



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5086

Board Order

www.co.monterey.ca.us

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

Agreement No. A-14571

- a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an agreement with Press Ganey Associates, Inc., in substantially the same form as presented, for access and participation in the National Database of Nursing Quality Indicators database ("NDNQI Participation Agreement") for \$8,201 with an agreement term January 1, 2020 through December 31, 2023;
- b. Authorize the Deputy Purchasing Agent for NMC or his designee to execute a master services agreement with Press Ganey Associates, Inc., in substantially the same form as presented, for performance measurement, improvement, and quality services at NMC ("Master Services Agreement") for \$414,793 with an agreement term of January 1, 2020 through December 31, 2023;
- c. Authorize the Deputy Purchasing Agent for NMC or his designee to execute up to three (3) future amendments to the NDNQI Participation Agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (\$820) of the original cost of the agreement;
- d. Authorize the Deputy Purchasing Agent for NMC or his designee to execute up to three (3) future amendments to the Master Services Agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (\$41,479) of the original cost of the agreement; and
- e. Approve the NMC Chief Executive Officer's recommendation to accept non-standard confidentiality, data ownership, warranty, indemnification, insurance, limitations on liability, and limitations on damages provisions within each of the NDNQI Participation Agreement and Master Services 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

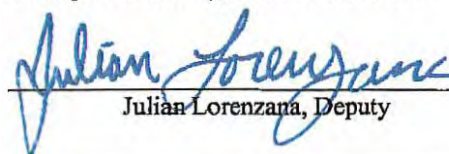
I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting December 10, 2019.

Dated: December 17, 2019

File ID: A 19-425

Agenda Item No.: 42

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


Julian Lorenzana, Deputy

MASTER SERVICES AGREEMENT

This Master Services Agreement (“MSA”) is entered into as of January 1, 2020 (“Effective Date”) by and between **Press Ganey Associates, Inc.**, an Indiana corporation with its principal offices at 404 Columbia Place, South Bend, Indiana 46601 (“Press Ganey”) **The County of Monterey, a political subdivision of the State of California (hereafter, “County of Monterey, on behalf of Natividad”)**, with its principal offices at 1441 Constitution Boulevard, Salinas, CA 93906 (“Client”). Each of Press Ganey and Client may be referred to herein as a “Party” and collectively as the “Parties.” This MSA together with each Statement of Work (“SOW(s)”) entered into by the Parties are collectively referred to as the “Agreement.”

WHEREAS, Client is in the business of operating health care facilities and delivering healthcare services;

WHEREAS, Press Ganey is in the business of providing certain performance measurement, improvement and other services to health care facilities; and

WHEREAS, Client desires to engage Press Ganey, and Press Ganey desires to be engaged, to perform the Services on behalf of Client detailed in and in accordance with this Agreement.

NOW THEREFORE, in consideration of the recitals above and the covenants, agreements and stipulations set forth herein, the Parties agree as follows:

1. **SERVICES.** Subject to the terms and conditions of this Agreement, Client agrees to purchase from Press Ganey the products, and engage Press Ganey to perform the services on Client's behalf, that are described in a SOW (“Service(s)”), and Press Ganey agrees to use commercially reasonable efforts to provide, deliver or perform those Services to Client in accordance with this Agreement.
2. **STATEMENTS OF WORK.** Each Service shall be described in a written SOW executed by the Parties that references this Agreement. The Parties shall enter into on or after the Effective Date a separate SOW for each Service performed and delivered under this Agreement. Unless specifically provided otherwise in a SOW, each SOW, including any additional obligations of each Party set forth in the SOW, shall be deemed to be incorporated fully (subject to the final sentence of this Section 2 (Statements of Work)) into this Agreement and shall be performed subject to the terms of this Agreement and any additional provisions set forth in that SOW. In the event of any conflict between a SOW and the terms of this Agreement, the terms of this Agreement shall control, unless the SOW references a particular section of this Agreement and provides that it is expressly amended for the purposes of the applicable SOW or otherwise, and that amendment will be valid only for that particular SOW and will not amend this Agreement generally (unless otherwise expressly set forth in that SOW). The first SOWs between the Parties are attached to and incorporated into this Agreement as **Exhibits A, B and C**. Notwithstanding the foregoing, should Client and Press Ganey enter into a SOW for Patient Reported Outcome Measures (“PROMs SOW”), those terms and conditions in the PROMS SOW relating to de-identified Client Data, Limited Data Set(s) (as defined in the PROMs SOW), publication of data, intellectual property rights, Data Extracts (as defined in the PROMs SOW), and indemnification, including but not limited to hold harmless language, shall apply to the services performed under such PROMs SOW.
3. **TERM.** The initial term of this Agreement shall commence on **January 1, 2020** (“Start Date”) and continue for **three (3) years** from the Start Date (“Initial Term”).
4. **COMPENSATION.**
 - a. Client shall pay Press Ganey the amounts set forth in each SOW, in United States Dollars, in accordance with the terms of that SOW and this Agreement. Unless otherwise provided in the applicable SOW, Press Ganey will invoice Client on a monthly basis for all fees, charges and other amounts incurred by Client under this Agreement.
 - b. Client shall be responsible via written Amendment for any applicable United States Postal Service rate increases that may occur and take effect during the Term of this Agreement.

- c. Payment is due to Press Ganey net thirty (30) days from receipt of a certified invoice by the County of Monterey Auditor-Controller. Client shall submit each payment to: Press Ganey Associates, Inc., Box 88335, Milwaukee, WI 53288-0335.
 - d. Press Ganey, in its sole discretion, reserves the right to withhold, suspend or terminate Services or immediately cancel this Agreement for past due or otherwise delinquent accounts.
- 5. CLIENT REQUIREMENTS.** Press Ganey shall ensure the quality of the Press Ganey national database for its survey service products through established standards of data collection and data reporting. In order to participate in the national database, Client agrees to comply with the requirements of sampling strategy, survey distribution methodology or other standards required for delivery of Services, which are set forth in each applicable SOW. Client acknowledges that a common distribution methodology must be used in order to avoid bias, enable comparative data validity, and meet the highest standards of reporting. Additionally, Client acknowledges that reporting standards require a minimum number of surveys be returned before a statistically valid report can be issued by Press Ganey.
- 6. CONSENTS/AUTHORIZATIONS.**
- a. Client hereby represents and warrants that it has obtained and shall continue to obtain and maintain throughout the Term, all necessary and required licenses, permits, consents, authorizations, and/or approvals required by applicable laws, rules, regulations or policies to enable Press Ganey's delivery of Services on Client's behalf in accordance with those laws, rules, regulations or policies, including, but not limited to, any patient consents or authorizations necessary for Press Ganey to perform the Services. For the avoidance of doubt, Client represents and warrants that it has obtained, and shall continue to obtain and maintain throughout the Term, the consents required by the Telephone Consumer Protection Act (TCPA) and the Federal Communications Commission's TCPA rules for Press Ganey to perform the Services through the use of an automatic telephone dialing system, prerecorded or artificial voice, or other technologies.
 - b. Should Client request and Press Ganey agree, to mail or deliver surveys in connection with the Services to patients who have received mental health services or treatment for other sensitive conditions, Client will sign a waiver in the form and substance approved by Press Ganey and Client represents, warrants and covenants to Press Ganey that each survey that Client requests or otherwise engages Press Ganey to mail or deliver in connection with the Services, including those involving patients who have received mental health services or treatment for other sensitive conditions, when mailed or delivered by Press Ganey in accordance with applicable SOW, will comply with all applicable laws, including: (i) HIPAA (as defined in Section 9(c)), (ii) other applicable federal and state laws governing the privacy or security of health data, (iii) all laws governing the use or disclosure of sensitive health information, (iv) the TCPA and the Federal Communications Commission's TCPA rules, and (v) all laws governing the use or disclosure of health data relating to a minor. Client acknowledges and agrees that Press Ganey provides the Services as an administrative service only and in reliance on Client's representations and warranties set forth in this Section 6 (Consents / Authorizations) and elsewhere in this Agreement.
- 7. OWNERSHIP AND INTELLECTUAL PROPERTY.**
- a. Unless specifically provided otherwise in a SOW (in which case that specific exception shall apply only to the SOW that includes that exception and not any other SOWs), the Parties acknowledge and agree that any Client-specific reports (including quarterly reports and any report created by Client using a Press Ganey online application) and Client-specific data analyses created by Press Ganey for Client under this Agreement (collectively, "Work Product") shall be owned by Client. Subject to Section 7(b), below, all right, title and interest in the Work Product will vest in Client and all Work Product will be deemed to be works made for hire for Client.

- b. Notwithstanding anything to the contrary in Section 7(a), Press Ganey owns, and reserves all rights in and to, the Press Ganey Knowledge Base Materials. The phrase "Press Ganey Knowledge Base Materials" shall mean any survey questions, methodologies, comparative and benchmark databases and any related documentation generated by or on behalf of Press Ganey or any Press Ganey personnel (including, without limitation, all de-identified survey-level responses and other measures of patient satisfaction or clinical performance) as well as any technology, software, code, processes, know-how, or tools that have independent value outside of the Work Product. In the event that the Work Product contains or references any Press Ganey Knowledge Base Materials, Press Ganey hereby grants to Client a perpetual, non-exclusive, non-transferable, non-sublicensable, limited license to use or access those Press Ganey Knowledge Base Materials that may be contained in the Work Product solely for Client's own internal purposes. Press Ganey will retain all right, title and interest (including, without limitation, all intellectual property rights) in and to the Press Ganey Knowledge Base Materials. Client shall not, and shall not permit any third party to, (i) decompile, disassemble or reverse engineer the Press Ganey Knowledge Base Materials; (ii) modify the Press Ganey Knowledge Base Materials, or create any derivative product from any of the Press Ganey Knowledge Base Materials; (iii) use the Press Ganey Knowledge Base Materials except as incorporated into the Work Product; or (iv) market, sell or distribute the Press Ganey Knowledge Base Materials on a stand-alone basis or together with any other products or services. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Press Ganey Knowledge Base Materials shall be owned solely and exclusively by Press Ganey, as shall any and all patent rights, copyrights, trade secret rights, trademark rights, and all other proprietary rights, worldwide therein and thereto, and Client hereby assigns to Press Ganey any and all of its interests, title or ownership in the Press Ganey Knowledge Base Materials or any modification to or derivative work of the Press Ganey Knowledge Base Materials.
- c. Client acknowledges and agrees that, pursuant to this Agreement, Client has provided and continues to provide Press Ganey, or Press Ganey has otherwise collected or accessed and continues to collect or access on Client's behalf, certain data (including, but not limited to, patient uploads and responses) (collectively, "Client Data") in connection with Press Ganey's performance of the Services for Client or the exercise of Press Ganey's rights under this Agreement. Notwithstanding anything to the contrary in this Agreement, the BAA (as defined below) or any other agreement or understanding between the Parties, and without limiting any other rights of Press Ganey with respect to Client Data or PHI (as defined below) received from or created on behalf of Client, including any rights set forth in the BAA, Client hereby authorizes Press Ganey to de-identify Client Data and to use, disclose and include that de-identified Client Data within the Press Ganey Knowledge Base Materials. The Parties acknowledge and agree that de-identified Client Data shall immediately cease to be Client Data and shall become part of the Press Ganey Knowledge Base Materials. The Parties further acknowledge and agree that de-identified Client Data no longer meets the definition of PHI and is therefore not subject to the provisions of the BAA. Client and Press Ganey shall not, and Client shall not permit any third party to, attempt to re-identify any Press Ganey Knowledge Base Materials, including any de-identified Client Data therein.
- d. Client acknowledges and agrees that electronic, raw data files containing patient-level responses, measurement or improvement scores or compilations thereof, that may be provided by Press Ganey to Client ("Data Files"), also contain Press Ganey proprietary information and intellectual property. Client may request, and Press Ganey may agree to provide Client with access to the Data Files in a manner determined by Press Ganey after the Parties enter into a separate data use agreement in the form and substance approved by Press Ganey. In the event that Press Ganey provides Client with access to any Data Files, Client agrees to: (i) only use the Data Files for its own internal purposes and not for the benefit of any third party; (ii) only share, disclose, or transmit the Data Files to a person who is an employee of Client or has a written contractual relationship with Client to provide further analysis of Client's own internal business purposes; (iii) not, and Client shall not permit any third party to, combine any of the information in the Data

Files with other information to generate benchmarks; and (iv) not, and Client shall not permit any third party to, share Data Files with any other entity that provides satisfaction/experience/engagement measurement reporting tools, services, or other activities or services similar or reasonably competitive to those offered by Press Ganey.

- e. Neither Party shall use the Marks of the other Party for any advertising, marketing, or endorsement without the prior written consent from such other Party; provided, however, that, without obtaining Press Ganey's prior written consent, Client may use Press Ganey's Marks solely to promote its use of the Services provided by Press Ganey to Client under this Agreement, provided that such use of Press Ganey's Marks shall be in compliance with Press Ganey's then-current branding usage guidelines available to Client upon request. The foregoing notwithstanding, Client grants Press Ganey the right to include Client's name in Press Ganey's client list, including its list of participants in the database, and list of award winners, when applicable. A Party shall immediately cease using the Marks of the other Party in any manner found objectionable by that Party. As used in this Agreement, "Marks" means a Party's trademarks, service marks and associated logos. Each Party shall retain all right, title and interest in and to its Marks, and each Party's use of the other Party's Marks shall inure to the benefit of such other Party.

8. CONFIDENTIALITY.

- a. Client agrees to hold in strict confidence and neither to sell, convey, distribute, duplicate, or disclose, nor otherwise utilize, alter/modify, or create derivative works from Press Ganey's Confidential Information. "Confidential Information" shall mean all information of Press Ganey's that is not generally known to the public and is used, obtained or developed by Press Ganey in connection with its business and which is disclosed in writing, verbally, electronically or by any other means directly or indirectly by Press Ganey to Client before or after the Effective Date, including, without limitation, any information relating to: methodologies and protocols, processes, surveys or other measurement instruments, measurement calculations, know-how, sampling information, staffing models, pricing and related contract information finances, source code, product designs, improvements, trade secrets, market opportunities, customers, suppliers, specifications, and future product offerings. And the terms and conditions of this Agreement. Client agrees to take reasonable steps to ensure that its employees, agents and any other persons permitted access to Confidential Information are advised of the confidential nature of the materials and the restrictions herein imposed upon Client. Client and Press Ganey agree that this Agreement is not confidential.
- b. The County of Monterey ("County") is a public agency subject to the disclosure requirements of the California Public Records Act (CPRA). If County receives a CPRA request for documents (as defined by the CPRA) and said request relates to the Confidential Information described in this Agreement, County will notify Press Ganey of the request and confer with Press Ganey regarding an appropriate response to said request. If Press Ganey contends that any documents are Press Ganey's Confidential Information, not subject to the CPRA, and/or exempt from the CPRA, and Press Ganey wishes to prevent disclosure of said documents, Press Ganey shall instruct County to withhold said documents, including utilizing a redacted version of this Agreement. Press Ganey shall provide such a redacted Agreement promptly upon such request. If the County disagrees with Press Ganey's determination, the County shall immediately provide Press Ganey written notice of such disagreement so that Press Ganey may seek a protective order. In the absence of such a protective order the County may disclose Confidential Information of Press Ganey as required by law, as long as the County provided Press Ganey with sufficient time to seek a protective order, and so long as the County discloses only such Confidential Information as the receiving Party is legally required to disclose.
- c.

- d. The obligations of confidentiality provided hereunder shall survive for a period of two (2) years after the expiration or termination of this Agreement for any reason; provided, however, with respect to any item of Confidential Information which rises to the level of a trade secret under applicable law, such obligations shall survive the expiration of such two (2) year period and remain in full force and effect for so long as the applicable Confidential Information remains a trade secret under applicable law. Upon the termination or expiration of this Agreement, for any reason, all Confidential Information disclosed hereunder will be promptly returned to Press Ganey or, upon the request of Press Ganey, will be promptly destroyed and certified as destroyed by an officer of Client.
- e. Client warrants that it will only use Confidential Information as authorized by Press Ganey and in direct connection with the Services. Client acknowledges and agrees that irreparable harm would result to Press Ganey upon any breach of the covenants contained in this Section 8 (Confidentiality) by Client and that damages arising out of such breach may be difficult to ascertain. Therefore, Client and Press Ganey agree that, in addition to all other remedies provided at law or in equity, Press Ganey may seek, without bond, from a court of law or equity both temporary and permanent injunctive relief to prevent a breach of any of such covenants.
- f. Press Ganey shall protect the confidentiality of all information received from Client. Press Ganey shall maintain information received in connection with this Agreement in strict confidence, and shall not disclose any such information to any individual or outside entity, except as authorized or required by law for the performance of its duties hereunder.
- g. "Confidential Information" shall not include any Protected Health Information (as that term is defined in 45 C.F.R. § 160.103) received from, or received, maintained, transmitted or created on behalf of, Client by Press Ganey in connection with the Services (collectively, "PHI"). All PHI shall be subject to the business associate agreement ("BAA") as required by law, between the Parties attached to and incorporated into this Agreement as **Exhibit C**, which may be amended and/or restated from time to time by the Parties. In the event of a conflict between this Agreement or any SOW, on the one hand, and the BAA, on the other hand, relating to creation, receipt, maintenance or transmission of PHI, the terms and conditions of the BAA shall control. Notwithstanding the foregoing, certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Press Ganey. Data transmitted directly from CMS to Press Ganey shall be governed by an applicable Data Use Agreement ("DUA") between Press Ganey and CMS, as required by CMS. PHI transmitted by Client to Press Ganey related specifically to those Services described in the preceding sentence shall be subject to the BAA, however, in the event that any provision of the BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

9. COMPLIANCE OBLIGATIONS.

- a. **Access to Books and Records.** If 42 U.S.C. § 1395x(v)(1)(I) is applicable to this Agreement, Press Ganey will allow the Secretary of Health and Human Services ("HHS"), the Comptroller General, or their duly authorized representative, access, upon proper request, to Press Ganey's books, documents, and records, and any subcontractor's books, documents, and records (collectively "Records") necessary to verify the cost of the Services provided hereunder until expiration of four (4) years after said Services are furnished. In the event that there is a request by one (1) or more federal agencies to examine Press Ganey's Records, Press Ganey shall notify Client immediately of the nature and scope of any request, and shall provide copies of any Records to Client prior to providing them to any governmental agent, giving Client an opportunity to lawfully oppose such production of documents.
- b. **Federal Healthcare Programs.** Press Ganey represents and warrants to Client that it is not excluded from participation in any federal health care program, as defined under 42 U.S.C. § 1320a-7b(f), for the provision

of items or services for which payment may be made under such federal health care programs and has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent such that it knows or should know are excluded from participation in any federal health care program to provide items or services hereunder. Press Ganey represents and warrants to Client that no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), has occurred or is pending or threatened against Press Ganey or to its knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement.

- c. **HIPAA.** Press Ganey shall provide its Services in accordance with all applicable federal and state laws and regulations governing the confidentiality and security of Client Data. The Parties anticipate that Press Ganey will or is likely to have access to, create, maintain, transmit and/or receive certain PHI and/or personal information in conjunction with the Services being provided hereunder. With respect to any PHI that Press Ganey receives from, or creates on behalf of, Client, Press Ganey is and will at all times during the Term be in compliance with all applicable federal and state privacy and security statutes and regulations including the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including amendments made through the American Recovery and Reinvestment Act and any regulations thereto promulgated by the Secretary of HHS. Notwithstanding the foregoing, Client agrees that any information contained in any file(s) transferred to Press Ganey under or in furtherance of this Agreement shall not be a designated record set as defined by HIPAA. Client agrees to maintain a separate designated record set for each of its patients pursuant to which Client may comply with 45 C.F.R. §§ 164.524 and 164.526 without need to obtain or reference PHI in possession of Press Ganey.
- d. **Privacy Laws and TCPA.** With respect to Services that Press Ganey provides on behalf of Client, Client shall comply with all applicable U.S. federal and state laws, rules and regulations, international export and privacy laws, privacy policies and other laws regarding telephone calls, text messages, call recording, and the transfer and/or transmission of data, including but not limited to the TCPA.

10. QUALITY REPORTING. If Press Ganey is chosen as Client's vendor under the (i) Consumer Assessment of Healthcare Providers and Systems ("CAHPS"), (ii) ORYX or other quality measurement program under The Joint Commission, (iii) Centers for Medicare and Medicaid Service reporting program, or (iv) any other federal, state or regulatory reporting program (collectively, "Quality Reporting Program"), Press Ganey shall adhere to these programs' most current requirements in its delivery of Services. Client agrees that contracting with Press Ganey for Services under a Quality Reporting Program is not an assurance of compliance with all federal and/or state requirements. Client understands that it has a separate and distinct non-delegable legal obligation to comply with all federal and/or state requirements and Press Ganey is not liable for Client's failure to comply with these requirements.

11. WARRANTY.

- a. Press Ganey warrants that Services provided hereunder will be performed in a professional and workmanlike manner, and that the Work Product, delivered by Press Ganey to Client will conform substantially to the specifications in the SOW.
- b. Press Ganey does not warrant or represent that the Services provided pursuant to this Agreement will be capable of achieving any particular result in Client's business, that all errors, defects or deficiencies can or will be found or correct, or that the operation of any Work Product which is the subject of the task specifications will operate uninterrupted or error free. With regard to Services that do not comply with the warranties provided in this Section 11, Press Ganey shall correct or adjust any defective performance or nonperformance ("Defects"), of the Services provided that Client notifies Press Ganey in accordance with Section 13(b) of such non-compliance. If the Defects are not cured within the period set forth in Section 13(b), Client may terminate this Agreement pursuant to that Section.

- c. FOR THE AVOIDANCE OF DOUBT, PRESS GANEY MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO AND SHALL NOT BE LIABLE FOR: (A) ANY FAILURE BY PRESS GANEY OR CLIENT TO OBTAIN 'PRIOR EXPRESS CONSENT' OR 'PRIOR EXPRESS WRITTEN CONSENT' AS APPLICABLE UNDER THE TCPA OR THE FCC'S TCPA RULES TO PLACE VOICE TELEPHONE CALLS AND, FOR WIRELESS TELEPHONE NUMBERS, VOICE CALLS AND TEXT MESSAGES; (B) ANY INACCURATE DATA, INFORMATION OR INSTRUCTIONS PROVIDED BY CLIENT TO PRESS GANEY; OR (C) ANY USE OF AN AUTOMATIC TELEPHONE DIALING SYSTEM OR A PRERECORDED VOICE BY PRESS GANEY OR CLIENT.
 - d. THE WARRANTIES SET FORTH IN THIS SECTION 11 (WARRANTY) ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.
- 12. TAXES.** Notwithstanding the fact that Client may be a tax-exempt entity, Client will be responsible for payment of any sales, use, excise, value-added, personal property, export, import, withholding, transaction privilege, or similarly imposed taxes (collectively, "Taxes") assessed or imposed by any tax authority with respect to the payments Client makes to Press Ganey under this Agreement (except for any taxes based on Press Ganey's net income or employees). The pricing set forth in any SOW, as amended from time-to-time by the Parties, does not include any Taxes. Both parties agree that, if at any time during or after the Term, any tax authority asserting jurisdiction over Client or any Client facility assesses liability for Taxes, imposes one (1) or more Taxes or revokes (through legislation or agency decision) any tax exemption previously relied upon by Client, Client shall assume full responsibility for and make all payments of any and all Taxes due via an amendment to this agreement.
- 13. TERMINATION AND SURVIVAL.**
- a. **Cancellation.** Any cancellation of this Agreement by Client not in accordance with this Section 13 (Termination and Survival) shall trigger a payment, due in full, upon demand by Press Ganey in an amount equal to six (6) months worth of fees due to Press Ganey under the Agreement ("Liquidated Damages"). The Parties do not intend the Liquidated Damages to constitute a penalty, but rather compensation for harm caused to Press Ganey that is difficult to determine as of the Effective Date of this Agreement.
 - b. **Termination.**
 - 1. In the case of material breach of the material terms of this Agreement or violation of any laws described in Sections 6(b) or 9, the non-breaching Party shall notify the breaching Party of the suspected breach in writing and provide a reasonably detailed description of the breach. The breaching Party shall have forty-five (45) days to cure the breach described in that notice. In the event the breaching Party is unable to cure that breach within that forty-five (45) day period, the other Party may terminate this Agreement by providing a written termination notice to the breaching Party, but may not make a claim for future damages under this Agreement. In lieu of terminating this Agreement as provided for in this Section 13(b), Press Ganey may suspend the provision of the Services to Client until Client has cured the breach to Press Ganey's satisfaction. No Liquidated Damages shall be due for any valid termination of this Agreement under this Section 13(b).
 - 2. During the Initial Term of this Agreement, Client may terminate the Agreement for any reason by giving written notice of termination to the Press Ganey at least ninety (90) days prior to the anniversary of the Start Date. Upon proper notice, such termination shall be effective upon the next annual anniversary of the Start Date. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.



3. Client's payments to Press Ganey 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 Client's purchase of the indicated quantity of services, then Client may give written notice of this fact to Press Ganey in accordance with section 13(b)(2) above, and the obligations of the parties under this Agreement shall terminate upon the next annual anniversary of the Start Date.
- c. Where a BAA has been executed between the Parties, and where there has been a material breach of said BAA by Press Ganey for which no cure is possible and in which the BAA and relationship must be terminated, no Liquidated Damages shall be due.
- d. The Parties agree that according to the CAHPS Quality Assurance Guidelines a Client may only change CAHPS vendors at the beginning of any calendar quarter. Therefore, any cancellation during a calendar quarter shall not be valid until the end of the applicable calendar quarter and the Parties agree that Client shall be responsible for all costs incurred by Press Ganey, which costs shall not exceed those herein agreed to by the Parties, resulting from Client's compliance obligations with CMS regulations or aforementioned Quality Reporting Program following receipt of a cancellation notice due to the aforementioned CAHPS guidelines.
- e. **Survival.** In addition to any other provisions herein, which by their terms, survive the termination or expiration of this Agreement or that must survive in order to give meaning to other provisions of the Agreement, the following Sections of this Agreement will survive termination or expiration of this Agreement: 6 (Consents/Authorizations), 7 (Ownership and Intellectual Property), 8 (Confidentiality), 9 (Compliance Obligations), 10 (Quality Reporting), 12 (Taxes), 14 (Indemnification and Limitation of Liability), 16(f) (Choice of Law), and 16(g) (Dispute Resolution).

14. INDEMNIFICATION AND LIMITATION OF LIABILITY.

- a. **Indemnification.** Subject to the terms and conditions set forth herein, each Party shall indemnify, defend, and hold harmless the other Party, and its respective directors, officers, parent entities, subsidiaries, employees, shareholders, agents and its and their successors and assigns from and against any and all third-party claims, actions, suits, liabilities, judgments, losses, damages, reasonable costs, reasonable charges, reasonable attorneys' fees and/or expenses incurred or suffered by the indemnified Party arising out of, relating to or in connection with (i) the indemnifying Party's performance under this contract, including the acts, errors or omissions of any third party within their control, (ii) the indemnifying Party's breach of this Agreement or (iii) the indemnifying Party's violation of applicable law, including, but not limited to, any violation of the laws described in Section 6(b). Press Ganey shall indemnify, defend, and hold harmless Client, and its respective directors, officers, parent entities, subsidiaries, employees from and against any and all third-party claims, actions, losses, damages, and/or liability related to the infringement or misappropriation by Press Ganey of any patent, patent application issued or published on or before the Effective Date, copyright or trademark of a third party in the United States and for any related costs or expenses (including reasonable attorney's fees) incurred by Client.
- b. **Limitation of Liability.** Notwithstanding any other provision of this Agreement and except as specified in Section 13(a) (Termination and Survival) or where this exclusion or restriction of liability would be void or ineffective under applicable law, in no event will either Party be liable to the other under, in connection with or related to this Agreement for any special, indirect, consequential, exemplary or punitive damages (including, without limitation, loss of profits or revenues, loss of goodwill, penalties or withholding of reimbursement by a health care payer, state/federal agency or other entity) whether based on breach of contract, warranty, tort, product liability or any other legal theory, even if that Party has been advised of the possibility of such damages. The Parties further agree that, notwithstanding any other provision of this Agreement, the BAA, or any other agreement between the Parties or exhibit hereto, Press Ganey's total cumulative liability under, in connection with or related to this Agreement or in furtherance of the

Agreement's provisions or objectives, including but not limited to liability under the BAA or any other agreement between the Parties or exhibit hereto, shall be limited to actual direct damages not to exceed three (3x) times the amount paid (less any refunds or credits) by Client to Press Ganey during the twelve (12) month period preceding the date of the claim..

15. INSURANCE

a. Evidence of Coverage:

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

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.

c. Insurance Coverage Requirements: Without limiting Press Ganey's duty to indemnify, Press Ganey 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 and \$2,000,000 in the aggregate.

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 Press Ganey 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.

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, Press Ganey 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.

c. Other Requirements:

All insurance required by this Agreement shall be with 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 Press Ganey completes its performance of services under this Agreement.

Press Ganey shall provide Client notice in writing at least thirty days in advance of any reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Press Ganey 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.

Press Ganey shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, upon request by Client, annual certificates to Client.

- 16. NOTICES.** Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective two (2) days after they are delivered or when received, whichever occurs first, and shall be sufficient if given in writing, hand delivered, sent by overnight courier or First Class United States Mail, postage prepaid. Refusal to accept delivery will be deemed receipt. A Party may change its notice address for purposes of this Agreement by giving written notice to the other Party. Notice locations for the Parties are as follows:

Press Ganey:

Press Ganey Associates, Inc.
404 Columbia Place
South Bend IN 46601
Attn: Contracts Dept.

Client:

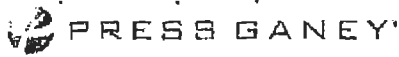
Natividad Medical Center
Attn: Contracts Division
1441 Constitution Blvd
Salinas CA 93906
Fax: 831-757-2592

17. MISCELLANEOUS.

- a. **Independent Contractor.** Press Ganey is an independent contractor to Client and nothing contained in this Agreement shall be construed as creating or implying a legal partnership, agency, joint venture or employment relationship between the Parties, nor shall either Party have the right, power or authority, whether express or implied, to assume, create or incur any expense, liability or obligation, whether express or implied, on behalf of the other Party.
- b. **Assignment.** Neither Party may assign this Agreement without the express written consent of the other Party. Notwithstanding the foregoing, either Party may, upon proper notice to the other Party, assign this Agreement to any affiliate or entity resulting from the sale, combination, or transfer of all or substantially all of the assets, capital stock, or membership interest, or from any other corporate form of reorganization by or of a Party. Any permitted assignee or successor of Client shall acknowledge in writing that the terms and conditions of this Agreement shall continue in full force and effect through the end of the Term after the date of such permitted assignment or succession.
- c. **Severability and Amendment.** If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision herein or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted from this Agreement to the minimum extent necessary to cure

such violation. The Parties further agree that in the event that a Party reasonably determines that the performance of any Services is deemed to be a violation of any statute, regulation, or other binding requirement by that Party, the Parties agree to negotiate in good faith to amend the Agreement, to the extent possible consistent with its purposes, to conform to the amended legal requirement.

- d. **Waiver.** No provision of or right or obligation in this Agreement shall be deemed waived by a Party unless such waiver is in writing and signed by the Party against whom enforcement is sought. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement.
- e. **Force Majeure.** Except for Client's obligations to make payments to Press Ganey under this Agreement, neither Party shall be liable under, or in default of, this Agreement for failure to perform its obligations hereunder if such failure arises out of causes beyond such Party's reasonable control and without its fault or negligence. Such causes or conditions include, but shall not be limited to, act of God, war, terrorism, civil disturbance, court order, natural disaster, or any other cause beyond the reasonable control of the affected party (a "force majeure"). However, if by reason of a force majeure either Party shall be rendered unable to carry out its obligations under this Agreement, either in whole or part, then such Party shall give notice and full particulars of such force majeure in writing to the other Party reasonably soon after occurrence of the event or course relied upon. The Party providing notice of a force majeure shall endeavor to remove or overcome such inability with all reasonable effort.
- f. **Choice of Law.** -Intentionally omitted.
- g. **Dispute Resolution.** Any controversy or claim arising out of or related to this Agreement or the breach thereof shall be resolved by the Parties through binding arbitration in Indiana pursuant to the commercial arbitration rules of the American Arbitration Association ("AAA") and judgment on any award rendered by the arbitrator shall be final and non-appealable and may be entered in any court of competent jurisdiction. The arbitration proceedings must be conducted in the English language. Arbitration shall be initiated by service of the demand for arbitration within a reasonable time after the claim has arisen. In no event may arbitration be demanded after the date the claim would be barred by the applicable statute of limitations. The arbitrator will be chosen by mutual agreement of the Parties. If the Parties fail to reach agreement within thirty (30) days of service of the demand for arbitration, the arbitrator will be chosen by the AAA. The foregoing notwithstanding, Press Ganey reserves the right to invoke the jurisdiction of any competent court to remedy or prevent violation of any provision of this Agreement.
- h. **Entire Agreement.** This Agreement, associated SOWs and any other exhibits hereby extinguish and supersede all previous and contemporaneous agreements, understandings and communications, whether oral or written, between the Parties and constitute the entire understanding between the Parties with respect to the subject matter herein and may not be modified or amended except by written agreement executed by both Parties, unless otherwise specified herein. The Parties acknowledge that this Agreement may need to be modified to ensure compliance and consistency with applicable law and changes thereto, including but not limited to the TCPA, and the Parties agree to amend the Agreement, at any time or from time to time, for such purposes.
- i. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of Press Ganey and Client and no third party beneficiary status shall be created with respect to any other entity or person.
- j. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by mail in portable document format will be effective as delivery of a manually executed signature page of this Agreement.



[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.

COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD (Client #769)	PRESS GANEY ASSOCIATES, INC.
By: <i>[Signature]</i> for Gary Gray	By: Mike Williams <small>Digitally signed by Mike Williams DN: dc=com, cc=pressganey, dc=us, ou=Offices, ou=Accounts, ou=Users, cn=Mike Williams, email=Mike.Williams@pressgane y.com Date: 2020.01.06 10:40:11 -06'00'</small>
Name: <i>Kristen Aldrich</i>	Name:
Title: <i>Contracts Manager</i>	Title: <i>SVP, Operations</i>
Date: <i>12-10-19</i>	Date: <i>1/6/2020</i>

Approved as to form

[Signature]
Monterey County Deputy Auditor/Controller
Date: *12/3/2019*

[Signature]
Monterey County Deputy County Counsel
Date: *11/26/19*

**EXHIBIT A
PATIENT EXPERIENCE
STATEMENT OF WORK**

This Statement of Work ("SOW") entered into by and between **Press Ganey Associates, Inc.** ("Press Ganey") and **The County of Monterey, on behalf of Natividad** ("Client," together with Press Ganey, the "Parties") covers Press Ganey's engagement to provide services to the Client. This SOW is entered into pursuant to and subject to the terms and conditions of the County of Monterey Master Services Agreement ("MSA") between the Parties effective January 1, 2020. Capitalized terms not defined in this SOW will have the meanings assigned to them in the MSA.

1. SERVICE SUMMARY.

- a. Patient Experience Survey Products. Press Ganey shall use commercially reasonable efforts to:
- Create and send multiple versions of the survey tool, as necessary and as requested by Client.
 - Conduct multiple wave surveying services to satisfy Client's participation requirements, pursuant to applicable initiatives set forth in the Consumer Assessment of Health Providers and Systems, sponsored by the Centers for Medicare and Medicaid Services, if applicable.
 - Provide access to survey images and recordings, if available and permitted based on CMS guidelines.
 - Offer Client the ability to monitor the number of surveys administered, returned, and completed.
 - Transcribe all patient survey comments made in English collected via mail or telephone verbatim (for example, grammar mistakes would not be corrected) and apply a comment rating to each comment.
 - Apply a comment rating to each eSurvey comment made in English using a sentiment analysis software algorithm, which yields a rating accuracy of eighty (80) percent.
- b. Patient Experience Reports. Press Ganey shall use commercially reasonable efforts to:
- Provide a worldwide, royalty-free, non-exclusive, limited, non-transferable, non-assignable, non-sublicenseable license to use Press Ganey's Patient Experience web-based application(s), for an unlimited number of users at each facility; client must designate a primary root user who will be responsible for user access and management of adding, maintaining and deleting users for their organization. For the avoidance of doubt, Client shall have no right or license to use any source code associated with the application and agrees not to reverse engineer the application or otherwise attempt to obtain the source code for the application or make any other use of the application except as authorized by Press Ganey in writing;
 - Provide reporting of patient experience results that include, but are not limited to:
 - (1) Static reports of Press Ganey CAHPS performance for standard time periods.
 - a. Static reports will be provided within thirty (30) days of the close of data collection.
 - (2) Interactive reporting, including the ability to create configurable data views
 - (3) Benchmarking to allow organizational comparison with selected peer groups
 - (4) Priority indices
 - (5) Comment reports
 - Make comments available for review through the web-based application and provide the capability for Client's designated staff to review comments containing concerning content through specialized reporting, also referred to as "Hot Comments". The determination regarding the content to be flagged by the Hot Comments functionality requires Client's input. Client acknowledges that (i) Press Ganey does not guarantee that Hot Comments will identify

- all content that Client considers to be concerning and (ii) Press Ganey has no obligation to flag comments for any reason.
- Provide additional reports through the web-based application on a monthly, quarterly, or annual basis upon Client's request. There may be a fee associated with these additional reports.
- c. Client Support Services. Press Ganey shall use commercially reasonable efforts to:
- Provide access to improvement content related to major service lines.
 - Provide access to Press Ganey's Online Forum – an information exchange forum that allows facilities to review industry best practices and collaborative solutions for improving patient experience.
 - Offer educational networking opportunities with other Press Ganey clients through the National Client Conference and Regional Education Symposia.
 - Provide periodic access to online Press Ganey publications.
- d. Advisor Support. Press Ganey will provide a Patient Experience Advisor (“Advisor”) who will support Client through unlimited virtual support and up to two (2) onsite days annually in the following activities:
- Advise in the development and promotion of a new patient experience strategy or the revitalization of existing one
 - Support data interpretation, including goal setting guidance, and data management guidance
 - Provide Product and Press Ganey tool Training and Education
 - Best practice sharing via approved Tool Kits and Press Ganey publications
 - Conduct real-time observations with standard feedback report of active best practices
 - Facilitate networking
 - At mutual agreement with client, provide an annual Partnership Plan
- e. Account Manager Support. Press Ganey shall use commercially reasonable efforts to provide access to a designated Account Manager who will:
- Work collaboratively with client on the implementation of new survey products and continuous on-going support:
 - Cooperate with client to determine survey customization that aligns with organizational goals and initiatives. Survey customizations can be made once annually.
 - Recommend appropriate sampling strategies aimed toward obtaining actionable data. Client may request sampling adjustments quarterly, and Press Ganey will cooperate with Client to determine whether the requested adjustment is recommended.
 - Collaborate with client and Advisor to align inbound data with expected reporting outputs that drive improvement initiatives.
 - Provide reasonably detailed information from audits proactively performed in connection with Client setup and otherwise throughout the term of the SOW to guide compliance with CAHPS regulations and guidelines. Client acknowledges that this is not an assurance of compliance with any federal and/or state laws, regulations, or requirements. Client understands that it has a separate and distinct non-delegable legal obligation to comply with all federal and/or state laws, regulations or requirements and Press Ganey is not liable for Client's failure to comply with these requirements.

- f. Client Support Desk. Press Ganey shall use commercially reasonable efforts to provide access to our client support desk who will:
- Provide virtual, real time client user assistance, Monday – Friday, 8:00 am – 8:00 pm EST.

2. DATA COLLECTION METHODOLOGY. Provided that Client is in compliance with its obligations under Section 4, Press Ganey shall use commercially reasonable efforts to:

a. InfoTurn Surveying (Mail Methodology).

- Provide surveys and accompanying cover letters for each contracted patient survey service;
- Provide surveys and a return, business reply envelope with each mailing;
- Complete mailings within three (3) business days of receipt of electronic patient data;
- Provide access to scanned survey images within three (3) business days of their return via the PG Application; and
- Transcribe all survey comments made in English within five (5) business days of Press Ganey's receipt, if Client has contracted for Press Ganey's "Comments Service".

b. InfoTurn Surveying: (Bulk Print Mail/Handout Methodology).

- Provide surveys and accompanying cover letters for each contracted patient survey service;
- Provide surveys and a return, business reply envelope with each bulk shipment;
- Mail the bulk shipment to the facility within ten (10) business days of the survey order;
- Scan returned and completed surveys into the Press Ganey database within three (3) business days of receipt;
- Transcribe all survey comments within five (5) business days of Press Ganey's receipt, if Client has contracted for Press Ganey's "Comments Service".

c. eSurvey Blend: (Electronic Internet Surveying).

- Send and process mail survey prior to sending email notifications to all survey respondents who provide an email address; and
- Enter survey results into the Press Ganey database and make them available for viewing via the PG Application within three (3) business days following submission.

3. SERVICE ASSURANCE.

- a. Press Ganey Hours of Operations: Monday – Friday, 8:00 am – 5:00 pm during Client's local time.
- b. Press Ganey Holidays. Press Ganey recognizes the following nine (9) holidays and all offices are closed on these days or their days of observance:
- New Year's Day (January 1)
 - Martin Luther King Day (third Monday in January)
 - Memorial Day (last Monday in May)
 - Independence Day (July 4)
 - Labor Day (first Monday in September)
 - Thanksgiving (fourth Thursday in November)
 - Day after Thanksgiving
 - Christmas Eve (December 24)
 - Christmas (December 25)
- c. Federal Closures. Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every

reasonable effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. [Information](#) on these closures may be found at www.pressganey.com/terms.

- d. Other Closures. There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. [http://](#) Information on these closures may be found at www.pressganey.com/terms.

4. CLIENT RESPONSIBILITIES. Client shall at all times during the Term:

- Comply with certain hardware and software requirements to receive Press Ganey's online services, as amended from time to time, which requirement may be found at www.pressganey.com/terms.
- Designate a primary root user for the Press Ganey Online System and Applications that is responsible for user access and management of users within their organization.
- Upon the departure of an employee from Client's facility, immediately terminate their access to Press Ganey Applications and other Press Ganey systems;
- Prior to processing data, provide Press Ganey a completed demographic profile for the contracted service(s). Profiles must be completed and returned to Client's Account Manager by the first of the month preceding the month in which the facility is to receive the first report.
- Notify Press Ganey of changes to the demographic profiles prior to the first business day of the month preceding the report month, including changes in unit configurations and specialty designations.
- Obtain any and all patient consents, authorizations, and/or approvals required by applicable U.S. federal and state laws, rules, regulations, policy, or industry guidelines to enable Press Ganey to execute its obligations under this Agreement, including but not limited to privacy policies, laws regarding the transfer and/or transmission of data, the Telemarketing Sales Rule and the Telephone Consumer Protection Act (the "TCPA"), and the CTIA Short Code Handbook.
- If Client is receiving Text Invitation services, ensure that the Patient providing the "prior express consent" or "prior express written consent" to send texts to a telephone number as required by the TCPA, that Patient is the current subscriber or customary user for that telephone number, and that the consent obtained from such Patient/subscriber has not been revoked.
- Ensure that the email addresses provided to Press Ganey are currently assigned to the designated Patient and that no Patient has opted out or unsubscribed from receiving emails from Client.
- Comply with the requirements of sampling strategy and survey distribution methodology. Client recognizes that a common distribution methodology must be used in order to avoid bias, enable comparative data to be valid, and meet the highest standards of reporting. Additionally, Client acknowledges that reporting standards require that a minimum number of surveys must be returned before a statistically-valid report can be issued by Press Ganey. The minimum requirement for small hospital databases and for other services not mentioned below is thirty (30) returned surveys. The minimum requirements for the large hospital comparative databases are as follows:
 - Inpatient – one hundred and seventy-five (175)
 - Pediatric Inpatient – one hundred and forty-two (142)
 - Emergency Room – one hundred and forty-five (145)
 - Ambulatory Surgery – one hundred and six (106)
 - Medical Practice – thirty (30)
 - Outpatient Services – one hundred and forty-nine (149)



5. PAYMENT TERMS.

a. Contract fees are as indicated on Attachment A.

6. ACKNOWLEDGEMENT; DISCLAIMER. THE PARTIES AGREE THAT FOR PURPOSES OF THE TCPA, PRESS GANEY SHALL BE DEEMED TO BE CONTACTING PATIENTS AT THE CLIENT'S DIRECTION, UNDER THE CLIENT'S SUPERVISION, AND FOR THE CLIENT'S BENEFIT AND CLIENT SHALL HAVE SOLE RESPONSIBILITY TO OBTAIN ANY AND ALL NECESSARY CONSENTS FROM PATIENTS AS DEFINED UNDER THE TCPA.

COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD (Client #769)	PRESS GANEY ASSOCIATES, INC.
By: <i>Kristen Aldrich</i> for Gary Gray	By: Mike Williams Digitally signed by Mike Williams DN: dc=com, dc=pressganey, dc=us, ou= Offices, ou=Accounts, ou=Users, cn=Mike Williams, email=Mike.Williams@pressganey.com Date: 2020.01.06 10:41:26 -06'00'
Name: <i>Kristen Aldrich</i>	Name:
Title: <i>Purchasing Agents</i>	Title: SVP, Operations
Date: <i>12.10.19</i>	Date: 1/6/2020

[Signature]
Monterey County Deputy Auditor/Controller
Date: *12/31/2019*

Monterey County Deputy County Counsel
Date: _____

ATTACHMENT A

1. Beginning January 1, 2020, the Client agrees to pay Press Ganey an annual contract fee of \$162,493.00 for the services listed herein and outlined on Exhibit A, B, and C. This fee will be invoiced upfront quarterly after the start of services ("Annual Fee").
 - a. The Annual Fee Includes:
 - i. Up to 26,791 mailed and/or bulk mail/handout surveys (Wave 1 and Wave 2) annually through the United States Postal Service for the services of:
 1. Behavioral Health Inpatient
 2. Emergency Department
 3. Inpatient with HCAHPs
 4. Medical Practice with CGCAHPS
 5. Neonatal Intensive Care Unit (NICU)
 6. Outpatient Services
 7. Pediatric Inpatient
 8. Rehabilitation Inpatient
 - ii. Unlimited email surveys for all services listed above with the exception of Behavioral Health Inpatient, Pediatric Inpatient, and NICU.
 - iii. Up to 57 Medical Practice Providers
 - iv. Comment processing for all services listed above.
 - v. iRound Service as outlined on Exhibit C
2. Additional Medical Practice providers may be added via mutual written amendment of the Parties at a rate of \$800.00 per provider, plus any annual increases allowed under this Agreement. Each provider added will receive 300 mailed surveys, unlimited email surveys, and comment processing. Additional services and facilities may be added upon written Amendment of the Parties at mutually agreed upon pricing.
3. Press Ganey will not mail more surveys than the included volume outlined above. Additional surveys may be added via mutual written amendment of the Parties at mutually agreed upon pricing.

EXHIBIT B
NATIVIDAD MEDICAL CENTER EMPLOYEE AND PHYSICIAN SURVEY
STATEMENT OF WORK 2020

This Statement of Work ("SOW") entered by and between **Press Ganey Associates, Inc.** ("Press Ganey Associates") and **County of Monterey, on behalf of Natividad** ("Client," together with Press Ganey Associates, the "Parties") covers Press Ganey Associates engagement to provide services to the Client. This SOW is subject to the terms and conditions in the County of Monterey Master Services Agreement ("MSA"). Effective January 1, 2020. The initial term of this service is a period commencing **January 1, 2020** and ending **June 30, 2020**.

Survey	Start Date	Survey Administration Date	Completion Date
2020 Employee Survey	January 1, 2020	April 2020	June 30, 2020
2020 Hospital Physician Survey	January 1, 2020	April 2020	June 30, 2020

1. SERVICES.

- a. Press Ganey Associates agrees to provide one (1) Employee survey, one (1) Hospital Physician surveys and advisor services to Client. The project planning process for the surveys will begin as outlined above.

Employee Survey Project Fee - \$37,362

Hospital Physician Survey Project Fee - \$16,957

- b. The project fee for this project is based on the services outlined in Section 5. Changes to the Project Fee will be effective upon mutual written agreement of the parties.
- c. A minimum of twelve (12) weeks from signed contract to survey administration date is required to set up all projects. The survey administration and end dates listed above may need to be adjusted to later dates to allow for the set up timeframe prior to the survey administration date.

2. PAYMENT.

- a. Client will be invoiced based on the schedule below. The initial invoice is based on the Project Fee included in Section 5. Invoices are based on the Project Fee included in Section 5.

<i>Invoice No.</i>	<i>Invoice Timing</i>	<i>Invoice Amount</i>
<i>Invoice No. 1</i>	<i>Upon Initiation of Project</i>	<i>50% of Project Fee Per Survey</i>
<i>Invoice No. 2*</i>	<i>Project Completion</i>	<i>50% of Project Fee Per Survey</i>

3. SERVICE ASSURANCE.

- a. Press Ganey Hours of Operations. Press Ganey shall provide access to our associates Monday – Friday, 8:00 am – 5:00 pm EST.
- b. Press Ganey Holidays. Press Ganey recognizes the following nine (9) holidays and all offices are closed on these days or their days of observance:
- New Year's Day (January 1)
 - Martin Luther King Day (third Monday in January)
 - Memorial Day (last Monday in May)
 - Independence Day (July 4)

- Labor Day (first Monday in September)
 - Thanksgiving (fourth Thursday in November)
 - Day after Thanksgiving
 - Christmas Eve (December 24)
 - Christmas (December 25)
- c. Federal Closures. Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. Information on these closures may be found at www.pressganey.com/terms.
- d. Other Closures. There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. Information on these closures may be found at www.pressganey.com/terms.
- 4. CLIENT RESPONSIBILITIES.** Client shall:
- Comply with certain hardware and software requirements to receive Press Ganey's online services, as amended from time to time, which requirements may be found at www.pressganey.com/terms.
 - Designate a primary contact for Press Ganey's Engagement Portal that is responsible user access and management of users within their organization;
 - Upon the departure of an employee from Client's facility, immediately terminate their access to Press Ganey Applications and other Press Ganey systems.

5. PROJECT FEE.

Employee Engagement Survey

Number of employees invited to survey: up to 1,500

Core Survey Services

GENERAL SERVICES.

- a. Product Planning and Management
- Press Ganey Engagement Advisors support your organization's senior leaders and human resource professionals throughout the survey experience.
 - Our advisors and project teams work with nationally ranked health care providers. Leveraging our extensive knowledge of health care organizational structures, practices and cultures, we reduce your project's ramp-up time. Our advisors and project teams ensure that demands on your staff are minimized, and provide you with a process that is clear, simple and successful.
 - Our advisors will conduct an annual Organizational Review for prioritization of support needs.
- b. Assistance with Pre-Survey Communication Strategies

- We provide best practices and ideas so that our clients can design a comprehensive communication campaign to create buy-in across the organization, engage employees in the process and ensure a high response rate.
- c. Account Manager Support.
Press Ganey shall provide access to a designated Account Manager who will:
- Work collaboratively with your Human Resource Business Partner (HRBP) on the implementation and Administration of your Engagement survey.
 - Partner with you to determine survey customization that aligns with organizational goals and initiatives.
 - Recommend best practices for a successful launch that will maximize participation.
 - Collaborate closely with your HRBP and Advisor to align organization structure and strategy with expected reporting outputs that drive improvement initiatives.
 - Assist with survey set up and administration through Press Ganey's Engagement Portal solution.
- d. Client Support Desk.
Press Ganey shall provide access to our client support desk who will:
- Provide virtual, real time client user assistance, Monday – Friday, 8:00 am – 8:00 pm EST.

SURVEY INSTRUMENT.

- a. Engagement Model™
- The **Engagement Model** provides an empirical framework for the **Employee Survey** and includes three domains that represent the key driver items for each. The **Organization** Domain measures employee attitudes toward the organization. The **Manager** Domain measures employee attitudes toward the immediate manager and supervisors within the work group/department. The **Employee** Domain measures employee attitudes toward their job and the performance of coworkers and report group. Our surveys use valid, reliable items linked to robust national employee health care benchmarks and can be tailored to meet the unique needs of your organization.
- b. Survey for Natividad Medical Center
- **Power Plus Survey™**, which contains 65 core items, fully assesses performance in the organization, manager and employee domains. Additional survey items can be added to the Power Plus Survey to address specific organizational needs. **Power Survey™** is a streamlined version consisting of 24 core items that are the most predictive of employee commitment. Additional survey items can be added to the Power Survey to address specific organizational needs. The Employee Survey also includes demographic questions and optional open-ended questions. The surveys use a five-point response scale to measure performance.
- c. Resilience Survey Module
- The Press Ganey's Resilience Survey consist of 8 items. The survey was psychometrically tested and validated using respondent-level calculations. Current reporting for Engagement metrics is designed to display data at the group average level. Resilience metrics in the Engagement Portal will be provided at the at the group average level.
- d. Safety Culture Survey Modules (based on 1,500 employees invited)
- The Press Ganey Safety Culture survey measures the relevant issues and workplace activities that define an organization's focus on safety. Assessing safety culture at the organization and work unit-level supports awareness building around patient safety issues,

- identifies strengths and concerns, and evaluates the impact of patient safety interventions and performance over time
- The Press Ganey Safety Culture survey consists of 19 positively-worded survey items. The survey centers on obtaining caregiver feedback related to the primary factors that impact safety:
 - Prevention and reporting
 - Resources and teamwork
 - Pride and reputation
 - The Press Ganey Safety Culture survey is certified by The Leapfrog Group as a Tier 3 safety culture survey. This means that the survey instrument has demonstrated validity, consistency and reliability to meet the standards of The Leapfrog Group.
 - This service enables an organization to fully evaluate safety culture across the organization and access safety data at a work group level within the online reporting system. Online users can see data segmented by safety culture factors with the corresponding aggregate summary scores, as well as detailed item-level measures for each individual safety item within a factor.
- e. Survey Design Meeting
- The proposal includes conference calls to ensure the survey content achieves the client's strategic objectives.
- f. Organizational Mapping
- The organizational and demographic mapping structure specific to your organization is an important feature of our survey process. Developing the mapping structure is a collaborative effort between the client and Press Ganey's subject matter experts. The accuracy of the organizational mapping structure insures that survey responses are attributed to the correct group at the time of the survey.
 - Press Ganey will strive to ensure that your mapping structure is correctly configured based upon the information provided by you about your organizational structure. The mapping structure must be finalized prior to administration based on the project timeline due date.
 - Changes requested prior to survey administration but after the mapping due date could delay survey administration.
 - The mapping structure must be finalized prior to administration based on the project timeline due date. No mapping changes will be made once survey administration begins.
 - The survey reflects the current hierarchy at the time of administration, if the hierarchy changes, Press Ganey recommends administering a pulse survey to ascertain the work unit's response to that change.

SURVEY ADMINISTRATION.

a. Web-based Administration

- Our online survey is secure, easy to navigate, and features popular options such as Change Responses or Review Responses. Additional optional features include routing and branching of specific items for specific demographic groups. Optional use of passwords enables linking to HRIS data, which auto-fills employees' demographic information and report group mapping. Online surveys are easily accessed using most up-to-date browsers, make no demands on your IT resources and leave no lasting footprints, cookies or DDLs.
- It is highly recommended that all clients use IE 11, Chrome 2+, Firefox 4+, or Safari 3+ when accessing our online systems. Effective January 2016, Microsoft will no longer support

browsers below Internet Explorer version 11 (IE11). Future enhancements to Press Ganey reporting applications will only be designed and tested for vendor-supported browsers, such as IE11 and Chrome.

- Designated users will be able to monitor survey response rates for the facility by using the online reporting suite. Online survey responses automatically populate this report.
- b. Two Open-Ended Survey Items
 - Compilation and reporting of English responses to **two** open-ended survey items is included.
- c. Use of Unique Survey Links or Survey Passwords and the “Pre-filling” of Demographic Data
 - This approach involves the use of links or passwords that are tied to each participant’s data. The demographic data are linked to the password through the HRIS data file.
- d. Electronic Survey Invitation and two survey reminders sent to each employee

DATA ANALYSIS & REPORTING.

- a. Standard Data Analysis
 - Survey responses are processed and analyzed for standard reporting for each group in the hierarchical mapping scheme. Data are presented in multiple formats, including mean scores for domains and survey items, difference scores (from benchmarks), response frequencies (*n* size) and response distribution (% unfavorable, % neutral and % favorable).
 - Two National Benchmarks will be provided: Press Ganey recommends the National Health Care Benchmark and a second National Benchmark to be selected from Press Ganey’s standard list of National Health Care Benchmarks (See Appendix I).
 - **National Health Care Benchmark** is based on 1,141,646 health care respondents across 746 health systems, representing over 2,142 facilities. This data tracks the prevailing attitudes of the current health care labor force in the U.S. We also offer an extensive suite of national health care employee benchmarks. Our segmented benchmarks ensure a clear interpretation of results, prioritize action planning and increase the likelihood of organizational improvement.
- b. The Engagement Portal: An interactive, Web-based reporting system
 - The Engagement Portal delivers results and insights through an intuitive, interactive, Web-based solution, delivering the most meaningful metrics for leaders at all levels. The Engagement Portal features enhanced reporting and analytic capabilities, including:
 - Summary Dashboards – to view key performance metrics at a glance
 - Multiple Hierarchical Views – to view multiple versions of mapping sequence
 - Filtering & Trending Options – to view segments like key demographics and historical scores
 - **Note:** You will receive trending for one year of history across two hierarchies within the standard Dashboard.
 - Detailed Item Views – to view item level scores from various perspectives
 - Key Strengths & Concerns – a unique Press Ganey feature that is available at all levels of the organization
 - Ad Hoc Reporting Feature – allows the user to define report parameters
 - Ability to export to an Excel and/or PDF file based on the defined view

Specific Results Views:

- The **Results View by Demographics** provides results for different demographic groups in a format for easy comparison (e.g., years affiliated, age, employed, location).
- The **Percentile Ranking View** enables sorting and ranking of items scores and percentile ranking at the system level using the selected the National Benchmark.
- The **Ranking View** enables sorting and ranking of work group scores for specific items.
- Results are provided for all groups with the minimum number of responses. When a group does not meet the threshold, these responses are “rolled-up” into the next higher level of reporting. The permission-based system provides for different levels of access and user function based on individual login user-ids.
- Users can choose what area of the results or what part of the organization to examine more closely. Results can be viewed on the screen, printed and/or exported to Excel.
- Users will have access to Press Ganey’s web-based support that includes step by step guides and videos to navigate the engagement portal.
- Press Ganey’s Advisor will provide a virtual Engagement Portal training to your organization (up to 2 hours) to educate leaders on how to access the tool and pinpoint opportunities for improvement.
- Results are available per the following timeline:
 - The Online Portal available: Within one (1) week after data analysis begins
 - Overall Executive Overview: Within four (4) weeks after data analysis begins

Note: Data analysis begins when all completed surveys are received and the client has approved the final reporting structure.

Should the client choose to terminate this agreement, access to Press Ganey’s online reporting platform will be available until the earlier of twelve (12) months after survey administration or thirty (30) days after termination of agreement.

c. System Level Executive Overview

- Our Engagement Advisors will prepare an interpretive summary of the overall organization results in the form of an **Executive Overview** that includes key metrics and comparisons to national benchmarks. A summary of key organizational strengths and concerns is provided along with recommendations for post-survey action planning. The Press Ganey Advisor will present the Executive Overview (onsite) to the leadership team you identify.

d. System Level Key Driver Analysis

- We will provide advanced analysis on the survey data to identify the primary drivers of engagement. Based on multiple regression modeling, **Key Driver Analysis** isolates survey items that most powerfully impact an outcome of interest. This analysis is most commonly used to determine survey items that greatly influence employee commitment. Key driver analysis is often performed using all of an organization’s respondents; however, subgroups may also be analyzed to explore their differences.

e. System Level Tiers

- We provide trend information for work group metrics.

POST-SURVEY FEEDBACK AND ACTION PLANNING.

a. Web-based Action Planning with integrated Tips

- Our action planning guide assists administrators, directors and managers with implementing and refining their plans for action. Action planning documents improvement initiatives and clarifies who or which groups have responsibility and accountability for change.
- b. Engagement Improvement Playbook for Managers and Senior Leaders
 - A detailed guide to interpreting results, planning feedback meetings with a team and creating an action plan on selected issues.

ADVISORY SUPPORT.

A Press Ganey Advisor will be assigned to your account to help support the rollout of your engagement results and support the planning and execution of tactics to help drive improvement. Along with providing virtual support to your leaders, the Press Ganey Advisor will come on site for (up to) 1 day to deliver the results to your executive leadership team. An onsite day includes (up to) six (6) hours of meetings and/or presentations in a 12-hour period.

The Advisor will:

- a. Participate in a virtual project Kickoff Session
 - Offer guidance on item selection and benchmarking
 - Support the development of the organizational hierarchy
- b. Facilitate goal setting efforts in conjunction with the primary contact from your organization
- c. Coordinate one day onsite for Executive Overview delivery and management presentations
 - Following the survey, we provide robust support for senior leaders and managers. Once the results are compiled, the team develops a presentation (as mentioned above) and training strategy that disseminates organization-level results and provides managers/leaders with the knowledge and skills to easily interpret their results.
 - Your Press Ganey Advisor will meet with C-Suite members to discuss tier distribution and best practice recommendations for improvement.
 - Your Press Ganey Advisor will meet with your managers and discuss tips and tactics for sharing results and driving improvement strategies
- d. Provide access to and guidance on using data management and/or best practice toolkit resources
- e. Provide education and training on Press Ganey tools
- f. Participate in one annual (virtual) Executive Business Review with the Press Ganey account team and organizational leadership

Base Price <i>This price includes services listed above.</i>	\$ 53,375
Discount	\$ 16,013
Base Price after Discount	\$ 37,362

Hospital Physician Engagement Solutions

Number of physicians invited to survey: up to 100

GENERAL SERVICES.

a. Product Planning and Management

- Press Ganey Engagement Advisors support the organization's leaders and human resource professionals throughout the survey experience.
- Our advisors and project teams work with nationally ranked health care providers. Leveraging our extensive knowledge of health care organizational structures, practices and cultures, we reduce your project's ramp-up time. Our advisors and project teams ensure that demands on your staff are minimized, and provide you with a process that is clear, simple and successful.

b. Assistance with Pre-Survey Communication Strategies

- We provide best practices and ideas so that our clients can design a comprehensive communication campaign to create buy-in across the organization, engage physicians in the process and ensure a high response rate.

SURVEY INSTRUMENT.

a. Physician Survey based on the Model of Physician Engagement™

- From the beginning of your project, the **Engagement Model** provides a framework for the **Physician Survey** and guides the development of a core survey which is a succinct, empirically-based survey instrument; after the survey, it delivers concise metrics that simplify reporting, focus the organization and drive action.
- Additional survey items can be added to address specific organizational needs. Open-ended questions can also be added (additional cost).

b. Resilience Survey Module

- The Press Ganey's Resilience Survey consist of 8 items. The survey was psychometrically tested and validated using respondent-level calculations. Current reporting for Engagement metrics is designed to display data at the group average level. Resilience metrics in the Engagement Portal will be provided at the at the group average level.

c. Safety Culture Survey Module (based on 100 physicians invited)

- The Press Ganey Safety Culture survey measures the relevant issues and workplace activities that define an organization's focus on safety. Assessing safety culture at the organization and work unit-level supports awareness building around patient safety issues, identifies strengths and concerns, and evaluates the impact of patient safety interventions and performance over time.
- The Press Ganey Safety Culture survey consists of 19 positively-worded survey items. The survey centers on obtaining caregiver feedback related to the primary factors that impact safety:
 - Prevention and reporting
 - Resources and teamwork
 - Pride and reputation

- The Press Ganey Safety Culture survey is certified by The Leapfrog Group as a Tier 3 safety culture survey. This means that the survey instrument has demonstrated validity, consistency and reliability to meet the standards of The Leapfrog Group.
 - This service enables an organization to fully evaluate safety culture across the organization and access safety data at a work group level within the online reporting system. Online users can see data segmented by safety culture factors with the corresponding aggregate summary scores, as well as detailed item-level measures for each individual safety item within a factor.
- d. Project Launch and Survey Design Meeting
- The proposal includes conference calls with the Engagement Team to confirm the project plan, project timeline and survey content
- e. Mapping Scheme for Results
- Mapping for the physician respondents includes specialty area and other demographic variables, such as employment status and years affiliated with the organization. This will be specific to your organization.

SURVEY ADMINISTRATION.

- a. Web-based Administration
- Our online survey is secure, easy to navigate, and features popular options such as Change Responses or Review Responses. Use of passwords enables linking to HRIS or other data, which auto-fills physicians' demographic information and report group mapping. Online surveys are easily accessed using most up-to-date browsers, make no demands on your IT resources and leave no lasting footprints, cookies or DLLs.
 - It is highly recommended that all clients use IE 11, Chrome 2+, Firefox 4+, or Safari 3+ when accessing our online systems. Effective January 2016, Microsoft will no longer support browsers below Internet Explorer version 11 (IE11). Future enhancements to Press Ganey reporting applications will only be designed and tested for vendor-supported browsers, such as IE11 and Chrome.
 - Designated users will be able to monitor survey response rates for the facility by using the online reporting suite. Online survey responses automatically populate this report.
- b. Open-Ended Survey Items
- Compilation and reporting of English responses to **two** open-ended survey items is included.
- e. Use of Unique Survey Links or Survey Passwords and the "Pre-filling" of Demographic Data
- This approach involves the use of links or passwords that are tied to each participant's data. The demographic data are linked to the password through the HRIS data file.
 - Client support desk is available (M-F, 8 a.m. – 8 p.m. ET).
- c. Electronic survey invitation and two survey reminders sent to each invited physician

DATA ANALYSIS AND REPORTING.

- a. Standard Data Analysis
- Survey responses are processed and analyzed for standard reporting for each group in the hierarchical coding scheme determined by the Client. Data are presented in multiple formats, including mean scores for domains and survey items, difference scores (from benchmarks), response frequencies (*n* size) and response distribution (% unfavorable, % neutral and % favorable).

- b. Two National Benchmarks will be provided: Press Ganey recommends the National Physician Benchmark and a second National Benchmark to be selected from Press Ganey's standard list of National Physician Benchmarks (See Appendix I).
- **National Physician Benchmark** National Physician Average is based on a broad sample of physicians spanning major practice areas and sectors within the Health Care Services Industry. It provides a context through which any health care services organization may gauge the opinions of its active medical staff. Currently reflective of 73,566 licensed physicians across more than 2,250 health care facilities, these data reflect the general opinions of current physicians practicing medicine in the United States.
- c. The Engagement Portal: An interactive, Web-based reporting system
- The Engagement Portal delivers results and insights through an intuitive, interactive, Web-based solution, delivering the most meaningful metrics for leaders at all levels. The Engagement Portal features enhanced reporting and analytic capabilities, including:
 - Summary Dashboards – to view key performance metrics at a glance
 - Multiple Hierarchical Views – to view multiple versions of mapping sequence
 - Filtering & Trending Options – to view segments like key demographics and historical scores
 - Detailed Item Views – to view item level scores from various perspectives
 - Key Strengths & Concerns – a unique Press Ganey feature that is available at all levels of the organization
 - Ad Hoc Reporting Feature – allows the user to define report parameters
 - Ability to export to an Excel and/or PDF file based on the defined view

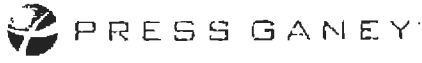
Specific Results Views:

- The **Results View for All Physicians** summarizes data for all responding physicians and presents results for every survey item with comparisons to various benchmarks.
- The **Results View by Specialty** (principle area of practice or program as defined by your organization and selected by the physicians) summarizes data for all responding physicians and presents results for every survey item with comparisons to various benchmarks.
- The **Results View by Demographics** provides results for different demographic groups in a format for easy comparison (e.g., years affiliated, age, employed, location).
- The **Percentile Ranking View** enables sorting and ranking of items scores and percentile ranking at the system level using the selected National Physician Benchmarks.
- The **Ranking View** enables sorting and ranking of work group scores for specific items.

Additional Report:

- The **Executive Overview** illuminates the organization's strength and concern areas in a PowerPoint presentation format (approx. 20–30 slides). It provides the key drivers for the organization, provides recommendations for focal areas, sets the direction for action planning and provides best practices.

Data access is customized for each recipient or user and provided over our secure, permission-based, Web-hosted reporting platform. Access to The Engagement Portal can be provided to an unlimited number of end users based on the client's organizational structure and needs.



- Results are available per the following timeline:
 - The Online Portal available: Within one (1) week after data analysis begins
 - Overall Executive Overview: Within four (4) weeks after data analysis begins

Note: Data analysis begins when all completed surveys are received and the client has approved the final reporting structure. To ensure confidentiality, results are reported for groups with a defined minimum of respondents. We recommend a minimum of at least five (5) respondents.

Access to survey data will be available until the earlier of twelve (12) months after survey administration or thirty (30) days after termination of agreement.

d. Web-based Action Planning with Integrated Tips


- Our action planning guide assists administrators, directors and managers with implementing and refining their plans for action. Action planning documents improvement initiatives and clarifies who or which groups have responsibility and accountability for change.

PRESENTATION OF RESULTS TO SENIOR LEADERS, POST-SURVEY FEEDBACK AND ACTION PLANNING.

a. Presentation of Results to Senior Management and Representatives

- Your Engagement Advisor will provide one day of on-site consulting to deliver the Executive Overview and establish a roadmap for effective feedback and action planning. One day of on-site consulting is not to exceed six (6) hours of presentations.

Base Price <i>This price includes services listed above.</i>	\$ 24,225
Discount	\$ 7,268
Base Price after Discount	\$ 16,957

THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD (Client #769)	PRESS GANEY ASSOCIATES INC.
By: 	By: Mike Williams <small>Digitally signed by Mike Williams DN: dc=com, dc=pressganey, dc=us, ou=Offices, ou=Accounts, ou=Users, cn=Mike Williams, email=Mike.Williams@pressganey.com Date: 2020.01.06 10:42:50 -0600</small>
Name: <u>Gary R Gray</u>	Name: _____
Title: <u>CEO</u>	Title: <u>SVP, Operations</u>
Date: <u>12/16/19</u>	Date: <u>1/6/2020</u>



 Monterey County Deputy Auditor/Controller

 Monterey County Deputy County Counsel

- Results are available per the following timeline:
 - The Online Portal available: Within one (1) week after data analysis begins
 - Overall Executive Overview: Within four (4) weeks after data analysis begins

Note: Data analysis begins when all completed surveys are received and the client has approved the final reporting structure. To ensure confidentiality, results are reported for groups with a defined minimum of respondents. We recommend a minimum of at least five (5) respondents.

Access to survey data will be available until the earlier of twelve (12) months after survey administration or thirty (30) days after termination of agreement.

d. Web-based Action Planning with integrated Tips

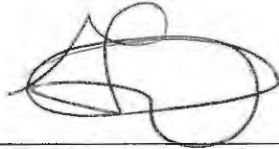
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Discount	\$ 7,268
Base Price after Discount	\$ 16,957

THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD (Client #769)	PRESS GANEY ASSOCIATES INC.
By: 	By:
Name: <u>Gary R. Gony</u>	Name:
Title: <u>CEO</u>	Title:
Date: <u>12/16/19</u>	Date:


 Monterey County Deputy Auditor/Controller

Monterey County Deputy County Counsel

Appendix I: Standard Norm List: Employee

This document outlines the list of norms that are defined as 'standard.' All other norms will be considered 'custom' and are subject to an additional charge.

Standard Norms List

List of Employee Norms
AHA-1 Employee Avg
AHA-2 Employee Avg
AHA-3 Employee Avg
AHA-4 Employee Avg
AHA-5 Employee Avg
AHA-6 Employee Avg
AHA-7 Employee Avg
AHA-8 Employee Avg (Developing)
AHA-9 Employee Avg
Nat'l Academic Healthcare Avg
Nat'l Acute Care Avg
Nat'l Ambulatory Care Avg
Nat'l Behavioral Health Avg
Nat'l Cancer Center Avg
Nat'l Children's Healthcare Avg
Nat'l Clinic Employee Avg
Nat'l Community Hospital Avg
Nat'l Corporate Healthcare Avg
Nat'l Healthcare Avg
Nat'l Home Health Avg
Nat'l Long Term Care Avg
Nat'l Magnet Organization Avg
Nat'l Magnet RN Avg
Nat'l Nursing Excellence Academic Avg (Updated quarterly)
Nat'l Nursing Excellence Academic Teaching Avg (Updated quarterly)
Nat'l Nursing Excellence Ambulatory Avg (Updated quarterly)
Nat'l Nursing Excellence Avg (Updated quarterly)
Nat'l Nursing Excellence Behavioral Health Avg (Updated quarterly)
Nat'l Nursing Excellence Clinic Avg (Updated quarterly)
Nat'l Nursing Excellence Emergency Avg (Updated quarterly)
Nat'l Nursing Excellence ICU Avg (Updated quarterly)

Nat'l Nursing Excellence Manager Avg (Updated quarterly)
Nat'l Nursing Excellence Medical-Surgical Avg (Updated quarterly)
Nat'l Nursing Excellence Non-Teaching Avg (Updated quarterly)
Nat'l Nursing Excellence Pediatrics Avg (Updated quarterly)
Nat'l Nursing Excellence Surgery Avg (Updated quarterly)
Nat'l Registered Nurse Avg
Nat'l Top Decile on Engagement Avg

Standard Norm List: Physician

This document outlines the list of norms that are defined as 'standard.'

Standard Norms List

List of Physician Norms
AHA-1 Physician Avg (Developing)
AHA-2 Physician Avg
AHA-3 Physician Avg
AHA-4 Physician Avg
AHA-5 Physician Avg
AHA-6 Physician Avg (Developing)
AHA-7 Physician Avg
AHA-9 Physician Avg (Developing)
Nat'l Children's Physician Avg (Developing)
Nat'l Clinic Physician Avg
Nat'l Physician Avg

EXHIBIT C IROUND STATEMENT OF WORK

This Statement of Work ("SOW") entered into on January 1, 2020 ("SOW Effective Date") by and between **Press Ganey Associates, Inc.** ("Press Ganey") and **The County of Monterey, on behalf of Natividad ("Client"),** together with Press Ganey, the "Parties") covers Press Ganey's engagement to provide services to the Client. This SOW is entered into pursuant to and subject to the terms and conditions in the Master Services Agreement between the Parties effective January 1, 2020_ (the "Existing Agreement"). Capitalized terms not defined in this SOW will have the meanings assigned to them in the MSA.

1. IROUND OVERVIEW

iRound combines a web-based rounding application, analytical dashboard, and change management support services to help hospital leaders transform their approach to experience – by enabling communication, issue resolution, and personalized care.

Client staff can automate daily rounding with iRound using any internet-connected device and iRound's proprietary Status Map interface, which provides a real-time view of patient locations and occupancy as well as tracking of rounds and service recovery requests at the patient level (ADT integration required). A secure dashboard system transforms the data into interactive reports for in-depth analysis and systematic performance improvement in real time. Service recovery & physician/employee recognition capabilities further drive real time performance improvement by allowing in the moment, patient-centric issue resolution, as well as timely and specific employee feedback.

iRound eliminates the need to manually key in paper notes from daily patient rounds, reducing the risk of transcription errors and saving valuable nursing time. More importantly, iRound enables staff to take rapid action upon identifying a patient need or concern during a round.

iRound's auditing and reporting functionality supports common use cases such as Quality & Safety and Environment of Care.

2. SERVICE SUMMARY.

- a. Press Ganey shall use commercially reasonable efforts to:
 - Provide a non-exclusive, limited, non-transferable, non-assignable, non-sublicensable, non-source code license to use Press Ganey's iRound web-based rounding survey tool and reporting application (the "Rounding Application"), for use at each facility. For the avoidance of doubt, Client shall have no right or license to use any source code associated with the Rounding Application and agrees not to reverse engineer the Rounding Application or otherwise attempt to obtain the source code for the Rounding Application or make any other use of the Rounding Application except as authorized by Press Ganey in writing.
 - Train Client to administer surveying via the Rounding Application, as requested by Client;
 - Provide access to a designated Account Manager, who will address survey set up and maintenance via telephone and email.
- b. Quality of data derived from Rounding Application.
 - If, in its use of the Rounding Application, Client elects to utilize or include surveys or questions that are not provided by Press Ganey (such as for purposes related to goal setting and other kinds of incentive targets), Press Ganey disclaims any responsibility for the quality, validity, accuracy, or any other characteristics of the data associated with the non-Press Ganey provided surveys or questions.

c. Advisor Support.

- Encourage Patient Experience rounding strategy
- Support data interpretation, including goal setting and data management guidance
- Provide Product and Press Ganey tool Training and Education
- Best practice sharing and Facilitate networking

3. DATA COLLECTION METHODOLOGY. Provided that Client is in compliance with its obligations under Section 4, Press Ganey shall use commercially reasonable efforts to provide:

iRound Rounding and Reporting Tool

The Rounding Application provides automation of rounding, coupled with analytic tools for data aggregation and reporting, including:

- Dashboards to provide at-a-glance views of rounding performance on a daily basis for all units
- Service Recovery Task tracking and reporting in a real time manner to facilitate faster action to resolve service issues
- Ability for multiple users to easily access and track key patient rounding on demand
- Detailed, drill-down reporting of accumulated data with daily, weekly, or monthly frequency

The Rounding Application is comprised generally of the following major components:

- Web-Based Application for Rounding and Wireless Synchronization of Accumulated Data
- Web-Based Analytics Engine, Dashboards, and Reporting Tool
- Patient Experience Rounding Forms and Reports based on Best Practices
- Audit Forms and Reports for Quality & Safety and/or other user cases
- Optional HL7 ADT integration for real time patient level rounding data.
- Orientation, Training, Site Configuration, and Support

Technology Components	
iRound Web-Based Application for Rounding	Web browser based application for data collection at the room, bed, or patient level
Patient Experience Rounding Forms and Reports	Foundational best practice-based Patient Experience rounding forms and reports for Daily Patient Rounding, Staff Recognition, Service Recovery and Leader Rounding on Employees
Audit Forms and Reports	Library of templated audit/survey forms supporting Quality & Safety, Infection Prevention, Environment of Care and Regulatory & Compliance.
HL7 ADT Integration	Admission, Discharge and Transfer activity from Client's Admissions application to iRound allows the ability track historical rounding and profile information at the patient level

4. SERVICE ASSURANCE.

- a. Press Ganey Hours of Operations. Press Ganey shall provide access to our associates Monday – Friday, 8:00 am – 5:00 pm EST.

- b. Press Ganey Holidays. Press Ganey recognizes the following nine (9) holidays and all offices are closed on these days or their days of observance:
- New Year's Day (January 1)
 - Martin Luther King Day (third Monday in January)
 - Memorial Day (last Monday in May)
 - Independence Day (July 4)
 - Labor Day (first Monday in September)
 - Thanksgiving (fourth Thursday in November)
 - Day after Thanksgiving
 - Christmas Eve (December 24)
 - Christmas (December 25)
- c. Federal Closures. Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. Information on these closures may be found at www.pressganey.com/terms.
- d. Other Closures. There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. Information on these closures may be found at www.pressganey.com/terms.

5. CLIENT RESPONSIBILITIES. Client shall at all times during the Term :

- a. Utilize the Rounding Application, including administering the survey, via hardware Client supplies (iPad, Tablet, PC, etc.) using a wireless network or device with Internet access at Client's place of business.
- b. Work with designated Press Ganey Account Manager to set up the survey, organizational hierarchy, and users and manage modifications to the Rounding Application.
- c. Ensure that its use of the Rounding Application complies with CAHPS regulations applicable to the facility in which Client informs Press Ganey that it will use the Rounding Application.
- i. If Client modifies a Press Ganey template or any Press Ganey-approved question, creates its own template or question(s), or uses the Press Ganey template in a facility for which a different or additional set of CAHPS regulations applies, Press Ganey is not responsible for CAHPS compliance.
- ii. Client will discontinue its use of any Press Ganey-approved question or template immediately, in the event Client receives notice from Press Ganey that any such question or template no longer complies with CAHPS protocol.
- d. Promptly notify Press Ganey of any Electronic Health Record (EHR) system conversions and advise Press Ganey in advance if any Client facilities contemplated to receive services utilize an alternative EHR system. Additional fees may apply for implementation of new interface connections to (re-)establish HL7 ADT integration at Client or any newly added Client facilities.
- e. Client agrees not to utilize the Rounding Application to collect financial information, including but not limited to bank account information and credit card numbers, and social security numbers.



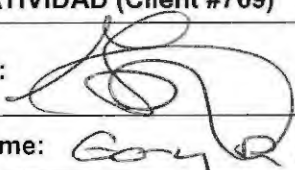
Press Ganey shall not be responsible or liable in the event such information is collected by or transferred to the Rounding Application.

- f. Client acknowledges that it must comply with certain hardware and software requirements to receive Press Ganey's online services, as amended from time to time, which requirements may be found at www.pressganey.com/terms.
- g. Upon the departure of an employee from Client's facility, immediately notify designated Account Manager to terminate their access to the Rounding Application and other Press Ganey systems.
- h. Obtain any and all patient consents, authorizations, and/or approvals required by applicable U.S. federal and state laws, rules, regulations, policy or industry guidelines including but not limited to privacy policies to enable Press Ganey to execute its obligations under this SOW.

6. PAYMENT TERMS.

- a. Fees for the Services provided under this SOW are as indicated on **Attachment A**.

IN WITNESS WHEREOF, the undersigned have executed this SOW effective as of the SOW Effective Date.

THE COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD (Client #769)	PRESS GANEY ASSOCIATES, INC.
By: 	By:
Name: Gary R. G...	Name:
Title: CEO	Title:
Date: 12/16/19	Date:



 Monterey County Deputy Auditor/Controller

Date: _____

 Monterey County Deputy County Counsel

Date: _____

NDNQI[®] Participant Agreement

This Participant Agreement ("Agreement") is entered into effective 1st day January 1, 2020 ("Effective Date"), by and between **Press Ganey Associates, Inc.** ("Press Ganey"), an Indiana corporation with principal offices at 404 Columbia Place, South Bend, Indiana 46601, and **The County of Monterey, a political subdivision of the State of California (hereafter, "County of Monterey on behalf of Natividad Medical Center** ("Participant") physically located at 1441 Constitution Boulevard, Salinas, CA 93906.

Whereas, Press Ganey Associates, Inc. owns the National Database of Nursing Quality Indicators Program[®] (the "NDNQI[®] Program"), and has assumed the management and administration of the NDNQI Program from the University of Kansas Medical Center Research Institute, Inc. ("KUMCRI"); and

Whereas, Press Ganey, desires to enlist Participant and Participant desires to be involved in the NDNQI Program to engage in self-evaluation for the purpose of analyzing and improving nursing services, patient care, and nurse satisfaction;

Now, therefore, the parties agree to the following terms and conditions:

1. SERVICES

In exchange for the annual fee paid by Participant, Participant shall be provided:

- 1.1 Data from hospitals participating in the NDNQI Program, aggregated in groups with comparable institutions ("Comparison Data"). Participant's data are included in Comparison Data in accordance with NDNQI Program procedures. Press Ganey reserves the right to determine whether or not Participant's data are included in Comparison Data.
- 1.2 A Clinical and Staffing Measure report that includes information on trends and Comparison Data, provided data is received for the NDNQI nursing quality measures within the scheduled timeline; and
- 1.3 The opportunity to participate annually in the RN Survey on a first come, first serve basis with limited availability under the guidelines set forth by the NDNQI Program. RN Survey data reports that include Comparison Data, provided data is received by Press Ganey for the RN Survey within the scheduled timeline; and
- 1.4 Assurance of quality standards for data management through established standards of data collection, data reporting, and data security, in order to ensure data integrity and security. Press Ganey reserves the right to delete erroneous data.

2. SERVICE ASSURANCE

- 2.1. Press Ganey Hours of Operations. Press Ganey shall provide access to our associates Monday – Friday, 8:00 am – 5:00 pm EST.
- 2.2. Press Ganey Holidays. Press Ganey recognizes the following nine (9) holidays and all offices are closed on these days or their days of observance:
 - 2.2.1. New Year's Day (January 1)
 - 2.2.2. Martin Luther King Day (third Monday in January)
 - 2.2.3. Memorial Day (last Monday in May)
 - 2.2.4. Independence Day (July 4)
 - 2.2.5. Labor Day (first Monday in September)
 - 2.2.6. Thanksgiving (fourth Thursday in November)

- 2.2.7. Day after Thanksgiving
- 2.2.8. Christmas Eve (December 24)
- 2.2.9. Christmas (December 25)
- 2.3. **Federal Closures.** Press Ganey services may be impacted by federal closures, such as federal holidays, federal shutdown, states of emergency, severe weather, or natural disaster. Every effort will be made to notify the Client and return to normal business operations once the federal closure ends. The timing for this return to normal business operations will be dependent upon the cause and duration of the closure as well as the resulting aftermath. Information on these closures may be found at www.pressganey.com/terms.
- 2.4. **Other Closures.** There may be occasions where Press Ganey closes all offices, such as for a corporate meeting or a day of community service. If these instances occur, the client will be notified by Press Ganey a minimum of thirty (30) days in advance of such a closure. Information on these closures may be found at www.pressganey.com/terms.

3. PARTICIPANT RESPONSIBILITIES

Under this Agreement, Participant agrees to adhere to the following requirements:

3.1 General Requirements

Participant shall:

- a. Integrate data collection into the institutional infrastructure, accountabilities, and processes in order to optimize the collection of valid and reliable data for the NDNQI Measures, related definitions, and coding guidelines. For the purposes of this Agreement, "Measures" shall mean those variables, monitored over time, that focus on (i) how patients and their conditions are affected by their interaction with nursing staff, (ii) how care is delivered, (iii) staffing patterns expected to affect quality and quantity of care provided by nurses, and (iv) measurements of nursing satisfaction as described below;
- b. Identify data collection stakeholders within its institution and systematically negotiate their assistance and commitment to the success of the data collection and compilation;
- c. Identify a Site Coordinator for Participant. The Site Coordinator will (i) be responsible for data collection and timely submission, (ii) be available to answer questions from NDNQI Program staff and provide clarification on the data submitted, and (iii) distribute the NDNQI reports to responsible parties in the Participant organization;
- d. Identify and submit accurate data according to NDNQI specifications, respond to queries for clarification, and/or make data submission corrections within the prescribed timeframes. Participant understands and agrees that, in order to ensure data integrity, erroneous or invalid data may be deleted in accordance with NDNQI procedures;
- e. Adhere to the data use obligations as set forth in Section 9 (Database Use/Ownership/Intellectual Property); and
- f. Promptly notify Press Ganey NDNQI Program staff if the Participant is no longer able to continue participation.

3.2 Clinical and Staffing Measures

The NDNQI Clinical and Staffing Measures are nursing sensitive metrics that are collected on specific types of hospital units. Participant shall complete the Clinical and Staffing Indicator collection process according to NDNQI specifications and submit the data on the NDNQI Database website as set forth in posted timelines.

3.3 RN Survey

Press Ganey offers the opportunity to measure RN satisfaction. If Participant enrolls in the RN Survey, Participant agrees to adhere to posted timelines and procedures for the RN Survey. This includes adhering to the NDNQI RN Survey Coordinator Data Collection Protocol and Participant's local Institutional Review Board requirements for human subjects protection.

Except for Section 3.1.e, Participant's failure to perform the functions listed in this Section 3 (or cause them to be performed) will not constitute grounds for termination by Press Ganey, *provided, however,* that Press Ganey's nonperformance of its obligations under this Agreement will be excused if and to the extent such nonperformance results from Participant's failure to perform its responsibilities.

4. CONSIDERATION AND PAYMENT

In consideration for the participation in the NDNQI Program and the delivery of reports to Participant, Participant shall pay Press Ganey the annual fee as outlined in the Fee Schedule minus any applicable discount ("Annual Fee"). For a given calendar year, any Participant that participates in the Program for that year beginning after March 31 of that year shall have the Annual Fee prorated by quarters, such that each Participant who joins between April 1 and June 30 of that year shall pay an amount equal to three-fourths of the Annual Fee; each Participant who joins between July 1 and September 30 of that year shall pay an amount equal to one-half the Annual Fee; and each Participant who joins after October 1 of that year will pay an amount equal to one-fourth the Annual Fee. Such pro-rated Annual Fees will only apply to the first year in which Participant participates in the Program. For each subsequent year, each Participant will pay the full Annual Fee. Press Ganey will invoice Participant at the end of the year for the upcoming year and upon payment of the Annual Fee, this Agreement shall automatically renew, and extend the period of performance for the following year and subsequent years unless written notice of termination is received by either party. If the Participant does not pay the Annual Fee as set forth in the applicable invoice for a given year, this Agreement will automatically terminate. Failure to provide payment will be considered written notice of termination by the Participant.

Payments shall be **made payable to Press Ganey Associates, Inc.**, referencing this agreement, and sent to a bank lockbox located at the following address:

Press Ganey Associates, Inc.
Box 88335
Milwaukee, WI 53288-0335

In the event that the annual fees for participation in this Program are increased, the Participant shall be notified of such change by no later than October 1 prior to the January 1 fee increase.

5. CONFIDENTIALITY

- 5.1 “Confidential Information” Defined. “Confidential Information” means (a) all data and information transmitted electronically by (or on behalf of) Participant or its employees to the NDNQI (regardless of whether or how marked), and (b) all data and information provided in writing or transmitted electronically to Participant (regardless of whether or how marked), including NDNQI benchmarks, Comparison Data, extensible markup language (XML), unique data identifiers, programs, educational materials, definitions, and other codes or algorithms.
- 5.2 “Confidential Information” does not include any particular information that the receiving party can demonstrate: (a) was rightfully in the possession of or known by, the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party; (b) was or has become generally available to the public other than as a result of disclosure by the receiving party or its agents; (c) after disclosure to the receiving party, was received from a third party who, to the receiving party’s knowledge, had a lawful right to disclose such information to the receiving party without any obligation to restrict its further use or disclosure; (d) was independently developed by the receiving party without use of or reference to any Confidential Information of the disclosing party; or (e) that the disclosing party has disclosed to unaffiliated third parties without similar restrictions.
- 5.3 Participant’s identity as a participant in the NDNQI Program, along with identity of Participant’s key contact personnel will be known by Press Ganey and NDNQI Program personnel. Press Ganey may disclose Participant’s participation in the NDNQI Program to outside entities; however, such disclosure will be limited to Participant’s participation in the NDNQI Program and will not affect Press Ganey’s obligations to maintain the confidentiality of Participant’s data. Participant’s participation in the NDNQI Program would generally be used to recognize Participant’s commitment to quality, including recognition that may be in the form of communication with the participants or recognition at meetings, and to provide speaking opportunities, publishing opportunities, access to marketing information about related products and services, and other similar activities. If Participant is located outside of the United States, annual fee payment information and the identity of Participant may be disclosed to United States authorities in accordance with any US federal and state reporting requirements to which Participant and/or Press Ganey are subject, e.g., the Internal Revenue Code and accompanying regulations.
- 5.4 Obligations of Confidentiality. The receiving party may only disclose Confidential Information to personnel who have a legitimate need to know the information for the purposes of this Agreement and who are obligated to protect the confidentiality of the information in a manner substantially equivalent to that required of the receiving party. The receiving party will keep Confidential Information confidential and secure, and will protect it from unauthorized use or disclosure by using at least the same degree of care as the receiving party employs to avoid unauthorized use or disclosure of its own confidential information of a similar nature, but in no event less than reasonable care. If any unauthorized disclosure or loss of any Confidential Information occurs, the receiving party will promptly notify the disclosing party and will cooperate with the disclosing party and take all such actions as may be necessary or reasonably requested by the disclosing party to minimize the violation and any damage resulting from it.
- 5.5 No Implied Rights. Confidential Information will remain the property of the disclosing party. Nothing contained in this Section 5 (Confidentiality) will be construed as obligating a party to disclose Confidential Information, or as granting to or conferring on the receiving party,

expressly or by implication, any rights or license to Confidential Information. Any such obligation or grant will only be as provided by other provisions of this Agreement.

5.6 Compelled Disclosure. If the receiving party is legally compelled to disclose any Confidential Information in a manner not otherwise permitted by this Agreement, the receiving party will (a) promptly notify the disclosing party, describing the subpoena, court order, or other similar process pursuant to which the receiving party is compelled to disclose the Confidential Information, (b) provide the disclosing party with documentation thereof, and (c) permit the disclosing party reasonable time to seek a protective order or other appropriate remedy to limit disclosure.

5.7 Duration of Confidentiality Obligations. Each party's obligations under this Section 5 (Confidentiality) apply to Confidential Information, whether disclosed to the receiving party before or after the Effective Date, and will continue during the Term and survive the expiration or termination of this Agreement.

6. TERMINATION

Either party may terminate this Agreement by providing the other party thirty days (30) days written notice of termination by fax, email or letter as outlined in Section 18 (Notices). In the event that Press Ganey terminates this Agreement, the funds paid by Participant shall be refunded to the Participant on a prorated basis, depending on the calendar quarter in which the termination occurs. In the event that Participant terminates this agreement no funds will be returned to Participant. An assignment of this Agreement to a third party as specified in Section 15 (Assignment) shall not constitute a termination of this Agreement and shall not entitle Participant to any proration of charges.

7. INDEPENDENT CONTRACTORS

It is understood that in the performance of this Agreement, the parties, although cooperating on the Program, are acting solely as independent contractors and not as employees or agents, partners or joint ventures of the other.

8. USE OF NAME

Except as permitted pursuant to Sections 5.3, 5.6, this Section 8, and Section 9 (Database Use/Ownership/Intellectual Property), the parties agree that they will not use the other party's (or its employees, agents, investigators', or affiliates) name, symbols, trademarks, service marks or logos, including the Press Ganey and NDNQI names, symbols, marks, or logos (collectively the "Marks"), in any advertisement, promotion, brochure, solicitation or similar document or for any marketing, public relations, advertising, display or other business purpose, or any statement to the public, without the other party's prior written consent which may be given or withheld at the sole discretion of the party whose consent is sought. Notwithstanding the foregoing: (i) Participant may elect to disclose its participation in the NDNQI Program, including the RN Survey, and the parties shall have the right to refer to this Agreement as appropriate in the conduct of its business and in any filings required with any governmental agency or as otherwise required by law; and (ii) Participant grants Press Ganey the right to include Participant's name in Press Ganey's client list, including its list of participants in the NDNQI Program database, and list of award winners, when applicable. A party shall immediately cease using the Marks of the other party in any manner found objectionable by that party. Each party shall retain all right, title and interest in and to its Marks, and each party's use of the other party's Marks shall inure to the benefit of such other party.

9. DATABASE USE/OWNERSHIP/INTELLECTUAL PROPERTY

- 9.1 Except as permitted pursuant to Section 5.3, neither Press Ganey nor its employees, agents, representatives, and investigators shall divulge any portion of the data or the analysis which reveals the identity of the Participant, its affiliates, or any survey respondent to any party other than as necessary to fulfill Program responsibilities and requests or as required by law or court order, without the express written consent of an authorized officer or representative of the Participant.
- 9.2 All data collected as a part of the NDNQI Program will become part of the total NDNQI Program databases, which are owned by Press Ganey. All data included in the NDNQI Program databases may be accessed and used by Press Ganey, or third parties authorized by Press Ganey to access such data. Except for technology-based vendors subject to the same confidentiality requirements as Press Ganey, no third parties shall have access to individual Participant data in a manner that could identify the Participant associated with that data. Notwithstanding the foregoing, data collected as part of the NDNQI Program may be accessed and used for research by Press Ganey or third parties authorized by Press Ganey. Comparison Data will be made available to hospitals participating in the NDNQI Program and third parties authorized by Press Ganey.
- 9.3 Press Ganey retains all right, title and interest in and to the Measures used as part of the NDNQI Program and to the NDNQI Program database.
- 9.4 The parties acknowledge and agree that any Participant-specific reports (including quarterly reports and any report created by Participant using a Press Ganey online application) and Participant-specific data analyses created by Press Ganey for Participant under this Agreement (collectively, "Work Product") shall be owned by Participant. Subject to Section 9.5, below, all right, title and interest in the Work Product will vest in Participant and all Work Product will be deemed to be works made for hire for Participant.
- 9.5 Notwithstanding anything to the contrary in Section 9.4, Press Ganey owns, and reserves all rights in and to, the Press Ganey Knowledge Base Materials. The phrase "Press Ganey Knowledge Base Materials" shall mean any survey questions, methodologies, comparative and benchmark databases and any related documentation generated by or on behalf of Press Ganey or any Press Ganey personnel (including, without limitation, all de-identified survey-level responses and other measures of patient satisfaction or clinical performance) as well as any technology, software, code, processes, know-how, or tools that have independent value outside of the Work Product. In the event that the Work Product contains or references any Press Ganey Knowledge Base Materials, Press Ganey hereby grants to Participant a perpetual, non-exclusive, non-transferable, non-sublicensable, limited license to use or access those Press Ganey Knowledge Base Materials that may be contained in the Work Product solely for Participant's own internal purposes. Press Ganey will retain all right, title and interest (including, without limitation, all intellectual property rights) in and to the Press Ganey Knowledge Base Materials. Participant shall not, and shall not permit any third party to, (i) decompile, disassemble or reverse engineer the Press Ganey Knowledge Base Materials; (ii) modify the Press Ganey Knowledge Base Materials, or create any derivative product from any of the Press Ganey Knowledge Base Materials; (iii) use the Press Ganey Knowledge Base Materials except as incorporated into the Work Product; or (iv) market, sell or distribute the Press Ganey Knowledge Base Materials on a stand-alone basis or together with any other products or services. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Press Ganey Knowledge Base Materials shall be owned solely and exclusively by Press Ganey, as shall any and all patent rights, copyrights, trade secret rights, trademark rights, and all other proprietary rights, worldwide therein and thereto, and Participant hereby assigns to

Press Ganey any and all of its interests, title or ownership in the Press Ganey Knowledge Base Materials or any modification to or derivative work of the Press Ganey Knowledge Base Materials.

- 9.6 Participant acknowledges and agrees that, pursuant to this Agreement, Participant has provided and continues to provide Press Ganey, or Press Ganey has otherwise collected or accessed and continues to collect or access on Participant's behalf, certain data (including, but not limited to, patient uploads and responses) (collectively, "Participant Data") in connection with Press Ganey's performance of the Services for Participant or the exercise of Press Ganey's rights under this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement or understanding between the Parties, and without limiting any other rights of Press Ganey with respect to Participant Data or PHI (as defined below) received from or created on behalf of Participant, Participant hereby authorizes Press Ganey to de-identify Participant Data and to use, disclose and include that de-identified Participant Data within the Press Ganey Knowledge Base Materials. The Parties acknowledge and agree that de-identified Participant Data shall immediately cease to be Participant Data and shall become part of the Press Ganey Knowledge Base Materials. The Parties further acknowledge and agree that de-identified Participant Data no longer meets the definition of PHI and is therefore not subject to the provisions of Section 11 ("Limited Data Set"). Participant shall not, and Participant shall not permit any third party to, attempt to re-identify any Press Ganey Knowledge Base Materials, including any de-identified Participant Data therein.
- 9.7 Participant acknowledges and agrees that electronic, raw data files containing patient-level responses, measurement or improvement scores or compilations thereof, that may be provided by Press Ganey to Participant ("Data Files") also contain Press Ganey proprietary information and intellectual property. Participant may request, and Press Ganey may agree to provide Participant with access to the Data Files in a manner determined by Press Ganey after the Parties enter into a separate data use agreement in the form and substance approved by Press Ganey. In the event that Press Ganey provides Participant with access to any Data Files, Participant agrees to: (i) only use the Data Files for its own internal purposes and not for the benefit of any third party; (ii) only share, disclose, or transmit the Data Files to a person who is an employee of Participant or has a written contractual relationship with Participant to provide further analysis of Participant's own internal business purposes; (iii) not, and Participant shall not permit any third party to, combine any of the information in the Data Files with other information to generate benchmarks; and (iv) not, and Participant shall not permit any third party to, share Data Files with any other entity that provides satisfaction/experience/engagement measurement reporting tools, services, or other activities or services similar or reasonably competitive to those offered by Press Ganey.

10. RESPONSIBILITY

Participant shall be responsible for the data collection and data integrity from its institution, including any privacy requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Notwithstanding anything to the contrary in this Agreement, all individually identifiable health information shall be treated as confidential by the parties in accordance with all applicable federal, state, or local laws and regulations governing the confidentiality and privacy of individually identifiable health information, including but without limitation, HIPAA, HITECH and any regulations and official guidance promulgated thereunder, and the parties agree to take such additional steps and/or to negotiate such amendments to this Agreement as may be required to ensure that the

parties are and remain in compliance with the above referenced laws, regulations and official guidance. Participant shall adhere to posted Press Ganey computer standards, as amended from time to time, which may be found at www.pressganey.com/terms.

11. LIMITED DATA SET

For the purposes of this Agreement, the terms “Protected Health Information” and “Limited Data Set” shall have the same definitions as found in the HIPAA Privacy Rule 45 CFR 164.501 and 45 CFR 164.514(e)(2), as amended. All data included in the Program database that constitute a Limited Data Set and the use thereof shall be permitted by Participant in accordance with the following terms and conditions:

- 11.1 The NDNQI Program collects nursing quality-related data including the month and quarter of individual subject’s outcomes and neonate subject’s ages, making the NDNQI Program a Limited Data Set pursuant to HIPAA regulations. A Limited Data Set is Protected Health Information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:
- a. Names;
 - b. Postal address information, other than town or city, State, and zip code;
 - c. Telephone numbers;
 - d. Fax numbers
 - e. Electronic mail addresses;
 - f. Social security numbers;
 - g. Medical record numbers;
 - h. Health plan beneficiary numbers;
 - i. Account numbers;
 - j. Certificate/license numbers;
 - k. Vehicle identifiers and serial numbers, including license plate numbers;
 - l. Device identifiers and serial numbers;
 - m. Web universal resource locators (URLs);
 - n. Internet protocol (IP) address numbers;
 - o. Biometric identifiers, including finger and voice prints; and
 - p. Full face photographic images and any comparable images.
- 11.2 Except as otherwise specified herein, Press Ganey may make all uses and disclosures of the Limited Data Set necessary to conduct the NDNQI Program and affiliated research projects.
- 11.3 In addition to Press Ganey, the individuals, or classes of individuals, who are permitted to use or receive the Limited Data Set include: all NDNQI Program staff including researchers and subcontractors performing research and/or services on behalf of or in association with Press Ganey.
- 11.4 Press Ganey may make the Limited Data Set available to third parties for research approved by Press Ganey provided that (i) the data cannot be identified by the third party as data of the Participant, (ii) the data cannot be identified by the third party as data of an individual subject, and (iii) the third party signs a data use agreement that complies with the HIPAA Privacy Rule.

- 11.5 Press Ganey agrees to not use or disclose the Limited Data Set for any other purpose other than as described herein or as required by law.
- 11.6 Press Ganey agrees to use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement. The NDNQI Program has implemented appropriate industry standard privacy and security safeguards including (i) encryption, (ii) user authentication, (iii) role based access controls, (iv) disaster recovery, (v) programmed back-up, (vi) virus protection, and (vii) secure firewall.
- 11.7 Press Ganey agrees to report to Participant within ten (10) business days of which Press Ganey becomes aware of any use or disclosure of the Limited Data Set not provided for by this Agreement.
- 11.8 Press Ganey agrees to ensure that any agent, including a subcontractor, to whom Press Ganey provides the Limited Data Set, agrees to the same restrictions and conditions that apply through this Agreement, with respect to such information.
- 11.9 Press Ganey agrees not to ascertain the identity or contact the subjects of the information.
- 11.10 Duration of Limited Data Set Obligations. The obligations under this Section 11 (Limited Data Set) will continue during the Term and survive the expiration or termination of this Agreement for as long as Press Ganey retains Participant Data.

12. WARRANTY

- 12.1 Participant hereby represents and warrants that it has obtained and shall continue to obtain and maintain throughout the term of this Agreement, all necessary and required licenses, permits, consents, authorizations, and/or approvals required by applicable laws, rules, regulations or policies to enable Press Ganey's delivery of services in accordance with those laws, rules, regulations or policies, including, but not limited to, any patient consents or authorizations necessary for Press Ganey to perform the services.
- 12.2 Press Ganey warrants that the services provided hereunder will be performed in a professional and workmanlike manner.
- 12.3 Press Ganey does not warrant or represent that the services provided pursuant to this Agreement will be capable of achieving any particular result in Participant's business, that all errors, defects or deficiencies can or will be found or corrected, or that the operation of any Work Product which is the subject of the task specifications will operate uninterrupted or error free.
- 12.4 THE WARRANTIES SET FORTH IN THIS SECTION 12 (WARRANTY) ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

13. INDEMNIFICATION AND LIMITATION OF LIABILITY

- 13.1 Indemnification. Subject to the terms and conditions set forth herein, Participant shall indemnify, defend, and hold harmless Press Ganey, and its respective directors, officers,

parent entities, subsidiaries, employees, shareholders, agents and its and their successors and assigns from and against any and all third-party claims, actions, suits, liabilities, judgments, losses, damages, reasonable costs, reasonable charges, reasonable attorneys' fees and/or expenses incurred or suffered by Press Ganey arising out of, relating to or in connection with (i) Participant's performance under this Agreement, including the acts, errors or omissions of any third party, (ii) Participant's breach of this Agreement, including, but not limited to, Participant's failure to obtain any consents or authorizations required by Section 12.1 or (iii) Participant's violation of applicable law. Press Ganey shall indemnify, defend, and hold harmless Participant, and its respective directors, officers, parent entities, subsidiaries, employees from and against any and all third-party claims, actions, losses, damages, and/or liability related to the infringement or misappropriation by Press Ganey of any patent, patent application issued or published on or before the Effective Date, copyright or trademark of a third party in the United States and for any related costs or expenses (including reasonable attorney's fees) incurred by Participant.

- 13.2 **Limitation of Liability.** Notwithstanding any other provision of this Agreement or where this exclusion or restriction of liability would be void or ineffective under applicable law, in no event will either party be liable to the other under, in connection with or related to this Agreement for any special, indirect, consequential, exemplary or punitive damages (including, without limitation, loss of profits or revenues, loss of goodwill, penalties or withholding of reimbursement by a health care payer, state/federal agency or other entity) whether based on breach of contract, warranty, tort, product liability or any other legal theory, even if that party has been advised of the possibility of such damages. The parties further agree that, notwithstanding any other provision of this Agreement, Press Ganey's total cumulative liability under, in connection with or related to this Agreement or in furtherance of the Agreement's provisions or objectives, shall be limited to actual, direct damages not to exceed the amount paid (less any refunds or credits) by Participant to Press Ganey during the twelve (12) month period preceding the date of the claim.

14. CHANGES IN AGREEMENT

Any changes to the terms of this Agreement in any way shall be valid if the change is made in writing and approved by the parties or, if after an appropriate 90-day notice of an NDNQI policy change, Participant continues to participate in the NDNQI Program.

15. ASSIGNMENT

Except as specified in this Section, the parties may not assign or transfer any of their rights or responsibilities under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, a party may assign this Agreement to any corporate affiliate, for purposes of any reorganization, or as may be required in connection with any tax-exempt bond financing. Such assignment shall not affect the ongoing confidentiality of data set forth in Sections 5 (Confidentiality), 9 (Database Use/Ownership/Intellectual Property), and 11 (Limited Data Set) of this Agreement as it applies to other external entities. According to the terms in Section 6 (Termination) and Section 18 (Notices), either party may terminate this Agreement with proper written notice.

16. COMPLIANCE WITH LAW

The parties agree to comply with all applicable federal, state and local laws, regulations, ordinances and orders with respect to the performance of the NDNQI Program and this Agreement.

17. GOVERNING LAW

Except in the case in which the Participant is a government operated entity, the Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, without regard to the principles of conflict of laws.

18. NOTICES

Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective two (2) days after they are delivered or when received, whichever occurs first, and shall be sufficient if given in writing, hand delivered, sent by overnight courier or First Class United States Mail, postage prepaid. Refusal to accept delivery will be deemed receipt. A party may change its notice address for purposes of this Agreement by giving written notice to the other party. Notice location for the Participant shall be the address provided by the Participant to Press Ganey and listed in the Hospital Information section of the NDNQI Program website pertaining to Participant. Notice location for Press Ganey shall be:

Press Ganey Associates, Inc.
404 Columbia Place
South Bend, IN 46601
Attn: Contracts Dept.

19. SEVERABILITY

If any portion or term of this Agreement shall for any reason be held invalid, illegal, or otherwise unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be construed as if such term or provision, to the extent the same shall have been held invalid, illegal, or unenforceable, had never been contained herein.

20. WAIVER

No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition, or of any other term, provision, or condition of this Agreement.

21. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such party's control, such as labor disputes or disturbances of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, acts of terror or other such occurrences.


22. ENTIRE AGREEMENT

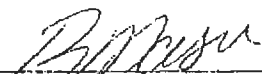
This Agreement constitutes the entire and only Agreement between the parties relating to the research, and all prior negotiation, representations, agreements and understanding are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by a written document signed by duly authorized representatives of the parties. By your

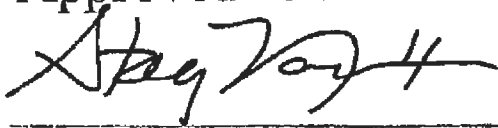


acceptance of this Agreement, you attest that no modifications were made to this Agreement without written consent of Press Ganey. If modifications were made without authorization, this Agreement will not be binding on Press Ganey. You further attest that you have authority to bind Participant to the contractual terms of this Agreement.

In Witness Whereof, the parties hereto agree to be bound by the terms herein effective on the Effective Date marked above.

Press Ganey Associates, Inc.	County of Monterey on behalf of Natividad By your signature to this agreement, you attest that no modifications were made to this agreement without written consent of Press Ganey. If modifications were made without authorization, this agreement will not be binding on Press Ganey. You further attest that you have authority to bind your Institution to the contractual terms of this Agreement.
By: Mike Williams <small>Digitally signed by Mike Williams DN: dc=com, dc=pressganey, dc=us, ou=Offices, ou=Accounts, ou=Users, cn=Mike Williams, email=Mike.Williams@pressganey.com Date: 2020.01.06 10:44:45 -0600'</small>	By: 
Title: SVP, Operations	Title: <u>CEO</u>
Date: 1/6/2020	Date: <u>12/19/19</u>

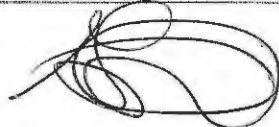

 Monterey County Deputy Auditor/Controller
 Date: 12/12/19


Approved as to form

 Monterey County Deputy County Counsel
 Date: 11/26/19

Participant Site Coordinator
By:
Title:
Date:

acceptance of this Agreement, you attest that no modifications were made to this Agreement without written consent of Press Ganey. If modifications were made without authorization, this Agreement will not be binding on Press Ganey. You further attest that you have authority to bind Participant to the contractual terms of this Agreement.


In Witness Whereof, the parties hereto agree to be bound by the terms herein effective on the Effective Date marked above.

Press Ganey Associates, Inc.	County of Monterey on behalf of Natividad By your signature to this agreement, you attest that no modifications were made to this agreement without written consent of Press Ganey. If modifications were made without authorization, this agreement will not be binding on Press Ganey. You further attest that you have authority to bind your Institution to the contractual terms of this Agreement.
By:	By: 
Title:	Title: <u>CEO</u>
Date:	Date: <u>12/19/12</u>



 Monterey County Deputy Auditor/Controller
 Date: 12/12/19

Approved as to form



 Monterey County Deputy County Counsel
 Date: 11/26/19

Participant Site Coordinator
By:
Title:
Date:

2020 Fee Schedule

Payment of a Base Fee for service entitles a Participant to submit data, receive reports and to participate annually in the RN Survey under the guidelines set forth by National Database of Nursing Quality Indicators® (NDNQI®). Press Ganey reserves the right to increase the base fee for hospitals joining the NDNQI program at any time.

1. Base Fee for Service:

Each Participant is assessed an initial membership fee based on bed size at the time of enrollment and/or invoicing. This fee covers the Clinical and Staffing Measures and the RN Survey (Job Satisfaction or Practice Environment Scale modules).

Bed Size	Annual Fee
100-199	\$6,900.61

If a Participant's hospital bed size changes during the year, no additional charges shall be assessed for an increase and no refunds shall be issued for a decrease.

2. RN Survey Add-On:

Participant may add on the following RN Survey module via the member portion of the NDNQI webpage. Participant is assessed the following fee at the time of enrollment in the following service add-on:

Service Add On	Annual Fee
Magnet Module	\$1,300

3. Discounts:

- a. **Multi-year Discounts:** Press Ganey will honor a multi-year discount at 5% off the Base Fee per year during the initial three year term under unique circumstances in which, e.g., an individual Participant or Affiliated Facilities representing a number of hospitals sign a contract for a minimum of three (3) years.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective January 1, 2020 (“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 Press Ganey Associates, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

RECITALS

A. WHEREAS, Business Associate and Covered Entity have entered into one or more agreements (the “Services Agreement”) pursuant to which 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, 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

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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, each to the extent applicable to Business Associate and the information in Business Associate's possession.

(b) "California Confidentiality Laws" shall mean the laws of the State of California applicable to Business Associate governing the confidentiality of PHI, 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 have the meaning in the HIPAA Rules, 45 C.F.R. § 160.103, limited to the information Business Associate receives from, or creates, receives, maintains or transmits for or on behalf of, Covered Entity. **PHI includes EPHI.**

(d) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a the Services Agreement.

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

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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.

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 be responsible for, and 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 reasonably assist with Covered Entity's efforts to notify individuals or potentially impacted individuals;

(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, subject to any limitation(s) of liability in the Services Agreement, 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, for affected individuals whose PHI 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 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. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

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(g) Intentionally Omitted;

(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 by Business Associate in a Designated Record Set:

(i) Upon fifteen (15) days' prior written request from Covered Entity, provide access to such PHI in a Designated Record Set 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 fifteen (15) days' prior written request from Covered Entity, make any amendment(s) to such PHI in a Designated Record Set 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) Intentionally Omitted;

(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 ten (10) 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

3.2 Business Associate Acknowledgment.

(a) 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 applicable to Business Associate and the information in its possession, and not preempted by HIPAA or the HITECH Act.

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;

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(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 either Party determines in good faith that the other Party has breached a material term of this BAA, the non-breaching Party shall: (i) immediately terminate this BAA and any underlying Services Agreement if the violating Party has breached a material term of this BAA and cure is not possible; or (ii) provide written notice of such breach or violation and terminate this BAA and any underlying Services Agreement within thirty (30) days of the breaching Party's receipt of such written notice of such breach, if the breach is not cured to the satisfaction of the non-breaching Party.

4.3 Automatic Termination. This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreement.

4.4 Effect of Termination. Within sixty (60) days of termination or expiration of this BAA for any reason, Business Associate shall destroy 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 destroying 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 destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to 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 infeasible to destroy; (ii) destroy 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) destroy the PHI retained by Business Associate when it is no longer infeasible to do so.

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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.

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:

Press Ganey Associates
404 Columbia Place
South Bend, IN 46601
Attn: Contracts
Fax: 574-245-3933

With a copy to:
HIPAA Privacy Officer at privacy@pressganey.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

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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.

5.8 Indemnification. Business Associate shall, subject to any limitation(s) of liability in the Services Agreement, indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising directly out of, 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. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

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, relating to creation, receipt, maintenance or transmission of PHI, 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.

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5.11. CMS Data. Certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Business Associate. PHI transmitted from CMS to Business Associate shall be governed by an applicable Data Use Agreement ("DUA") between Business Associate and CMS, as required by CMS. PHI transmitted by Covered Entity to Business Associate related specifically to those Certain Services described in the preceding sentence shall be subject to this BAA, however, in the event that any provision of this BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

5.11 Audit or Investigations. Business Associate shall promptly advise Covered Entity of any audit, complaint review, or complaint investigation by the Secretary or other state or federal agency related to (i) compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws and (ii) Covered Entity's PHI.

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: TURN PAGE →
Print Name _____
Print Title _____
Date: _____

By: [Signature] for Gary Gray
Print Name: Kristen Aldrich
Print Title: Contracts Manager
Date: 12-10-19

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BUSINESS ASSOCIATE

By: **Mike Williams**
Print Name _____
Print Title SVP, Operations
Date: 1/6/2020

Digitally signed by Mike Williams
DN: dc=com, dc=pressganey,
dc=us, ou= Offices, ou=Accounts,
ou=Users, cn=Mike Williams,
email=Mike.Williams@pressganey.c
om
Date: 2020.01.06 10:45:52 -06'00'

COVERED ENTITY

By: [Signature] for Cary Gray
Print Name: Kristen Aldrich
Print Title: Contracts Manager
Date: 12-10-19

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective January 1, 2020 (“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 Press Ganey Associates, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

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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, 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:

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(b) "California Confidentiality Laws" shall mean the laws of the State of California applicable to Business Associate governing the confidentiality of PHI, 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 have the meaning in the HIPAA Rules, 45 C.F.R. § 160.103, limited to the information Business Associate receives from, or creates, receives, maintains or transmits for or on behalf of, Covered Entity. **PHI includes EPHI.**

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(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

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and revised on 12/09/16*

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.

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 be responsible for, and 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 reasonably assist with Covered Entity's efforts to notify individuals or potentially impacted individuals;

(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, subject to any limitation(s) of liability in the Services Agreement, 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, for affected individuals whose PHI 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 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. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Intentionally Omitted;

(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 by Business Associate in a Designated Record Set:

(i) Upon fifteen (15) days' prior written request from Covered Entity, provide access to such PHI in a Designated Record Set 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 fifteen (15) days' prior written request from Covered Entity, make any amendment(s) to such PHI in a Designated Record Set 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) Intentionally Omitted;

(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 ten (10) 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

3.2 Business Associate Acknowledgment.

(a) 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 applicable to Business Associate and the information in its possession, and not preempted by HIPAA or the HITECH Act.

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;

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and revised on 12/09/16*

(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 either Party determines in good faith that the other Party has breached a material term of this BAA, the non-breaching Party shall: (i) immediately terminate this BAA and any underlying Services Agreement if the violating Party has breached a material term of this BAA and cure is not possible; or (ii) provide written notice of such breach or violation and terminate this BAA and any underlying Services Agreement within thirty (30) days of the breaching Party's receipt of such written notice of such breach, if the breach is not cured to the satisfaction of the non-breaching Party.

4.3 Automatic Termination. This BAA shall automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreement.

4.4 Effect of Termination. Within sixty (60) days of termination or expiration of this BAA for any reason, Business Associate shall destroy 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 destroying 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 destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to 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 infeasible to destroy; (ii) destroy 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) destroy the PHI retained by Business Associate when it is no longer infeasible to do so.

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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.

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:

Press Ganey Associates
404 Columbia Place
South Bend, IN 46601
Attn: Contracts
Fax: 574-245-3933

With a copy to:
HIPAA Privacy Officer at privacy@pressganey.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.

5.8 Indemnification. Business Associate shall, subject to any limitation(s) of liability in the Services Agreement, indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising directly out of, 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. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

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, relating to creation, receipt, maintenance or transmission of PHI, 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.

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5.11. CMS Data. Certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Business Associate. PHI transmitted from CMS to Business Associate shall be governed by an applicable Data Use Agreement ("DUA") between Business Associate and CMS, as required by CMS. PHI transmitted by Covered Entity to Business Associate related specifically to those Certain Services described in the preceding sentence shall be subject to this BAA, however, in the event that any provision of this BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

5.11 Audit or Investigations. Business Associate shall promptly advise Covered Entity of any audit, complaint review, or complaint investigation by the Secretary or other state or federal agency related to (i) compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws and (ii) Covered Entity's PHI.

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: TURN PAGE →
Print Name _____
Print Title _____
Date: _____

By: [Signature] for Gary Gray
Print Name: Kristen Aldrich
Print Title: Contracts Manager
Date: 12-10-19

5.11. CMS Data. Certain Services involve PHI transmitted directly from The Centers for Medicare and Medicaid Services ("CMS") to Business Associate. PHI transmitted from CMS to Business Associate shall be governed by an applicable Data Use Agreement ("DUA") between Business Associate and CMS, as required by CMS. PHI transmitted by Covered Entity to Business Associate related specifically to those Certain Services described in the preceding sentence shall be subject to this BAA, however, in the event that any provision of this BAA conflicts with Business Associate's obligations under its DUA with CMS or any other requirements imposed by CMS upon Business Associate as a CAHPS vendor, the terms and obligations of the DUA and CMS requirements as a CAHPS vendor shall supersede any requirement set forth therein.

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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

By: **Mike Williams**
Print Name _____
Print Title SVP, Operations
Date: 1/6/2020

Digitally signed by Mike Williams
DN: dc=com, dc=pressganey,
dc=us, ou= Offices, ou=Accounts,
ou=Users, cn=Mike Williams,
email=Mike.Williams@pressganey.c
om
Date: 2020.01.06 10:45:52 -06'00'

COVERED ENTITY

By: [Signature] for Cary Gray
Print Name: Kristen Aldrich
Print Title: Contracts Manager
Date: 12-10-19