

**PROFESSIONAL AND MEDICAL DIRECTOR SERVICES AGREEMENT**

**by and between**

**ACCESS SUPPORT NETWORK, a California nonprofit corporation (“CONTRACTOR”)**

**and**

**NATIVIDAD MEDICAL CENTER (“NMC”)**

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL MEDICAL DIRECTOR SERVICES AGREEMENT (this “**Agreement**”) is entered into as of June 1, 2021, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**NMC**”), and ACCESS SUPPORT NETWORK, a California nonprofit corporation (“**Contractor**”). County, NMC, and Contractor are sometimes referred to in this Agreement as a “**Party**” or, collectively, as the “**Parties.**”

### RECITALS

A. Contractor is the operator of the Salinas Syringe Exchange Program located in Salinas, California, (the “**Syringe Exchange Program**”).

B. NMC employs, contracts with, or otherwise engages medical professionals (collectively, “**Physicians**” and each, a “**Physician**”), each of whom is a physician duly licensed and qualified to practice medicine in the State of California (“**State**”). Each Physician is board certified for the practice of medicine in the specialty of family medicine (the “**Specialty**”).

C. Contractor must arrange for the provision of professional consultation and treatment of patients (collectively, the “**Patients**”), without regard to any consideration other than medical condition.

D. Contractor and NMC desire that NMC, through the services of the Physicians, provide professional Specialty services at the Syringe Exchange Program on the terms and conditions described herein.

### AGREEMENT

#### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I. NMC’S OBLIGATIONS

**1.1 Services.** NMC, through Physicians, shall provide Specialty medical care and patient education at the Syringe Exchange Program four (4) hours per week, in accordance with a schedule mutually agreed to by the Parties, initially Friday afternoons. Contractor shall notify NMC at least sixty (60) days in advance of the staffing need for Services. NMC shall use its best efforts to notify Contractor at least forty-eight (48) hours in advance of any inability to provide a Physician to perform Services.

**1.2 Availability.** On or before the first (1<sup>st</sup>) day of each month, NMC shall inform Contractor of Physicians’ schedule of availability to perform the Services during the following month.

**1.3 Records Available to NMC.** Both during and after the term of this Agreement, Contractor shall permit NMC and NMC’s agents to inspect and/or duplicate, at NMC’s sole cost and expense, any medical chart and record to the extent necessary to meet NMC’s professional

responsibilities to patients, to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, and/or to fulfill requirements pursuant to provider contracts to provide patient information; provided, however, such inspection or duplication is permitted and conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient confidentiality. NMC shall be solely responsible for maintaining patient confidentiality with respect to any information which NMC obtains pursuant to this Section.

**1.4 Physicians.** NMC shall employ, contract with, or otherwise engage Physicians. NMC has initially engaged those Physicians listed (and identified by NPI number) on **Exhibit 1.4** to provide the Services, which Physicians are hereby approved and accepted by Contractor. NMC may from time to time engage one (1) or more additional Physicians (including locum tenens physicians) to provide the Services under this Agreement, subject to Contractor's prior written approval. NMC shall notify Contractor within seven (7) business days of learning that a Physician is no longer qualified to provide Services or is no longer engaged by NMC.

**1.5 Use of Space.** Contractor shall provide Physician(s) with suitable space to perform the Services. Contractor shall remain responsible for the overall operation of the Services and shall maintain such space and facilities in good and sanitary order, condition, and repair.

**1.6 Equipment.** Contractor shall furnish such equipment and supplies as Contractor deems necessary for Physician(s) to perform the Services. Contractor will be responsible for ensuring that the equipment so used by Physician(s) pursuant to this Agreement is maintained in good operating order, including any necessary maintenance and/or repairs.

**1.7 Services and Supplies.** Contractor shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other services, including medical records, administrative and engineering services, and expendable supplies as Contractor deems is necessary for the proper operation and conduct of the Services.

## **ARTICLE II.** **COMPENSATION**

**2.1 Compensation.** Contractor shall pay to NMC an amount equal to Six Hundred Dollars (\$600) per week for those Services provided by Physicians under this Agreement and One Hundred Fifty Dollars (\$150) per hour for each hour over four (4) hours per week. Contractor shall pay the compensation due for Services performed by NMC after NMC's submission of the monthly invoice of preceding month's activity.

**2.2 Billing and Collection.** Contractor shall have the sole and exclusive right to bill and collect for any and all Services rendered to Patients by NMC or any Physician under this Agreement. Contractor shall have the sole and exclusive right, title and interest in and to accounts receivable with respect to such Services.

(a) **Assignment of Claims.** NMC hereby assigns (or reassigns, as the case may be) to Contractor all claims, demands and rights of NMC for any and all Services rendered

by NMC or Physicians pursuant to this Agreement. NMC shall, and shall cause Physicians to, take such action and execute such documents (e.g., CMS Forms 855R and 855I), as may be reasonably necessary or appropriate to effectuate the assignment (or reassignment, as the case may be) to Contractor of all claims, demands and rights of NMC and Physicians for any and all Services rendered by NMC and Physicians pursuant to this Agreement.

(b) **Cooperation with Billing and Collections.** NMC shall, and shall cause Physicians to, cooperate with Contractor in the billing and collection of fees with respect to Services rendered by NMC and Physicians. Without limiting the generality of the foregoing, NMC shall, and shall cause Physicians to, cooperate with Contractor in completing such claim forms with respect to Services rendered by NMC and Physicians pursuant to this Agreement as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors.

(c) **Contractor as Exclusive Source for Compensation for Services.** NMC shall seek and obtain compensation for the performance of Services only from Contractor, and Physicians shall seek and obtain compensation for the performance of Services only from NMC. Neither NMC nor Physicians shall not, bill, assess or charge any fee, assessment or charge of any type against any Contractor patient or any other person or entity for Services rendered by NMC and Physicians pursuant to this Agreement.

(d) **Joint and Several Liability.** Contractor and NMC acknowledge that they will be jointly and severally liable for any Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the “**Federal Health Care Programs**”) overpayments relating to claims with respect to Services furnished by NMC and Physicians pursuant to this Agreement. The foregoing is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the Parties’ respective indemnification obligations under this Agreement.

### **ARTICLE III.** **INSURANCE AND INDEMNITY**

**3.1 Insurance Coverage Requirements.** NMC shall obtain and maintain or cause to be obtained and maintained throughout the term of this Agreement, at no expense to Contractor, (i) professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate to insure it and the Physicians, (ii) general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate to insure it and the Physicians in the aggregate annually. NMC shall provide Contractor with certificates evidencing all such insurance coverage prior to the commencement of this Agreement. All insurance policies providing such coverage shall provide for at least thirty (30) days’ written notice to Contractor of any expiration, cancellation, reduction, or other material change in the amount or scope of such insurance. In the event that NMC obtains “claims made” insurance, it shall, following termination of this Agreement, maintain such insurance coverage or obtain unlimited extended reporting (“coverage”) coverage covering all activities conducted by it and the Physicians in connection with the Services provided hereunder, as applicable, throughout the term of this Agreement.

### **3.2 Indemnification.**

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

(b) **Indemnification by NMC.** NMC agrees to defend, indemnify, and hold harmless Contractor, to the extent permitted by applicable law, from and against any and all claims and losses whatsoever accruing or resulting to any person, firm or corporation for damages, injury or death arising out of or connected with any negligent act or omission or willful misconduct of NMC or any of its agents or employees.

**3.3 Survival of Obligations.** The Parties' obligations under this Article III shall survive the expiration or termination of this Agreement for any reason.

## **ARTICLE IV. RELATIONSHIP BETWEEN THE PARTIES**

**4.1 Independent Contractor.** NMC and each Physician is and shall at all times be an independent contractor with respect to Contractor in the performance of NMC's and Physician's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between Contractor and NMC or Contractor and any Physician.

**4.2 Limitation on Control.** Contractor shall neither have nor exercise any control or direction over any Physician's professional medical judgment or the methods by which any Physician performs professional medical services.

**4.3 Practice of Medicine.** NMC and Contractor acknowledge that Contractor is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent that any act or service required of, or reserved to, Contractor in this Agreement is construed or deemed to constitute the practice of medicine, the performance of such act or service by Contractor shall be deemed waived or unenforceable, unless this Agreement can be amended to comply with the law, in which case the Parties shall make such amendment.

**4.4 Referrals.** NMC and the Physicians shall be entitled to refer patients to any hospital or other health care facility or provider deemed by NMC or the Physicians best qualified to deliver medical services to any particular patient. Nothing in this Agreement or in any other written or oral agreement between Contractor and NMC or the Physicians, nor any consideration

offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to Contractor or any Affiliate. In the event that any governmental agency, any court or any other judicial body of competent jurisdiction, as applicable, issues an opinion, ruling or decision that any payment, fee or consideration provided for hereunder is made or given in return for patient referrals, either Party may at its option terminate this Agreement with three (3) days' notice to the other Party. NMC's rights under this Agreement shall not be dependent in any way on the referral of patients or business to Contractor or any Affiliate by NMC, Physician or any person employed or retained by NMC.

#### **4.5 Cooperation.**

(a) The Parties recognize that, during the term of this Agreement and for an undetermined time period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and legal issues, claims, or actions.

(b) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an "**Action**") arises with a third party wherein both the Parties are included as defendants, each Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each Party shall make every reasonable attempt to include the other Party in any settlement offer or negotiations. In the event the other Party is not included in the settlement, the settling Party shall immediately disclose to the other Party in writing the acceptance of any settlement and terms relating thereto, if allowed by the settlement agreement.

### **ARTICLE V. TERM AND TERMINATION**

**5.1 Term.** This Agreement shall become effective on June 1, 2021 (the "**Effective Date**"), and shall continue until May 31, 2021 (the "**Expiration Date**"), subject to the termination provisions of this Agreement.

**5.2 Termination for Cause.** Either Party shall have the right to terminate this Agreement upon breach of this Agreement by the other Party where the breach is not cured within thirty (30) calendar days after one Party gives written notice of the breach to the other Party.

#### **5.3 Termination or Modification in the Event of Government Action.**

(a) If the Parties receive notice of any Government Action, the Parties shall attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, acting in good faith, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall terminate ten (10) calendar days after one Party notices the other of such fact.

(c) For the purposes of this Section, “**Government Action**” shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to either Party, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

- (i) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) if NMC or any Physician referred patients to Contractor or any Affiliate of Contractor;
- (ii) prohibit Contractor or any Affiliate of Contractor from billing for services provided to patients referred to by NMC or any Physician; or
- (iii) subject Contractor, NMC, any Physician, or any Affiliate of Contractor or NMC, or any of their respective employees or agents, to civil or criminal prosecution (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

(d) For the purposes of this Agreement, “**Affiliate**” shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with a Party.

**5.4 Termination without Cause.** Either Party may terminate this Agreement without cause, expense or penalty, effective thirty (30) calendar days after written notice of termination is given to the other Party.

**5.5 Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement, and (ii) those rights and obligations which expressly survive termination or expiration of this Agreement. This Section 5.5 shall survive the expiration or termination for any reason of this Agreement.

**5.6 Return of Property.** Upon any termination or expiration of this Agreement, NMC shall immediately return to Contractor all of Contractor’s property, including Contractor’s equipment, supplies, furniture, furnishings and patient records, which is in NMC’s or any Physician’s possession or under NMC’s or any Physician’s control.

**ARTICLE VI.**  
**GENERAL PROVISIONS**

**6.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties and attached to this Agreement.

**6.2 Assignment.** Neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

**6.3 Compliance with HIPAA.** Contractor and Group Physicians shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, "**HIPAA**," the obligations collectively referred to herein as "**HIPAA Obligations**"), as set forth in **Exhibit 6.3**. The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.

**6.4 Counterparts.** This Agreement 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.

**6.5 Dispute Resolution.** In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties with respect to this Agreement (each, a "**Dispute**"), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable, but in no case more than ten (10) days after one Party gives written notice of a Dispute to the other Party (the "**Dispute Notice**"), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the "**Meet and Confer**"). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws.



(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to arbitration conducted by Judicial Arbitration and Mediation Services, Inc. (“JAMS”), or other arbitration and/or mediation services company as agreed to by the Parties, in accordance with the following rules and procedures:

- (i) Each Party may commence arbitration by giving written notice to the other Party demanding arbitration (the “**Arbitration Notice**”). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.
- (ii) The arbitration shall be conducted in Monterey County and in accordance with the commercial arbitration rules and procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules and/or procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.
- (iii) The arbitration shall be conducted before a single impartial retired member of the JAMS panel of arbitrators (or panel of arbitrators from such other arbitration company as mutually agreed to by the Parties) covering Monterey County (the “**Panel**”). The Parties shall use their good faith efforts to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time period, then each Party shall select one arbitrator from the Panel, and those arbitrators shall select a single impartial arbitrator from the Panel to serve as arbitrator of the Dispute.
- (iv) The Parties expressly waive any right to any and all discovery in connection with the arbitration; provided, however, that each Party shall have the right to conduct no more than two (2) depositions and submit one set of interrogatories with a maximum of forty (40) questions, including subparts of such questions.
- (v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted

to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.

- (vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.
- (vii) The fees and costs of JAMS (or other arbitration company as mutually agreed to by the Parties) and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.
- (viii) Except as set forth in Section 6.5(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorneys' fees and costs; provided, however, that the arbitrator shall require one Party to pay the costs and expenses of the prevailing Party, including attorneys' fees and costs and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or position of a Party were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section and sections governing Compliance with HIPAA of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance or any other form of injunctive or equitable relief or remedy.

(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within Monterey County for purposes of enforcing this Section and sections governing Compliance with HIPAA of this Agreement. Contractor hereby consents to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceeding, in

addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such action or proceeding, including attorneys' fees and costs and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section shall survive the expiration or termination of this Agreement.

**6.6 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**6.7 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated by reference into this Agreement, wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**6.8 Force Majeure.** Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees, suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

**6.9 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State.

**6.10 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**6.11 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified: (i) "days" shall be considered "calendar days;" (ii) "months" shall be considered "calendar months;" and (iii) "including" means "including, without limitation" in this Agreement and its exhibits and attachments.

**6.12 No Third Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

**6.13 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice shall be deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

If to Contractor, addressed to:

Access Support Network  
340 Church Street  
Salinas, CA 93901  
Attn: David Kilburn, Executive Director

If to NMC, addressed to:

NATIVIDAD MEDICAL CENTER  
1441 Constitution Blvd., Bldg. 300  
Salinas, California 93906  
Attention: Physician Services

**6.14 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

**6.15 Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement.

**6.16 Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

**6.17 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

*[signature page follows]*

The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

**CONTRACTOR**

**ACCESS SUPPORT NETWORK**, a  
California nonprofit corporation

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

Date: \_\_\_\_\_, 20\_\_

**NMC**

**NATIVIDAD MEDICAL CENTER**

\_\_\_\_\_  
Deputy Purchasing Agent

Date: \_\_\_\_\_, 20\_\_

**APPROVED AS TO LEGAL PROVISIONS:**

\_\_\_\_\_  
Stacy Saetta, Deputy County Counsel

Date: \_\_\_\_\_, 20\_\_

**APPROVED AS TO FISCAL PROVISIONS:**

\_\_\_\_\_  
Deputy Auditor/Controller

Date: \_\_\_\_\_, 20\_\_

**Exhibit 1.4**

**PHYSICIANS/PROVIDERS**

[List Approved Physicians Below]

<b>Physician</b>	<b>NPI Number</b>
Christina Zaro, M.D.	1538171400

### **Exhibit 6.3**

#### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”), effective June 1, 2021 (“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 Access Support Network (“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:

Access Support Network  
340 Church Street  
Salinas, CA 93901  
Attn: David Kilburn, Executive Director

If to Covered Entity, to:

NATIVIDAD MEDICAL CENTER  
1441 Constitution Boulevard  
Salinas, California 93906  
Attention: Compliance Officer  
Phone: (831) 755-4111

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.

**ACCESS SUPPORT NETWORK**

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

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

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

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

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

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

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

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

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