

PROFESSIONAL SERVICES AGREEMENT

by and between

NATIVIDAD MEDICAL CENTER (“Hospital”)

and

**PEDIATRIC GASTROENTEROLOGY MEDICAL ASSOCIATES OF THE SANTA
CLARA VALLEY (“Contractor”)**

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "**Agreement**") is entered into as of September 1, 2011, by and between COUNTY OF MONTEREY ("**County**") on behalf of NATIVIDAD MEDICAL CENTER ("**Hospital**"), and **PEDIATRIC GASTROENTEROLOGY MEDICAL ASSOCIATES OF THE SANTA CLARA VALLEY**, a California general partnership ("**Contractor**"). County, Hospital and Contractor are sometimes referred to in this Agreement as a "**Party**" or, collectively, as the "**Parties.**"

RECITALS

A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California and various outpatient clinics (collectively, the "**Clinic**") under its acute care license.

B. Contractor is a professional corporation organized under the laws of the State of California (the "**State**"), consisting of employees and contractors (collectively, "**Group Physicians**" and each, a "**Group Physician**"), each of whom is a physician duly licensed and qualified to practice medicine in the State. Each Group Physician is board certified for the practice of medicine in the specialty of pediatric gastroenterology (the "**Specialty**").

C. Hospital must arrange for the provision of professional consultation and treatment of patients who present to Hospital's Clinic (collectively, the "**Clinic Patients**"), without regard to any consideration other than medical condition.

D. Hospital has considered the following factors in determining the necessity and amount of compensation payable to Contractor pursuant to this Agreement:

1. The nature of Contractor's duties as contemplated by this Agreement.
2. Contractor's qualifications.

AGREEMENT

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. CONTRACTOR'S OBLIGATIONS

1.1 **Professional Services.** Contractor shall provide professional services in the Specialty (the "**Professional Services**") to Clinic Patients, upon the terms and subject to the conditions set forth in this Agreement.

1.2 **Teaching Services.** Contractor shall provide to Hospital those teaching services set forth in Exhibit 1.2 (collectively, the "**Teaching Services**"). Contractor shall not be separately compensated for the provision of Teaching Services under this Agreement.

1.3 **Additional Services.** Contractor shall provide to Hospital those additional services set forth in **Exhibit 1.3** (the “**Additional Services**”), upon the terms and subject to the conditions set forth in this Agreement. The Professional Services, Teaching Services and Additional Services are sometimes referred to collectively in this Agreement as the “**Services.**”

1.4 **Time Commitment.** Contractor shall allocate time among the Professional Services, Teaching Services and Additional Services as reasonably requested by Hospital from time to time.

1.5 **Availability.** On or before the first (1st) day of each month, Contractor shall inform Hospital of Group Physicians’ schedule of availability to perform the Services during the following month. Group Physicians shall use their best efforts to adjust such schedule of availability if reasonably requested by Hospital in order to meet Hospital’s needs for the Services.

1.6 **Time Reports.** Contractor shall maintain and submit to Hospital monthly time sheets that provide a true and accurate accounting of time spent on a daily basis providing the Services. Such time sheets shall be on the then-current form provided by Hospital attached hereto as **Exhibit 1.6.** Contractor shall submit all such time sheets to Hospital no later than the tenth (10th) day of each month for Services provided during the immediately preceding month.

1.7 **Medical Staff.** Each Group Physician shall be a member in good standing in the “active staff” category of Hospital’s Medical Staff and have and maintain all clinical privileges at Hospital necessary for the performance of Group Physician’s obligations under this Agreement. If, as of the Effective Date (as defined in Section 5.1), any Group Physician is not a member in good standing in the “active staff” category of the Medical Staff or does not hold all clinical privileges at Hospital necessary for the performance of Group Physician’s obligations hereunder, such Group Physician shall have a reasonable amount of time, which in no event shall exceed sixty (60) calendar days from the Effective Date, to obtain such membership and/or clinical privileges; provided, however, that such Group Physician diligently pursues such membership and/or clinical privileges in accordance with the normal procedures set forth in the Medical Staff bylaws; and provided, however, that, at all times, Group Physician has been granted privileges to perform the Services. Any Group Physician may obtain and maintain medical staff privileges at any other hospital or health care facility at Group Physician’s sole expense.

1.8 **Professional Qualifications.** Each Group Physician shall have and maintain an unrestricted license to practice medicine in the State. Each Group Physician shall be board certified in the Specialty by the applicable medical specialty board approved by the American Board of Medical Specialties. Each Group Physician shall have and maintain a valid and unrestricted United States Drug Enforcement Administration (“**DEA**”) registration.

1.9 **Review of Office of the Inspector General (“OIG”) Medicare Compliance Bulletins.** The OIG from time to time issues Medicare compliance alert bulletins. To the extent applicable to Contractor’s performance under this Agreement, Contractor and each Group Physician shall undertake to review, be familiar with and comply with all applicable requirements of such OIG compliance bulletins.

1.10 Performance Standards. Contractor and each Group Physician shall comply with all bylaws, Medical Staff policies, rules and regulations of Hospital and the Medical Staff (collectively, the “Hospital Rules”), and all protocols applicable to the Services or the Hospital (the “Protocols”).

1.11 Code of Conduct. Contractor hereby acknowledges receipt of Hospital’s Code of Conduct which is attached to this Agreement as **Exhibit 1.11** (the “Code”), and agrees that Contractor and each Group Physician has been given ample opportunity to read, review and understand the Code. With respect to Contractor’s and the Group Physicians’ business dealings with Hospital and their performance of the Services described in this Agreement, neither Contractor nor any Group Physician shall act in any manner which conflicts with or violates the Code, nor cause another person to act in any manner which conflicts with or violates the Code. Contractor and each Group Physician shall comply with the Code as it relates to their business relationship with Hospital or any Affiliate, subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind.

1.12 Continuing Medical Education. Contractor shall ensure that each Group Physician participates in continuing medical education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community and as otherwise required by the medical profession.

1.13 Use of Space. Contractor and each Group Physician shall use Hospital’s premises and space solely and exclusively for the provision of the Services, except in an emergency or with Hospital’s prior written consent.

1.14 Notification of Certain Events. Contractor shall notify Hospital in writing within twenty-four (24) hours after the occurrence of any one or more of the following events:

(a) Contractor or any Group Physician becomes the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by: Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the “Federal Health Care Programs”) or state equivalent, any state’s medical board, any agency responsible for professional licensing, standards or behavior, or any medical staff;

(b) the medical staff membership or clinical privileges of any Group Physician at any hospital are denied, suspended, restricted, revoked or voluntarily relinquished, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) any Group Physician becomes the subject of any suit, action or other legal proceeding arising out of Contractor’s professional services;

(d) any Group Physician becomes incapacitated or disabled from providing the Services, or voluntarily or involuntarily retires from the practice of medicine;

- (e) any Group Physician's license to practice medicine in the State is restricted, suspended or terminated, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;
- (f) Contractor or any Group Physician is charged with or convicted of a criminal offense;
- (g) Contractor changes the location of Contractor's office;
- (h) any act of nature or any other event occurs which has a material adverse effect on Contractor's or any Group Physician's ability to provide the Services; or
- (i) Contractor or any Group Physician is debarred, suspended, excluded or otherwise ineligible to participate in any federal or state health care program.

1.15 Representations and Warranties by Contractor. Contractor represents and warrants that: (a) no Group Physician's license to practice medicine in any state has ever been suspended, revoked or restricted; (b) neither Contractor nor any Group Physician has ever been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board; (c) neither Contractor nor Group Physician has ever been excluded or suspended from participation in, or sanctioned by, any Federal Health Care Program; (d) no Group Physician has ever been denied membership and/or reappointment to the medical staff of any hospital or health care facility; (e) no Group Physician's medical staff membership or clinical privileges at any hospital or health care facility have ever been suspended, limited or revoked for a medical disciplinary cause or reason; and (f) no Group Physician has ever been charged with or convicted of a felony, a misdemeanor involving fraud, dishonesty, controlled substances, or moral turpitude, or any crime relevant to the provision of medical services or the practice of medicine.

1.16 Nondiscrimination. Neither Contractor nor any Group Physician shall differentiate or discriminate in performing the Services on the basis of race, religion, creed, color, national origin, ancestry, sex, physical disability, mental disability, medical condition, marital status, age, sexual orientation or payor, or on any other basis prohibited by applicable law.

1.17 Non-Exclusive Services. The Services provided by Contractor hereunder are intended to be non-exclusive. Notwithstanding the above, during the term of this Agreement, Contractor shall undertake to retain the service capacity necessary to provide those Services described in this Agreement, to the extent necessary to serve the reasonably foreseeable patient needs for medical care at Hospital and the administrative services hereunder.

1.18 Compliance with Grant Terms. If this Agreement has been or will be funded with monies received by Hospital or County pursuant to a contract with the state or federal government or private entity in which Hospital or County is the grantee, Contractor and Group Physicians shall comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, Hospital shall deliver a copy of said contract to Contractor at no cost to Contractor.

1.19 Group Physicians.

(a) Contractor shall employ, contract with, or otherwise engage Group Physicians. Contractor has initially engaged those Group Physicians listed (and identified by NPI number) on Exhibit 1.19(a) to provide the Services, which Group Physicians are hereby approved and accepted by Hospital.

(b) Contractor may from time to time engage one (1) or more additional Group Physicians (including locum tenens physicians) to provide the Services under this Agreement, subject to Hospital's prior written approval, which approval may be given, withheld or conditioned by Hospital in its sole discretion. In the event Hospital withholds approval with respect to any additional Group Physician, such Group Physician shall not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that the withholding of approval is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior.

(c) Contractor shall ensure that, during the term of this Agreement, any and all Group Physicians (including locum tenens physicians) providing the Services satisfy the professional standards and qualifications set forth in this Article I of this Agreement.

(d) Contractor shall provide prompt written notice to Hospital in the event any Group Physician resigns, is terminated by Contractor, or otherwise ceases to provide the Services.

(e) Contractor shall ensure that the Services are performed only on the Hospital's premises by Group Physicians who have been approved and accepted by Hospital, and have not been removed in accordance with this Agreement.

(f) Contractor shall cause each Group Physician providing the Services to comply with all obligations, prohibitions, covenants and conditions imposed on Contractor pursuant to this Agreement. Contractor shall cause each Group Physician to execute and deliver to Hospital a letter of acknowledgment in the form attached as Exhibit 1.19(f) prior to providing any Services under this Agreement.

ARTICLE II.
COMPENSATION

2.1 Compensation. Hospital shall pay to Contractor the amount determined in accordance with Exhibit 2.1 (the "Compensation"), upon the terms and conditions set forth therein. The total amount payable by Hospital to Contractor under this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00).

2.2 Billing and Collection. Hospital shall have the sole and exclusive right to bill and collect for any and all Professional Services rendered to Clinic Patients by Contractor or any Group Physician under this Agreement (the "NMC Services"). Hospital shall have the sole and exclusive right, title and interest in and to accounts receivable with respect to such NMC Services.

(a) **Assignment of Claims.** Contractor hereby assigns (or reassigns, as the case may be) to Hospital all claims, demands and rights of Contractor for any and all NMC Services rendered by Contractor pursuant to this Agreement. Contractor shall take such action and execute such documents (e.g., CMS Forms 855R and 855I), as may be reasonably necessary or appropriate to effectuate the assignment (or reassignment, as the case may be) to Hospital of all claims, demands and rights of Contractor for any and all NMC Services rendered by Contractor pursuant to this Agreement.

(b) **Fees and Rates.** Hospital shall have the right to determine, after consultation with Contractor, all rates and charges for NMC Services rendered by Contractor pursuant to this Agreement, including fee-for-service rates.

(c) **Cooperation with Billing and Collections.** Contractor shall cooperate with Hospital in the billing and collection of fees with respect to NMC Services rendered by Contractor. Without limiting the generality of the foregoing, Contractor shall cooperate with Hospital in completing such claim forms with respect to NMC Services rendered by Contractor pursuant to this Agreement as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors.

(d) **Hospital as Exclusive Source for Compensation for NMC Services.** Contractor shall seek and obtain compensation for the performance of NMC Services only from Hospital. Contractor shall not, bill, assess or charge any fee, assessment or charge of any type against any Hospital patient or any other person or entity for NMC Services rendered by Contractor pursuant to this Agreement. Contractor shall promptly deliver to Hospital any and all compensation, in whatever form, that is received by Contractor or any Group Physician for NMC Services rendered by Contractor or any Group Physician pursuant to this Agreement, including any amount received from any Managed Care Organization (as defined below) for NMC Services rendered by Contractor or any Group Physician pursuant to this Agreement.

(e) **Indemnification for Billing Information.** Contractor hereby agrees to indemnify County, Hospital, its officers, supervisors, trustees, employees and agents, from and against any and all liability, cost, loss, penalty or expense (including, without limitation, attorneys' fees and court costs) incurred by Hospital resulting from negligent acts or negligent omissions of Contractor which result in inaccurate and/or improper billing information furnished by Contractor and relied on by Hospital regarding Professional Services rendered by Contractor to Clinic Patients, to the extent such liability, cost, loss, penalty or expense exceeds the amount of payment or reimbursement actually received by Hospital for such services.

2.3 Third Party Payer Arrangements.

(a) Contractor shall cooperate in all reasonable respects necessary to facilitate Hospital's entry into or maintenance of any third party payer arrangements for the provision of services under Federal Health Care Programs or any other public or private health and/or hospital care programs, including insurance programs, self-funded employer health programs, health care service plans and preferred provider organizations.

(b) To enable Hospital or the Clinic to participate in any third party payor arrangement, Contractor shall, not more than ten (10) business days following Hospital's request:

- (i) Initiate enrollment as a provider (if required by the third party payor), separate from Hospital and Clinic, with any third party payor or intermediate organization (including any independent practice association) (each, a "Managed Care Organization") designated by Hospital for the provision of Professional Services to Hospital patients covered by such Managed Care Organization;
- (ii) Complete any documents (e.g., CAQH Universal Provider Datasource form) as may be reasonably necessary or appropriate to effectuate enrollment;
- (iii) Enter into a written agreement with such Managed Care Organization as may be necessary or appropriate for the provision of Professional Services to Hospital patients covered by such Managed Care Organization; and/or
- (iv) Enter into a written agreement with Hospital regarding global billing, capitation or other payment arrangements as may be necessary or appropriate for the provision of Professional Services to Hospital patients covered by such Managed Care Organization.

ARTICLE III. INSURANCE AND INDEMNITY

3.1 Evidence of Coverage. Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to Hospital's Medical Staff Office, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and Hospital has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

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

3.3 Insurance Coverage Requirements. Without limiting Contractor's or Group Physician's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement, at Contractor's sole cost and expense, a policy or policies of insurance with the following minimum limits of liability:

(a) **Professional liability insurance**, covering Contractor and each Group Physician with coverage of not less than One-Million Dollars (\$1,000,000) per physician per occurrence and Three-Million Dollars (\$3,000,000) per physician in the aggregate; or such other amount(s) of professional liability insurance as may be required by Article 2.2-1 of Hospital's Medical Staff Bylaws from time to time, to cover liability for malpractice and/or errors or omissions made in the course of rendering services under this Agreement. If any professional liability insurance covering Contractor and Group Physician is procured on a "Claims Made" rather than "Occurrence" basis, then Contractor and Group Physician shall either continue such coverage or obtain extended reporting coverage ("**Tail Coverage**"), as appropriate, upon the occurrence of any of the following: (i) termination or expiration of this Agreement; (ii) change of coverage if such change shall result in a gap in coverage; or (iii) amendment, reduction or other material change in the then existing professional liability coverage of Contractor if such amendment, reduction or other material change will result in a gap in coverage. Any Tail Coverage shall have liability limits in the amount set forth above and shall in all events continue in existence until the greater of: (a) three (3) years or (b) the longest statute of limitations for professional and general liability for acts committed has expired. All insurance required by this Agreement shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact insurance business in the State.

(b) **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 One Million Dollars (\$1,000,000) per occurrence.

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

(c) **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 One Million Dollars (\$1,000,000) per occurrence.

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

(d) **Workers' Compensation Insurance**, if Contractor employs others in the performance of this Agreement, in accordance with California Labor Code Section 3700 and with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each disease.

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

3.4 Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to Hospital and issued and executed by an admitted insurer authorized to transact insurance business in the State. 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 (3) years following the date Contractor and Group Physicians complete their performance of services under this Agreement.

Each liability policy shall provide that Hospital shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor, Group Physicians, and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by Hospital, Contractor shall file certificates of insurance with Hospital's Medical Staff Office, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor and each Group Physician shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Hospital, annual certificates to Hospital's Medical Staff Office. If the certificate is not received by the expiration date, Hospital shall notify Contractor and Contractor shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles Hospital, at its sole discretion, to terminate the Agreement immediately.

3.5 Right to Offset Insurance Costs. In the event that Contractor does not purchase the liability insurance set forth in this Section, and without limiting any rights or remedies of County, County may at its option and within its sole discretion provide the liability insurance required by this Section and continue to pay the premiums therefor. If Contractor does not promptly reimburse all such amounts, then County shall have the right to withhold and offset the compensation due to Contractor under this Agreement, in addition to such other rights or privileges as County may have at law or in equity.

3.6 Indemnification.

(a) **Indemnification by Contractor.** Contractor and each Group Physician shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with Contractor's or Group Physicians' performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "Contractor's performance" includes Contractor's and Group Physicians' acts or omissions and the acts or omissions of Contractor's officers, employees, agents and subcontractors.

(b) **Indemnification by County.** County agrees to defend, indemnify, and hold harmless Contractor and Group Physicians, to the extent permitted by applicable law, from and against any and all claims and losses whatsoever accruing or resulting to any person, firm or corporation for damages, injury or death arising out of or connected with any negligent act or omission or willful misconduct of County or any of its agents or employees.

3.7 Indemnification for Timely Payment of Tax Contributions. It is expressly agreed by the Parties hereto that no work, act, commission or omission of Contractor or Group Physician shall be construed to make or render Contractor or any Group Physician the agent, employee or servant of County. Contractor and each Group Physician agrees to indemnify, defend and hold harmless County and Hospital from and against any and all liability, loss, costs or obligations (including, without limitation, interest, penalties and attorney's fees in defending against the same) against County or Hospital based upon any claim that Contractor has failed to make proper and timely payment of any required tax contributions for itself, its employees, or its purported agents or independent contractors.

3.8 Hospital Services. Hospital shall retain professional and administrative responsibility for the operation of the Clinic, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of Contractor under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in this Article III.

3.9 Survival of Obligations. The Parties' obligations under this Article III shall survive the expiration or termination of this Agreement for any reason.

ARTICLE IV. RELATIONSHIP BETWEEN THE PARTIES

4.1 Independent Contractor.

(a) Contractor and each Group Physician is and shall at all times be an independent contractor with respect to Hospital in the performance of Contractor's and Group

Physician's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between Hospital and Contractor or Hospital and any Group Physician. No Group Physician shall hold himself or herself out as an officer, agent or employee of Hospital, and shall not incur any contractual or financial obligation on behalf of Hospital without Hospital's prior written consent.

(b) If the Internal Revenue Service ("IRS") or any other governmental agency should inquire about, question or challenge the independent contractor status of Contractor or any Group Physician with respect to County, the Parties hereto mutually agree that: (i) each shall inform the other Party hereto of such inquiry or challenge; and (ii) County and Contractor shall each have the right to participate in any discussion or negotiation occurring with the taxing agency, regardless of who initiated such discussions or negotiations. In the event the taxing agency concludes that an independent contractor relationship does not exist, County may terminate this Agreement effective immediately upon written notice. In the event of such termination, the Parties remain free to negotiate an employer/employee contract with any Group Physician.

4.2 Limitation on Control. Hospital shall neither have nor exercise any control or direction over Contractor's or any Group Physician's professional medical judgment or the methods by which Contractor or any Group Physician performs professional medical services; provided, however, that Contractor and Group Physicians shall be subject to and shall at all times comply with the Protocols and the bylaws, guidelines, policies and rules applicable to other members of the Medical Staff.

4.3 Practice of Medicine. Contractor and Hospital acknowledge that Hospital is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent that any act or service required of, or reserved to, Hospital in this Agreement is construed or deemed to constitute the practice of medicine, the performance of such act or service by Hospital shall be deemed waived or unenforceable, unless this Agreement can be amended to comply with the law, in which case the Parties shall make such amendment.

4.4 No Benefit Contributions. Hospital shall have no obligation under this Agreement to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor. Notwithstanding the foregoing, if Hospital determines or is advised that it is required by law to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government mandated, employment-related insurance and similar programs) to, or on behalf of, Contractor or any other person employed or retained by Contractor, Contractor shall reimburse Hospital for any such expenditure within thirty (30) calendar days after being notified of such expenditure.

4.5 Referrals. Contractor and the Group Physicians shall be entitled to refer patients to any hospital or other health care facility or provider deemed by Contractor or the Group Physicians best qualified to deliver medical services to any particular patient. Nothing in this

Agreement or in any other written or oral agreement between Hospital and Contractor or Hospital and the Group Physicians, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Hospital or any Affiliate. In the event that any governmental agency, any court or any other judicial body of competent jurisdiction, as applicable, issues an opinion, ruling or decision that any payment, fee or consideration provided for hereunder is made or given in return for patient referrals, either Party may at its option terminate this Agreement with three (3) days' notice to the other Party. Contractor's and Group Physicians' rights under this Agreement shall not be dependent in any way on the referral of patients or business to Hospital or any Affiliate by Contractor, Group Physician or any person employed or retained by Contractor.

4.6 Form 1099 or W-2. If required to do so under applicable law, Hospital shall issue an Internal Revenue Service Form 1099 or Form W-2 to Contractor.

4.7 Contractor Compensation Arrangements. Contractor represents and warrants to Hospital that the compensation paid or to be paid by Contractor to any physician is and will at all times be fair market value for services and items actually provided by such physician, not taking into account the value or volume of referrals or other business generated by such physician for Hospital or any Affiliate. Contractor further represents and warrants to Hospital that Contractor has and will at all times maintain a written agreement with each physician receiving compensation from Contractor.

4.8 Cooperation.

(a) The Parties recognize that, during the term of this Agreement and for an undetermined time period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and legal issues, claims, or actions.

(b) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an "**Action**") arises with a third party wherein both the Parties are included as defendants, each Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each Party shall make every reasonable attempt to include the other Party in any settlement offer or negotiations. In the event the other Party is not included in the settlement, the settling Party shall immediately disclose to the other Party in writing the acceptance of any settlement and terms relating thereto, if allowed by the settlement agreement.

(c) Contractor shall cooperate with the individual designated by Hospital to have principal responsibility for the administration and operation of the Clinic. Such cooperation shall include supervision, selection, assignment, and evaluation of personnel; management and

direction of equipment maintenance; development of budgets; and oversight of the acquisition of materials, supplies, and equipment.

(d) Contractor shall assist Hospital, as reasonably requested by Hospital, in Hospital's compliance with applicable laws and the standards, requirements, guidelines and recommendations of any governing or advisory body having authority to set standards relating to the operation of Hospital, or any nationally recognized accrediting organization that Hospital designates from time to time.

4.9 Contractor's Performance. County or Hospital, at its option and within its sole discretion, may seek evaluation of contractual performance by requesting input from Hospital's Medical Director/Chief Medical Officer and from other professionals within Hospital.

4.10 Right of Inspection. Upon reasonable prior written notice, Hospital and County officials and their designees may inspect the books and records of Contractor which are necessary to determine that work performed by Contractor or any Group Physician to patients hereunder is in accord with the requirements of this Agreement. Such inspection shall be made in a manner so as not to disrupt the operations of Hospital or Contractor.

4.11 Access to and Audit of Records. Hospital shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the Contractor and its subcontractors related to services provided under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), the Parties may be subject, at the request of Hospital or as part of any audit of Hospital, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three (3) years after final payment under the Agreement.

ARTICLE V. TERM AND TERMINATION

5.1 Term. This Agreement shall become effective on September 1, 2011 (the "Effective Date"), and shall continue until August 31, 2012 (the "Expiration Date"), subject to the termination provisions of this Agreement.

5.2 Termination by Hospital. Hospital shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events:

(a) breach of this Agreement by Contractor or any Group Physician where the breach is not cured within thirty (30) calendar days after Hospital gives written notice of the breach to Contractor;

(b) neglect of professional duty by Contractor in a manner that poses an imminent danger to the health or safety of any individual, or violates Hospital's policies, rules or regulations;

(c) there is a "substantial change" in Contractor which has not received prior written approval or subsequent ratification by Hospital. The retirement, withdrawal, termination,

or suspension of one (1) or more Group Physicians of Contractor at any time during the term of this Agreement shall be considered to be a “substantial change” in Contractor only if there is a reduction in hours equivalent to in excess of one full-time Group Physician. Notwithstanding anything in the foregoing to the contrary, the retirement, withdrawal, termination, or suspension of any single Group Physician of Contractor shall not constitute a “substantial change” in Contractor as that term is used herein;

(d) breach by Contractor or any Group Physician of any HIPAA Obligation (as defined in **Exhibit 6.4**);

(e) Contractor makes an assignment for the benefit of creditors, admits in writing the inability to pay its debts as they mature, applies to any court for the appointment of a trustee or receiver over its assets, or upon commencement of any voluntary or involuntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution liquidation or other similar law or any jurisdiction;

(f) the insurance required to be maintained by Contractor under this Agreement is terminated, reduced below the minimum coverage requirements set forth in this Agreement, not renewed or cancelled (whether by action of the insurance company or Contractor) for any reason, and Contractor has not obtained replacement coverage as required by this Agreement prior to the effective date of such termination, reduction, non-renewal or cancellation;

(g) Contractor is rendered unable to comply with the terms of this Agreement for any reason; or

(h) upon a sale of all or substantially all assets comprising Hospital’s acute care hospital facility, any change of control in Hospital’s organization, or any change in control of its day to day operations, whether through a membership change or by management contract. Hospital shall notify Contractor in writing of such sale or change of control at least thirty (30) days prior to the closing date of any such sale or the effective date of any such change of control.

5.3 Termination by Contractor. Contractor shall have the right to terminate this Agreement upon breach of this Agreement by Hospital where the breach is not cured within thirty (30) calendar days after Contractor gives written notice of the breach to Hospital.

5.4 Termination or Modification in the Event of Government Action.

(a) If the Parties receive notice of any Government Action, the Parties shall attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, acting in good faith, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall terminate ten (10) calendar days after one Party notifies the other of such fact.

(c) For the purposes of this Section, “**Government Action**” shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or

local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to Hospital, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

- (i) revoke or jeopardize the status of any health facility license granted to Hospital or any Affiliate of Hospital;
- (ii) revoke or jeopardize the federal, state or local tax-exempt status of Hospital or any Affiliate of Hospital, or their respective tax-exempt financial obligations;
- (iii) prevent Contractor or any Group Physician from being able to access and use the facilities of Hospital or any Affiliate of Hospital;
- (iv) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) if Contractor or any Group Physician referred patients to Hospital or any Affiliate of Hospital;
- (v) prohibit Hospital or any Affiliate of Hospital from billing for services provided to patients referred to by Contractor or any Group Physician;
- (vi) subject Hospital or Contractor, any Group Physician, or any Affiliate of Hospital, or any of their respective employees or agents, to civil or criminal prosecution (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement; or
- (vii) jeopardize Hospital's full accreditation with any accrediting organization as Hospital designates from time to time.

(d) For the purposes of this Agreement, "Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by or is under common control with Hospital.

5.5 Termination without Cause. Either Party may terminate this Agreement without cause, expense or penalty, effective sixty (60) calendar days after written notice of termination is given to the other Party.

5.6 Effect of Termination or Expiration. Upon any termination or expiration of this Agreement:

(a) All rights and obligations of the Parties shall cease except: (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement; (ii) those rights and obligations which expressly survive termination or expiration of this Agreement; and (iii) Contractor's obligation to continue to provide services to

Hospital patients under Contractor's and Group Physicians' care at the time of expiration or termination of this Agreement, until the patient's course of treatment is completed or the patient is transferred to the care of another physician.

(b) Neither Contractor nor any Group Physician shall do anything or cause any other person to do anything that interferes with Hospital's efforts to engage any other person or entity for the provision of the Services, or interfere in any way with any relationship between Hospital and any other person or entity who may be engaged to provide the Services to Hospital.

(c) Group Physicians shall not have any right to a "fair hearing" or any other similar rights or procedures under the Medical Staff bylaws or otherwise.

(d) This Section 5.6 shall survive the expiration or termination for any reason of this Agreement.

5.7 Return of Property. Upon any termination or expiration of this Agreement, Contractor shall immediately return to Hospital all of Hospital's property, including Hospital's equipment, supplies, furniture, furnishings and patient records, which is in Contractor's or any Group Physician's possession or under Contractor's or any Group Physician's control.

ARTICLE VI. GENERAL PROVISIONS

6.1 Amendment. This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties and attached to this Agreement.

6.2 Assignment. This Agreement is entered into by Hospital in reliance on the professional and administrative skills of Contractor. Contractor shall be solely responsible for providing the Services and otherwise fulfilling the terms of this Agreement, except as specifically set forth in this Agreement. Except for assignment by Hospital to an entity owned, controlled by, or under common control with Hospital, neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

6.3 Attorneys' Fees. If either Party brings an action for any relief or collection against the other Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, including without limitation fees incurred in arbitration, at trial, on appeal and on any review therefrom, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.

6.4 Compliance with HIPAA. Contractor and Group Physicians shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, “HIPAA,” the obligations collectively referred to herein as “HIPAA Obligations”), as set forth in **Exhibit 6.4**. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.

6.5 Compliance with Laws and Accreditation. Contractor and Group Physicians shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments (collectively, “Laws”) applicable to Contractor and Group Physicians, the provision of the Services, or the obligations of Contractor and Group Physicians under this Agreement, including without limitation laws that require Contractor or any Group Physician to disclose any economic interest or relationship with Hospital. Contractor and Group Physicians shall take actions necessary to ensure that the Clinic is operated in accordance with: all requirements of a nationally recognized accrediting organization that Hospital designates from time to time, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state or local agency.

6.6 Compliance with Medicare Rules. To the extent required by law or regulation, Contractor shall make available, upon written request from Hospital, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and Contractor’s books, documents and records. Contractor shall preserve and make available such books, documents and records for a period of ten (10) years after the end of the term of this Agreement, or the length of time required by state or federal law. If Contractor is requested to disclose books, documents or records pursuant to this Section for any purpose, Contractor shall notify Hospital of the nature and scope of such request, and Contractor shall make available, upon written request of Hospital, all such books, documents or records. Contractor shall indemnify and hold harmless Hospital if any amount of reimbursement is denied or disallowed because of Contractor’s failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. This Section shall survive the expiration or termination for any reason of this Agreement.

If Contractor carries out any of the duties of the contract through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of ten (10) years after the furnishing of such Services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

6.7 Confidential Information.

(a) During the term of this Agreement, Contractor and Group Physicians may have access to and become acquainted with Trade Secrets and Confidential Information of

Hospital. “**Trade Secrets**” includes information and data relating to payor contracts and accounts, clients, patients, patient groups, patient lists, billing practices and procedures, business techniques and methods, strategic plans, operations and related data. “**Confidential Information**” includes Trade Secrets and any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of Hospital or any Affiliate that Hospital discloses or otherwise makes available in any manner to Contractor or Group Physicians, or to which Contractor or Group Physicians may gain access in the performance of the Services under this Agreement, or which Contractor or any Group Physician knows or has reason to know is confidential information of Hospital or any Affiliate; whether such information is disclosed orally, visually or in writing, and whether or not bearing any legend or marking indicating that such information or data is confidential. By way of example, but not limitation, Confidential Information includes any and all know-how, processes, manuals, confidential reports, procedures and methods of Hospital, any Hospital patient’s individually identifiable health information (as defined under HIPAA), and any information, records and proceedings of Hospital and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes proprietary or confidential information of any third party that may be in Hospital’s or any Affiliate’s possession.

(b) Confidential Information shall be and remain the sole property of Hospital, and shall, as applicable, be proprietary information protected under the Uniform Trade Secrets Act. Neither Contractor nor any Group Physician shall use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose any Confidential Information to any person or entity, without the prior written consent of Hospital. Contractor and Group Physicians shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor and any Group Physician protects his, her, or its own confidential or proprietary information of a similar nature and with no less than reasonable care. All documents that Contractor and Group Physicians prepare, or Confidential Information that might be given to Contractor in the course of providing Services under this Agreement, are the exclusive property of Hospital, and, without the prior written consent of Hospital, shall not be removed from Hospital’s premises.

(c) Contractor and Group Physicians shall return to Hospital all Confidential Information and all copies thereof in Contractor’s and Group Physicians’ possession or control, and permanently erase all electronic copies of such Confidential Information, promptly upon the written request of Hospital, or the termination or expiration of this Agreement. Neither Contractor nor any Group Physician shall copy, duplicate or reproduce any Confidential Information without the prior written consent of Hospital.

(d) This Section shall survive the expiration or termination of this Agreement.

6.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

6.9 Disclosure of Interests. Contractor or any Group Physician shall provide to Hospital, as requested by Hospital from time to time, information sufficient to disclose any ownership, investment or compensation interest or arrangement of Contractor, or any of Contractor's or any Group Physician's immediate family members, in any entity providing "designated health services" (as such term is defined in the Stark Law (42 U.S.C. Section 1395nn) and its regulations) or any other health care services. This Section shall not impose on Hospital any disclosure or reporting requirements or obligations imposed on Contractor or any Group Physician under any governmental program or create an assumption of such disclosure obligations by Hospital. Contractor and Group Physicians shall have the sole responsibility to fulfill any such federal and/or state reporting requirements or obligations.

6.10 Dispute Resolution. In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties with respect to this Agreement (each, a "Dispute"), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable, but in no case more than ten (10) days after one Party gives written notice of a Dispute to the other Party (the "Dispute Notice"), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the "Meet and Confer"). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws.

(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to arbitration conducted by Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or other arbitration and/or mediation services company as agreed to by the Parties, in accordance with the following rules and procedures:

- (i) Each Party may commence arbitration by giving written notice to the other Party demanding arbitration (the "Arbitration Notice"). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.
- (ii) The arbitration shall be conducted in the County in which the Hospital is located and in accordance with the commercial arbitration rules and procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules

and/or procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.

- (iii) The arbitration shall be conducted before a single impartial retired member of the JAMS panel of arbitrators (or panel of arbitrators from such other arbitration company as mutually agreed to by the Parties) covering the County in which the Hospital is located (the "Panel"). The Parties shall use their good faith efforts to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time period, then each Party shall select one arbitrator from the Panel, and those arbitrators shall select a single impartial arbitrator from the Panel to serve as arbitrator of the Dispute.
- (iv) The Parties expressly waive any right to any and all discovery in connection with the arbitration; provided, however, that each Party shall have the right to conduct no more than two (2) depositions and submit one set of interrogatories with a maximum of forty (40) questions, including subparts of such questions.
- (v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.
- (vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.
- (vii) The fees and costs of JAMS (or other arbitration company as mutually agreed to by the Parties) and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the

arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.

- (viii) Except as set forth in Section 6.10(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorneys' fees and costs; provided, however, that the arbitrator shall require one Party to pay the costs and expenses of the prevailing Party, including attorneys' fees and costs and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or position of a Party were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section and sections governing Confidential Information, Compliance with HIPAA, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance or any other form of injunctive or equitable relief or remedy.

(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within the County in which the Hospital is located for purposes of enforcing this Section and sections governing Confidential Information, Compliance with HIPAA, Compliance with Laws and Accreditation and Compliance with Medicare Rules of this Agreement. Contractor hereby consents to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceeding, in addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such action or proceeding, including attorneys' fees and costs and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section shall survive the expiration or termination of this Agreement.

6.11 Entire Agreement. This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

6.12 Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

6.13 Force Majeure. Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

6.14 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State.

6.15 Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

6.16 Litigation Consultation. Contractor shall ensure that no Group Physician accepts consulting assignments or otherwise contract, agree, or enter into any arrangement to provide expert testimony or evaluation on behalf of a plaintiff in connection with any claim against Hospital or any Affiliate named, or expected to be named as a defendant. Contractor shall ensure that no Group Physician accepts similar consulting assignments if (a) the defendants or anticipated defendants include a member of the medical staff of Hospital or any Affiliate, and (b) the matter relates to events that occurred at Hospital or any Affiliate; provided, however, the provisions of this Section shall not apply to situations in which a Group Physician served as a treating physician.

6.17 Master List. The Parties acknowledge and agree that this Agreement, together with any other contracts between Hospital and Contractor, will be included on the master list of physician contracts maintained by Hospital.

6.18 Meaning of Certain Words. Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified: (i) "days" shall be considered "calendar days;" (ii) "months" shall be considered "calendar months;" and (iii) "including" means "including, without limitation" in this Agreement and its exhibits and attachments.

6.19 New Group Physicians. Each new Group Physician shall agree in writing to be bound by the terms of and conditions of this Agreement.

6.20 No Conflicting Obligations. Contractor represents and warrants that the execution and delivery of this Agreement and the performance of its obligations hereunder do not and will not: (a) present a conflict of interest or materially interfere with the performance of Contractor's duties under any other agreement or arrangement; or (b) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice and/or lapse of time, would constitute a default) under, terminate, accelerate the performance required by, or result in a right of termination or acceleration under any of the terms, conditions or provisions of any other agreement, indebtedness, note, bond, indenture, security or pledge agreement, license, franchise, permit, or other instrument or obligation to which Contractor is a party or by which Contractor is bound. Contractor shall immediately inform Hospital of any other agreements to which Contractor is a party that may present a conflict of interest or materially interfere with performance of Contractor's duties under this Agreement.

6.21 No Third Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

6.22 Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice shall be deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

If to Hospital, addressed to:

NATIVIDAD MEDICAL CENTER
1441 Constitution Blvd., Bldg. 300
Salinas, California 93906
Attention: Gary Gray, D.O., Chief Medical Officer

If to Contractor, addressed to:

PEDIATRIC GASTROENTEROLOGY MEDICAL
ASSOCIATES OF THE SANTA CLARA VALLEY
2577 Samaritan Drive
San Jose, CA 95124

6.23 Participation in Federal and State Programs. Contractor hereby represents that neither it nor any Group Physician is debarred, suspended, excluded or otherwise ineligible to participate in any federal or state health care program.

6.24 Representations. Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed

or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

6.25 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement.

6.26 Statutes and Regulations. Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

6.27 Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.


[signature page follows]

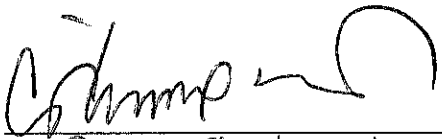
The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

CONTRACTOR

PEDIATRIC GASTROENTEROLOGY
MEDICAL ASSOCIATES OF THE SANTA
CLARA VALLEY, a California general
partnership

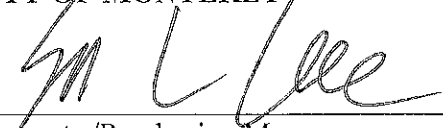
Date: _____, 20__


By: Margorie F. McCracken MD, PhD
Its _____

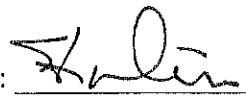

By: Phuong Christine Nguyen MD
Its _____

Tax I.D. No. 77-0558210

COUNTY OF MONTEREY

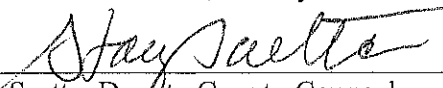
By: 
Contracts /Purchasing Manager

Purchase Order Number _____
Date: 12.5, 2011

By: 
Natividad Medical Center Representative

Date: 10/4, 2011

APPROVED AS TO LEGAL FORM:
CHARLES J. McKEE, County Counsel


Stacy Saetta, Deputy County Counsel

Date: 10/6, 2011


Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey 10-7-11

Exhibit 1.2

TEACHING SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor shall:

1. supervise patient care in a constructive and supportive way;
2. demonstrate effective interviewing, physical examination, procedures, use of diagnostic and therapeutic interventions, and medical records documentation;
3. create a professional role model; and
4. evaluate resident performance in a meaningful, objective fashion.

Exhibit 1.3

ADDITIONAL SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor shall:

1. provide teaching, educational or training services, as reasonably requested by Hospital;
2. participate in utilization review programs, as reasonably requested by Hospital;
3. participate in risk management, quality assurance and peer review programs, as reasonably requested by Hospital;
4. accept third party insured patients and referrals of patients which are made by members of the Medical Staff, subject only to the limitations of scheduling and Contractor's professional qualifications;
5. assist Hospital in monitoring and reviewing the clinical performance of health care professionals who provide services to Hospital's patients; including reviewing incident reports and patient satisfaction studies relevant to the Specialty, and assisting Hospital in implementing any necessary corrective actions to address any issues identified during the course of such review;
6. assist in monitoring the performance of those professionals who are not meeting Hospital quality and/or performance standards, including, without limitation, direct observation of the provision of care by such professionals, and in disciplining any professionals who continue poor performance, recognizing that the Hospital Board of Directors is ultimately responsible for maintaining the standards of care provided to patients;
7. assist Hospital management with all preparation for, and conduct of, any inspections and on-site surveys of Hospital or Clinic conducted by governmental agencies or accrediting organizations;
8. cooperate with Hospital in all litigation matters affecting Contractor or Hospital, consistent with advice from Contractor's legal counsel;
9. cooperate and comply with Hospital's policies and procedures which are pertinent to patient relations, quality assurance, scheduling, billing, collections and other administrative matters and cooperate with Hospital's efforts to bill and collect fees for services rendered to Hospital's patients. All business transactions related to the Services provided by Contractor, such as enrollment, and verification and billings, shall be conducted by and in the name of Hospital; and
10. assist Hospital in developing, implementing and monitoring a program by which quality measures are reportable to Hospital with respect to the Specialty.

Exhibit 1.6

CONTRACTOR'S MONTHLY TIME REPORT

(See attached.)



Accurately document all time in quarter hour (.25 hour) increments. Do not exceed 24 hours in a single day. Directions and examples are located on back of timesheet.

Employee #:	Dept Name:	Cost Center:	Period Ending:	Direct		Hospital Administrations and Teaching Services										Other Admin		Non-billable Activities			Total
				00001	00002	00003	00004	00005	00006	00007	00008	00009	00010	00011	00012	CME (PR)	Conferences and Training (PR)	Non-Productive Hrs	Paid Time Off (Sick/Vacation) (PR)	Holiday Re-search (PR)	
Name:	Sched. In House Care (PR)	IP/OP Care (PR)	On-Call (PR)	Supervision & Training of Nurses & Techs, etc.	Utilization Review and Other Committee Meetings	Quality Control, Medical Review, Autopsy	Supervision of Interns and Residents	Teaching of Interns & Residents	Teaching & Supervision of Allied Health Professionals	Other Administrative (specify)	CME (PR)	Conferences and Training (PR)	Non-Productive Hrs	Paid Time Off (Sick/Vacation) (PR)	Holiday Re-search (PR)	Other Non-Billable Activities (specify)	TOTAL HOURS				
1	Date:	A Hospital & NMC Clinic Time																			
2	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
3	Date:	A Hospital & NMC Clinic Time																			
4	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
5	Date:	A Hospital & NMC Clinic Time																			
6	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
7	Date:	A Hospital & NMC Clinic Time																			
8	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
9	Date:	A Hospital & NMC Clinic Time																			
10	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
11	Date:	A Hospital & NMC Clinic Time																			
12	Date:	B. Non-Hosp & Non-NMC Clinic Time																			
13	Date:	A Hospital & NMC Clinic Time																			
14	Date:	B. Non-Hosp & Non-NMC Clinic Time																			

SIGN IN BLUE INK

I certify that the hours and types of service shown below are correct and that the employee performed satisfactorily, meeting all requirements.

Service Director: _____

Telephone Number: **831-755-4196** Date: _____

SIGN IN BLUE INK

I certify that the above information is a true and accurate statement of the hours and locations indicated.

Provider: _____

Telephone Number: **831-755-4196** Date: _____

Exhibit 1.11



MEDICAL STAFF POLICY

Title: Practitioner Code of Conduct	Effective: 05/01/09 Revised:
Standard: MSP004-2	Approved: MEC 04/14/09 BOT 05/01/09

As a member of the Medical Staff or an Allied Health Professional (AHP) of Natividad Medical Center (NMC) (collectively Practitioners), I acknowledge that the ability of Practitioners and NMC employees to jointly deliver high quality health care depends significantly upon their ability to communicate well, collaborate effectively, and work as a team. I recognize that patients, family members, visitors, colleagues and NMC staff members must be treated in a dignified and respectful manner at all times.

POLICY

In keeping with the accepted standards of the health care profession as evidenced by the Hippocratic Oath, the Code of Ethics of the American Medical Association (AMA) and other professional societies, and the values of NMC, Practitioners are leaders in maintaining professional standards of behavior. In keeping with this responsibility to maintain professional standards of behavior at NMC, Practitioners:

1. Facilitate effective patient care by consistent, active, and cooperative participation as members of the NMC health care team.
2. Recognize the individual and independent responsibilities of all other members of the NMC health care team and their right to independently advocate on behalf of the patient.
3. Maintain respect for the dignity and sensitivities of patients and families, as well as colleagues, NMC employees, and all other health care professionals.
4. Participate in the Medical Staff quality assessment and peer review activities, and in organizational performance improvement activities.
5. Contribute to the overall educational mission of NMC.
6. Reflect positively upon the reputation of the health care profession, the Medical Staff, and NMC in their language, action, attitude, and behavior.

Behaviors of Practitioners which do not meet the professional behavior standards established in this Code of Conduct (Code) shall be referred to as Disruptive or Unprofessional Behavior.

Disruptive or Unprofessional Behavior by Practitioners exhibited on the premises of NMC, whether or not the Practitioner is on duty or functioning in his/her professional capacity, are subject to this Code.

EXAMPLES OF PROFESSIONAL BEHAVIOR

Practitioners are expected to exhibit professional behavior at NMC, consistent with this Code, as follows:

1. Be consistently available with cooperative and timely responsiveness to appropriate requests from physicians, nurses, and all other members of the NMC health care team in patient care and other professional responsibilities.
2. Provide for and communicate alternate coverage arrangements to assure the continuity and quality of care.
3. Demonstrate language, action, attitude and behavior which consistently convey to patients, families, colleagues, and all other members of the NMC health care team a sense of compassion and respect for human dignity.
4. Understand and accept individual cultural differences.
5. Maintain appropriate, timely, and legible medical record entries which enable all NMC professionals to understand and effectively participate in a cohesive plan of management to assure continuity, quality, and efficiency of care and effective post-discharge planning and follow-up.
6. Respect the right of patients, families or other designated surrogates to participate in an informed manner in decisions pertaining to patient care.
7. Treat patients and all persons functioning in any capacity within NMC with courtesy, respect, and human dignity.

EXAMPLES OF DISRUPTIVE OR UNPROFESSIONAL BEHAVIOR

Disruptive or Unprofessional Behavior, as characterized in this Code, includes but is not limited to:

1. Misappropriation or unauthorized removal or possession of NMC owned property.
2. Falsification of medical records, including timekeeping records and other NMC documents.
3. Working under the influence of alcohol or illegal drugs.
4. Working under the influence of prescription or over-the-counter medications when use of such medications significantly affects the practitioner's level of cognitive functioning.
5. Possession, distribution, purchase, sale, transfer, transport or use of illegal drugs in the workplace.

6. Possession of dangerous or unauthorized materials such as explosives, firearms, or other weapons in the workplace.
7. Writing derogatory and/or accusatory notes in the medical record which are not necessary for the provision of quality patient care services. Concerns regarding the performance of other Practitioners or NMC employees should be reported on a NMC Quality Review Report form and submitted pursuant to NMC policy and should not be entered into the patient's medical record.

8. Harassment

Harassment is verbal or physical contact that denigrates or shows hostility or aversion toward an individual based on race, religion, color, national origin, ancestry, age, disability, marital status, gender, sexual orientation, or any other basis protected by federal, state, or local law or ordinance, and that:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment, or;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance, or;
3. Otherwise adversely affects an individual's employment opportunity.

Harassing conduct includes, but is not limited to:

1. Epithets, slurs, negative stereotyping, threatening, intimidating, or hostile acts that relate to race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation.
 2. Written material or illustrations that denigrate or show hostility or aversion toward an individual or group because of race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation, and is placed on walls; bulletin boards, or elsewhere on NMC's premises or circulated in the workplace.
9. Physical behavior that is harassing, intimidating, or threatening, such as unwanted touching, obscene gestures or throwing of objects.
 10. Passive behaviors, such as refusing to perform assigned tasks or to answer questions, return phone calls, or pages.
 11. Language that is a reasonable adult would consider to be foul, abusive, degrading, demeaning, or threatening, such as crude comments, degrading jokes or comments, yelling or shouting at a person, or threatening violence or retribution.
 12. Single incident of egregious behavior, such as an assault or other criminal act.

13. Criticism of NMC staff in front of patients, families, or other staff.

PROCEDURE

1. Any person who functions in any capacity at NMC who observes Practitioner language, action, attitude, or behavior which may be unprofessional, harassing, or disruptive to the provision of quality patient care services should document the incident on a NMC Quality Review Report form.
2. Identified incidents involving Practitioners shall be reviewed pursuant to the current Road Map for Handling Reports of Disruptive or Unprofessional Behavior or the County Sexual Harassment Policy, as determined by the nature of the behavior and the person who exhibits it.

I acknowledge that I have received and read this Practitioner Code of Conduct. I acknowledge that hospitals are required to define and address disruptive and inappropriate conduct to comply with The Joint Commission standards for accreditation. I agree to adhere to the guidelines in this Code and conduct myself in a professional manner. I further understand that failure to behave in a professional fashion may result in disciplinary actions set forth in the RoadMap for Handling Reports of Disruptive or Unprofessional Behavior or as determined by the Medical Executive Committee pursuant to the Medical Staff Bylaws.

Signature: _____

Date: _____

Exhibit 1.19(a)

GROUP PHYSICIANS/GROUP PROVIDERS

[List Approved Group Physicians Below]

Group Physician	NPI Number
MARJORIE MCCRACKEN	1043327570
P. CHRISTINE NGUYEN	1154342871

Exhibit 1.19(f)

LETTER OF ACKNOWLEDGEMENT

NATIVIDAD MEDICAL CENTER
1441 Constitution Blvd., Bldg. 300
Salinas, California 93906

Ladies and Gentlemen:

I acknowledge that NATIVIDAD MEDICAL CENTER ("*Hospital*") and PEDIATRIC GASTROENTEROLOGY MEDICAL ASSOCIATES OF THE SANTA CLARA VALLEY ("*Contractor*") have entered into a Professional Services Agreement ("*Agreement*") under which Contractor shall perform specified Services (as defined in the Agreement), and that I have been engaged by Contractor to provide Professional Services as a "*Group Physician*" (as defined in the Agreement). In consideration of Hospital's approval of me as a Group Physician eligible to furnish the Services, I expressly:

1. Acknowledge that I have read the Agreement, and agree to abide by and comply with all of the requirements of the Agreement applicable to Group Physicians;
2. Acknowledge that I have read the Code, and agree to abide by and comply with the Code as they relate to my business relationship with Hospital or any Affiliates, subsidiaries, employees, agents, servants, officers, directors, contractors and suppliers of every kind;
3. Acknowledge that I have no employment, independent contractor or other contractual relationship with Hospital, that my right to practice at Hospital as a Group Physician is derived solely through my employment or contractual relationship with Contractor;
4. Acknowledge that upon the expiration or termination of the Agreement for any reason, or the termination of my employment or other affiliation with Contractor for any reason, my right to continue to provide Professional Services will each immediately be relinquished, without any action on the part of Hospital and/or the Medical Staff;
6. Acknowledge that, with regard to all of the foregoing, I will not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, unless Hospital determines that my removal, or the termination of my right to provide Professional Services, as applicable, is reportable to any state's medical board or other agency responsible for professional licensing, standards or behavior, and hereby waive any right to demand or otherwise initiate any such hearing or appellate review under any provision of the Medical Staff Bylaws.

Sincerely,

[Name of Group Physician]

Exhibit 2.1

COMPENSATION

1. **Professional Services.** Hospital shall pay to Contractor the amount of One Thousand Four Hundred (\$1,400.00) per eight (8) hour day for those Professional Services provided to Clinic Patients by Contractor under this Agreement; provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.

2. **Timing.** Hospital shall pay the compensation due for Services performed by Contractor after Contractor's submission of the monthly invoice of preceding month's activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is "30 days after receipt of the certified invoice in the Auditor-Controller's Office".

Exhibit 6.4

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“**Exhibit**”) supplements and is made a part of this Agreement by and between Hospital (“**Covered Entity**” or “**CE**”) and Contractor (“**Business Associate**” or “**BA**”).

- (A) Unless otherwise specified in this Exhibit, all capitalized terms used in this Exhibit shall have the meanings established for purposes of HIPAA or HITECH, as applicable. Specific statutory or regulatory citations used in this Exhibit shall mean such citations as amended and in effect from time to time.
1. “**Compliance Date**” shall mean, with respect to any applicable provision in this Exhibit, the later of the date by which compliance with such provision is required under HITECH and the effective date of this Agreement.
 2. “**Electronic Protected Health Information**” shall mean Protected Health Information that is transmitted or maintained in electronic media.
 3. “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d through 1320d-8, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
 4. “**HITECH**” shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
 5. “**Protected Health Information**” shall mean the term as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, the CE by BA pursuant to performance of the Services.
 6. “**Privacy Rule**” shall mean the federal privacy regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and E).
 7. “**Security Rule**” shall mean the federal security regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and C).
 8. “**Services**” shall mean the Professional Services, the Teaching Services and the Additional Services, collectively, as defined in the Agreement.

9. **“Unsecured Protected Health Information”** shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the regulations or guidance issued pursuant to 42 U.S.C. § 17932(h)(2).

(B) With regard to BA’s use and disclosure of Protected Health Information:

1. BA may use and disclose Protected Health Information as reasonably required or contemplated in connection with the performance of the Services, excluding the use or further disclosure of Protected Health Information in a manner that would violate the requirements of the Privacy Rule, if done by the CE. Notwithstanding the foregoing, BA may use and disclose Protected Health Information for the proper management and administration of BA as provided in 45 C.F.R. § 164.504(e)(4).
2. BA will not use or further disclose Protected Health Information other than as permitted or required by this Exhibit, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or as otherwise Required by Law.
3. BA will implement and use appropriate administrative, physical, and technical safeguards to (1) prevent use or disclosure of Protected Health Information other than as permitted or required by this Exhibit; (2) reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that BA creates, receives, maintains, or transmits on behalf of the CE; and (3) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.
4. BA will, without unreasonable delay, report to the CE (1) any use or disclosure of Protected Health Information not provided for by this Exhibit of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (2) any Security Incident affecting Electronic Protected Health Information of which BA becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).
5. BA will, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, notify the CE of any Breach of Unsecured Protected Health Information. The notification shall include, to the extent possible (and subsequently as the information becomes available), the identification of all individuals whose Unsecured Protected Health Information is reasonably believed by BA to have been Breached along with any other available information that is required to be included in the notification to the Individual, the Secretary, and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164 (Subparts A, D, and E), as of their respective Compliance Dates.

6. BA will ensure that any subcontractors or agents to whom BA provides Protected Health Information agree to the same restrictions and conditions that apply to BA with respect to such Protected Health Information. To the extent that BA provides Electronic Protected Health Information to a subcontractor or agent, it will require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information consistent with the requirements of this Exhibit.
7. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information in accordance with 45 C.F.R. § 164.524.
8. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will provide an electronic copy of such Protected Health Information in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.
9. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information for amendment and incorporate any amendments to such information as directed by the CE, all in accordance with 45 C.F.R. § 164.526.
10. BA will document and make available the information required to provide an accounting of disclosures of Protected Health Information, in accordance with 45 C.F.R. § 164.528.
11. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will make an accounting of disclosures of such Protected Health Information in accordance with the requirements for accounting of disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c), as of its Compliance Date.
12. BA will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining the CE's compliance with the Privacy Rule.
13. BA will, as of the Compliance Date of 42 U.S.C. § 17935(b), limit any request, use, or disclosure by BA of Protected Health Information, to the extent practicable, to the Limited Data Set of such Protected Health Information (as defined in 45 C.F.R. § 164.514(e)(2)), or, if the request, use, or disclosure by BA of Protected Health Information, not in a Limited Data Set, is necessary for BA's performance of the Services, BA will limit the amount of such Protected Health Information requested, used, or disclosed by BA to the minimum necessary to accomplish the intended purpose of such request, use, or disclosure, respectively; provided, however, that the requirements set forth above in this subsection (13) shall be superseded and replaced by the requirements of the "minimum

necessary” regulations or guidance to be issued by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)) on and after its Compliance Date.

14. BA will not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.
 15. BA will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.
 16. BA will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.
- (C) In addition to any other obligation set forth in this Agreement, including this Exhibit, the CE agrees that it will: (1) not make any disclosure of Protected Health Information to BA if such disclosure would violate HIPAA, HITECH, or any applicable federal or state law or regulation; (2) not request BA to use or make any disclosure of Protected Health Information in any manner that would not be permissible under HIPAA, HITECH, or any applicable federal or state law or regulation if such use or disclosure were done by the CE; and (3) limit any disclosure of Protected Health Information to BA, to the extent practicable, to the Limited Data Set of such Protected Health Information, or, if the disclosure of Protected Health Information that is not in a Limited Data Set is necessary for BA’s performance of the Services, to limit the disclosure of such Protected Health Information to the minimum necessary to accomplish the intended purpose of such disclosure, provided, however, that the requirements set forth above in this part (3) shall be superseded and replaced by the requirements of the “minimum necessary” regulations or guidance to be issued by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)) on and after its Compliance Date.
- (D) If either the CE or BA knows of either a violation of a material term of this Exhibit by the other party or a pattern of activity or practice of the other party that constitutes a material breach or violation of this Exhibit, the non-breaching party will provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. In the event that the breaching party does not cure the breach or end the violation on or before thirty (30) days after receipt of the written notice, the non-breaching party may do the following:
- (i) if feasible, terminate this Agreement; or
 - (ii) if termination of this Agreement is infeasible, report the issue to the Secretary.
- (E) BA will, at termination of this Agreement, if feasible, return or destroy all Protected Health Information that BA still maintains in any form and retain no copies of Protected Health Information or, if such return or destruction is not feasible (such as in the event that the retention of Protected Health Information is required for archival purposes to

evidence the Services), BA may retain such Protected Health Information and shall thereupon extend the protections of this Exhibit to such Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible.

- (F) Any other provision of this Agreement that is directly contradictory to one or more terms of this Exhibit shall be superseded by the terms of this Exhibit to the extent and only to the extent of the contradiction and only for the purpose of the CE's and BA's compliance with HIPAA and HITECH. The terms of this Exhibit, to the extent they are unclear, shall be construed to allow for compliance by the CE and BA with HIPAA and HITECH.
- (G) **Indemnification.** Each party, CE and BA, will indemnify, hold harmless and defend the other party to this Exhibit from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, active or passive negligence, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Exhibit; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the party's performance under this Exhibit.

Nothing contained in this Exhibit is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third party beneficiary under or by reason of this Exhibit.

Hospital

Signature: _____

Date: _____

Contractor

Signature: _____

Date: _____

Signature: _____

Date: _____