

**CONSULTING SERVICES AGREEMENT**

OptumInsight, Inc. with a principal place of business at 11000 Optum Circle, Eden Prairie, Minnesota 55344 ("Optum") and between the County of Monterey, a political subdivision of the State of California (hereinafter, "County"), on behalf of Natividad Medical Center("Natividad"), a general acute care teaching hospital wholly owned and operated by the County. Natividad has entered into this Consulting Services Agreement dated April 2, 2019 ("Effective Date") and agree to the description of services (the "Services"), fees, and terms and conditions attached and incorporated herein. The parties agree as follows:

1. **Scope of Services:** Optum shall provide the consulting services and deliverables for Natividad as described on Exhibit A.

2. **Use of Services.**

a. Natividad may use the Services for Natividad's own internal business purposes, in accordance with this Agreement.

b. Natividad shall not publish, translate or transfer possession of the Services or any deliverables in connection with the Services, or create derivative works based on the Services. Natividad shall not disclose, allow disclosure of, or sublicense the Services or deliverables to any third party or allow any third party access to or use the Services or deliverables. This provision shall survive the termination of this Agreement.

c. Optum may use proprietary tools, computer programs, algorithms, databases, methods and techniques, processes and other materials and ideas developed by itself or others to perform the Services for Natividad ("Optum Tools"). Natividad acknowledges and agrees that the Optum Tools, including any modifications, improvements, adaptations, or enhancements thereto or new versions thereof, are not deemed a deliverable or "work made for hire" under this Agreement and remain the sole property of Optum.

3. **Natividad Responsibilities:**

Optum is not responsible for any deficiency or failure to complete Services if such deficiency or failure results from Natividad's failure to fully and timely comply at all times with Natividad's obligations which include, but are not limited to, the following:

- A. Natividad will provide Optum resources with appropriate logins, system access, workspace and tools to perform the Services in a timely manner. Technical set up prior to beginning the assigned Services shall be billed to Natividad.
- B. Natividad resources shall provide adequate guidance to the Optum resources and shall provide timely decision-making.
- C. Natividad commits to making the necessary Natividad resources, available to support the successful execution of the Services.
- D. Natividad will be responsible for procuring *prior* to commencement of the Services, and for maintaining, any and all applicable software licenses.
- E. Natividad will provide Optum access to any Natividad technology only to the extent Optum needs such access to provide the Services.

Natividad will provide any data, information, processes, documentation, or any other documents and information required by Optum for supporting the Services in a timely manner (a timely manner is typically within two (2) working days).

4. **Assumptions.** The following assumptions and constraints have been identified and agreed to by both Optum and Natividad. If any of these assumptions prove to be incorrect or no longer accurate, the parties will agree on appropriate changes to this SOW and resulting fees, which will be mutually agreed upon by the parties. Any change in Services will be documented and detailed in a change order in accordance with the change request process set forth herein.

Natividad shall be responsible for any delays, additional costs which are mutually agreed upon by the parties, or other liabilities caused by any deficiencies in regard to Natividad's compliance with the obligations outlined in the SOW. Optum's delivery of Services and the amount of fees charged are dependent on Natividad's timely and effective compliance with the obligations outlined in the SOW.

5. Timeline: The Services have been estimated to take 12 weeks. Natividad understands that failure to meet its obligations, delays caused in scheduling meetings, changes in the objectives or scope of the project and/or new information acquired during the course of the project, may impact Optum's ability to deliver the Services within the estimated timeline

6. Fees and Payment Terms.

A. Services Fee. This is a fixed fee project; accordingly, Natividad shall pay Optum the fixed fee amount of \$120,000 (US\$) for the Services (the "Services Fee"). Natividad understands that delays caused in scheduling meetings, changes in the objectives or scope of the project and/or new information acquired during the course of the project, may impact Optum's ability to deliver the Services within the Services Fee.

B. Billing. Optum shall submit such invoice periodically or at the completion of Services, but in any event, not later than 30 days after completion of the Services. The invoice shall set forth the amounts claimed by Optum for the previous period, with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Natividad shall certify the invoice, either in the requested amount or in such other amount as Natividad 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.

7. Change Request Process. Changes in the scope of the project or timeline for any Services under this Agreement require a change request and may result in a new or revised schedule and associated fees. All requests to change project scope will use the following procedure. Either Optum or Natividad shall initiate a change request in writing signed by Natividad and Optum, specifying the description of the proposed change. The impact on costs, staffing, workloads, and schedule will be documented by Optum. Optum shall specify the date before which Natividad must respond to avoid uncontrolled impacts on the project plan. If the change request is approved by both parties, Optum will amend the Agreement and budget as needed and schedule the work to commence accordingly as stated in the "Change Request form". The signatures of Natividad and Optum on the change request form will confirm approval or rejection of the request. Optum will not commence work on the change request without approval.

8. Acknowledgement. Natividad acknowledges and agrees that the Services under this Agreement are provided for informational purposes only. Any interpretation, implementation or use of the Services, or Natividad's decisions based on Optum's recommendations, are solely and exclusively at Natividad's discretion, and shall be conducted in accordance with Natividad's standard change management processes. Natividad is solely responsible for the decisions it makes and actions it takes using the recommendations and best practices provided as part of the Services, and Natividad agrees that Optum shall not be held responsible or liable for any actions taken by Natividad, or any error, inaccuracy, or omission in the Services, or for any damage (including, but not limited to consequential damages) resulting from Natividad's use of the Services.

9. Term. Either party may cancel and terminate this Agreement for good cause effective immediately upon written notice to the other party unless the reason for termination is capable of being cured and is reasonably cured within 30 days after receipt of notice. "Good cause" includes failure of either party to perform as provided under this Agreement. If Natividad terminated this Agreement for good cause, Natividad is obligated to compensate Optum for all fees due through the date of termination. Natividad's payments to Optum under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are

not obtained and continued at a level sufficient to allow for Natividad purchase of the indicated quantity of services, then Natividad may give a written notice of this fact to Optum and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

**9.1** The term of this Agreement is from April 2, 2019 through April 1, 2019 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Optuminsight Inc. and Natividad and with Natividad signing last and Optuminsight Inc. may not commence work before Natividad signs this Agreement.

#### **10. Warranties.**

Optum represents and warrants that it will provide the Services in a professional and workmanlike manner. Natividad represents and warrants that (a) its signatory is authorized to enter into this Agreement on behalf of Natividad, and (b) (i) its provision of any Natividad data and (ii) its and its receipt of and access to the Services will not violate any of its obligations to third parties or violate any applicable laws and that Natividad has obtained all necessary third party consents to provide the Natividad data and for such Natividad data to be used in the manner contemplated by the Agreement. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE SERVICES ARE PROVIDED "AS IS." AND OPTUM MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES. INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. MERCHANTABILITY, TITLE. AND NONINFRINGEMENT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND OPTUM IS NOT RESPONSIBLE FOR ANY DELAYS. DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**11. Limitation of Liability.** Natividad agrees that neither Optum nor its Personnel will be liable to Natividad for any claims, liabilities, or expenses relating to the Services or the Agreement for an aggregate amount not to exceed two times the amount paid by Natividad to Optum under the Agreement. In no event will a party or its Personnel be liable to the other party and/or its Personnel for consequential, special, indirect, incidental, punitive or exemplary loss, damage or expense relating to the Services or the Agreement, including , without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if a party has been advised of the possibility of such damages. In addition, Optum will not be liable in respect of the following: (a) any decisions made by Natividad as a result of the performance of the Services or (b) Natividad's misuse of the Services.

#### **12. Insurance**

##### **12.1 Evidence of Coverage:**

Prior to commencement of this Agreement, Optum 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.

This verification of coverage shall be sent to NMC's Contracts Division, unless otherwise directed. OPTUM 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 OPTUM.

**12.2 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.

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

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.

Exemption/Modification (Justification attached; subject to approval).

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 \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if OPTUM employs others 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.

Exemption/Modification (Justification attached; subject to approval).

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 OPTUM 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.

Exemption/Modification (Justification attached; subject to approval).

#### 12.4 Other Requirements:

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 OPTUM completes its performance of services under this Agreement.

Optum will provide 30 days' prior written notice of cancellation should such cancellation result in Optum's inability to comply with the insurance requirements herein. Each policy shall provide coverage for OPTUM 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.

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 Optum'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 OPTUM's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 or CG 20 10 in tandem with CG 20 37. The required endorsement from for Automobile Additional Insured Endorsement is Form PCA 048.

Prior to the execution of this Agreement by NMC, OPTUM shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that OPTUM has in effect the insurance required by this Agreement. OPTUM shall file a new or amended certificate of insurance within five (5) 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.

Optum 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 Division. If the certificate is not received by the expiration date, NMC shall notify OPTUM and OPTUM shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by OPTUM to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

**13. Cyber Liability** –Consultant should carry and maintain cyber liability insurance with limits of not less than \$2,000,000 and aggregate of \$4,000,000 covering claims involving the legal liability to others for privacy violations, record holder breach notification costs, privacy breach remediation costs, privacy regulatory actions, fines and penalties, theft of confidential or protected information, damage to or destruction of electronic information, restoration or retrieval of electronic information, intentional and/or unintentional release of private or confidential information, alteration of electronic information, ransomware, extortion and network security. Such insurance must affirmatively state that the coverage it provides is primary and non-contributory to any other valid and collectible insurance.”

**14. Mutual Indemnification.**

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

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

**15. Confidentiality** . Each party will maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers, or its patients. Each party will use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but not less than reasonable care. Each party will disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this Agreement. The obligation to maintain the

confidentiality of such information will not extend to information in the public domain at the time of disclosure, or to information that is required to be disclosed by law or by court order and will expire five years after this Agreement terminates or expires. This Agreement is a public record subject to disclosure pursuant to a request made under the California Public Records Act ("CPRA").

**16. Exceptions.** The following will not constitute "Confidential Information": (a) information which was already in a party's possession prior to the date hereof and which was not acquired or obtained from the other party; (b) information which was obtained from a third person or entity which, insofar as is known to the receiving party, is not prohibited from transmitting the information by a contractual, legal, or fiduciary obligation; (c) information which is or becomes generally available to the public other than as a result of disclosure by the receiving party or its directors, officers, consultants, or other employees in violation of this Agreement; or (d) information that is independently developed by the receiving party without reference to the other party's Confidential Information

**17. Data Rights.** Optum shall not be deemed to have any ownership rights in PHI provided to Optum pursuant to the terms of this Agreement. However, during and after the term of this Agreement, Optum may use, transfer and combine data from Natividad and information derived from that data for preparing normative benchmark data, and for internal research and analytical purposes, but only in a manner that is consistent with HIPAA, that does not identify Natividad as a source of the data, and that does not disclose Natividad-specific experience. Optum may also perform data aggregation and use de-identified information, so long as such use is consistent with HIPAA.

**18. Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California.

**19. Integrated Agreement.** This Agreement constitutes the entire understanding between the parties and supersedes all prior proposals, communications and agreements between the parties relating to its subject matter. No amendment, change, or waiver of any provision of this Agreement or terms on any purchase order or other document will be binding unless in writing and signed by both parties. Terms of a purchase order or other ordering or shipping document do not modify, amend, or add to the terms of this Agreement, and shall have no effect. In the event one or more of the provisions of this Agreement are found to be invalid, illegal or unenforceable by a court with jurisdiction, the remaining provisions shall continue in full force and effect.

**20. Assignments.** The Agreement is not assignable by either party without the other parties' prior written consent. The Agreement is binding upon, and insures to the benefit of the parties and their respective successors and assigns. None of the services covered by this Agreement shall be subcontracted without the prior written approval of Natividad. Notwithstanding any such subcontract, Optum shall continue to be liable for the performance of all requirements of this Agreement..

The parties have accepted and agreed to this Agreement as of the Effective Date.

**OPTUMINSIGHT, INC.**

**NATIVIDAD (The County of Monterey)**

DocuSigned by:  
By: John Simon  
41ED8368209F48F...  
Name: John Simon  
Title: Sr VP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Apttus: 00556063.0

AS  
Monterey County Deputy County Counsel  
Date: 4.1.19

[Signature]  
Monterey County Deputy Auditor/Controller  
Date: 4.3.19

## EXHIBIT A

### I. Services.

A. Scope of Services. Optum shall provide the consulting services set forth below in order to assess Natividad's perioperative services and develop a strategic playbook through market assessment (the "Services" which are included in the definition of "Services" in the Agreement).

- Conduct initial planning call, form Executive Steering Committee and determine meeting cadence
- Prepare and submit and information request from Natividad covering 12 months of financial, operational and staffing data, as well as other pertinent documents
- Conduct stakeholder interviews Conduct on-site observations of Operating Room ("OR") inpatient procedure rooms, OR inpatient pre/post area, OR outpatient procedure rooms, OR outpatient pre/post area, ambulatory procedure rooms, ambulatory pre/post area, and other areas as needed
- Conduct qualitative and quantitative analysis, including:
  - Analyze block utilization rates to determine true weekday, weekend and afterhours utilization, as well as identify unused capacity that may be leveraged to fuel volume growth
  - Evaluate block and room utilization in addition to out-of-block utilization and make recommendations related to service rationalization between the sites
  - Assess the perioperative department's governance structure and scheduling policies and processes
  - Conduct a productivity analysis of perioperative services, including staffing, preoperative testing, and OR and staff, including benchmarking against the Truven Health Analytics database and other proprietary databases to identify both productivity and skill mix opportunities
  - Conduct a comprehensive process flow assessment of preoperative testing procedures, scheduling processes and the surgery enterprise's interactions with physician offices prior to the day of surgery
  - Identify opportunities to maximize throughput delays associated with supplies and instrumentation, including the coordination between sterile processing, materials management team members and OR staff

#### **Organizational Structure, Governance and Culture**

- Review documentation regarding the department's organizational structure to define the current reality, including physician leadership structure, staffing needs, infrastructures, present roles and responsibilities — and develop a high-level understanding of overall performance
- Benchmark the existing model against peer organizations to identify the optimal resource mix for an alternative structure, evaluating internal and external factors that may be contributing to barriers for success, as well as areas for improvement within the existing structure
- Assess governance, management and physician leadership structure and function, including policies and procedures that guide and align the various physician constituencies within Natividad and identify a footprint for structural optimization and integration

- Conduct stakeholder interviews and an organizational review, focusing on key areas such as:
  - Effectiveness of governance as compared to management
  - Physician leadership structure and scope of decision-making, structural and organizational optimization
  - Optimization of leadership composition and profile
  - Review of duties and responsibilities of governance members
  - Nursing leadership and optimization

**Strategic Objectives/Ambulatory Point of View Development**

- At engagement onset, Optum will conduct a working session with Natividad leadership to determine the system's point of view ("POV") on the future of ambulatory services delivery
- Develop a set of strategic hypotheses to begin the process of articulating emerging imperatives and requirements regarding Natividad's ambulatory capabilities, specific to both the Medical Office Building ("MOB") and system-wide.

**Fact Based Development**

- Assess Natividad markets to develop an Inside-Out and Outside-In fact base of factors driving ambulatory services success
- Evaluate market and organizational considerations and opportunities to validate Natividad's POV and understand the pace of market change and implications on the specific MOB by focusing on:
  - Care model opportunities in the context of ambulatory strategic priorities
  - Payer funding sources, specifically defining pathways that align Natividad with consumer populations via product strategies, risk adoption plays (e.g., shared savings, bundles, etc.), and commercialization pathways (e.g. exchange products, Medicaid strategies, etc.);
  - Major and emerging competitors and related strategic considerations;
  - Network and partnership considerations; and
  - Other components as may be collaboratively determined appropriate.
- Inside-Out Analysis will include the following:
  - Inventory of physical, functional, and other aspects of the Natividad ambulatory network to identify strengths and potential gaps via the system's POV on the future of ambulatory care delivery. Elements of the assessment will include:
    - Volumes and volume trends, by MOB-relevant ambulatory service
    - Natividad MOB (and other inpatient/outpatient, as relevant) procedural/surgical capacity
    - Service-specific financial performance, current and trends
    - Regional independent and integrated physician relationships, current and potential
    - Degree of alignment between Natividad enterprise and MOB-specific strategic initiatives
- Outside-In Analysis will include the following:



- Optum will develop comprehensive, market type-specific assessments of the current state and trajectories of Natividad ambulatory markets relevant to the MOB, focusing on the following areas:
  - Market demographics
  - Payer environment
  - Programmatic surgical services profile
  - Volumes and volume trends, by service
  - Payer mix
  - Local/regional competitor assessment
  - Regulatory initiatives/changes
  - Physician environment assessment

#### **Develop MOB-Specific Services Configuration Evaluation Framework**

- Collaborate with Natividad leadership to develop an evaluation framework that reflects strategic and financial criteria to determine which potential services configuration optimize the MOB. Criteria may include:
  - Market
    - Current market volume, by service
    - Volume growth trajectory
    - Competitive market landscape
  - Financial
    - Financial contribution, by service
    - Financial trajectory of service

#### **Quantify Financial Impact of MOB Services Configurations**

- Assist in the development of financial projections associated with the services to be included in the MOB.
- Natividad Finance staff is responsible for developing actual projections, while Optum will serve in the role of a provider of key assumptions.

#### **Prioritize Services Configuration**

- Work with Natividad leadership to develop a final prioritization of clinical services to be included in the MOB.
- Deliver to Natividad a detailed accounting of the services to be included in the MOB, as well as their potential growth trajectories over time.

#### **Develop Risk Assessment**

- Optum and Natividad will agree on an optimal set of clinical services to be included in the MOB. Optum will provide a formal risk assessment to inform Natividad with a full and formal identification of potential future trends and/or events that could impair the MOB's performance and/or cause Natividad to implement contingencies.

- Identify key market and organizational gaps specific to Natividad with respect to known industry-wise trends, as well as in light of findings and data analyses performed as part of the above assessment.
- Optum will work with engagement leadership to proactively define mitigation strategies associated with high-likelihood and/or large magnitude risks.

B. Deliverables.

Optum will provide to Natividad the following deliverables.

- Recommendations for overall best practices, optimized workflows and efficiencies.
- Data compilation, dashboard setup, etc. around key metrics, including turnaround times, first case starts, block time utilization, etc.
- Recommended governance structure, inclusive of policies and procedures, committee infrastructure, etc.
- Recommendations for improvement plan for leadership and surgical governance
- Recommendations for operational and executive dashboards related to key performance measures
- Recommended opportunities to improve, based upon data availability, surgical services' first-case start times and patient throughput
- Recommended staffing targets for appropriate utilization levels, standards for clinical outcomes, and reduced cost-per-case
- Performance gap analysis and recommendations for prioritized improvement areas to maximize efficiency across perioperative process, including Pre-Admission Testing function
- Recommendations for physician leadership structure and scope of decisions
- Recommendations for transition of care for patient
- Set of strategic hypotheses to begin the process of articulating emerging imperatives and requirements regarding Natividad's ambulatory capabilities
- A detailed accounting of the services to be included in the MOB, as well as their potential growth trajectories over time
- Inside-Out Analysis to identify strengths/potential gaps in the system
- Outside-In Analysis to compare the system to relevant markets based on MOB specific factors
- A formal risk assessment to inform Natividad with a full and formal identification of potential future trends and/or events that could impair the MOB's performance and/or cause Natividad to implement contingencies

C. Out of Scope. Any services outside the Scope of Services set forth in herein are considered out of scope, including but not limited to the following:

- Implementation support

**BUSINESS ASSOCIATE AGREEMENT EXHIBIT B**

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective April 2, 2019 (“Effective Date”), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Optuminsight Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

### RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information (“PHI”) that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the “Breach Notification Rule”), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the “Security Rule”), (collectively “HIPAA”), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below), as applicable.

D. WHEREAS, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, 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”).

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”) shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29, to the extent applicable.

(b) "California Confidentiality Laws" shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. **PHI includes EPHI.**

(d) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

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

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or, where applicable, California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the 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);

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(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as 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 person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that 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); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **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) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity reasonably determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

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(ii) Covered Entity shall have sole control over the timing and method of providing the legally required notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall reasonably assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure of PHI, Security Incident, or Breach caused by Business Associate. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. For a Breach caused by Business Associate, Business Associate shall reimburse Covered Entity for 1) its reasonable and actual costs in providing any legally required notification to affected individuals, appropriate government agencies, and, if necessary the media, and 2) any other mutually agreed upon costs which may include, but not be limited to, costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance as required by law) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such records provided to the Secretary hereunder, upon reasonable request by Covered Entity;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) 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. 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;

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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 ten (10) 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 thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors 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 to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; 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. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) If applicable, 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) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, notify the Covered Entity without unreasonable delay following Business Associate's receipt of any request or subpoena for PHI subject to this BAA. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall reasonably cooperate with the Covered Entity in such challenge; and

(m) Maintain policies and procedures materially in accordance with applicable state confidentiality laws and industry standards designed to ensure the security and integrity of the Covered Entity's PHI and protect against threats or hazards to such security.



**3.2 Business Associate Acknowledgment.**

(a) 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.

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply with those portions of HIPAA and the HITECH Act which are applicable to Business Associate. Business Associate shall comply with all applicable California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

**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 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;

(c) 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

(d) Notify Business Associate 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. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the reasonable satisfaction of Covered Entity.

**4.3 Automatic Termination.** This BAA 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.

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**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. 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 with 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. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the terms of this BAA, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities or when it becomes feasible to return or destroy the PHI.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA 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 HIPAA, the HITECH Act, or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to the revised obligations. Further, no provision of this BAA 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 BAA 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:

Optuminsight Inc.

Attn: General Counsel

11000 Optum Circle

Eden Prairie, MN 55344

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

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

If to Covered Entity, to:

Natividad Medical Center

Attn: Compliance/Privacy Officer

1441 Constitution Blvd.

Salinas, CA 93906

Phone: 831-755-4111

Fax: 831-755-6254

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 BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or electronic copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Indemnification.** Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any third party claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA by Business Associate and/or its agents, members, employees, or Subcontractors performing hereunder, 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 provide the broadest possible indemnification for the County. This provision is in addition

to, and independent of, any indemnification provision in any related or other agreement between the Parties.

**5.9 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence or claims-made basis, covering Business Associate's legal liability to others for claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Business Associate under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

**5.12 Audit or Investigations.** If legally permissible, Business Associate shall, without unreasonable delay, advise Covered Entity following any request for any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws as they pertain to this BAA.

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

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By:   
41ED8368209F46F...

By: \_\_\_\_\_

Print Name John Simon

Print Name: \_\_\_\_\_

Print Title Sr VP

Print Title: \_\_\_\_\_

Date: 3/27/2019

Date: \_\_\_\_\_

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*