

 **Natividad** MEDICAL CENTER  
County of Monterey Agreement for Services  
(Not to Exceed \$100,000)

This Agreement (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and **Verge Solutions, LLC** hereinafter "CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties.").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED;** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of the Agreement. The services are generally described as follows: **Web based software license for access to quality compliance software system online.**

**PAYMENTS BY NMC;** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$90,420**.

**TERM OF AGREEMENT;** the term of this Agreement is from **January 1, 2016** through **December 31, 2017** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

NMC reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

**SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS;** the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Attachment 1:** Addendum

**Exhibit A:** Scope of Services/Payment Provisions

**Exhibit B:** Business Associate Agreement

**1. PERFORMANCE STANDARDS:**

- 1.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 1.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement.

CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

**2. PAYMENT CONDITIONS:**

- 2.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 2.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 2.3. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 2.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

**3. TERMINATION:**

- 3.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. 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.
- 3.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.

**4. INDEMNIFICATION:**

- 4.1. CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any claim, liability, loss injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. 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 the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

5. **INSURANCE:**

5.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

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

5.2. 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 NMC's Contracts/Purchasing Director.

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

5.4. 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 Contractors, 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)

5.5. 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)

5.6. Workers' Compensation Insurance, If CONTRACTOR 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)

- 5.7. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR 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)

## 6. Other Insurance Requirements:

- 6.1. All insurance required by this Agreement shall be with a company acceptable to NMC 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 CONTRACTOR completes its performance of services under this Agreement.
- 6.2. Each liability policy shall provide that NMC 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 CONTRACTOR 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.
- 6.3. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.**
- 6.4. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five 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.

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

**7. RECORDS AND CONFIDENTIALITY:**

7.1. Confidentiality: CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

7.2. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

7.3. Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

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

8. Royalties and Inventions: NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.

9. Non-Discrimination: During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services

primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

10. Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
11. Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.
12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

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**NATIVIDAD MEDICAL CENTER:**

Natividad medical Center  
Attn: Contracts Division  
Natividad Medical Center  
1441 Constitution Blvd  
Salinas, CA. 93906  
FAX: 831-757-2592

**CONTRACTOR:**

Verge Solutions, LLC  
Attn:  
P.O. Box 394  
Mt. Pleasant, SC 29465  
Fax:  
Email:

**MISCELLANEOUS PROVISIONS:**

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 13.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 13.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 13.4 Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.

- 13.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 13.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 13.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 13.12 Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 13.13 Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 13.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 13.15 Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, Representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 13.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.


*Signature Page to follow*

**NATIVIDAD MEDICAL CENTER**

By:   
Gary R. Gray, DO, CEO


Date: 1/13/15

**APPROVED AS TO LEGAL PROVISIONS**

By:   
Monterey County Deputy County Counsel

Date: 1/13/16


**APPROVED AS TO FISCAL PROVISIONS**

By:   
Monterey County Deputy Auditor/Controller

Date: 1/13/16

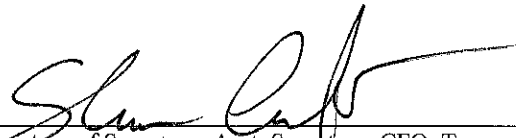
**CONTRACTOR**

Verge Solutions, LLC  
Contractor's Business Name\*\*\* (see instructions)

  
Signature of Chair, President, or Vice-President

Chris M. Malanuk, President  
Name and Title

Date: Dec. 10, 2015

By:   
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Shannon Carter CFO  
Name and Title

Date: 12-11-15

**\*\*\*Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).



**Addendum to County of Monterey Agreement  
Between  
County of Monterey, a political subdivision of the State of California (hereinafter, "the  
County"), on behalf of Natividad Medical Center ("NMC")  
And  
Verge Solutions, LLC**

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This Attachment 1 will serve as an Addendum to the Agreement between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("NMC") and Verge Solutions, LLC ("CONTRACTOR") ("Agreement"), attached hereto, and shall have the full force and effect as if set forth within the Agreement.

**I. Section 4, Indemnification**

The following is hereby added to the end of Section 4.1

"The indemnification obligations set forth herein shall be subject to an aggregate cap of \$3,000,000.00."

**II. Section 7.1, Confidentiality**

Section 7.1 is hereby deleted in its entirety and replaced with the following:

"7.1 NMC and CONTRACTOR understand and agree that in the performance of the Agreement each party may have access to private or confidential information of the other party, including, but not limited to, trade secrets, marketing and business plans and technical information, which is designated as confidential by the disclosing party in writing, whether by letter or by the use of a proprietary stamp or legend, prior to or at the time it is disclosed to the other party ("Confidential Information"). This Agreement, including without limitation its financial terms are subject to disclosure pursuant to a request made under the California Public Records Act. NMC acknowledges and agrees that the technical and functional specifications, the code and design of the Verge System and all tools and utilities supplied by Verge to NMC are Confidential Information of Verge.

Each party agrees that: (i) all Confidential Information shall remain the exclusive property of the owner; (ii) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain, the confidentiality and secrecy of the Confidential Information; (iii) and shall use prudent methods to ensure that its employees and agents do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (iv) it shall return or destroy all copies of Confidential Information upon request of the other party.

Confidential Information shall not include any information to the extent that it (i) is or becomes a part of the public domain through no act or omission on the part Verge, (ii) is disclosed to third parties by the NMC without restriction on such third parties, (iii) is in the

**Attachment 1**

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receiving party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under Agreement, (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information (v) is released from confidential treatment by mutual written consent; (vi) deemed part of the Verge System as described above; or (vii) is subject to disclosure pursuant to a request made under the California Public Records Act.

**III. Section 14, Warranty**

New Sections 14.1 -14.4 are hereby added as follows:

"14.1 CONTRACTOR warrants that the products and services provided pursuant to the Agreement as provided for in this Agreement, including the CONTRACTOR System, shall conform to and perform as specified in its Documentation, with the term "Documentation" meaning the end-user, technical and operating manuals provided to NMC by CONTRACTOR. CONTRACTOR will make every reasonable attempt to provide a fully functioning product. However, CONTRACTOR is not responsible for bugs in Microsoft Internet Explorer or any other software utilized by Licensee. CONTRACTOR is responsible for warranting compatibility with product to a CONTRACTOR specified version of Microsoft Internet Explorer.

Neither party nor its officers, agents, employees, members, or affiliates, shall be liable for the performance, conduct, misconduct, errors, omissions, actions or inactions, of any employee or agent of the other party. The relationship of CONTRACTOR to NMC shall be that of an independent contractor, and neither CONTRACTOR nor any employee or agent of CONTRACTOR shall be deemed to be an agent or employee of NMC.

In the event of a breach of warranty, CONTRACTOR's liability shall be limited to either correction of the products and services to operate as warranted or, at CONTRACTOR's election, to refunding to NMC fees paid by NMC for product in breach for up to six (6) months preceding the verification of the breach by both parties.

Except for damages resulting from the breach of the confidentiality provisions of Section 7 of this Agreement, neither party shall be liable to the other for any damages other than direct damages, including but not limited to consequential, indirect, special, exemplary, or punitive damages, or any lost revenues or lost profits.

#### 14.2 Error Correction and Downtime Warranty

In the event that the System contains defects or material errors, CONTRACTOR shall perform all acts necessary to correct such errors within a commercially reasonable time.

Notwithstanding the above, if Registered Users are unable to access the Verge System due to errors of the System, CONTRACTOR shall provide NMC status updates for such error correction activity that extends beyond one (1) business day; and CONTRACTOR shall provide NMC daily status updates for such error correction activity until such error correction activity is complete.

CONTRACTOR will use all commercially reasonable efforts to minimize the number of occasions in which access to the Verge System will be impaired or disrupted, provided that such occasions are within CONTRACTOR's reasonable control. It is Verge's expectation that there will be 0.5% (or 44 hours) of scheduled downtime within a one-year period. Verge will give NMC a seventy-two (72) hour written notice of any scheduled downtime. Verge will attempt to schedule downtime between the hours of 11:00 p.m. and 7:00 a.m. Eastern Standard Time.

CONTRACTOR will use commercially reasonable efforts, including, but not limited to use of industry standard virus controls, to take actions it deems appropriate to remedy or avoid impaired or disrupted access to the Verge System.

In the event CONTRACTOR exceeds 0.5% scheduled downtime in any given month during the term of this Agreement, Verge shall refund to NMC, within thirty (30) days, an amount equivalent to one month's fees.

#### 14.3 Warranty Against Infringement

CONTRACTOR warrants that it is the sole owner of the Verge System and has the right to enter into the Agreement. CONTRACTOR agrees to defend and hold harmless NMC from any suit brought against NMC for any alleged infringement ("Claims") based upon CONTRACTOR's or NMC's use of the Verge System provided NMC fully cooperates with CONTRACTOR including but not limited to: (a) notifying CONTRACTOR as soon as possible of any suit or threat of suit; and (b) granting CONTRACTOR complete control of the defense of all such claims, including the right to settle all Claims in accordance with any applicable laws of South Carolina. If, as the result of any Claims, NMC is required to stop using the Verge System, Verge shall pay NMC, as full and liquidated damages, all fees paid by NMC to CONTRACTOR. The payment will be made within thirty (30) days of the date which is later, either the date when the System is returned by the NMC to CONTRACTOR or the date of receipt of NMC's demand letter to CONTRACTOR.



**Exhibit A: Scope of Services/Payment Provisions**

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**To Agreement by and between  
NATIVIDAD MEDICAL CENTER, hereinafter referred to as "NMC"  
AND  
Verge Solutions, LLC, hereinafter referred to as "CONTRACTOR"**

**Scope of Work / Payment Provisions**

- 1. Description of All Services to be Rendered by CONTRACTOR:**  
Verge Solutions, LLC will provide Software as a Service (SaaS). Verge Solutions, LLC SaaS shall include the following products: VSurvey, VIncident, VPatientRelations, and VPeerReview.

VSurvey enables NMC to proactively manage compliance: Regulatory, Quality, Data Security, and Custom Standards. Incorporating powerful data collection tools, survey methodology, flexible reporting and corrective action plans, VSurvey shall assist with NMC being "survey ready" at all times.

VIncident empowers event reporting and patient safety tools that transform real-time data into actionable results. With a user-friendly icon screen, intuitive forms and easy reporting, VIncident automates NMC's event management process.

VPatientRelations makes it easier to understand and improve all areas of patient relationship management. NMC shall be able to create an efficient process of collecting and reporting patient complaints, grievances, suggestions and compliments.

VPeerReview provides the tools to enable the physician review process. Information is securely managed within the Peer Review Committee to protect the sensitive nature of this process, while ensuring swift review, action, and closure.
- 2. Definition of Registered User**  
As used in the Agreement, the term "Registered User" shall mean any individual affiliated with the NMC who is authorized to access the Verge System through a User Account and Password.



**Exhibit A: Scope of Services/Payment Provisions**

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**3. Grants of Rights; Restrictions**

- A. Subject to the terms of the Agreement, CONTRACTOR hereby grants to NMC a limited, non-exclusive, nontransferable license and right to allow its Registered Users to access and use the Verge System. Access shall be granted to the Registered Users pursuant to the terms set forth in the schedule attached in Section (the "**Pricing/Fees:**"). Verge acknowledges that NMC owns and retains exclusive rights of NMC Content.
- B. No provision of the Agreement shall be deemed to restrict or limit CONTRACTOR's right to market, sell, distribute, display or otherwise provide access to the CONTRACTOR System directly or indirectly anywhere in the world, or enter into contracts, grant licenses or make arrangements with any other party to market, sell, distribute, display or otherwise provide access to the CONTRACTOR's System anywhere in the world.
- C. NMC shall not distribute the CONTRACTOR's System to any third party other than a Registered User.
- D. NMC shall take commercially reasonable precautions to not permit any corporation, partnership or other type of legal entity, other than an individual authorized by NMC, to become a Registered User and access the CONTRACTOR's System without CONTRACTOR's prior written consent.

**4. Proprietary Rights**

- A. NMC acknowledges and agrees that all ownership and proprietary rights (including, without limitation, source code, object code, web pages, technology, know-how, and any copyrights, patents or other intellectual property protection) to the CONTRACTOR's System is and shall remain the sole and exclusive property of CONTRACTOR.
- B. NMC acknowledges and agrees that CONTRACTOR is the sole owner of the logos, trade names, trademarks and service marks (collectively the "Verge Marks") used in connection with the CONTRACTOR System and that nothing contained in the Agreement grants NMC any right to use any Verge Marks except as expressly provided in r the Agreement.
- C. NMC shall promptly advise CONTRACTOR of any possible infringement of which NMC becomes aware of any Verge Marks or other proprietary rights, or any unauthorized use of the CONTRACTOR System.



**Exhibit A: Scope of Services/Payment Provisions**

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**5. Advertising and Promotion**

NMC shall not make, publish or distribute or cooperate with any third party in making, publishing or distributing any public announcements, press releases, advertising, marketing promotional or other materials (whether in print, electronically or otherwise) ("Materials") that use any Verge Marks without the prior written approval of CONTRACTOR. CONTRACTOR shall not use NMC's logos, trademarks or service marks or NMC's name in any customer list, press release or announcement, advertising, marketing, promotional or other materials (whether in print, electronically or otherwise) without the prior written approval of NMC.

**6. CONTRACTOR Obligations:**

**A. Setup, Training and Software Modifications**

1. During the first year of the Agreement, Verge shall provide Customer with unlimited remote training for the Verge System. Each year thereafter, Verge will provide unlimited web-based training through the "VSchool" and "VUniversity" sessions staffed and moderated by key Verge staff.
2. Provide unlimited sessions of WebEx training for Customers' Register User's for use of the service during the first year of the agreement.
3. Set up an account on CONTRACTOR Internet Server for use of the online software, which will include the following but is not limited to:
  - a. VIncident Deliverables
    - Includes Patient, Employee, Visitor and other general safety incident reporting
    - Form customization that includes "smart logic" functionality and subsequent revisions.
    - Workflow creation and management.
    - Standardized and customized report generation both hospital-specific and health system-wide that includes highly configurable, flexible "template-driven" reporting with the option of customized templates.
    - Creation of data entry icons linked to individual data entry forms.
    - Tailored user security settings.



**Exhibit A: Scope of Services/Payment Provisions**

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- Customizable committee structure for each entity (Patient Safety committee)
  - All implementation set up and management. There may be some cost incurred for VPN and non-standard data interfaces.
  - 100% web-based, hosted on Verge servers.
  - Unlimited remote training and support for users.
- b. VPatientRelations Deliverables
- Form customization that includes “smart logic” functionality and subsequent revisions.
  - Workflow creation and management.
  - Standardized and customized report generation both hospital-specific and health system-wide that includes highly configurable, flexible “template-driven” reporting with the option of customized templates.
  - Creation of data entry icons linked to individual data entry forms.
  - Ability to automatically generate form letters and/or emails for follow-up.
  - Tailored user security settings.
  - Customizable committee structure for each entity (Patient Relations committee).
  - All implementation set up and management. There may be some cost incurred for VPN and non-standard data interfaces.
  - 100% web-based, hosted on Verge servers.
  - Unlimited remote training and support for users.
- c. VPeerReview Deliverables
- Form customization that includes “smart logic” functionality and subsequent revisions.
  - Workflow creation and management.
  - Standardized and customized report generation both hospital specific and health system-wide that includes highly configurable, flexible “template-driven” reporting with the option of customized templates.
  - Creation of data entry icons linked to individual data entry forms.
  - Tailored user security settings.



#### Exhibit A: Scope of Services/Payment Provisions

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- Customizable committee structure for each entity (Peer Review committee).
  - All implementation set up and management. There may be some cost incurred for VPN and non-standard data interfaces.
  - 100% web-based, hosted on Verge servers.
  - Unlimited remote training and support for users.
  - Option to submission to Verge Patient Safety Organization (VPSO) upon execution of VPSO stand alone Agreement
- d. VSurvey Deliverables
- Unlimited standards by license type (TJC, CMS, state department of health, DNV, etc.)
  - Form customization that includes “smart logic” functionality (data collection & trending).
  - Unlimited, customized corrective action plans with notifications and reminders.
  - Unlimited document storage and quick links to standards.
  - Easy, comprehensive reporting focused on various compliance dashboards, control charts, and standard data tables.
  - Tailored user security settings.
  - Customizable committee structure for each entity (Accreditation/compliance committee)
  - All implementation set up and management.
  - Highly configurable, flexible “template-driven” reporting with the option of customizing.
  - 100% web-based, hosted on Verge servers.
  - Unlimited remote training and support for users.

#### B. System Configuration and Accessibility

- During the term hereof, CONTRACTOR agrees that the Application(s) will have an uptime of at least 99%. Scheduled maintenance (for upgrades, patches, etc.) will not be calculated as part of this figure.
- CONTRACTOR will approve the use of Internet Explorer current version plus the previous two versions and all subsequent releases of Microsoft Internet Explorer Browser.





#### Exhibit A: Scope of Services/Payment Provisions

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- All upgrades to the CONTRACTOR SaaS, licensed by Licensee, will be provided to Licensee free of charge.

- CONTRACTOR shall provide 128 bit encryption for browser sessions.
- This Agreement allows for unlimited full logins for NMC users.

#### C. Other CONTRACTOR Services

1. CONTRACTOR takes no responsibility for any changes, modifications or enhancements made to the software listed in this agreement by Licensee or another third party or entity other than CONTRACTOR.

2. Restoration of User Data: If corruption or deletion of user data has occurred due to hardware, operating system, software malfunction, or operator error, during the term hereof CONTRACTOR will assist Licensee in restoration of such data upon the following conditions:

i. CONTRACTOR is required to keep adequate backups of the software and all Licensee data stored on CONTRACTOR server(s).

3. CONTRACTOR will warranty compatibility with product per Software and system configuration specified in section 6.B.

4. CONTRACTOR shall follow internal policy for disaster recovery:

- a. The team will be contacted and assembled by the ERT. The team's responsibilities include:
- b. Establish facilities for an emergency level of service within 6.0 business hours;
- c. Restore key services (RTO) within 12.0 business hours of the incident;
- d. Recover to business as usual (RPO) within 24.0 hours or latest backups after the incident;
- e. Coordinate activities with disaster recovery team, first responders, etc.
- f. Report to the emergency response team.

#### 7. NMC Obligations:

- A. NMC shall pay an amount not to exceed \$90,420 for the performance of work set forth in the Scope of Services.
- B. NMC shall acquire, install, operate and maintain at its expense all communications lines, equipment, software, services and related technology necessary to access the CONTRACTOR System.



**Exhibit A: Scope of Services/Payment Provisions**

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C. Except as specifically provided in the Agreement, NMC shall not use, store, manipulate, distribute or otherwise make available to any third party access to CONTRACTOR System without the prior written consent of CONTRACTOR. NMC shall use reasonable commercial efforts not to permit any other party to, access, alter or otherwise change in any manner the content, format or presentation of the CONTRACTOR System including, without limitation, all copyright and proprietary rights notices.

**8. Standard Sets:**

In the case that CONTRACTOR imports the standards into VSuite, ownership and copyright of the standards set remains with the third party, and CONTRACTOR will abide by, and pass along to NMC, any changes that the third party author makes. In those instances where additional fees are required by the third party author prior to providing access to the standards, CONTRACTOR and NMC will agree upon the additional fees in advance and in writing prior to activation and invoicing. The following standards are included in this Agreement:

ACGME	CLER (Pathways to Excellence)
CA (CDPH)	Medical Waste Management Act (Chapter 9)
CA (CDPH)	Patient Safety Licensing Survey
California	CCS Manual of Procedures
California	Health and Safety Code Section 1339.63 (MERP)
California	Title 22 - Division 5 - Chapter 01 - Hospitals
California	Title 24 - Part 2 - Chapter 12 - Section 1224 Hospitals (2007)
CMS	Appendix A - Hospitals
CMS	DMEPOS
CMS	ESRD (Interpretive Guidance)
CMS	Fire Safety Survey Report 2000 Code
CMS	Patient Safety Initiative
CoC	Cancer Program Standards
FDA	Mammography Quality Standards Act Regulations
HIT	SAFER Guides
Leapfrog	Leapfrog Hospital Survey (Section 6-NQF Safe Practices for Better Healthcare)
TJC	Comprehensive Accreditation Manual Hospital
TJC	Sentinel Event Alerts



**Exhibit A: Scope of Services/Payment Provisions**

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**9. Patient Data:**

- A. All data provided by Natividad Medical Center (County of Monterey) belongs to Natividad Medical Center (County of Monterey). All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the property of Natividad Medical Center (County of Monterey). Use or distribution of Natividad Medical Center (County of Monterey) data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from Natividad Medical Center (County of Monterey).
- B. For systems hosted or stored on equipment not owned by Natividad Medical Center (County of Monterey), CONTRACTOR shall furnish all data to Natividad Medical Center (County of Monterey) upon request by Natividad Medical Center (County of Monterey) at any time during the term of this AGREEMENT in a useable format as specified by NMC and at no additional cost to Natividad Medical Center (County of Monterey).
- C. Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.
- D. CONTRACTOR operates in compliance with all local, state, and federal rules and regulations. CONTRACTOR will comply with all NMC policy and procedures. CONTRACTOR will aid NMC, to the best of its ability, with preparation for upcoming JCAHO and state inspections, as pertains to IOM services. CONTRACTOR is a HIPAA compliant company, and abides by all HIPAA standards in effect at the time of this writing.
- E. Data Disposal: The data gathered by CONTRACTOR shall be stored on CONTRACTOR servers for a minimum of seven years from the year of transmission, unless otherwise agreed.



**Exhibit A: Scope of Services/Payment Provisions**

**10. Pricing/Fees**

- A. For pricing, please refer to attached annual license schedule.
- B. License Period: This Agreement is valid for the period of two (2) years.
- C. There shall be no travel reimbursement allowed during this Agreement.
- D. License fee paid upfront annually; Monterey County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

**Annual License Fees:** NMC will be invoiced as follows for the access provided to the locations listed above.

Year 1: \$45,210.00

<input checked="" type="checkbox"/> VSurvey - Hospital	\$12,870.00
<input checked="" type="checkbox"/> VIncident	\$15,840.00
<input checked="" type="checkbox"/> VPatientRelations	\$ 8,250.00
<input checked="" type="checkbox"/> VPeerReview	\$ 8,250.00

Year 2: \$45,210.00

<input checked="" type="checkbox"/> VSurvey - Hospital	\$12,870.00
<input checked="" type="checkbox"/> VIncident	\$15,840.00
<input checked="" type="checkbox"/> VPatientRelations	\$ 8,250.00
<input checked="" type="checkbox"/> VPeerReview	\$ 8,250.00

- 11. Delivery of Contractor Information.** NMC shall acquire, install, operate and maintain at its expense all communications lines, equipment, software, services and related technology necessary to access the CONTRACTOR System. Except as specifically provided in the Agreement, NMC shall not use, store, manipulate, distribute or otherwise make available to any third party access to the CONTRACTOR System without the prior written consent of CONTRACTOR. NMC shall use reasonable commercial efforts not to permit any other party to, access, alter or otherwise change in any manner the content, format or presentation of the CONTRACTOR System including, without limitation, all copyright and proprietary rights notices.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective December 8, 2015 (“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 Verge Solutions, LLC (“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 (“E PHI”), 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:

Verge Solutions, LLC

P.O. Box 394

Mt. Pleasant, SC 29465

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

If to Covered Entity, to:

Natividad Medical Center

1441 Constitution Blvd.

Salinas, CA 93906

Attn: 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: Chris M. Malanuk

By: [Signature]

Print Name: Chris M. Malanuk

Print Name: Gary Gray

Print Title: President

Print Title: CEO

Date: Dec. 10, 2015

Date: 11/13/15