Enrollware

Software Services Agreement

This Software Services Agreement ("Agreement") is entered into by and between Enrollware Software, LLC ("Enrollware") a Delaware limited liability company, and the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital ("Customer"), (each, a "Party" and, collectively, the "Parties").

The Parties hereto agree to the following:

1. Contract Period

The initial term of this Agreement will commence on August 1, 2021 ("Effective Date") and, unless terminated earlier in accordance herewith, will continue for one (1) year. Either Party may terminate this Agreement for any reason upon thirty (30) days prior written notice to the other Party.

2. Billing and Payment

(a) Payments are due in advance, upon receipt of invoice from Enrollware according to the following:

Annual Fees: $2988.00

Optional Fees:

One-time custom schedule and registration page skins: $250.00

Text Messaging: $30 / month for the first 1000 message segments. $15 / month for each additional 1000 message segments. One text message segment equals 160 characters.

Payment Terms: All invoices are due net thirty (30) days from receipt of a certified invoice by the County of Monterey Auditor-Controller.

(c) There are no limits on system usage including the number of classes, students, instructors, administrators, or training sites.

(d) Customer agrees to pay any sales, uses, excise, value added and other taxes or duties and any other taxes arising out of the Agreement, excluding taxes based on Enrollware's net income. The charges listed in this Section 2 at the time of Agreement execution are not taxable. Subsequent executed amendments hereto shall not include any applicable sales, use, person property, excise, or other similar taxes. The amount of any applicable sales, use, personal property, or other similar tax applicable to such future licenses or purchases made via addendum to this Agreement shall be paid directly by Customer or shall be paid to Enrollware on receipt of invoice therefore.

3. Representations and Warranties

(a) General. Each Party represents and warrants that it has the right and authority to enter into this Agreement, and that by entering into this Agreement, it will not violate, conflict with or cause a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien or encumbrance to which it is a party or by which it or any of its property is or may become subject or bound.

(b) Compliance with the Laws. Each Party represents and warrants that no consent, approval or authorization of or designation, declaration or filing with any governmental authority is required in connection with the valid execution, delivery, and performance of this Agreement. Each Party shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to it and this Agreement, including copyright, privacy and communications decency laws.

(c) Infringement. Enrollware shall indemnify defend, and hold harmless Customer, including its employees, agents, subsidiaries, affiliates, and its directors, officers, members, shareholders and owners, from and against all losses, liabilities, judgments, awards, settlements, damages, fines, injuries, penalties and costs (including reasonable legal fees and expenses) from any third party claim, suit or proceeding brought against Customer based on a claim that Enrollware's software and/or services infringe or violate any United States copyright, trade secret, trade dress, trademark, patent or any other intellectual property right. Customer must: (i) promptly give Enrollware written notice of any such third party claim; and (ii) permit Enrollware to control, and cooperate with Enrollware, at Enrollware's expense, in the defense and settlement of any such claim. Furthermore, if in Enrollware's opinion, a claim is likely, Enrollware may, in its sole discretion, (i) obtain the right for Customer to continue to use the software and/or service; (ii) substitute other software and/or services with similar capabilities; (iii) modify the Software and/or service so that it is no longer infringing; or (iv) if in Enrollware's opinion, none of the above options are commercially practicable, Enrollware may terminate this Agreement and refund any unused pre-paid fees paid for the Software and/or services. Enrollware shall not be responsible for any claim of infringement that arises from: (i) unauthorized modifications to the Software and/or services; (ii) use of the Software and/or services in a manner or in combination with products not provided or approved in writing by Enrollware; or (iii) any use of the Software and/or services not in accordance with this Agreement or the applicable documentation.

(d) PCI Compliance. Enrollware has achieved and will maintain PCI DSS Service Provider compliance against the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website. Upon written request, Enrollware will provide a current attestation of compliance.

(e) Data Security.   Enrollware will use reasonable precautions, including but not limited to, physical, software, and network security measures, employee screening, training, supervision and appropriate agreements with employees, to prevent anyone other than Customer or its authorized employees from monitoring, using, gaining access to Customer's data; protect appropriate copies of Customer's data from loss, corruption or unauthorized alteration; and prevent the disclosure of Customer's access control information to anyone other than authorized Customer's employees.

DISCLAIMER. THE WARRANTIES SET FORTH IN THIS SECTION 3 ARE THE ONLY WARRANTIES MADE BY ENROLLWARE. ENROLLWARE MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR SOFTWARE. ENROLLWARE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR PERFORMANCE.

4. Limitation of Liability

IN NO EVENT WILL ENROLLWARE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES OR SOFTWARE, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, FAILURE OF PERFORMANCE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO ENROLLWARE'S RECORDS, PROGRAMS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENROLLWARE'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY DAMAGES INCURRED BY CUSTOMER FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER LIABILITY IN CONTRACT OR IN TORT, ARISING FROM THE SERVICES FURNISHED HEREUNDER OR FROM ANY CAUSE RELATED THERETO, WILL NOT EXCEED THE AGGREGATE LIMITS OF THE INSURANCE AS SET FORTH HEREIN.

5. **Confidential Information**

(a) Definition. For purposes of this Agreement "Confidential Information" shall mean information including, without limitation, data, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and information marked "Confidential", or if disclosed verbally, is identified as confidential at the time of disclosure. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving Party; (ii) was rightfully known or becomes rightfully known to the receiving Party from a source other than the disclosing Party; (iii) is independently developed by the receiving Party; (iv) is approved by the disclosing Party for disclosure; and (v) the receiving Party is legally compelled to disclose; provided, however, that prior to any such compelled disclosure, the receiving Party will cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving Party will be entitled to disclose the Confidential Information, but only as, and to the extent, necessary to legally comply with such compelled disclosure. Confidential Information of Enrollware does not include information that is or becomes publicly known or available as a result of Customer's proper compliance with the California Public Records Act.

(b) Nondisclosure. During the term of this Agreement and for a period of two (2) years thereafter, each Party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information, but in no event using less than reasonable care, and to use such

Confidential Information only as permitted under this Agreement; each Party agrees to only disclose the other Party's Confidential Information to its employees: (a) with a need to know for permitted uses of such information; and (b) who are informed of the nondisclosure/ non-use obligations imposed by this Section 5.

6. Customer Responsibility

(a) Customer is solely responsible for the content of any postings, data, or transmissions using the Services, or any other use of the Services by Customer or by any person or entity Customer permits to access the Services. Customer shall defend indemnify and hold harmless Enrollware from and against all liabilities and costs arising from any and all third-party claims by any person based upon the content of any such communications.

(b) Customer is responsible for the security of their data. Enrollware will not be liable for the disclosure, monitoring, loss, alteration or corruption of Customer data to the extent it results from Customer's failure to implement reasonable security measures to protect against the unauthorized use of facilities, computers, network access devices and passwords.

(c) Customer represents and warrants that it will: (a) not use the Services in a manner that: (i) is prohibited by any law or regulation, or to facilitate the violation of any law or regulation; or (ii) will disrupt a third party's use of the Services; (b) not violate or tamper with the security of any Enrollware computer equipment or program. If Enrollware has reasonable grounds to believe that Customer is utilizing the Services for any illegal or disruptive purpose, Enrollware may suspend the Services immediately with or without notice to Customer.

(d) Customer may not resell the Services.

(e) Customer shall implement security procedures necessary to limit access of the Services to Customer's authorized users.

7. Customer Data

(a) All data is owned by Customer and is to be strictly held as confidential. Enrollware will delete and destroy all copies of data once the Agreement is terminated after giving Customer thirty (30) days time to export the data into Customer's possession. Customer has the option to receive a backup of data at any time via the system's data export facility.

(b) All right, title and interest in and to the Software and Services, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating thereto, belong exclusively to Enrollware or their respective owners.

8. Service Performance

Enrollware will use its best efforts to provide one hundred percent system availability. Customer understands that service outages will occur from time to time and the associated resolutions may not be under the direct control of Enrollware.

9. Termination

Either Party may terminate this Agreement for any reason upon thirty (30) days prior written notice to the other Party. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

10. General Provisions & Force Majeure

(a) This Agreement, including any amendments and attachments hereto constitute the entire agreement between the Parties. The terms and conditions of this Agreement may not be altered, amended, or modified except in writing signed by each Party.

No provision of any purchase order or other document issued by Customer, which purports to alter, vary, modify or add to the provisions of this Agreement, shall be binding upon Enrollware or effective for any purpose, unless accepted by Enrollware in writing.

It is further expressly understood and agreed that, there being no expectations to the contrary between the Parties, no usage of trade or other regular practice or method of dealing either within the computer software industry, Enrollware's industry or between the Parties shall be used to modify, interpret, supplement, or alter in any manner the express terms and conditions of this Agreement.

(b) Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the Parties, nor shall either Party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other.

(c) This Agreement may not be assigned, sublicensed or transferred, in whole or in part, by either party without the prior written consent from the other party. Any attempted assignment, subletting or transfer shall be void.

(d) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(e) No delay or failure of Enrollware or Customer in exercising any right herein and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights herein. Any waiver by Enrollware or Customer of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

(f) In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, terrorism, fire, explosion, power blackout,

earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of god, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected Party or other causes beyond such Party's reasonable control (a "Force Majeure Event") the Party who has been so affected shall immediately give notice to the other Party and shall diligently work to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds seven (7) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may by giving written notice immediately terminate this Agreement.

(g) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument.

(h) Choice of Law and Jury Trial Waiver. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. In case of any dispute related to this Agreement, the Parties agree to submit to personal jurisdiction in the State of California. Furthermore, the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of California for purposes of any suit, action or other proceeding arising out of this Agreement. THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THE TERMS, OBLIGATIONS AND/OR PERFORMANCE OF THIS AGREEMENT.

11. Insurance.

11.1 Evidence of Coverage:

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

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

11.2. 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 CUSTOMER's Contracts/Purchasing Director.

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

11.4. 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 Subcontractors, 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)

11.5. 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; subject to approval)

11.6. Workers' Compensation Insurance, If Enrollware 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)

11.7. 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, Enrollware 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)

11.8. Other Insurance Requirements:

11.9. All insurance required by this Agreement shall be with a company acceptable to CUSTOMER and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Enrollware completes its performance of services under this Agreement.

11.10. Each liability policy shall provide that CUSTOMER 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 Enrollware 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.

11.11. 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 Enrollware'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 Enrollware's insurance.

11.12. Prior to the execution of this Agreement by CUSTOMER, Enrollware shall file certificates of insurance with CUSTOMER's Contracts/Purchasing Department, showing that Enrollware has in effect the insurance required by this Agreement. Enrollware 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.

11.13. Enrollware shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by CUSTOMER, annual certificates to CUSTOMER's Contracts/Purchasing Department. If the certificate is not received by the expiration date, CUSTOMER shall notify Enrollware and Enrollware shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Enrollware to maintain such insurance is a default of this Agreement, which entitles CUSTOMER, at its sole discretion, to terminate the Agreement immediately.

12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to Customer and Enrollware's contract administrators at the addresses listed below.

CUSTOMER   :   ENROLLWARE:

Natividad Medical Center   Enrollware Software, Inc.
Attn: Contracts Division   Attn: Contracts Administration
Natividad Medical Center   540 Deval Drive, Suite 301
1441Constitution Blvd   Auburn, AL 36832
Salinas, CA. 93906
FAX: 831-757-2592

13. <u>MUTUAL INDEMNIFICATION.</u>

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

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

<div align="center">SIGNATURES ON FOLLOWING PAGE.</div>

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Customer:

Name:_____   Title: _____

Signature:_____   Date:_____

Enrollware Software, LLC:

Name: Steven Johnson _____   Title: President _____

Signature: _____[signature]_____   Date: 5/5/2021 _____

Reviewed and approved as to form.

[signature]

Deputy County Counsel
5/18/2021

Reviewed and approved as to fiscal provisions

[signature] Joey Nolasco

Property Tax Manager
5/19/2021