



# Monterey County

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

## Board Order

### Agreement No.: A-12716

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

- a. Authorized and directed the Purchasing Manager for Natividad Medical Center (NMC) to execute the First Amendment to the Professional Services Agreement with Delphine Engel M.D. to provide general and critical care surgery services at NMC, extending the term to June 30, 2015 and adding \$300,000 for a revised Agreement amount not to exceed \$400,000 in the aggregate (for the period August 1, 2013 to June 30, 2015); and
- b. Authorized the Purchasing Manager for NMC to sign up to three (3) amendments to this agreement where the total amendments do not exceed 10% of the original contract amount, and do not significantly change the scope of work.


PASSED AND ADOPTED on this 24th day of June 2014, by the following vote, to wit:

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

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on June 24, 2014.

Dated: June 27, 2014  
File Number: A 14-133

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

By   
Deputy

**FIRST AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES  
AGREEMENT**

THIS FIRST AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT (the “**Amendment**”) is made and entered into as of July 1, 2014, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and DELPHINE ENGEL, M.D., an individual (“**Contractor**”) with respect to the following:

**RECITALS**

A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California and various outpatient clinics (collectively, the “**Clinics**”) under its acute care license.

B. Contractor is duly licensed to practice medicine in the State of California (the “**State**”). Contractor is board certified for the practice of medicine in the specialty of general surgery (collectively, the “**Specialty**”).

C. Contractor and Hospital have entered into that certain Professional Services Agreement dated effective as of August 1, 2013 (the “**Agreement**”) pursuant to which Contractor provides Specialty services, including trauma, acute care surgery and surgical critical care as well as inpatient and outpatient procedures performed in Hospital’s operating room.

D. In order to ensure adequate and continued Specialty coverage for the Hospital as required by applicable federal and state law, Hospital desires to engage a panel of physicians specializing in the Specialty, including Contractor (each, a “**Panel Member**” and, collectively, the “**Panel Members**”), to provide call coverage for the Hospital, upon the terms and subject to the conditions set forth in this Agreement.

E. Hospital and Contractor desire to amend the Agreement as set forth herein to extend the term and add to the amount payable by \$300,000 to for services provided during the extended term.

**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 1.14.** Section 1.14 to the Agreement is hereby amended and restated to read in its entirety as follows:

**“1.14 Continuing Medical Education.** Contractor shall participate in continuing medical education (“CME”) as necessary to maintain licensure, professional competence and skills commensurate with the standards of the medical community, as required under the American College of Surgeons trauma center requirements and guidelines (“ACS Requirements”) or as otherwise required by the medical profession. Contractor must provide to Hospital documentation showing Contractor’s completion of a minimum of sixteen (16) hours of CME per year, or forty-eight (48) hours over three (3) years of external trauma-related CME.”

3. **Section 1.24.** Section 1.24 to the Agreement is hereby amended and restated to read in its entirety as follows:

**“1.24 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 1.24**, 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. **New Exhibit 1.24.** New **Exhibit 1.24** is hereby added to the Agreement as attached **Exhibit 1.24**.

5. **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 Four Hundred Thousand Dollars (\$400,000).”

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

**“5.1 Term.** This Agreement shall become effective on August 1, 2013 (the “Effective Date”), and shall continue until June 30, 2015 (the “Expiration Date”), subject to the termination provisions of this Agreement.”

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

8. **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.”

9. **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.

10. **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.

11. **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**

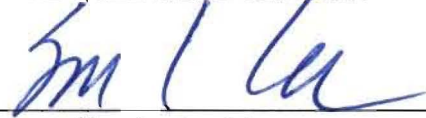
DELPHINE ENGEL M.D., an individual

Date: May 29, 2014



**NATIVIDAD MEDICAL CENTER**

Purchase Order Number

By:   
Contracts /Purchasing Manager

Date: 6-24, 2014

By:   
Natividad Medical Center Representative

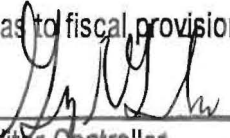
Date: 6-6, 2014

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

  
Stacy Saetta, Deputy County Counsel

Date: 6/6, 2014

Reviewed as to fiscal provisions

  
Auditor-Controller  
County of Monterey 6-6-14

## Exhibit 1.24

### COVERAGE SERVICES AND RESPONSE TIME REQUIREMENTS

Contractor shall meet the following requirements when providing Coverage Services in the Specialty, including trauma, acute care surgery and surgical critical care as well as inpatient and outpatient procedures performed in Hospital's operating room, under this Agreement:

1. Contractor shall provide Coverage Services along with other Panel Members in a manner that is sufficient to ensure Specialty coverage for the Hospital twenty-four (24) hours per day, seven (7) days per week, including all holidays, in accordance with the schedule developed by the trauma program director designated by Hospital (the "**Trauma Program Director**") in consultation with the Panel Members from time to time;
2. Contractor shall be in the emergency department on patient arrival, with adequate notification from the field.
3. Contractor shall adhere to the Level II trauma center requirements regarding response times. The maximum acceptable response time for Level II trauma centers is 15 minutes from patient arrival for Code Trauma alerts, and 30 minutes for Tier 2 trauma alerts (moderate trauma). Response time means the trauma surgeon on primary call (Contractor) is physically present in the trauma resuscitation room as documented by the trauma scribe on the trauma run sheet;
4. Contractor's presence in the trauma resuscitation room-must be in compliance at least 80% of the time. Demonstration of the Contractor's prompt arrival for patients with appropriate activation criteria will be monitored by the Hospital's trauma Performance Improvement and Patient Safety (PIPS) program as documented by the trauma scribe on the trauma run document;
5. Contractor shall identify himself or herself as present to the trauma scribe. It is the Contractor's sole responsibility to ensure his or her presence in the trauma room is documented by the trauma scribe on the trauma run sheet. If Contractor's presence is not documented, Contractor will be considered not to be present. Failure to meet these time restrictions may lead to immediate removal from the call panel by the Trauma Program Director;
6. Contractor shall be board certified or board eligible in general surgery or fellows of the American College of Surgeons;
7. Contractor shall provide proof of current Advanced Trauma Life Support (ATLS) certification to Hospital; and
8. Contractor shall participate in Hospital's Trauma Committees as requested by Hospital and must be present at least 50% of the Committee meetings.

## Exhibit 2.1

### COMPENSATION

The following compensation will apply prior to Hospital's activation of Level II/III Trauma Center:

1. **Coverage Services.** Hospital shall pay to Contractor an amount equal to Four Thousand Six Hundred Dollars (\$4,600.00) per twenty-four (24) hour shift of Coverage Services provided pursuant to this Agreement; provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.

Thereafter, the following compensation will apply upon and after Hospital's activation of Level II/III Trauma Center:

2. **Coverage Services.** Hospital shall pay to Contractor an amount equal to Three Thousand Five Hundred Dollars (\$3,500) per twenty-four (24) hour period of in-house Coverage Services provided pursuant to this Agreement, provided, however, that Contractor is in compliance with the terms and conditions of this Agreement. The Coverage Services stipend is inclusive of travel expenses, Contractor shall not receive additional reimbursement for travel expenses.

3. **Uninsured Patient Services.**

(a) Hospital shall pay to Contractor an amount equal to then-current (as of the date of service), hospital-based, Medicare Physician Fee Schedule amount for Uninsured Services (as defined below) provided by Contractor (the "**Uninsured Patient Compensation**"). The Uninsured Patient Compensation shall be Contractor's sole and exclusive compensation for Uninsured Services provided by Contractor pursuant to this Agreement and Contractor shall not seek further compensation from any other source. Contractor shall be paid on the CPT codes submitted and verified by Hospital professional billing office coders.

(b) For purposes of this Agreement, "**Uninsured Services**" shall mean medically necessary, professional medical services that are rendered to patients at Hospital who are not insured for medical care by any third-party payor at the time of service (collectively, the "**Uninsured Patients**").

(c) Procedures with the following modifiers will be reimbursed at the Medicare allowable rate using the current established Medicare guidelines for reimbursement when using the modifier:

(i) Procedures that are or could be billed with the modifier 22 (unusual procedural services) will not be considered for additional reimbursement to be paid to Contractor; rather the procedure will be reimbursed at the Medicare allowable and if other

modifiers are used, the procedure will be paid at the current established Medicare reimbursement rate applying Medicare guidelines for those modifiers.

(ii) If modifier 52 (reduced services) and/or 53 (discontinued services) is/are needed for billing, the percentage of the Medicare allowable to be paid to Contractor will be determined by the Hospital physician billing manager and the Hospital Chief Medical Officer (CMO).

(iii) Unless a code is specifically designated as an add-on code, the Medicare rules for multiple procedure guidelines shall apply (*i.e.*, the main procedure will be paid at 100% and subsequent procedures will be paid at 50%), consistent with Medicare reimbursement guidelines for modifiers.

(d) The Parties intend that Hospital will pay for Uninsured Services only if the Uninsured Patient has no means of paying for those services (*e.g.*, independent wealth, third-party payor, etc.). If it is later determined that an Uninsured Patient or a third-party payor will pay for the Uninsured Services the following shall apply:

(i) Hospital shall have the sole and exclusive right to bill, collect and own any and all fees that might be collected for Uninsured Services provided by Contractor pursuant to this Agreement. Contractor hereby grants Hospital the right to retain any and all collections received by Hospital for Contractor's Uninsured Services. In the event that Contractor receives any payment from third-party payors for Uninsured Services that Contractor furnishes pursuant to this Agreement, Contractor shall promptly turn over such payments to Hospital. Contractor shall designate Hospital as Contractor's attorney-in-fact for billing for Uninsured Services provided by Contractor pursuant to this Agreement.

(ii) For any procedure without an established RVU value and/or not listed procedure (*e.g.*, x stop), Hospital will reimburse Contractor based upon Hospital's reimbursement from a payor if Hospital has received payment from a payor. In the event no payment is received from a payor, no reimbursement will be made to Contractor.

(iii) The Parties agree to resolve any and all billing, collection and reimbursement disputes as expeditiously as possible, up to and including the dispute resolution procedure outlined in this Section 2. If a claim is disputed by a payor, Contractor will make every effort to assist the Hospital billing manager to resolve the claim, If the claim is denied by the payor, and no payment is received within twelve (12) months of the service date, the amount of the disputed claim will be adjusted (recouped) from future payments due to Contractor after the twelve (12) month period.

(iv) Hospital will adjust future invoices if Hospital is unable to recover payment for surgery/treatment due to a procedure being classified by a payor as non payable (*e.g.*, it is considered experimental, represents non-covered services, is categorized as medically unnecessary, or is otherwise excluded from coverage), or if Contractor is found to have breached a necessary reimbursement procedure (*e.g.*, scheduling a procedure from its office and not obtaining the authorization for the procedure to be performed at Hospital). No payment will



be allowed to Contractor in these circumstances. At its discretion and at its sole cost and expense, Contractor may appeal to the payor any determination that a procedure is non-payable.

(e) For Uninsured Services, Hospital shall pay to Contractor the Uninsured Patient Compensation, so long as Contractor submits information relating to its patient encounters as follows:

(i) Contractor will complete an encounter charge form for Uninsured Services provided; Hospital will check both the diagnosis and the documentation to verify coding on encounter forms for one hundred percent (100%) of encounters. This review will require Contractor to dictate patient visit notes into the Hospital dictation system within twenty-four (24) hours of completion of an encounter so that documentation available is for review of the encounter charge form. Any encounter charge form for which there is not an accompanying dictated patient visit note shall not be reviewed by Hospital until the patient visit note is submitted to the Hospital. The sole exception to the dictation requirement shall be when Contractor is using CPT code 99024 for post-operative visits and is not expecting payment for the visit, in which case the Contractor physician can hand write the visit note.

(i) Contractor will submit an encounter charge form to Hospital within thirty (30) days from date of service and after the Patient is determined to have no payor source and identified as an Uninsured Patient.

4. **Clinic Services.** Contractor shall provide Professional Services in the Clinics (“Clinic Services”) as requested by Hospital from time to time. In recognition of the mutual obligations of the Parties hereunder, Hospital and Contractor acknowledge that there shall be no monetary compensation to Contractor for the Clinic Services furnished by Contractor hereunder.

5. **Professional Liability Reimbursement.** In the event that Contractor does not purchase the professional liability insurance set forth in the Agreement, Hospital will deduct Twenty Dollars and Fifty-Two Cents (\$20.52) per 24 hour shift worked by Contractor to compensate for Hospital’s payment of professional liability insurance premiums on behalf of Contractor.

6. **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”.

**Attachment A**

**ADDITIONAL OBLIGATIONS**

Contractor shall participate in performance improvement activities associated with the American College of Surgeons National Surgical Quality Improvement Program (ACS NSQIP).

### Exhibit 6.3

#### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”), effective July 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 **DELPHINE ENGEL MD** (“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 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:

2121 SE Belmont St Apt 406  
Portland OR 97214  
Attn: Delphine Engel  
Tel: 718-415-5301  
Fax: \_\_\_\_\_

If to Covered Entity, to:

Natividad Medical Center  
1441 Constitution Blvd  
Salinas, CA 93906  
Attn: Harry Weis, CEO

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]

By:   
Print Name: Delphine Engel  
Print Title: MD  
Date: 5-29-2014

[COVERED ENTITY]

By:   
Print Name: Harry Weis  
Print Title: CEO  
Date: 6/3/14