



# Monterey County Board of Supervisors

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

## Board Order

### Agreement No.: A-13111

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

Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an Agreement, with a retroactive start date of July 1, 2015 with Toyon Associates Inc. for; 1. Rural Floor Budget Neutrality Appeals Services; and 2. Medicare/Medicaid Crossover Bad Debt Recovery Services; and 3. Medicare/Medi-Cal Appeal Services; and 4. OSHPD Report Preparation Services; and 5. Medicaid Eligible Day Services (POA/Historical); and 6, Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services, and 7. Consulting Services, at NMC, for an amount not to exceed \$1,000,000 for the period July 1, 2015 through June 30, 2018.

PASSED AND ADOPTED on this 26th day of April 2016, by the following vote, to wit:

AYES: Supervisors Phillips, Salinas and Parker

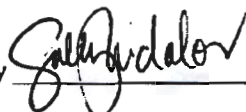
NOES: None

ABSENT: Supervisors Armenta and 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 79 for the meeting on April 26, 2016.

Dated: April 28, 2016  
File ID: A 16-040

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

By  Deputy



# Monterey County

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

## Board Report

Legistar File Number: A 16-040

April 26, 2016

Introduced: 2/18/2016

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an Agreement, with a retroactive start date of July 1, 2015 with Toyon Associates Inc. for ; 1. Rural Floor Budget Neutrality Appeals Services; and 2. Medicare/Medicaid Crossover Bad Debt Recovery Services; and 3. Medicare/Medi-Cal Appeal Services; and 4. OSHPD Report Preparation Services; and 5. Medicaid Eligible Day Services (POA/Historical); and 6, Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services, and 7. Consulting Services, at NMC, for an amount not to exceed \$1,000,000 for the period July 1, 2015 through June 30, 2018

### **RECOMMENDATION:**

**It is recommended the Board of Supervisors:**

Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an Agreement, with a retroactive start date of July 1, 2015 with Toyon Associates Inc. for ; 1. Rural Floor Budget Neutrality Appeals Services; and 2. Medicare/Medicaid Crossover Bad Debt Recovery Services; and 3. Medicare/Medi-Cal Appeal Services; and 4. OSHPD Report Preparation Services; and 5. Medicaid Eligible Day Services (POA/Historical); and 6, Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services, and 7. Consulting Services, at NMC, for an amount not to exceed \$1,000,000 for the period July 1, 2015 through June 30, 2018

### **SUMMARY/DISCUSSION:**

Toyon Associates Inc. provides expert services in areas of reimbursement from state and federal government. Their consulting services includes preparation of state's Medi-Cal cost reports, federal Medicare cost report, special supplemental cost reports (P-14) to the state, state's Short Doyle cost reports and annual state's OSHPD reports. Toyon provides assistance in representing Natividad Medical Center during scheduled audits and appeals for all state and federal cost and supplemental reports. Toyon provides strategic assistance on reimbursement issues related to Disproportionate Share, Realignment, Bad Debts, Waiver funding and programs and other reimbursement related initiatives particular to safety net provider (public) hospitals.

The previous Amended and Consolidated Agreement with Toyon Associates Inc. for these services was initiated in 2009 and expired on June 30, 2015. NMC wishes to enter into a new Agreement, retroactive to July 1, 2015. Toyon Associates Inc. will continue to provide NMC with the services described above including pursuing reimbursable cost available on previously reported year which are available to Monterey County Health System. This is an ongoing

process between provider (NMC), State and Federal Government.

The primary reason that this Agreement was not completed on time was due to numerous months of negotiations between the parties. Between July and February the total amount owed is approximately \$152,771.57.

**OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved this Agreement as to legal form and risk provisions, and the Auditor-Controller has reviewed and approved as to payment provisions. The Agreement has also been reviewed and approved by NMC's Finance Committee on 11/24/15 and by its Board of Trustees on 12/4/15.

**FINANCING:**

The cost for this Agreement is \$1,000,000 of which \$364,068 is included in the Fiscal Year 2015-16 Adopted Budget. The amounts for the remaining years of the Agreement will be included in those budgets as appropriate. There is no impact to the General Fund.

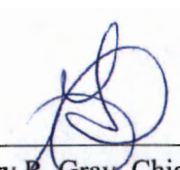
Prepared by: Juan Polanco Chief Hospital Accountant, 783-2372

Approved by: Gary R. Gray, DO, Chief Executive Officer, 783-2504

Attachments:

Original Agreement with Toyon's Associates, Inc.

Attachments on file with the Clerk of the Board



\_\_\_\_\_  
Dr. Gary R. Gray, Chief Executive Officer

4/7/16  
\_\_\_\_\_  
Date

**COUNTY OF MONTEREY AGREEMENT FOR SERVICES**  
**(MORE THAN \$100,000)**

This Agreement for Services (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "the County"), on behalf of Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County, and **Toyon Associates, Inc.** (hereinafter "CONTRACTOR").

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

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of the Agreement. The services are generally described as follows: **1. Rural Floor Budget Neutrality Appeals Services; and 2. Medicare/Medicaid Crossover Bad Debt Recovery Services; and 3. Medicare/Medi-Cal Appeal Services; and 4. OSHPD Report Preparation Services; and 5. Medicaid Eligible Day Services (POA/Historical); and 6. Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services, and 7. Consulting Services.**
2. **PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$1,000,000.**
3. **TERM OF AGREEMENT.**
  - 3.1. The term of this Agreement is retroactive from **July 1, 2015 through June 30, 2018** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.
  - 3.2. NMC reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

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

- **A-1 Rural Floor Budget Neutrality Appeals Services**
- **A-2 Medicare/Medicaid Crossover Bad Debt Recovery Services**
- **A-3 Medicare/Medi-Cal Appeal Services**
- **A-4 OSHPD Report Preparation Services**
- **A-5 Medicaid Eligible Day Services (POS/Historical)**
- **A-6 Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services**
- **A-7 Consulting Services**

**Exhibit B: Business Associate Agreement**

**5. PERFORMANCE STANDARDS.**

- 5.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 5.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

**6. PAYMENT CONDITIONS.**

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.
- 6.5. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

**7. TERMINATION.**

- 7.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.3 NMC's payments to CONTRACTOR 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 NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, 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.

## **8. INDEMNIFICATION.**

- 8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## **9. INSURANCE.**

### **9.1 Evidence of Coverage:**

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

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has



approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.2 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.

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

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 CONTRACTOR 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 CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

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

9.4 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 CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

**Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds** with respect to liability arising out of the Contractor's work, including ongoing and completed operations, **and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.** The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

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

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

## 10. RECORDS AND CONFIDENTIALITY.

- 10.1 Confidentiality. CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any



confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

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

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

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

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

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

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or

federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below

**NATIVIDAD MEDICAL CENTER:**

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

**CONTRACTOR:**

Name: Toyon Associates, Inc.  
Attn: Thomas P Knight  
Address: 1800 Sutter St., Suite 600  
City, State, Zip: Concord, CA 94520  
FAX: 925 687-9013  
Email: tom.knight@toyonassociates.com

**15. MISCELLANEOUS PROVISIONS.**

15.1 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.

15.3 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this

Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

- 15.4 Contractor: The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 15.5 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.6 Assignment and Subcontracting: The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.7 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement: NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Integration: This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either

written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.

15.16 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

*Signature Page to follow*

**NATIVIDAD MEDICAL CENTER**

By: [Signature]  
Gary R. Gray, DO, Chief Executive Officer

Date: 4/29/16

**APPROVED AS TO LEGAL PROVISIONS**

By: [Signature]  
Monterey County Deputy County Counsel

Date: Feb. 16, 2016

**APPROVED AS TO FISCAL PROVISIONS**

By: [Signature]  
Monterey County Deputy Auditor/Controller

Date: 2-17-16

**CONTRACTOR**

Toyon Associates, Inc.  
Contractor's Business Name\*\*\* (see instructions)

[Signature]  
Signature of Chair, President or Vice-President

Thomas P Knight, President  
Name and Title

Date: 1/19/16

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

Jahanna M Knight, Secretary  
Name and Title

Date: 1/19/16

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

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

## **Exhibit A-1- Rural Floor Budget Neutrality Appeals Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-1 is the Exhibit A-1 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement Dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-1.

The Service provided through this Exhibit A-1 is for the purpose of pursuing additional PPS reimbursement through the Medicare appeals process by disputing CMS transition to a State level rural floor budget neutrality factor.

Toyon will pursue additional PPS reimbursement through the Medicare appeals process by disputing CMS transition to a State level rural floor budget neutrality factor. The PPS Program is a budget neutral program, which means any increase or decrease in any funding source has to be offset by applying a budget neutrality factor, since the annual Medicare PPS budget is set each year by Congress and cannot be adjusted.

#### **1. Background:**

The regulations require each State to have a rural floor. The rural floor is the wage index established based on the wage indices for all the hospitals in the State. If a hospital's wage index is below the rural floor, it receives the wage index set at the rural floor. This means that California's rural floor will be based on the wage indices of California hospitals that are not subject to the rural floor. Since there are a significant number of hospitals in Southern California that are not subject to the rural floor, the transition to the specific budget neutrality factor in California will have a large negative impact on California hospitals not subject to the rural floor, especially Northern California hospitals.

Toyon is disputing the change from a national budget neutrality factor to individual state neutrality factors through a group appeal. Contractor's obligations with respect to the Exhibit A-1 Scope of Services remains in effect for so long as the foregoing issue stays unresolved, such that the applicable Services shall be deemed "Contractor Surviving Obligations" (as defined below) if not resolved by the Expiration Date. As such, this Exhibit A-1 Scope of Services will not be an on-going cost. Once the litigation concludes and payments are distributed, the work pursuant to this Exhibit A-1 will be completed and this Exhibit A-1 will expire.

#### **2. Scope of Services:**

Toyon's service will include this appeal, and include, but are not limited to, the following:



- Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish the issue.
- Develop appeal strategy, perform research, and obtain documentation needed to pursue the rural floor budget neutrality issue.
- Prepare and file preliminary and final position papers.
- Review the Intermediary's preliminary and final position papers.
- Attempt to obtain administrative resolutions with the Intermediary in advance of scheduled PRRB hearings.
- Represent Natividad Medical Center at PRRB hearings if administrative resolution cannot be obtained. This includes preparation of testimony, evidence, and hearing strategy.
- If a PRRB Medicare hearing is necessary, we will engage an attorney to assist in handling the case and will prepare all needed hearing documentation.
- Perform all follow up needed with the Medicare Program with respect to appeals and reopening requests.
- Review any revised settlements resulting from appeals or reopening's and any hearing decisions and provide recommendations to Natividad Medical Center.
- Pursue unfavorable PRRB decisions to court if, in Toyon's opinion, there is sufficient likelihood of success and sufficient reimbursement value in relation to the cost of pursuing the case.

### **3. Cost Reporting Periods Covered By This Agreement:**

Toyon will pursue the rural floor budget neutrality issues for cost reporting periods (June 30, 2009 through June 30, 2011) that fall within the timeline for a transition to a State level budget neutrality factor. To the extent the rural floor issues and related appeal is unresolved on the Expiration Date, Toyon's obligations to complete the Exhibit A-1 Scope of Services shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement. Toyon shall notify NMC when the Exhibit A-1 Scope of Services is completed.

### **4. Compensation:**

Payment for the Exhibit A-1 Scope of Services will be calculated at 25% of the additional Medicare reimbursement realized by NMC as a result of Toyon's efforts, not to exceed One Hundred Thousand Dollars (\$100,000), in the aggregate. The additional reimbursement will be a payment to NMC by the Medicare Intermediary or a reduction in Medicare liabilities. Payment is due to Toyon within 30 days from the Monterey County Auditor Controller's Office notification of receipt by NMC of additional reimbursement or notification that additional reimbursement was applied against existing liabilities. No fees or expenses are due to Toyon unless additional reimbursement is realized.

When Contractor performs work relating to this Exhibit A-1 Rural Floor Budget Neutrality Appeal Scope of Services, Contractor will expressly reference "Exhibit A-1 Rural Floor Budget Neutrality Appeal Scope of Service" on their billing invoices.

## **Exhibit A-2 - Medicare/Medicaid Crossover Bad Debt Recovery Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-2 is the Exhibit A-2 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Restated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-2.

Contractor agrees to prepare and defend Medicare/Medicaid Crossover Bad Debt Claims.

#### **1. Background:**

The Medicare Program reimburses hospitals for the uncollected portion of Medicare beneficiary deductible and coinsurance amounts related to covered services (excluding the physician component). In order to be reimbursed for these bad debts, various documentation and procedural requirements must be met. Medicare regulations for bad debt recovery are contained at 42 CFR 413.80 and Medicare guidelines are contained at PRM 15-1, Chapter 3.

Contractor's obligations with respect to the Exhibit A-2 Scope of Services shall remain in effect until NMC's Medicare/Medicaid Crossover Bad Debt Listings have been prepared and defended during the Medicare audit for each of the cost reporting periods under the Term of Agreement, such that the applicable Services shall be deemed "Contractor Surviving Obligations" (as defined below) if not resolved by the Expiration Date.

#### **2. Scope of Services:**

Contractor will perform the following services to document and obtain reimbursement for uncollected Medicare/Medicaid crossover bad debts for each year covered under this Agreement.

- Obtain Medicare and Medi-Cal payment databases in electronic format.
- Prepare inpatient and outpatient Medicare/Medicaid crossover bad debt lists containing all required data elements.
- Verify on a sample basis that the Medicare deductible and coinsurance amounts in the bad debt list agree with the applicable Medicare remittance advices and insure that neither physician services nor non-covered items are included in the bad debt list.
- Prepare and present inpatient and outpatient Medicare/Medicaid crossover bad debt lists for cost report filing and for Medicare audit purposes.
- Respond to any Intermediary requests for additional documentation or audit samples relating to the bad debt lists.
- Provide the Hospital with a report of findings after the Medicare audit.

### **3. NMC will perform the following:**

- Grant access to its patient accounting/collection records, to facilitate the request of records from outside agencies, to notify Contractor when Medicare audits are scheduled, and to forward correspondence from the Intermediary regarding the bad debt claims.
- Bill the Medicaid Program for crossover deductibles and coinsurance.
- NMC will cause its agents and employees to comply in a timely manner with all reasonable requests from Contractor in connection with the preparation and presentation of NMC's crossover bad debt claims.

### **4. Compensation:**

Compensation for services provided pursuant to this Exhibit A-2 Medicare/Medicaid Crossover Bad Debt Recovery Services, shall be as follows:

Contractor will provide the Exhibit A-2 Scope of Services set forth in the Agreement for a fixed professional fee of \$6,000 per cost reporting period.

The fee per each cost reporting period is to be paid as follows (to the extent not already paid pursuant to the Original Professional Services Agreement for this Service): 40% at the time Contractor commences work on the applicable cost report, 60% upon presentation of the Medicare/Medicaid Crossover Bad Debt List. This fixed fee includes all professional time. A cost reporting period for the purposes of this Agreement shall be defined as follows: the period covered within a cost report filed with the Medicare Program.

This pricing assumes Contractor is able to obtain electronic remittance advice data and/or electronic payment files. Occasionally, some Medi-Cal managed care providers cannot provide this information. In such cases Contractor reserves the right to bill additional amounts to cover the cost of manual summarization of the data. NMC will be notified in advance for approval before proceeding if this occurs.

To the extent the Exhibit A-2 Scope of Services for a cost reporting period have not been completed prior to the Expiration Date, Toyon's obligations to complete the Exhibit A-2 Scope of Services shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement. Toyon shall notify NMC when the Exhibit A-2 Scope of Services is completed.

When Contractor performs work relating to this Exhibit A-2 Medicare/Medicaid Crossover Bad Debt Recovery Scope of Services, Contractor will expressly reference "Exhibit A-2 Medicare/Medicaid Crossover Bad Debt Recovery Scope of Services" on their billing invoices.

## **Exhibit A-3-Medicare/Medi-Cal Appeal Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-3 is the Exhibit A-3 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-3.

#### **1. Background:**

The Medicare/Medi-Cal programs have established procedures which providers of healthcare services must follow to pursue appeals of cost report audit adjustments and reopening's.

#### **2. Scope of Services:**

Toyon agrees to pursue Medicare/Medi-Cal cost report appeals and reopening's which include, but are not limited to the following services:

- Review audit adjustments and determine items that should be appealed. Issues to be pursued include but are not limited to bad debts, settlement data, GME, IME, DSH and cost disallowances.
- File appeal letters with relevant supporting information.
- File cost report reopening requests if appropriate.
- Research appeal issues, obtain documentation, and develop strategies for pursuit of the individual items.
- Prepare position papers.
- Develop and present proposed resolutions.
- Attempt to resolve appeal issues with the Intermediary.
- Represent NMC at PRRB and state hearings as needed.
- Pursue unfavorable appeal decision to court if appropriate.
- Review any revised cost reports issued as a result of appeal settlements or appeal decisions to determine their adequacy.
- Keep NMC informed as to the status of cases under appeal and provide the recommendations regarding issues that arise.

The services cover all appeals and reopening activity to completion, until there are no outstanding issues. As such, Contractor's obligations with respect to any outstanding appeals shall be deemed "Contractor Surviving Obligations" (as defined below) if not resolved by the Expiration Date.

As individual cases are completed, Toyon will so notify NMC.

### **3. NMC will perform the following:**

NMC agrees to grant access to its general accounting and patient accounting records, as well as its patient data base and other documents that may be needed for the pursuit of Medicare and Medi-Cal appeals. NMC is also responsible for the authorization of data requests to the Medicare and Medi-Cal programs.

### **4. Compensation:**

Payment for the Exhibit A-3 Scope of Service will be calculated as 25% of the reimbursement received by NMC as a result of Toyon's efforts in pursuing Medicare/Medi-Cal appeals and reopening's for all appeals and reopening's filed prior to July 1, 2015. For appeals and reopening's filed on or after July 1, 2015, the compensation will be calculated as 20% of the additional reimbursement received by NMC as a result of Toyon's efforts in pursuing Medicare/Medi-Cal appeals and reopening's. The maximum fees payable to Toyon, in the aggregate, for these services are eight hundred thousand dollars (\$800,000). This percentage covers all fees and expenses. Payment is due to Toyon within thirty (30) days from the Monterey County Auditor Controller's Office notification of: receipt by NMC of additional reimbursement or notification that additional reimbursement was applied against existing liabilities. To the extent one or more appeals remains unresolved on the Expiration Date, Toyon's obligation to complete the Exhibit A-3 Scope of Services for such appeal(s) shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement.

When Toyon performs work relating to this Exhibit A-3 Medicare/Medi-Cal Appeal Scope of Services, Toyon will expressly reference "Exhibit A-3 Medicare/ Medi-Cal Appeal Scope of Services" on their billing invoices.

## **Exhibit A-4 - OSHPD Report Preparation Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-4 is the Exhibit A-4 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-4.

#### **1. Scope of Services:**

Toyon will prepare the annual OSHPD Disclosure Report for filing and submission to OSHPD using an OSHPD approved electronic reporting software for NMC. In preparing the report, Toyon will comply with all applicable OSHPD reporting rules. Toyon will review the data for reasonableness and program edits. Data included in the report that affects NMC's PIRL calculations and Medi-Cal disproportionate share will be reviewed for consistency and reasonableness, if applicable.

#### **2. Data/Reporting:**

NMC's OSHPD report is prepared annually and shall be filed with OSHPD no later than one hundred twenty (120) days following the end of the applicable fiscal year (or any earlier period required by law). NMC will maintain the basic data needed to complete the reports, such as departmental revenue and expense, cost finding statistics, census statistics, payroll hours and dollars summarized by classification, etc. NMC shall cause its employees and agents to comply in a timely manner with all reasonable requests from Toyon in connection with the preparation of NMC's OSHPD report. In preparing the OSHPD report, Toyon will rely upon the accuracy of the cost, revenue and statistical information provided to them, as Toyon will not audit that information.

#### **3. Compensation:**

The professional fees to prepare the OSHPD report will be provided under a fixed fee arrangement and are set forth below. The fixed professional fees will be billed as follows (to the extent not already paid pursuant to the Original Professional Services Agreement for this Service): 40% at the time Contractor commences work on the applicable OSHPD report and the remaining 60% after the OSHPD report filing. The preparation price is \$11,000 per year. Software use fee incurred in conjunction with the project will be billed in addition to the professional fees. If Toyon uses their approved software for the project, the use fee for the OSHPD report will be \$325. If NMC has its own software that it wishes to use there will be no software charge. Invoices, for all services, will be submitted timely and are due and payable within 30 days after receipt in the Monterey County Auditor-Controller's Office.



When Toyon performs work relating to this Exhibit A-4 OSHPD Report Preparation Scope of Services, Toyon will expressly reference "Exhibit A-4 OSHPD Report Preparation Scope of Services" on their billing invoices.

## **Exhibit A-5 - Medicaid Eligible Day Services (POS/Historical)**

### **Scope of Services and Payment Provisions**

This Exhibit A-5 is the Exhibit A-5 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-5.

#### **1. Background:**

The Medicare Program pays Medical Centers that serve a disproportionate share of low-income patients an additional payment amount under the prospective payment system (PPS). This additional payment is referred to as the "disproportionate share adjustment" and is based on the formula set forth in Title 42, Code of Federal Regulations, Section 412.106. The formula involves the calculation of a disproportionate share adjustment factor which is multiplied by the amount of federal DRG payments. In calculating the disproportionate share adjustment factor, two ratios are critical. The first is the SSI ratio which represents the number of Medicare patient days for patients entitled to both Medicare Part A and SSI (excluding those patients who receive only State supplement) divided by the total number of Medicare Part A patient days. The second is the Medicaid ratio, which represents the number of Medicaid patient days divided by total Medical Center patient days. The SSI and Medicaid ratios are computed based on the PPS areas of the Medical Center.

The Centers for Medicare and Medicaid Services (CMS) through their regional intermediaries require substantial documentation for DSH payment purposes. The required documentation has increased over the past few years to include a set of steps requiring verification that the patient days claimed as Medicaid eligible days are in fact Medicaid eligible and that the patient does not have Medicare Part A coverage.

Toyon has a proprietary DSH documentation system which it will use to assist Natividad Medical Center to comply with Medicare requirements and which will support the Medical Center's DSH claims.

#### **2. Scope of Services:**

Toyon will prepare two Medi-Cal eligible day listings. The initial eligible day listing will utilize the State of California's Point of Service (POS) system that will be used for the filing of the Medicare cost report. This POS system provides the initial Medi-Cal eligible day determination and is the best source of eligibility for filed cost report purposes. Steps included in this POS list preparation include:

- Query of the State of California's POS system to identify Medi-Cal eligible patients
- Medicare common working file query of all eligible Medi-Cal eligible patients to ensure there is no dual coverage
- Link of eligible Obstetric patients to nursery newborn patients
- Review of results to ensure accuracy
- Preparation of summary Medi-Cal eligible days report for inclusion in the Medicare filed cost report

The second process for eligible Medi-Cal days identification is the use of the State of California's Historical eligibility system using Toyon's automated DSH eligibility system. This system is fully available 13 months after the end of the hospital's fiscal year. This is a far greater detailed analysis scrubbing of the patient database. Toyon's services include:

- Submission of Patient Database to State of California's historical eligibility system
- Scrub the Medi-Cal eligible patients through our 3 step process to exclude all dual eligible patients.
- Identification and pursuit of all out State Medicaid eligible patients.
- Detailed analysis and reprocessing of claims that may have limited or incorrect patient identification information
- Summarization of the finalized DSH eligible days list
- Identification of all patient days to be protested and appealed based on their return status
- Amend Medicare cost report for inclusion of updated eligible days prior to the Medicare audit
- Assist NMC in responding to any audit conducted by the Medicare Intermediary involving a Medicaid eligible day listing and/or DSH claim prepared by Toyon. A written report will be provided to NMC which analyzes any differences between the audit finding and filed claims and provide recommendations
- Toyon will request, facilitate, and follow up on all DSH related documentation/information needs throughout the project.

### **3. NMC will perform the following:**

NMC will cause its agents and employees to comply in a timely manner with all reasonable requests from Toyon in connection with the preparation and presentation of the Medical Center's claims.

### **4. Compensation:**

Toyon will provide the Scope of Services set forth in Section 2 of this Exhibit A-5 for a fixed fee of \$16,000 for each cost reporting period. The fee is to be paid as follows (to the extent not already paid pursuant to the Original Professional Services Agreement for this Service): 40% upon the completion of the DSH POS listing used to file Medicare cost report filing. The remaining 60% will be paid upon the presentation of the historical eligible day listing package for Medicare cost report finalization purposes. To the extent the Intermediary's

audit of the list remains unresolved on the Expiration Date; Toyon's obligations to complete the Exhibit A-5 Scope of Services for such cost reporting period shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement. The fixed fee includes all professional time and out-of-pocket expenses. A "cost reporting period" for the purposes of this Agreement shall be defined as follows: the period covered within a cost report filed with the Medicare Program.

When Toyon performs work relating to this Exhibit A-5 Medicaid Eligible Day Scope of Services, Toyon will expressly reference "Exhibit A-5 Medicaid Eligible Day Scope of Services" on their billing invoices.

## **Exhibit A-6 - Medicare/Medi-Cal/Short Doyle Cost Report Preparation Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-6 is the Exhibit A-6 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-6.

#### **1. Background:**

The Medicare and Medicaid Programs require the preparation and submission of an annual cost report five months after the end of each fiscal year. The complexity of the annual cost report has increased greatly over the years even though the actual amount of reimbursement affected by the cost report has decreased. Proper compilation of the cost reports is important for future reimbursement increases and to maintain compliance with Medicare reporting rules. Toyon has prepared hundreds of cost reports for all types and sizes of facilities and is well qualified to assist NMC with the preparation of its annual cost report.

#### **2. Scope of Services:**

Toyon agrees to prepare the annual Medicare/Medicaid and Short Doyle cost reports for timely submission to the fiscal intermediaries. As of the date hereof, NMC's Medicare/Medicaid cost reports are accepted by the Medicare Intermediary for filing no later than five (5) months after the end of the applicable fiscal year, and NMC's Short Doyle cost reports are accepted for filing no later than one hundred twenty (120) days after the end of the applicable fiscal year.

Toyon will provide the following services:

- Prepare NMC's Medicare/Medi-Cal/Short Doyle cost report for each applicable fiscal year using CMS approved software. The preparation of the cost reports will be for filing purposes and will include preparation of all related supplemental forms and questionnaires as required by the Medicare and Medi-Cal programs. The filed cost report will comply with all applicable Medicare/Medi-Cal regulations while protecting NMC's rights. All areas with significant reimbursement effect will be reviewed. Consideration will be given based on prior year's cost reports and previous audited Medicare cost reports to ensure consistency.
- Upon the completion of the Medicare/Medi-Cal cost report, Toyon will prepare the Short Doyle cost report. The cost allocation from the Medicare/Medi-Cal cost report is needed for the Short Doyle cost report preparation.

Non-Allowable Cost Analysis-Optional:

- Toyon will perform a review to identify non-allowable costs. The review will begin with interviews of appropriate management personnel to develop an understanding of NMC's organization and activities that occurred during the fiscal year. Toyon will then perform a review of Administrative and General costs and any other areas deemed warranted identifying non-allowable costs. This will include a review of account payable vendor invoices as needed. A report of findings and recommendations for cost elimination will be prepared and provided to management prior to completion of the cost report.
- The cost report for the fiscal year ending on the Expiration Date will not have been completed and filed by the Expiration Date. As such, Toyon's obligations to complete the cost report for that final fiscal year pursuant to this Exhibit A-6 shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement.

**3. Data Requirements:**

For purposes of this agreement, Toyon assumes NMC maintains the basic data needed to complete the report such as departmental revenue and expense information, cost finding statistics, census information, payroll hours and dollars summarized by classifications, etc.

**4. Reliance upon Facility Records:**

In preparing the cost report, Toyon will be relying upon the accuracy of the cost, revenue, and statistical information provided to us. Toyon will not be auditing this information. Toyon will, however, eliminate any costs identified as non-allowable by the facility as well as any specific items that may come to Toyon's attention during the course of the engagement.

**5. Compensation:**

The professional fees to prepare each annual set of cost reports (i.e. the Medicare annual cost report and the Short Doyle cost report), including provision of the related Services described above, will be provided under a fixed fee arrangement and are set forth below. The fixed professional fees will be billed as follows (to the extent not already paid pursuant to the Original Professional Services Agreement for this Service): 40% at the time Contractor commences work on the applicable cost reports and the remaining 60% after delivery of the cost report package for filing.

Preparation Price	Optional Non-Allowable Cost Analysis	Grand Total
\$25,000	\$6,000	\$31,000

Software use fee incurred in conjunction with the project will be billed in addition to professional fees. If Toyon uses their approved software, the use fee for the cost report will be \$600. If NMC uses its own software, there will be no software charge. Invoices, for all



services, will be submitted timely and are due and payable within 30 days after receipt in the Monterey County Auditor-Controller's Office.

Natividad Medical Center will cause its employees and agents to comply in a timely manner with all reasonable requests from Toyon in connection with the preparation of Natividad Medical Center's cost reports.

When Toyon performs work relating to this Exhibit A-6 Medicare Cost Report Preparation Scope of Services, Toyon will expressly reference "Exhibit A-6 Medicare Cost Report Preparation Scope of Services" on their billing invoices.

## **Exhibit A-7 - Consulting Services**

### **Scope of Services and Payment Provisions**

This Exhibit A-7 is the Exhibit A-7 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-7.

#### **1. Scope of Services:**

Toyon agrees to provide additional consultation services, as requested by NMC from time to time on an as-needed basis relating to Medicare/Medicaid, OSHPD reports, Rural Floor Budget Neutrality Appeals and anything related to these areas such as the implications on Medicare/Medicaid from an affiliation with another entity or budget issues, to the extent not provided pursuant to any of the other Service Exhibits. Per NMC's request, Toyon will also consult on (i) reimbursement models affected by economic shifts of government payors and some commercial payors, and (ii) organization necessities with analytical restructuring of business process, modeling and overall advisor engagement

#### **2. Reliance upon Facility Records:**

In preparing consultation reports, Toyon will be relying upon the accuracy of the information provided to them. Toyon will not be auditing this information.

#### **3. Compensation:**

Compensation for these Additional Consulting Services will be based on the hourly rate schedule attached hereto as Schedule A-7 (which rates shall be subject to annual increases commencing on the one year anniversary of the Effective Date of the Amended and Consolidated Agreement, equal to the percentage increase in the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, 1982-84 = 100 as compared to the prior twelve month period, but in no event greater than three percent (3%) annually, non-cumulative), except to the extent the parties agree in writing on an alternative fixed fee arrangement for a particular matter or a maximum number of hours for a particular matter. Notwithstanding the foregoing, in no event shall the total compensation for the Additional Consulting Services during the Term exceed \$300,000.

Invoices for services performed will be submitted monthly, and are due and payable within 30 days after receipt in the Monterey County Auditor-Controller's Office. To the extent Toyon is paid for a particular consultation matter, which has not been completed by the Expiration Date, Toyon's obligation to complete such consulting matter(s) pursuant to this

Exhibit A-7 shall survive the Expiration Date, with no additional compensation to Toyon for such extension, and shall constitute "Contractor Surviving Obligations" within the meaning of the Agreement

Natividad Medical Center will cause its employees and agents to comply in a timely manner with all reasonable requests from Toyon in connection with the consultation work.

When Toyon performs work relating to the Exhibit A-7 Consulting Scope of Services, Toyon will expressly reference "Exhibit A-7 Consulting Scope of Services" on their billing invoices.

## **SCHEDULE A-7**

### **HOURLY RATES AS OF 7/1/15**

<b>Title</b>	<b>Hourly Rates</b>
<b>President</b>	<b>\$400.00</b>
<b>Executive Vice President</b>	<b>\$330.00</b>
<b>Vice President</b>	<b>\$275.00</b>
<b>Senior Director - Client Services</b>	<b>\$220.00</b>
<b>Director – Client Services</b>	<b>\$185.00</b>
<b>Asst. Director – Client Services</b>	<b>\$150.00</b>
<b>Senior Consultant</b>	<b>\$135.00</b>
<b>Senior Analyst</b>	<b>\$100.00</b>
<b>Analyst</b>	<b>\$85.00</b>
<b>Systems Administrator/Programmer</b>	<b>\$135.00</b>
<b>Administrative Support</b>	<b>\$75.00</b>

## **EXHIBIT A-8 – Medicare Appeal Services – Two-Midnight Rule/Policy Dispute**

### **Scope of Services and Payment Provisions**

This Exhibit A-8 is the Exhibit A-8 referred to in that certain County of Monterey Agreement for Services (More Than \$100,000) - Amended and Consolidated Professional Services Agreement dated for reference purposes only on July 1, 2015, by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California, and Toyon Associates Inc., a California corporation (hereinafter "Contractor" or "Toyon") (the "Amended and Consolidated Agreement"). All initially capitalized terms defined in the Amended and Consolidated Agreement shall have the same meanings in this Exhibit A-8.

#### **1. Background:**

Within the FY 2014 IPPS Final Rule published on August 19, 2013, CMS instituted a 0.2 percent rate cut. CMS justified this rate cut as necessary in order to ensure that the application of the new "two-midnight" rule / policy did not lead to an aggregate increase in yearly IPPS payments for the Medicare program. During the notice and comment period for the FY 2014 IPPS rule, comments were made that identified the existence of statistical errors in CMS' underlying calculations that supported the rate cut. CMS justified the rate cut on the basis that the two-midnight rule (which presumes that hospital inpatient stays of two days are longer are medically necessary) would lead to a net increase of 40,000 inpatient cases per year. However, an independent analysis of CMS's own data has been made and the overwhelming conclusion is the two-midnight rule would lead to a substantial decrease in inpatient stays and a large increase in outpatient encounters. Many hospital systems have analyzed the impact on their own reimbursement and have reached the same conclusion. In other words, the financial impact of the two midnight rule on providers should result in a payment *increase*, not a payment decrease. There is no substantial evidence to support CMS' conclusion, thus making the rule legally invalid.

The Medicare Program allows hospitals to appeal final determinations that originate through Medicare Administrative Contractor (MAC) determinations and *Federal Register* notifications. The regulation is 42 C.F.R. § 405.1835. The services set forth in this agreement are for the purpose of increasing the hospital's Medicare reimbursement through the Medicare appeal process.

#### **2. Scope of Service:**

Toyon's service will include this appeal, and include, but are not limited to, the following:

- Review the audited cost reports, Intermediary Workpapers, and *Federal Register* notices to determine the issues to be appealed and/or reopened. All issues that impact Medicare reimbursement may be pursued. The issues to be appealed / reopened may include, but are not limited to, disproportionate share, bad debts, wage index, PPS standardized amounts, allowable costs, cost finding statistics, and cost apportionment statistics. Issues may be pursued even if the time period for administrative appeal rights has been exhausted.

- Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish Medicare appeals (if not already done), to add issues to existing appeals, and/or to transfer issues to group appeals.
- Develop appeal strategy, perform research, and obtain documentation needed to pursue disputed issues.
- Prepare and file cost report reopening requests if appropriate.
- Prepare and file preliminary and final position papers.
- Review the Intermediary's preliminary and final position papers.
- Attempt to obtain administrative resolutions with the Intermediary in advance of scheduled hearings.
- If a PRRB Medicare hearing is necessary, we will engage an attorney to assist in handling the case and will prepare all needed hearing documentation.
- Perform all follow up needed with the Medicare Program with respect to appeals and reopening requests.
- Review any revised settlements resulting from appeals or reopenings and any hearing decisions and provide recommendations to NMC.
- Pursue unfavorable PRRB decisions to court if, in TOYON'S opinion, there is sufficient likelihood of success and sufficient reimbursement value in relation to the cost of pursuing the case.
- Pursue issues directly to court or use expedited jurisdictional review if, in TOYON'S opinion, such action is deemed warranted.

### **3. Periods Covered By This Agreement:**

This appeal service applies to federal fiscal years 2014 through 2018. Additional federal fiscal years may be added to this agreement by written amendment executed by both parties.

### **4. Compensation**

Payment for Medicare appeal services set forth in this contract will be calculated as 10% of the additional Medicare reimbursement realized by NMC as a result of our work, not to exceed One Hundred Thousand Dollars (\$100,000) in the aggregate. The additional reimbursement resulting from a successful appeal will either be a payment to NMC by the Medicare Program or a reduction of an outstanding liability. Payment is due to TOYON within 30 days of NMC'S receipt of additional reimbursement or notification that its liability has been decreased. No fees or expenses are due to TOYON unless additional reimbursement is realized.

### **Miscellaneous Terms:**

Toyon shall have the right to continue the contingent fee projects (Exhibits A-1, A-4 and A-8) it started previously approved by NMC through to completion and to bill NMC based on the results obtained even if such billing is subsequent to the termination of the Agreement. The contingent fee projects must be fully settled or completed and final payment is received by NMC.



## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective July 1, 2015 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Toyon Associates, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

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

The Parties agree as follows:

### 1. **DEFINITIONS**

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

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

2.1 Unless otherwise limited herein, Business Associate may:

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

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

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

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

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

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

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

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4. TERMS AND TERMINATION**

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

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

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

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

#### **5. MISCELLANEOUS**

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

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

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

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

If to Business Associate, to:

Taxon Associates, Inc.  
1800 Sutter St., Suite 608  
Concord, CA 94520  
Attn: Ron Knapp  
Phone: 925 685-9312  
Fax: 925 687-9013

If to Covered Entity, to:

Natividad Medical Center  
1441 Constitution Blvd.  
Salinas, CA 93906  
Attn: Contracts Division  
Phone: 831-755-4111  
Fax: 831-757-2592

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

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

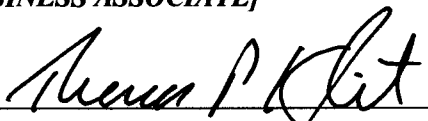
5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule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


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

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

**[BUSINESS ASSOCIATE]**

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

By:   
Print Name: Thomas P. Knight  
Print Title: President  
Date: 1/19/16

By:   
Print Name: Joy Oy  
Print Title: CEO  
Date: 4/2/16