Gortz	Print Name: Gary R Gray
Print Title Chief Financial Officer	Print Title: CEO
Date: 12/9/19	Date: 12/5/19

Approved by the County of Monterey Board of Supervisors on 11/01/16 and revised on 12/09/16