

EQUIPS IMPLEMENTATION AGREEMENT

THIS EQUIPS IMPLEMENTATION AGREEMENT ("Agreement") is made and entered into by and between the Society of Hospital Medicine, a Pennsylvania nonprofit corporation (herein "SHM") and the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (herein, the "Hospital").

WHEREAS, SHM has created a proprietary solution known as Glycemic Control (GC) eQUIPS (electronic Quality Improvement Programs) to provide Hospital with the resources and data analysis tools necessary to implement a quality intervention related to the management of care inpatients with hyperglycemic and hypoglycemia; and

WHEREAS, Hospital is committed to quality improvement, improved patient safety, the achievement of excellence and has internal leadership interested in achieving improved GC goals; and

WHEREAS, Hospital desires to engage SHM to provide a resource for facilitation and guidance of improved GC interventions through implementation of the GC eQUIPS program in its institution and SHM desires to facilitate the implementation of the GC eQUIPS program in Hospital pursuant to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Deliverables.** SHM agrees to provide for the benefit of Hospital those deliverables set forth on Exhibit A hereto (the "Deliverables") relating to the implementation of GC eQUIPS at Hospital. SHM agrees to provide the Deliverables by and through employees of SHM and through independent contractors who have written agreements with SHM to protect the confidentiality of the Confidential Information (as defined herein) of Hospital. For purposes of this Agreement, SHM's employees and independent contractors shall herein be referred to as the "SHM's Representatives," and Hospital's employees and independent contractors shall be referred to herein as the "Hospital's Representatives." SHM's data center reporting capabilities are as is. Should Hospital desire new or additional data center capabilities, Hospital agrees it will be responsible for

all costs associated with building desired capabilities. At the request of Hospital, SHM will provide a separate addendum to this Agreement that will include details and pricing for new or additional reporting capabilities.

2. **Consideration.** As consideration for the Deliverables, Hospital agrees to compensate SHM in the amount and at the times set forth on Exhibit A hereto.

3. **Term of Agreement.** The term of this Agreement shall commence on June 9, 2020 and shall continue for a period of two (2) years, provided, however, that Hospital may terminate this Agreement at any time by giving SHM thirty (30) days prior written notice. In the event that this Agreement is terminated by Hospital, a prorated refund shall be due to Hospital. Any change in pricing for a renewal term will be made available no less than sixty (60) days in advance of the commencement of the renewal term. If this Agreement is terminated by Hospital during a term of this Agreement, a prorated refund shall be due Hospital.

4. **Independent Contractor Status.** The relationship of SHM to Hospital is that of an independent contractor, and nothing herein shall be construed or deemed as creating any other relationship. As an independent contractor, SHM shall have the sole responsibility for paying taxes, workers compensation, and employee benefits (if any) and any other obligations to SHM's Representatives and will deliver the Deliverables in the way that SHM deems most feasible or desirable.

5. **Limited Warranties, Remedies and Damages.**

13.1 SHM warrants that the Deliverables will be provided with the professional skill and care provided in the industry generally and that the Deliverables will meet any written specifications set forth on Exhibit A. SHM and SHM's Representatives do not provide medical advice, or diagnose or treat any Hospital patients, but rather provide a systematic solution to assist Hospital to effectively achieve goals associated with GC. SHM warrants that SHM and SHM's Representatives have never been excluded, debarred or suspended or otherwise ineligible to participate in any state or federal governmental program (collectively, "Governmental Programs"), are not the subject of any investigation regarding

participation in any Governmental Programs and have not been convicted of any crime relating to any Governmental Programs. SHM agrees to notify Hospital immediately if SHM becomes aware of any adverse action related to the eligibility of SHM or any SHM Representatives to participate in Governmental Programs.

13.2 In the event that the Deliverables are found not to comply with the warranty above, and that notice with respect to such defect has been given to SHM within ninety (90) days after delivery of the Deliverables, SHM's sole obligation and Hospital's exclusive remedy is to promptly redeliver such Deliverables. Should any defect in Deliverables not be cured in a prompt manner, SHM shall refund to Hospital all unearned fees on a prorate basis. THE WARRANTIES STATED IN THIS AGREEMENT ARE LIMITED AND ARE THE ONLY WARRANTIES MADE BY SHM. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

13.3 NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER FOR CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OF PROFITS OR BUSINESS OPPORTUNITIES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE LIMITS OF THE INSURANCE AS STATED HEREIN.

6. Confidential and Proprietary Information.

13.1 The parties acknowledge and agree that in connection with the provision of the Deliverables, either party may be provided with or otherwise be exposed to or receive certain confidential and proprietary information (in such capacity, a "Receiving Party") of the other party (in such capacity, a "Disclosing Party"). Such confidential and proprietary information may include information concerning the methods or processes used by the Disclosing Party in its operations or used by the Disclosing Party to develop certain products and services, trade secrets of the Disclosing Party and other information that the Disclosing Party keeps

confidential or is contractually required to keep confidential pursuant to agreements between the Disclosing Party and third parties (all of the foregoing shall be deemed "Confidential Information" for purposes of this Agreement).

13.2 The parties hereby agree that any and all Confidential Information disclosed to a Receiving Party hereunder or obtained by a Receiving Party hereunder as a result of the Deliverables shall be the exclusive property of the Disclosing Party and the Receiving Party shall not in any way reveal, disclose or use Confidential Information other than with respect to the Deliverables.

13.3 The term "Confidential Information" does not include information or documentation which (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party contrary to the terms of this Agreement, (ii) was available on a non-confidential basis prior to its disclosure to the Receiving Party, or (iii) becomes available on a non-confidential basis from a source other than the Disclosing Party, provided such source is not contractually or otherwise obligated to keep such information confidential.

13.4 When this Agreement expires or terminates, SHM shall return to Hospital any Hospital records which SHM used or received from Hospital to perform services under this Agreement.

7. **Privacy of Patient Information.** Hospital covenants and agrees not to disclose to SHM or any of SHM's Representatives any "Protected Health Information" as that term is defined in the Health Insurance Portability and Accountability Act and accompanying regulations ("HIPAA"). Hospital covenants and agrees to disclose to SHM and SHM's Representatives certain de-identified data, as that term is defined in HIPAA, to enable SHM to provide the Deliverables, including, but not limited to, the assessment and benchmarking of Hospital's performance following the completion of the GC eQUIPS program. Any such de-identified data disclosed by Hospital shall be considered Confidential Information of Hospital.

8. **Ownership, License.** Hospital acknowledges and agrees that the copyright rights in and to Deliverables are owned by SHM. Hospital and Hospital's Representatives shall not remove any copyright, trademark, or service mark notices or any other indication of SHM's rights in and to the Deliverables. SHM hereby grants to Hospital a

limited, non-exclusive, non-transferable, royalty free license in and to the Deliverables solely for Hospital's internal use.

9. **Infringement Indemnification.** SHM agrees to indemnify, defend and hold harmless Hospital and Hospital's Representatives from and against any third party claims and actions based upon or arising out of the infringement or alleged infringement of any copyrights, trademarks or any other similar intellectual property right or interest with respect to any information, material or document, or part thereof, in whatever media (hard copy and electronic or other media), provided by SHM hereunder in connection with the Deliverables. Hospital agrees to give SHM prompt written notice of any such infringement claim or action and sole control of the defense or settlement of such claim or action. SHM shall have the right to resolve any such claim or action (i) by modifying any allegedly infringing material or document to make it non-infringing, (ii) by procuring a license for the same at the expense of SHM, or, (iii) if either such option is not feasible, to terminate this Agreement and the license to use such Deliverables.

10. **Non-Solicitation.** During the term hereof, each party agrees to refrain from any attempt to employ, solicit, take away or induce any representatives of the other party to leave his or her employment or engagement with the other party at any time during the term hereof or for twelve months after the provision of Deliverables. Each party shall cause its representatives to comply with the foregoing covenant and shall be responsible for any breach thereof by such party's representatives. A general solicitation of employees (through, for example advertisements in newspapers, magazines or trade journals) will not be a violation of this provision nor will a party's hiring an employee of the other party who responds to such a general solicitation by a violation of this provision.

11. **Severability and Survival.** In the event any provision of this Agreement shall be determined to be invalid, the remainder of this Agreement shall continue in full force and effect. The duties and obligations of the parties set forth herein with respect to the Confidential Information, and the provisions of Paragraph 7, 8, 9, and 10 shall survive delivery of the Deliverables and the termination of this Agreement for any reason.

12. **Notices.** Any notices or other communications required or permitted hereunder shall be made in writing and delivered by a nationally-

recognized overnight express delivery (postage pre-paid), or certified mail (postage pre-paid with return receipt requested), addressed to the applicable party at the address on the signature line below.

13. **Applicable Law.** The terms and conditions of this Agreement and all aspects of SHM's relationship with Hospital shall be construed and enforced according to the laws of the State of California, without regard to California conflicts of laws principles.

14. **Entire Agreement; Amendments.** There are no representations, agreements, arrangements, oral or written, as to the Deliverables that are not fully expressed herein and in Exhibit A hereto. This Agreement may not be amended except in a writing signed by the parties.

15. Payments by Hospital. SHM shall submit to the HOSPITAL an invoice on a form acceptable to HOSPITAL. If not otherwise specified, SHM may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by SHM for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as HOSPITAL approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

16. **Insurance.**

16.1 Evidence of Coverage:

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

This verification of coverage shall be sent to HOSPITAL's Contracts/Purchasing Department, unless otherwise directed. The SHM 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 SHM.

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

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

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

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

Exemption/Modification (Justification attached; subject to approval)

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

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and

the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Exemption/Modification (Justification attached as Exhibit B; subject to approval)

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

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

Exemption/Modification (Justification attached; subject to approval)

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

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

Exemption/Modification (Justification attached; subject to approval)

17 Other Insurance Requirements:

17.1 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 of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date SHM completes its performance of services under this Agreement.

17.2 Each liability policy shall provide that HOSPITAL shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for SHM 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.

17.3 **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the SHM'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 SHM's insurance.**

17.4 Prior to the execution of this Agreement by HOSPITAL, SHM shall file certificates of insurance with HOSPITAL's Contracts/Purchasing Department,

showing that SHM has in effect the insurance required by this Agreement. SHM shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

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

18. **Assignment and Subcontracting.** SHM shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of Hospital. None of the services covered by this Agreement shall be subcontracted without the prior written approval of Hospital. Notwithstanding any such subcontract, SHM shall continue to be liable for the performance of all requirements of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized representatives of the parties, intending to be legally bound, as of the effective date set forth below.

SOCIETY OF HOSPITAL MEDICINE HOSPITAL

By: Josh Boswell

Title: General Counsel

Society of Hospital Medicine
Attention: Josh Boswell
1500 Spring Garden Street, Suite 501
Philadelphia, PA 19130

COUNTY OF MONTEREY

By: _____

Title: _____

Natividad Medical Center
1441 Constitution Blvd
Salinas, CA 93912
Attn: Contracts Unit

Approved as to fiscal provisions



4/22/2020
Assistant Auditor-Controller

Approved as to form. 4/21/2020



Deputy County Counsel

EXHIBIT A

“Deliverables” referenced below for purposes of the EQUIPS IMPLEMENTATION AGREEMENT (“Agreement”) by and between Hospital and SHM, as those terms are defined in the Agreement, shall mean the following:

DELIVERABLES

SHM shall provide the following deliverables to Hospital through the Glycemic Control eQUIPS program:

- Two years of access to the Data Center, maintained by Data Center (a HIPAA compliant vendor), for purposes of data analysis, performance tracking, and benchmarking performance metrics against other participating hospitals.;
- Access to a secured community website, virtual workspace, and discussion forum, allowing sharing of ideas, documents and other resources with other GC eQUIPS participating hospitals;
- Provision of up to five usernames for Hospital access to the data center and secured community website (Hospital will provide name and contact information for Hospital’s GC eQUIPS users at SHM within thirty days of the Effective Date);
- Educational resources, including a virtual library dedicated solely to glycemic control, glycemic control implementation guide, and updated literature reviews; and
- Access to on-demand webinars facilitated by national experts.

CONSIDERATION FOR DELIVERABLES

Upon execution of the Agreement by the parties, Hospital agrees to pay SHM a total fee not to exceed \$7,500 (\$5,000 for the first year and \$2,500 for the second year).

EXHIBIT B

Justification for Exemption to Auto Insurance Requirements

Both Hospital and SMH agree that because there is no driving associated with providing the services as per this Agreement and its Scope of Services, SMH is not required to comply with the auto insurance requirements as stated herein.

Should the scope of services change at any time during the term of this Agreement, this exemption may be revoked