

**AMENDMENT NO. 9  
TO SERVICES AGREEMENT  
BETWEEN KPMG LLP (FORMERLY BEACON PARTNERS, INC., AND  
NATIVIDAD MEDICAL CENTER  
FOR  
MEDITECH MANAGEMENT, SUPPORT AND CONSULTING SERVICES**

This Amendment No. 9 to the Services Agreement ("Agreement") which was effective on June 1, 2010 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"), and KPMG LLP., (hereinafter "CONTRACTOR"), with respect to the following:

**RECITALS**

**WHEREAS**, NMC and Beacon Partners, Inc. ("Beacon") entered into that certain Professional Services Agreement for management consulting services with a six month term of June 1, 2010 through December 31, 2010 and a total Agreement amount not to exceed \$97,000; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 1 to extend the term through January 31, 2011 with no change to the amount; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 2 to extend the term through June 30, 2011 and adding \$95,880 for a revised total Agreement amount of \$193,080 ; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 3 to add an additional \$150,000 for a revised total agreement amount of \$343,080 with no change to term end date; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 4 to extend the term through June 30, 2012 and adding \$170,000 for a revised total Agreement amount of \$513,080; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 5 to extend the term through June 30, 2013 and adding \$520,000 for a revised total Agreement amount of \$1,033,080

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 6 to extend the term through April 15, 2015 and adding \$3,022,790 for a revised total Agreement amount of \$4,055,870; and

**WHEREAS**, NMC and Beacon amended the Agreement via Amendment No. 7 to extend the term through June 30, 2015 and adding \$4,098,400 for a revised total Agreement amount of \$8,154,270; and

**WHEREAS**, Beacon and CONTRACTOR executed an Assignment and Assumption Agreement wherein Beacon assigned the Agreement to CONTRACTOR, effective as of June 24, 2015; and

**WHEREAS**, NMC consented in writing, effective as of the Effective Date of June 24, 2015, to the assignment by Beacon and assumption by CONTRACTOR of the Agreement; and

**WHEREAS**, NMC and CONTRACTOR amended the Agreement via Amendment No. 8 to extend through June 30, 2016, add consulting services related to Meditech's Operating Room Manager (ORM), and add an additional \$3,192,000 for a revised total Agreement amount of \$11,346,270

**WHEREAS**, NMC and CONTRACTOR currently wish to amend the Agreement to extend it for an additional nine month period for an Agreement term of June 1, 2010 to March 31, 2017, to allow for services to continue with no change to the Agreement amount.

**AGREEMENT**

**NOW, THEREFORE**, the parties agree to amend the Agreement as follows:

The Agreement is hereby renewed on the terms and conditions as set forth in Original Agreement, as amended by Amendments 1 through 8 incorporated herein by this reference, except as specifically set forth below.

1. The first sentence of Section 2 "TERM OF AGREEMENT" shall be amended to the following;  
***"The term of this Agreement is June 1, 2010 to March 31, 2017 unless sooner terminated pursuant to this Agreement"***
2. Section 3, "ADDITIONAL PROVISIONS/EXHIBITS" shall be amended to the following:  
***"The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:  
Exhibit A: Scope of Services/Payment Provisions of Original Agreement  
Attachment A of Amendment No. 1  
Attachment A of Amendment No. 2  
Attachment A of Amendment No. 3  
Amendment No. 5 to Exhibit A per Amendment No. 5  
Amendment No. 6 to Exhibit A per Amendment No. 6  
Amendment No. 7 to Exhibit A per Amendment No. 7  
Amendment No. 8 to Exhibit A per Amendment No. 8  
Amendment No. 9 to Exhibit A per Amendment No. 9  
Exhibit B: Business Associate Agreement"***
3. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 9 and shall continue in full force and effect as set forth in the Agreement and Amendments 1 through 8.
4. A copy of this Amendment No. 9 shall be attached to the Original Agreement.

**IN WITNESS WHEREOF**, the parties hereto are in agreement with this Amendment No. 9 on the basis set forth in this document and have executed this Amendment on the day and year set forth herein.

*Signature page to follow*

**Natividad Medical Center**

By: \_\_\_\_\_  
Gary R. Gray, DO, CEO

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

**APPROVED AS TO LEGAL PROVISIONS**

By: Stanley Della  
Monterey County Deputy County Counsel

Date: 6/7 2016

**APPROVED AS TO FISCAL PROVISIONS**

By: Don Holly  
Monterey County Deputy Auditor/Controller

Date: 6/8/16

**CONTRACTOR**

KPMG, LLP  
\_\_\_\_\_  
**CONTRACTOR's Business Name\*\*\*** (see instructions)

Michael Kirby  
\_\_\_\_\_  
Signature of Chair, President, or Vice-President

Michael D. Kirby, Managing Director  
\_\_\_\_\_  
Name and Title

Date: 5/27/16

By: Ralph P. Fagnoli, Jr.  
\_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Ralph P. Fagnoli, Jr., Managing Director  
\_\_\_\_\_  
Name and Title

Date: 5/27/16

**\*\*\*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)



**Amendment Number 9 to  
Exhibit A Statement of Work**

This Amendment Number 9 to Exhibit A Statement of Work (the "Amendment") is made effective as of July 1, 2016 (the "Amendment Effective Date") by and between Natividad Medical Center ("NMC") and KPMG, LLP ("KPMG") to modify and amend that certain to Exhibit A Statement of Work dated June 1, 2010 to the Professional Services Agreement, (the "Agreement") effective June 1, 2010.

NMC represents to KPMG that NMC has obtained all legal consents necessary to amend this contract to KPMG without further competition, and that amendment of this contract is made in accordance with all applicable laws, regulations, rules, policies, and requirements.

**PERSONNEL, PROJECT DURATION, AND FEES**

All personnel assigned to the engagement shall be fully qualified to perform the tasks assigned to them and shall perform the services in a competent and professional manner. Resources will be engaged to provide MEDITECH subject matter expertise on many modules, including but not limited to:

Billing & Accounts Receivable	Operating Room Management
Bedside Medication Verification	Prescription Management
Electronic Medication Administration Record	Pharmacy
Order Entry & Computerized Provider Order Entry (CPOE)	Materials Management
Emergency Department Management	Laboratory
Abstracting	Patient Care System
Community Wide Scheduling	Imaging & Therapeutic Services
Medical Record Inquiry	Non-Procedural Reporting (NPR)

Other MEDITECH modules may be introduced into the scope of work as identified by NMC leadership.

One resource will be assigned the role of Project Manager for the implementation of MEDITECH's Operating Room Management module.

The remaining consultants will provide support services for existing MEDITECH modules as listed above. NMC will make all final design/implementation decisions and KPMG resources will operate as directed by NMC. KPMG will provide assistance in connection with the Services provided pursuant to this Amendment. Our assistance will be performed under the direction and supervision of NMC, who will be responsible for communicating the tasks and requirements of the positions to KPMG personnel and for reviewing their work. KPMG will help the Client to identify options and alternatives for utilizing the



MEDITECH system to meet the desired needs. If a KPMG Resource identifies a technical issue while assisting the Client, he/she will gather information to provide to the Client for issue resolution. KPMG will assist Client to develop and test solutions, and the Client will be responsible for validating and approving corrective updates to the system into production operations. Any decisions, authorizations, or conclusions made during this engagement are deemed to be that of the Client.

KPMG recognizes that NMC is conducting an ongoing recruitment process to fully staff its IT department with FTEs. We also recognize that NMC intends to issue a Request for Proposal (RFP) for IT applications and operations roles not yet filled by FTEs. If a KPMG held role is filled by a new FTE hire or RFP awardee, KPMG will deliver a clear transition plan to NMC IT administration. Once the transition plan is signed off by NMC IT Administration, KPMG will fully execute the agreed upon transition plan.

**Timing and Professional Fees**

This engagement is estimated to require the resources identified below over a duration of nine (9) months from July 1, 2016 to March 31, 2017. Upon acceptance of Amendment 9, KPMG and NMC will jointly confirm the start date of the project. The estimated consulting fees for the services follow and are inclusive of travel and administrative expenses in accordance with all applicable Monterey County policies, including without limitation the Monterey County travel policy:

<i>Resource Level</i>	<i>Rate/Hour</i>	<i># of Hours</i>	<i>Estimated Cost</i>
MEDITECH Subject Matter Experts	\$ 175	6,120	\$ 1,071,000
ORM Project Manager	\$ 175	1,440	\$ 252,000
Total			\$ 1,323,000

The terms and conditions agreed upon between NMC and KPMG as reflected in Amendment Number 8 will apply to this engagement.

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective July 1 \_\_\_\_\_, 2016 (“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 KPMG LLP (“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. 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 five (5) business days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall seek input from 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 five (5) 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) notify the Covered Entity within five (5) business 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 reasonably cooperate with the Covered Entity in such challenge;



(k) 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 five (5) 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 seek input from 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 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 HIPAA or HITECH 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:

KPMG LLP  
\_\_\_\_\_  
55 Second Street, Suite 1400  
\_\_\_\_\_  
San Francisco, CA 94105  
\_\_\_\_\_  
Attn: Michael Kirby, Managing Director  
\_\_\_\_\_  
Phone: (415) 963-7058  
\_\_\_\_\_  
Fax: (415) 840-1733  
\_\_\_\_\_

With a copy to:

KPMG LLP  
\_\_\_\_\_  
345 Park Ave.  
\_\_\_\_\_  
New York, NY 10154  
\_\_\_\_\_  
Attn: Legal/Contracts Department  
\_\_\_\_\_  
Phone: (212) 758-9700  
\_\_\_\_\_  
Fax: (212) 758-9819  
\_\_\_\_\_

If to Covered Entity, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

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. Business Associate shall indemnify, defend, and hold harmless the Covered Entity, its officers, agents, and employees from any claim, liability, 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 Business Associate 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. Business Associate 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 Business Associate 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.

**KPMG LLP**

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

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

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

Print Name: Michael D. Kirby \_\_\_\_\_

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

Print Title: Managing Director \_\_\_\_\_

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

Date: 5/26/16 \_\_\_\_\_

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