

**AMENDMENT NO. 10
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN CYNTHIA HARLOWE, AND
NATIVIDAD MEDICAL CENTER
FOR
PROFESSIONAL CONSULTING SERVICES**

This Amendment No. 10 to the Professional Services Agreement ("Agreement"), dated July 1, 2009 is entered into by and between the County of Monterey, on behalf of Natividad Medical Center (hereinafter "NMC"), and Cynthia Harlowe, (hereinafter "CONTRACTOR"), with respect to the following:

RECITALS

WHEREAS, the Professional Services Agreement was executed for Professional Consulting Services with a one year term and a total Agreement amount not to exceed \$25,000; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on February 1, 2010 to increase the total agreement amount to \$50,000 via Amendment No. 1; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on July 1, 2010 to extend the term for an additional twelve month period through June 30, 2011 and increase the total agreement amount to \$100,000 via Renewal Amendment No. 2; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on February 1, 2011 to increase the total agreement amount to \$150,000 via Amendment No. 3; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on July 1, 2011 to extend the term for an additional twelve month period through June 30, 2012 and increase the total agreement amount to \$200,000 via Amendment No. 4; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on November 1, 2011 to increase the total agreement amount to \$215,000 via Amendment No. 5; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on July 1, 2012 to extend the term for an additional twelve month period through June 30, 2013 and increase the total agreement amount to \$240,000 via Amendment No. 6; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on July 1, 2013 to extend the term for an additional twelve month period through June 30, 2014 and increase the total agreement amount to \$265,000 via Amendment No. 7; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on June 1, 2014 to extend the term for an additional twelve month period through June 30, 2015 and increase the total agreement amount to \$422,000 via Amendment No. 8; and

WHEREAS, NMC and CONTRACTOR amended the Agreement effective on November 15, 2014 to increase the total agreement amount to \$723,000 via Amendment No. 9; and

WHEREAS, NMC and CONTRACTOR currently wish to amend the Agreement to extend it for an additional three year term period through June 30, 2018 to allow for continued services with additions to the original scope of work and to add an additional \$750,000 increase for a revised total Agreement amount not to exceed of \$1,473,000.

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 and in Amendments Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 incorporated herein by this reference, except as specifically set forth below.

1. Section 1, "PAYMENTS BY NMC" shall be amended to the following; "NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT A-10 as per Amendment No. 10 attached hereto this Amendment No. 10. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$1,473,000.
2. The first sentence of Section 2 "TERM OF AGREEMENT" shall be amended to the following; *"The term of this Agreement is July 1, 2009 to June 30, 2018 unless sooner terminated pursuant to this Agreement"*
3. 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-10: revised Scope of Services/Payment Provisions as per Amendment No. 10"
Exhibit B-10: Business Associate Agreement
4. New Section 4.4 is added to the Agreement:

"4.4. **Time of Work.** CONTRACTOR shall provide such services as CONTRACTOR deems necessary and reasonable to complete the specific services described in Exhibit A but is not required to perform services at any particular time. NMC shall not have first right to CONTRACTOR's time."
5. New section 4.5 is added to the Agreement:

"4.5. **Method of Performing Services.** CONTRACTOR will determine the method, details, and means of performing the services described in Exhibit A by CONTRACTOR or any of CONTRACTOR's employees. NMC shall have no right to, and shall not, control the manner or determine the method of accomplishing CONTRACTOR'S services."
6. New Section 4.6 is added to the Agreement:

"4.6. **Performance Requirements.** The services must be performed in full compliance at all times with the requirements of this Agreement and to the satisfaction of NMC."
7. New Section 4.7 is added to the Agreement

"4.7. **Contractor Staff Approval.** NMC shall have the right to disapprove of any member of CONTRACTOR'S staff assigned to perform services under this Agreement."
8. New Section 5.3 is added to the Agreement:

"5.3. **Violation of Performance Requirements.** NMC will be obligated to pay CONTRACTOR only for services actually performed."
9. New Section 12.2 is added to the Agreement:

"12.2. **Employment Related Claims.** CONTRACTOR agrees that she shall be solely responsible for the direction, supervision, counseling and discipline of her employees, including the conducting of informal and formal performance evaluations. CONTRACTOR agrees to be solely responsible for all matters relating to compensation of her employees, subcontractors, agents, partners or consultants including but not limited to compliance with federal and state and local wage and hours laws, laws governing workers' compensation, Social Security, lay-off or termination

compensation, withholding and payment of any and all federal, state and local personal income taxes, disability/death insurance, unemployment, and any other taxes for such persons, including any related employer assessments or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits. At CONTRACTOR'S expense as described herein, CONTRACTOR agrees to defend, indemnify, and hold harmless NMC, its officers, agents, employees, members, subsidiaries, parent, affiliates, and successors in interest from and against any claim, demand, action, proceeding, threatened or actual, judgment, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of CONTRACTOR's or NMC's alleged failure to pay, when due, all such compensation, premiums, taxes and obligations and including any claim of whatever nature brought by any employee of CONTRACTOR of applicant for employment, arising out of the hiring, or failure to hire the employee/applicant, or arising out of any aspect of his/her employment by CONTRACTOR and the termination thereof (collectively referred to for purposes of this Section as "Employment Claim(s)"). CONTRACTOR shall pay to NMC any expenses or charges relating to or arising from any such Employment Claim(s) as they are incurred by NMC."

10. New Section 12.3 is added to the Agreement:

"12.3. **Common-Law Employees.** The foregoing shall apply to CONTRACTOR and CONTRACTOR's employees and agents even if CONTRACTOR or any of CONTRACTOR's employees or agents is subsequently reclassified by any court or governmental agency as a common-law employee for periods during which services were performed under this Agreement."

11. New Section 14.17 is added to the Agreement:

"14.17. **Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs. Any purported assignment or delegation not consented to by NMC shall be void at NMC's option and shall constitute a material breach of this Agreement."

12. New Section 14.18 is added to the Agreement:

"14.18. **Authority.** CONTRACTOR has the full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and CONTRACTOR'S performance of this Agreement does not violate or conflict with any agreement to which CONTRACTOR is a party. CONTRACTOR further represents that there is no pending or threatened litigation that would have a material adverse impact on her performance under this Agreement."

13. New Section 14.19 is added to the Agreement:

"14.19. **Acknowledgment.** CONTRACTOR acknowledges that she has carefully read this Agreement, that he has been provided a full and ample opportunity to study it, that she has been advised that she may consult with an attorney prior to signing it, that she fully understands its final and binding effect, and that she is signing this Agreement voluntarily on her own behalf."

14. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 10.

15. A copy of this Amendment No. 10 shall be attached to the Original Agreement.

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IN WITNESS WHEREOF, the parties hereto are in agreement with this Amendment No. 10 on the basis set forth in this document and have executed this Amendment on the day and year set forth herein.

Natividad Medical Center

By: _____
Gary R. Gray, DO, Interim CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: _____
Monterey County Deputy County Counsel

Date: 7/2/15

APPROVED AS TO FISCAL PROVISIONS

By: _____
Monterey County Deputy Auditor/Controller

Date: 7-2-15

CONTRACTOR

CONTRACTOR's Business Name*** (see instructions)

Cynthia E. Harlowe, MSW, CPA, HR.
Signature of Chair, President, or Vice-President

CYNTHIA E. HARLOWE, MSW, CPA, HR. HEALTHCARE CONSULTANT
Name and Title

Date: 6/30/2015

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

Name and Title

Date: _____

*****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)

To Agreement by and between
NATIVIDAD MEDICAL CENTER, hereinafter referred to as "NMC"
AND
Cynthia Harlowe, hereinafter referred to as "CONTRACTOR"

Scope of Work / Payment Provisions

Description of All Services to be rendered by CONTRACTOR:

A. Assist With Annual Joint Commission Intra- Cycle Monitoring (ICM) Focused Standards Assessment (FSA)

Introduction/Background:

The Joint Commission's Intracycle Monitoring (ICM) process helps organizations with their continuous standards compliance efforts. Every accredited organization has access to an ICM Profile, an online workspace on The Joint Commission Connect extranet. The Profile includes a list of high-risk topics and related standards, as well as resources and solutions to contemporary health care service challenges. Located within the ICM Profile, the Focused Standards Assessment (FSA) provides organizations with an easy-to-use, interactive standards self-assessment scoring tool. The FSA lists applicable standards customized to an organization's accredited programs and services; standards linked to high-risk topics are displayed with an "R" icon for easy recognition. The FSA tool workspace permits an organization to develop and monitor corrective plans of action in order to sustain standards compliance.

Scope:

Contractor shall assist with annual standards self-assessment activities during the intervening years between on-site full survey events.

Task Description:

Goals and Objectives

Assist and guide annual standards self-assessment activities between on-site full survey events during the recommended intervals of 12 months.

Preparation:

- A. Collaborate with medical staff in completing the FSA and developing action plans as necessary.
 - Contractor shall initiate face-to-face meetings with medical staff to discuss compliance and timelines.
 - Contractor shall monitor level of compliance with medical staff along with the standards and elements of performance that are in place at the time of self-assessment.
 - Contractor shall provide informative information to medical staff about scoring methodology that is used by surveyors during on-site survey.

- B. Conduct appropriate interviews with leader or representative for each of the functional areas, in accordance with the CAMH manual, who can discuss the activity and responsibilities of the functional area and has responsibility to implement an action plan for compliance.
 - Contractor shall initiate face-to-face meetings with leader or representative of each functional area to review compliance for specific areas of CAMH.
 - Contractor shall formulate a timeline for specific tasks that need to be completed and determine resources required to achieve goals.
 - Contractor shall provide status updates to CEO on a monthly basis.
- C. Conduct interview(s) with representative who can describe the medical staff peer review process and the medical staff's involvement in performance improvement.
 - Contractor shall gather information from medical staff to obtain information for ongoing professional practice evaluations.
 - Contractor shall ensure medical staff is education on peer review process and guide staff to gather data from multiple sources, including aggregate analysis of resource use, practice patterns, patient outcomes, direct observation, complaints, peer reviews, and comparative performance measurement projects.

Metrics:

The Contractor shall determine the degree to which the self-assessment outcomes were achieved, as well as the value as perceived by the participants by directly soliciting their feedback during collaboration with medical staff. The Contractor shall analyze metrics for trends, concerns, questions, improvements and recommendations.

After Action Report:

The Contractor shall utilize appropriate staff interviews, document review, tracers, and observation of practices, review of systems and processes, and medical record review to complete the ICM FSA process. Contractor shall provide an After Action Report, identifying achievement of self-assessment activities outcomes, and recommendation for improvement, NLT 30 business days after assessment completion.

Period of Performance:

The tasks and deliverables for this deliverable must be completed during Period of Performance: July 1, 2015 to June 30, 2018.

Basis of Effort:

Contractor	Rate	Days	Total
Cynthia Harlowe	\$2,500.0	250	\$625,000

Deliverables:

Description	Deliver to	Acceptable Quality Level	Due Date (NLT)
Provide input to written report on all self-assessment exercises.	Dr. Gray	100% accurate, delivered on time (zero days late), in accordance with all requirements	30 Days after to completion of self-assessment exercise.
Provide input to the after-action-report, identifying achievement of course outcomes in accordance with formal and informal participant feedback and recommendation for improvement.	Dr. Gray	100% accurate, delivered on time (zero days late), in accordance with all requirements	30 Days after to completion of self-assessment exercise.

B. Assist Quality Department with patient related projects

Introduction/Background:

The Quality Department offers an opportunity for NMC to work collaboratively in teams to design and implement innovative solutions aimed at improving patient care. Items focused are including quality improvement, patient safety, patient experience and choosing wisely and value-based care.

In this era of rapid regulatory change contractor may assist on several projects or focused engagements:

1. The Delivery System Reform Incentive Program (DSRIP) is a novel, pay-for-performance initiative in which California's 21 designated public hospitals receive essential Medicaid dollars in exchange for meeting pre-set milestones related to patient outcomes and care processes. The California DSRIP was the first of its kind in the nation.
2. Licensing, certification and reporting requirements are evolving at a rapid pace. Contractor will assist the Quality Director with interpretation and the implementation of requirements as set forth by the California Department of Public Health and CMS.

Scope:

Contractor shall assist with the development of milestones, infrastructure development and system redesign to ensure full compliance with regulatory standards and population focused outcomes.

Task Description:

Goals and Objectives

Assist Quality Department with developing systems to achieve high quality; efficient processes; strong communication and the most 'patient-centered' care possible.

Assist quality staff with interpretation of regulatory and licensing requirements to ensure full compliance. Enhance patient care processes and outcomes to ensure that hospital meets DSRIP goals and objectives. Metrics and deliverables will vary depending upon the area of focus and will be determined prior to commencing a focused project.

Preparation:

- A. Assists with planning, organizing, and managing the operational and administrative activities for quality/compliance services; design hospital wide staff development programs; coordinate and integrate quality/compliance management functions and operational systems; monitor quality/compliance management data reports and implement corrective action to improve deficiencies
 - Contractor shall initiate face-to-face meetings with staff to discuss objectives and timelines.
- B. Provide administrative and management support regarding concurrent and retrospective activity, measurement, and analysis of data collection and treatment; evaluate data and recommend course of action; provide hospital wide in-service education sessions regarding quality functions.
 - Contractor shall provide written reports detailing collected data and recommended actions.
- C. Review and interpret federal, state and The Joint Commission regulations, policies, and procedures with regard to quality/compliance management services; recommend how to modify hospital systems and procedures as required.
 - Refer to Section A for task description.
- D. Develop and monitor the preparation of quality/compliance management reports for all hospital staff, administration, and Board of Trustees; respond to the Board of Trustees regarding issues of quality of care or compliance issues.
 - Using principles of evidence-based medicine, high-reliability organizations, reducing unnecessary complexity, and focus on patient-centered care, Contractor shall identify and recommend improvements to continuously improve. A key component shall be receiving feedback from patients.

Metrics:

The Contractor shall analyze metrics for trends, concerns, questions, improvements and recommendations.

After Action Report:

The Contractor shall utilize all data provided and create action plans based on outcomes of analysis. Contractor shall provide an After Action Report, identifying high quality achievements along with recommendations for improvement.

Period of Performance:

The tasks and deliverables for this deliverable must be completed during Period of Performance: July 1, 2015 to June 30, 2018.

Basis of Effort:

Contractor	Rate	Days	Total
Cynthia Harlowe	\$2,500.0	50	\$125,000

Deliverables:

Description	Deliver to	Acceptable Quality Level	Due Date (NLT)
Focused engagement measures and deliverables.	Dr. Gray	100% accurate, delivered on time (zero days late), in accordance with all requirements	Within 7 business days of new project.
Focused engagement progress reports.	Dr. Gray	100% accurate, delivered on time (zero days late), in accordance with all requirements	Bi-weekly during project period.
After-action report and sustainability plan.	Dr. Gray	100% accurate, delivered on time (zero days late), in accordance with all requirements	30 Days after to completion of focused engagement.

Pricing/Fees:

- For consulting services County will pay contractor a fee of two-thousand five hundred dollars (\$2,500.00) per day to include all expenses, with offsite time billed at two hundred fifty dollars (\$250.00) per hour.
- There shall be no travel reimbursement allowed during this Agreement.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective _____, 20____ ("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 CYNTHIA HARLOWE, MSN, CPHQ ("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 two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. TERMS AND TERMINATION

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

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

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

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

5. MISCELLANEOUS

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

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

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

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

If to Business Associate, to:

CYNTHIA HARLOWE
P.O. Box 3209
Emeryville, CA 92549
Attn: _____
Phone: 541-390-3991
Fax: _____

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

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

[BUSINESS ASSOCIATE]

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

By: Cynthia Harlowe, MSN, CPHL By: _____

Print Name: CYNTHIA HARLOWE, MSN, CPHL Print Name: _____

Print Title: HEALTH CARE CONSULTANT Print Title: _____

Date: 4/27/15 Date: _____