

HOSPITAL PARTICIPATION AGREEMENT

NAME OF HOSPITAL: Natividad Medical Center
HOSPITAL FEIN/TAX ID: 94-6000524
HOSPITAL ADDRESS: 1441 Constitution Boulevard
Salinas, CA 93906

This Hospital Participation Agreement (“Agreement”) is effective as of the date signed by both parties (“Effective Date”) between Natividad Medical Center (“Hospital”) and the American College of Surgeons (“ACS”) and shall continue through the end of the “Participation Period” as defined in Section 1 below.

WHEREAS, Hospital desires to participate in the ACS National Surgical Quality Improvement Program (“ACS NSQIP”) and ACS desires to receive data from Hospital for inclusion in the ACS NSQIP.

1. Participation Period. The “Participation Period” shall begin on and will continue for the length of time described on Exhibit A, attached to and made a part of this Agreement.
2. Options. The ACS NSQIP has established participation levels (the “Option(s)”), each of which has associated data contribution requirements and fees. Hospital has chosen, and ACS has confirmed, the Option indicated on Exhibit A (“Hospital’s Option”). Hospital will continue participation in the chosen Option through the Participation Period unless ACS and Hospital mutually agree in writing to change the Hospital’s Option and amend this Agreement accordingly. ACS will consider the timing of data reporting cycles to determine when participating hospitals will have an opportunity to select a different Option.
3. Contribution of Data. Hospital agrees to contribute certain data (the “ACS NSQIP Data”) to a proprietary database established by the ACS (the “ACS NSQIP Database”). Hospital must submit its ACS NSQIP Data in accordance with the data reliability standards established by ACS NSQIP. Hospital agrees to contribute a set number of cases based on the minimum data contribution requirements for Hospital’s Option as established by ACS NSQIP and generally described on Exhibit B. Hospital will submit data in the format as required by ACS NSQIP via the official ACS NSQIP web-based data collection system (“Workstation”) with standardized fields as developed by ACS and/or ACS authorized vendor(s). Hospital agrees to use an ACS authorized vendor and ACS will not be required to accept data from any other vendor. Hospital shall retain ownership of the data it submits to the ACS NSQIP and, subject to the terms and conditions set forth herein, hereby grants to ACS a non-exclusive, perpetual, irrevocable license to utilize the ACS NSQIP Data contributed to the ACS NSQIP and to share it with other participants for purposes of quality improvement/benchmarking in the area of health care, or for related research purposes in the area of health care (as further described in the Business Associate and Data Use Agreement executed by the parties).

4. Fees. Hospital agrees to pay to ACS an annual fee for participation in the ACS NSQIP for the Participation Period described on Exhibit A. Hospital shall pay additional fees as described in Section 10, Data Collectors, and Section 12, Audits, as applicable.
5. Payment. Hospital will pay the annual fee for participation for each year of the Participation Period, in advance. ACS will provide Hospital with an invoice for the first year of the Participation Period upon receipt of a fully executed Agreement. Thereafter, ACS will provide an invoice thirty (30) days prior to the anniversary date of the Participation Period. Payment is due upon receipt.
6. Services Provided to Hospital. ACS will provide to Hospital the services described on Exhibit C.
7. Hospital Requirements. Hospital will continuously comply with the participation requirements described on Exhibit D and subject to change from time to time.
8. Access to and Use of Data. Hospital will have continuous access to Hospital's own ACS NSQIP Data. Hospital will also have continuous access to cumulative non-risk-adjusted ACS NSQIP Data of all contributors, in a manner that does not identify or permit identification of the contributors, and presented for the purpose of comparison to national averages and peer groups. Notwithstanding the ownership rights of contributing hospitals to the data submitted to the ACS NSQIP, ACS owns all right, title, and interest in the ACS NSQIP Database and the aggregated data contained therein. ACS hereby grants to Hospital a limited, non-exclusive, revocable license to utilize these non-risk-adjusted ACS NSQIP Data for appropriate internal purposes only. ACS NSQIP will provide reports to Hospital from time to time, which will contain risk-adjusted ACS NSQIP Data. ACS hereby grants Hospital a non-exclusive license to use the risk-adjusted data for appropriate internal and external purposes.
9. Confidentiality of Hospital's Identity. ACS will not release Hospital's ACS NSQIP Data in any format or circumstance that identifies Hospital or its medical or professional staff or employees as the contributor of its specific data, except to the Hospital, as required by legal process, or as specifically authorized by Hospital. If any legal demand for Hospital's ACS NSQIP Data is made upon ACS, ACS will promptly notify Hospital so that Hospital may, at its option, challenge the validity of the legal process. The provisions of this section shall survive any termination or expiration of this Agreement.
10. Data Collectors. Hospital agrees to dedicate the required number of data collectors as determined by Hospital's surgical volume. Replacement and backup SCRs and additional staff may participate in the SCR training for a fee of \$2,500 per individual trained.
11. Access to Workstation. Hospital acknowledges and agrees that it is responsible for controlling access to Hospital's own data and Hospital's Workstation at all times. Hospital will provide ACS NSQIP with a current and up to date list of authorized Hospital users with a need to access the Workstation. Hospital agrees to promptly notify ACS NSQIP of any changes to its list of authorized users, including additions and deletions to the list of authorized users.
12. Audits. In order to monitor the quality of the data entered into the ACS NSQIP system, Hospital agrees that ACS or its agents may from time to time conduct audits of Hospital's data and collection procedures. ACS will provide at least ten (10) business days notice of an audit. To the extent medical records are needed to conduct the audit, ACS request and Hospital will provide only the minimum necessary portions of the record needed for the audit. Additional

audits may be required by ACS NSQIP or requested by Hospital for an additional fee of \$3,500 per audit.

13. Hospital's Confidential Business Information. ACS will take reasonable steps to protect the confidentiality of non-patient information concerning Hospital that it receives or generates in connection with this Agreement and that Hospital designates as confidential. ACS will use such information solely to carry out this Agreement and will not disclose such information without Hospital's prior written approval or as required by law. Notwithstanding the foregoing, ACS may disclose the names and contact information of Hospital's Surgeon Champion and Surgical Clinical Reviewers to other NSQIP participants. The provisions of this section shall survive any termination or expiration of this Agreement.

14. Use of Name. Neither ACS nor Hospital shall use the name or logo of the other party or of any of its affiliates, or any variation or acronym thereof, without the prior written consent of the other party, except that ACS may include the name of Hospital in lists of participants in the ACS NSQIP, and Hospital may state that Hospital participates in the ACS NSQIP.

15. Termination. ACS reserves the right to terminate this Agreement upon thirty (30) days prior written notice to Hospital, if Hospital materially fails to fulfill the terms of the Agreement or materially violates its conditions, in which case ACS will not refund fees and Hospital will be obligated to pay all fees for the then-current Participation Period. Hospital may terminate this Agreement at any time, provided that Hospital will be obligated to pay all fees applicable for the then-current Participation Period. ACS may also terminate this Agreement prior to the end of a Participation Period if ACS suspends data collection under the ACS NSQIP or Hospital's Option, in which case ACS will refund to Hospital the pro rata portion of fees paid by Hospital for the unfulfilled portion of the then-current Participation Period. This agreement shall automatically terminate upon the termination of the Business Associate and Data Use Agreement.

16. Effect of Termination on Provision of Data to ACS. The parties acknowledge and agree that the provision of any protected health information ("PHI") to ACS in accordance with this Agreement is conditioned upon this Agreement and the Business Associate and Data Use Agreement being in full force and effect. Therefore, upon termination of this Agreement or the Business and Data Use Agreement, the parties agree that Hospital will refrain from submitting PHI to ACS, and ACS will refrain from accepting PHI from Hospital.

17. Force Majeure. Neither party shall be liable for failure to meet any requirements of this Agreement, and this Agreement may not be terminated for such cause, if such failure is due to electrical outage, strike, natural disaster or other event beyond the control of the party, which makes performance impossible or impractical.

18. No Warranty; Limitation of Liability.

- a. Disclaimer of Warranty. To the maximum extent permitted by applicable law, ACS NSQIP and the services provided by ACS hereunder ("ACS NSQIP Materials") are provided "as is" with all faults, and ACS disclaims any and all express or implied representations and warranties with respect to the ACS NSQIP Materials, including any express or implied warranty of merchantability, fitness for a particular purpose, accuracy, non-infringement, or that the ACS NSQIP materials will operate error free, uninterrupted or be free of viruses. The entire

risk as to the selection, satisfaction quality and performance and use of ACS NSQIP materials shall be with hospital.

- b. Limitation of Liability. To the maximum extent permitted by applicable law, in no event shall ACS be liable for any indirect, special, incidental, consequential, punitive, or exemplary damages (including damages related to delays, loss of data, interruption of service or loss of use, business, revenue, or profits) in connection with this agreement, use or inability to use the ACS NSQIP Materials, under any legal theory, even if ACS has been advised of the possibility of such damages. Except as provided in the Business Associate and Data Use Agreement, in no event shall ACS be liable for any third party claim. Liability for damages shall be limited and/or excluded as provided in this agreement, even if any exclusive remedy provided for in this Agreement fails of its essential purpose.

19. Miscellaneous.

- a. Amendment. Any amendment to this Agreement must be in writing and signed by both of the parties.
- b. Assignment. Except as otherwise provided herein, neither party may without the written consent of the other assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement.
- c. Severability. If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature, or by any regulation issued by the United States or a State, or declared null and void by any court with valid jurisdiction, then the parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.
- d. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the parties, whether oral or in writing, concerning its subject matter.
- e. Jurisdiction. This Agreement is governed by the laws of the State of Illinois and venue for resolution of any disputes shall reside in the Federal or State courts in Cook County, Illinois.
- f. Third Party Beneficiaries. ACS and Hospital agree that Individuals whose PHI is used or disclosed to ACS or its agents or subcontractors under this Agreement are not third-party beneficiaries of this Agreement.
- g. Waiver. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- h. Relationship of the Parties. The parties are independent contractors of each other. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.

- i. Authority. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the party he or she represents, and that this Agreement will be binding on such party, and its officers, directors, agents, and employees.
- j. Notices. Any notices required pursuant to this Agreement shall be in writing and sent by US Mail, personal delivery, next-day express mail, or by facsimile addressed as identified below:

American College of Surgeons
Attn: Gay Vincent
633 North Saint Clair Street

Chicago, IL 60611
Fax: 312-202-5025

Natividad Medical Center
Michael McMillin
1441 Constitution Boulevard,
Building 300
Salinas, CA 93906

- k. Exclusion. ACS states that to the best of its knowledge it is not currently excluded from participating in any federal health care program.
- l. Insurance. ACS agrees to maintain business liability insurance which ACS determines is commercially reasonable and sufficient to cover its obligations under this Agreement.
- m. Access to Books and Records. If and to the extent applicable to ACS, for four (4) years after services are furnished pursuant to the Agreement, ACS shall retain, and shall allow the Comptroller General of the United States, the United States Department of Health and Human Services, and their duly authorized representatives, access to the Agreement and to such of ACS's books, documents, and records as are necessary to verify the nature and extent of the costs of the services rendered pursuant to the Agreement. If ACS provides services or a portion of services identified in the Agreement pursuant to a subcontract with an individual or organization that is related to ACS by control or common ownership and the services or portion of services provided pursuant to the subcontract has a value or cost of \$10,000.00 or more over a twelve (12) month period, ACS shall require the subcontractor in writing through the subcontract to retain and allow access to its records on the same terms and conditions as set forth herein. This Section shall be null and void to the extent Section 1861(v)(1)(I) of the Social Security Act, as amended, is not applicable to this Agreement.

Kitty Vineyard

CQI Business Operations Manager

Print Name and Title of person on behalf of the American College of Surgeons

DocuSigned by:

Kitty Vineyard

Signature of person on behalf of the American College of Surgeons

8/21/2020

Date

Print Name and Title of person accepting on behalf of Hospital



Signature of person accepting on behalf of Hospital



Date

Approved as to form. August 19, 2020



Deputy County Counsel

Approved Fiscal Terms.



August 20, 2020

Chief Deputy Auditor-Controller



**EXHIBIT A
SERVICE LEVEL OPTIONS**

NAME OF HOSPITAL: Natividad Medical Center
HOSPITAL ADDRESS: 1441 Constitution Boulevard, Salinas, California 93906

SELECTION OF TERM FOR PARTICIPATION PERIOD:

The Participation Period shall begin on 10/01/2020 and will continue for the length of time as indicated.

Twelve (12) consecutive months

SELECTION OF HOSPITAL OPTION:

The ACS NSQIP has established participation levels (the "Option(s)"), each of which has associated data contribution requirements and fees. Hospital has chosen, and ACS has confirmed, the Option indicated on Exhibit A ("Hospital's Option"). Hospital will continue participation in the chosen Option through the Participation Period unless ACS and Hospital mutually agree in writing to change the Hospital's Option and amend this Agreement accordingly. ACS will consider the timing of data reporting cycles to determine when participating hospitals will have an opportunity to select a different Option.

Select one of the following as Hospital's Option:

ACS NSQIP Essentials

ACS NSQIP Small & Rural

Rural (Hospital Zip code falls under Rural Urban Commuter Area [RUCA] data codes 7.0 through 10.6.)

Small (Hospital performs fewer than 1680 +/- 5% cases per year.)

ACS NSQIP Procedure Targeted

SELECTION OF ANNUAL FEE:

The Hospital agrees to pay to ACS an annual fee for participation in the ACS NSQIP for the Participation Period. Detailed below is a current Pricing Guide to the ACS NSQIP Options. The annual fee that applies to the ACS NSQIP Option of choice will be fixed for the term of the Participation Period as selected above. Additional fees may apply as described in Section 10, Data Collectors, and Section 12, Audits.

Select the Annual Fee that applies to the ACS NSQIP Option of choice:

\$27,000 ACS NSQIP Essentials

\$10,000 ACS NSQIP Small & Rural

\$29,000 ACS NSQIP Procedure Targeted

SELECTION OF ANNUAL DISCOUNTS:

ACS will determine on an annual basis if Hospital qualifies to receive a discount(s) based on certain criteria. Small and Rural Option participants are not eligible for any discounts.

Hospitals are eligible for either a System Discount or a Collaborative Discount, but not both. Small and Rural Option hospitals that are part of a system may be counted toward the system volume threshold requirements so that larger hospitals in the system may qualify for a System Discount.

Select either System Discount or Collaborative Discount:

(\$3,500) System Discount

Name of System: Click here to enter text.

System Discount:

- Must meet the ACS definition of a "System." A "System" is defined as two or more hospitals that are owned, leased, or contract managed by a central organization.
- 5 or more hospitals from a system must enroll in ACS NSQIP in order for any one of them to receive a system discount or 100% of the hospital system, if less than 5 hospitals in a system. Discount is \$3,500 per hospital per year.
- For any hospital that participates in the ACS NSQIP prior to their system meeting the system discount requirements, that hospital will be entitled to the discount at the time of their next contract (or if on a three year contract, at the time of their next annual invoice) once their system meets the threshold requirements.
- Hospitals in a system may participate in different options.

(\$3,500) Collaborative Discount

Name of Collaborative: Click here to enter text.

Collaborative Discount:

- Hospital must be part of an ACS NSQIP recognized collaborative. The definition of an ACS NSQIP "recognized collaborative" includes the following:
 - Must have a formal data sharing agreement signed between the participating hospitals and the ACS NSQIP
 - Must hold quarterly meetings and produce meeting minutes
 - Focused on surgical quality improvement activities
- Hospitals in a collaborative may participate in different options.

EXHIBIT B ACS NSQIP Options

	Essentials	Small & Rural	Procedure Targeted
Who is Eligible	Any hospital	Small and rural hospitals (Small defined as performing fewer than 1680 +/- 5% cases per year. Rural defined as RUCA data codes 7.0 through 10.6.)	Any hospital
Best Suited For	Hospitals wanting to collect only the essential elements for QI Purposes	Small and rural hospitals	Larger hospitals; Those w/ CPT codes available within the hospital
Number of Variables	Approximately 46 "Clinical" Variables	Approximately 46 "Clinical" Variables (Same as Essentials)	"Core" set of approximately 46 "Clinical" Variables + Procedure specific variables ("Core" set is the same as Essentials)
Versions Available	General/Vascular Multispecialty	Multispecialty	General/Vascular Multispecialty
Case Volume Requirements	General/Vascular = 1680 cases per year (or all cases if less than 1680) Multispecialty = 20% total case volume by specialty (minimum 1680 cases or all cases if less than 1680)	Maximum =1680 cases per year	Minimum =1680 cases per year (Exact volume dependent on the # of targeted procedures selected and hospital volume for each of these procedures)
Sampling	General/Vascular = 40 cases per 8 day cycle Multispecialty = May be more than 40 cases per 8 day cycle - dependent on volume	All cases (100% capture)	15 "Core Cases" per 8 day cycle (use NSQIP standard sampling methodology to select cases) 25 "Procedure Targeted" Cases per 8 day cycle (or more if additional FTEs available)
FTE Requirements	1 FTE Minimum May be more for Multispecialty- use formula: # cases required/1680 = # FTE required	¼ FTE for up to 400 cases ½ FTE for up to 800 cases ¾ FTE for up to 1200 cases 1 FTE for up to 1680 cases	1 FTE Minimum May be more if hospital chooses to collect more than 1,050 "Targeted" procedures per year

EXHIBIT C

SERVICES PROVIDED TO HOSPITAL

A. SCR Training, Education & Support

The ACS NSQIP will provide web based training, education, and support to the Surgical Clinical Reviewers (SCRs) during regular ACS NSQIP business hours (Central Time Zone):

- **Initial Web Based Training Sessions for new SCRs**
- **SCR Conference Calls**
- **Clinical Support and Communications**

In addition, the ACS NSQIP will provide:

- **SCR Job Description and Hiring Qualifications Document**

B. Monitoring of Data Accrual Rates and Data Sampling Methodologies

The ACS NSQIP will monitor accrual rates and data sampling methodologies and make recommendations for Hospitals that are not meeting the Program requirements. These Hospitals will then be contacted directly to discern the reason for any discrepancies and to discuss a plan of action for correcting them.

C. Clinical Performance Improvement Reports

The ACS NSQIP has developed a set of reports for use by the Hospitals in support of their Clinical Performance Improvement efforts. These reports will allow Hospitals to view their surgical data in summary and detail and to benchmark their results against other participation hospitals. These reports include:

- **Non-Risk Adjusted Online Reports & Benchmarking Tools**
- **Risk Adjusted Semiannual Reports**

D. IT and Customer Service Support

The ACS NSQIP will supply customer service and technical support to Hospitals including the set up of new Hospitals; quality assurance and monitoring of software performance; occasional and reasonable ad-hoc report generation for Hospitals; help desk support for SCRs; software set-up and support for workstation software; and software and application maintenance and enhancement. These services will be provided during ACS NSQIP regular business hours (Central Time Zone).

E. Software

The ACS NSQIP Workstation and XML Uploader (a data automation schema) are available to Hospitals to increase productivity of data collection.

EXHIBIT D

HOSPITAL PARTICIPATION REQUIREMENTS

Requirements for a Hospital's participation in the ACS NSQIP:

A. ACS NSQIP Program Administration and Oversight at the Hospital:

- Commitment from the Hospital's Chief of Surgery or delegated surgeon to serve as Surgeon Champion (SC) and to oversee ACS NSQIP implementation and administration at the Hospital.
- Participation of the SC on program conference calls.
- Funding for the SC or his/her designee to attend a national ACS NSQIP meeting once per year.

B. Data Collection by a Trained Surgical Clinical Reviewer (SCR):

- Hospital agrees to hire a qualified, dedicated SCR to collect and submit data to the ACS NSQIP.
- This SCR will be dedicated to the ACS NSQIP and will be provided with necessary access to medical records and patient information (paper or electronic) for collection of ACS NSQIP data elements.
- The SCR must successfully complete the ACS NSQIP training program, any required or associated exams, and participate in on-going training, conferences, and conference calls.
- Hospital agrees to provide funding for the SCR to attend a national ACS NSQIP meeting once per year.
- In the event that the SCR is on extended leave or has chosen to leave the position during the program year, Hospital is expected to identify a back-up SCR ready to participate in training to assume the role of data collector.

C. Payment of Annual Fee:

- An annual fee paid to the American College of Surgeons will cover the cost of participating in ACS NSQIP:
 - ACS NSQIP website
 - Web-based Workstation
 - XML Uploader
 - Data verification and encryption
 - Data analysis
 - Report production
 - Inter-rater reliability determination and audits
 - Training and support for one SCR
 - On-line Benchmarking
 - Semiannual Report

D. Data Quality/Reporting:

- The implementation of the data acquisition and transmission protocol as outlined in the ACS NSQIP Operation Manual. This includes:
 - Meeting the data accrual requirements as described in the ACS NSQIP Hospital Participation Agreement, Section 3 "Contribution of Data".

- Maintaining high quality of data collection.
- Obtaining complete 30-day follow-up on all participating patients through the generation of a 30-day follow-up letter and/or phone calls to patients and periodic death searches of public records.
- Facilitating and hosting Inter-rater Reliability Audits by ACS NSQIP personnel to assess the quality of data, as described below.

Note: The ACS NSQIP will monitor data accrual. Failure to meet data collection requirements may result in the exclusion of the data collected by the Hospital from the semiannual reports and may also result in the termination of the Hospital from the ACS NSQIP.