

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the “**Amendment**”) is made and entered into as of **October 1, 2014**, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and SALINAS VALLEY RADIOLOGISTS, INC., A MEDICAL GROUP, a California professional corporation (“**Contractor**”) with respect to the following:

RECITALS

A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California under its acute care license.

B. Contractor and Hospital have entered into that certain Professional Services Agreement dated effective as of May 1, 2013 (the “**Agreement**”) pursuant to which Contractor provides certain professional, administrative and coverage services.

C. Hospital and Contractor desire to amend the Agreement to extend the term and to include additional interventional radiology services and increase the amount payable by Nine Hundred Eighty Thousand Dollars (\$980,000).

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Hospital and Contractor agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
2. **Section 1.5.** Section 1.5 to the Agreement is hereby amended and restated to read in its entirety as follows:

“1.5 Time Commitment.

(a) Contractor shall ensure that at least one (1) Group Physician is physically present on site to provide diagnostic radiology services and one (1) Group Physician is physically present to provide interventional radiology services, at minimum, Mondays through Fridays from 8:00 a.m. to 5:00 p.m., other than holidays observed by Hospital. With respect to diagnostic radiology services, Contractor shall provide remote coverage between 5:00 p.m. and 8:00 a.m. either through its Group Physicians or through an after-hours reading service agreed upon by both Parties. In addition, Contractor shall meet the coverage and staffing requirements set forth in **Exhibit 1.1**. Contractor shall allocate time among the Coverage Services, Professional Services, Teaching Services and Additional Services as reasonably requested by Hospital from time to time.

(b) Contractor shall provide the Director Services a minimum of sixteen (16) hours per month.”

3. **New Section 1.23.** Section 1.23 to the Agreement is added to the Agreement to read in its entirety as follows:

“**1.23 Response Times.** Contractor shall be promptly available and respond in person to a request for an emergency evaluation by the attending physician or the ED physician within a response time frame as required by the patient’s medical condition and in accordance with the requirements set forth in **Exhibit 1.1**, the Hospital Rules and ACS Requirements. Contractor shall respond within thirty (30) minutes by phone, if asked to respond by phone, to any request for an ED or patient phone consultation and subsequent follow-up at Hospital.”

4. **Section 2.1.** Section 2.1 to the Agreement is hereby amended and restated to read in its entirety as follows:

“**2.1 Compensation.** Hospital shall pay to Contractor the amount determined in accordance with **Exhibit 2.1** (the “**Compensation**”), upon the terms and conditions set forth therein. The total amount payable by Hospital to Contractor under this Agreement shall not exceed the sum of One Million Six Hundred and Sixty Seven Thousand Dollars (\$1,667,000).”

5. **Section 5.1.** Section 5.1 to the Agreement is hereby amended to read in its entirety as follows:

“**5.1 Term.** This Agreement shall become effective on May 1, 2013 (the “**Effective Date**”), and shall continue until June 30, 2016 (the “**Expiration Date**”), subject to the termination provisions of this Agreement.”

6. **Section 5.5.** Section 5.5 to the Agreement is hereby amended and restated to read in its entirety as follows:

“**5.5 Termination without Cause.** On or after May 1, 2015, either Party may terminate this Agreement without cause, expense or penalty, effective ninety (90) days after written notice of termination is given to the other Party.”

7. **New Section 5.11.** Section 5.11 to the Agreement is hereby added to the Agreement to read in its entirety as follows:

“**5.11 Termination or Amendment in Response to Reduction of Government Funding.** Effective August 1, 2015, notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to the County for services that are to be provided under this Agreement, County, in its sole and absolute discretion after consultation with the Contractor, may elect to terminate this Agreement by giving written notice of termination to Contractor effective immediately or on such other date as County specifies in the notice.

Alternatively, County and Contractor may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.”

8. **New Section 5.12.** Section 5.12 to the Agreement is hereby added to the Agreement to read in its entirety as follows:

“5.12 Termination or Amendment in Response to Reduction or Elimination of Trauma Program. If the County determines that it is unable to continue the Trauma Program at any time, County will immediately notify Contractor of such occurrence, and the trauma-specific provisions set forth in this Amendment shall terminate concurrently with the effective date of termination of the Trauma Program. In such case, all other provisions in the Agreement shall continue to remain in full force and effect on its terms, subject to the terms and conditions set forth in this Agreement, and Exhibit 2.1 to the Agreement would be replaced in its entirety with the attached Exhibit 2.1 – Attachment B.”

9. **Section 6.4.** Section 6.4 to the Agreement is hereby amended and restated to read in its entirety as follows:

“6.4 Compliance with Laws and Accreditation. Contractor shall comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments applicable to Contractor, the provision of the Services, Hospital’s trauma center designation, or the obligations of Contractor under this Agreement, including without limitation laws that require Contractor to disclose any economic interest or relationship with Hospital, the Emergency Medical Treatment and Active Labor Act and the rules and regulations thereunder (“EMTALA”), California Health and Safety Code Section 1317 and the rules and regulations thereunder (“**Health and Safety Code §1317**”), Title 22, Division 9, Chapter 7 of the California Code of Regulations (Trauma Care Systems), the County of Monterey Emergency Medical Services Trauma Care System Plan and Protocols and Policies and any applicable guidelines issued by the American College of Surgeons Committee on Trauma and/or the U.S. Department of Health and Human Services, each as amended from time to time (collectively, the “**Laws**”). Contractor shall perform and handle all patient transfers and reports in accordance with applicable Laws, including EMTALA, and Health and Safety Code §1317. Contractor shall take actions necessary to ensure that the Hospital and/or Clinic are operated in accordance with: all requirements of a nationally recognized accrediting organization that Hospital designates from time to time, all applicable licensing requirements, and all other relevant requirements promulgated by any federal, state or local agency.”

10. **Exhibit 1.1.** Exhibit 1.1 to the Agreement is hereby replaced in its entirety with the attached Exhibit 1.1.

11. **Exhibit 1.3.** Exhibit 1.3 to the Agreement is hereby replaced in its entirety with the attached Exhibit 1.3.

12. **Exhibit 2.1.** Exhibit 2.1 to the Agreement is hereby replaced in its entirety with the attached Exhibit 2.1 – Attachment A.

13. **Exhibit 6.3.** Exhibit 6.3 to the Agreement is hereby replaced in its entirety with the attached Exhibit 6.3.

14. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. **Continuing Effect of Agreement.** Except as herein provided, all of the terms and conditions of the Agreement remain in full force and effect from the Effective Date of the Agreement.

16. **Reference.** After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

[signature page follows]

IN WITNESS WHEREOF, Hospital and Contractor have executed this Amendment as of the day and year first written above.

CONTRACTOR

SALINAS VALLEY RADIOLOGISTS, INC.,
A MEDICAL GROUP, a California
professional corporation

Date: 9/17/14, 2014

Michael Bone

NATIVIDAD MEDICAL CENTER

Purchase Order Number

By: _____
Contracts /Purchasing Manager

Date: _____, 2014

By: *Ally B. Alufend*
Natividad Medical Center Representative

Date: 9/18, 2014

APPROVED AS TO LEGAL FORM:
CHARLES J. McKEE, County Counsel

Stacy Saetta, Deputy County Counsel

Date: _____, 2014

Exhibit 1.1

COVERAGE AND PROFESSIONAL SERVICES

1. **Diagnostic Imaging.** Contractor shall provide twenty (24) hour, seven (7) days a week coverage of the Hospital's Diagnostic Imaging Department.

a. Contractor shall perform and interpret the professional component of diagnostic imaging services, including without limitation, the following procedures:

- i. Radiographic Examinations
- ii. Fluoroscopy Procedures
- iii. Diagnostic and Therapeutic Nuclear Medicine including SPECT
- iv. Computerized Axial Tomography (CT and CTA examinations)
- v. Ultrasound and Non-invasive Vascular Testing
- vi. Mammography
- vii. Magnetic Resonance Imaging (MRI and MRA examinations)
- viii. Emergency Department Radiology
- ix. Bone Densitometry

b. Additionally, all new technologies, modalities or procedures, which are considered by the American College of Radiology to be appropriate by radiologists, shall be deemed included as radiology imaging services for the purposes of this Agreement and shall be provided exclusively by Contractor during the term of this Agreement;

c. Contractor will provide procedure results for use of the members of the Hospital's Medical Staff or area physicians in the diagnosis and/or treatment of patients within one (1) business day after exam results are made available to a Group Physician and within two (2) hours after exam is made available for STAT/Urgent exams. Contractor shall ensure that Group Physicians dictate mammography exam results within two (2) business days.

d. **After-Hours Reading Services.** Contractor shall arrange for preliminary after-hour reading services during the hours of 5:00 p.m. to 8:00 a.m. on business days and twenty-four (24) hours on non-business days. Such services shall be provided by Contractor or other provider approved by Hospital. Contractor shall over read all exams initially reviewed by after-hours provider and sign final reads within 24 hours.

2. **Interventional Radiology.**

a. Contractor shall ensure that one (1) or more Group Physicians is/are available on an on-call basis to provide dedicated interventional radiology services to Hospital patients twenty four (24) hours, seven (7) days per week, including all holidays, in accordance with American College of Surgeons trauma center requirements and guidelines (the "**On-Call Interventional Radiologist**");

b. the On-Call Interventional Radiologist shall be board certified in radiology;

c. the On-Call Interventional Radiologist shall not be encumbered while on call. If the On-Call Interventional Radiologist is unable to respond because he/she is performing a procedure at another institution, this will constitute grounds for immediate removal from the call panel;

d. the On-Call Interventional Radiologist shall be physically present within thirty (30) minutes of notification in the trauma resuscitation area when consulted by the surgical trauma team leader for multiply injured patients;

e. the On-Call Interventional Radiologist shall be in the emergency department upon patient arrival with adequate notification from the field. The maximum acceptable response time is thirty (30) minutes for Level II trauma centers. Response time means the On-Call Interventional Radiologist is physically present in the trauma resuscitation room as documented by the trauma scribe on the trauma run sheet;

f. the On-Call Interventional Radiologist's presence in the trauma resuscitation room must be in compliance at least eighty percent (80%) of the time. Demonstration of the On-Call Interventional Radiologist's prompt arrival for patients with appropriate activation criteria will be monitored by the Hospital's trauma Performance Improvement and Patient Safety (PIPS) program by documentation of the On-Call Interventional Radiologist's arrival as documented on the trauma run document;

g. the On-Call Interventional Radiologist must identify himself/herself as present to the trauma scribe. It is the On-Call Interventional Radiologist's sole responsibility to ensure his/her presence in the trauma room is documented by the trauma scribe on the trauma run sheet. If his/her presence is not documented, he/she will be considered not to be present. Failure to meet these time restrictions may lead to immediate removal from the trauma call panel by the Trauma Program Director;

h. Contractor shall ensure that one (1) Group Physician is available to assist with central venous access and PICC line placement services if Hospital personnel need such assistance; and

i. Contractor shall schedule procedures within twenty-four (24) hours after receipt of a request and after completing any applicable protocols, including, without limitation, discussions with requesting physicians when appropriate, prior to scheduling the procedure. Contractor shall use its best efforts complete elective procedures within seven (7) business days.

Exhibit 1.3

DIRECTOR SERVICES

Contractor shall:

1. provide general administration of the day-to-day operations of the radiology department (the “**Department**”);
2. advise and assist in the development of protocols and policies for the Department including the implementation of interventional radiology services;
3. ensure physician coverage of the Department;
4. schedule, coordinate and supervise the provision of medical and ancillary services within the Department;
5. ensure the maintenance of consistently high quality service, and advise Hospital in the development and implementation of an appropriate quality assurance program with respect to the Department;
6. coordinate and consult with Hospital and Medical Staff regarding the efficiency and effectiveness of the Department, and make recommendations and analyses as needed for Hospital to improve services provided in the Department and reduce costs;
7. develop, review, and provide training programs for Medical Staff and Hospital personnel;
8. prepare such reports and records as may be required by this Agreement, or reasonably required by the Hospital or the Medical Staff;
9. participate in Hospital and Medical Staff committees upon reasonable request by Hospital;
10. participate in continuing medical education, research and teaching activities upon request by Hospital;
11. participate in utilization review programs, as reasonably requested by Hospital;
12. participate in risk management and quality assurance programs, as reasonably requested by Hospital;
13. assist Hospital management with preparation for, and conduct of, any inspections and on-site surveys of Hospital or the Department conducted by governmental agencies, accrediting organizations, or payors contracting with Hospital;
14. provide a Group Physician designated by the Trauma Program Director to be the liaison to the trauma program (the “**Group Physician Liaison**”); and

15. ensure the Group Physician Liaison participates in trauma committees and is physically present at least fifty percent (50%) of the committee meetings.

Exhibit 2.1 – Attachment A

COMPENSATION

1. **Coverage and Professional Services.** Hospital shall pay to Contractor the amount of Fifty Eight Thousand Three Hundred Thirty Three Dollars (\$58,333) per month for Coverage and Professional Services rendered by Contractor under this Agreement; provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.

2. **Incentive Compensation.** Contractor shall be eligible for additional compensation of up to twenty thousand dollars (\$20,000) per Contract Year (collectively, “**Incentive Compensation**”). Such Incentive Compensation shall be based on Hospital’s data. Such Incentive Compensation shall be paid at the end of each Contract Year and shall be calculated as follows for the twelve (12) months preceding the payment date. For purposes of this Agreement, “**Contract Year**” shall mean each consecutive twelve (12) month period beginning on the Effective Date during the term of this Agreement.

Quality Initiative	Measure	Incentive Goal	Incentive Amount	Incentive Goal	Incentive Amount	Incentive Goal	Incentive Amount
Provider Satisfaction	<ul style="list-style-type: none"> • <u>Responsiveness</u> of radiology provider to physicians/staff • <u>Communication</u> between radiology provider and physician/staff • <u>Overall quality</u> of patient care 	<p align="center">≥70% Very Good/ Excellent</p>	\$10,000	<p align="center">≥80% Very Good/ Excellent</p>	\$15,000	<p align="center">≥90% Very Good/ Excellent</p>	\$20,000

3. **Director Services.** Hospital shall pay to Contractor the amount of Four Thousand Two Hundred Dollars (\$4,200) per month for the provision of Director Services.

4. **Timing.** Hospital shall pay the compensation due for Services performed by Contractor after Contractor’s submission of the monthly invoice of preceding month’s activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is “30 days after receipt of the certified invoice in the Auditor-Controller’s Office”.

Exhibit 2.1 – Attachment B

COMPENSATION

1. **Coverage and Professional Services.** Hospital shall pay to Contractor the amount of Fourteen Thousand Five Hundred Eighty-Three Dollars and Thirty-Three Cents (\$14,583.33) per month for Coverage and Professional Services rendered by Contractor under this Agreement; provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.

2. **Director Services.** Hospital shall pay to Contractor the amount of Two Thousand Dollars (\$2,000) per month for the provision of Director Services.

3. **Incentive Compensation.** Contractor shall be eligible for additional compensation of up to twenty thousand dollars (\$30,000) per Contract Year (collectively, “**Incentive Compensation**”). Such Incentive Compensation shall be based on Hospital’s data. Such Incentive Compensation shall be paid at the end of each Contract Year and shall be calculated as follows for the twelve (12) months preceding the payment date. For purposes of this Agreement, “**Contract Year**” shall mean each consecutive twelve (12) month period beginning on the Effective Date during the term of this Agreement.

Quality Initiative	Measure	Incentive Goal	Incentive Amount	Incentive Goal	Incentive Amount	Incentive Goal	Incentive Amount
Provider Satisfaction	<ul style="list-style-type: none"> • <u>Responsiveness</u> of radiology provider to physicians/staff • <u>Communication</u> between radiology provider and physician/staff • <u>Overall quality</u> of patient care 	≥70% Very Good/ Excellent	\$10,000	≥80% Very Good/ Excellent	\$15,000	≥90% Very Good/ Excellent	\$30,000

4. **Timing.** Hospital shall pay the compensation due for Services performed by Contractor after Contractor’s submission of the monthly invoice of preceding month’s activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is “30 days after receipt of the certified invoice in the Auditor-Controller’s Office”.

Exhibit 6.3

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective **October 1, 2014** (“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 **SALINAS VALLEY RADIOLOGISTS, INC.**, a medical corporation (“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 (“E PHI”), 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, 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) upon twenty (20) business days' prior written request, 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's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within twenty (20) business 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) business 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) business 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 twenty (20) business 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 twenty (20) business 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) 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 cooperate fully with the Covered Entity in such challenge; and

(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 five (5) business 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) business 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:

Attn: _____
Tel: _____
Fax: _____

If to Covered Entity, to:

Natividad Medical Center
1441 Constitution Blvd, Bldg 300
Salinas, CA 93906

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. The parties agree that Section of the Agreement between the Parties shall control in the event of a claim, loss, or material breach of this Agreement by either Party.

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]

[COVERED ENTITY]

By: Michael E. Basse

By: Kelly R O'Keefe

Print Name: MICHAEL E. BASSE, MD

Print Name: Kelly R O'Keefe

Print Title: SVR PRESIDENT

Print Title: Interim CEO

Date: 9/17/2014

Date: 9/18/14