

**AGREEMENT FOR MANAGEMENT
OF THE ACUTE REHABILITATION
UNIT AT NATIVIDAD MEDICAL CENTER**

PROFESSIONAL SERVICES AGREEMENT

This Agreement for Services (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "the County"), on behalf of Natividad Medical Center, a general acute care teaching hospital wholly owned and operated by the County ("NMC"), and RehabCare Group of California, LLC d/b/a Kindred Hospital Rehabilitation Services (hereinafter "Contractor")(each a "Party" and collectively "the Parties").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.

County hereby engages Contractor to perform, and Contractor hereby agrees to perform, the services described herein and in conformity with the terms of this Agreement. The services are generally described as follows: **management of the acute rehabilitation unit at NMC (the "Program")**. For purposes of this Agreement, the Operational Date is May 1, 2017.

The purpose and intent of this Agreement is to assist County in ongoing management of the Program. The Parties do not intend this Agreement, or any aspect of the operation of the Program, to form a partnership, joint venture, or any other form of legal association. Neither Party shall be held to be a fiduciary or trustee, or to have any fiduciary obligation, to the other Party. Contractor acknowledges and agrees that County has and will maintain throughout the Term of this Agreement, sole and complete ownership and control over the use and operation of its facilities to be used by the Program.

County and Contractor covenant and agree that none of their individual employees shall be considered employees or agents of the other. Each party hereto agrees to conduct itself in accordance with applicable laws and regulations in order to maintain the independent contractor status of this relationship. Except as specifically set forth herein, County shall not, by entering into any performance under this Agreement, become liable for any of the existing or future obligations, liabilities or debts of Contractor, and Contractor shall not, by providing services to County, assume or become liable for any of the existing or future obligations, liabilities, or debts of County.

PAYMENTS BY NMC. NMC shall pay the Contractor in accordance with the payment provisions set forth herein, subject to the limitations set forth in this Agreement. The total amount payable by County to Contractor under this Agreement shall not exceed the sum of \$5,000,000 for a five (5) year term as designated in Article VI herein, excluding compensation for Temporary Therapy Services under Article IV.

ARTICLE I PRELIMINARY MATTERS

- 1.1 Medical Director Services.** Except to the extent otherwise provided herein, Contractor shall not be responsible for providing any Medical Director services associated with the Program. County shall bear the responsibility for employing a qualified Medical Director or otherwise arranging for the provision of such Medical Director services. County shall assure that the Medical Director shall staff the Program as is required to comply with federal Medicare regulations and other federal, state and local laws and regulations relating to the operation of a rehabilitation facility. The Medical Director shall be available on a seven (7) day a week basis to coordinate with patients' physicians in connection with admission of patients into and/or discharge of patients from the Program. County shall consult with

Contractor in selecting a Medical Director for the Program, but County shall retain sole and absolute discretion in selecting, disciplining, and/or terminating any such Medical Director.

ARTICLE II CONTRACTOR'S RESPONSIBILITIES

- 2.1 Scope of Services.** Contractor shall assume responsibility for implementing the Program at NMC by providing the Acute Rehabilitation Unit services and such services as are further provided herein related to operation of the Program, other than Medical Director services, subject at all times to the County's ultimate control of, and authority over, the Program (collectively, the "Services").
- 2.2 Contractor Recommendations.** In providing the Services, Contractor will, from time to time, be required to make recommendations to County regarding actions which County and/or NMC should take. County shall comply with Contractor's recommendations provided that County determines, in its sole discretion, that such recommendations promote the quality and/or effectiveness of Program services.
- 2.3 Staffing and Performance Expectations.** Contractor shall provide the following staff for the Program as follows:
- (a) Program Director.** The Program Director shall be Contractor's on-site representative responsible for day-to-day management of the Program. County, in consultation with Contractor, shall designate a County employee with whom the Program Director will maintain a day-to-day reporting relationship. County shall consult with Contractor prior to changing the reporting relationship of the Program Director.
 - (b) Clinical Liaison.** The Clinical Liaison shall develop and implement educational programs directed both at NMC's medical staff and employees and members of the community in general.

- (c) **Admissions Coordinator.** The Admissions Coordinator shall be responsible for providing administrative support to the patient admission process, contribute to program development, problem solving and managing the efficiency of admissions process and shall coordinate such efforts with the interdisciplinary team.
- (d) **Personnel.** The following types of other personnel, sufficient to provide patients with appropriate care, consistent with applicable industry and accrediting body standards:
 - (i) Rehab/IRF-PAI Coordinator
 - (ii) Activities Coordinator

2.4 Contractor Personnel. Contractor shall be responsible for the payment of: (a) wages, employee benefits, workers' compensation insurance, liability insurance, and other compensation for its employees; and (b) all fees of independent contractors, to the extent each is engaged by Contractor to provide Services to County pursuant to this Section (collectively, the "**Contractor Personnel**"). Contractor Personnel providing Services to County pursuant to this Section shall not be, and shall not be deemed to be for any purpose, employees of County. Pursuant to Section 3.7, all Contractor Personnel will, however, be subject to County's customary post-offer/pre-employment and periodic health screening provided for County's employees, which County will conduct in a manner consistent with the manner in which it conducts such procedures for County's own employees, at no charge or cost to Contractor.

The initial appointment, of Contractor Personnel from time to time during the term of this Agreement by Contractor, shall require the prior approval of County, which approval County may not unreasonably withhold. If, in County's good faith judgment, any Contractor Personnel has failed to perform adequately his or her material job responsibilities or has

failed to act in accordance with applicable standards of professional and ethical, conduct, then County shall notify Contractor in writing. Within five (5) business days of receiving such notice, Contractor will meet (either in person or by telephone) with County to review the reasons for County's dissatisfaction and attempt to cure the situation by taking such action as is mutually agreed by the Parties, consistent with Contractor's human resource policies and procedures. If, in the good faith judgment of County, the performance of such Contractor Personnel remains unsatisfactory, then County may request that he or she be removed from providing services in connection with the Program, and Contractor shall comply with such request. Notwithstanding the foregoing, County shall have the right to require Contractor to remove and replace any Contractor Personnel immediately if County, in its good faith judgment, determines that the continued presence of any particular Contractor Personnel jeopardizes patient safety or otherwise has a material adverse effect on the Program. Should County determine that that the continued presence of any particular Contractor Personnel jeopardizes the delivery of quality patient care then County shall notify Contractor in writing. Within five (5) business days of receiving such notice, Contractor will meet (either in person or by telephone) with County to review the reasons for County's dissatisfaction and attempt to cure the situation by taking such action as is mutually agreed by the Parties.

Contractor agrees: (i) to independently conduct credentialing of all Contractor Personnel prior to the assignment by Contractor of such personnel to provide services at County; (ii) to provide County with a job description and credential documentation for all Contractor Personnel who will be assigned to provide services at NMC; (iii) to provide County with such other information regarding Contractor personnel as County may from time to time reasonably request and which Contractor is allowed lawfully to provide; (iv) to pay all

wages, benefits, workers' compensation insurance, liability insurance, and other compensation for all Contractor Personnel employed by Contractor to provide services to County and NMC; and (v) to pay all fees of independent contractors engaged by Contractor to provide services to County pursuant to this Agreement.

2.5 Licensure and Credentialing. Contractor shall ensure that all Contractor Personnel associated with the Program who are professionals will be licensed as required by applicable federal and state laws, and will meet applicable credentialing requirements of County as described in the Medical Staff bylaws of NMC or other similar requirements on the date such individuals are assigned by Contractor to provide Services at NMC and thereafter for so long as such individuals provide Services at NMC. County agrees to assist Contractor Personnel to obtain appropriate privileges as expeditiously as possible, provided the individual meets all applicable requirements.

2.6 Orientation; Staff Training. Contractor shall provide orientation regarding the Program for the Directors of NMC's departments and other NMC employees and staff in need of such orientation for the operation of the Program, and training for NMC's nursing staff assigned to the Program.

2.7 Policies and Procedures.

(a) New Policies/Procedures: Contractor shall propose for County's consideration and approval policies and procedures for the Program to be adopted by appropriate governing bodies within The County. All Program Policies must: (i) be reviewed and approved by County; (ii) be reviewed and approved by the Medical Staff of NMC; (iii) be integrated with NMC's existing policies and procedures relating to clinical and administrative operations, including without limitation, quality of care policies and procedures; (iv) comply with the terms of this Agreement; and (v) be

consistent with generally recognized and prevailing standards in NMC's service area for the delivery of Program services.

(b) Compliance with Existing Policies/Procedures: Contractor shall ensure that all of Contractor's Personnel fully comply with NMC's policies and procedures to the extent made available to Contractor.

2.8 Accreditation.

(a) NMC Accreditation. Contractor shall assist County in County's preparation of materials relating to the Program in connection with the accreditation of NMC by the Joint Commission or a similar accreditation organization.

(b) Program Accreditation. If requested by County, Contractor shall assist the County in the County's preparation of materials required to obtain and/or maintain accreditation of the Program by the Commission on Accreditation of Rehabilitation Facilities ("CARF") or a similar accreditation organization.

2.9 Space Planning. If requested by County, Contractor shall provide space planning recommendations to County with respect to efficient and effective use of the Program space.

2.10 Outcome Monitoring. Contractor shall implement and operate its own evaluation system to monitor, measure, and report to County clinical and operational Program outcomes at no additional expense to County.

2.11 Quality Improvement. Contractor shall provide continuous quality improvement systems (including but not limited to process improvement reasonably approved by County) with respect to Services provided in the Program and shall provide NMC with quality improvement reporting on a quarterly basis each year during the term of the Agreement.

- 2.12 Additional Responsibilities.** Contractor shall provide the related Community Services Development and/or Communications Activities described in Exhibit A, attached hereto under the Section “Contractor Responsibilities”.
- 2.13 Program Exclusivity.** Each Party represents and warrants to the other that it is not a party to or otherwise obligated under any agreement with any other person or entity which provides or will provide any services that are or will be competitive with the Program. Each Party agrees, on behalf of itself and its affiliates and Representatives, that throughout the Term of this Agreement, whether acting as a principal on its own account, or jointly with others as an agent, employee, contractor, stockholder, or general or limited partner, that without the other Party’s prior written consent, it will not, and will not permit any of its affiliates or representatives to, directly or indirectly: (i) own, operate or establish, provide services for or on behalf of, or otherwise engage or participate in, or (ii) permit or assist any other person or entity in owning, operating, establishing, providing services for or on behalf of or engaging or participating in the operation of acute inpatient rehabilitation units at, any hospital or other facility in the County of Monterey that provides services that are competitive with the Program.

ARTICLE III COUNTY'S RESPONSIBILITIES

- 3.1 Space, Equipment, and Materials.** County shall provide and maintain the space, equipment, and other materials and supplies required to operate the Program. The Program space will comply with all applicable federal, state and local requirements for operation of the Program and will be sufficient to support both the patient care and the management / administrative requirements of the Program. So long as economically feasible, County shall configure the Program space consistent with Contractor's recommendations provided that County determines that such recommendations will maximize the efficient and

effective use of Program space.

3.2 Quarterly Management Meetings. At least once per calendar quarter, NMC's senior management team (e.g., CEO, CFO, CNO) shall meet with Contractor's Program Director and members of Contractor's senior management team (e.g., President, Regional Vice President) to discuss the Program and strategies for improving the Services provided through the Program.

(a) **General Hospital Services.** County shall provide linen, laundry, dietary, medical records, pastoral care, clerical and other general services, which Contractor does not agree to provide in this Agreement, with respect to Program patients in accordance with NMC's general standards for such services. County shall provide diagnostic and ancillary services to Program patients as ordered by each patient's attending physician. County shall provide the Program with dedicated (full-time or part-time) nursing personnel sufficient to staff a twenty four (24) bed Program. The level of nurse staffing and the manner in which County nursing personnel perform and document the nursing care they provide shall be consistent with applicable industry and accreditation standards.

(b) County shall ensure that all professional personnel who are required to hold state licenses and/or professional certifications have such licenses and/or certifications throughout the duration of their assignment to the Program.

3.3 County Personnel.

(a) County personnel, including without limitation the Medical Director and nursing and clerical personnel assigned to the Program, shall not be, and shall not be deemed to be for any purpose, employees of Contractor. County shall be responsible for the compensation (including benefits, workers' compensation insurance, and

liability insurance) for its own employees.

(b) County shall also provide therapy and other personnel sufficient to provide patients with appropriate therapy care, consistent with applicable industry and accrediting body standards. County shall ensure the provision of therapy services is in compliance with regulatory requirements and is sufficient to meet patient care. Should County be unable to secure the necessary therapy staff, County may request Contractor to supply such staff as needed, as set forth more fully in Article IV herein.

3.4 Distinct Part Status. County shall use commercially reasonable efforts and perform all acts necessary to maintain the Program as a distinct-part, Diagnosis Related Group ("DRG")-exempt rehabilitation unit for purposes of participation in the federal Medicare program.

3.5 Admissions; Billing. County shall admit patients to the Program in accordance with County's standard admission policies and in accordance with treatment protocols appropriate for the Program. County shall invoice Program patients in County's name for Services rendered through the Program, as well as for any ancillary or miscellaneous services, except for professional service fees, which are billed directly as appropriate. County shall set daily County service rates to be charged for Program Services, after consultation with Contractor.

3.6 Contractor Personnel Screening. County shall provide all of Contractor's Personnel with the same customary post-offer/pre-employment and periodic health screening procedures that County provides to its own employees, in a manner consistent with the manner in which it conducts such procedures for its own employees and at no charge or cost to Contractor.

3.7 Additional Responsibilities. County shall provide the related Community Services Development and/or Communications Activities described in Exhibit A, attached

hereto, as set forth under the Section "County Responsibilities."

**ARTICLE IV
TEMPORARY THERAPY SERVICES**

- 4.1 Temporary Therapy Services.** The parties agree that temporary staff may be needed by County for the provision of physical and occupational therapy and speech-language pathology services ("Temporary Therapy Services"). Such Temporary Therapy Services staff may include Physical and Occupational Therapists, Speech Pathologists, Physical Therapy Assistants, Rehabilitation Technicians, Certified Occupational Therapy Assistants, and Social Workers (hereinafter collectively referred to as "Temporary Therapy Personnel"). The parties also agree that when additional Temporary Therapy Personnel are needed, as determined by County after consultation with Contractor, that County shall make reasonable efforts to arrange for the necessary Temporary Therapy Personnel. In the event that County is unsuccessful in arranging for the needed Temporary Therapy Personnel, County will promptly notify Contractor and request at that time that Contractor provide Temporary Therapy Personnel who are Contractor's full time or part time employees. Contractor shall not assign registry staff to NMC under this Section. The parties shall mutually agree as to the scheduling for the provision of any needed Temporary Therapy Personnel. The parties also agree that should County hire a County employee to fill any Temporary Therapy Services positions then being filled by Contractor's employees, that County shall give Contractor a fourteen (14) day notification that Contractor's employee(s) shall be replaced with County's employee(s).
- 4.2 Equipment and Supplies.** County shall provide all equipment and supplies that are required with respect to the provision of the Temporary Therapy Services.
- 4.3 Physical Examinations and Screenings.** To the extent County requires a physical

examination or other test of any personnel performing services pursuant to this Agreement who are employees of Contractor, County shall bear all costs of such tests.

4.4 Compensation for Temporary Therapy Services. Any and all Temporary Therapy Services that are provided by Contractor's employees pursuant to this Article IV will be compensated separately from the other Services provided under this Agreement. Both parties agree that under these circumstances, Contractor shall bill County for all Temporary Therapist Personnel provided by Contractor in accordance with Exhibit B attached hereto.

4.5 Invoices; Payment. Contractor shall submit to the Contract Administrator of the County an invoice for the fees payable for Temporary Therapist Personnel which Contractor provides at County's request. All invoices shall be submitted in a format acceptable to County. If not otherwise specified, the Contractor may submit such invoices periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. Each invoice shall set forth the amounts claimed by Contractor for the previous period, together with documentation supporting the amounts claimed satisfactory to County, and such other information as the County may require. The Contract Administrator or his/her designee shall certify the invoice within thirty (30) days of the date of the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of the date of such certification (the "Due Date"). Based on the foregoing deadlines, the Due Date will never be later than sixty (60) days after the date of the invoice.

ARTICLE V FINANCIAL ARRANGEMENTS

5.1 Compensation for Services.

- (a) Management Fees.** County shall pay Contractor a flat monthly fee of \$82,083.00 (“Management Fee”) for the provision of all Services rendered by Contractor pursuant to this Agreement, with the exception of Temporary Therapy Services as set forth in Section 4.4 herein.

5.2 Appeals of Denied Claims. As soon as practicable following Contractor’s receipt of a Denial Notice from the Medicare Program of a claim for Program Services from County, Contractor shall, at its cost, appeal the Denied Claim in accordance with applicable Medicare regulations through the Administrative law Judge level of appeal. For purposes of this Agreement, a “Denial Claim” will mean any denial, disallowance or reduction of reimbursement based upon a clinical finding of a lack of medical necessity for Services rendered by Contractor or a lack of technical compliance related to components under Contractor control, provided that such denial, disallowance or reduction of reimbursement: (i) results from Contractor’s failure to perform its obligations under this Agreement; (ii) the notice of Denial was received by NMC for a period during which Contractor was Program manager under this Agreement; and (iii) did not result from the failure of NMC, its agents, or employees to: (a) comply with any provisions of this Agreement; (b) submit a valid accurate claim for reimbursement to the MAC/FI or agency no later than four (4) months after the Services were rendered; (c) properly maintain medical records; or (d) correctly determine and comply with applicable third-party payor coverage requirements or communicate to Contractor a rehabilitation patient's eligibility for third party-payor coverage or change in coverage status. County shall cooperate fully with Contractor, including providing timely access to necessary medical records and personnel, as well as timely completion of all appeal forms, and by notifying Contractor within ten (10) calendar days of any communication received by County related to the Denied Claim or the appeal process. If such Denied Claims are reversed through the

aforementioned appeals processes, NMC will receive its reimbursements determined by the reversal through the appeals process and Contractor shall keep all service fees paid to it by NMC. If, however, Contractor does not prevail in the appeals processes, through the Administrative Law Judge level of appeal (“unsuccessfully appealed claim”), Contractor shall refund to County \$1,867.00 per unsuccessfully appealed claim. If County experiences an increase of more than 10% in unsuccessfully appealed Denied Claims, the parties agree to readdress appeals processes and reimbursement arrangement for Denied Claims.

5.3 Invoices; Payment. Contractor shall submit to the NMC Accounts Payable Division an invoice for the fees payable by County pursuant to Section 5.1. If not otherwise specified, the Contractor may submit such invoice periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. 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 as the County may require. The Contract Administrator or his/her designee shall certify the invoice within thirty (30) days of the date of the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor- Controller for payment. The County Auditor-Controller shall pay the amount certified within thirty (30) days of the date of such certification (the "Due Date").

5.4 Right of Offset. Notwithstanding any other provision of this Agreement, to the extent that County has made or makes any payments to Contractor under this Agreement in excess of amounts owed to Contractor hereunder, County shall have the right to offset subsequent payments due to Contractor under this Agreement to the extent of such overpayments. If

County exercises such right of offset, County shall inform Contractor in writing of the amount of overpayments County has determined, as well as the amount of offset County is exercising with respect to each invoice submitted to County by Contractor.

5.5 Medicare Denials Management. To the extent Contractor provides Services to a Medicare patient hereunder, and Medicare denies payment to County for such Services based solely or in part on incorrect or untimely documentation by Contractor, as defined by regulations of or other guidance from Medicare (hereinafter a "Denied Claim"), then County shall notify Contractor in writing of such Denied Claim (a "Denial Notice") within ten (10) calendar days of County's receipt of a notice of denial from Medicare.

5.6 Annual Rate Change to Service Fee. The Management Fee payable under Section 5.1 will be adjusted annually on the anniversary of the Operational Date to provide for an annual rate change. The rate change is based upon the Medical Care expenditure category of the Consumer Price Index for All Urban Consumers, U.S. City Average, published by the U.S. Bureau for Labor Statistics ("CPJ"), comparing the CPI for the fourth (4th) month preceding the then occurring anniversary date with the CPI for the same month of the prior year and changing the fees payable under this Agreement in the same percentage that such index has changed between such respective months.

ARTICLE VI AGREEMENT TERM AND TERMINATION PROVISIONS

6.1 Term. This Agreement is effective on May 1, 2017, and shall continue through April 30, 2022 (the "Term") unless sooner terminated in accordance with the provisions of this Agreement.

6.2 Termination. This Agreement may be terminated as described below:

- (a) **Mutual Agreement.** This Agreement may be terminated upon the mutual agreement of the Parties to terminate this Agreement.
- (b) **Written Notice.** Either Party may terminate this Agreement for any reason, or for no reason, effective on the annual anniversary of the Operational Date by giving written notice of such termination to the other Party at least one hundred eighty (180) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. As stated in the “General Description of Services to be Provided” Section of this Agreement, the “Operational Date” is on May 1, 2017 and the “annual anniversary date” shall fall on May 1, 2018, and again on May 1, 2019, May 1, 2020, May 1, 2021 and May 1, 2022.
- (c) **Termination for Breach.** Either Party may terminate this Agreement effective thirty (30) days after giving written notice of termination to the other Party if the Party to whom such notice is given is in breach of any material covenant or other provision of this Agreement, including without limitation the failure to pay any compensation required to be paid hereunder. The Party giving such notice of termination shall set forth in the notice the facts underlying its claim that the other Party is in breach of this Agreement. Notwithstanding the foregoing, this Agreement shall not terminate in the event that the breaching party cures the breach, to the satisfaction of the non-breaching Party, prior to the effective date of the termination.
- (d) **Immediate Termination.** Either Party may terminate this Agreement immediately if
 - i. the other Party makes, negotiates, or commences negotiations for partial or complete assignment of its assets for the benefit of creditors, pursuant to statutory or common law;

- ii. suffers an appointment of a receiver, custodian, examiner, or a trustee for any of its property or assets;
- iii. terminates, liquidates, or dissolves, or files for bankruptcy;
- iv. is suspended, excluded, or otherwise becomes ineligible to participate in the Medicare, Medi-Cal, or any other federal or state government-sponsored health program;
- v. has its state license, certification as a Medicare provider, or applicable accreditation suspended, revoked, or otherwise lost, in whole or in part;
- vi. If insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this Agreement, County will immediately notify Contractor of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

6.3 Legal Event. Notwithstanding any other provision of this Agreement, if the governmental agencies that administer the Medicare, Medicaid, or other federally funded programs (or their representatives or agents), or any other federal, state, or local governmental or nongovernmental agency, or any court or administrative tribunal, pass, issue, or promulgate any law, rule, regulation, standard, interpretation, order, decision, or judgment, including but not limited to those relating to any regulations pursuant to state or federal anti-kickback or physician self-referral statutes (collectively or individually, "**Legal Event**"), which, in the good-faith judgment of one Party (the "**Noticing Party**"), materially and adversely affects either Party's licensure, accreditation, certification, or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement

from any federal, state, or local governmental or nongovernmental payor, or which subjects the Noticing Party to a risk of prosecution or civil monetary penalty, or if in the good faith opinion of counsel to either Party any term or provision of this Agreement could trigger a Legal Event, then the Noticing Party may give the other Party written notice of intent to amend or terminate this Agreement. In the event of such notice, the Parties shall have sixty (60) days from the giving of such notice (the "**Renegotiation Period**") within which to attempt to amend this Agreement. If this Agreement is not amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the sixtieth (60th) day after said notice was given. Except as otherwise required by Applicable Laws, any amounts owing to either Party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligation hereunder that is to continue beyond expiration or termination of this Agreement shall so continue pursuant to its terms.

6.4 Effect of Termination. Termination of this Agreement will not affect the rights and obligations of the parties arising out of any services performed under this Agreement prior to the effective date of such termination including compensation for same.

6.5 Obligations Upon Termination. Upon expiration or termination of this Agreement, neither Party shall have any further obligation hereunder except for (1) obligations due and owing which arose prior to the termination or expiration of the Agreement; (2) obligations or covenants contained herein which expressly extend beyond the Term of this Agreement; and (3) Contractor's obligation to continue rendering any of the services provided under this Agreement underway at the time of expiration or termination until such services are completed or transferred to another services provider. Contractor shall reasonably participate in an orderly transition of the services provided hereunder to any

new services provider with whom County contracts. It is County's sole duty to arrange to provide, after the termination of this Agreement, any and all products and services needed to replace the products and services provided by Contractor under this Agreement.

- 6.6 Outstanding Balances.** Within thirty (30) days following the expiration or termination of this Agreement, at a time and place to be mutually agreed, County and Contractor will meet to resolve any outstanding balances due to Contractor and other issues with respect to termination. All amounts payable to Contractor from County under this Agreement or otherwise shall be due and payable to Contractor sixty (60) days following the termination or expiration of this Agreement.

ARTICLE VII BACKGROUND CHECKS

- 7.1 Proof of Identification.** Contractor and Contractor's employees shall be required to display their identification badge at all times while working in NMC.
- 7.2 Fingerprinting and Background Checks.** All Contractor Personnel working at NMC must be fingerprinted and must have a background check completed by County prior to beginning employment at NMC. Contractor shall have Contractor Personnel, including Temporary Therapist Personnel provided by Contractor, fingerprinted at the Monterey County Sheriffs Public Safety Building located at 1414 Natividad Road, Salinas, CA, or another approved County certified vendor which County NMC may designate to initiate background checks unless otherwise directed by County. County shall be responsible for all costs of fingerprinting and background checks during this Agreement for new or replacement personnel hired after the Effective Date.

ARTICLE VIII CONFIDENTIALITY

8.1 Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information, documentation, data, know-how, devices, designs, trade secrets and technology, whether obtained before or after the execution of this Agreement, without regard to medium of storage or method of transmission of such information, including without limitation all notes, minutes, and other summaries of planning meetings between representatives of the Parties which are not legitimately in the public domain, including, but not limited to, the following:

- (a) With respect to Contractor:
 - (i) all proprietary documents, including but not limited to all business plans, financial data, memoranda, manuals, handbooks, production books and audio or visual recordings (excluding written materials distributed to Program patients);
 - (ii) all computer software developed or provided by Contractor (including all documentation relating thereto);
 - (iii) all proprietary methods, techniques, policies, management strategies and procedures utilized by Contractor or provided by Contractor for County to use in providing treatment services to Program patients;
 - (iv) all marketing strategies, demographics, and other related materials;
 - (v) all aggregated patient data or information; and
 - (vi) all other trade secret material bearing a "Confidential Information" designation.
- (b) With respect to County:
 - (i) all pricing or business strategies created by County;
 - (ii) charge data;

(iii) financial information, including without limitation, costs and expenses, and wages;

(iv) all marketing strategies, demographics, and other related materials; and

(v) all other material bearing a "Confidential Information" designation.

8.2 Exclusions. Confidential Information shall not include this Agreement or information which the party receiving the information can prove was in its possession legitimately prior to the disclosure of the information to that party, or is information generally available within the healthcare, rehabilitation, or long-term care industries, or is information rightfully obtained by it through third-party sources.

8.3 Efforts to Secure Confidential Information. Confidential Information disclosed pursuant to this Agreement is disclosed in confidence and with the understanding that it constitutes valuable information developed at great expenditure of time, effort, and money. Each Party shall secure and protect the other Party's Confidential Information using all commercially reasonable means, but in no event shall such means be less than those used by each Party to secure its own Confidential Information. If any person seeks to compel a Party to disclose the other Party's Confidential Information, the disclosing Party shall promptly notify the other Party so that the other Party has the opportunity to seek an appropriate protective order.

8.4 Copies; Return of Confidential Information. Any disclosure of Confidential Information by a Party is done in reliance upon the other Party's representations and covenants in this Agreement. Each Party agrees not to use, duplicate, or make any copies of the other Party's Confidential Information except as necessary to carry out its responsibilities under this Agreement. Upon termination of this Agreement for any reason, each Party shall promptly return to the other Party all material constituting or containing Confidential Information.

Neither Party shall thereafter use, appropriate, reproduce, or disclose such information to any third party, except to the extent such disclosures are required by law, pursuant to subpoena or other legal process.

8.5 Confidential Health Information and Records. Contractor and Contractor Personnel shall comply with all legal requirements regarding the confidentiality and security of patient records and patient identifiable information, including without limitation the Health Insurance Portability and Accountability Act of 1996 and all rules and regulations promulgated thereunder, as may be amended ("**HIPAA**"), the California Medical Information Act ("**CMIA**"), contained in the California Civil Code Section 56 et seq. the California Patient Access To Medical Records Act ("**PAMRA**"), contained in the California Health and Safety Code, Section 123100 et seq., California Health and Safety Code Section 1280.15 and other California patient privacy laws (collectively, "Health Information Privacy Laws"). Additionally, the Parties agree to and have signed the attached Business Associate Agreement.

8.6 Remedies. Violation or breach of this Article VIII may result in grievous and irreparable harm to the Parties, which harm may be difficult to quantify, and a Party whose Confidential Information is disclosed in violation of this Article VIII will not have an adequate remedy at law for breach of Article VIII. Therefore, each Party shall waive any defense that the other Party has an adequate remedy at law in the event of such breach, and the other Party may enforce its rights in equity by injunctive or other equitable relief, in addition to whatever other remedies may exist. The Parties waive any requirement for the securing or posting of any bond in connection with obtaining any such injunctive or other equitable relief.

8.7 Survival. The provisions of this ARTICLE VIII shall survive the termination of this

Agreement.

**ARTICLE IX
EMPLOYEE RECRUITMENT**

9.1 Solicitation of Contractor Personnel. County acknowledges that Contractor has expended and will continue to expend substantial time, effort, and money in training staff in the management and operation of the Program. Contractor Personnel who provide Services to County will have access to and possess Confidential Information of Contractor. For County to employ or contract with Contractor Personnel or former Contractor Personnel likely would result in the use by County of Contractor Confidential Information in violation of ARTICLE VIII. Therefore, without Contractor's prior written consent, County shall not during the Term of this Agreement

(i) directly through its efforts; or

(ii) indirectly through the efforts of person(s) acting by or on behalf of County during the Term of this Agreement employ, solicit the employment of, or in any way retain the services of any Contractor Personnel employed or retained by Contractor. This restriction will not apply to any Contractor Personnel who were employed by County at any time prior to their becoming employed or retained by Contractor to provide Services under this Agreement.

9.2 Solicitation of County Personnel. Without County's prior written consent, Contractor shall not:

(i) directly through its efforts; or

(ii) indirectly through the efforts of person(s) acting by or on behalf of Contractor during the Term of this Agreement employ, solicit the employment of, or in any way retain the services of any employee, former employee, or independent

contractor of County, if such individual was employed or retained by County.

This restriction will not apply to any County Personnel who were employed or retained by Contractor prior to their becoming employed or retained by County.

ARTICLE X INTELLECTUAL PROPERTY

10.1 Service Mark. RehabCare and KHRS are registered service marks belonging exclusively to Contractor. This Agreement transfers no right, title, or interest in or to service marks or any other marks to County. County shall not cause any documents to be printed or copied bearing a service mark of Contractor or a Contractor affiliate without an accompanying legend indicating that such service mark is the registered service mark of Contractor or its affiliate, as applicable. County shall not provide any goods or services under Contractor's service mark unless a separate written service mark license agreement, specifically authorizing the use of such service mark, is entered into by the Parties.

10.2 Survival. The provisions of this ARTICLE X shall survive termination of this Agreement.

ARTICLE XI COMPLIANCE

11.1 Compliance Programs.

(a) County represents and warrants to Contractor that County has in effect a compliance program that promotes the prevention, detection, and resolution of instances of conduct that do not conform to federal and state laws and that such compliance program will extend to the Program, including without limitation:

(i) the documentation of services provided through the Program by County

personnel; and

(ii) County's billing of Program services.

As part of County's compliance efforts, County shall monitor the operation of the Program for compliance with the same level of frequency and intensity as that with which County monitors County's operations generally, but in no event shall County review the Program less frequently than once each twelve (12) months. County's obligation to monitor the program will supplement, but not supersede, Contractor's obligation to monitor the performance of those individuals serving the Program in the capacity of Contractor Personnel, as described in Section 11.1(b) below.

If County receives any complaints that the Program does not operate in compliance with applicable federal and state laws and regulations or if, through County's internal monitoring of the Program, County identifies an area of potential noncompliance related to Contractor's services provided in the Program, County shall notify Contractor's compliance officer in a timely manner. County shall cooperate and assist Contractor in any investigation that Contractor may elect to conduct in follow-up to information disclosed by County, and shall work with Contractor in good faith in the development of a plan to correct deficiencies, if any, and to prevent recurrences. Contractor shall cooperate and assist County in any investigation that County may elect to conduct pursuant to County's compliance program and shall work with County in good faith in the development of a plan to correct deficiencies, if any, and to prevent recurrences.

(b) Contractor represents and warrants to County that Contractor has in effect a compliance program that promotes the prevention, detection, and resolution of instances of conduct that do not conform to federal and state laws and that such compliance program extends to the documentation of service provided by individuals in their capacity as Contractor Personnel. As part of Contractor's compliance efforts, Contractor shall monitor the

performance of Contractor Personnel including Temporary Therapy Personnel, assigned to provide services through the Program with the same level of frequency and intensity as that with which Contractor monitors Contractor Personnel assigned to comparable programs across the United States, but in no event shall Contractor review the performance of Contractor Personnel less frequently than once each twelve (12) months. Contractor's obligations to monitor those individuals serving as Contractor Personnel will supplement, but not supersede, County's obligation to monitor the Program, as described in Section 11.1(a) above. If Contractor receives any complaints that the Program does not operate in compliance with applicable federal and state laws and regulations or if, through Contractor's internal monitoring of the Contractor Personnel, Contractor identifies an area of potential noncompliance related to the Program, Contractor shall promptly notify County's compliance officer. Contractor shall cooperate and assist County in any investigation that County may elect to conduct in follow-up to information disclosed by Contractor, and shall work with County in good faith in the development of a plan to correct deficiencies, if any, and to prevent recurrences. County shall cooperate and assist Contractor in any investigation that Contractor may elect to conduct pursuant to Contractor's compliance program and shall work with Contractor in good faith in the development of a plan to correct deficiencies, if any, and to prevent recurrences.

11.2 Compliance with General Laws. Each Party shall perform its obligations under this Agreement in compliance with all applicable laws, ordinances, codes and regulations of federal, state and local governments, including laws that require the application of the laws of any other jurisdiction.

11.3 Compliance with Healthcare Laws. Without limiting the generality of the foregoing Section, each Party shall fulfill its obligations under this Agreement in accordance with any and all applicable laws, rules, guidelines and requirements of governmental, accrediting,

reimbursement, payment and other agencies having jurisdiction over the services provided hereunder, including without limitation, compliance with all applicable laws and regulations of federal, state and local governments and all agencies thereof relating to Healthcare Laws and Practices (as defined below). For purposes of this Agreement, "**Healthcare Laws and Practices**" means all federal, state or local laws, rules, regulations or guidelines regarding (a) any government-sponsored health care program, including Medicare and other federally or state funded entitlement programs, and including those laws, rules, regulations and guidelines related to covered services, charging practices, billing, collection, marketing and advertising; (b) kickbacks, fee-splitting and other referral practices, including, without limitation, the federal anti-kickback statute set forth at 42 U.S.C. Section 1320a-7b (the "**Anti-Kickback Statute**"), the federal physician self-referral prohibition law set forth at 42 U.S.C. Section 1395nn (the "**Stark Law**"), , California Welfare and Institutions Code Section 14107.2(a), California Business and Professions Code Sections 650, 650.01 and 650.02, California Labor Code Sections 139.3 and 139.31 and other related or similar laws and regulations; and (c) the privacy, confidentiality, maintenance, or protection of patient records, including, without limitation, Health Information Privacy Laws.

11.4 HIPAA Compliance.

(a) **Business Associate Agreement.** County, as a covered entity, and Contractor, as a business associate, are parties to a HIPAA Business Associate Agreement (the "BAA") and agree that the BAA shall be updated from time to time as needed for continued compliance with HIPAA.

11.5 Fair Value Warranty. Each Party represents and warrants to the other that the aggregate benefit given or received under this Agreement has been determined in advance through a process of arm's length negotiations that were intended to achieve an exchange of services

consistent with fair market value under the circumstances, and that any benefit given or received under this Agreement is not intended to induce, does not require, and is not contingent upon, the admission, recommendation or referral of any patient, item or service, directly or indirectly, to County or Contractor and, further, is not determined in any manner that takes into account, directly or indirectly, the value of business generated between the Parties.

11.6 Representations and Warranties of Contractor. Contractor represents and warrants to County that neither Contractor, its officers, directors and employees/contractors nor any Contractor Personnel provided by Contractor under this Agreement (i) are currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 USC § 1320a-7b(f) (the “Federal Healthcare Programs”) or any state healthcare programs; (ii) have been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs; and (iii) are, to the best of Contractor's knowledge, under investigation or otherwise aware of any circumstances which may result in Contractor or any Contractor Personnel being excluded from participation in the Federal Healthcare Programs or any state healthcare programs. This will be an ongoing representation and warranty during the Term, and Contractor shall immediately notify County of any change in the status of the representations and warranty set forth in this Section. Any breach of this Section will give County the right to terminate this Agreement immediately for cause.

- 11.7** The parties hereby represent, warrant and covenant that, as of the Effective Date and for the Term, with respect to any federal or state health care program as defined by applicable state and federal laws, neither party nor any individual with a direct or indirect ownership or central interest of five (5%) percent or more in either party has ever been barred, suspended or excluded from any such program. The parties shall immediately notify the other party if this representation at any time in the future is no longer correct.
- 11.8** The parties shall work cooperatively to review and ensure that, as a result of any payment hereunder, Contractor shall not withhold, limit, or reduce the provision of items or services that would otherwise be provided to any patient of the Program; otherwise restrict medically necessary care to any such patient, or discharge any such patient sooner than is medically appropriate; “cherry-pick” any Program patients based on their favorable health condition (and anticipated cost of their care), insurance status, or ability to pay; increase patient referrals to the Program, or the use of items or services covered by any governmental or commercial health care payment plan or program than would otherwise have been the case.
- 11.9 Deficit Reduction Act.** Contractor’s parent company, Kindred Healthcare, is committed to complying with the laws and regulations that govern its operations as a healthcare provider, employer and business. The federal False Claims Act, 31 U.S.C. §§ 3729-3733, and similar state laws assist the federal and state governments in combating fraud and abuse and recovering losses resulting from fraud in government programs, purchases and/or contracts. These laws prohibit the knowing and/or intentional use of false or fraudulent claims, records

or statements for the purpose of obtaining payment from the government. These laws apply to Medicare and Medicaid reimbursement and prohibit, among other things, billing for services not rendered; billing for undocumented services; falsifying cost reports; billing for medically unnecessary services; assigning improper codes to secure reimbursement or higher reimbursement; and participating in kickbacks. A violation of these laws may result in civil, criminal and/or administrative penalties, including monetary penalties, imprisonment, exclusion from participation in Medicare and Medicaid and loss of licensure status. Federal law and some state laws allow private citizens to file a lawsuit on behalf of the government, and to share in a percentage of any monetary recovery or settlement. These laws and Kindred policy prohibit retaliating or discriminating against employees because of their initiation of, or participation in, a lawful false claims investigation, report, claim or proceeding. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff, including compensation for lost wages and reinstatement to a former position. Summaries of the federal False Claims Act, related state laws and applicable whistleblower provisions are posted on Kindred's external web site and on Kindred's intranet web site (Knect). Suspected false claims violations should be reported to Kindred Management, Kindred's Compliance Department (800) 545-0749, or to the appropriate federal or state agency.

11.10 Survival. The provisions of this ARTICLE XI shall survive the termination of this Agreement.

ARTICLE XII

INSURANCE AND INDEMNIFICATION

12.1 Insurance.

a. Evidence of Coverage:

Prior to commencement of this Agreement, the 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.

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

b. Qualifying Insurers: All coverages, except surety and excess liability, 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 NMC's Contracts/Purchasing Director.

c. Insurance Coverage Requirements: 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:

d. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a limit for Bodily Injury and Property Damage of not less than \$5,000,000 per occurrence and \$15,000,000 in the aggregate. Limits can be provided through a combination of primary and excess liability policies.

e. 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.

f. 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.

g. 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 \$3,000,000 in the aggregate, to cover liability for malpractice arising from CONTRACTOR's performance when rendering professional services pursuant to this Agreement. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the 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.

Other Requirements:

- a. All insurance except surety and excess liability as required by this Agreement shall be with a company acceptable to NMC 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.
- b. CONTRACTOR shall provide that NMC 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.
- c. **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 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 from 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 from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.
- d. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) 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.
- e. 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 NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC 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 NMC, at its sole discretion, to terminate the Agreement immediately.

12.2 Indemnification of County. Contractor shall indemnify, hold harmless and defend County, NMC, and County's and NMC's affiliates, officers, directors, partners, and employees

("County Indemnitees"), from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by or as a result of (1) the performance of any services or the furnishing of any material supplies under this Agreement or any other acts or omissions by Contractor and/or its members, agents, employees, and/or subcontractors during the Term of this Agreement; or (2) the breach of any agreement or covenant of Contractor and/or any of its shareholders, agents, or employees contained in or made in connection with this Agreement; unless such claims, liabilities or losses arise out of the negligence or willful misconduct of County.

12.3 Indemnification of Contractor. County shall indemnify, hold harmless and defend Contractor, its affiliates, officers, directors, partners, and employees ("Contractor Indemnitees"), from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), caused or asserted to have been caused, directly or indirectly, by or as a result of (1) the performance of any intentional acts, negligent acts, or omissions by County and/or its agents, employees and/or subcontractors during the Term of this Agreement; or (2) the breach of any agreement or covenant of County and/or any of its agents or employees contained in or made in connection with this Agreement; unless such claims, liabilities or losses arise out of the negligence or willful misconduct of Contractor.

12.4 Notice of Indemnified Claims. To the extent a Party hereto intends to seek indemnification under this Article (the "Indemnified Party"), such Indemnified Party shall provide written notice (the "Indemnification Notice") to the Party from whom

indemnification is sought ("**Indemnitor**") within thirty (30) days of obtaining information, regarding any action, claim, or demand, which would lead a reasonable person to conclude that indemnification would be available hereunder (an "Indemnified Claim"). The Indemnified Party shall (a) allow the Indemnitor and/or its insurers to assume direction and control of the defense of any action, suit, or proceeding relating to or arising from an Indemnified Claim, if they elect to do so, including without limitation the right to select or approve defense counsel; (b) cooperate fully with the Indemnitor and its insurer in defending against, and settling, such actions, suits, or proceedings. Notwithstanding the above, where the County is the Indemnified Party, Contractor shall not have the authority to settle an Indemnified Claim unless such settlement is approved in advance by the County's Board of Supervisors, and the parties agree that their respective approvals shall not be unreasonably withheld, conditioned or delayed. Failure of the Indemnified Party to comply with the requirements of this Section shall render this indemnification provision null and void as to the Indemnified Claim.

12.5 Amount of Payment. In calculating the payment amount of any indemnification claim to be made to an Indemnified Party under this Article XII, there will be deducted any insurance proceeds actually recovered by the Indemnified Party in respect thereof. Nothing in this Section 12.5 shall limit or restrict in any manner any rights an insurer may have to seek recovery from an Indemnitor for payments made by the insurer to an Indemnified Party. Indemnified Party Nothing in this

12.6 Survival. The provisions of this ARTICLE XII shall survive the termination of this Agreement.

ARTICLE XIII

GENERAL PROVISIONS

- 13.1 Force Majeure.** If any Party hereto is delayed or prevented from fulfilling its obligations under this Agreement by Force Majeure, such Party shall not be liable under this Agreement for such delay or failure. For purposes of this Agreement, "**Force Majeure**" means any cause beyond the reasonable control of a Party, including without limitation acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials, or facilities.
- 13.2 Governing Law.** The validity of this Agreement, the interpretations of the rights and duties of the parties hereunder and the construction of the terms hereof will be governed in accordance with the laws of the State of California without regard to its conflicts of laws principles.
- 13.3 Federal Government Access.** Until the expiration of four (4) years after services are rendered under this Agreement, Contractor shall make available, upon request of the Secretary of Health and Human Services, the Controller General, or their duly authorized representatives, any books, documents (including a copy of this Agreement), or records of Contractor necessary to certify the nature and extent of costs claimed for purposes of Medicare reimbursement for the services provided under this Agreement. Contractor shall provide such books, documents, and records subject to applicable federal law and in accordance with regulations governing such access. If Contractor performs any of its obligations under this Agreement through subcontract with a related organization, and the value or cost of such subcontract services is in excess of Ten Thousand Dollars (\$10,000.00), then until four (4) years after the termination of services provided under this Agreement, Contractor shall provide in its contract with such related organization that such related organization shall make available, upon request of the Secretary of Health and Human

Services, the Controller General, or their duly authorized representatives, any books, documents, and records of such related organization as are necessary to verify the nature and amount of costs claimed for Medicare reimbursement with respect to services rendered under this Agreement. Contractor shall provide such subcontract, books, documents, and records subject to applicable law and in accordance with regulations governing such access.

13.4 Severability. If any part of this Agreement should be held to be void or unenforceable, such part shall be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found void or unenforceable.

13.5 Medical Records. Patient medical records shall at all times be and remain the property of County. Pursuant to Section 8.5, Contractor and Contractor Personnel shall maintain the confidentiality of information contained in patient medical records and will only release such information and/or records in accordance with applicable state and federal laws and regulations.

13.6 Complete Agreement. This Agreement and the following Exhibits attached hereto constitute the complete understanding of the Parties and supersede any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter herein, including, without limitation, the Prior Agreements.

Exhibit A: Community Services Development/Communications Activities

Exhibit B: Contractor's Therapy Services Rates

13.7 Future Amendments. No amendment to this Agreement or any of its Exhibits shall be effective unless in writing and signed by both Parties.

13.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which together will constitute only one (1) Agreement.

13.9 Captions. The captions or headings of the Articles and other Sections and subSections hereof

are inserted only as a matter of convenience and shall have no effect on the meaning of the provisions herein.

13.10 Binding Effect. Except as otherwise expressly provided herein, this Agreement will be binding on the successors and assigns of the respective Parties.

13.11 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the advance written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, either Party may, upon written notice to the other Party, assign this Agreement without the other Party's written consent to an entity (including an affiliated entity) that acquires operational control of the assigning Party and/or substantially all of the assigning Party's assets.

13.12 Authority. County and Contractor each represents to the other that it has taken all necessary corporate action to authorize the execution and delivery of this Agreement.

13.13 Waiver. Any waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

13.14 EEOC Executive Order 11246. Unless this Agreement is exempted by rules, regulations, or orders of the Secretary of the United States Department of Labor, the parties agree to comply with the Equal Employment Opportunity provisions of Executive Order 11246, § 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act.

(a) The parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and

advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

- (b) The parties, where applicable, shall comply with the regulations set forth under 29 CFR part 471, Appendix A to Subpart A regarding NLRA compliance.

ARTICLE XIV NOTICES

14.1 Notices. Notices required to be given to the respective Parties under this Agreement shall be deemed given by any of the following means: (a) when personally delivered to County's contract administrator or to Contractor's responsible officer; (b) when personally delivered to the Party's principal 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; twenty- four (24) hours after the notice is transmitted by facsimile machine to the other Party, at the Party's facsimile number specified pursuant to this Agreement, provided that the Party giving notice by facsimile must promptly confirm receipt of the facsimile transmission by telephone to the receiving Party's office; or (d) 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:

If to County: Natividad Medical Center, Contracts Division
1444 Constitution Boulevard
Salinas, CA 93906
Tel: (831) 755-4111
Fax: (831) 757-2592

With copies to: County of Monterey
Office of the County Counsel
168 West Alisal Street, 3rd Flr
Salinas, CA 93901
Tel: (831) 755-5045
Fax: (831) 755-5283
Attn: Deputy County Counsel for Natividad Medical Center

If to
Contractor: Kindred Hospital Rehabilitation Services
680 South Fourth Street
Louisville, KY 40202
Fax: (502) 596-4871
Attn: Senior Vice President

With copies to: Law Department
Fax: (502) 596-4789
Appeals and Denials
Fax: (888) 305-1459

14.2 Change of Address. Either Party may change his/her/its address for notices by notice given pursuant to this Section.

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Agreement on the basis set forth in this document and have executed this Agreement on the day and year set forth herein.




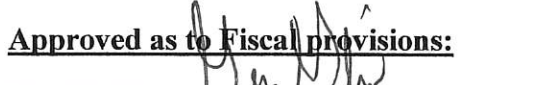
<u>County of Monterey on behalf of Natividad Medical Center</u>	<u>RehabCare Group of California, LLC</u> 
Gary R. Gray, DO, CEO	Signature of Chair, President or Vice-President <u>Joseph Fuller, Vice President of Finance</u> Printed Name and Title
Date	<u>3-28-17</u> Date
<u>Approved as to Legal Provisions:</u> 	
Monterey County Deputy County Counsel <u>3/29/17</u>	Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer <u>James F. Mattingly, Chief Financial Officer</u> Printed Name and Title
Date	<u>3/28/17</u> Date
<u>Approved as to Fiscal provisions:</u> 	<u>Signature Instructions</u>
Monterey County Chief-Deputy Auditor-Controller <u>4-3-17</u>	For 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).
Date	

EXHIBIT A
COMMUNITY SERVICES DEVELOPMENT / COMMUNICATIONS ACTIVITIES

Contractor Responsibilities:

- Development of Patient Orientation Literature
- Development of "Contractor" Community Relations Brochure
- Community Relations Plan: development and implementation, including travel, entertainment, and business meal expenses related to direct community relations efforts
- Provision of Contractor specialty items for community relations development
- Provision of Reprints of selected articles
- Provision of Community Relations Training
- Provision of Tracking Systems -diagnosis, payor class, admissions, hospitals, etc.
- Provision of Patient Relations Tracking
- Assist in developing Public Relations programs
- Trending and tracking of patient outcome data to be presented quarterly
- Assist with development of operations and capital budget
- Monitoring and management of daily operations to include productivity and expenses
- Ongoing assessment of appropriateness of care provided and responsibility to recommend changes to staffing and program as identified.
- Development, monitoring and implementation of performance improvement plan for Department.
-

County Responsibilities:

Printing of business cards for five (5) members of the Contractor Program Team to be designated by NMC shortly after execution of this Agreement.

- Provide telephone system (usually four (4) telephones with four (4) lines common to each) and media advisories / press releases on hospital stationery, mailing of clinical staffing notes
- Printing, addressing, and mailing of invitations and announcements for

Contractor educational seminars and community services development events, and collaterals

- Hosting of groups for seminars, community services development events and open houses, including refreshments and meals
- Photocopy machines available for the Program's use in the Hospital

EXHIBIT B
CONTRACTOR'S THERAPY SERVICES HOURLY RATES

Rate Table (BASE)

Contractor Titles	County (NMC) Titles	Billing Rate (Base)	Markup for cost of Benefits for FULL-time employees (28% of billing rate)	Markup for cost of Benefits for PART-time employees (15% of billing rate)	Additional markup added (25%)	TOTAL RATE BILLED FOR FULL-TIME EMPLOYEES (BASE)	TOTAL RATE BILLED FOR PART-TIME EMPLOYEES (BASE)
Physical Therapist	Physical Therapist	\$41.00	\$11.48	\$6.15	\$10.25	\$62.73	\$57.40
Physical Therapy Assistant	Physical Therapy Asst.	\$28.00	\$7.84	\$4.20	\$7.00	\$42.84	\$39.20
Occupational Therapist	Occupational Therapist	\$40.00	\$11.20	\$6.00	\$10.00	\$61.20	\$56.00
Certified Occupational Therapist Assistant	N/A	\$35.00	\$9.80	\$5.25	\$8.75	\$53.55	\$49.00
Rehabilitation Tech	Physical Therapist Helper	\$15.15	\$4.24	\$2.27	\$3.79	\$23.18	\$21.21
Speech Pathologist	Speech Pathologist	\$38.00	\$10.64	\$5.70	\$9.50	\$58.14	\$53.20
Social Worker	Social Worker V	\$30.00	\$8.40	\$4.50	\$7.50	\$45.90	\$42.00

Explanation of markup in table above: Benefits for each position described in the table above will be calculated at 28% of the actual hourly rate billed for full-time positions and 15% of the actual hourly rate billed for part-time/PRN positions.

Rate Table (MAX)

Contractor Titles	County (NMC) Titles	Billing Rate (Max)	Markup for cost of Benefits for FULL-time employees (28% of billing rate)	Markup for cost of Benefits for PART-time employees (15% of billing rate)	Additional markup added (25%)	TOTAL RATE BILLED FOR FULL-TIME EMPLOYEES (MAX)	TOTAL RATE BILLED FOR PART-TIME EMPLOYEES (MAX)
Physical Therapist	Physical Therapist	\$53.50	\$14.98	\$8.03	\$13.38	\$81.86	\$74.90
Physical Therapy Assistant	Physical Therapy Asst.	\$39.00	\$10.92	\$5.85	\$9.75	\$59.67	\$54.60
Occupational Therapist	Occupational Therapist	\$48.50	\$13.58	\$7.28	\$12.13	\$74.21	\$67.90
Certified Occupational Therapist Assistant	N/A	\$40.00	\$11.20	\$6.00	\$10.00	\$61.20	\$56.00
Rehabilitation Tech	Physical Therapist Helper	\$18.50	\$5.18	\$2.78	\$4.63	\$28.31	\$25.90
Speech Pathologist	Speech Pathologist	\$51.00	\$14.28	\$7.65	\$12.75	\$78.03	\$71.40
Social Worker	Social Worker V	\$40.00	\$11.20	\$6.00	\$10.00	\$61.20	\$56.00

Explanation of markup in table above: Benefits for each position described in the table above will be calculated at 28% of the actual hourly rate billed for full-time positions and 15% of the actual hourly rate billed for part-time/PRN positions.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") effective May 1, 2017 ("Effective Date"), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and RehabCare Group of California, LLC d/b/a Kindred Hospital Rehabilitation Services ("Business Associate") (each a "Party" and collectively the "Parties").

RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information ("PHI") that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the "Breach Notification Rule"), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the "Security Rule"), (collectively "HIPAA"), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI") shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) "Breach" shall have the same meaning as "breach" as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a

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manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term "Breach" as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient's "medical information" as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a "breach of the security of the system" under Cal. Civil Code §1798.29.

(b) "California Confidentiality Laws" shall mean the applicable laws of the State of California governing the confidentiality of Medical Information or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) "Medical Information" shall have the same meaning as provided in Cal. Civil Code §56.05(j).

(d) "Personal Information" shall the same meaning as provided in Cal. Civil Code §1798.82(h).

(e) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium, limited to the information created or received by Business Associate from or on behalf of Covered Entity: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity's behalf. **PHI includes EPHI.**

(f) "Services" shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

2. PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) Use PHI if necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

(f) Use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1. Responsibilities of Business Associate. With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that

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such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) To the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm (which may include the costs of obtaining up to one year of credit monitoring services and identity theft insurance) for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether

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Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed; and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

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

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

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(k) Unless prohibited by law, notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of

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such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(l) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

3.2 Business Associate Acknowledgment.

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

(b) Business Associate further acknowledges that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with Covered Entity's privacy practices, as stated in Covered Entity's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy>. Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at least once annually while doing business with Covered Entity to ensure it remains updated on any changes to the Notice of Privacy Practices Covered Entity may make.

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

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

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

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

(d) Notify Business Associate of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

4. TERM AND TERMINATION

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4.1 Term. This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

4.2 Termination. If Covered Entity determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity.

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

4.4 Effect of Termination. Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (vi) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

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

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

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

If to Business Associate, to:

Attn: _____

Phone: _____

Fax: _____

If to Covered Entity, to:

Natividad Medical Center
Attn: Compliance/Privacy Officer
1441 Constitution Blvd.
Salinas, CA 93906
Phone: 831-755-4111
Fax: 831-755-6254

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Relationship of Parties. Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

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5.7 Choice of Law; Interpretation. This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

5.8 Indemnification. Business Associate shall indemnify, defend, and hold harmless the County of Monterey (the "County"), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to provide the broadest possible indemnification for the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties.

5.9 Applicability of Terms. This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

5.10 Insurance. In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's request.

5.11 Legal Actions. Business Associate shall make itself and any Subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its shareholders, directors, officers, agents or employees based upon a claim of violation of HIPAA or other laws related to security and privacy, except where Business Associate or its Subcontractor, employee or agent is named as an adverse party.

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5.12 Audit or Investigations. Promptly, but no later than five (5) calendar days after notice thereof, Covered Entity shall have the right to inspect and audit Business Associate's privacy and security controls relating to Business Associate's compliance with the terms of this BAA and HIPAA. Business Associate may impose reasonable restrictions upon Covered Entity's access to Business Associate's premises information systems, including but not limited to limiting access only to those information systems which contain Covered Entity's PHI and limiting access to ensure Business Associate's compliance with existing confidentiality obligations to its other customers. Such audits shall occur no more often than once per year or after any Breach or Security Incident and only upon a good faith belief by Covered Entity that Business Associate is not in compliance with its obligations under this BAA or HIPAA relating to Covered Entity's PHI. All audits shall be conducted with the least interruption to Business Associate's normal business operations as feasible. Covered Entity shall be responsible for all costs incurred to perform the audit.

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

BUSINESS ASSOCIATE

COVERED ENTITY

By: 

By: _____

Print Name Joseph Fuller

Print Name: Gary R. Gray, DO

Print Title Vice-President of Finance

Print Title: CEO Natividad Medical Center

Date: 3/28/17

Date: _____