

**NX HEALTH NETWORK
PARTICIPATING FACILITY AGREEMENT**

THIS PARTICIPATING FACILITY AGREEMENT (this “**Agreement**”) is made as of the 1st day of May, 2017, (the “**Effective Date**”) by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, a medical facility (hereinafter referred to as “**Facility and/or Provider**”), and NX Health Network (“**NXHN**”) an Arizona corporation, on behalf all NXHN Affiliates.

WHEREAS, NXHN and Payors make available to employers and individuals, or administer on behalf of employers or other entities, various health care benefit programs for the benefit of employees and their eligible dependents or individual participants and their eligible dependents. In addition, Payors provide administrative services and provider network services to third party administrators, insurance companies offering health benefit plans; and

WHEREAS, NXHN desires to have Facility as a Participating Provider for PPO Products (as defined herein) offered by NXHN and Payors; and

WHEREAS, Facility desires to be a Participating Provider for PPO Products offered by NXHN and Payors. Facility has obtained and holds all registrations, permits, licenses and other approvals and consents that are required to obtain from or make with all governmental entities under applicable law in order to conduct its business as presently conducted and to enter into and perform its obligation under this agreement.

NOW THEREFORE, in consideration for promises and mutual covenants set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NXHN and Facility hereby agrees as follows:

1. DEFINITIONS

- 1.1 Affiliate.** Any corporation, partnership or other legal entity directly or indirectly owned or controlled by, or which owns or controls, or which is under common ownership or control with a party. For purposes of this definition, “control” of an entity means direct or indirect ownership of 50% or more of the entity, or 50% or more of the general partner or manager in the case the entity is a limited partnership or a limited liability company. A list of NXHN Affiliates with access to this Agreement as of the Effective Date of this Agreement is set forth in Exhibit C in which Exhibit C be amended to add NXHN Affiliates only upon the prior approval of Facility.
- 1.2 Billed Charges.** The fees billed by Facility under Facility’s standard Charge Master.
- 1.3 Charge Master.** The comprehensive listing of items and services billable by Facility with the corresponding charges for such items and services.

- 1.4 Clean Claim.** Clean Claim shall have the meaning required by State law and shall include all information required to be submitted in accordance with Section 2.6. To the extent there is no applicable definition under State law, Clean Claim shall mean a claim to NXHN's or Payor's designated claims center, that consists of the UB 04 or CMS 1500 data set, or its successor form, with entries stated as mandatory by the National Uniform Billing Committee or its successor, and with respect to electronic claims, in the format and with the data content and data conditions consistent with HIPAA, as amended from time to time, or other applicable law.
- 1.5 Covered Services.** All of the health care services and supplies: (a) that are Medically Necessary; (b) Facility is licensed to provide to Members; and (c) that are covered under the terms of the applicable Member Contract. **Emergency Services.** Any health care service provided to a Member (unless otherwise defined in the Member Contract in which case the definition therein shall control) after the sudden onset of a medical condition that manifests itself by acute symptoms of sufficient severity or severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:
- (i) placing the health of the Member, or, with respect to a pregnant Member, the health of the Member or her unborn child, in serious jeopardy;
 - (ii) serious impairment to bodily functions; or
 - (iii) serious dysfunction of any bodily organ or part.
- 1.6 Medically Necessary.** Unless otherwise defined in the Member Contract in which case the definition therein shall control, Medically Necessary shall mean those services, supplies, equipment and facility charges that are not expressly excluded under the Member Contract and are:
- 1.6.1** Medically appropriate, so that expected health benefits (such as, but not limited to, increased life expectancy, improved functional capacity, prevention of complications, relief of pain) materially exceed the expected health risks;
 - 1.6.2** Necessary to meet the health needs of the Covered Services, improve physiological function and required for a reason other than improving appearance;
 - 1.6.3** Consistent in type, frequency and duration of treatment with scientifically-based guidelines of national medical research, professional medical specialty organizations or governmental agencies that are generally accepted as national authorities on the services, supplies, equipment or facilities for which coverage is requested;

- 1.6.4 Consistent with the diagnosis of the condition at issue; and
- 1.6.5 Required for reasons other than the comfort or convenience of the Member or Member's Provider; and
- 1.6.6 Not experimental or investigational as determined by NXHN or a Payor under its Experimental Procedures Determination Policy.
- 1.7 **Material Change.** Any change in NXHN's Policies that could reasonably be expected, to have a material adverse impact on (i) Facility's reimbursement for Covered Services or (ii) Facility administration or (iii) Facility expenses. For purposes of this Agreement, a "material adverse impact" shall mean a financial impact greater than or equal to 0.5% of the revenue expected to be paid to the Facility during the initial one year period following the effective date of this Agreement.
- 1.8 **Member.** An individual who is eligible to receive Covered Services under a Member Contract. Member may be defined as an injured worker or claimant as defined by statute, regulation or policy.
- 1.9 **Member Contract.** The instrument between a Payor and an employer, union, Member, or other entity which sets forth the terms of the health benefit program. It is important to note that certain Products do not have a Member Contract and benefits may be defined by statute or regulation. Member Contracts shall cover, at a minimum, all covered services required of an insured product under the law of the state in which the Facility is located as applicable based on Payor's requirement to adhere to state laws. NXHN shall provide Facility a specimen description of the Member Contracts upon request.
- 1.10 **Participating Provider.** A health care provider, including, but not limited to, a Provider, home health agency, laboratory or other professional, facility, supplier, or vendor that has entered into a direct or indirect written agreement with NXHN to provide Covered Services to Members.
- 1.11 **Payor.** An employer, trust fund, trust, a governmental unit, any other entity which has an obligation to arrange or provide medical services or benefits for such services to Members or any other entity which has contracted with NXHN to use an Exclusive PPO network of providers and has agreed in writing to be bound by the terms of this Agreement, and has agreed to be responsible for funding benefit payments for Covered Services provided to Members under the terms of a PPO Product. A list of Payors is attached hereto as Exhibit B, which attachment may be amended to add Payors only upon the prior approval of Facility. In the event of non-payment by a Payor as required by the terms of this Agreement, Facility shall have the right to terminate this Agreement with respect to such payor upon thirty (30) days written notice to NXHN. In the sole discretion of the Facility, such termination shall be effective regardless of the Payor's ability to cure such non-payment following the receipt of notice.

- 1.12 Network Lease.** Network Lease includes Third Party Administrators and large employers who are interested in securing access to our networks and who will each be a Payor under the terms hereof.
- 1.13 Trauma Claims.** Any inpatient, outpatient or emergency department claim which contains Form Locator 14, type 5 and the revenue code 068x (0680 through 0689). The entire claim (admission through discharge) will be paid at the Trauma Services reimbursement rate listed in Exhibit A.

2. PROVIDER OBLIGATIONS

2.1 Provision of Covered Services.

- 2.1.1** Facility shall provide Covered Services to Members of PPO Products listed on Exhibit B and set forth in the Member Contract that are generally provided by Facility. Such Covered Services shall be delivered in a prompt manner, consistent with professional, clinical and ethical standards and in the same manner as provided to Facility's other patients. Facility shall accept Members as on the same basis as Facility is accepting non-Members. Facility shall not discriminate against a Member on the basis of age, race, color, creed, religion, gender, sexual preference, national origin, health status, use of Covered Services, income level, or on the basis that Member is enrolled in a managed care organization or is a Medicare beneficiary.
- 2.1.2** Subject to bed availability and compliance with Facility's admission criteria, Facility will make Covered Services available and accessible to Members twenty-four (24) hours a day, seven (7) days per week, in accordance with Facility's policies and procedures. Notwithstanding the foregoing, NXHN acknowledges that not all services provided by Facility will be available at all times.
- 2.1.3** Facility will ensure that its employees, affiliates and entities that are subcontractors render services in connection with this Agreement while adhering to all of the requirements set forth in this Agreement. Facility will make reasonable efforts to encourage its subcontractors, such as Emergency Room Physicians, that working under a separate Tax ID number of the Facility, to become a contracted provider with NXHN.
- 2.1.4** Unless otherwise provided by a PPO Product or Member Contract, except when Facility determines an emergency situation renders it unsafe or impractical, Facility shall make reasonable efforts to refer Members to Participating Providers where available. For non-emergency services, Provider shall only admit a Member for inpatient care and shall only refer Members for other care after obtaining authorization from Payor's Utilization Review team in accordance with the applicable Member Contract.

2.1.5 NXHN and Payor reserve the right to introduce new PPO Products in addition to the current Products while this Agreement is in effect and to designate Facility as participating or non-participating in any such new product. To the extent that the specific terms for the provision of Covered Services in new products are not included herein, they shall be agreed to pursuant to Section 5.2 of this Agreement if NXHN or a Payor offers participation in these programs to Facility. Facility understands and agrees that Facilities participation in a current or future product does not mean that Facility shall be permitted to participate with each and every Payor for that product.

2.2 Standard of Care. Facility agrees to provide or arrange for the provision of Covered Services in conformity with generally accepted medical and surgical practices in effect at the time of service. Facility also agrees to implement peer review and credentialing of providers, nurse practitioners, provider assistants and other ancillary personnel who provide Covered Services to Members on behalf of Facility.

2.3 Policies and Procedures. Facility agrees to make reasonable efforts to comply with all applicable NXHN policies and procedures, including but not limited to, quality improvement, utilization review, peer review, grievance procedures, credentialing and re credentialing procedures, coordination of benefit procedures, and any other policies that NXHN may implement from time to time (the "NXHN Policies"), as well as such Payor policies which have been provided to Facility and are consistent with NXHN Policies. Failure to comply with a NXHN Policy shall not result in a denial for payment. NXHN may at any time modify Policies following the provision of written notice to the Facility. NXHN will provide ninety (90) days prior notice by letter or electronic mail to the individual identified below of Material Changes. Facility shall not be required to comply with any new Policy which has not been provided to the NXHN in writing. In the event that Facility at any point reasonably determines that a Material Change is likely to have a Material adverse financial impact upon Facility, Facility agrees to notify NXHN, specifying the specific bases demonstrating a likely material adverse financial impact, and the Parties will negotiate in good faith an appropriate amendment, if any, to this Agreement. In the event the Parties do not reach an acceptable amendment, (i) the applicable policies shall not apply to Facility, or (ii) Facility may elect to terminate this Agreement following the provision of sixty (60) days advance written notice to the NXHN. In the event any such change is implemented, Facility shall have the right to submit the matter to arbitration. In the event the matter is arbitrated, the arbitration scope shall be limited to quantifying the adverse financial impact to Facility of the change and the arbitrator will award the amount necessary to cover the adverse financial impact to the Facility in light of that change, as well as the Facility's attorneys' fee incurred in enforcing this section. In the event that through arbitration, it has been determined that there was no financial impact on Facility, Facility will incur the cost of attorney fees on behalf of NXHN.

- 2.4 Licensure.** Facility agrees to maintain in good standing all licenses, accreditations, and certifications required by law and NXHN's credentialing requirements for so long as the Agreement is in effect.
- 2.5 Liability Insurance.** Facility agrees to procure and maintain applicable and mandatory liability insurance to protect against all allegations arising out of the rendering of professional and all hospital based services or the alleged failure to render medical services by Facility and Facilities employees ("**Malpractice Liability Insurance**"). Facility may obtain such insurance through an insurance company or through a self-insurance mechanism. Malpractice Liability Insurance coverage shall be maintained at minimum state law requirements. Facility also agrees to procure and maintain comprehensive general and/or umbrella liability insurance in appropriate amounts.
- 2.6 Claim Submission.**
- 2.6.1** Facility agrees to submit its claims for reimbursement and encounter forms, as required by NXHN or Payor, on a UB04Form or Centers for Medicare and Medicaid Services ("**CMS**") 1500 forms with current CMS coding or its successor billing form, current International Classification of Diseases, Ninth Revision ("**ICD9**"), Tenth Revision ("**ICD10**"), and Current Procedural Terminology Fourth Edition ("**CPT4**") * coding in accordance with the then current Medicare guidelines. Facility shall submit bills within one hundred and eighty (180) days of the date of service and/or discharge unless coordination of benefit issues exists. (**CPT copyright 2007 American Medical Association. All rights reserved.*)
- 2.6.2** Facility understands and agrees that Facility has one (1) year from the date of service in which to appeal payment decisions and denials by NXHN or a Payor. After this one (1) year period no further adjustments to payments shall be made.
- 2.6.3** Facility agrees to accept the reimbursement amounts specified in attached Exhibit A as payment in full for Covered Services rendered to Member. In no case shall reimbursement exceed Facility's Billed Charges. Facility further agrees that when Covered Services are provided to a Member, the Member shall be liable only for actual applicable copayments and/or deductibles as determined by Payor in accordance with the Member Contract. NXHN represents that each Payor has agreed in writing to the reimbursement amounts specified in the attached Exhibit A and shall make payment for Covered Services provided to Members in accordance with the terms of this Agreement.
- 2.6.4** Claims submitted by Facility will not be repriced or re-coded by NXHN or Payor.

Facility agrees to accept United Claim Solutions, acting as agent of NXHN and Payors, to review all claims for appropriateness of billing, while utilizing recognized national standards and national correct coding initiative rules following the provision of notice to Facility. NXHN agrees that United Claim Solutions has agreed to be bound by the confidentiality provisions of this Agreement and is not compensated on a contingency basis or otherwise at risk for services provided by Facility

2.7 Hold Harmless.

2.7.1 Facility agrees that in no event, including, but not limited to, nonpayment by a Payor, or a Payor insolvency or breach of the Agreement Shall Facility bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Member or persons other than a Payor acting on their behalf, for services rendered under the Agreement. For purposes of this section, services rendered under the Agreement include those health care services delivered to Members by any and all health care professionals employed by or independently contracted with the Facility for whom Facility submits claims on their behalf. This section shall not prohibit collection of copayments, coinsurance, or deductibles in accordance with the Member's Member Contract.

2.7.2 Facility further agrees that: (i) this provision shall survive termination of the Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Member; and (ii) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Facility and a Member or a person acting on Member's behalf.

2.8 Marketing. Facility hereby consents to including its name in NXHN or Payor marketing materials and listing Facility in the participating provider directory that NXHN or a Payor routinely distributes to Members, Participating Providers and employer groups.

2.9 Access to and Copying of Records.

2.9.1 Access. Facility shall only be obligated to provide information or data that is required for the Facility to comply with State or Federal mandated audits. Facility agrees to cooperate with requests for other audits as requested if they present no administrative, financial or other relevant burden to Facility. NXHN or Payor shall provide written notice of its intent to perform an audit and shall specify the purpose and scope of such review, which shall not interfere with the daily operations of the Facility. NXHN or Payor shall only be allowed to audit up to twenty (20) medical records per year, unless the Facility specifically agrees otherwise. NXHN's or Payor's audits shall be conducted on a claim by claim basis and extrapolated results shall not be allowed. Audits shall be performed by NXHN or the Payor in accordance

with the audit policies of the Facility. Facility further agrees that it shall ensure that Members have access to their medical records in accordance with the requirements of state and federal law.

2.9.2 Survival. The terms and conditions of this Section 2.9 shall survive the termination of the Agreement.

2.10 Compliance with Government Requirements. Facility agrees to comply with all applicable requirements, laws, rules and regulations of CMS, any other Federal agencies and any State agencies of the State(s) in which doing business and providing medical services, including, without limitation, requirements that shall cause or require NXHN to amend the terms and conditions of the Agreement. Facility understands and agrees that CMS and the appropriate State agencies may change or add to such requirements, laws, rules and regulations from time to time.

2.10.1 Site Evaluations. Facility agrees to permit NXHN, any Federal or State agency having jurisdiction over Facility's provision of services and/or the U.S. Department of Health and Human Services and any accrediting organization to conduct periodic site evaluations of its facilities, offices and records. Upon NXHN's written request, Facility shall provide NXHN with a copy of the written response to any questions or comments posed by the agencies listed in the preceding sentence. On site evaluations by NXHN will be limited to once per year.

2.10.2 Survival. The terms and conditions of this Section 2.10 shall survive termination of the Agreement.

2.11 Duty to Notify NXHN. Facility agrees to immediately notify NXHN, in writing, of (i) any change in its licensure accreditation or certification status; (ii) loss or substantial decrease in the limits or change of its medical malpractice policy; (iii) any judgments or settlements and, (iv) any other situation that may materially interfere with Facility's obligations under the Agreement. Facility also shall make reasonable efforts to notify NXHN of any complaints it receives from Members regarding NXHN. NXHN shall notify Facility of any complaints it receives from Members regarding Facility. Facility and NXHN agree to cooperate fully in the investigation and resolution of any such Member complaint.

2.12 Drug Formulary/Generic Substitutions. Where applicable by Product, and to the extent Facility prescribes a medication, Provider shall use reasonable efforts to use the drug formulary designated by Payor ("**Drug Formulary**") when prescribing medications for Members and the Drug Formulary may be modified from time to time by a Payor.

2.13 Practice of Medicine. Facility acknowledges that NXHN does not practice medicine or exercise control over the methods or medical professional judgments by which or how a Provider renders medical services to Members. Facility shall be responsible for clinical decisions regarding admission, discharge or other medical

treatment of Members regardless of receipt by Facility of any recommendations, authorizations or denials of payment for treatment provided to Members from NXHN, its agent or any other person or entity performing quality improvement or utilization management. NXHN encourages Facility to communicate with patients regarding the treatment options available to them, including alternative medications, regardless of benefit coverage limitations.

3. PAYOR OBLIGATIONS

3.1 Payment.

- 3.1.1** In consideration of Facilities agreement to perform Covered Services in accordance with this Agreement, Facility shall be paid for Covered Services performed according to the terms set forth in Exhibit A attached. Payors shall make payment within thirty (30) calendar days of Payor's receipt of a Clean Claim submitted by Facility in accordance with Section 2.6 above.
- 3.1.2** If a claim is denied, notice of denial with an explanation of the reason for the denial shall be made within the timeframes established by applicable law, or if none is applicable, within thirty (30) days of the receipt of a claim. Regardless of whether Facility complied with NXHN Policies, including submitting a claim in a timely fashion, if the service or level of care provided to the Member was Medically Necessary then, provided the service in question otherwise was a Covered Service and the Member was eligible for services, the Facility shall be paid for such Covered Service at the applicable rate specified in Exhibit A of this Agreement.
- 3.1.3** NXHN or Payors may require appropriate documentation to support payment for Covered Services. Facility shall have the opportunity to correct any billing or coding error within ninety (90) days of denial related to any such claim submission. NXHN will rely on United Claim Solutions to audit all claims for appropriateness of billing and will make payment determination based on their expert claim review. NXHN and Payors may recover payment or retain portions of future payments in the event that a Payor determines that an individual was not an eligible Member at the time of services, or in the event of duplicate payment, overpayment, payment for non-covered services, error in payment uncovered as a result of a coordination of benefits process, or fraud.
- 3.1.4** Where the Payor, pursuant to applicable coordination of benefit law, is primary, the Payor shall be required to pay the amounts due under the Agreement as provided in Section 3.1.1. Where Payor is other than primary, the Payor shall be required to pay only those amounts which, when added to amounts owed to Facility from other sources, equal one hundred percent of the amount required by this Agreement, subject to limitations outlined in the Member Contract. Nothing herein shall be construed to preclude

Facility from seeking and obtaining payment from sources of payment other than Payor and Member.

- 3.2 Identification.** NXHN and Payors shall provide an identification card or other indicator of participating status to Members which shall identify whether the Member participates in a NXHN Product. In addition, the identification card will also identify the telephone number for Provider to call in order to confirm Member's benefit plan. NXHN and/or Payors shall provide Facility with a means to check Member eligibility via telephone or electronically twenty-four (24) hours per day, seven (7) days per week. NXHN or Payor shall respond to all requests for eligibility determinations immediately, and no later than two (2) hours following such request. At such time as NXHN or a Payor receives an inquiry from Provider regarding a Member's benefit plan or Covered Services, NXHN or a Payor shall use information given by Provider to make preliminary benefit decisions.

4. TERM AND TERMINATION

- 4.1 Term of Agreement.** This Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions herein.
- 4.2 Termination without Cause.** After the initial twelve (12) month period, either party may terminate this Agreement at any time with ninety (90) days prior written notice, which termination shall be effective the last day of the month following the ninety (90) day notice period.
- 4.3 Termination for Cause.**
- 4.3.1 Breach.** Either Party may terminate the Agreement for the breach of a material term, condition or provision of the Agreement, after sixty (60) days prior written notice to the other Party, specifying such material breach. The breaching Party shall have a minimum of forty-five (45) days or such longer reasonable period agreed to by the Parties to correct or cure such material breach. If the breaching Party fails or refuses to cure the material breach within such time, then the non-breaching Party may elect to terminate the Agreement effective the last day of the month following the end of the notice period. The remedy herein provided shall not be exclusive of, but shall be in addition to, any remedy available at law or in equity to the non-breaching Party.
- 4.3.2 Immediate Termination;** NXHN may terminate Facility from providing in Network Covered Services to Members for the following reasons:
- 4.3.2.1** Termination, revocation, suspension or other limitation of Facility licensure, certification, or accreditation necessary to operate under applicable State Guidelines.

4.3.2.2 NXHN determines in good faith that the Facilities continued provision of services to Members may result in, or is resulting in, danger to the health, safety or welfare of Members. Where the danger results from the actions of its staff, contractors or subcontractors, then Facility shall suspend its relationship with such staff, contractors, subcontractors upon immediate notice from NXHN, at least with respect to Members, and if Facility fails to take such action, NXHN may terminate the Agreement upon ten (10) days' notice.

4.4 Continuation of Benefits. Upon termination of the Agreement, Facility shall continue to provide Covered Services to Members who are receiving treatment at the time of termination or who are hospitalized on the date the Agreement terminates or expires, until the course of treatment is completed or through the date of each such Member's discharge or until NXHN or a Payor makes reasonable arrangements to have another hospital provide the service. Such continuation of services shall be made in accordance with the terms and conditions of the Agreement as it may be amended and in effect at the time, including but not limited to the compensation rates and terms set forth therein. This Section shall survive termination of the Agreement.

5. GENERAL REQUIREMENTS

5.1 Assignment. Neither party shall assign, transfer, or subcontract any of its rights, interests, duties, or obligations under this Agreement, whether by sale, assignment, negotiation, pledge or otherwise, without the prior written consent of the other party. Without limiting the foregoing, the following events shall constitute an assignment of this Agreement for purposes of this Section 6.1: (a) the sale, transfer or other disposition of all or substantially all of the issued and outstanding voting securities or interests of either party or either party's direct or indirect corporate parent; (b) the merger, consolidation or other reorganization of a party if, immediately following such transaction, either the party or its member(s) shareholders or other equity holders (as existing immediately preceding such transaction) do not own a majority of all classes of the issued and outstanding membership interests or voting securities of the surviving, consolidated or reorganized entity; and (c) the issuance of any class of voting securities or interests by a party (or its successor) if, immediately following such transaction, the party's shareholders or other equity holders existing immediately preceding such issuance do not own a majority of all classes of the issued and outstanding voting securities or interests of the party. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, successors, assigns and representatives.

5.2 Amendments. NXHN may unilaterally amend the Agreement to the extent necessary to comply with applicable Federal or State law, regulatory requirements,

accreditation standards or licensing guidelines or rules. NXHN shall give advance written notice to the Facility of such amendment and the effective date of the amendment. All other amendments or modifications to this Agreement shall be in writing and executed by NXHN and Facility.

- 5.3 Confidentiality.** Facility and NXHN and Payors agree to maintain the privacy and confidentiality of all information and records regarding Members, including but not limited to medical records, in accordance with all State and Federal laws, including regulations promulgated under the Health Insurance Portability and Accountability Act. In addition, each Party shall maintain the confidentiality of the financial terms of the Agreement and the confidentiality of the other Party's proprietary information that is not otherwise public information, provided NXHN or a Payor may disclose reimbursement terms to prospective and current employer groups. Facility shall ensure that any vendors, subcontractors or other such entities that have a need to know the terms of the Agreement also maintain the privacy and confidentiality of all financial terms of the Agreement. In the event that either Party violates its duties under this provision, the other Party may seek injunctive relief. Notwithstanding the foregoing, the parties acknowledge that this Agreement is subject to disclosure pursuant to the California Public Records Act and any disclosure required thereunder will not require any notice to NXHN. This Section shall survive the termination of the Agreement.
- 5.4 Names, Symbols, Trademarks.** Except as provided in Section 2.8, NXHN, Payors, and Provider each reserve the right to and control of the use of their name, symbols, trademarks, and service marks presently existing or later established. In addition, except as provided in Section 2.8, neither NXHN, Payors, nor Provider shall use the other Party's name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise, without the prior written consent of that Party and shall cease any such usage immediately upon written notice of the Party or on termination of the Agreement, whichever is sooner.
- 5.5** Nothing in the Agreement shall be construed to prohibit Provider or Provider's employees from freely communicating with patients regarding:
- (i) Medically Necessary and appropriate care with or on behalf of an Member, including information regarding the nature of treatment, risks of treatment, alternative treatments, or the availability of alternate therapies, consultation or tests, regardless of benefit coverage limitations;
 - (ii) the process that NXHN or Payor or any entity contracting with NXHN or Payor uses or proposes to use to deny payment for a health care service; or
 - (iii) the decision of NXHN or Payor to deny payment for a health care service. In the event that either party violates its duties under this provision, the

other party may seek injunctive relief. This Section shall survive the termination of the Agreement.

- 5.6 No Third Party Beneficiaries.** Other than as expressly set forth in the Agreement, no third persons or entities are intended to be or are third party beneficiaries of or under the Agreement, including, without limitation, Members. Nothing in the Agreement shall be construed to create any liability on the part of a NXHN Payors, Provider or their respective directors, officers, shareholders, employees or agents, as the case may be, to any such third parties for any act or failure to act of any Party hereto.
- 5.7 Notice.** Any notice, request, demand or communication required or permitted hereunder (“Notices”) shall be given in writing by certified mail, return receipt requested, to the Party to be notified. All Notices shall be deemed given and received three (3) days after mailing to the address specified as follows:
- NXHN**
Attention: Provider Contracting Department
23048 N. 15th Avenue
Phoenix, Arizona 85027
- Provider**
Address as on Signature Page.
- 5.8 Relationship.** None of the provisions of the Agreement is intended to create, nor shall be deemed or construed to create any relationship between the Parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of the Agreement. Neither Provider nor NXHN nor any Payor shall be liable to any other Party for any act, or any failure to act, of the other Party to the Agreement. The Parties agree that the Agreement shall be interpreted to be between Provider and whichever Payor is a party to the Member Contract under which the Member related to the then instant matter in receiving Covered Services.
- 5.9 Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to such State’s choice of law provisions.
- 5.10 Representation by Counsel.** Each Party acknowledges that it has had the opportunity to be represented by counsel of such Party’s choice with respect to the Agreement. In view of the foregoing and notwithstanding any otherwise applicable principles of construction or interpretation, the Agreement shall be deemed to have been drafted jointly by the Parties and in the event of any ambiguity, shall not be construed or interpreted against the drafting Party.
- 5.11 Severability.** In the event, any portion of the Agreement is found to be void, illegal, or unenforceable, the enforceability of any other portion shall not be affected.

- 5.12 **Waiver.** The waiver by either Party of any breach or violation of any provision of the Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision.
- 5.13 **Indemnification.** Each party agrees to accept and be responsible for the acts or omissions of its individual employees and agents, and hold the other party harmless from liability which may arise from any such act or omission, and shall indemnify such other party for any expenses incurred in the defense of claims and/or lawsuits arising from such act or omissions, including reasonable attorneys' fees.
- 5.14 **Entire Agreement.** The Agreement, together with Exhibits and/or Appendices, constitutes the entire understanding of the Parties with respect to the subject matter and supersedes any and all prior agreements between Facility and NXHN.
- 5.15 **Business Associate Agreement.** During the term of this Agreement, the parties will agree to be bound by the terms of the County of Monterey approved Business Associate Agreement, a copy of which is attached hereto.

INTENDING TO BE BOUND, this Agreement has been duly executed by the authorized representatives of the Parties set forth below as of the date first written above.

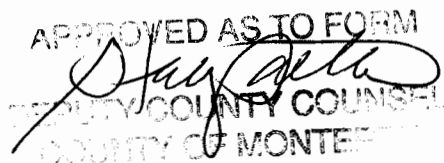
**COUNTY OF MONTEREY, ON
BEHALF OF NATIVIDAD MEDICAL
CENTER**

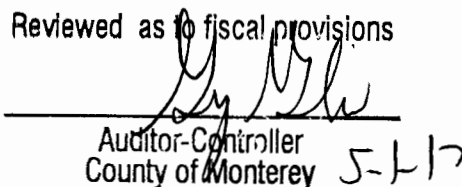
NX HEALTH NETWORK

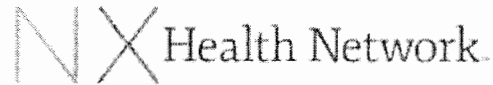
By: _____
 Print Name: Gary Gray, D.O.
 Title: Chief Executive Officer
 Date: _____
 Tax ID #: 94-6000524

By: _____
 Print Name: _____
 Title: _____
 Date: _____

ADDRESS FOR NOTICE:
1441 Constitution Boulevard
Salinas, CA 93906

APPROVED AS TO FORM

 DEPUTY COUNTY COUNSEL
 COUNTY OF MONTEREY

Reviewed as to fiscal provisions

 Auditor-Controller
 County of Monterey 5-17



**EXHIBIT A
FEE SCHEDULE**

Inpatient/Outpatient Services/Claims

All Inpatient, Outpatient and Emergency Room services/claims shall be reimbursed at ^{RATE}~~REDACTED~~ of the Facility's Billed Charges, except for Trauma Services which will be compensated as set forth below.

Trauma Services/Claims

All Inpatient, Outpatient, and Emergency Room Trauma Services/claims shall be reimbursed at ^{RATE}~~REDACTED~~ of the Facility's Billed Charges for the entire claim (admission through discharge).

Physician Services

- A. All Primary Care services shall be reimbursed at ^{RATE}~~REDACTED~~ of the local rate of the current Medicare Professional Fee Schedule (MPFS) in effect for the Salinas CA locality on the date of claim processing for the date such services are rendered.
- B. All Specialty Care services shall be reimbursed at ^{RATE}~~REDACTED~~ of the local rate of the current Medicare Professional Fee Schedule (MPFS) in effect for the Salinas CA locality on the date of claim processing for the date such services are rendered.
- C. Services submitted by provider that do not fall under CMS pricing methodology will be cross walked to a CMS covered service. (i.e. to appropriate G Code)
- E. Any services not listed on the current Medicare Professional Fee Schedule in effect on the date of claim processing for the date such services are rendered will be priced at ^{RATE}~~REDACTED~~ of the Facility's Billed Charges.
- F. Nationally recognized coding edits and standards set by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association for all professional fee services performed will apply including applying Multiple Procedure Payment Reduction (MPPR) to the Practice Expense (PE) component of payment of select therapy services paid under the MPFS.

All Services:

Billed Charges in the Facility's Charmaster shall not increase in the aggregate more than ~~RATES REDACTED~~ in any given consecutive 12-month period from the inception of this signed Agreement. Charge master updates resulting in an increase of more than ~~RATES REDACTED~~ in the aggregate in any given consecutive 12-month period shall be submitted to ~~NYU~~ within 30 days of any annual increase. Aggregate charges increase in excess of ~~RATES REDACTED~~ during any given consecutive 12-month period of this Agreement may result in an additional discount. Percentage discount calculated from charges may be changed appropriately to Payors reimbursement to Facility paid under a % discount does not increase by more than ~~RATES REDACTED~~ during any consecutive 12 month period of this Agreement.

In no case shall reimbursement exceed Provider's Billed Charges.

EXHIBIT B

ATTACHED LIST OF PARTICIPATING PAYORS CONTRACTED WITH NXHN

1. Monterey Mushrooms
2. Robert F Kennedy Medical Plan (RFK)

**EXHIBIT C
AFILIATES OF NXHN**

United Claim Solutions (UCS) – NXHN is a wholly owned subsidiary of UCS

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective MAY 1, 2017 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and NX HEALTH NETWORK ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules"). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI"), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law , or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

 NX HEALTH NETWORK

Attn: _____

Phone: _____

Fax: _____

If to Covered Entity, to:

 Natividad Medical Center

 1441 Constitution Blvd.

 Salinas, CA 93906

Attn: NMC Contracts Division

Phone: (831) 755-4111

Fax: (831) 757-2592

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

[BUSINESS ASSOCIATE]

***COUNTY OF MONTEREY, ON BEHALF OF
NATIVIDAD MEDICAL CENTER***

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____