

  
**COUNTY OF MONTEREY AGREEMENT FOR SERVICES**  
**(MORE THAN \$100,000)**

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 (“NMC”), a general acute care teaching hospital wholly owned and operated by the County, and 3DR Laboratories, LLC (hereinafter “CONTRACTOR”).

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

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of the Agreement. The services are generally described as follows: Provide 3D medical image post processing services.
2. **PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$75,000**.
3. **TERM OF AGREEMENT.**
  - 3.1. The term of this Agreement is from August 1, 2017 through July 31, 2020 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.
  - 3.2. NMC reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:  
  
**Exhibit A:** Scope of Services/Payment Provisions  
**Exhibit B:** Business Associate Agreement
5. **PERFORMANCE STANDARDS.**
  - 5.1. CONTRACTOR warrants that CONTRACTOR and Contractor’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.

- 5.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## **6. PAYMENT CONDITIONS.**

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.
- 6.5. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 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. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

## **7. TERMINATION.**

- 7.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which

NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.3 NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 8. INDEMNIFICATION.

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

## 9. INSURANCE.

### 9.1 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. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

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.

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

9.3 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:

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

- Exemption/Modification (Justification attached; subject to approval).

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.

- Exemption/Modification (Justification attached; subject to approval).

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.

- Exemption/Modification (Justification attached; subject to approval).

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

- Exemption/Modification (Justification attached; subject to approval).

#### 9.4 Other Requirements:

All insurance 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.

Each liability policy 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. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work

under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

**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.

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.

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.

## **10. RECORDS AND CONFIDENTIALITY.**

10.1 Confidentiality. CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

10.2 NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

- 10.3 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 Access to and Audit of Records. NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 Royalties and Inventions. NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.
11. **NON-DISCRIMINATION**. During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
13. **INDEPENDENT CONTRACTOR**. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely

liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below

**NATIVIDAD MEDICAL CENTER:**

Natividad medical Center  
Attn: Contracts Division  
Natividad Medical Center  
1441 Constitution Blvd  
Salinas, CA. 93906  
FAX: 831-757-2592

**CONTRACTOR:**

Name: 3DR Laboratories, LLC  
  
Attn: Don Cundiff  
  
Address: 332 West Broadway, Heyburn Bldg. Suite  
700  
City, State, Zip: Louisville, KY 40202  
  
Email: [dcundiff@3drinc.com](mailto:dcundiff@3drinc.com)

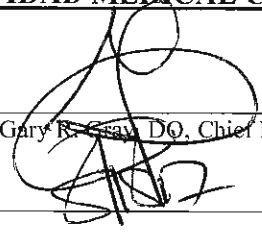
**15. MISCELLANEOUS PROVISIONS.**


- 15.1 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 15.3 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.4 **Contractor:** The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 15.5 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.

- 15.6 Assignment and Subcontracting: The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.7 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement: NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Integration: This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 15.16 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.



**NATIVIDAD MEDICAL CENTER**

By:  \_\_\_\_\_  
Gary R. Gray, D.O., Chief Executive Officer

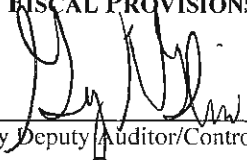
Date:  \_\_\_\_\_

**APPROVED AS TO LEGAL PROVISIONS**

By:  \_\_\_\_\_  
Monterey County Deputy County Counsel

Date: 8-14-17 \_\_\_\_\_

**APPROVED AS TO FISCAL PROVISIONS**

By:  \_\_\_\_\_  
Monterey County Deputy Auditor/Controller

Date: 8-16-17 \_\_\_\_\_


**CONTRACTOR**

3DR Laboratories, LLC  
Contractor's Business Name\*\*\* (see instructions)

David E. Ferguson  
Signature of Chair, President, or Vice-President

David E. Ferguson  
Chairman and Senior Managing Director  
Name and Title

Date: July 12, 2017 \_\_\_\_\_

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

Maria DeArco CFO  
Name and Title

Date: 7-17-17 \_\_\_\_\_

**\*\*\*Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

## EXHIBIT A SCOPE OF SERVICES/PAYMENT PROVISIONS

### I. Description of All Services to be Rendered and CONTRACTOR obligation:

CONTRACTOR hereby agrees that during the term of this Agreement it will provide the Services described in this Section 1 below.

- a. General Services Description: CONTRACTOR shall provide NMC with twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year access to radiologic technologists employed by CONTRACTOR who are certified by the American Registry of Radiologic Technologists and who satisfy the requirements of all applicable industry, accreditation and regulatory standards and federal, state and local laws, regulations and ordinances (each a “**Technologist**” and collectively the “**Technologists**”). The Technologists will be employed and work through CONTRACTOR’s laboratory located at 332 West Broadway, Suite 700, Louisville, Kentucky (the “**Laboratory**”) and will create multi-planar and three dimensional images. Such three dimensional images will be provided to physicians working on behalf of NMC for diagnostic interpretation and for maintaining records on each case (*See Definition of “Case” in Paragraph a(ii.) below*) for which images are submitted. NMC will transmit patients’ Digital Imaging & Communication in Medicine (“DICOM”) files that have been created through NMC’s Advanced Visualization (“**AV**”) scanning operations – across Virtual Private Networks to CONTRACTOR along with appropriate “Order Entry” information, notifications and instructions to enable the Technologists to process the cases as required (*See definition of “Acceptable Data Sets” in Paragraph a (ii.) below*). CONTRACTOR will utilize its standard AV protocols or AV protocols that have been customized to satisfy NMC’s clinical requirements to process the image files and then return the completed images and associated clinical materials back to NMC for viewing through NMC’s Picture Archiving Communications Systems (“**PACS**”) and Radiology Information Systems (“**RIS**”) infrastructure. If NMC provides notification to CONTRACTOR and all components of the DICOM scan files and associated processing instructions in accordance with the Notification Procedures set forth in Schedule B, CONTRACTOR guarantees the applicable Turnaround Time (“**TAT**”) required to complete the processing (*See definition of Turnaround Time in Paragraph a(i.) below*). All cases that are not completed within the guaranteed TAT will be processed “at no charge” to NMC.
  - i. Turnaround Time (TAT) Definition: A case’s TAT means the length of time that is required for the CONTRACTOR Technologists to prepare all the medical images, output DICOM series, measurements and cine data sets required by the specific case protocol so that they are ready to be transmitted back to NMC’s RIS/PACS system for reading and interpretation. Applicable TATs are presented in Schedule B to this Agreement. A case’s TAT begins at the point in time when all necessary components of the

source DICOM data sets have been fully received and logged-in by CONTRACTOR's Workflow Management System ("3DQ") along with appropriate Case Order Notification and Clinical Processing Instructions. The successful receipt of these case components constitutes an Acceptable Data Set and triggers the start of the TAT. The case's TAT ends when all components of the required protocol have been completed by the Technologist and transferred to CONTRACTOR's "Send-Back System" for transmission back to NMC's specified receiving locations. Actual transmissions times required to initially send the DICOM files from the NMC scanner to CONTRACTOR or to return the completed case files to NMC for viewing and interpretation are not included in the calculation of the actual TAT achieved.

- ii. "Case", "Acceptable Data Set" and Clinical Protocol Category Definitions  
A **"Case"** means a complete Computed Tomography Angiography (CTA), Cardiac Computed Tomography Angiography (CCTA), Magnetic Resonance (MR), Magnetic Resonance Angiogram (MRA), Single-Photon Emission Computed Tomography (SPECT), Computed Tomography ("CT")/ Positron Emission Tomography ("PET"), or other Cardiovascular, Orthopedic or Neurological reconstruction prepared from a source DICOM data set and transmitted by NMC to CONTRACTOR's data center for processing. Functional Cardiac Analysis performed using either CTA or MR files constitutes a separate and additional case that is not considered to be a part of another case reconstructed from the same source DICOM data set. Additionally, CONTRACTOR may elect to treat a full-body, AIF Runoff case as two (2) separate cases for billing purposes if the AIF Runoff protocol requested by NMC cannot be physically completed by the CONTRACTOR's Technologist within the Turnaround Time set forth in Schedule B and still satisfy clinical quality control standards, as determined by CONTRACTOR and NMC in its reasonable discretion. Case-specific protocols are rigorously used by the Technologist to prepare images, measurements, cine loops and other materials that will be used by the radiologists to render a diagnosis and/or by referring physicians to perform treatment or pre-surgical planning.

**"Acceptable Data Set"** means a digital file that has been generated in a standard DICOM format by a medical imaging scanner (i.e. CT, MR, PET), or other standard modality) that contains all elements and satisfies all parameters required for a Technologist to use such DICOM file to prepare a specified, advanced visualization protocol. Once an Acceptable Data Set has been received and "time-stamped" by the 3DQ System, it will be placed in a work queue based on its priority and Clinical Protocol Category. The assigned CONTRACTOR Technologist(s) processes the case to create the image series required by the designated clinical

protocol(s). The case is deemed to have been completed – for purposes of measuring the actual case TAT against the guaranteed TAT – when all required components of the cases have been completed.

- iii. Case Types Certain Cases are more difficult to process and require a longer amount of a Technologist’s time to complete or more advanced Technologist knowledge and skill. Therefore, the CONTRACTOR pricing parameters are separated between Regular Cases and Premium Cases.
- iv. Clinical Case Categories Regular Cases are those cases that can normally be completed within a TAT ranging from one (1) (hour) to four (4) hours following the receipt of all data and information required to process the case. Examples of case protocols that are normally classified as Regular Cases include most CT, CTA, MR, Pet and PET/CT cases involving orthopedic, neurological, etc. including but not limited to:

AIF Runoff	Subclavian	Facial Bones
CCTA-Heart	Pelvis	Calcaneous
CFA-Function	Thoracic	Hand
Shoulder	Radius/Ulna	Tibia/Fibula
Hip	Humerus	Clavicle
Pancreas	Femur	Skull
Circle of Willis	Mesenteric	Urogram
Carotid	Chest-aorta	Trachea
Aorta-abd	Mandible	MRI-Cspine
Foot	Cervical	MRI-Tspine
Ankle	PET/CT Fusion	Abdominal
Elbow	Knee	Lumbar
Liver Volume	MRI Breast	Scoliosis
Spleen Volume	Chest Dissection	Renal Mass

EP Planning	Liver Mass	Sternum
Upper Extremity	Wrist	Renals
SIRT Liver	Aorta w/7 Measurements	Mesenteric
Super STAT Circle of Willis	Super STAT Carotid	

Premium Cases are those cases that require materially more time and clinical expertise to complete. Typically, Premium Case protocols will have a TAT of twelve (12) hours with a limited number requiring as much as twenty-four (24) hours. Examples of Case protocols that are normally classified as Premium Cases include but are not limited to:

Pre-Operative AAA Stent	Post-Operative AAA Stent	Liver Donor
Pre-Operative TAA Stent	Post-Operative TAA Stent	TAVR
MRI-Functional Analysis	Recipient Renal Study	TEAVR
Aorta-Pre-Operative	CTA Left & Right	

- b. Protocol Advisory Services. CONTRACTOR will utilize its standard post-processing protocols and when requested by NMC will use good faith efforts to tailor protocols to meet specific institutional preferences. Furthermore, CONTRACTOR will actively participate in the development of protocols to assist NMC in adapting to ongoing developments/changes in existing software and hardware platforms. CONTRACTOR will also offer assistance in evaluating scanning protocols to help improve the quality of the 3D renderings it prepares for NMC. If the customized protocols – because of their complexity - cannot be effectively post-processed within the target turnaround times specified above and/or for the Fee Per Case charges presented herein below, CONTRACTOR will notify NMC of this fact and the parties will cooperate to develop mutually acceptable target turnaround times and Fee Per Case charges for all such custom protocols.
- c. Network Connectivity Coordination. Network connectivity and capacity attributes are major determinants of the total elapsed time required to transmit medical data sets to CONTRACTOR and to receive the processed 3D Images back for interpretation. Therefore, high speed, secure virtual private network (“VPN”)

internet connections shall be used to transmit medical data sets to, and from, CONTRACTOR's Laboratory. NMC and CONTRACTOR agree that each Party shall assume responsibility for implementing its portion of the network connectivity as defined below:

- i. CONTRACTOR Network Connectivity. CONTRACTOR agrees to acquire and maintain high-speed connections to the Internet with bandwidth capacity sufficient to reasonably satisfy the needs of all its clients. CONTRACTOR will use commercially reasonable efforts to coordinate, via telephone and at no charge, with NMC technical support personnel to assist in establishing and maintaining secure Internet connections that will facilitate the rapid and secure movement of the medical data sets to CONTRACTOR and the return of the rendered 3D Images back to NMC.
  
- ii. NMC Connectivity and Use of "Di-Celerator". NMC shall acquire and maintain connections to the Internet with at least ten (10) mbps (megabits per second) of bandwidth with latency characteristics of less than eighty-five ms (milliseconds), "**Minimum Bandwidth**". Both parties understand that the sending and receiving of DICOM image data files may be slower than anticipated and that both parties – if deemed necessary - will make their best efforts to develop secondary processes designed to improve the sending and receiving times.

To this end and if requested by NMC, CONTRACTOR will provide its "Di-Celerator" image compression and transmission software at no charge to NMC for use in attempting to reduce the image file transmission times. NMC will utilize (at no charge to CONTRACTOR) an appropriate Windows-based workstation/server that will provide interim DICOM file storage, compression and transmission capabilities provided by the Di-Celerator software. NMC understands that CONTRACTOR is providing the Di-Celerator software for use as a potential solution for improving the DICOM image file transmission problem and that CONTRACTOR makes no guarantees that the Di-Celerator software will provide material improvements to the DICOM file transmission times.

CONTRACTOR hereby grants NMC a non-transferable license to utilize the output produced by CONTRACTOR from any software used by CONTRACTOR to provide the Services to NMC hereunder, including: (i) "Di-Celerator" image compression and transmission software; (ii) QMASS and QFLOW software licensed to CONTRACTOR by Medis Medical Imaging Systems, Inc. ("**Medis**"); or, (iii) 3D rendering software provided by vendors including Visage Imaging, TeraRecon, Vital Images, Analyze 10, etc., (collectively, "**Software**") for the Initial Term or any Renewal Term of this Agreement.

- d. Workflow Consulting. CONTRACTOR will consult with NMC imaging and IT personnel to implement mutually agreeable workflow procedures by which Acceptable Data Sets will be moved to CONTRACTOR's Systems. CONTRACTOR will not charge NMC for these consulting services. Once the post-processing has been completed, CONTRACTOR's Technologists will forward the processed case files, which will have been prepared according to approved protocols, back to the NMC designated picture archiving and communication system ("PACS"). The processed cases will be accessed by NMC radiologists and referring physicians directly through the PACS system or other image distribution facilities operated by NMC.
- e. Additional Post-processing of Completed Cases by CONTRACTOR Technologists. CONTRACTOR shall provide access to NMC Authorized Personnel to request that CONTRACTOR Technologists perform additional manipulation and post-processing of completed cases (**Call Backs**) that have been transmitted back to NMC but are still stored on CONTRACTOR's servers, for a period of thirty (30) days following the completion of the initial post-processing protocol by CONTRACTOR's Technologists. It is anticipated that the additional post-processing requested will be to either correct or clarify clinical findings that result during the reading and image interpretation performed by NMC's Authorized Personnel. Those additional post-processing steps will normally not result in additional fees being charged. However, additional protocols ordered during the 30 day period for cases previously completed may result in additional fees being charged.
- f. Retention of Thin Slice Data Sets and Rendered 3D Images. All thin slice data sets and rendered 3D Images associated with post-processing services will be available on CONTRACTOR's servers on a first-in, first-out (FIFO) basis for thirty (30) days following the initial receipt of the DICOM case files.
- g. Hosting Services. If applicable, terms and conditions related to CONTRACTOR's provision of Hosting Services are set forth in Schedule F.

Obligations of CONTRACTOR; Performance Expectations. CONTRACTOR hereby agrees that during the term of this Agreement CONTRACTOR shall use reasonable efforts to provide the services as described herein

## II. NMC Obligations:

NMC hereby agrees that during the term of this Agreement:

- a. NMC shall be responsible for any third party billing and collection for services provided to their customers.
- b. NMC shall fully cooperate with CONTRACTOR regarding the installation, implementation, and maintenance of a communication network that will allow CONTRACTOR to provide the Services.
- c. NMC shall assume sole responsibility for the actions of any party, other than CONTRACTOR or CONTRACTOR agents, who shall be provided access by NMC to any cases reconstructed by CONTRACTOR. NMC further assumes the sole responsibility for implementing and maintaining the procedures and protocols which CONTRACTOR recommends to access the 3D Images.
- d. NMC shall use its best efforts to utilize scanning equipment and protocols capable of acquiring medical data sets that are acceptable for advanced post-processing.
- e. NMC shall adhere to the Notification Procedures set forth in Schedule B of this Agreement.

### Pricing Structure, Billing Calculation Procedure and Other Pricing Matters.

Pricing Structure. During the Initial Term, and any Renewal Term, NMC shall pay CONTRACTOR for post-processing services in accordance with the Fee per Case Structure shown below. All cases submitted to CONTRACTOR for post-processing (both Regular and Premium) from NMC's participating locations will be aggregated to determine which Fee per Case pricing tier to use for a specific month.

The Pricing Structure for Post-Processing Services is based upon three factors:

Clinical Protocol Category (Regular vs. Premium) – The descriptions of the various clinical protocols provided above identify the relative difficulty and amount of time required to process them.

Fixed Fee-Per-Case vs. Variable, Quantity-discounted Fee-Per-Case – Fixed fees that do not vary based on the number of cases processed each month have been assigned to certain cases (Premium Cases) identified below. The fees for the other cases – Regular Cases – are determined based upon the aggregate number of cases processed by all participating NMC facilities and discounted accordingly.

Case Priority – Critical cases that require priority processing (“STAT” cases) are charged a surcharge to cover the additional costs of expedited handling by CONTRACTOR.



### III. Pricing/Fees:

- a. NMC shall pay CONTRACTOR for post-processing services in accordance with the Fee per case structure shown below. All cases submitted to CONTRACTOR for post-processing from NMC's affiliated facilities will be aggregated to determine which Fee per case pricing tier to use for a specific month.

#### \$30 Fixed Regular Fee Per Case for:

- Each complete PET/CT Fusion case processed by CONTRACTOR's Senior Technologists;
- Each complete Calcium Scoring cases prepared by CONTRACTOR's Senior Technologists; and,
- Each Magnetic Resonance Ventricular Flow case prepared by CONTRACTOR's Senior Technologists.

\$130 Fixed Premium Fee Per Case for each Magnetic Resonance Functional Cardiac Analysis case and each CT Functional Analysis (Left and Right Ventricle).

\$160 Fixed Premium Fee Per Case for each Computed Tomography Angiography (CTA) study that includes post-processing protocols related to pre- and post-stent placements for Abdominal Aortic Aneurysms (AAA), Thoracic Aortic Aneurysms (TAA), Trans catheter Aortic Valve Replacements (TAVR) and Liver and Renal Donor/Recipient cases.

For all other Regular Cases submitted to CONTRACTOR by NMC during a specific month the following Discounted Fee Per Case charges will be:

- |                             |                            |
|-----------------------------|----------------------------|
| • Up to <u>50</u>           | <u>Fee Per Case = \$60</u> |
| • <u>51</u> to <u>100</u>   | <u>Fee Per Case = \$58</u> |
| • <u>101</u> to <u>150</u>  | <u>Fee Per Case = \$56</u> |
| • <u>151</u> to <u>200</u>  | <u>Fee Per Case = \$55</u> |
| • <u>201</u> to <u>250</u>  | <u>Fee Per Case = \$53</u> |
| • <u>251</u> to <u>500</u>  | <u>Fee Per Case = \$52</u> |
| • <u>501</u> to <u>1000</u> | <u>Fee Per Case = \$51</u> |
| • Over <u>1000</u>          | <u>Fee Per Case = \$50</u> |

The Fee Per Case pricing tiers presented above apply to all cases processed during a given month. Therefore, the number of Fixed Regular and Fixed Premium Cases will be added to the number of Regular cases to determine the Fee per Case for the discounted Regular cases.

The Fee Per Case and Target Turnaround Times for other specific protocols not identified in Schedule B to this Agreement will be negotiated by CONTRACTOR with NMC prior to their being post-processed by CONTRACTOR's technologists.

STAT Case Surcharge. A surcharge of fifteen percent (15%) of the Fee Per Case will be charged for each case designated with a STAT priority. The guaranteed TAT for a Regular Case is normally four (4) hours. However, if NMC provides a Pre-Notification to CONTRACTOR that a STAT case will be transmitted at least 15 minutes in advance of the receipt of the DICOM file components, then CONTRACTOR will guarantee to complete the case processing within a one (1) hour TAT.

If adequate STAT priority Pre-Notification is not provided to CONTRACTOR by NMC, CONTRACTOR will not honor the STAT request and will schedule the case to be processed as a Routine priority case.

STAT TATs cannot be guaranteed for Premium Cases. However, if requested by NMC, CONTRACTOR will make its "Best Efforts" to turn Premium Cases around in less than the contractual TAT for those cases designated with a STAT priority.

NMC agrees that it will request the STAT priority for only those cases in which the more rapid turnaround of the post-processed images is deemed to be medically necessary for the individual patient's health situation.

Super STAT Protocols. Currently, CONTRACTOR provides a special Super STAT protocol that guarantees a thirty (30) minute TAT for purposes of expediting neuro-interventional decision-making related to stroke diagnosis and treatment. STAT priority Pre-Notification as described above is also required for cases where the Super STAT priority is requested. These two protocols are abbreviated materially from the Regular Circle of Willis and Regular Carotid protocols to enable this rapid turnaround. Cases that are designated to have a Super STAT priority will also be assessed with a 15% surcharge of the appropriate Fee per Case.

Late Case Credits. All cases - routine and STAT - that are not completed by CONTRACTOR's Technologists within the specified Target Turnaround Times describe herein will not be charged to NMC. Late case credits will be subtracted from the monthly bill but will be included in the cumulative monthly case volume to determine the appropriate pricing tier to use in selecting the Fee per Case to use for such month.

#### IV. ADDITIONAL TERMS AND CONDITIONS

a. Responsibility. NATIVIDAD agrees and acknowledges that (i) 3DR will provide the services described in this Agreement as a visualization tool for NATIVIDAD and that 3DR will not provide any interpretation or diagnosis of NATIVIDAD's patients' 3D Images and (ii) the sole responsibility for interpreting the patients' 3D Images remains with NATIVIDAD or the independent contractor physicians working on behalf of NATIVIDAD. Therefore, NATIVIDAD shall indemnify and hold harmless 3DR, its officers, members, directors, and employees from any and all claims, actions, demands or suits brought by any third Party with respect to medical treatment or diagnosis, or any other action, inaction, error or omission, made or taken by NATIVIDAD based on, or related to, the services provided by 3DR pursuant to this Agreement.

b. Warranties.

i. Title. 3DR warrants and represents that: (i) it has and shall continue to have for the Term of this Agreement, the right to grant to NATIVIDAD the license to use the Software as set forth in this Agreement without violating the rights of any third Party; and (ii) there is no actual or threatened suit by any third party based on an alleged violation of such right by 3DR. To the extent 3DR incorporates third party rights into the Software or Services, 3DR warrants and represents that it has obtained the rights from those third parties necessary to vest in or grant to NATIVIDAD the various rights necessary under this Agreement. 3DR further agrees that it shall notify NATIVIDAD, in writing, of any regulatory issues, arbitration, or litigation, pending or active, that may affect 3DR's performance or ability to perform under this Agreement promptly upon learning of same, but in any event no later than twenty (20) days after 3DR becomes aware of such matters.

ii. Illicit Code. 3DR warrants and represents that: (i) unless authorized in writing by NATIVIDAD; or (ii) necessary to perform valid duties under this Agreement, any Software provided to NATIVIDAD by 3DR for use by 3DR, NATIVIDAD shall: (a) contain no hidden files; (b) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides; (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; or (d) contain no key, node lock, time out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this Agreement, based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria ("Illicit Code"). If any Software contains Illicit Code, 3DR shall, via a document specific to this provision, notify NATIVIDAD in writing and receive a signed acknowledgement of receipt from NATIVIDAD. Such notification shall specifically inform NATIVIDAD of the full extent and nature of the Illicit Code and provide NATIVIDAD with instructions for overriding such Illicit Code in emergencies. Notwithstanding anything elsewhere in this Agreement to the contrary and to the extent any Software contains Illicit Code, 3DR shall be in default of this Agreement and no cure period shall apply. In addition to any other remedies available to them under this

Agreement, NATIVIDAD reserves the right to pursue any civil and/or criminal penalties available to them against 3DR.

- c. CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.
- d. Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.
- e. County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.
- f. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

## Schedule A

### “Central Server” Model: Assumes 3DR Thin Server located at 3DR Laboratory:

- DICOM data sets for each case are transmitted to 3DR by NATIVIDAD.
- 3DR personnel perform post-processing of the DICOM data sets using 3DR Thin hardware and software as appropriate and immediately transmit rendered Images back to NATIVIDAD PACS or other devices specified in NATIVIDAD protocols.
- 3DR technologists temporarily (30 day accessibility period) store rendered Images and thin slice data sets on 3DR servers to satisfy NATIVIDAD additional post-processing requirements.
- Following expiration of accessibility period, 3D Images and thin slice data sets are deleted.

## Schedule B

### Notification Procedures & Minimum Acceptable Service Levels

(To be completed by inserting final, customized procedures prior to initiation of services.)

Notification Procedures: "Notification Procedures" means the written procedures set forth below that are customized and used by NATIVIDAD's technologists to notify the 3DR Technologists that a Case is being transmitted and that includes specific information about the patient and the clinical protocol(s) that are to be performed. The Notification Procedures below are representative of Notification Procedures associated with the use of the Facsimile modality. NATIVIDAD's specific Notification Procedures will be developed by NATIVIDAD and 3DR during the implementation planning process and may also include procedures for the use of email and telephone.

FOR: Regular & Premium Cases (Notification may differ for email of phone)

NATIVIDAD shall notify 3DR that a case with a "Regular" or "Premium" designation has been transmitted to 3DR's system and that an Acceptable Data Set is available on 3DR's system for 3DR to perform post-processing services by sending an appropriate Fax memorandum to 3DR using the following FAX telephone number: (502) 569-1026. All faxes (for Regular, Premium and STAT cases) shall have a cover sheet that includes the following confidentiality statement:

*This Facsimile transmission is intended only for the addressee shown above. It may contain information that is privileged, confidential or otherwise protected from disclosure. Any review, dissemination or use of this transmission or any of its contents by persons other than the addressee is strictly prohibited. If you receive this fax in error, please destroy materials immediately and call the front desk at (xxx-xxx-xxxx) upon receipt. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company.*

The Fax transmission form may include at least the following information:

Physician Name: Hospital Name;

Hospital Contact Phone Number:

Patient Name:

Patient Identification/Reference Date:

Scan Date;

Number of Images:

Bill to Information:

**FOR: Regular STAT Cases (Notification may differ for email of phone)**

NATIVIDAD shall provide 3DR with at least fifteen (15) minutes notice that a STAT case is imminent prior to the transfer of Acceptable Data Sets from NATIVIDAD’s scanner to 3DR’s systems by calling the “Beeper” Phone Number” [1-800-315-6521] carried by the “on-call” Technologist. NATIVIDAD’s representative making the notification phone call shall leave the contact number which the Technologist will call back immediately. Purchaser’s notifying party may provide the Technologist with the following information:

Physician Name:

Hospital Name:

Patient Identification/Reference Data:

Scan Date;

Number of Images:

NATIVIDAD will subsequently verify by phone call to 3DR’s operations control personnel that the requested STAT post processing case has been completed and then send to 3DR a FAX containing the additional information provided with Regular and Premium Cases for follow-up documentation.

FOR: STAT Cases

NATIVIDAD shall provide 3DR with at least fifteen (15) minutes notice (via telephone, email, fax or other notification for STAT Cases.

**FOR: Super STAT Cases (Use same procedure as for STAT cases)**

**Minimum Acceptable Service Levels (Case Turnaround Times):** Provided that NATIVIDAD provides notification to 3DR and all components of the DICOM scan files and associated processing instructions as specified in this Schedule B, 3DR will “guarantee” the TAT required to complete the processing. All cases that are not completed within the guaranteed TAT will be processed “at no charge” to the NATIVIDAD Participant.

MASL #	Criteria	Minimum Acceptable Service Level
1.	Regular Cases	4 Hour TAT (assumes close alignment with scope and complexity of NATIVIDAD standard protocols). If NATIVIDAD provides 3DR with at least fifteen (15) minutes notice then a 1 Hour TAT.
2.	Premium Cases	12 Hour TAT for standard Premium Cases. 24 Hour TAT for the following Premium Cases: TAVR and MR Functional Analysis
3.	STAT Cases (not applicable to Premium Cases)	1 Hour TAT for STAT Cases other than Abdominal Aortic Aneurysm (“AAA”) and Thoracic Aortic Aneurysm (“TAA”), Transcatheter Aortic Valve Replacement (“TAVR”) and

		Liver/Renal Donor Workup cases, MR Cardiac (“ <b>Functional Cardiac Analysis</b> ”) cases and AIF Runoff cases (collectively, the “ <b>Long Cases</b> ”). 3DR shall perform the post-processing services as expeditiously as possible for the Long Cases. <u>No STAT priority will be guaranteed for Premium Cases because of the additional amount of Technologist time required to process Premium Cases.</u>
4.	<u>Super STAT Cases</u>	<u>30 Minute TAT (with abbreviated protocols only – i.e. “code strokes”, etc.)</u>
5.	<u>MRA Functional Cases Only</u>	<u>24 Hour TAT</u>
6.	<u>Stent Cases</u>	<u>12 Hour TAT*</u>
7.	<u>TAVR Cases</u>	<u>12 Hour TAT*</u>
8.	<u>MRA Functional Cases</u>	<u>24 Hour TAT*</u>
9.	<u>Liver Donor Workups</u>	<u>12 Hour TAT*</u>
10.	<u>Renal Donor Workups</u>	<u>12 Hour TAT*</u>
11.	<u>Full-Body AIF Runoffs</u>	<u>4 Hour TAT* (per anatomical section depending on complexity and measurement requirements) (actual TAT determined based on NATIVIDAD’s protocol characteristics)</u>
6.	<u>Stent Cases</u>	<u>12 Hour TAT*</u>

Neither the time required to transmit the source data sets from NATIVIDAD’s scanner to 3DR nor the time required to transmit the finished case’s image data sets back to NATIVIDAD’s RIS/PACS are included in the TAT measurements. Therefore, the total elapsed time required for sending, processing and returning the completed image sets to NATIVIDAD will be longer than the actual processing TAT being measured. The difference in elapsed time will be largely determined by the speed of transmission achieved through the 3DR/NATIVIDAD VPN connections.

**\*STAT TATs for these Cases are not guaranteed.**

**Fee Reductions for Turnaround Times**

All Regular Cases, Premium Cases, STAT Cases and Super STAT Cases that are not completed by the Technologists within the specified TAT described in this Schedule B will not be charged to NATIVIDAD. Late case credits will be subtracted from the monthly bill but will be included in the cumulative monthly case volume to determine the appropriate pricing tier to use in selecting the Fee Per Case to use for such month.



## Schedule C

### **Qualifications of 3DR's Senior Technologists**

#### **Job Description – 3DR Senior Technologist**

---

##### **Primary Responsibilities:**

All Technologists shall be employed by 3DR and 3DR will not outsource any of the Services provided to NATIVIDAD per this Agreement. Senior Technologists are under general supervision of the 3D Director of Laboratory Operations. The Senior Technologist manipulates CT and MRI medical images on highly sophisticated 3D workstations and specialized “thin” client/server equipment in multiple planes and dimensions for clinical visualization and quantitative analysis of diagnostic and interventional studies. The technologist must:

- Manage transfer of image data to and from the 3D lab’s post-processing equipment in an accurate and timely manner;
- Must have the ability to determine which 3D views to prepare for diagnosis and pre-surgical planning;
- Collaborate with other professional colleagues and to be able to respond to clinicians’ detailed request for views depicting certain anatomy and/or pathology; and
- Willing and able to be trained to perform 3DR imaging protocols on varied patient population including 3D vascular exams to include all arteries and veins.

##### **Specific Duties:**

The successful candidate for the Senior Technologist position will undergo a rigorous training period for approximately three (3) months. This will include training in operation of complex 3D imaging software, and in creating standard protocol views for a wide range of clinical anatomy and pathology. The Technologist will also be expected to complete all 3DR Academy training modules. The 3D imaging Technologist must be well versed in scanning technology, cross-sectional anatomy and gross pathology. Have the skills and knowledge to be able to recognize poor image quality such as motion, artifact, and incorrect algorithms.

##### **Experience Requirements:**

The Senior Technologist should be familiar with various Picture Archiving Communications Systems (“PACS”) and Radiology Information Systems (“RIS”), including the ability to accurately log patient data for precise recordkeeping and billing. This position requires an understanding and familiarity with UNIX and Windows operating systems, a variety of visualization and quantification software packages, and basic cross-sectional anatomy and pathology. Additional experience requirements include:

- Experience with 3D and multi-planar reformatting preferred.
- Experience with thin-client technology preferred.

- Knowledge of cross-sectional anatomy, physiology, medical terminology and radiologic equipment.
- Excellent interpersonal, communication and organizational skills.
- Knowledge of Magnetic Resonance and Computed Tomography Imaging.
- Experience in volumetric image processing strongly preferred. Desirable workstation experience includes: GE –AW, Tera Recon, Vital Images and Voxar.

Excellent written and verbal communication skills are required. Physical demands require sitting for eight (8) hours in front of a 3D workstation with scheduled breaks, using a mouse and keyboard. Candidates must possess the mental and visual ability to operate complex computer equipment. Creative problem-solving and the ability to design and manage clients' workflow are critically important skills.

**Education and Certifications:**

ARRT RT(R) required, CT and MR preferred

Associates of Health Science in Radiologic Technology required

Volumetric Imaging Certification preferred

Four-year Baccalaureate degree in a science is highly desirable

## **Schedule D**

### **Additional Authorized 3DR Personnel**

---

The following 3DR personnel are authorized by NATIVIDAD to supervise other 3DR Technologists who are performing post-processing of NATIVIDAD cases and/or directly perform post-processing of NATIVIDAD cases even though their qualifications do not conform to the specific background, training and certification requirements specified in the Job Description for a Senior Technologist presented in Schedule C. 3DR Laboratories attest that these Additional Authorized Personnel are qualified to perform the supervisory and direct service delivery tasks of Senior Technologists because of their unique qualifications that do not include appearing on the American Registry of Radiologic Technologists (“ASRT”).

#### **Robert Falk, MD – Founder, Managing Director, and Chief Medical Officer**

Dr. Falk has been a practicing radiologist in Louisville, Kentucky since 1987. He completed his medical training, including medical school, internship, radiology residency and neuro-radiology fellowship at The Medical College of Wisconsin in Milwaukee. In addition to an interest in neuro-radiology, he has expertise in body imaging, musculoskeletal, cardiovascular disease and advanced 3D image manipulation. Dr. Falk is past president of the Jewish Healthcare Medical Staff and former vice chair of the Jewish Healthcare Services Board of Trustees. He has served on the Board of Directors and Executive Committee of the Physicians Incorporated in Louisville, and as the physician representative for Jewish Healthcare to The Leadership Institute. Dr. Falk founded 3DR in 2004 and still maintains a busy private practice while devoting more and more time to building 3DR.

## Schedule F

### Hosting Services Schedule

To carry out its application service/hosting obligations under the Agreement ("**Hosting Services**"), 3DR agrees to the terms and conditions set forth in this Hosting Services Addendum ("**Hosting Addendum**"). If there is a conflict between the terms of the Agreement and the terms of this Hosting Addendum, the terms of this Hosting Addendum shall control.

1. **Data Center / Host Contractor.** The Services shall be hosted at the 3DR data center facility, located at: 332 West Broadway, Suite 700, Louisville, Kentucky ("**Data Center**").
2. **Security.** 3DR and any subcontractors to whom Data is provided shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of Data in the possession of 3DR or such subcontractors, and which shall be (i) no less rigorous than those maintained by NATIVIDAD as of the Effective Date (or implemented by NATIVIDAD in the future to the extent deemed necessary by NATIVIDAD), as each is communicated to 3DR in accordance with the Agreement, (ii) no less rigorous than those maintained by 3DR for its own information of a similar nature, (iii) no less rigorous than accepted security standards in the industry, and (iv) adequate to meet the requirements of NATIVIDAD's privacy, security and records retention policies, as well as all obligations imposed on NATIVIDAD under law, as each is communicated to 3DR in accordance with the Agreement. "Data" means all data and information, whether in written or electronic form, submitted to 3DR by NATIVIDAD or a user, or obtained, developed or produced by 3DR in connection with the Services, but excluding internal communications of 3DR that relate only to 3DR's administration and management.

The data security program and associated technical, organizational and security measures shall comply in all material respects with all applicable laws.

The content and implementation of the data security program and associated technical, organizational and security measures shall be fully documented in writing by 3DR. 3DR shall permit NATIVIDAD to review such documentation and/or to inspect 3DR's compliance with such program in accordance with the Agreement.

Under no circumstances shall 3DR make any changes that materially weaken any technical, organizational or security measures in place to safeguard Data, or result in 3DR's failure to meet any of the minimum standards set forth above without NATIVIDAD's prior approval. Under no circumstances shall 3DR or 3DR's employees attempt to access or allow access to Data that is not required for the performance of 3DR's obligations or otherwise permitted under the Agreement.

NATIVIDAD shall have the right to establish backup security for any Data and to keep backup

copies of such Data in its possession if it chooses. At NATIVIDAD's request, 3DR shall provide NATIVIDAD with downloads of Data to enable NATIVIDAD to maintain such backup copies.

If NATIVIDAD authorizes certain 3DR employees to access and use (direct or remote) any of its computer or electronic data storage systems, 3DR shall limit such access and use solely to 3DR employees and subcontractors and to the performance of the Hosting Services or 3DR's other obligations under the Agreement, and shall not permit any access or use of any such computer or electronic data storage system by unauthorized personnel or for any other purpose. All user identification numbers and passwords disclosed to 3DR or 3DR's employees or subcontractors for, and any information obtained by 3DR or 3DR's employees or subcontractors as a result of, their access to and use of such computer and electronic storage systems shall be deemed to be, and shall be treated as, Data.

3. **Certification and Audits of 3DR.** 3DR represents and warrants that with respect to its Data Center, it has performed a security audit based on the Statement on Standards for Attestation Engagements (SSAE) No. 16 and is in receipt of a[n] American Institute of Certified Public Accountants ("AICPA") AT Section 101 SOC 2, Type II report prepared by a certified public accountant registered with the Public Company Oversight Board that covers at least a six month period of time in a July 1 to June 30 fiscal year with a favorable assessment of 3DR's internal controls and shall maintain same on an annual basis throughout the Term of this Agreement. Annually, 3DR shall provide NATIVIDAD with a copy of its then current AICPA AT Section 101 SOC 2, Type II audit for any six month period in a July 1 to June 30 fiscal year by not later than June 1 of the applicable year and shall provide any updates thereto necessary to address any deficiencies identified in such audit. If 3DR becomes certified in other programs intended to evaluate security of the data center or measures to ensure data confidentiality and integrity, 3DR shall provide information regarding such certification to NATIVIDAD.
4. 3DR shall safeguard Data against loss, disclosure, unauthorized access or alteration under security procedures consistent with best practices in the health and medical industry. Data shall not be duplicated and/or disclosed to others, in whole or in part, by 3DR, without the express written consent of NATIVIDAD, except and only to the extent that such duplication or disclosure is necessary to carry out the performance of the Hosting Services or as necessary to comply with any laws. If 3DR is legally compelled by law, process or order of any court or governmental agency or otherwise to disclose Data and/or NATIVIDAD's Confidential Information, 3DR shall give NATIVIDAD prompt notice and permit NATIVIDAD to seek a protective order or take other appropriate action.
5. **Destruction of Data.** Upon termination of the Agreement, 3DR shall erase or destroy all Data in 3DR's possession and, upon request by NATIVIDAD, provide certification thereof.
6. **Destroyed or Lost Data.** 3DR bears the full and complete risk and liability for all loss, theft or destruction to any Data provided to 3DR. 3DR will not modify, delete or destroy any Data or media on which Data resides without prior authorization from NATIVIDAD. 3DR will maintain and provide to NATIVIDAD one or more reports that identify Data or media that have been modified or destroyed (except as authorized in the Agreement). In the event any Data is modified, lost or destroyed due to any act or omission of 3DR that is not authorized in the

Agreement, including any breach of the security procedures described in the Agreement, 3DR shall be responsible for the prompt regeneration or replacement of Data. 3DR shall prioritize this effort so that the loss of Data will not have an adverse effect upon NATIVIDAD's business or the Hosting Services.

7. **Audit Logs.** 3DR shall ensure audit trails are maintained with regard to access to all Data, without limitation, 3DR shall utilize sufficient access control applications to enable it to identify and authenticate users with access to Data, and to record and investigate security related events and data, including, but not limited to, establishing user audit trails. 3DR shall investigate any security breach resulting in unauthorized access to such Data, and provide additional security protections, at no additional charge to NATIVIDAD, to correct any security deficiencies identified by NATIVIDAD. 3DR warrants and represents that all information provided by it, its agents, and its representatives (for the avoidance of doubt, "**agents**" and "**representatives**" exclude third parties other than 3DR's contractors acting on 3DR's behalf) prior to the execution of this Agreement and all responses to any applicable request for proposal and/or security review issued by NATIVIDAD are true, complete, and accurate. To the extent NATIVIDAD provides 3DR with: (i) notice of any material misrepresentation; (ii) evidence of the misrepresentation; and (iii) NATIVIDAD costs directly arising from the misrepresentation, 3DR shall have thirty (30) business days to respond to NATIVIDAD regarding the misrepresentation, and provide NATIVIDAD with a plan to cure the misrepresentation.
8. **Retention of Logs.** 3DR will retain the system and security logs generated by the operating system and security software for twelve (12) months.

Exhibit B

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) effective August 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 3DR Labs, LLC (“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 (“HIPAA”), 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, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”).

E. 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**

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

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 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 PHI 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) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (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.**

(d) "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);

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*



(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 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;

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

(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) In consultation with the Covered Entity, Business Associate shall mitigate, 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 Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable request by Covered Entity;

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

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

(k) 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;

(l) 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

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(m) 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 and the HITECH Act. Business Associate shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC'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 NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC 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**

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**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 (v) 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

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

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:

3DR Labs, LLC.

Attn: Don Cundiff

332 West Broadway, Suite 700, Louisville, Kentucky 40202

Phone: 502-814-7017

Fax: 502-569-1026

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.

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**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.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**5.12 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

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: David E. Ferguson  
Print Name David E. Ferguson  
Print Title Chairman & Senior Managing Dir.  
Date: 7/12/2017

By: [Signature]  
Print Name: Gary R. Gray  
Print Title: Chief Executive Officer  
Date: [Signature]

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*