

**NATIVIDAD MEDICAL CENTER
CONTRACTS/PURCHASING
1441 CONSTITUTION BLVD
SALINAS, CA 93906
(831) 783-2620**

AGREEMENT

Per RFP # 9600-71

**For Enterprise Master Person Index System
For County of Monterey**

AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by the County of Monterey on behalf of Natividad Medical Center, hereinafter referred to as "NMC", a political subdivision of the State of California, and NextGate Solutions, Inc., hereinafter referred to as "CONTRACTOR."

1.0 RECITALS

- 1.1 WHEREAS, NMC has invited proposals through the Request for Proposals (RFP #9600-71) for an Enterprise Master Person Index System, in accordance with the specifications set forth in this AGREEMENT; and
- 1.2 WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and
- 1.3 WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.
- 1.4 NOW THEREFORE, NMC and CONTRACTOR, for the consideration hereinafter named, agree as follows:

2.0 PERFORMANCE OF THE AGREEMENT

- 2.1 After consideration and evaluation of the CONTRACTOR'S proposal, NMC hereby engages CONTRACTOR to provide the services set forth in RFP # 9600-71 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 9600-71. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:
 - AGREEMENT,
 - RFP # 9600-71 dated August 23, 2017, including all attachments and exhibits
 - CONTRACTOR'S Proposal dated October 6, 2017,
 - Certificate of Insurance
 - Additional Insured Endorsements
- 2.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT, RFP # 9600-71 including all attachments and exhibits, CONTRACTOR'S Proposal, Certificate of Insurance, and Additional Insured Endorsements.
- 2.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and

deliver the services required under this AGREEMENT and are not employees of NMC nor of the County of Monterey, or immediate family of an employee of Natividad Medical Center nor of the County of Monterey.

- 2.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 2.5 CONTRACTOR shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of the United States and of the State of California. The Agency will be in compliance with Title 22, OSHA, Federal and State Labor Laws and the Joint Commission on Accreditation of Health Care Organizations.
- 2.6 CONTRACTOR must maintain all applicable and required licenses throughout the term of the AGREEMENT.
- 2.7 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use Natividad Medical Center premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

3.0 SCOPE OF SERVICES

- 3.1 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A: Scope of Services/Payment Provisions

4.0 TERM OF AGREEMENT

- 4.1 The initial term of the AGREEMENT is from November 6, 2018 through November 5, 2023. NMC is not required to state a reason if it elects not to renew this AGREEMENT.
- 4.2 If NMC exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions.

5.0 TERMINATION

- 5.1 During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

- 5.2 NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due to the CONTRACTOR under this Agreement.
- 5.3 NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

6.0 COMPENSATION AND PAYMENTS

- 6.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing attached hereto as EXHIBIT A.
- 6.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 6.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 6.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 6.5 CONTRACTOR shall levy no additional fees nor surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 6.6 Tax:
- 6.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 6.6.2 County is registered with the Internal Revenue Service, San Francisco office, EIN number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

7.0 INVOICES AND PURCHASE ORDERS

- 7.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Natividad Medical Center Accounts Payable department at the following address:

Natividad Medical Center
Accounts Payable Department
P.O. Box 81611
Salinas, CA. 93912

- 7.2 CONTRACTOR shall reference the RFP number on all invoices submitted to NMC. CONTRACTOR shall submit such invoices once per month. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this AGREEMENT, and shall promptly submit such invoice to the County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 7.3 All NMC Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 7.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by NMC. Surcharges and additional fees not included in the AGREEMENT must be approved by NMC in writing via an Amendment.

8.0 STANDARD INDEMNIFICATION

- 8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, including its officers, agents, and employees, 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 County of Monterey. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS

- 9.1 Evidence of Coverage:

- 9.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall

accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

9.1.2 This verification of coverage shall be sent to the County of Monterey's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County of Monterey. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

9.1.3 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County of Monterey's Purchasing Officer.

9.2 Insurance Coverage Requirements:

9.2.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

9.2.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed

Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

9.2.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

9.2.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

9.2.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or

earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

9.3 Other Insurance Requirements:

- 9.3.1 All insurance required by this AGREEMENT shall be with a company acceptable to County of Monterey and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 9.3.2 Each liability policy shall provide that County of Monterey shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 9.3.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County of Monterey and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 9.3.4 Prior to the execution of this AGREEMENT by County of Monterey, CONTRACTOR shall file certificates of insurance with County of Monterey's contract administrator and County of Monterey's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 9.3.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County of Monterey, annual certificates to County of Monterey's Contract Administrator and County of Monterey's Contracts/Purchasing Division. If the certificate is not received by the expiration

date, County of Monterey shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County of Monterey, at its sole discretion, to terminate this AGREEMENT immediately.

10.0 NON-DISCRIMINATION

- 10.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 10.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 10.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

11.0 ASSIGNMENT AND SUBCONTRACTING

- 11.1 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of NMC.
- 11.2 Subcontractors that have been approved by NMC: Any subcontractor utilized by CONTRACTOR shall comply with all of the County of Monterey requirements stated herein this Agreement including insurance and indemnification sections.

12.0 CONFLICT OF INTEREST

- 12.1 CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

13.0 COMPLIANCE WITH APPLICABLE LAWS

- 13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and

local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

- 13.2 CONTRACTOR shall report immediately to NMC, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

14.0 RECORDS AND CONFIDENTIALITY

- 14.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the NMC or prepared in connection with the performance of this AGREEMENT, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 14.2 NMC Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this AGREEMENT.
- 14.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 14.4 Access to and Audit of Records: NMC and the County of Monterey shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of NMC or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

15.0 ROYALTIES AND INVENTIONS

- 15.1 Royalties and Inventions. NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.

16.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT

- 16.0 Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.

17.0 INDEPENDENT CONTRACTOR

- 17.1 Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

18.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT— HIPAA COMPLIANCE

- 18.1 CONTRACTOR agrees to operate its business in a manner as necessary to permit NMC to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards").
- 18.2 CONTRACTOR and NMC shall agree to and execute the Business Associates Agreement attached hereto as Schedule 6 as a binding part of this AGREEMENT.

19.0 FORCE MAJEURE

- 19.1 Neither NMC nor CONTRACTOR 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 reasonable control (a "Force Majeure Event"), including, without limitation, 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, 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 in good faith use its best efforts to perform its duties and obligations under this Agreement.
- 19.2 If either NMC or CONTRACTOR wishes to claim protection with respect to a Force Majeure Event, it shall as soon as possible following the occurrence or date of such Force Majeure Event, notify the other Party of the nature and expected duration of the force majeure event and shall thereafter keep the other Party informed until such time as it is able to perform its obligations.

20.0 TRAVEL REIMBURSEMENT

- 20.1 Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

21.0 KEY DESIGNATED CONTACTS

- 21.1 Emergencies: CONTRACTOR acknowledges that NMC plans for the continuity of hospital operations during an emergency, especially sustained incidents, and that collaboration with CONTRACTOR is necessary to maintain continuity of operations. Accordingly, CONTRACTOR shall provide the name and contact information of a representative who shall be available 24 hours a day, 7 days a week, in the event of an emergency:

Name: TOM EZELL

Title: CLOUD OPERATIONS MANAGER Phone: 626-376-4222
(must list a personal cell phone or other number whereby successful contact is ensured)

During an emergency, contractor shall use its best efforts to provide NMC with all available supplies, materials, equipment and/or services on a priority basis. The Parties agree that time is of the essence. The delivery of CONTRACTOR's supplies, materials, equipment and/or services will be mutually agreed upon by NMC and CONTRACTOR at the time of order and will be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to CONTRACTOR's facility and/or equipment, will be taken into consideration.

21.2 Non emergencies: CONTRACTOR shall designate the following individual as COUNTY's key point of contact throughout the term of the Agreement. This individual shall be available to assist NMC between the hours of 8:00 AM and 5:00 PM (PST), seven days per week, 365 days per year (this includes holidays):

Name: EDWARD YANG
Title: COO
Phone: (626) 381-9271
Email: edy.yang@nextgate.com

22.0 GUARANTEE OF MALWARE-FREE GOODS

22.1 All software provided by CONTRACTOR to NMC shall be free of malicious code such as viruses, Trojan horse programs, worms, spyware, etc. Validation of this must be written into the contract. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spyware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spyware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers.

23.0 INTELLECTUAL PROPERTY RIGHTS

- 23.1 All data provided by NMC belongs to County of Monterey. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the property of County of Monterey. Use or distribution of County of Monterey data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County of Monterey.
- 23.2 For NMC data hosted or stored on equipment not owned by County of Monterey, CONTRACTOR shall furnish all data to County of Monterey upon request by County of Monterey at any time during the term of this AGREEMENT and up to one year after the term has expired, in a useable format as specified by County of Monterey and at no additional cost to NMC.
- 23.3 Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

24.0 NOTICES

- 24.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to NMC contracts division manager or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO NMC:
Natividad Medical Center
CONTRACTS DIVISION
1441 Constitution Blvd
Salinas, CA 93906

FAX No.: (831) 757-2592

TO CONTRACTOR:

Name NEXTGATE SOLUTIONS, INC.
Address 3579 E. FOOTHILL BLVD. #587
PASADENA, CA 91107
FAX No. (732) 909-2521
Email ngscontracts@nextgate.com
Tel. No. (626) 376-4100

25.0 LEGAL DISPUTES

- 25.1 CONTRACTOR agrees that this AGREEMENT, and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 25.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 25.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 25.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

26.0 MISCELLANEOUS PROVISIONS

- 26.1 Waiver: Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 26.2 Contractor: The term "Contractor" as used in this Agreement includes Contractor's

- officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 26.3 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 26.4 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.
- 26.5 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 26.6 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement
- 26.7 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 26.8 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 26.9 Construction of Agreement: NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 26.10 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 26.11 Integration: This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 26.12 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

~Signature page to follow~

NATIVIDAD MEDICAL CENTER

By: _____
Gary R. Gray, DO, CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: _____
Monterey County Deputy County Counsel

Date: _____
9/7/18

APPROVED AS TO FISCAL PROVISIONS

By: _____
Monterey County Deputy Auditor/Controller

Date: _____
9/17/18

CONTRACTOR

NEXTEATE SOLUTIONS, INC.
Contractor's Business Name*** (see instructions)

Signature of Chair, President, or Vice-President

ANDY ARODITS, CEO
Name and Title

Date: AUGUST 29, 2018

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

EDWARD YANG, COO
Name and Title

Date: AUGUST 29, 2018

*****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).

EXHIBIT A – Scope of Services/Payment Provisions
to
COUNTY OF MONTEREY AGREEMENT FOR SERVICES

PARTIES:

NEXTGATE SOLUTIONS, INC., a California corporation with an address at 3579 E Foothill Boulevard, Suite 587, Pasadena, CA 91107 (“**NextGate**”)

AND

County of Monterey, a political subdivision of the State of California (“**County**”), on behalf of **Natividad Medical Center (“NMC”)**, a general acute care teaching hospital wholly owned and operated by the County with an address at 1441 Constitution Blvd. Salinas, CA 93912-1611. County and NMC are collectively referred to herein as “**Customer**”.

BACKGROUND

- A. NextGate and Customer have entered into a County of Monterey Agreement for Services, of even date herewith (the “**Master Agreement**”). This Exhibit shall supplement the Master Agreement. Notwithstanding anything in the Master Agreement to the contrary, in the event of any conflict between the terms of the Master Agreement and this Exhibit, the terms of this Exhibit shall control.
- B. NextGate has developed the SaaS Service.
- C. Customer wishes to receive access, and allow access to its affiliated clinicians, hospitals, physician practice groups or other Participants to the SaaS Service.
- D. The parties have entered into this Exhibit to set out the terms and conditions on which NextGate will make the SaaS Service available to Customer remotely as a hosted solution.

SPECIFIC TERMS

Effective Date	Start Date: October 1, 2018
Software Use Restrictions	Refer to Schedule 5
Number of EUIDs	1,000,000 (Incremental EUID growth fees will not be assessed during Initial Term)
Software (Check all that apply):	<input checked="" type="checkbox"/> MatchMetrix EMPI
Consulting Rates	\$220 per hour
SaaS Service Fees	\$15,494.81 Per Month
Setup Fees	Implementation: \$100,000
Installation – Integration Fees	Installation (including) professional services): \$145,680
Installation – Conversion/Deduplication	Integration costs: \$75,680 Conversion/Deduplication for 28,000 Duplicate tasks: \$70,000

Travel	\$66,000 billed monthly in arrears as incurred and will be reimbursed as described in section [13.7] herein.
Payment Terms for SaaS Service Fees	SaaS Service Fees are payable semi-annually, in advance, with the first 6-month invoice payable upon contract Effective Date.
Currency	US Dollars
Initial Term	60 months At least 6 months prior to the end of the initial term, the parties agree to discuss and negotiate any renewal to the agreement.
Contracting Jurisdiction	State of California
Schedules Attached	Schedule 1: [Intentionally Omitted] Schedule 2: Service Levels and Support Services Schedule 3: Service Credits (if applicable) Schedule 4: Acceptance Testing Schedule 5: Statement of Work Schedule 6: Business Associate Agreement (if applicable) Schedule 7: Travel Guidelines Schedule 8: Customer Billing Information Schedule 9: Marketing Collaboration Schedule 10: RFP Response

GENERAL TERMS AND CONDITIONS

1. Definitions

1.1 In this Exhibit, capitalized words have the following meaning:

- (a) **"Acceptance Criteria"** means the minimum criteria each Deliverable must meet to pass the Acceptance Tests, as mutually agreed in writing by both parties. In the absence of agreement, the Acceptance Criteria for any Deliverable shall mean that the Deliverable operates in conformance with the terms of Section 17.1(b).
- (b) **"Acceptance Testing"** has the meaning given to it in Schedule 4.
- (c) **"Acceptance Tests"** means the tests that will be carried out in accordance with Schedule 4.
- (d) **"Accepted"** has the meaning given in clause 1.5 of Schedule 4.
- (e) **"Affiliates"** means companies that are under the common control with NextGate, control meaning the direct or indirect ownership of more than fifty percent (50%) of voting rights and/or capital shares.
- (f) **"Business Associate Agreement"** means the Business Associate Agreement attached hereto as Schedule 6, if any.
- (g) **"Business Day"** means Monday to Friday, excluding public holidays in the Jurisdiction.
- (h) **"Business Hours"** means 8.00 am to 5.00 pm local time in the Jurisdiction, each Business Day.
- (i) **"Change Request"** has the meaning given to it in Section 8.1 of this Exhibit.
- (j) **"Confidential Information"** has the meaning given to it in Section 19.1 of this Exhibit.
- (k) **"Consulting Rates"** means the consulting rates set out in the Specific Terms or as updated by NextGate from time to time in accordance with this Exhibit.
- (l) **"Controlling Provision"** has the meaning given to it in Section 22.15.
- (m) **"Customer Data"** means data, including any personally identifiable information (PII) or protected health information (PHI) made available by Customer or the Participants for transmission by users and systems to/from the SaaS Service.
- (n) **"DDOS Attack"** means a denial-of-service attack, being a malicious attempt by attackers to prevent legitimate users and systems of a service from using that service.
- (o) **"Deliverable"** means a deliverable to be provided by NextGate as set out in Schedule 5.
- (p) **Intentionally omitted.**
- (q) **"Downtime"** is anytime where the SaaS Services are not substantially available for use by the Customer, other than Downtime Exclusions (as described in Schedule 2).
- (r) **"Effective Date"** has the meaning specified in the Specific Terms.
- (s) **"Embedded Software"** has the meaning given to it in Section 14.4.
- (t) **"EUID"** means enterprise unique identifier.
- (u) **"Exhibit"** means these General Terms and Conditions, the Specific Terms on the first page of this document and the attached schedules, together with any other document that is incorporated into the foregoing by reference.
- (v) **"Fault"** means a failure of the Software to operate substantially in conformance with the terms of Section 17.1(b).
- (w) **"Fees"** means the fees payable under this Exhibit as described in the Specific Terms.
- (x) **"Force Majeure"** has the meaning given to it in Section 22.8.
- (y) **"GST"** means goods and services tax also known as general sales tax.
- (z) **"High Risk Activities"** has the meaning given to it in Section 17.6.
- (aa) **"Set-up Services"** means the services to set-up and connect the Customer to the SaaS Service as described in one or more Schedules as well as any additional training, consulting or other professional services related to the SaaS Service requested by Customer to implement SaaS

- Service and/or integrate Users and enable their use of the SaaS Service, as described in Schedule 5 agreed upon in writing by the parties.
- (bb) **“Initial Response Time”** means the elapsed time between when NextGate receives notification of a request for Support Services by Customer and the time that NextGate acknowledges receipt of that request.
 - (cc) **“Initial Term”** means the period of time set out in the Specific Terms (as established by the Specific Terms as of the Effective Date).
 - (dd) **“Interface”** means the mechanism that enables communication between Customer’s system and NextGate’s SaaS solution stack.
 - (ee) **“Interfaced Applications”** means software products that are proprietary to third parties not provided by NextGate and that Customer elects to use in conjunction with the SaaS Service.
 - (ff) **“Jurisdiction”** means the location set out in the Specific Terms.
 - (gg) **“MRN”** means medical record number.
 - (hh) **“Participant”** means any individual or entity authorized by Customer to access the SaaS Service pursuant to a participation agreement with the Customer, and which may include but not be limited to (i) any healthcare entity such as a hospital, clinic, clinical laboratory, imaging center, ambulatory surgery center, physical therapy center, pharmacy, home health care agency, emergency medical service, nursing home, clearinghouse or an individual healthcare clinician including a healthcare provider or any employee or authorized agent of the foregoing; or (ii) health insurers, self-insured health insurance plans, schools, prisons and/or camps (to the extent they may provide health care services to students, inmates or participants or otherwise need access to health records), third party administrators of health insurance plans and billing companies and other entities that are directly or indirectly involved with providing, administrating, insuring or paying for health care or reviewing the quality of health care.
 - (ii) **“Progress Report”** means the update provided by NextGate to Customer by phone or email in respect of resolution of each request for Support Services submitted by Customer.
 - (jj) **“Protected Health Information”** has the meaning given to it in the Business Associate Agreement.
 - (kk) **“Release”** means an update to the Software containing minor improvements or minor enhancements to existing features. A Release is generally indicated by a change in the digit to the right of the first decimal point (x.x to x.y).
 - (ll) **“SaaS Service”** means the provision of the contracted NextGate application stack, without any modifications, in a hosted environment and access to the Software-as-a-Service, in accordance with the Service Levels.
 - (mm) **“Scheduled Maintenance”** means periodic scheduled upgrades and maintenance on the SaaS Service and supporting Software, which will require making the SaaS Service unavailable for limited times. Examples of downtime for Scheduled Maintenance may include upgrades to hardware, network device operating systems or configurations, application server operating systems, upgrades or configuration changes to hosted applications, upgrades or configuration changes to database software and upgrades or configuration changes to virtual software management systems. NextGate will provide as much prior notice of Scheduled Maintenance as reasonably possible, but not less than 72 hours advance notice other than in the event of emergency preventative maintenance. Unless otherwise agreed.
 - (nn) **“Service Levels”** means the System Availability Objective and the Support Service Levels.
 - (oo) **“Services”** has the meaning given to it in Section 2.1.
 - (pp) **“Setup Fees”** means the fees for the Set-up Services, as set out in Schedule 5.
 - (qq) **“Severity Level”** means the Fault severity levels specified in the table in clause 4 of Schedule 2, in relation to each request for Support Services received by NextGate’s support center from Customer, which shall be mutually agreed by NextGate and Customer or failing agreement, as determined by NextGate)

- (rr) **“Software”** means the software described in the Specific Terms, including Releases, Versions and all other bug fixes, patches, updates, upgrades, enhancements or modifications to such software that NextGate may install as part of the SaaS Service.
- (ss) Intentionally omitted.”
- (tt) **“Source System”** means the authoritative data source sending data either to NextGate’s solution stack directly or to an overarching system that is integrated with NextGate’s system.
- (uu) **“Specific Terms”** means the specific details set out in the table on the first page of this Exhibit to which these General Terms and Conditions are attached.
- (vv) **“Specifications”** means the technical specifications for the SaaS Service as mutually agreed in writing by NextGate and the Customer.
- (ww) **“Support Service Levels”** means the service levels for the Support Services, as set out in Schedule 2.
- (xx) **“Support Services”** means technical support services to be provided by NextGate to resolve Faults in accordance with Schedule 2.
- (yy) **“System Availability Objective”** means the System Availability Objective applicable to the SaaS Service, as set out in Schedule 2.
- (zz) **“Target Resolution Time”** means the target elapsed time between when NextGate receives notification of a request for Support Services by Customer and the time a final position is agreed between NextGate and Customer, where a solution has been implemented (which may be remedying the Fault or providing a reasonable and temporary work-around). This time is a target only, and NextGate does not guarantee that any particular request for Support Services will be resolved within the specified time period. The Target Resolution Time does not include any time spent waiting for a response from Customer.
- (aaa) **“Tax”** means any local or national taxes, levies, duties or fees that may be applicable to the Software or any payments under this Exhibit, excluding any taxes based on the net income of NextGate.
- (bbb) **“Term”** means the Initial Term and all Renewal Terms.
- (ccc) **“Users”** means individuals authorized to use the SaaS Service in accordance with this Agreement who have been supplied user identifications and passwords by Customer, or, if applicable, a Participant.
- (ddd) **“Version”** means any new version of the Software that provides substantial performance improvements, architectural changes, new features or additional functionality, and which is made generally commercially available by NextGate. A Version is generally indicated by a change in the digit to the left of the first decimal point (x.x to y.x).
- (eee) **“Virus”** means malicious codes, programs or internal components, which includes a computer virus, worm, trap door, back door, time or clock, ransomware, and other technical treats to the SaaS Service and Software.

1.2 In this Exhibit, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Exhibit;
- (b) the singular includes the plural and vice versa and words implying a gender include other genders;
- (c) The terms “including” and “includes” shall be deemed to be followed by the statement “without limitation” and any obligation not to do something shall include permitting such thing to be done by a third party;
- (d) a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed; and
- (e) a reference to a party includes its executors, administrators, successors and permitted assigns.

2. PROVISION OF SERVICES

2.1 In consideration for payment of the applicable Fees and subject to all other terms and conditions of this Exhibit, NextGate will provide the following services to the Customer (and Users and Participants, as applicable):

- (a) the Set-up Services; and
 - (b) the SaaS Services;
- (together, the "**Services**").

2.2 Subject to the requirements set forth in this Exhibit, NextGate may, if it deems necessary or advisable, enter into subcontracts for the performance of some part of the Services, however, NextGate's right to subcontract any of the Services shall not relieve NextGate of any of its duties or obligations under this Exhibit and NextGate shall take full responsibility for the actions of its subcontractors. NextGate shall provide advance written notice to Customer prior to subcontracting any of its duties or obligations under the Master Agreement.

2.3 The provision and consumption of SaaS Service is via a preconfigured setup (through the Set-up Services) of NextGate's solution without any modifications (e.g., clinical interfaces and/or workflows) unless defined Schedule 5.

3. **RIGHT TO USE SaaS SERVICE**

3.1 Provided that Customer is not in default of its ongoing payment of the Fees, NextGate hereby grants to Customer a non-exclusive, non-transferable (except as otherwise permitted in Section 22.5) and revocable right to use the SaaS Service for its internal business operations in accordance with the terms and conditions of this Exhibit. The SaaS Service shall be made available for use by Customer and its Users twenty-four (24) hours per day, seven (7) days per week in accordance with the System Availability Objective, excluding Downtime Exclusions (as defined in Schedule 2).

3.2 The use right granted in Section 3.1 shall extend to Users accessing the SaaS Service for Customer's internal business operations. Customer acknowledges that it is responsible for any User's breach of this Exhibit as if that breach were committed by Customer.

3.3 Any use of the SaaS Service not expressly permitted by this Exhibit is prohibited. Without limiting the foregoing, Customer shall not:

- (a) reverse assemble, reverse compile, reverse engineer or otherwise attempt to derive the object or source code of the Software, or otherwise attempt to access or use the Software other than through the SaaS Service;
- (b) copy, modify, enhance or create derivative works of any part or feature of the SaaS Service or the Software;
- (c) use any part of the SaaS Service to build a product or service which competes with the SaaS Service;
- (d) interfere or disrupt the integrity or performance of the SaaS Service or third party data contained therein, or attempt to gain, or allow others to gain unauthorized access to the SaaS Service or related systems or networks; or
- (e) lease, sublease, sublicense, sell, distribute, transfer possession or rent out the SaaS Service or the Software, or engage in service bureau work, time-sharing arrangements or any other activity permitting access of the SaaS Service or the Software to third parties (except to its Participants and as otherwise expressly permitted by this Exhibit).

4. **CUSTOMER OBLIGATIONS**

4.1 Customer shall, at all times during the Term:

- (a) ensure that the SaaS Service is used only in accordance with this Exhibit;
- (b) provide NextGate with all reasonably necessary co-operation in relation to this Exhibit, and all necessary access to such information as may be agreed upon by the parties, so that NextGate can provide the Services;
- (c) be solely responsible for the accuracy, quality, integrity, and legality of Customer Data, and the means by which Customer acquires its data;
- (d) use all reasonable efforts to prevent unauthorized access to or use of the Software and/or the SaaS Service and notify NextGate promptly of any unauthorized access or use thereof;
- (e) not request, permit or authorize anyone other than NextGate or an entity that NextGate has approved for Customer, to provide any Services in respect of the SaaS Service;

- (f) carry out all other responsibilities of the Customer set out in this Exhibit in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, NextGate may adjust any agreed timetable or delivery schedule as reasonably necessary; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the SaaS Service, and for all problems, conditions, delays, delivery failures and all other loss or damage caused by or relating to Customer's network connections or telecommunications links from Customer's networks.

5. PARTICIPANTS

- 5.1 This Section 5 applies only where Customer is expressly permitted by this Exhibit to grant access to the SaaS Service to Participants.
- 5.2 Where this Section applies to this Exhibit, the access right granted at Section 3.1 and 3.2 extends to Participants (and Users of Participants) for Participants' internal business operations, subject to any further restrictions detailed in this Exhibit. Customer acknowledges that it is responsible for any Participant or Users' breach of this Exhibit as if that breach were committed by Customer.
- 5.3 Customer must have a legally enforceable agreement with each Participant that includes confidentiality terms and those terms deemed necessary by Customer to effect the terms of this Exhibit. Customer will exclude NextGate from liability under the Participant Agreement; provided, however, that Customer is not required to identify NextGate by name.

6. ACCESSIBLE SOFTWARE

- 6.1 NextGate shall make the production instance of the Software available to the Users via the SaaS Service in accordance with this Exhibit.
- 6.2 Provided that this Exhibit has not been terminated, Releases, Versions, and all other bug fixes, patches, updates, upgrades, enhancements or modifications to the Software will be made available by NextGate to Customer as part of the SaaS Service. Enhancements or modifications requested by Customer will be managed via Change Request. Some updates to the SaaS Service will occur automatically after Customer has approved such update in writing, while others may require Customer to schedule and implement a Release or Version.

7. INTERFACED APPLICATIONS

- 7.1 The Customer acknowledges and agrees that the Software is intended to be used with Interfaced Applications for which NextGate is not responsible. Customer acknowledges that it is Customer's or the Participants' responsibility to ensure that it has valid license agreements for all Interfaced Applications and permission to develop interfaces thereto. Customer agrees that NextGate takes no responsibility for the operation or performance of such Interfaced Applications, or for costs associated with the development of interfaces to such Interfaced Applications (unless the same is mutually agreed as part of the Set-up Services). Notwithstanding the foregoing, in the event the application to which the Software is integrated is another NextGate product, NextGate shall have responsibility, at no additional cost to Customer, for ensuring that the Interfaced Applications operate and perform with the Software and SaaS Service.

NextGate acknowledges and agrees that the Software is intended to be used with customers Interfaced Applications for which NextGate is responsible for making its application available to receive and reply to these transactions in the formats and protocols specified in the RFP response.

- 7.2 If Customer installs or enables Interfaced Applications for use with the SaaS Service, Customer hereby acknowledges that NextGate may allow providers of those Interfaced Applications to access the Customer Data as required for the interoperation of such Interfaced Applications with the SaaS Service. NextGate shall not be liable for any disclosure, modification or deletion of Customer Data resulting from any such access by third party providers.
- 7.3 To the extent that the Customer advises NextGate that an Interfaced Application is not functioning as intended with the SaaS Service, NextGate, in consultation with Customer, shall use reasonable efforts in accordance with this Exhibit to identify whether the failure was caused by the SaaS Service or the

Interfaced Application. Where the failure is caused by Fault in the SaaS Service, NextGate shall correct the Fault at no additional cost to Customer. Where the failure is not caused by a Fault in the SaaS Service, NextGate shall use reasonable endeavors to assist the Customer and the third party licensor if applicable to resolve the failure but shall be permitted to charge time and materials rates for such assistance at the Consulting Rates. Notwithstanding the foregoing, if NextGate is charging for providing assistance when the Fault is not in the SaaS Services, NextGate will only provide such assistance when the parties agree in writing on the course of action and all associated costs.

7.4 Customer acknowledges that if it upgrades or otherwise modifies the Interfaced Applications, it may be required to reconfigure the interfaces to the Software, which will require a suitably qualified and trained resource. If Customer does not have appropriately qualified personnel, Customer may engage NextGate to provide such services on a time and materials basis at the Consulting Rates under the terms of this Exhibit.

7.5 When used throughout this Exhibit, the term "Interfaced Applications" shall not be interpreted to include those products within the NextGate portfolio of products even when such products are not licensed under this Exhibit. In the event Customer licenses additional products from the NextGate portfolio, the parties shall enter into a separate written agreement regarding the same, and NextGate shall remain fully responsible for the operation and performance of such products with the SaaS Service.

8. **SaaS SERVICE MODIFICATIONS**

8.1 Customer may ask for changes to the SaaS Service during the Term by submitting a written request to NextGate ("**Change Request**"). Within a reasonable time after receipt of a Change Request, NextGate will advise the Customer in writing of whether the change can be accepted, the impact of such change on the Services (including any cost impact) and seek Customer's written confirmation of the change on such terms. Any changes to Fees as a result of implementing a Change Request will be fair and reasonable and in any event based on the Consulting Rates. Customer shall have a reasonable time from receipt of NextGate's response to confirm, in writing, the Change Request on such terms, failing which it shall be deemed to have been rejected and the existing Services shall continue. Any charges associated with Set-up of the Change Request shall be agreed in writing between the parties at the time of confirming the Change Request.

9. **[INTENTIONALLY OMITTED]**

10. **SECURITY OF SaaS SERVICE**

10.1 NextGate shall maintain and enforce physical security procedures with respect to its access, use and possession of Customer Data and Confidential Information, under healthcare industry standards, which may change from time to time, for such types of locations, and provide appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of such information. Without limiting the generality of the foregoing and without limiting NextGate's liability or responsibilities under this Exhibit, NextGate will take reasonable and appropriate measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access NextGate systems or the information found therein. NextGate will periodically test its systems for potential areas where security could be breached.

10.2 NextGate shall ensure that its systems include up-to-date anti-viral software to prevent Viruses from reaching Customer systems through NextGate's systems. In the event it can be determined that Customer received a Virus from NextGate, NextGate agrees to take action promptly, at its own expense, to identify and override such Virus and to use best efforts to carry out any technical recovery reasonably necessary to remedy any impact of such Virus.

10.3 Customer shall ensure that its systems include up-to-date anti-viral software to prevent Viruses from reaching NextGate systems through Customer's systems. In the event it can be determined that NextGate received a Virus from Customer, Customer agrees to take action promptly, at its own expense, to identify and override such Virus and to use best efforts to carry out any technical recovery reasonably necessary to remedy any impact of such Virus.

10.4 Customer acknowledges that the SaaS Service must be accessed using unique user login identifications and passwords, and agrees that it has sole responsibility for the creation of such unique identifiers and

for Users maintaining the confidentiality and security of the passwords used to access the SaaS Service. NextGate shall have no liability to Customer or any third party's unauthorized access to the SaaS Service resulting from a failure of Users to maintain the confidentiality and security of their passwords.

10.5 NextGate may rely upon any information from Customer and/or instructions set forth in any transmission from Customer using an assigned user login identifications and password, without making further investigation or inquiry, and regardless of the actual identity of the individual transmitting the same. Customer will indemnify and hold NextGate harmless from any loss or damage incurred as a result of NextGate's reliance on such information and/or instructions.

10.6 Without limiting NextGate's responsibilities under this Exhibit, Customer acknowledges that the SaaS Service is not a security software product and does not offer protection against the transmission of viruses, hacking or other attempts to gain unauthorized access to the Customer's network or the Interfaced Applications. Customer acknowledges and agrees that it will install and maintain appropriate security solutions to avoid unauthorized access to its network, including without limitation adequate firewall, intrusion detection, anti-virus and security solutions. Customer shall have sole responsibility for ensuring that each User has access restrictions appropriate to that User's position.

11. NETWORK CONDITIONS

11.1 The SaaS Service is provided via public and private networks which are not maintained by NextGate. NextGate disclaims any liability for delays, delivery failures, unavailability of the SaaS Service or Software, or any other loss or damage, due to network latency or unavailability where such networks are not provided by NextGate.

12. SET-UP SERVICES

12.1 Customer may, from time to time, purchase additional Services. If Customer requests that NextGate provide additional Services, NextGate will provide Customer with a separate agreement for the desired services.

12.2 The Acceptance Testing provisions contained in Schedule 4 shall apply to the Deliverables of this Exhibit.

12.3 Each party shall co-operate with the other party's personnel in respect of any request for information made for the purposes of NextGate fulfilling its Set-up Services obligations under this Exhibit. Customer shall ensure that its personnel involved in the Set-up Services are suitably qualified staff with sufficient skills and expertise in the software applications and business practices used by Customer to carry out Customer's responsibilities.

12.4 Where the Set-up Services are interrupted for an extended period of time for reasons outside a party's control (including reasons attributable to the other party), the parties shall discuss in good faith "releasing" the relevant teams until such time as the Set-up Services can recommence. Neither NextGate nor Customer shall have liability for failing to meet any agreed timeframes where the failure is attributable to the other party and the parties agree to adjust any agreed timeframes to account for delays.

13. FEES AND PAYMENTS

13.1 Customer agrees to pay NextGate the Fees plus any applicable Taxes within thirty (30) days of receipt of an invoice certified for payment by the Monterey County Auditor-Controller, in accordance with the payment terms or milestones specified in the Specific Terms. Where no payment terms are otherwise agreed, the Fees will be invoiced monthly in advance commencing on execution of this Exhibit and the Setup Fees will be payable on a time and materials basis at the Consulting Rates invoiced monthly in arrears.

13.2 The charges listed in Exhibit A at the time of Agreement and in any subsequent executed amendments hereto shall not include any applicable sales, use, person property, excise, or other similar taxes. The amount of any applicable sales, use, personal property, or other similar tax applicable to such future licenses or purchases made via addendum to this Exhibit shall be paid directly by Customer or shall be paid to NextGate on receipt of invoice therefore.

13.3 All amounts and Fees stated or referred to in this Exhibit are exclusive of GST (if any).

13.4 NextGate shall provide Customer with notification of a failure to pay an undisputed invoice and Customer shall sixty (60) days after Customer's receipt of the notice to cure the failure.

- 13.5 NextGate shall direct all invoices to the individuals or departments listed in Schedule 8
- 13.6 All services outside the scope of the Services (including, without limitation, those excluded by Section 17.3) will be charged on a time and materials basis in accordance with the Consulting Rates.
- 13.7 Any travel and lodging expenses incurred by NextGate while performing services at Customer's site, shall be reimbursed by Customer in accordance with the County's Travel and Business Expense Reimbursement Policy, which are incorporated herein and attached hereto as Schedule 7.
- 13.8 Provided any increase to the Fees shall not apply until after the Initial Term, NextGate reserves the right to review and amend its Fees and the Consulting Rates upon the effective date of each Renewal Term and will provide not less than ninety (90) days' written notice of any increase in such Fees and Consulting Rates.
- 13.9 If Customer shall acquire, merge or consolidate with another entity or business after the Initial Term, and the resulting expansion of Customer's business results in additional costs to NextGate with respect to the Services to be provided hereunder, then the parties shall negotiate in good faith appropriate changes to the pricing and/or license terms under this Exhibit to accommodate such increased costs.

14. **OWNERSHIP AND INTELLECTUAL PROPERTY**

- 14.1 NextGate reserves and retains all right, title and interest in and to the SaaS Service and underlying Software and Deliverables. Except for the license rights expressly granted in this Exhibit, no express or implied license, right or interest in or to any intellectual property of NextGate or its licensors is conferred by this Exhibit. If Customer suggests new features or functionality that NextGate, in its sole discretion, adopts for the Software, such new features or functionality will be the sole and exclusive property of NextGate. Any portion of the Software merged into or used in conjunction with other software or hardware will continue to be the property of NextGate and subject to the terms and conditions of this Exhibit.
- 14.2 Copyright and other intellectual property rights in any materials or software (whether written or machine-readable), proprietary methodologies, templates, forms, spreadsheets, databases and other electronic tools created by or licensed to NextGate prior to or outside the scope of the Services and any subsequent modifications thereto and NextGate's working papers or other documentation generated by NextGate during the performance of the Set-up Services will remain vested in NextGate, excluding any Customer Data, Confidential Information or any intellectual property rights of Customer reflected in such working papers or any documentation of or any information related thereto.
- 14.3 Provided that the following does not include or result from the use of Customer Data, Customer Confidential Information or any intellectual property rights of Customer, nothing in these terms prevents or restricts NextGate from developing and/or using NextGate's pre-existing intellectual property, NextGate's Confidential Information, any ideas, concepts, know-how, information, techniques, inventions and improvements developed during the course of the Set-up Services and relating to methods or processes of more general application, including those in the field of information technology and business processes, for itself or other customers.
- 14.4 Intentionally omitted.
- 14.5 Copyright and other intellectual property rights in any materials or software (whether written or machine-readable), proprietary methodologies, templates, forms, spreadsheets, databases and other electronic tools created by or licensed to Customer prior to or outside the scope of the Services and any subsequent modifications thereto and Customer's working papers or other documentation generated by Customer will remain vested in Customer, excluding any Confidential Information or any intellectual property rights of NextGate reflected in such working papers or any documentation of or any information related thereto.
- 14.6 Provided that the following does not include or result from the use of NextGate Confidential Information or any intellectual property rights of NextGate, nothing in these terms prevents or restricts Customer from developing and/or using Customer's pre-existing intellectual property, Customer's Confidential Information, any ideas, concepts, know-how, information, techniques, inventions and improvements developed during the course of this Exhibit and relating to methods or processes of more general application, including those in the field of information technology and business processes, for itself or other customers.

15. **INTELLECTUAL PROPERTY INDEMNITY**

- 15.1 NextGate will indemnify and defend, at its expense, Customer for any amounts awarded against Customer in any judgment or settlement arising as a result of the SaaS Service infringing the intellectual property rights of any third party, provided that:
- (a) NextGate is given prompt notice of any such claim; provided a failure to promptly notify shall only serve to reduce the indemnity rights to the extent that such failure actually prejudiced NextGate's defense of the claim;
 - (b) Customer provides reasonable co-operation to NextGate in the defense and settlement of such claim, at NextGate's expense; and
 - (c) to the extent legally permissible, NextGate is given sole authority to defend the claim; provided that any settlements shall require prior approval by Customer if (x) the settlement does not release Customer from all liabilities and obligations with respect to such claim, (y) the settlement imposes injunctive or other equitable relief against Customer or (z) the settlement would result in the imposition of additional costs to Customer.
- 15.2 In the defense or settlement of any claim, NextGate may procure the right for Customer to continue using the SaaS Service, replace or modify the infringing item(s) with an equivalent service and/or documentation (as applicable) so that it/they becomes non-infringing or, if such remedies are not reasonably available, terminate this Exhibit on thirty (30) Business Days' notice to Customer without any additional liability. If NextGate terminates this Exhibit during the first year of the Initial Term, NextGate shall refund Customer all one-time Fees as well as any prepaid but unearned recurring Fees paid under this Exhibit. If NextGate terminates this Exhibit after the first year of the Initial Term, NextGate shall refund Customer all prepaid but unearned recurring Fees and all one time fees paid under this Exhibit during the most recent twelve (12) month period. NextGate Refunds shall be made within thirty (30) days of NextGate's decision to select option to terminate this Exhibit.
- 15.3 In no event will NextGate, its employees, agents and sub-contractors be liable to Customer to the extent that the alleged infringement is based on:
- (a) a modification of the SaaS Service by anyone other than NextGate or an NextGate representative;
 - (b) Customer's use of the SaaS Service in violation of this Exhibit; or
 - (c) Customer's use of the SaaS Service after Customer was provided with a Version or Release that would have eliminated the infringement; provided that Customer received written notice from NextGate that the Version or Release would have resolved an alleged or actual infringement.
- 15.4 The foregoing states Customer's sole and exclusive rights and remedies, and NextGate's entire obligations and liability, for infringement of the intellectual property rights of any third party.
16. **CUSTOMER DATA**
- 16.1 All right, title and interest in and to Customer Data is held exclusively by Customer, and Customer has sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Customer is responsible for obtaining the requisite consents and preferences of Users and patients in relation to the use of their personal information in Customer Data (including opt-out requests).
- 16.2 If agreed to as part of these measures, NextGate will back-up Customer Data in accordance with this Exhibit.
- 16.3 NextGate represents, covenants, and warrants that NextGate will use Customer Data only in compliance with (i) this Exhibit, (ii) the terms of the Business Associate Agreement, which is incorporated herein by reference; and (iii) all applicable laws. NextGate further agrees that NextGate will adhere to the same standards for Customer Data as is set forth in Section 19.2 for Confidential Information. For the avoidance of doubt, in no event may NextGate aggregate and/or de-identify Customer's Customer Data outside of NextGate's obligations to Customer under this Exhibit.
- 16.4 NextGate will not retain any Customer Data for any period longer than necessary for NextGate to fulfill its obligations under this Exhibit. As soon as NextGate no longer needs to retain such Customer Data in order to perform its duties under this Exhibit, NextGate will notify Customer and, at NextGate's option, promptly, but in any case, within ninety (90) days after expiration or termination of this Exhibit return to the Customer and destroy or erase all such Customer Data (and certify by email the same). Notwithstanding anything to the contrary, and unless otherwise mutually agreed to by the parties,

NextGate is not required to retain Customer Data for longer than 90 days from the expiration or termination of this Exhibit.

17. **WARRANTIES AND DISCLAIMERS**

17.1 NextGate warrants that:

- (a) all Services will be carried out with reasonable due care and attention by suitably skilled, qualified and experienced personnel;
- (b) the SaaS Service and Software will (i) conform substantially to the Specifications (ii) comply with all requirements of applicable federal, state, or local laws, rules and regulations; (iii) perform within the stated Service Level Objectives and (iv) it has disaster recovery and back-up procedures in accordance with this Exhibit; and
- (c) the performance of NextGate's duties under this Exhibit will not breach or be in conflict with any other agreement to which NextGate or its employees, agents, or subcontractors who perform such duties are a party or are bound. NextGate further represents and warrants that its services provided pursuant to this Exhibit will not be affected or altered as a result of any relationship NextGate has with a third party involved in the provision of health care services or equipment.

NextGate has provided responses in the RFP attached as Schedule 10 to the best of its knowledge. Such RFP is for reference only and shall not be deemed to be representations or warranties made by NextGate.

17.2 In the event of NextGate's breach of the express warranties granted in Section 17.1 (b), NextGate shall correct the SaaS Service in order that it conform in accordance with the warranty. In the event of NextGate's breach of the express warranties granted in Section 17.1(a) NextGate shall, at NextGate's option (a) supply such Services again at no cost, or (b) pay the direct cost of having such Services supplied by a third party. In the event NextGate is unable to correct the breach within the period set forth in Section 20.2, Customer may proceed in accordance with termination provisions in clause 20.

17.3 NextGate shall have no liability to remedy a breach of a warranty contained in Section 17.1(b) above to the extent the relevant Fault is caused by:

- (a) the misuse or improper use of the Software or Services or use other than in accordance with the Specifications;
- (b) any modifications or alterations to the Software or Services or Customer's technical environment not made or approved in writing by NextGate;
- (c) an act or omission of Customer in breach of this Exhibit;
- (d) NextGate's reliance on the dependencies or assumptions agreed in writing by both parties; or
- (e) information given to NextGate by Customer being untrue, inaccurate and misleading in a material respect.

17.4 OTHER THAN AS EXPRESSLY SET FORTH IN THE MASTER AGREEMENT OR THIS EXHIBIT, NEXTGATE MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE SAAS SERVICE OR SOFTWARE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.5 Customer understands and agrees that NextGate and its licensors are not engaged in the practice of medicine and that the SaaS Service is a conduit for information only and in no way a substitute for competent medical advisors or related clinicians. All medical practice management and patient care decisions made in which the SaaS Service may be utilized, and the consequences thereof, will be exclusively the responsibility of the Customer, as well as physicians and other Users, practitioners and clinicians with privileges to use the SaaS Service. The successful operation of the SaaS Service is dependent on Customer's use of proper procedures and systems for the management of the data being processed and input of correct data, and Customer is solely responsible for the accuracy and adequacy of the data furnished for processing by the SaaS Service.

17.6 Customer acknowledges that the Software is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage

(“**High Risk Activities**”). NextGate specifically disclaims any express or implied warranty of fitness for High Risk Activities.

17.7 Without reducing NextGate’s obligations under this Exhibit, Customer acknowledges that NextGate does not control or monitor the transfer of data over telecommunications facilities, including the internet, except where managed by NextGate Software, and that internet accessibility carries with it the risk that Customer’s privacy, Confidential Information and property may be lost or compromised through systems that are not under the control of NextGate.

18. **GENERAL INDEMNIFICATION & LIMITATION OF LIABILITY**

18.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR CLAIMS COVERED BY A PARTY’S INDEMNIFICATION OBLIGATION, IN NO EVENT SHALL CUSTOMER OR NEXTGATE (INCLUDING THEIR AFFILIATES, SUPPLIERS OR ITS THIRD PARTY LICENSORS) BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY LOSS OF PROFITS OR REVENUE, ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES, OR PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THE MASTER AGREEMENT (INCLUDING THIS EXHIBIT) OR USE OR INABILITY TO USE SAAS SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR CLAIMS COVERED BY A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THE MASTER AGREEMENT (TO THE EXTENT RELATED TO THIRD PARTY CLAIMS), NEITHER CUSTOMER NOR NEXTGATE (INCLUDING THEIR AFFILIATES, SUPPLIERS OR ITS THIRD PARTY LICENSORS) SHALL BE LIABLE TO THE OTHER PARTY FOR ANY ACTUAL DAMAGES ARISING OUT OF, BASED ON, OR RELATING TO THIS EXHIBIT EXCEEDING THE TWO (2) TIMES AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER UNDER THE MASTER AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. WITH RESPECT TO NEXTGATE’S INDEMNITY OBLIGATIONS (TO THE EXTENT RELATED TO THIRD PARTY CLAIMS), NEXTGATE’S MAXIMUM LIABILITY SHALL BE LIMITED TO \$1 MILLION, BUT ONLY TO THE EXTENT THAT SUCH CLAIMS ARE COVERED BY THE INSURANCE POLICIES HELD BY NEXTGATE PURSUANT TO THE MASTER AGREEMENT.

19. **CONFIDENTIALITY**

19.1 Each party shall hold the other party’s Confidential Information in confidence and shall not disclose Confidential Information to any third party (except as permitted in Section 19.2 below) without the disclosing party’s prior written consent. “**Confidential Information**” means any information disclosed by NextGate or the Customer, or that is created by a party under or in relation to this Exhibit and relates to the other party or that other party’s business, that is not generally known to the public or, by its nature, should be reasonably considered confidential. In the case of Customer and without limiting the generality of the foregoing, Confidential Information of Customer shall also Customer Data and the information disclosed by the User and the Participants. Confidential Information shall not include information that:

- (a) is or becomes generally available to the public other than as a result of a breach of an obligation under this Exhibit or any other obligation of confidence;
- (b) is acquired from a third party who owes no obligation of confidence in respect of the information;
- (c) is or has been independently developed by the recipient without use of the Confidential Information; or was known to it prior to receipt, as evidenced by written records; or
- (d) is required to be disclosed pursuant to law or by order of a court of competent jurisdiction.

19.2 Confidential information does not include this Agreement, which is a public record subject to disclosure pursuant to a request under the California Records Act.

19.3 Each party will take measures to protect the Confidential Information of the other party that are no less protective than those measures it uses to protect its own comparable Confidential Information, and in any event, not less than a reasonable degree of protection. Confidential Information may be disclosed to a party’s employees, contractors and agents (for whom that party will be responsible) and then only to those employees, contractors or agents who (i) need to know and to the extent needed to carry out that person’s role for that party; (ii) are bound to the same level of confidentiality set forth in this Exhibit; and (iii) unless specifically agreed upon in writing by all parties to this Exhibit, are located in the United States. Customer

may further disclose NextGate's Confidential Information to its Users, Participants and affiliates provided they meet the criteria established by (i), (ii) and (iii) above. Both parties agree that any Confidential Information received from or created in relation to the other party shall only be used for the purposes of providing or receiving Services under this Exhibit. For the avoidance of doubt, in no event may the receiving party aggregate and/or de-identify the Confidential Information of the disclosing party outside of the receiving party's obligation to the disclosing party under this Exhibit.

19.4 Except as otherwise stated in Schedule 9, each party agrees not to use the name, trademark, service mark, or design registered to the other party or its affiliates in any publicity, promotional, or advertising material, unless review and written approval of the intended use is obtained from the other party (which in the case of Customer must be provided by Customer's Corporate Communications department) prior to the release of any such material.

20. **Intentionally Omitted**

21. **TERMINATION; EFFECTS OF TERMINATION**

21.1 In addition to the termination provisions in the Master Agreement, NextGate shall have the right to terminate this Exhibit and the Master Agreement upon any breach of this Exhibit or the Master Agreement by Customer, which breach is not cured by Customer within thirty (30) days of Customer's receipt of written notice of such breach from NextGate.

21.2 Upon expiration or termination of this Exhibit for any reason:

- (a) Subject to any agreed exit plan, the Customer's right to access the Software and the SaaS Service granted under this Exhibit will immediately terminate;
- (b) Except as expressly provided herein, all Confidential Information of the disclosing party shall be promptly destroyed by the receiving party upon termination of this Exhibit; provided however, (i) the receiving party may retain copies as necessary for purposes of meeting applicable professional standards and/or legal requirements; and (ii) prior to such destruction NextGate shall provide Customer, at no cost, with a copy of its Confidential Information in a mutually agreed upon electronic format. Upon the request of the disclosing party, the receiving party shall certify to the other in writing that it has met the obligations of this paragraph. Notwithstanding the foregoing, the handling of Customer Data shall be in accordance with Section 16.4 of this Exhibit;
- (c) Termination of this Exhibit shall not release either party from liability for accrued obligations or any previous breach of this Exhibit, and shall be without prejudice to other rights and remedies as may be available, including injunctive or other equitable remedies;
- (d) In the event this Exhibit (or the Master Agreement) is terminated for any reason, NextGate shall refund to Customer any pre-paid unearned SaaS Services Fees on a prorated basis, for undelivered post-termination SaaS Services; provided that Customer shall continue to pay any monthly fees to NextGate for any transition period during which NextGate agrees to maintain Customer's data on NextGate's systems. For clarity, unless otherwise specified in a Statement of Work, Customer shall not be entitled to a refund for Set-up Services actually rendered in conformance with this Exhibit where Customer elects not to accept Software and/or SaaS Service that satisfies the Acceptance Testing criteria. This Section 21.1(d) shall not affect NextGate's obligations to refund Fees pursuant to Section 15.2, nor shall it affect any other rights that Customer may have under this Exhibit, at law or in equity; and
- (e) If requested by Customer, NextGate may provide Customer with assistance, cooperation and consultation to ensure a smooth and timely transition of the terminated Services, for up to ninety (90) days following expiration or termination. Customer will reimburse NextGate for any such assistance on a time and materials basis, at the Consulting Rates as well as any travel and lodging expenses if Services are provided by Customer's site.

22. **GENERAL**

22.1 If any provision of this Exhibit is held to be unenforceable for any reason by any court of competent jurisdiction, it shall be severed and the remainder of this Exhibit shall continue in full force and effect. Further, the parties shall renegotiate in good faith to amend this Exhibit to comply with the requirements of law. If the parties fail to reach such an amendment satisfying each of the parties within ninety (90)

days' following a written request by one of the parties, then any party may terminate this Exhibit upon thirty (30) days' written notice, without further obligation or penalty, financial or otherwise, to the other parties.

- 22.2 Except as otherwise permitted herein, all notices provided for herein shall be in accordance with the terms of the Master Agreement.
- 22.3 Nothing in this Exhibit shall be construed as establishing a partnership, joint venture, agency, employment or other similar relationship between the parties. None of the parties have any express or implied rights nor authority to assume or create any obligation or responsibility on behalf of or in the name of the other party, except as may otherwise be set forth in this Exhibit. In the event NextGate's independent contractor status is determined to be misclassified, NextGate (on behalf of NextGate's employees, agents and subcontractors performing NextGate's duties and responsibilities set forth in this Exhibit), shall, for itself and its heirs, executors, administrators, legal representatives and permitted assigns, waive any and all potential claims to Customer employee benefits.
- 22.4 If any dispute arises relating to this Exhibit or the SaaS Service, the parties will attempt to resolve the dispute in good faith by senior level negotiations. Where both parties agree that it may be beneficial, the dispute may be referred to mediation using the services of an appropriate and agreed mediator to facilitate the mediation process. Nothing in this Section shall preclude either party from seeking equitable relief from a court of competent jurisdiction.
- 22.5 Neither this Exhibit nor any portion of this Exhibit may be assigned or delegated by any party without the prior written consent of the other parties. The foregoing notwithstanding, NextGate may assign this Exhibit to a third party without the consent of Customer in connection with such third party's acquisition of NextGate's business (whether by merger, consolidation, stock sale or sale of all or substantially all of NextGate's assets). In the event such party is located outside the United States, all provisions in this Exhibit relating to data sovereignty and service performance in the United States shall continue to apply. Any purported assignment or delegation in violation of this Section is void. This Exhibit binds and benefits the parties and their permitted successors and assigns.
- 22.6 Except in relation to third party licensors, nothing in this Exhibit shall be construed as giving any third party any right, remedy or claim.
- 22.7 This Exhibit may be amended only by written agreement of the parties. This Exhibit (including its Schedules and any documents included in this Exhibit by reference), the Master Agreement (including all attachments thereto), and the Business Associate Agreement constitute the entire agreement between the parties and supersedes all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings, among the parties with respect to the subject matter of this Exhibit, including the licensing provision of the SaaS Service. Furthermore, any invoice, quotation, internet, "click-wrap" or "shrink-wrap" terms and conditions not expressly set forth in this Exhibit are of no force or effect even if Customer signs the invoice or quotation, uses the SaaS Service, or selects "I accept". Without limiting the generality of the foregoing, the parties acknowledge that, other than the representations and warranties made in this Exhibit, neither party has relied on any representations, warranties, statements, documents, marketing materials, workpapers, descriptions, instruments, or otherwise made or delivered (verbally or in writing) by either party. Any waiver of any terms of this Exhibit must be in writing and shall not operate as a waiver of any other term or preclude any other or further exercise of such term. This Exhibit shall supplement the Master Agreement. Notwithstanding anything in the Master Agreement to the contrary, in the event of any conflict between the terms of the Master Agreement and this Exhibit, the terms of this Exhibit shall control.
- 22.8 None of the parties shall be liable for any act, omission, or failure to fulfill its obligations under this Exhibit if such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war or state sponsored activity, epidemics, governmental action after the date of this Exhibit, fire, communication line failures, hacking, power failures, earthquakes or other disasters (called "**Force Majeure**"). Without limiting the scope of the foregoing, any fault, outage or failure in telecommunications network, or any other telecommunications network used by Customer or NextGate shall also be deemed to be outside the control of NextGate. In the event NextGate is unable to perform its obligations due to said Force Majeure circumstances for a period of thirty (30) days, Customer has the right to immediately terminate the Main Agreement upon written notice to NextGate.

- 22.9 Intentionally Omitted.
- 22.10 This Exhibit shall not be governed by either the provisions of the International Sale of Goods Act or the United Nations Convention for Contracts on the International Sale of Goods.
- 22.11 Intentionally Omitted.
- 22.12 The parties certify, to the best of their knowledge and belief, after due inquiry using industry standards, that the parties and/or any of their principals: (i) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency; and (ii) have not been convicted of a criminal offense related to the provision of health care items or services.
- 22.13 During the Term, the parties agree to comply with any and all laws, rules, regulations, and licensing requirements that are now or hereafter promulgated by any local, state, and federal governmental authority/agency that governs or applies to their respective duties and obligations hereunder. Upon reasonable request, NextGate will provide to Customer a list of all key NextGate resources that have access to Customer Data, by name and job title, to the extent required by law or regulation to enable Customer to remain compliant with such laws or regulations. Customer will notify NextGate (which may occur via e-mail) when it is required to provide the aforementioned list.
- 22.14 Each party agrees to maintain during the term of this Exhibit, at its own cost and expense, the respective insurance policies and coverage set forth in the Master Agreement.

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SCHEDULE 1

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SCHEDULE 2

Service Levels and Support Services

This Schedule 2 sets forth the applicable Service Levels, which includes the System Availability Objective of the SaaS Service, and the associated Support Services.

1. SERVICE LEVEL OBJECTIVES

NextGate will use commercially reasonable efforts to meet the service level objectives identified below (together, the "Service Levels"):

- i. **Data Backup Objective.** Scheduled backup jobs will be fully completed every day. Measurement of this objective will occur daily. Regular or continuous replication of data to a local data storage device or a remote datacenter shall meet the requirement for the data backup objective.
- ii. **Response and Resolution Time Objectives** (as defined in Support Services below). Response Time Objectives and Resolution Time Objectives are set forth in the Table 1 below.
- iii. **System Availability Objective.** NextGate will make the SaaS Service available such that the amount of Downtime in a given month will not exceed 0.5%.

2. LIMITATIONS ON SERVICE LEVELS

The Service Levels will not apply if: (1) Customer disables (either intentionally or unintentionally) NextGate's administrative access to the Configuration (e.g., by changing a password); (2) Customer makes any modifications that prohibit the SaaS Services from working properly; or (3) Customer modifies or deletes the contents of NextGate's administrative directories, or disables or modifies any software installed by NextGate for the purposes of monitoring or server maintenance; (4) Customer violates the terms of this Exhibit; or (5) Customer becomes ineligible for service credits pursuant to any other provision of this Exhibit.

3. DOWNTIME EXCLUSIONS

Downtime does not include unavailability caused by: (1) Scheduled Maintenance or a suspension of SaaS Services when such suspension is permitted in this Exhibit; (2) flaws in Customer's Data; (3) the incompatibility of any operating system, Interfaced Applications or vendor supplied security patches with Customer's Data or the Software; (4) acts or omissions of Customer or its agents, including all testing of the servers by Customer or a third party vendor; (5) the failure of servers or services outside of a datacenter on which the SaaS Services are dependent, including, but not limited to, inaccessibility on the Internet that is not caused by NextGate's network or network providers; (6) NextGate's blocking of Customer Data that NextGate deems in its sole reasonable discretion to be in violation of applicable laws (including HIPAA) or other health care regulations; (7) a Force Majeure or events not in NextGate's direct control; (8) a denial of service attack; (9) Customer's failure to meet the terms and conditions of this Exhibit; (10) Downtime not reported by Customer within five (5) Business Days of the day the Downtime first began; (11) time required to format or reformat disks or other storage devices; (12) Non-production hardware or applications.

4. SUPPORT SERVICES

- 4.1 During the Initial Term and any Renewal Term, NextGate shall provide the support services for the SaaS Service as described below (the "**Support Services**"). NextGate shall:
- iv. Correct any failure of the SaaS Services to perform in accordance with terms of Section 17.1(b) in the base Agreement, including without limitation, defect repair, programming corrections, and remedial programming or a procedure or routine that, when observed in regular operation of the SaaS Service, eliminates the practical adverse effect of the Fault.
 - v. Provide all Releases, Versions and all other bug fixes, patches, updates, upgrades, enhancements or modifications to such software that NextGate may install as part of the SaaS Service.
 - vi. Provide unlimited access for up to ten (10) named users to NextGate's ticketing system to log any issue or Fault. Telephone support is 24x7 in accordance to the SLA table below in the applicable Jurisdiction. Customer may modify its named users at any time upon written notice to NextGate (which may include email)
 - vii. Provide online access to technical support bulletins and other user support information and forums; to the extent NextGate makes such resources available to its customers.
 - viii. In the event that two or more Severity Level 1 Incidents occur (as described below) within 30 days of each other, NextGate shall promptly investigate the root causes of such support issues and shall provide to Customer within ten (10) days of the occurrence of the Severity Level 1 Incident an analysis of such root causes and a proposed corrective action plan for Customer's review, comment and approval (the "**Corrective Action Plan**"). The Corrective Action Plan shall include, at a minimum: (i) a commitment by NextGate to Customer to devote the appropriate time, skilled personnel, systems support and equipment, and/or resources to remedy the Severity Level 1 incident; (ii) a strategy for developing any programming/software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of such incidents; and (iii) time frames for Set-up of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in this Exhibit) for Customer's Set-up of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan. NextGate will not be responsible for any cost that the Customer may incur in making changes to resolve Severity Level 1 incidents.
- 4.2 Customer's support staff will be responsible for first-level support, including the provision of an internal support desk service to end users of the SaaS Service for providing general assistance and initially diagnosing any operational or functional problems with the SaaS Service. Customer's support staff shall timely report Faults that cannot be solved internally in accordance with the procedure outlined herein. Support requests may be logged by Customer in relation to the use of the SaaS Service in a non-production environment, provided that such calls are not subject to the Support Service Levels. To the extent that a Fault is Interfaced Applications, NextGate will use reasonable efforts to resolve such Fault deemed unrelated to the Nextgate system or Nextgate's API's through recourse to the third party licensor, but such Faults shall not be subject to the Support Service Levels.
- 4.3 Customer shall ensure that its support staff are familiar with and knowledgeable about the functional capabilities and technical operation of the SaaS Service. If they are not available or are unable to attend within a reasonable time period in relation to a response by NextGate to a support request, NextGate will notify Customer that it intends to lower the Severity Level and if Customer fails to correct the issue, NextGate has the right to lower the Severity Level until corrected by Customer.
- 4.4 At no point will Customer have access to NextGate's back-end production environments for the purposes of Support Services.
- 4.5 No back-end access to any SaaS environments will be provided to the Customer. Additional environments will need to be set up for Customer testing purposes at an additional cost following a detailed review of additional requirements.
- 4.6 NextGate may charge Customer in accordance with the Consulting Rates for any support outside the scope of the Support Services, including first-level support requests for assistance with respect to use of the SaaS Service or other matters not relating to Faults (e.g. troubleshooting for problems not relating to Faults). The parties shall agree upon such additional support in writing.

Target Incident Response and Resolution Time

This Exhibit includes a fault level (impact) determination. The incident / issue severity can be set with a second set of definitions to include urgency which can be set by the Customer. The Customer can increase the severity of an issue to guide the support team as to which issue to fix first. Customers can therefore set the issue urgency (low / medium / high) to indicate the severity of the issue. NextGate will only pay service credits based on impact.

Table 1

Severity Level	Target Receipt Acknowledged Response Time	Target Response Time Objectives	Resolution Commences	Target Resolution Time	Target Resolution Time Objectives	Coverage Hours
Severity 1	1 hour	99%	1 hour	4 hours	99%	24/7/365
Severity 2	2 hours	99%	2 hours	8 hours	99%	24/7/365
Severity 3	Next Business Day	95%	1 day	2 weeks	None	8am ET – 5pm PT
Severity 4	Next Business Day	90%	1 week	By Arrangement	None	8am ET – 5pm PT
Severity Level	Definition					
Severity 1	Critical Business Impact – a “system down” or the operation of a mission critical application is severely impacted by the problem and work cannot reasonably continue.					
Severity 2	Significant Business Impact – Limited functionality. Some features work, but others do not. The production server or application is considered unstable after service has been restored.					
Severity 3	Minor Business Impact – An error that does not cause a significant portion or feature of the software to be inoperative—but it is certainly more than an irritant.					
Severity 4	No Business Impact / Enhancement Request – No impact on production. Technical questions or enhancement request.					
Recovery Objectives						
Recovery Point Objective (RPO)	15 Minutes					
Recovery Time Objective (RTO)	12 Hours					

SCHEDULE 3

Service Credits

1. SERVICE CREDITS

In addition to those rights set forth in this Exhibit, including the right to terminate, should NextGate fail to achieve the Service Levels set forth in Schedule 2, NextGate shall provide Customer with the service credits identified below ("**Service Credits**"). Customer will not be eligible for Service Credits for Downtime, including delays in restoring the Services, resulting from Customer's failure to provide current and accurate contact information.

- (i) **Data Backup Objective.** The Service Credit for not meeting this objective in any given month will be one percent (1%) of the month's SaaS Service Fees for such monthly period.
- (ii) **Response and Resolution Time Objectives.** The Service Credit for not meeting Level 1 or Level 2 Response Time Objectives more than once in any given month will be two percent (2%) of the month's SaaS Service Fees. The Service Credit for not meeting Level 1 or Level 2 Resolution Time Objectives more than once in any given month will be two percent (2%) of the month's SaaS Service Fees.
- (iii) **System Availability Objective.** For each full hour that the system is unavailable beyond the System Availability Objective, the Service Credit for not meeting this objective in any given month is 1/720 times the SaaS Service Fee, but not to exceed ten percent (10%) of the monthly SaaS Service Fee for that month.

2. SERVICE CREDIT PROCEDURES

Within ten (10) Business Days after the end of each calendar month, NextGate will provide Customer with a set of reports that illustrates NextGate's performance relative to the Service Levels, and detail regarding the total Service Credits creditable for all Service Level failures during such calendar month. The calculation of all Service Credits will be based on NextGate's measurement and monitoring as described below. NextGate will apply Service Credits to the invoice immediately following its determination of Service Credit eligibility and amount. In the event a Service Credit remains following the termination of this Exhibit, NextGate shall refund Customer the remaining Service Credits within thirty (30) days of the termination date.

If Customer disputes NextGate's calculation of Service Level performance or Service Credits, any data used to calculate such values, or any other subject matter of this Schedule 3, Customer must notify NextGate, within thirty (30) days after receipt of the applicable NextGate report, in writing of the basis of such dispute, in which case NextGate shall respond promptly to such notice and the parties shall use good faith efforts to resolve such dispute in a timely manner. No such claims or any other remedy will be available to Customers after the thirty (30) day period.

SCHEDULE 4

Acceptance Testing

- 1.1 On completion of each Deliverable for which Acceptance Testing applies (if and to the extent that Acceptance Testing is expressly defined in Schedule 5), NextGate will notify Customer in writing (which may be by email) that the Deliverable is ready for Acceptance Testing. Customer will, within five (5) Business Days of such notification (or such other time mutually agreed in writing by the parties)_complete Acceptance Tests to establish whether the Deliverable performs in accordance with the Acceptance Criteria for that Deliverable ("**Testing Period**").
- 1.2 During the Acceptance Tests:
- (a) Customer will be responsible, at its own cost, for:
 - (i) Arranging and carrying out Acceptance Tests;
 - (ii) determining the level of functionality and performance achieved in testing;
 - (iii) requesting NextGate to verify, diagnose and correct any suspected Fault; and
 - (iv) making available to NextGate written details of any Fault found to exist.
 - (b) NextGate will be responsible, at its own cost, for:
 - (i) the verification, diagnosis and correction of any suspected Fault;
 - (ii) making available to Customer written details of any Fault found to exist and the action that will be taken; and
 - (iii) providing to Customer all reasonable assistance and guidance to Customer's staff requested by Customer during the Acceptance Tests.
- 1.3 Prior to the end of the Testing Period but as soon as practicable after the relevant Acceptance Tests have been completed, Customer will submit the results of the Acceptance Tests to NextGate and notify NextGate in writing (which may be by email) whether or not the Deliverable(s) meet the Acceptance Criteria.
- 1.4 Where NextGate is notified that a Deliverable does not meet the Acceptance Criteria, Customer will provide NextGate with any other relevant information reasonably available that will assist NextGate to identify the reason for the failure, and may:
- (a) require NextGate to correct any Fault in accordance with clause 1.2(b) above (in which case any agreed timetable for delivery of the Deliverable will be amended accordingly); or
 - (b) accept the Deliverable subject to such conditions as the parties may agree.
- 1.5 A Deliverable will be deemed to be Accepted where:
- (a) Customer provides written notification to NextGate that the Deliverable meets the Acceptance Criteria;
 - (b) No written notification of acceptance or rejection has been provided to NextGate by the Customer during the Testing Period; or
 - (c) the Customer starts using the Deliverable in a live environment for a period of 10 business days.
- 1.6 Any dispute which arises as to whether a Deliverable passes an Acceptance Test will be referred for resolution in accordance with Section 22.4 of this Exhibit.

SCHEDULE 5

Set-Up Services

Description	
EMPI set up of MatchMatrix. NextGate install the NextGate EMPI software, configure the algorithm, load the data based on the data extracts, provide integration and provide project management. These services will allow access to its affiliated clinicians, hospitals, physician practice groups or other participants.	
Source Systems	<ul style="list-style-type: none"> • Up to 3 Sources Systems – Meditech 5.67, EPIC, and NetSmart-BH
Integration Engine	<ul style="list-style-type: none"> • One inbound/One outbound
Number of EUIDs allocated in the system	<ul style="list-style-type: none"> • 1,000,000
Number of Interfaces	<ul style="list-style-type: none"> • Three
Additional Terms	Services to be provided remotely
Prior to Project Initiation, Client will act in accordance with:	<ul style="list-style-type: none"> • Provide resources and documentation (such as topology) to support this project. • Data Extract and Interface messages according to the NextGate Specification <ul style="list-style-type: none"> ○ NextGate provides specifications for integration, client to normalize to the NextGate specification • Will read and understand the NextGate Set-up Guidebook • All client project resources will complete the e-learning training. • NextGate will provide appropriate resource(s) to support the set up • Completed Set-up Questionnaire is returned to NextGate within 3 days of contract execution • Integration connectivity to the Stage environment
Project Initiation	<ul style="list-style-type: none"> • Validate all Project Initiation Requirements • Kick Off Meeting • NextGate Deliverable: Project Schedule
Data Validation/Load	<ul style="list-style-type: none"> • Software Installation of Match Matrix to (3) environments • Enable Integration to Stage Environment • Data Analysis in Test • NextGate Deliverable: Client Access to Test and Stage Environment

Testing/Integration	<ul style="list-style-type: none"> • Re-Run Data Analysis in Stage • System Integration Testing in Stage • Training • Testing • Client Deliverable: Client provide a data extract for the Production Load in the same format as initially accepted • NextGate/Client Deliverable: Training as defined below: 			
	Course Title	Course Description	Attendee Role	Duration
	203: MatchMatrix Reporter - WebEx Only	Learn concepts and build reports using MatchMatrix Reporter in two 4 hours sessions. Topics include: installation and scheduling, understanding the data model, creating queries for Reporter or other reporting tools, modifying an existing Jasper report.	Project Team Members Support	Two- 2 hour sessions
	501a: Data Quality Manager - End User WebEx Only	Using sample data, students navigate the MatchMatrix user interface to: understand search capabilities, view/edit/merge/unmerge records, resolve potential duplicates, and determine decision making for matching criteria.	Project Team Members Support	2 hour session; 1 hour follow-up
	E-Learning			
	E 101: Introduction to the EMPI Process	An e-learning class designed to discuss the EMPI matching process.	Project Team Members Support	45 minutes
	P 101: Provider Overview	An e-learning class designed to provide an overview of the Provider Registry.	Project Team Members Support	45 minutes
	E 102: EMPI Data Analysis Reports Overview	Discusses the process of reading and reviewing EMPI reports in order to identify irrelevant data, set thresholds, and review match reports.	Project Team Members Support	45 minutes

Go-Live	<ul style="list-style-type: none"> • Final Data Extract for Production • Queuing Interfaces • Load Data into Production • Go Live • Transition to Support • NextGate Deliverable: Executive Summary, Business Architecture Diagram
Project Duration	<ul style="list-style-type: none"> • After pre-requisites are validated, anticipated set up duration is 30 days.

Except as otherwise herein specifically noted or modified, all terms and conditions of this Exhibit shall remain in full force and effect.

SCHEDULE 6

Business Associate Agreement

This Business Associate Addendum (the "Addendum") is made as of the 1st day of October 2018 (the "Effective Date"), by and between NextGate Solutions, Inc. ("Business Associate") and County of Monterey, a political subdivision of the State of California ("County"), on behalf of Natividad Medical Center ("NMC") ("Covered Entity") (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Parties desire to enter into this Agreement in order to comply with the privacy regulations (the "Privacy Rule") and security regulations (the "Security Rule") adopted by the U.S. Department of Health and Human Services ("HHS") at 45 C.F.R. Parts 160 and 164, as promulgated by HHS in accordance with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"); and the HHS regulations promulgated on January 25, 2013, entitled the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act," hereinafter such regulations and Acts collectively referred to as the "HIPAA Requirements";

WHEREAS, Covered Entity and Business Associate entered into an Agreement dated October 1, 2018, (the "Agreement"), under which Business Associate provides services to Covered Entity ("Services");

WHEREAS, in connection with these Services, Business Associate meets the definition of a "business associate" as defined by 45 C.F.R. Section 160.103; and

WHEREAS, the Parties desire to enter into this Addendum in order to ensure the Covered Entity receives adequate and satisfactory assurances from Business Associate that Business Associate and its subcontractors will comply with all applicable obligations under the HIPAA Requirements;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions.

Unless otherwise provided in this Addendum, all capitalized terms in the Addendum will have the meaning set forth in the HIPAA Requirements. References to Protected Health Information (hereinafter "PHI") shall be construed to include Electronic Protected Health Information, and references to PHI shall mean only the PHI that Business Associate uses, discloses, creates, receives, maintains and/or transmits for or on behalf of Covered Entity to perform the Services. For purposes of this Addendum, capitalized words shall have the definitions given or used by the HIPAA Requirements as of the compliance deadline established by such requirements. The Parties hereby acknowledge that the definition of PHI includes Genetic Information, as defined at 45 C.F.R. §160.103.

2. Obligations of Business Associate.

- A. Compliance with Laws. Vendor acknowledges and agrees it meets the definition of a "business associate" as defined at 45 C.F.R. §160.103. Business Associate shall only create, receive, use, disclose, maintain, and/or transmit PHI in compliance with this Agreement and the Confidentiality Requirements, including 45 C.F.R. §164.504(e). Business Associate agrees to comply with applicable federal and state laws, including but not limited to the HIPAA Requirements.

- B. Business Associate Agreements with Subcontractors. If Business Associate subcontracts any portion of the Services to any agent or subcontractor as those terms are defined or otherwise used in the HIPAA Requirements (hereinafter referred to individually as a "Subcontractor" or collectively as "Subcontractors"), prior to any Subcontractor accessing, creating, using, disclosing, maintaining, transmitting or receiving any PHI Business Associate shall require such Subcontractor to agree in writing to the same business associate agreement restrictions and conditions set forth in the HIPAA Requirements, including but not limited to the implementation specifications of 45 C.F.R. §§164.314, 164.410, 164.502, and 164.504(e); provided further, such agreement shall require the Subcontractor to comply with the HIPAA Requirements, including but not limited to the Security Standards.
- C. Use of PHI. Except as otherwise permitted by law and this Addendum, Business Associate shall only create, receive, use, disclose, maintain, and/or transmit PHI in compliance with the Agreement, this Addendum and the HIPAA Requirements, whichever is more protective of patient confidentiality and patient rights. In accordance with the foregoing, Business Associate shall use PHI (i) to perform the Services, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out Business Associate's legal responsibilities, provided that such uses are permitted under federal and applicable state law. Additionally, Business Associate may use and disclose PHI for Data Aggregation purposes relating to the health care operations of the Covered Entity.
- D. Disclosure of PHI. Business Associate may disclose PHI if required to do so by law. In addition to the requirements of Section 2.B. regarding Business Associate Agreements with Subcontractors, Business Associate may disclose PHI to a third party, including any Subcontractor, as necessary for such third party to assist Business Associate in performance of the Services; provided, however, that prior to any such disclosure Business Associate: (a) obtains reasonable written assurances from the third party, including any Subcontractor, to whom the PHI is disclosed that the third party will hold such PHI confidentially and will use or disclose such PHI only as Required by Law or for the purpose(s) for which the PHI was disclosed to the third party; and (b) requires the third party, including any Subcontractor, to agree to notify the Business Associate promptly, but in no event later than five (5) business days, following any instance of which such third party is aware that PHI has been used or disclosed for a purpose that is not permitted by this Addendum or the HIPAA Requirements. Business Associate further agrees that any disclosures of PHI made by Business Associate to any third party, including Subcontractors, shall comply with the HIPAA Requirements, including but not limited to the Security Standards.
- E. Report of Misuses and/or Inappropriate Disclosures of PHI. Business Associate shall: (1) report to the Covered Entity any use or disclosure of PHI not permitted by this Addendum or the HIPAA Requirements, such report to be made within five (5) business days of the Business Associate becoming aware of such misuse or inappropriate disclosure; (2) mitigate, to the extent practical, any harmful effect that is known or reasonably foreseeable to Business Associate and is the result of a use or disclosure of PHI by Business Associate or any Subcontractor in violation of the Addendum, the HIPAA Requirements or other applicable law.
- F. De-identification and Limited Data Sets. Covered Entity retains all rights in the PHI. Except as otherwise may be required by law, Business Associate shall not de-identify PHI without the express written consent of Covered Entity.
- G. Safeguards by Business Associate and Subcontractors. Business Associate represents and warrants that it has adopted, implemented and shall continue to maintain, for so long as Business Associate has access to, maintains, uses or discloses Data, as defined below, adequate and appropriate safeguards to: (i) protect the confidentiality and security of PHI and other individually identifiable information obtained from, or created on behalf of, Covered Entity (for purposes of this Section 2.G., "Data"), and (ii) prevent the use or disclosure of Data other than as provided for by this Addendum, the HIPAA Requirements and other applicable law. Business Associate's administrative, physical and technical safeguards protecting Data shall comply with applicable law,

the HIPAA Security Rule, HHS technical guidance, and any privacy and security guidelines or standards issued by the National Institute for Standards and Technology ("NIST") regarding individually identifiable information, including Data. Business Associate shall ensure that each Subcontractor implements the Security Standards to protect the confidentiality, integrity, and availability of the Data that it uses, discloses, creates, receives, maintains and/or transmits on behalf of Business Associate and/or the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the Subcontractor under this Addendum as if such act, failures or omissions were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly agrees that its Subcontractors will be specifically advised of, and will warrant in writing to comply in all respects with, the terms of this Addendum.

- H. Minimum Necessary. Business Associate shall limit its uses and disclosures of PHI to the "Minimum Necessary," that is, Business Associate shall only use and further disclose PHI as permitted by this Addendum and the HIPAA Requirements (including but not limited to the minimum necessary standard set forth at 45 C.F.R. Section 164.502(b)), to accomplish the intended purpose of such use, disclosure, or request to use or disclose.
3. Individual Rights. Business Associate agrees as follows:
 - A. Individual Right to Copy or Append PHI in the Designated Record Set. In the event Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall promptly take all actions necessary for Covered Entity to comply with 45 C.F.R. Sections 164.524 and 164.526. Business Associate shall provide any request it (or its Subcontractors) receives from an Individual for access or amendment under such regulations to Covered Entity within five (5) business days of receipt. Business Associate agrees that only Covered Entity shall respond to requests received by Business Associate (or its Subcontractors) from Individuals.
 - B. Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an Accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528, and to make this information available to Covered Entity within fifteen days of Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for Accounting of Disclosures. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI. If an Individual requests an Accounting of Disclosures directly from Business Associate, Business Associate will forward the request and its Disclosure record to Covered Entity within five (5) business days of Business Associate's receipt of the Individual's request. Covered Entity will be responsible for preparing and delivering the Accounting to the Individual. Business Associate will not provide an Accounting of its Disclosures directly to any Individual.
 4. Internal Practices, Policies and Procedures. Except as otherwise specified herein, Business Associate shall make available information regarding Covered Entity's and Business Associate's internal practices, policies and procedures relating to the use and disclosure of PHI to HHS or its authorized agents for the purpose of determining Covered Entity's and/or Business Associate's compliance with the HIPAA Rules. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by HHS or its authorized agents. To the extent permitted by law, Business Associate shall promptly notify Covered Entity in writing regarding any requests for such information received from HHS or its authorized agents.
 5. Withdrawal of Authorization. If the use or disclosure of PHI in this Addendum is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the

extent it has relied on such use or disclosure, or if an exception under the HIPAA Requirements expressly applies.

6. Security Incidents. Business Associate agrees to report to the Covered Entity any Security Incident of which Business Associate becomes aware, as follows:
 - A. Attempted incidents, i.e., those incidents that are unsuccessful and neither penetrate the information systems nor cause any threat of harm to such systems, shall be reported to the Covered Entity within thirty (30) days of the Covered Entity's written request. The Covered Entity will not make such a request more frequently than quarterly.
 - B. Successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operation shall be reported to the Covered Entity immediately.
7. Breaches of Unsecured PHI. Business Associate will report in writing to Covered Entity any Breach of Unsecured Protected Health Information, as defined in the Breach Notification Regulations, 45 C.F.R. Section 164.400 *et seq.* (each a "HIPAA Breach"), within five (5) business days of the date Business Associate Discovers the Breach, and shall provide Covered Entity with all information required by 45 C.F.R. Section 164.410 that Business Associate has or may obtain without unreasonable difficulty. Business Associate will provide such information to Covered Entity in the manner required by the Breach Notification Regulations, and as promptly as is possible. Business Associate will reimburse Covered Entity for any reasonable expenses Covered Entity incurs in notifying Individuals of such Breach experienced by Business Associate or Business Associate's Subcontractors, and for all reasonable expenses Covered Entity incurs in mitigating harm to those Individuals as well as Covered Entity. This Section shall survive the expiration or termination of this Addendum and shall remain in effect for so long as Business Associate maintains PHI.
8. Data Breach Notification and Mitigation Under State Laws. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information accessed, maintained, created, transmitted, used or disclosed on behalf of Covered Entity (including, but not limited to, PHI and referred to in this Section 8 as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) notify Covered Entity within five (5) business days (or such shorter time frame as required by applicable State law) of any State Breach; (ii) cooperate and assist the Covered Entity with any investigation into any State Breach or alleged State Breach; (iii) cooperate and assist the Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iv) comply with Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by any State Breach; and (v) assist with the implementation of any decision by any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents). This Section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains Individually Identifiable Information, including PHI.
9. Term and Termination.
 - A. Term. This Addendum shall be effective as of the Effective Date and shall be terminated concurrently with the termination of the Agreement, or as otherwise provided in this Addendum.
 - B. Termination for Breach. Either Party may terminate the Agreement (the "Terminating Party") upon written notice to the other Party (the "Terminated Party") if the Terminating Party determines that the Terminated Party has breached a material term of this Addendum. The Terminating Party will provide the Terminated Party with written notice of the breach of this Agreement and afford the

Terminated Party the opportunity to cure the breach to the satisfaction of the Terminating Party within thirty (30) days of the date of such notice. If the Terminated Party fails to timely cure the breach, as determined by the Terminating Party in its sole discretion, the Terminated Party may terminate the Agreement.

- C. Effect of Termination. Upon termination of this Addendum for any reason, Business Associate agrees to return or destroy all PHI received from, or accessed, maintained, used, disclosed and/or transmitted for or on behalf of, Covered Entity by Business Associate (or its Subcontractors). If Business Associate reasonably determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Addendum to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.
10. Indemnification. To the fullest extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity and Covered Entity's officers, directors, employees, agents, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, costs related to mitigation and equitable relief), for any damage or loss incurred by an Indemnitee arising out of, resulting from, or attributable to: (1) any HIPAA Breach and/or State Breach experienced by Business Associate, its Subcontractors or its agents, and (2) any act, omission, negligence or misconduct of Business Associate, any Business Associate Subcontractor or any agent of Business Associate in connection with the performance of the duties, representations and obligations of Business Associate, its Subcontractors and its agents' under this Addendum (hereinafter a "Claim," and collectively "Claims"). To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of its Subcontractors and agents in furnishing the services as if they were the Business Associate's own acts, failures or omissions. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity or any equitable remedy. Notwithstanding the foregoing, in no event shall Business Associate be liable to an Indemnitee to the extent a Claim arises from the negligence or misconduct of the Indemnitee.

The foregoing indemnification obligation is conditioned on Business Associate having sole control over the defense and settlement of any claim that is subject to indemnification under this Agreement, provided that (a) Covered Entity has approved such settlement or judgment in writing in advance, which approval shall not be unreasonably denied, (b) Covered Entity chooses or approves in writing (which shall not unreasonably be withheld) the counsel selected by Business Associate to defend such claim, and (c) Covered Entity approves in advance and in writing the settlement of all Claims. Business Associate may not admit fault or negligence by Covered Entity in the settlement of any Claim.

Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action; provided, however, that Covered Entity's costs associated with such cooperation shall be reimbursed by Business Associate.

The rights and obligations set forth in this Section 9 shall survive termination of the Agreement and this Addendum, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

11. Mitigation. If Business Associate violates this Addendum, the HIPAA Requirements, state medical record privacy laws, and/or State Breach laws, Business Associate shall promptly mitigate any damage caused by such violation or breach; provided, however, that Business Associate admits no negligence or fault by Covered Entity as part of its mitigation efforts.
12. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

13. Insurance. Business Associate shall maintain at its own expense insurance covering Business Associate for claims, losses, liabilities, judgments, settlements, lawsuits and other damages arising out of its performance under this Addendum, and any negligent or otherwise wrongful acts or omissions by Business Associate or any employee or agent of Business Associate, including by way of example and not limitation, any HIPAA Breach and/or State Breach experienced by Business Associate with Covered Entity listed as an additional insured. Such policy or policies of insurance shall provide limits of liability in the minimum amount of \$1/3m in errors and omissions insurance. Upon Covered Entity's request, Business Associate or Business Associate's agent shall provide Covered Entity with a copy of all certificates of insurance evidencing the existence of all coverage required hereunder. Business Associate shall require its insurance carriers or agents to provide Covered Entity, and Business Associate shall also provide Covered Entity, with not less than ninety (90) days prior written notice of a material change in the liability policies of Business Associate.
14. Individually Identifiable Information and PHI to Remain in United States. Business Associate represents and warrants that in no event shall Individually Identifiable Information or PHI be stored or otherwise maintained by Business Associate or its Subcontractors outside the United States and its territories (the "U.S."). Business Associate further agrees to use commercially reasonable efforts to prevent the transmission of Individually Identifiable Information and/or PHI via a method or through use of a medium that is likely to result in such information being sent outside the U.S., regardless of the length of time (or lack thereof) such information may be outside the U.S.
15. Miscellaneous.
- A. Survival. The respective rights and obligations of Business Associate under this Addendum shall survive the termination of this Addendum and shall continue for so long as Business Associate, its Subcontractors or agents maintain PHI.
- B. Notices. Any notices pertaining to this Addendum shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:
- If to Covered Entity:
- Natividad
1441 Constitution Blvd.
Salinas, CA 93912-1611
Attn: Dr. Gary Gray, Chief Executive Officer
- If to Business Associate:
- NextGate Solutions, Inc.
3579 E. Foothill Blvd. #587
Pasadena, CA 91107
Attn: Edward Yang, COO
- C. Amendments. This Addendum may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Addendum from time to time as necessary to comply with the HIPAA Requirements.
- D. Choice of Law. This Addendum and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.

- E. Assignment of Rights and Delegation of Duties. This Addendum is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign any of its rights or delegate any of its obligations under this Addendum without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
- F. Nature of Addendum. Nothing in this Addendum shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties. The Parties explicitly agree that Business Associate is an independent contractor of Covered Entity, and not an agent of Covered Entity.
- G. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Addendum may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
- H. Equitable Relief. Any disclosure or misappropriation of PHI by Business Associate in violation of this Addendum will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
- I. Severability. The provisions of this Addendum shall be severable, and if any provision of this Addendum shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Addendum shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
- J. No Third Party Beneficiaries. Nothing in this Addendum shall be considered or construed as conferring any right or benefit on a person not party to this Addendum nor imposing any obligations on either Party hereto to persons not a party to this Addendum
- K. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Addendum are inserted for convenience only, do not constitute a part of this Addendum and shall not affect in any way the meaning or interpretation of this Addendum.
- L. Entire Addendum. This Addendum, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Addendum is in effect, constitutes the entire Addendum between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, Addendums, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistency or conflict between any provisions of this Addendum in any provisions of the Agreement, Exhibits, Riders, or amendments, the provisions of this Addendum shall control.
- M. Interpretation. Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Addendum shall prevail over the provisions of any other Agreement

or Addendum that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Addendum or the HIPAA Requirements.

- N. **Regulatory References.** A citation in this Addendum to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
- O. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

Agreed to:

BUSINESS ASSOCIATE

By: 
(Authorized Signature)

Name: Edward Yang
(Type or Print)

Title: COO

Date: August 29, 2018

COVERED ENTITY

By: _____
(Authorized Signature)

Name: _____
(Type or Print)

Title: _____

Date: _____

SCHEDULE 7

Travel Guidelines

- Any travel to the client site will be pre-approved by the Customer.
- Expenses for all approved travels are to be paid for by the Customer.
- NextGate staff will submit receipts from travel to the client upon completion and invoicing of the travel.
- Expenses for all approved travels are to be paid for by the Customer.
- NextGate staff will adhere to the County's detailed Travel and Expense Policy.

SCHEDULE 8

Customer Billing Information

For any questions or communication regarding billing, please contact
Accounts Receivable @ (626) 340-4990 or NGSAR@NextGate.com

CUSTOMER INFORMATION:	
Customer Name:	Natividad Medical Center
Billing Address:	PO Box 81611 Salinas, CA 93912-1611

CONTACTS – INVOICE APPROVAL & PAYMENT	
Approving Manager:	Ari Entin, Chief Information Officer
Email Address:	<u>EntinA@natividad.com</u>
Phone #:	831-783-2564
Accounts Payable Manager:	
Email Address:	AccountsPayableEmail@natividad.com
Phone #:	831-755-4111

SCHEDULE 9

Marketing Collaboration

This Schedule sets forth the marketing and publicity activities that Customer and NextGate agree to perform.

1. MARKETING ACTIVITIES

- i. One (1) press release published within 14 days of the execution of the Master Agreement to announce the business relationship between the parties.
- ii. One (1) press release published within 30 days of successful "Go Live" of the NextGate SaaS EMPI Solution by Customer.
- iii. Customer agrees, with prior permission, to allow NextGate to use the name, logo, state seal, or similar identifier in the production of the activities listed in the Schedule. In addition, NextGate is allowed, with prior permission, to use Customer's name and logo on NextGate's website in relation to the activities described in this Schedule.

2. RESPONSIBILITIES

- i. NextGate will be responsible for the coordination of all marketing efforts.

3. REVIEW OF CONTENT PRIOR TO RELEASE

All marketing content will be made available for Customer's review and approval prior to the content being published.

4. COSTS INCURRED FOR MARKETING ACTIVITY

Costs incurred for the activities listed in this Schedule 9 will be the responsibility of NextGate.

SCHEDULE 10

RFP Response

[See Attached]