

HOSPITAL PARTICIPATION AGREEMENT

NAME OF HOSPITAL: County of Monterey for the provision of services for Natividad Medical Center
HOSPITAL FEIN/TAX ID: 94-6000524
HOSPITAL ADDRESS: 1441 Constitution Blvd.
CITY, STATE ZIP: Salinas, CA 93906

THIS HOSPITAL PARTICIPATION AGREEMENT (“Agreement”) is between the hospital identified above (“Hospital”) and the American College of Surgeons (“ACS”).

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

WHEREAS, as an ACS NSQIP participating hospital, Hospital is also eligible to participate in the ACS Quality Verification Program for ACS NSQIP Hospitals (“ACS NSQIP QVP”) that is a part of this Agreement; and

WHEREAS, the parties desire to enter into this Agreement based upon the terms and conditions shown below.

NOW, Therefore, in consideration of the foregoing, Hospital and ACS agree as follows:

1. **Term.** The term of this Agreement is October 1, 2022 through September 30, 2027 unless sooner terminated pursuant to Section 18 of this Agreement below (the “Term”).

2. **Contribution of Data.** a) **NSQIP Registry.** Hospital agrees to contribute certain data (the “ACS NSQIP Data”) to a proprietary database established by ACS (the “NSQIP Registry”). Hospital must submit its ACS NSQIP Data in accordance with the data reliability standards established by ACS NSQIP. Hospital agrees to contribute a set number of cases based on the minimum ACS NSQIP Data contribution requirements for Hospital’s participation in the ACS NSQIP as established by ACS. Hospital will submit data in the format as required by ACS via the official ACS NSQIP web-based data collection system on the ACS Quality Data Platform (“QDP”) with standardized fields as developed by ACS and/or ACS authorized vendor(s). Hospital agrees to use an ACS authorized vendor and ACS will not be required to accept data from any other vendor. Hospital shall retain ownership of the data it submits to the ACS NSQIP Registry and, subject to the terms and conditions set forth herein, hereby grants to ACS a non-exclusive, perpetual, irrevocable license to utilize the ACS NSQIP Data contributed to the ACS NSQIP Database by Hospital and to share such ACS NSQIP Data with other ACS NSQIP participants for purposes of quality improvement/benchmarking in the area of health care, or for related research purposes in the area of health care as further described in the Business Associate and Data Use Agreement (“BA/DUA”).

b) **ACS NSQIP QVP.** Hospital may apply for status as an ACS NSQIP QVP Verified Hospital at any time during the Term. At that time Hospital further agrees to submit to ACS the data necessary for ACS to evaluate whether Hospital meets the Standards as described in the data requirements included in the ACS NSQIP QVP materials available through Hospital’s account, and as further described in this Agreement.

3. **BA/DUA.** Hospital and ACS agree that the attached Business Associate and Data Use Agreement (BA/DUA) executed in 2016 is still binding and associated with this Agreement. The parties acknowledge and agree that any provision or exchange of data by or between Hospital and ACS is conditioned upon the terms of this Agreement and the BA/DUA. Hospital further acknowledges that ACS will treat any protected health information (“PHI”) it receives from Hospital in accordance with the terms of the BA/DUA.

4. **Hospital Participation Requirements.** a) **ACS NSQIP Participation.** Hospital will continuously comply with the ACS NSQIP participation requirements described in this Agreement and as set forth at: <https://www.facs.org/quality-programs/acs-nsqip/about/joinnow/participation>. The ACS NSQIP participation requirements are subject to change from time to time.

b) **ACS NSQIP QVP Participation.** If Hospital has enrolled in the ACS NSQIP QVP, i) Hospital agrees to complete an application and a pre-review questionnaire (“PRQ”), and participate in a site visit including chart review

(“Site Visit”). and ii) Hospital will continuously comply with the ACS NSQIP QVP participation requirements described in this Agreement. A description of the ACS NSQIP QVP can be found at: <https://www.facs.org/quality-programs/acs-nsqip/about-nsqip-qvp>. ACS will provide Hospital with the Standards. A complete listing and description of the Standards can be accessed at: <https://www.facs.org/quality-programs/quality-verification/program-standards>. Upon seeking verification, Hospital warrants that it either will then meet, or at that time is using and will use its best efforts to work toward meeting, the Standards in effect as of the Effective Date of this Agreement or enrollment date to be an ACS NSQIP QVP-Focused Verified Hospital.

c) Changes to Standards. The Standards are subject to change from time to time. ACS will notify Hospital of any such changes by email to Hospital’s primary contact. Hospital is required to be in compliance with the revised Standards within six (6) months from the date that ACS provides notice of such changes to the Standards (the “Deadline”). Hospital shall notify ACS in writing in the event that Hospital is unable to comply with the revised Standards by the Deadline.

5. **ACS NSQIP QVP Hospital Evaluation and Verification**. If Hospital is participating in the ACS NSQIP QVP, ACS will schedule a Site Visit at a mutually agreeable time after ACS’s acceptance of the PRQ and related ACS NSQIP QVP verification materials. Following the Site Visit, ACS will evaluate whether Hospital meets the Standards for designation as an ACS NSQIP QVP Verified Hospital. ACS will submit to Hospital a confidential summary report of its findings and potential opportunities for Hospital’s quality improvement efforts and activities. If Hospital is verified, then Hospital will be designated as an ACS NSQIP QVP Verified Hospital and listed as such on ACS’s website. The ACS NSQIP QVP verification cycle is approximately three (3) years, as long as Hospital is a program participant. If ACS determines that Hospital does not meet the Standards, ACS will provide Hospital a list of deficiencies. Hospital may correct the deficiencies which are correctable within a prescribed period of time set by ACS and provide ACS with evidence of such correction. ACS may require additional Site Visit(s) to determine whether Hospital has corrected such deficiencies as necessary to meet the Standards. If ACS determines that such additional Site Visit(s) are required in its sole reasonable discretion then Hospital agrees to pay any required additional Site Visit fees. If Hospital corrects the deficiencies within the prescribed timeframe, ACS shall grant verification of Hospital. If ACS denies verification, Hospital may appeal, under ACS procedures, and the decision of ACS regarding such appeal by Hospital shall be final. If Hospital is denied verification by ACS it may reapply within six (6) months of the date of such denial. Hospital agrees to pay additional Site Visit fees related to Hospital’s reapplication for verification.

6. **ACS NSQIP and QVP Services Provided to Hospital**. ACS will provide Hospital the ACS NSQIP services described on <https://www.facs.org/quality-programs/acs-nsqip/about/oinnow/services>, and if Hospital participates in the ACS NSQIP QVP-Focused, ACS will provide Hospital the Focused services as described at: <https://www.facs.org/quality-programs/acs-nsqip/about-nsqip-qvp>.

7. **Fees**. In exchange for the services ACS provides to Hospital related to its participation in the ACS NSQIP Registry and access to and/or participation in the NSQIP QVP Focused, Hospital agrees to pay to ACS an annual participation fee as described on <https://www.facs.org/quality-programs/acs-nsqip/about/oinnow/program-fees> (the “Annual Fee”) (Note: pricing for the NSQIP and NSQIP QVP Focused does not change based upon actual participation and/or verification through the NSQIP QVP Focused program). ACS may adjust the Annual Fee from time to time and will provide Hospital at least sixty (60) days’ advance notice of any such adjustment. Hospital further agrees to pay any additional fees in connection with Site Visit(s) (as described in Section 5), Data Collectors (as described in Section 11), and Audits (as described in Section 14).

8. **Payment**. ACS will invoice Hospital for the initial Annual Fee at the time Hospital submits a signed copy of this Agreement to ACS for countersignature. Thereafter, ACS will invoice Hospital sixty (60) days before each anniversary of the Effective Date unless Hospital does not wish to continue participation in the ACS NSQIP. Payment of the Annual Fee shall be due in full upon Hospital’s receipt of the invoice.

9. **Access to and License Use of ACS NSQIP Data**. Hospital will have continuous access to Hospital’s own ACS NSQIP Data. Hospital will also have continuous access to cumulative, non-risk-adjusted ACS NSQIP Data contributed by all ACS NSQIP participants, in a manner that does not identify or permit identification of the ACS NSQIP participant-contributor(s), and presented for the purpose of comparison to national averages and peer groups. Notwithstanding the ownership rights of each ACS NSQIP participant-contributor to the data they individually submit to the ACS NSQIP Registry, ACS owns all right, title, and interest in the ACS NSQIP Registry and the aggregated data contained therein. ACS hereby grants to Hospital a limited, non-exclusive, revocable license to utilize the cumulative, non-risk-adjusted

ACS NSQIP Data for internal purposes only. ACS will provide reports to Hospital from time to time, which will contain risk-adjusted ACS NSQIP Data. ACS hereby grants to Hospital a limited, non-exclusive, revocable license to use such risk-adjusted ACS NSQIP Data for internal and external purposes.

10. **Confidentiality of Hospital's Identity.** ACS will not release Hospital's ACS NSQIP Data in any form or format that identifies Hospital or its medical or professional staff or employees, or any of them, as the contributor(s) of Hospital's specific ACS NSQIP Data, except: to Hospital, as required by legal process, or as specifically authorized by Hospital. If any legal demand for Hospital's ACS NSQIP Data is made upon ACS, ACS will promptly notify Hospital so that Hospital may, at its option, challenge the validity of such demand. The provisions of this Section shall survive any termination or expiration of this Agreement.

11. **Data Collectors.** Hospital acknowledges that it must ensure adequate staffing for high-quality data collection and analysis and agrees to dedicate the required number of data collectors as determined by Hospital's surgical volume to submit ACS NSQIP Data to the NSQIP Registry, including a qualified, dedicated Surgical Clinical Reviewer ("SCR"). A description of SCR training and resources is available at: <https://www.facs.org/quality-programs/acs-nsqip/about/joinnow/services>.

12. **Reporting of Hospital Changes.** Hospital agrees to immediately notify ACS of any changes to Hospital's operations including changes in personnel, physical environment, procedure, equipment, administration, or any other circumstance, which results in Hospital no longer meeting the requirements for approval as an ACS NSQIP QVP Verified Hospital.

13. **Access to NSQIP Registry on the ACS QDP** Hospital acknowledges and agrees that it is at all times responsible for controlling access to Hospital's own data and Hospital's account ("ACS NSQIP Participant Portal"), as well as access to the NSQIP Registry on the ACS QDP. Hospital is solely responsible for designating the persons authorized to access the ACS NSQIP Participant Portal and/or the NSQIP Registry and the scope of each Authorized User's permissible access and use for or on behalf of Hospital (collectively the "Authorized Users") Hospital agrees to maintain in the ACS NSQIP Participant Portal an up-to-date list of its current authorized users with a need to access the NSQIP Registry on the ACS QDP and to promptly update its list of authorized users in the ACS NSQIP Participant Portal to account for any additions and/or deletions of authorized users. Hospital is responsible for maintaining the security of, and for all activities occurring under, the login credentials of each Authorized User, and for verifying any and all information or data transmitted, stored or received by the Authorized Users in accessing the NSQIP Registry.

14. **Audits.** In order to monitor the quality of the data entered into the NSQIP Registry, Hospital acknowledges that ACS or its agents will conduct regular inter-rater reliability audits of Hospital's data and collection procedures in relation to the ACS NSQIP Data Hospital contributes to the NSQIP Registry ("Audits"). ACS will provide Hospital at least ten (10) business days' prior notice of any such Audits and Hospital agrees to participate in, and cooperate with ACS in its conduct of, such Audits during the Term. To the extent medical records are required to conduct the Audits, the parties acknowledge and agree that ACS will request from Hospital, and Hospital will provide to ACS, only the minimum necessary information from the medical record that is required to complete the Audits. Hospital acknowledges and agrees that additional Audits may be required by ACS and/or requested by Hospital from time to time during the Term. If ACS determines, in its sole reasonable discretion, that additional Audit(s) is/are necessary, and/or if Hospital requests that ACS conduct additional Audit(s) then Hospital further agrees to pay to ACS an additional fee of Three Thousand Five Hundred Dollars (\$3,500) per such Audit.

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

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

b. If Hospital is an ACS NSQIP QVP-Focused Verified Hospital, and for so long as Hospital is a program participant in the ACS NSQIP QVP-Focused i) Hospital grants to ACS a limited license to use the name of Hospital to

identify Hospital as an ACS NSQIP QVP-Focused Verified Hospital, and Hospital acknowledges and specifically agrees that ACS may utilize the name of Hospital for such purposes in any medium, including any list(s) setting forth or otherwise identifying Hospital as an ACS NSQIP QVP-Focused Verified Hospital on ACS's website and in other media; and ii) ACS grants a limited revocable license to Hospital to use the designation "ACS NSQIP QVP-Focused Verified Hospital."

17. **Ongoing Participation in Special Projects/Programs** Hospital and ACS each hereby acknowledge, agree, and affirm that if Hospital participates in/will participate in special projects or programs, that supplement, are ancillary to, or otherwise related in any way to Hospital's participation in the ACS NSQIP (for example, NSQIP Collaboratives, NSQIP Quality in Training Initiative and the Hospital Compare project) including those in place prior to the date of this Agreement, those projects and programs continue to be/will be governed by any applicable documentation, addenda or amendments specific to those projects or programs, as well as incorporated into this Agreement.

18. **Termination**. Hospital may terminate this Agreement at any time during the Term. ACS may terminate this Agreement at any time during the Term upon thirty (30) days prior written notice to Hospital if Hospital materially fails to fulfill the terms of this Agreement or materially violates any of the conditions set forth herein. In addition, ACS may immediately terminate Hospital's participation in the ACS NSQIP QVP if Hospital practices may endanger patient safety as determined in ACS's sole reasonable discretion. ACS shall give notice to Hospital of its intent to terminate this Agreement and/or program for such causes, and Hospital shall have fifteen (15) days from the date of such notice to appeal, under ACS procedures, and the decision of ACS regarding such appeal by Hospital shall be final. Notwithstanding any term to the contrary herein, this Agreement shall automatically terminate upon the termination of the BA/DUA. In the event of any termination of this Agreement by ACS for the causes set forth hereinabove or as a result of the termination of the BA/DUA, Hospital shall not be entitled to the appeal rights set forth above or to any refund of the Annual Fee paid by Hospital to ACS hereunder. ACS may also terminate this Agreement in the event that ACS suspends data collection under the ACS NSQIP, in which case ACS will refund to Hospital the pro-rata portion of the Annual Fee paid by Hospital for the unfulfilled portion of the Term. No refund of any other fee(s) paid by Hospital to ACS hereunder is/are due on termination of this Agreement for any reason whatsoever.

19. **Effect of Termination on Provision of Data to ACS**. The parties acknowledge and agree that the provision of any PHI to ACS pursuant to this Agreement is conditioned upon this Agreement and the BA/DUA being in full force and effect. Therefore, upon termination of this Agreement or the BA/DUA, the parties agree that Hospital will refrain from submitting PHI to ACS, and ACS will refrain from accepting PHI from Hospital.

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

21. **Disclaimer of Warranty, Limitation of Liability, and Indemnification**

a) **No Warranty as to Materials and/or Services; disclaimer**. To the maximum extent permitted by applicable law, the ACS NSQIP Registry, and the materials and/or services provided by ACS hereunder ("ACS NSQIP Materials") are provided "as is" with all faults, and ACS disclaims any and all express or implied representations and warranties with respect to the ACS NSQIP Materials, including any express or implied warranty of merchantability, fitness for a particular purpose, accuracy, non-infringement, or that the ACS NSQIP materials will operate error free, uninterrupted or be free of viruses. The entire risk as to selection, quality, performance, and use of, and satisfaction with, ACS NSQIP Materials shall be with Hospital. The parties agree that the ACS NSQIP QVP is meant to improve the quality of care for Hospital's patients. Participation in the ACS NSQIP QVP does not guarantee or warrant the quality of patient services provided at Hospital. Notwithstanding any provision herein to the contrary, neither party shall be liable for indirect, special, incidental, consequential or exemplary damages (including damages related to loss of business revenue or profits or any use or inability to use the ACS NSQIP Materials) under any legal theory, even if a party has been advised of the possibility of such damages.

b) **Indemnification by Hospital**. Hospital agrees to indemnify, defend and hold harmless ACS, its employees, officers, directors, volunteers, successors and assigns from and against any liability, damages, costs (including attorney's fees), penalties, expenses of any kind, judgments, settlements, or claims arising from Hospital's participation in the ACS NSQIP and/or ACS NSQIP QVP.

c) **Indemnification by ACS.** Except for any liability, damages, costs (including attorney's fees), penalties, expenses of any kind, judgments, settlements or claims related to the care provided to a patient or as limited or disclaimed in this Agreement, ACS agrees to indemnify, defend, and hold harmless Hospital, its employees, officers, directors, volunteers, successors and assigns from and against any liability, damages, costs (including attorney's fees), penalties, expenses of any kind, judgments, settlements or claims arising from ACS's material breach of its obligations under this Agreement. EXCEPT AS PROVIDED IN THE BA/DUA, AND TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT IN NO EVENT SHALL ACS BE LIABLE FOR ANY THIRD-PARTY CLAIM, INCLUDING ANY LIABILITY FOR DAMAGES OR COSTS RELATED TO THE CARE PROVIDED TO ANY PATIENT BY HOSPITAL. ACS'S LIABILITY FOR DAMAGES SHALL BE LIMITED AND/OR EXCLUDED AS PROVIDED IN THIS AGREEMENT, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

d) The foregoing indemnification obligations are conditioned on the indemnifying party ("**Indemnitor**") having sole control over the defense (including selection of counsel) and settlement of any claim that is subject to indemnification under this Agreement provided that indemnified party ("**Indemnitee**") has approved such settlement, which approval shall not be unreasonably denied. Indemnitee shall provide Indemnitor with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Indemnitor in establishing a defense to such action. Indemnitee reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing. This Section 21 shall survive any termination of this Agreement.

22. **Amendment.** Any amendment to this Agreement must be in writing and signed by authorized representatives of each of ACS and Hospital.

23. **Assignment.** Except as otherwise provided herein, neither party may without the written consent of the other assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement. Notwithstanding the foregoing, Hospital may assign this Agreement and its rights and duties hereunder to another entity that either controls Hospital or is under common control with Hospital, or buys all or substantially all of the assets of Hospital, without obtaining the prior written consent of ACS; provided that Hospital furnishes written notice to ACS of such assignment within thirty (30) days' of the effective date of such assignment. Hospital acknowledges and agrees that, in the event of such assignment, ACS may require Hospital, if enrolled in NSQIP QVP, to submit a new application for participation in the ACS NSQIP QVP and/or conduct additional Site Visit(s) to verify Hospital's continued compliance with the Standards, each and any of which shall be at Hospital's expense in accordance with the terms of this Agreement.

24. **Severability.** If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature, or by any federal or state regulation, or declared null and void by any court with valid jurisdiction, then the parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.

25. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the parties, whether oral or in writing, concerning its subject matter.

26. **Jurisdiction.** This Agreement is governed by the laws of the State of Illinois and venue for resolution of any disputes arising hereunder or related hereto shall reside in a federal or state court of competent jurisdiction situated in Cook County, Illinois.

27. **Third Party Beneficiaries.** ACS and Hospital expressly acknowledge and agree that individuals whose PHI is used by or disclosed to ACS and its employees, agents, or subcontractors, or any of them, under this Agreement are not third-party beneficiaries of this Agreement. ACS and Hospital further expressly acknowledge and agree that individuals who utilize Hospital's services are not third-party beneficiaries of this Agreement, and nothing in this Agreement is intended to create any third party beneficiary to this Agreement.

28. **Waiver.** No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

29. **Relationship of the Parties.** The parties are independent contractors of each other. Nothing in this Agreement

shall be construed to create an employer/employee, joint venture, or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.

30. **Notices.** Any notices required pursuant to this Agreement shall be in writing and sent by U.S. Mail, personal delivery, next-day express mail, or by facsimile addressed as identified below:

If to ACS:
American College of Surgeons
Attn: Gay Vincent, CFO
633 North Saint Clair St.
Chicago, IL 60611-3211
Fax: 312-202-5025

If to Hospital:
Hospital: _____
Attn: _____
Street Address: _____
City, State, Zip: _____
Fax: _____

31. **Exclusion.** The parties represent and warrant that to the best of each party’s knowledge, such party is not currently and has not been, excluded from participating in any federal health care program.

32. **Insurance.** Each party will maintain business liability insurance which such party determines is commercially reasonable and sufficient to cover such party’s obligations under this Agreement.

33. **Access to Books and Records.** If and to the extent applicable to ACS, for four (4) years after services are furnished pursuant to the Agreement, ACS shall retain, and shall allow the Comptroller General of the United States, the United States Department of Health and Human Services, and their duly authorized representatives, access to this Agreement and to such of ACS’s books, documents, and records as are necessary to verify the nature and extent of the costs of the services rendered pursuant to this Agreement. If ACS provides services or a portion of services identified in this Agreement pursuant to a subcontract with an individual or organization that is related to ACS by control or common ownership and the services or portion of services provided pursuant to such subcontract has a value or cost of \$10,000.00 or more over a twelve (12) month period, ACS shall require the subcontractor in writing through the subcontract to retain and allow access to its records on the same terms and conditions as set forth herein. This Section shall be null and void to the extent 42 U.S.C. §1395x(v)(1)(I), as amended, is not applicable to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth hereinbelow.

“ACS”

“HOSPITAL”

AMERICAN COLLEGE OF SURGEONS

**COUNTY OF MONTEREY
NATIVIDAD MEDICAL CENTER**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____