



## Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

### Board Order

#### Agreement No.: A-11674

Upon motion of Supervisor Salinas, seconded by Supervisor Potter and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 5 to the Agreement (A-11674) with First Databank for Pharmacy Software Licensing Services at NMC, (no added dollars) for the period January 1, 2005 through December 31, 2014 for a revised total Agreement amount not to exceed \$173,717 in the aggregate; and
- b. Accepted non-standard language in the Agreement provided by the vendor and non-standard insurance requirements as recommended by the NMC Chief Executive Officer.

PASSED AND ADOPTED on this 25th day of June 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas and Potter  
NOES: None  
ABSENT: Supervisor Parker

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on June 25, 2013.

Dated: June 27, 2013  
File Number: A 12-235

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By  Deputy

## LICENSE AGREEMENT AMENDMENT

This is the Fifth Amendment to the License Agreement between FIRST DATABANK, INC. (FIRST DATABANK) and Natividad Medical Center (LICENSEE) dated January 1, 2005. FIRST DATABANK and LICENSEE agree to modify specific terms of the Agreement effective November 1, 2011. Except as provided below, all of the terms and provisions of the Agreement remain in full force and effect.

**Section A, LICENSEE REPRESENTATION** is amended as follows:

County of Monterey  
d/b/a Natividad Medical Center  
1441 Constitution Boulevard  
Salinas, CA 93906  
(831) 755-4111

**Section B, LICENSED PRODUCTS** is amended as follows: **First DataBank RxNorm Cross-Reference Module** and **ALERTSPACE™** are added as Licensed Products. Licensee now licenses the following products:

**NATIONAL DRUG DATA FILE™ (NDDF)**  
**DOSAGE RANGE CHECK MODULE™**  
**DRUG ALLERGY MODULE™**  
**DRUG-DISEASE CONTRAINDICATIONS MODULE™**  
**DRUG-DRUG INTERACTION MODULE™**  
**DRUG-FOOD INTERACTION MODULE™**  
**INDICATIONS MODULE™**  
**MIN/MAX DOSE MODULES™**  
**PATIENT EDUCATION MODULE™, English**  
**PRESCRIBER ORDER ENTRY MODULE™ (POEM)**

Premium Modules

**PATIENT EDUCATION MODULE™, Spanish**  
**First DataBank RxNorm Cross-Reference Module**  
**ALERTSPACE™**

**Section C, DECLARATION OF USE** is amended as follows:

1. Licensee shall use the Licensed Products in a single Meditech inpatient hospital pharmacy computer system at the site identified in Section A to support and regulate the distribution of medication to the patient and assist in clinical screening from within the boundaries of a single hospital institution. The **PATIENT EDUCATION MODULE**, English and Spanish, may be accessed by nurses' stations throughout the hospital for reference inquiries in the provision of patient care.
2. Licensee shall use the Licensed Products in a single Meditech Ambulatory Order Management (AOM) computer system at the site identified in Section A to support computerized prescription writing in an outpatient setting.

User Definition Paragraph:

A User is defined as any prescribing medical practitioner (PMP) at the site identified in Section A using Licensee's Meditech AOM computer system to support computerized prescription writing in an outpatient setting which includes Emergency Department and Outpatient Surgery. A count of the total number of prescribing medical practitioners (PMPs) who are utilizing the Meditech AOM

LICENSEE'S INITIALS *ML*

FDB'S INITIALS *LEX*  
(ACCT #320057) V4 MOK 09.14.12

computer system is listed on Exhibit 2 - End User Survey to this Agreement and shall be updated annually by Licensee as the basis for fee assessment. User fees are assessed by the number of prescribing medical practitioners (PMPs) who may obtain access to Licensee's Meditech AOM computer system.

Authorized use of Licensed Products expressly excludes distribution of data to any third party outside of Licensee's organization, use in medical practice management systems which support drug dispensing, a clinical data repository, computerized prescriber order entry in an inpatient setting, electronic medication administration record, disease management applications, prescription pricing in a retail setting, claims preparation and adjudication for the purpose of third party billing, litigation or regulatory investigations or inquiry (other than pursuant to a subpoena or other legal process compelling disclosure), supporting internet websites, or any other use not clearly defined above.

**Section D, LICENSE FEES AND PAYMENT SCHEDULE** is amended as follows: The LICENSEE shall pay to FIRST DATABANK the following Annual License Fees:

	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for <b>NDDF</b> for Use as defined in Section C.1:			
Covers up to 100 licensed beds	\$ 8,400	\$ 8,735	\$ 8,950
101-200 licensed beds	\$ 11,200	\$ 11,650	\$ 11,940
201-400 licensed beds	\$ 17,550	\$ 18,250	\$ 18,710
401-749 licensed beds	\$ 28,760	\$ 29,910	\$ 30,660
750+ licensed beds	Special Quote	Special Quote	Special Quote

	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual Base Fee for <b>NDDF</b> for Use as defined in Section C.2:	Waived	Waived	Waived

LICENSEE'S INITIALS 

FDB'S INITIALS 

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	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual User Fees for <b>NDDF</b> for Use as defined in Section C.2*:			
PMPs 1 - 50	\$ 67	\$ 69	\$ 71
PMPs 51- 150	\$ 60	\$ 62	\$ 64
PMPs 151 - 300	\$ 54	\$	\$
PMPs 301+	\$ 47	\$ 48	\$ 50

\*Annual User Fees are per PMP per year and are calculated incrementally based on the number of PMPs falling into each tier.

	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for <b>PATIENT EDUCATION MODULE</b> , Spanish for Use as defined in Section C:	\$ 2,175	\$ 2,262	\$ 2,320

	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for <b>First DataBank RxNorm Cross-Reference Module</b> for Use as defined in Section C:			
Covers up to 100 licensed beds	\$ 1,300	\$ 1,350	\$ 1,384
101- 200 licensed beds	\$ 1,732*	\$ 1,800	\$ 1,840
201-400 licensed beds	\$ 2,163	\$ 2,250	\$ 2,310
401-600 licensed beds	\$ 3,458	\$ 3,600	\$ 3,690
601-800 licensed beds	\$ 4,540	\$ 4,720	\$ 4,840
801-1,000 licensed beds	\$ 5,616	\$ 5,840	\$ 5,990
1,001+ licensed beds	Special Quote	Special Quote	Special Quote

\*Licensee will be invoiced a pro-rata portion of the Annual License Fee for **First DataBank RxNorm Cross-Reference Module** for the period beginning November 1, 2011 and ending December 31, 2011.

LICENSEE'S INITIALS 

FDB'S INITIALS 

(ACCT #320057) V4 MOK 09.14.12


	Fee Term Ending 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for <b>ALERTSPACE</b> for Use as defined in Section C:			
Covers up to 100 licensed beds	\$ 7,500	\$ 7,500	\$ 7,690
101-200 licensed beds	\$ 8,265*	\$ 8,265	\$ 8,470
201-400 licensed beds	\$ 8,775	\$ 8,775	\$ 8,990
401-749 licensed beds	\$ 14,380	\$ 14,380	\$ 14,740
750+ licensed beds	\$ 19,800	\$ 19,800	\$ 20,300

\*Licensee will be invoiced a pro-rata portion of the Annual License Fee for **ALERTSPACE** for the period beginning November 1, 2011 and ending June 30, 2012,

- i) License Fees consist of Annual Fees plus User Fees as specified in Exhibit 1. Annual Fees for each annual Fee Term are due and payable on each anniversary of the Effective Date. Fees for each Fee Term will be based on the then current total number of licensed beds as outlined in the current edition of Billian's HEALTHDATA™ Hospital Blue Book and the total number of prescribing medical practitioners (PMPs) as outlined in Section D.
- ii) Licensee will remit all payments in full no later than thirty (30) days of the invoice date. Amounts not received within thirty (30) days will be subject to late fees of one and one half percent (1½%) per month, on a prorated basis. In addition, First DataBank may recover from Licensee all expenses incurred in connection with collecting overdue amounts, including, but not limited to, collection costs and reasonable attorney's fees. Failure to pay amounts when due may result in discontinuation of product delivery and suspension of implementation support and customer service.
- iii) **IMPLEMENTATION SUPPORT SERVICES:** Licensee is entitled to two (2) hours of implementation support services for **First DataBank RxNorm Cross-Reference Module** and nine (9) hours for **ALERTSPACE** for Use as defined in Section C to be used during the current term of this Agreement. Such implementation support services will be available to Licensee via telephone and e-mail, during First DataBank's standard business hours of 8:00 A.M. to 8:00 P.M. EST Monday through Friday, at no additional charge to Licensee. Implementation support services beyond two (2) hours for **First DataBank RxNorm Cross-Reference Module** and nine (9) hours for **ALERTSPACE** for Use as defined in Section C, onsite, or outside of the standard business hours, or beyond the current term of this Agreement may be separately contracted between Licensee and First DataBank. For the purposes of this Agreement, implementation support services include technical contact regarding the integration of the Licensed Products into Licensee's application.

**STANDARD CUSTOMER SUPPORT SERVICES:** Standard customer support services will be available to Licensee for the term of the License Agreement via First DataBank's customer support toll-free number (1-800-633-3453) during normal business hours (8:00 A.M. to 8:00 P.M. EST Monday through Friday), via e-mail at [cs@firstdatabank.com](mailto:cs@firstdatabank.com), or via the Support Link at First DataBank's website at [www.firstdatabank.com](http://www.firstdatabank.com).

LICENSEE'S INITIALS 

FDB'S INITIALS   
(ACCT #320057) V4 MOK 09.14.12

Section E, ADDITIONAL TERMS AND CONDITIONS is amended by adding the following:


- 10. This Fifth Amendment supersedes the License Agreement Amendment signed by Licensee on March 14, 2012 and executed by First DataBank on March 22, 2012.
- 11. This Fifth Amendment, as signed by First DataBank on September 17, 2012, shall not be altered or amended by Licensee prior to execution.
- 12. The Annual License Fees for the Fee Term ending December 31, 2011 are based upon up to a total of 200 licensed beds. License Fees for future Fee Terms will be based upon then current total number of licensed beds.
- 13. First DataBank and Licensee agree that Section 6.i of the License Agreement is amended by adding the following: "With respect to Licensee's use of **ALERTSPACE**, Licensee hereby covenants and agrees to indemnify and hold First DataBank harmless from and against any liability, loss, injury or expense (including reasonable attorneys' fees and court costs) imposed upon, incurred or suffered by First DataBank relating to or arising out of any allegation or claim that the use of **ALERTSPACE**, or any information contained therein, caused or contributed to the personal injury or death of an individual unless the allegation or claim is determined by a court of competent jurisdiction to be the result of First DataBank's gross negligence or willful misconduct".
- 14. **INSURANCE.** First DataBank and Licensee agree that First DataBank covenants that it shall take out and maintain throughout the term of this License Agreement, at its sole cost and expense with the Licensee named as additional insured, insurance of not less than \$1,000,000 U.S. per occurrence for claims that the use of the information contained in the Licensed Products caused damages or injury.

IN WITNESS HEREOF, the parties hereto have executed this Amendment as of the Effective Date stated above.

**FIRST DATABANK**

DATED: 9/17/2012

500 East 96<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46240-3767  
(800) 428-4495  
(317) 571-7200  
(317) 571-7253 (FAX)

By   
Signature

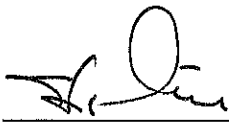
Lance E. Jennings  
Name (Print)

Director, Finance  
Title

**LICENSEE**

DATED: 10/1/12

**COUNTY OF MONTEREY**  
**D/B/A NATIVIDAD MEDICAL CENTER**  
1441 Constitution Boulevard  
Salinas, CA 93906  
(831) 755-4111


By   
Signature

Harvey Weiss  
Name (Print)

CEO  
Title

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY.

Reviewed as to fiscal provisions  
  
Auditor Controller  
County of Monterey

10/1/12

## MONTEREY COUNTY BOARD OF SUPERVISORS

<b>MEETING:</b>	<b>January 11, 2011</b>	<b>AGENDA NO.:</b>
<b>SUBJECT:</b>	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #4 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$47,757 for the period January 1, 2011 to December 31, 2013.	
<b>DEPARTMENT:</b>	Natividad Medical Center	

### RECOMMENDATION:

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #4 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$47,757 for the period January 1, 2011 to December 31, 2013.

### SUMMARY/DISCUSSION:

First Databank provides NMC with the industry's most comprehensive drug databases. Important components include the allergy and drug-drug interaction database which is integrated with NMC's Meditech system and provides up-to-date drug information to NMC pharmacists. All First Databank databases are supported by a level of clinical and IT expertise that's unmatched in the industry. At present First Databank databases are the most comprehensive and trusted drug knowledge, including NDDF Plus, one of the industry's most widely used and highly regarded sources of drug information. The databases also provide descriptive drug information, unique identifiers and pricing data, NDDF Plus offers an extensive array of clinical decision-support modules. The monthly updates are crucial for NMC to provide the safest care to our patients in real time. The vendor will not accept the standard County insurance and indemnification terms, none the less; NMC considers the contract essential to the delivery of high quality patient care and recommends approval of the contract despite the non-standard terms.

### OTHER AGENCY INVOLVEMENT:

The Amendment has been reviewed and approved by County Counsel, the Auditor/Controller's Office and the Natividad Medical Center Board of Trustees.

### FINANCING:

The cost for this Amendment is \$47,757. \$14,550 is included in the NMC Fiscal Year 2010/11 Approved Budget. Remaining monies will be included in the fiscal year budgets covered by this Amendment. This action will not require any additional General Fund subsidy.

Prepared by:

Nicole Gordon, Pharmacy Director  
831-769-8617

November 8, 2010

Attachments: Board Order, Amendment #4, 3, 2, 1, and Original Agreement

\_\_\_\_\_  
Harry Weis  
Chief Executive Officer

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

Agreement No.: A-11674

Authorize the Purchasing Manager for Natividad Medical )  
Center (NMC) to execute Amendment No. 4 to the Agreement )  
with First Databank for Pharmacy Software Licensing )  
Services in an amount not to exceed \$47,757 for the period )  
January 1, 2011 to December 31, 2013..... )

Upon motion of Supervisor Armenta, seconded by Supervisor Potter, and carried by those members present, the Board hereby:

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 4 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$47,757 for the period January 1, 2011 to December 31, 2013.

PASSED AND ADOPTED this 11th day of January 2011, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on January 11, 2011.

Dated: January 18, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By Denise Hancock  
Deputy



## LICENSE AGREEMENT AMENDMENT

This is the Fourth Amendment to the License Agreement between FIRST DATABANK, INC. (FIRST DATABANK) and Natividad Medical Center (LICENSEE) dated January 1, 2005. FIRST DATABANK and LICENSEE agree to modify specific terms of the Agreement effective January 1, 2011. Except as provided below, all of the terms and provisions of the Agreement remain in full force and effect.

**Section D, LICENSE FEES AND PAYMENT SCHEDULE** is amended as follows: The LICENSEE shall pay to FIRST DATABANK the following Annual License Fees:

		01/01/2011 to 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for Use as defined in Section C.1:	Covers up to 200 licensed beds	\$ 11,200	\$ 11,650	\$ 11,940

		01/01/2011 to 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual Base Fee for Use as defined in Section C.2:		Waived	Waived	Waived


		01/01/2011 to 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual End User Fees for Use as defined in Section C.2*:				
	PMPs 1 - 50	\$ 67	\$ 69	\$ 71
	PMPs 51- 150	\$ 60	\$ 62	\$ 64
	PMPs 151 - 300	\$ 54	\$ 55	\$ 57
	PMPs 301+	\$ 47	\$ 48	\$ 50

\*Annual End User Fees are per PMP per year and cumulative.

		01/01/2011 to 12/31/2011	01/01/2012 to 12/31/2012	01/01/2013 to 12/31/2013
Annual License Fee for <b>PATIENT EDUCATION MODULE</b> , Spanish for Use as defined in Section C:		\$ 2,175	\$ 2,262	\$ 2,320

- i) License Fees shall consist of Annual Fees plus End User Fees as specified in Exhibit 1. Annual Fees for each annual Fee Term are due and payable on each anniversary of the Effective Date. Fees for each Fee Term will be based on the then current number of total licensed beds as outlined in the current edition of Billian's HEALTHDATA™ Hospital Blue Book and the total number of prescribing medical practitioners (PMPs) as outlined in Section D.

LICENSEE'S INITIALS 

FDB'S INITIALS   
(320057) V2 DD 11.04.10

- ii) Licensee will remit all payments in full no later than forty-five (45) days of the invoice date. Failure to pay amounts within sixty (60) days of the invoice date may result in discontinuation of product delivery and suspension of implementation support and customer service.
- iii) **STANDARD CUSTOMER SUPPORT SERVICES:** Standard customer support services will be available to Licensee for the term of the License Agreement via First DataBank's customer support toll-free number (1-800-633-3453) during normal business hours (8:00 A.M. to 8:00 P.M. EST Monday through Friday), via e-mail at [cs@firstdatabank.com](mailto:cs@firstdatabank.com), or via the Support Link at First DataBank's website at [www.firstdatabank.com](http://www.firstdatabank.com).

**Section E, ADDITIONAL TERMS AND CONDITIONS** is amended by adding the following:

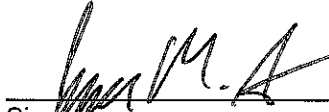
- 9. This Fourth Amendment, as signed by First DataBank on November 4, 2010, shall not be altered or amended by Licensee prior to execution.

**IN WITNESS HEREOF**, the parties hereto have executed this Amendment as of the Effective Date stated above.

**FIRST DATABANK**

DATED: 11/4/10

500 East 96<sup>th</sup> Street, Suite 500  
 Indianapolis, IN 46240-3767  
 (800) 428-4495  
 (317) 571-7200  
 (317) 571-7253 (FAX)

By   
 Signature

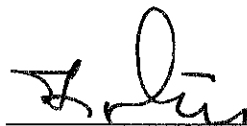
James M. Schultz  
 Name (Print)

Vice President, Finance  
 Title

**LICENSEE**

DATED: 11/5/10


**NATIVIDAD MEDICAL CENTER**  
 1441 Constitution Boulevard  
 Salinas, CA 93906  
 (831) 769-8617

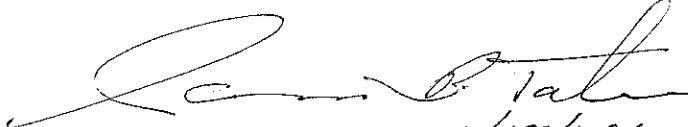
By   
 Signature

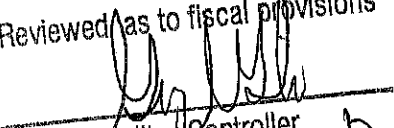
Henry W. Rios  
 Name (Print)

CEO  
 Title

APPROVED AS TO FORM AND LEGALITY

  
 DEPUTY COUNTY COUNCIL  
 COUNTY OF MONTEREY

  
 1/19/2011

Reviewed as to fiscal provisions  
  
 Auditor/Controller  
 County of Monterey 12-3-10

First Databank Worksheet

Annual License

**Year 1**

1-1-11 to 12-31-11	\$11,200.00
Pt Edu Spanish	\$2,175.00
AOM 30 PMPs @ \$67 each	\$2,010.00

**Year 2**

1-1-12 to 12-31-12	\$11,650.00
Pt Edu Spanish	\$2,262.00
AOM 30 PMPs @ \$69 each	\$2,070.00

**Year 3**

1-1-13 to 12-31-13	\$11,940.00
Pt Edu Spanish	\$2,320.00
AOM 30 PMP's @ \$71 each	\$2,130.00
<b>Grand Total</b>	<b>\$47,757.00</b>

MONTEREY COUNTY BOARD OF SUPERVISORS

<b>MEETING:</b>	<b>April 6, 2010</b>	<b>AGENDA NO.:</b>
<b>SUBJECT:</b>	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #3 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$50,000 for the period January 1, 2010 to December 31, 2010.	
<b>DEPARTMENT:</b>	Natividad Medical Center	

**RECOMMENDATION:**

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #3 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$50,000 for the period January 1, 2010 to December 31, 2010.

**SUMMARY/DISCUSSION:**

First Databank provides NMC with the industry's most comprehensive drug databases. Important components include the allergy and drug-drug interaction database which is integrated with NMC's Meditech system and provides up-to-date drug information to NMC pharmacists. All First DataBank databases are supported by a level of clinical and IT expertise that's unmatched in the industry. At present First Databank databases are the most comprehensive and trusted drug knowledge, including NDDF Plus, one of the industry's most widely used and highly regarded sources of drug information. The databases also provide descriptive drug information, unique identifiers and pricing data, NDDF Plus offers an extensive array of clinical decision-support modules. The monthly updates are crucial for NMC to provide the safest care to our patients in real time. The start date of this contract reflects continued provision of services under a prior contract during ongoing contract negotiations. The vendor will not accept the standard County insurance and indemnification terms, none the less; NMC considers the contract essential to the delivery of high quality patient care and recommends approval of the contract despite the non-standard terms.


**OTHER AGENCY INVOLVEMENT:**

The Amendment has been reviewed and approved by County Counsel, the Auditor/Controller's Office and the Natividad Medical Center Board of Trustees.

**FINANCING:**

The cost for this Amendment is \$50,000 and is included in the NMC Fiscal Year 2009-10 Approved Budget. This action will not require any additional General Fund subsidy.

Prepared by:  
Sid Cato, Management Analyst/Contracts  
March 8, 2009  
Attachments: Board Order, Amendment #3 & 2  
Original Agreement

  
\_\_\_\_\_  
Harry Weis  
Chief Executive Officer

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Agreement No: A - 11674**

Authorize the Purchasing Manager for Natividad Medical Center to )  
 execute Amendment No. 3 to the Agreement with First Databank for )  
 Pharmacy Software Licensing Services in an amount not to exceed )  
 \$50,000 for the period January 1, 2010 to December 31, 2010. )

Upon motion of Supervisor Potter, seconded by Supervisor Parker, and carried by those members present, the Board hereby:

Authorized the Purchasing Manager for Natividad Medical Center to execute Amendment No. 3 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$50,000 for the period January 1, 2010 to December 31, 2010.

PASSED AND ADOPTED this 6<sup>th</sup> day of April, 2010, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on April 6, 2010.

Dated: April 6, 2010

Gail T. Borkowski, Clerk of the Board of Supervisors  
 County of Monterey, State of California

By Robert Parker  
 Deputy

**LICENSE AGREEMENT AMENDMENT**

This is the Third Amendment to the License Agreement between FIRST DATABANK, INC. (FIRST DATABANK) and Natividad Medical Center (LICENSEE) dated January 1, 2005. FIRST DATABANK and LICENSEE agree to modify specific terms of the Agreement effective January 1, 2010. Except as provided below, all of the terms and provisions of the Agreement remain in full force and effect.

**Section C, DECLARATION OF USE** is amended as follows:

1. Licensee shall use the Licensed Products in a single Meditech inpatient hospital pharmacy computer system at the site identified in Section A to support and regulate the distribution of medication to the patient and assist in clinical screening from within the boundaries of a single hospital institution. The **PATIENT EDUCATION MODULE**, English and Spanish, may be accessed by nurses' stations throughout the hospital for reference inquiries in the provision of patient care.
2. Licensee shall use the Licensed Products in a single Meditech Ambulatory Order Management (AOM) computer system at the site identified in Section A to support computerized prescription writing in an outpatient setting.

**End User Definition Paragraph:**

An End User is defined as any prescribing medical practitioner (PMP) at the site identified in Section A using Licensee's Meditech AOM computer system to support computerized prescription writing in an outpatient setting which includes Emergency Department and Outpatient Surgery. A count of the total number of prescribing medical practitioners (PMPs) who are utilizing the Meditech AOM computer system is listed on Exhibit 2 - End User Survey to this Agreement and shall be updated annually by Licensee as the basis for fee assessment. End User fees are cumulative and are assessed by the number of prescribing medical practitioners (PMPs) who may obtain access to Licensee's Meditech AOM computer system.

Authorized use of Licensed Products expressly excludes distribution of data to any third party outside of Licensee's organization, use in medical practice management systems which support drug dispensing, a clinical data repository, computerized prescriber order entry, electronic medication administration record, disease management applications, prescription pricing in a retail setting, claims preparation and adjudication for the purpose of third party billing, litigation or regulatory investigations or inquiry (other than pursuant to a subpoena or other legal process compelling disclosure), clinical medical records management systems, supporting internet websites, or any other use not clearly defined above.

**Section E, ADDITIONAL TERMS AND CONDITIONS** is amended by adding the following:

6. For the purposes of this Agreement, Licensee internally references and defines this License Agreement as original Agreement No. A-11495.
7. First DataBank will continue to grant Licensee the same use rights under the same Terms and Conditions as stated in the original Agreement with an effective date of January 1, 2005 (original Agreement No. A-11495).
8. The total amount payable by Licensee to First DataBank under Agreement (original Agreement No.-11495) shall not exceed the total sum of \$50,000 for the balance of the term ending December 31, 2010.

LICENSEE'S INITIALS

FDB'S INITIALS  
(320057) V1 DD 02.26.10

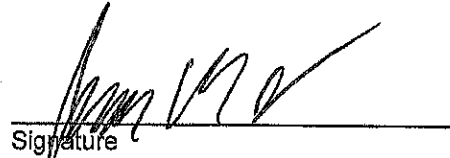
IN WITNESS HEREOF, the parties hereto have executed this Amendment as of the Effective Date stated above.

**FIRST DATABANK**

DATED: 4/24/10

500 East 96<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46240-3767  
(800) 428-4495  
(317) 571-7200  
(317) 571-7253 (FAX)

By

  
Signature

James M. Schultz  
Name (Print)

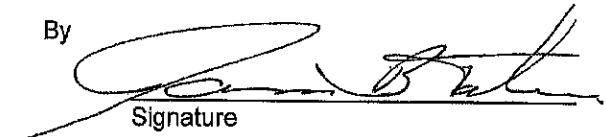
Vice President, Finance  
Title

**LICENSEE**

DATED: 4-17-10

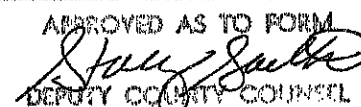
**NATIVIDAD MEDICAL CENTER**  
1441 Constitution Boulevard  
Salinas, CA 93906  
(831) 769-8617

By

  
Signature

James B. Tatum  
Name (Print)

Director, Purchasing  
Title

APPROVED AS TO FORM  
  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY  
3/5/10

Reviewed as to fiscal provisions

  
Auditor/Controller  
County of Monterey

3-6-10

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	July 21, 2009	AGENDA NO.:
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #2 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$25,500 for the period January 1, 2009 to December 31, 2010.	
DEPARTMENT:	Natividad Medical Center	

**RECOMMENDATION:**

Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #2 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$25,500 for the period January 1, 2009 to December 31, 2010.

**SUMMARY/DISCUSSION:**

First Databank provides NMC with the industry's most comprehensive drug databases. Important components include the allergy and drug-drug interaction database which is integrated with NMC's Meditech system and provides up-to-date drug information to NMC pharmacists. All First DataBank databases are supported by a level of clinical and IT expertise that's unmatched in the industry. At present First Databank databases are the most comprehensive and trusted drug knowledge, including NDDF Plus, one of the industry's most widely used and highly regarded sources of drug information. The databases also provide descriptive drug information, unique identifiers and pricing data, NDDF Plus offers an extensive array of clinical decision-support modules. The monthly updates are crucial for NMC to provide the safest care to our patients in real time. The start date of this contract reflects continued provision of services under a prior contract during ongoing contract negotiations. The vendor will not accept the standard County insurance and indemnification terms, none the less; NMC considers the contract essential to the delivery of high quality patient care and recommends approval of the contract despite the non-standard terms.

**OTHER AGENCY INVOLVEMENT:**

The Amendment has been reviewed and approved by County Counsel, the Auditor/Controller's Office and the Natividad Medical Center Board of Trustees.

**FINANCING:**

The cost for this Amendment is \$25,500 and is included in the NMC FY 2008-09 Approved Budget and the FY 2009-10 Recommended Budget. This action will not require any additional General Fund subsidy above the Approved Budget.

Prepared by:  
Sid Cato, Management Analyst/Contracts  
May 26, 2009  
Attachments: Board Order, Amendment #2  
Original Agreement

\_\_\_\_\_  
Harry Weis  
Chief Executive Officer



**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Agreement No: A - 11495**

Authorize the Purchasing Manager for Natividad )  
 Medical Center (NMC) to execute Amendment No. 2 )  
 to the Agreement with First Databank for Pharmacy )  
 Software Licensing Services in an amount not to )  
 exceed \$30,000 for the period January 1, 2009 to )  
 December 31, 2010. )

Upon motion of Supervisor Parker, seconded by Supervisor Salinas, and carried by those members present, the Board hereby:

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 2 to the Agreement with First Databank for Pharmacy Software Licensing Services in an amount not to exceed \$30,000 for the period January 1, 2009 to December 31, 2010.

PASSED AND ADOPTED this 21<sup>st</sup> day of July, 2009, by the following vote, to wit:

AYES: Supervisors Armenta, Salinas, Calcagno, Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on July 21, 2009.

Dated: July 22, 2009

Gail T. Borkowski, Clerk of the Board of Supervisors  
 County of Monterey, State of California

By           P. P.            
 Deputy

AMENDMENT #2

LICENSE AGREEMENT AMENDMENT

This is the Second Amendment to the License Agreement between FIRST DATABANK, INC. (FIRST DATABANK) and Natividad Medical Center (LICENSEE) dated January 1, 2005. FIRST DATABANK and LICENSEE agree to modify specific terms of the Agreement effective January 1, 2009. Except as provided below, all of the terms and provisions of the Agreement remain in full force and effect.

Section B, LICENSED PRODUCTS is amended as follows: PRESCRIBER ORDER ENTRY MODULE™ (POEM) is added as a Licensed Product. Licensee now licenses the following products:

- NATIONAL DRUG DATA FILE™ (NDDF)
- DOSAGE RANGE CHECK MODULE™
- DRUG ALLERGY MODULE™
- DRUG-DISEASE CONTRAINDICATIONS MODULE™
- DRUG-DRUG INTERACTION MODULE™
- DRUG-FOOD INTERACTION MODULE™
- INDICATIONS MODULE™
- MIN/MAX DOSE MODULES™
- PATIENT EDUCATION MODULE™, English
- PRESCRIBER ORDER ENTRY MODULE™ (POEM)

ADDED REL. AMENDMENT #2

Premium Module

PATIENT EDUCATION MODULE™, Spanish

Section C, DECLARATION OF USE is amended as follows:

1. Licensee shall use the Licensed Products in a single Meditech inpatient hospital pharmacy computer system at the site identified in Section A support and regulate the distribution of medication to the patient and assist in clinical screening from within the boundaries of a single hospital institution. The PATIENT EDUCATION MODULE, English and Spanish, may be accessed by nurses' stations throughout the hospital for reference inquiries in the provision of patient care.
2. Licensee shall use the Licensed Products in a single Meditech Ambulatory Order Management (AOM) computer system at the site identified in Section A to support computerized prescription writing in an outpatient setting.

End User Definition Paragraph:

An End User is defined as any prescribing medical practitioner (PMP) at the site identified in Section A using Licensee's Meditech AOM computer system to support computerized prescription writing in an outpatient setting which includes Emergency Department and Outpatient Surgery. A count of the total number of prescribing medical practitioners (PMPs) who are utilizing the Meditech AOM computer system is listed on Exhibit 2 - End User Survey to this Agreement and shall be updated annually by Licensee as the basis for fee assessment. End User fees are cumulative and are assessed by the number of prescribing medical practitioners (PMPs) who may obtain access to Licensee's Meditech AOM computer system.

LICENSEE'S INITIALS

FDB'S INITIALS  
(320067) V3 SN 4/23.09

Authorized use of Licensed Products expressly excludes redistribution of data or use in computerized prescriber order entry, or electronic medication administration records in an inpatient setting, a clinical data repository, prescription pricing in a retail setting, claims preparation or adjudication, clinical medical records management systems, supporting internet websites, or any other use not clearly defined above. In Use #1 or 2.

Section D, FEE AND PAYMENT SCHEDULE is amended as follows: The LICENSEE shall pay to FIRST DATABANK the following Annual License Fees:

Annual Fees for Fee Term beginning January 1, 2009 and ending December 31, 2009:

1. Annual License Fee for Use as defined in Section C.1: (covers up to 200 Licensed Beds): \$10,380
  2. Annual Base Fee for Use as defined in Section C.2: Waived
- Annual End User Fees for Use as defined in Section C.2:
- |  |                       |
|--|-----------------------|
| Prescribing Medical Practitioners (PMPs) 1 - 50    | \$60 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 51 - 150  | \$54 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 151 - 300 | \$48 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 301 +     | \$42 per PMP per year |
- End User Fees are cumulative.

Annual License Fee for PATIENT EDUCATION MODULE, Spanish \$2,025

Annual Fees for Fee Term beginning January 1, 2010 and ending December 31, 2010


1. Annual License Fee for Use as defined in Section C.1: (covers up to 200 Licensed Beds): \$10,800
  2. Annual Base Fee for Use as defined in Section C.2: Waived
- Annual End User Fees for Use as defined in Section C.2:
- |  |                       |
|--|-----------------------|
| Prescribing Medical Practitioners (PMPs) 1 - 50    | \$62 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 51 - 150  | \$56 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 151 - 300 | \$50 per PMP per year |
| Prescribing Medical Practitioners (PMPs) 301 +     | \$44 per PMP per year |
- End User Fees are cumulative.

Annual License Fee for PATIENT EDUCATION MODULE, Spanish \$2,100

License Fees shall consist of Annual Fees plus User Fees as specified in Exhibit 1. Annual Fees for each Annual Fee Term are due and payable on each anniversary of the Effective Date. End User Fees, when applicable, are billed at the end of each calendar quarter and are due and payable upon receipt of an invoice from First DataBank. Fees for each Fee Term will be based on the then current number of total Licensed Beds as outlined in the current edition of Billian's HEALTHDATA Hospital Blue Book and the total number of prescribing medical practitioners (PMPs) as outlined in Section D.2.

Licensee will remit all payments in full no later than forty-five (45) days of the invoice date. Failure to pay amounts within sixty (60) days of the invoice date may result in discontinuation of a product delivery and suspension of implementation support and customer service.

LICENSEE'S INITIALS

FDB'S INITIALS   
 (320067)-V3-SN-428-09

**Section E; ADDITIONAL TERMS AND CONDITIONS** is amended by adding the following:

4. This Second Amendment, as signed by First DataBank on April 23, 2009, shall not be altered or amended by Licensee prior to execution.
5. Annual Fees for each Fee Term will be based on the then current number of total Licensed Beds in Section D.1 and the total number of prescribing medical practitioners (PMPs) as outlined in Section D.2.

IN WITNESS HEREOF, the parties hereto have executed this Amendment as of the Effective Date stated above.

**FIRST DATABANK**

DATED: 4/23/09

500 East 96<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46240-3767  
(800) 428-4496  
(317) 571-7200  
(317) 571-7253 (FAX)

By

  
Signature

James M. Schultz  
Name (Print)

Vice President, Finance  
Title

**LICENSEE**

DATED: 7-23-09

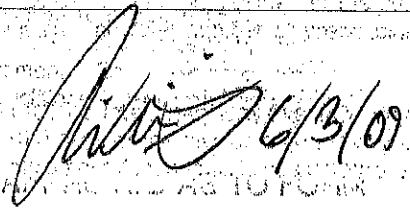
**NATIVIDAD MEDICAL CENTER**  
1441 Constitution Boulevard  
Salinas, CA 93906  
(831) 769-8617

By

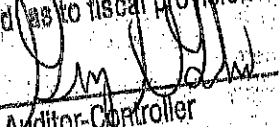
  
Signature

Kirk Larson  
Name (Print)

CIO  
Title

  
**WILLIAM M. LITT**  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions

  
Additor-Controller  
County of Monterey

6-309

EXHIBIT 2 - END USER SURVEY

USER COUNT

In accordance with Section C.2 of the Second Amendment to this Agreement, the following is a count of prescribing medical practitioners (PMPs) to whom the Licensed Products have been distributed under the terms of the Agreement.

Number of PMPs: 24

LICENSEE:

BY:

DATE:

LICENSEE:

BY:

DATE:

AMENDMENT # 7

Natividad Medical Center  
320057

### LICENSE AGREEMENT AMENDMENT

This is the First Amendment to the Standard License Agreement between FIRST DATABANK, INC. (FIRST DATABANK) and Natividad Medical Center (LICENSEE) dated January 1, 2005. FIRST DATABANK and LICENSEE agree to modify specific terms of the Agreement effective January 1, 2008. Except as provided below, all of the terms and provisions of the Agreement remain in full force and effect.

Section B, LICENSED PRODUCTS is restated as follows: Licensee now licenses the following products:

**NATIONAL DRUG DATA FILE™ (NDDF)**  
**DOSAGE RANGE CHECK MODULE™**  
**DRUG ALLERGY MODULE™**  
**DRUG-DISEASE CONTRAINDICATIONS MODULE™**  
**DRUG-DRUG INTERACTION MODULE™**  
**DRUG-FOOD INTERACTION MODULE™**  
**INDICATIONS MODULE™**  
**INTRAVENOUS MODULE™**  
**MINIMUM/MAXIMUM DOSE MODULES™**  
**PATIENT EDUCATION MODULE™, English**

Premium Modules

**PATIENT EDUCATION MODULE™, Spanish**

Section E, ADDITIONAL TERMS AND CONDITIONS is amended by adding the following:

2. First DataBank and Licensee agree that Section 10 of the Standard License Agreement is amended to read, "USE OF PATIENT EDUCATION. Licensee hereby agrees not to modify the Patient Education Knowledge Databases. If Licensee distributes the Patient Education Knowledge Database information, then Licensee agrees to distribute an unmodified version of the information from the Patient Education Knowledge Database for each applicable drug. Licensee further agrees to include the following disclaimer or subsequent disclaimer language that may be provided by First DataBank, at the top of any patient education information material provided to patients from the Patient Education Knowledge Databases:"

NOTE: This is a summary and does not contain all possible information about this product. For complete information about this product or your specific health needs, ask your healthcare professional. Always seek the advice of your healthcare professional if you have any questions about this product or your medical condition. This information is not intended as individual medical advice and does not substitute for the knowledge and judgment of your healthcare professional. This information does not contain any assurances that this product is safe, effective or appropriate for you.

3. Licensee's use of the Licensed Products as Identified in Section C is strictly limited to the United States of America and its territories and possessions.

LICENSEE'S INITIALS *Jec*

FDB'S INITIALS *MLK*  
(320057) DJD 10.18.07

IN WITNESS WHEREOF, FIRST DATABANK and LICENSEE have executed this Agreement as of the date indicated below.

FIRST DATABANK, INC.

BY: Martina Davis  
(DJD)  
DATE: 11/27/07

500 East 96<sup>th</sup> Street, Suite 500  
INDIANAPOLIS, IN 46240-3767  
(800) 428-4495  
(317) 571-7200  
(317) 571-7253 (FAX)

LICENSEE

BY: [Signature]  
DATE: 11/20/07

Natividad Medical Center  
1441 Constitution Blvd  
Salinas, CA 93906  
831-769-8617

APPROVED AS TO FORM  
W. ALLEN BIDWELL 11-16-2007  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY



FIRST DATABANK AND NATIVIDAD MEDICAL CENTER  
LICENSE AGREEMENT

This LICENSE AGREEMENT made and entered into at San Bruno, California as of the Effective Date noted on Exhibit 1 (attached and made a part hereof) between FIRST DATABANK, INC., a wholly owned subsidiary of The Hearst Corporation, a Delaware Corporation with offices at 1111 Bayhill Drive, San Bruno, California 94066 ("First DataBank") and LICENSEE identified in Exhibit 1.

WHEREAS:

1. First DataBank owns or is a Licensee of, and licenses or sublicenses various copyrighted databases of medical, pharmaceutical and nutritional information, and periodic updates thereto ("Databases"), related access software products ("Toolkits") and user manuals ("Manuals") referred to collectively, as the "FDB Knowledge Bases";
2. Licensee desires to obtain the use of one or more of the FDB Knowledge Bases with the Licensee's electronic information system or other computer system (the "System") as described in the Declaration of Use (Exhibit 1);
3. Subject to the terms and conditions of this Agreement, First DataBank is willing to grant to Licensee a nonexclusive license or sublicense to use the FDB Knowledge Bases indicated in Exhibit 1.

NOW, THEREFORE, in consideration of the premises and of the covenants and Agreements hereinafter set forth, it is agreed as follows:

1. DEFINITIONS OF CERTAIN TERMS. As used in this Agreement:

- a) "Licensed Products" means those FDB Knowledge Bases indicated in Exhibit 1 as being licensed to Licensee;
- b) "Effective Date" is the date stated in Exhibit 1 and is the Effective Date of this Agreement;
- c) "Fee Term" means the twelve-month period beginning on the Effective Date and each successive twelve-month period.

2. LICENSE. Subject to the terms and conditions of this Agreement, First DataBank grants and Licensee accepts the following limited, non-transferable and non-exclusive license or sublicense:

- a) To use the Licensed Products solely for its business operations, as defined in Exhibit 1 during the term of this Agreement;
- b) To the extent Exhibit 1 permits bundling of any or all of the Licensed Products, Licensee agrees to add substantial value to the Licensed Products contained in the bundle;
- c) Licensee shall have no right to use the Licensed Products on behalf of any third party, on a service bureau basis or otherwise unless (i) such services are specifically permitted in Exhibit 1, and (ii) such third party has entered into a license Agreement with Licensee or First DataBank and First DataBank has been paid the required license fee;
- d) Under no circumstances shall Licensee use the Licensed Products, or any portion thereof, to develop a competitive product, regardless of what is set forth in Exhibit 1;
- e) Licensee shall obtain no implied license rights to the Licensed Products. Any rights not expressly granted to Licensee in this Agreement shall be retained by First DataBank;
- f) Although some tangible objects may be delivered to Licensee pursuant to this Agreement, title to such objects shall not pass to Licensee, and this Agreement is not for the sale of goods. The Licensed Products shall be delivered to Licensee within twenty (20) working days from whichever is later, the date this Standard License Agreement is executed or the Effective Date on the Exhibit 1. Updates thereto shall be delivered with the frequency and in the format indicated in Exhibit 1;
- g) Licensee will not alter, amend, modify, or change in any respect, any of the Licensed Products unless authorized to do so by First DataBank. Without limiting the foregoing, Licensee shall have no right to use, modify, reproduce or distribute the Licensed Products, nor the right to license third parties to exercise any rights with regard to the Licensed Products other than as permitted in Exhibit 1.



3. TERM AND TERMINATION.

- a) This Agreement and license shall continue for a term of three (3) years from the Effective Date and thereafter shall renew for successive three (3) year periods at each renewal date at the then effective renewal rate, should written notification of renewal be received by Licensee in accordance with Section 3.b below;
  - b) At least sixty (60) days before commencement of the renewal date, First DataBank shall send to Licensee written notice of the applicable renewal rate. The renewal rate charged to Licensee shall be a market rate consistent with the rates First DataBank charges its other customers of a substantially similar nature, size and financial standing for similar uses of the Licensed Products. Within thirty (30) days after receipt of such renewal notice, Licensee shall, in writing, accept such renewal. Upon receipt of written acceptance of the renewal notification sent by First DataBank, this Agreement shall renew for a term of three (3) years at the applicable renewal rate. If written acceptance of the renewal is not received prior to the effective date of each term, this Agreement will expire at the end of the then current term. Notwithstanding the foregoing, either party may give notice of non-renewal in its sole and absolute discretion, without cause and without stating any reason therefore, First DataBank or Licensee shall give written notice of non-renewal to the other at least thirty (30) days prior to the end of the term then in effect.
  - c) Either party may terminate this license on thirty (30) days written notice, if the other party has materially breached any provision of this Agreement, and such breach has not been cured within such thirty (30) day period;
  - d) Upon termination of this Agreement, Licensee shall immediately cease use of the Licensed Products, and shall take such steps as are necessary to prohibit further use of the Licensed Products within Licensee's System and shall furnish First DataBank a written description of the steps so taken. Termination of this Agreement shall automatically terminate all sublicenses of the Licensed Products granted by Licensee. Within thirty (30) days of termination, Licensee shall return to First DataBank all copies or duplicates thereof of the Licensed Products.
4. PAYMENT OF LICENSE FEES. In consideration of the grant of the license, Licensee agrees to pay the Fees ("License Fees") listed in Exhibit 1. License Fees may consist of Annual Fees plus User Fees as specified in Exhibit 1. The Annual Fee for the first Fee Term is payable by Licensee to First DataBank on the Effective Date and Annual Fees for subsequent Fee Terms are due and payable on each anniversary of the Effective Date. End User Fees, when applicable, are billed quarterly and are due and payable upon receipt of an invoice from First DataBank. Licensee's obligation to pay License Fees for periods preceding termination will survive termination of this Agreement.
5. IMPLEMENTATION. Licensee assumes all responsibility to program, or obtain compatible software, for use of the Databases. All programming shall be done in accordance with specifications included in Database Manuals and supplements and other documentation provided by First DataBank. Licensee agrees that when programmed, the System shall display Copyright Notices, Disclaimers, and Expiration Dates as specified in Individual Database and Licensed Product Manuals.
6. COVENANTS OF LICENSEE. Licensee hereby agrees with First DataBank as follows:
- a) In the event that First DataBank grants Licensee permission to modify any of the Licensed Products, then Licensee assumes all liability for such modified Licensed Products. Licensee hereby acknowledges and agrees that First DataBank disclaims all warranties, express and implied, regarding any Licensee-modified Licensed Products. Further, Licensee hereby agrees to defend, indemnify, and hold First DataBank harmless from any third party claim arising from such Licensee-modified Licensed Products to the extent that such claim would not have existed but for Licensee's modification of the Licensed Products.
  - b) Licensee will not use the name of First DataBank, Inc. or "First DataBank", the names of any of the First DataBank Knowledge Bases, or any trademark owned by or licensed to First DataBank, except as authorized in writing;
  - c) Licensee shall reimburse First DataBank at First DataBank's direct cost for all shipping and delivery; and for all First DataBank originated magnetic media received by Licensee from First DataBank;
  - d) Licensee will hold the terms of this Agreement in strictest confidence releasing them only to employees of Licensee requiring such information and not to release or disclose them to any other party;
  - e) CONFIDENTIAL INFORMATION. Licensee acknowledges that the Licensed Products are the proprietary property of First DataBank and that the processes, formulas and methodology used in producing the Licensed Products are valuable trade secrets. Licensee shall hold in confidence and take reasonable measure, but not less than the measures taken by Licensee to safeguard its own confidential information, to safeguard, to prohibit access to, copying of, or disclosure of all confidential information and materials provided by First DataBank under this License, including, but not limited to, the Licensed Products and all information contained therein, any updates to the Licensed Products, and the User's Manuals. Licensee shall not disclose the terms of this Agreement, except as required by law.
  - f) Licensee will pay all taxes, however designated, including sales and use taxes and state and local privilege or excise taxes arising out of this Agreement and the transaction contemplated hereby;
  - g) That as long as this Agreement is in effect, and for a one (1) year period thereafter, Licensee shall maintain complete records with respect to the use of the Licensed Products, and the number and type of end user sites, if any. During normal business

hours, at reasonable intervals but no more often than quarterly, and upon reasonable notice, First DataBank or its designated representative may audit and review those records necessary to confirm that the fees paid to First DataBank are correct and that Licensee has complied with all of the terms of this Agreement, including but not limited to, the Declaration of Use and Fee and Payment Schedule set forth in Exhibit 1;

- h) USAGE. Licensee shall use the Licensed Products solely for Licensee's business purposes as described in Exhibit 1, "Declaration of Use". Licensee may not, without the prior written consent of First DataBank, transmit the Licensed Products to other data processing systems or units that are "on-line" with Licensee's data processing unit, or use the Licensed Products, or any data derived from the Licensed Products in a computer service business, network, time-sharing, multiple CPU, or multiple user arrangements including the Internet and Intranets, except as, if applicable, explicitly identified in Exhibit 1. Licensee shall not copy, reproduce, store in a retrieval system, sell, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in, or permit any unauthorized use of the Licensed Products, or any of them, in any form or by any media (electronic, mechanical, photocopy, recording, or otherwise), on either a permanent or temporary basis to any third party except as authorized in Exhibit 1. Licensee may use an outside Data Recovery Center provided First DataBank is notified in writing within thirty (30) days of such location. In such case, the terms of this Agreement shall be fully applicable.
  - i) Licensee hereby covenants and agrees to indemnify and hold First DataBank harmless from and against any liability, loss, injury or expense (including reasonable attorneys' fees and court costs) imposed upon, incurred or suffered by First DataBank by reason of Licensee's negligence.
  - j) Licensee acknowledges and agrees that the covenants and Agreements made in this Paragraph 6 are made for the benefit of First DataBank and shall survive the termination of this Agreement. In the event of any breach by Licensee of the terms of this Agreement, in addition to other relief to which First DataBank shall be entitled, First DataBank shall be entitled to terminate this License.
7. PROPRIETARY RIGHTS INDEMNIFICATION. First DataBank shall hold harmless and defend Licensee against suits based solely on a claim by a third party that the use of Licensed Products by Licensee under this Agreement infringes on any U.S. patent, copyright, trademark, or other property right, provided that Licensee gives First DataBank prompt written notice of such suits and permits First DataBank to control the defense thereof.
8. DISCLAIMERS.
- a) Licensee shall inspect and test Licensed Products upon receipt thereof. The Licensed Products are deemed proper and correct unless, within ten (10) working days after receipt thereof, Licensee provides First DataBank with written notice and documentation of any error in the Licensed Products;
  - b) First DataBank has utilized reasonable care in collecting and reporting the information contained in the Licensed Products and has obtained such information from sources believed to be reliable. First DataBank, however, does not warrant the accuracy of codes, prices or other data contained in the Licensed Products. Information reflecting prices is not a quotation or offer to sell or purchase. The clinical information contained in the Licensed Products is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals in patient care. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.
  - c) FIRST DATABANK MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OTHER THAN THOSE IN THIS LICENSE AGREEMENT, AND FURTHER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OF THE DATA FROM WHICH THE LICENSED PRODUCTS ARE COMPILED, NOR THE COMPATIBILITY OF THE LICENSED PRODUCTS WITH LICENSEE'S HARDWARE AND SYSTEMS, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
  - d) IN NO EVENT SHALL FIRST DATABANK BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, RELIANCE, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF FIRST DATABANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
  - e) IN NO EVENT SHALL FIRST DATABANK'S LIABILITY EXCEED THE AMOUNT PAID TO IT BY LICENSEE FOR THE CURRENT FEE TERM OF THIS LICENSE AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR CLAIM, AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF FIRST DATABANK, INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON NEGLIGENCE, BREACH OF WARRANTY OR BREACH OF CONTRACT.
9. PROFESSIONAL RESPONSIBILITY. Licensee acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. Licensee takes full responsibility for the use of information provided by the Licensed Products in patient care and acknowledges that the use of the Licensed Products in no way is intended to replace or substitute for professional judgment. First DataBank does not assume any responsibility for actions of Licensee which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis. Licensee shall ensure that all healthcare professionals using the Licensed Products are aware of the limitations of the use of the Licensed Products.

10. USE OF PATIENT EDUCATION. Licensee hereby agrees not to modify the Patient Education Knowledge Databases. If Licensee distributes the Patient Education Knowledge Database Information, then Licensee agrees to distribute an unmodified version of the information from the Patient Education Knowledge Database for each applicable drug. Licensee further agrees to include one of the following two disclaimers at the top of any patient education information material provided to patients from the Patient Education Knowledge Databases:

NOTE: The following information is intended to supplement, not substitute for, the expertise and judgment of your physician, pharmacist or other healthcare professional. It should not be construed to indicate that the use of the drug is safe, appropriate, or effective for you. Consult your healthcare professional before taking this drug.

OR

NOTE: The information in this monograph is not intended to cover all possible uses, directions, precautions, drug interactions, or adverse effects. This information is generalized and is not intended as specific medical advice. If you have questions about the medicines you are taking or would like more information, check with your doctor, pharmacist, or nurse.

11. ASSIGNMENT. This license and Licensee's rights hereunder may not be assigned or otherwise transferred, voluntarily or by operation of law. Any purported assignment of the rights or delegation of the duties under this Agreement by Licensee shall be void unless prior written consent is secured from First DataBank.
12. FORCE MAJEURE. Failure of First DataBank to perform or delay in the performance of First DataBank's obligations under this Agreement due to any cause or event not reasonably within First DataBank's control, including but not limited to casualty, labor disputes, failure of equipment, compliance with governmental authority or Act of God, shall not constitute a breach of this Agreement, and First DataBank's performance shall be excused during such period of delay.
13. NOTICES. Notices hereunder shall be delivered by hand, air courier express or certified mail with return receipt requested to the address of the Licensee identified on Exhibit 1, and shall be deemed delivered three (3) days after mailing.
14. CHOICE OF LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applied to Agreements entered into and to be performed entirely within California between California residents. The application of the United Nations Convention for Contracts for the International Sales of Goods is hereby expressly excluded. In the event of any dispute concerning this Agreement or the Licensed Products, suit may be brought only in a court of competent jurisdiction in the U.S. District Court of the Northern District of California or the California Superior Court for the County of San Mateo.
15. ENTIRETY; AMENDMENTS. This Agreement, including all Exhibits hereto, constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all prior Agreements, proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. All amendments to this Agreement shall be in writing signed by both parties.
16. NO WAIVER. No term or provision hereof shall be deemed waived and no such breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of a breach by the other, whether express or implied, shall not constitute a consent for, or waiver of, or excuse for any other different subsequent breach.
17. SEVERABILITY. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the Effective Date on Exhibit 1.

FIRST DATABANK

DATED: 1/12/05

By Marilyn Davis  
Signature

Marilyn Davis  
Name (Print)

Director of Contract Administration  
Title

LICENSEE

DATED: \_\_\_\_\_

Licensee

By [Signature]  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

REV.12/29/04

APPROVED AS TO FORM  
W. ALLEN BIDWELL JAN 06 2005  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

**EXHIBIT 1  
LICENSEE REPRESENTATIONS  
LICENSED PRODUCTS  
DECLARATION OF USE  
FEE AND PAYMENT SCHEDULES  
ADDITIONAL TERMS AND CONDITIONS**

This Exhibit 1 is a part of the Standard License Agreement between First DataBank and Licensee and identifies Licensee, the Databases, Declaration Of Use, License Fees, and Additional Terms (if any) applicable to that Agreement.

The Effective Date of this Agreement is: January 1, 2005

**A. LICENSEE REPRESENTATIONS**

Licensee Name: Natividad Medical Center  
Street Address: 1441 Constitution Blvd.  
City/State/Zip: Salinas, CA 93906  
Telephone (voice): (831) 769-8617

**B. LICENSED PRODUCTS:** Unless otherwise specified, Licensed Products are updated monthly.

**NATIONAL DRUG DATA FILE™ (NDDF)  
DOSAGE RANGE CHECK MODULE™  
DRUG ALLERGY MODULE™  
DRUG-DISEASE CONTRAINDICATIONS MODULE™  
DRUG-DRUG INTERACTION MODULE™  
DRUG-FOOD INTERACTION MODULE™  
DUPLICATE THERAPY MODULE™  
INDICATIONS MODULE™  
INTRAVENOUS MODULE™  
MINIMUM/MAXIMUM DOSE MODULES™  
PATIENT EDUCATION MODULE™, English**

Premium Modules

**PATIENT EDUCATION MODULE™, Spanish**

**C. DECLARATION OF USE:**

Licensee shall use the Licensed Products solely in a single Meditech inpatient hospital pharmacy system at the site identified above in Section A to support inpatient pharmacy dispensing and nurses' access to **PATIENT EDUCATION MODULE™, English and Spanish** at nurses' stations throughout the hospital. Use by Licensee excludes redistribution of data or use in medication order entry, prescription pricing, claims preparation, or clinical medical records management applications, or any other clinical application not stated above.

**D. FEE AND PAYMENT SCHEDULE:**

Annual License Fee (covers 101-200 Licensed Beds): \$9,600  
Annual License Fee for **PATIENT EDUCATION MODULE™, Spanish**: \$1,800  
Annual Shipping Charge: \$90

LICENSEE INITIALS MLC

FDB INITIALS MKD  
(320057) MOK 12/29/04

E. ADDITIONAL TERMS AND CONDITIONS:

1. Licensee understands the total licensed bed size will ALWAYS be used as the basis for fee assessment.

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LICENSEE INITIALS ML

FDB INITIALS MLD  
(320057) MOK 12/29/04