



# Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Order

### Agreement No.: A-13298

Upon motion of Supervisor Potter, seconded by Supervisor Armenta and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute the Master Agreement with Net Health Systems, Inc. (Net Health) retroactive to August 31, 2016, for the provision of rehabilitation documentation software and licenses to be used within Natividad Medical Center's Outpatient Physical, Occupational and Speech Therapy Departments, including a Purchase Schedule and containing non-standard risk terms regarding limitation of liability, non-standard insurance provisions, limitation on warranty and indemnification, in an amount not to exceed \$55,950 for a one-year term of August 31, 2016 through August 30, 2017; and
- b. Authorized the Deputy Purchasing Agent for NMC or his designee to execute up to three (3) future amendments to the Master Agreement, which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) (\$5,595) of the original cost of the Master Agreement.

PASSED AND ADOPTED on this 20th day of September 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on September 20, 2016.

Dated: September 21, 2016  
File ID: A 16-292

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By *Denise Hancock*  
Deputy

## MASTER AGREEMENT

**THIS MASTER AGREEMENT** (the "Agreement") is made this 31st day of August, 2016 (the "Effective Date"), by and between Net Health Systems, Inc., a Pennsylvania corporation with an address at 40 24<sup>th</sup> Street, Pittsburgh, Pennsylvania 15222 ("Net Health") and the County of Monterey on behalf of Natividad Medical Center, an entity organized under the laws of California with an address at 1441 Constitution Blvd, Salinas, CA 93912-1611 ("CUSTOMER").

### RECITALS

**WHEREAS**, Net Health owns proprietary software and CUSTOMER desires to license software from Net Health in accordance with the terms of this Agreement; and

**WHEREAS**, Net Health and CUSTOMER desire that this Agreement serve as the Master Agreement with respect to one or more purchase schedule(s) (each a "Purchase Schedule") attached hereto as Exhibit A (which may from time to time be amended, supplemented, or restated as agreed in writing between the parties) and executed by Net Health and CUSTOMER setting forth the Licensed Software (as such term is defined herein below), services, service fees and other terms applicable thereto.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, and intending to be legally bound hereby, the parties agree as follows:

#### 1. LICENSE.

(a) License Grant. Subject to the terms, conditions and limitations set forth in this Agreement, Net Health hereby grants to CUSTOMER, and CUSTOMER accepts and receives, the non-exclusive, non-transferable license more fully described in the Purchase Schedule(s) (the "Licensed Software") attached hereto as Exhibit A, and all related materials and services, if any, supplied by Net Health hereunder in accordance with the documentation provided by Net Health for the number of designated sites and healthcare providers/users (each an "Authorized Site/Provider," which Authorized Sites/Providers are more fully identified on Exhibit A) set forth in the applicable Purchase Schedule.

(b) Limitations. Except as otherwise expressly set forth herein, the foregoing license expressly excludes licenses to copy, distribute, disseminate, modify, reverse engineer or sublicense Licensed Software. Payment of the Fees (as defined in Section 4) or any portion thereof does not entitle CUSTOMER, or any of its affiliates, independent contractors, or agents, to use the Licensed Software at any location other than an Authorized Site. Subject to the foregoing restrictions and Section 7 hereof, CUSTOMER'S affiliates and those agents and subcontractors of CUSTOMER that have agreed in writing to abide by the terms and conditions of this Agreement may access and/or use the Licensed Software solely for CUSTOMER'S benefit hereunder. CUSTOMER at all times shall be responsible and liable to Net Health for any use of the Licensed Software by such affiliates, agents or subcontractors.

(c) Title. Title to the Licensed Software and all additional programs developed by Net Health for CUSTOMER hereunder, and all copies thereof are proprietary to Net Health and title thereto remains with Net Health.

(d) License Term. In accordance with the terms herein, commencing on the Effective Date of this Agreement or any applicable Purchase Schedule Effective Date, Net Health grants to CUSTOMER a license to use the Licensed Software only for the term stated in the applicable Purchase Schedule (the "Initial Term").

(e) Return of Data. (i) All data provided by CUSTOMER ("CUSTOMER data") belongs to CUSTOMER. Except for purposes of providing the services hereunder, use or distribution of CUSTOMER data by Net Health is prohibited unless Net Health obtains prior written consent from CUSTOMER. Upon request from CUSTOMER following termination of this Agreement or any Purchase Schedule for any reason, Net Health shall provide in a useable electronic form, as a comma delimited text file, a copy of the CUSTOMER data to CUSTOMER. If CUSTOMER makes no such request within 90 days of termination, Net Health shall have the right to destroy its copy of such CUSTOMER Data without further obligations to CUSTOMER. If Net Health is unable to return all data then data must be erased, destroyed and rendered unreadable in its entirety in a manner that prevents its physical reconstruction.

## 2. INTERFACES.

(a) CUSTOMER agrees to accept, and Net Health agrees to build, as applicable, the interface(s) described in the Purchase Schedule (the "Interface(s)").

(b) Implementation Timeframe. Assuming reasonable cooperation from CUSTOMER, the Interface shall be completed no more than forty-five (45) days after CUSTOMER requests such interface, which request shall be deemed to be submitted upon the completion, execution, and delivery of the Applicable Purchase Schedule to Net Health and the attachment of the same to the Agreement; provided, however, Net Health is not currently building an interface for CUSTOMER. In this event, Net Health will complete the requested Interface within approximately forty-five (45) days after the previous CUSTOMER interface is accepted.

(c) Acceptance. CUSTOMER will have a period of thirty (30) days after completion of the Interface (the "Acceptance Period") to test the Interface to confirm that it is capable performing in all material respects in accordance with all functional specifications set forth in the Purchase Schedule. If CUSTOMER notifies Net Health in writing during the Acceptance Period of any failure of the Interface to conform to the standards as set forth in the Purchase Schedule, Net Health, at its own expense, will modify, repair, adjust, or replace the Interface to make it conform to the specifications set forth in the Purchase Schedule within thirty (30) days after the date Net Health receives CUSTOMER'S deficiency notice. Net Health will provide CUSTOMER with a written "corrective action plan" in response to CUSTOMER'S deficiency notice. CUSTOMER may perform additional acceptance tests during a period commencing on the date when Net Health has delivered a revised Interface correcting all identified deficiencies. This restarted Acceptance Period will have a duration equal to that of the initial Acceptance Period. If the Interface does not conform to the specifications set forth in the Purchase Schedule, at the end of the applicable Acceptance Period or any extension thereof, CUSTOMER may either (i) reject such Interface

and terminate the Purchase Schedule with respect to such interface for material breach without further cure period, or (ii) repeat the acceptance procedures set forth in this Section 2(c) as often as CUSTOMER determines is necessary.

**3. INTENTIONALLY OMITTED.**

**4. PAYMENT.**

(a) In consideration of the Licensed Software and Interface(s) provided hereby, CUSTOMER shall pay to Net Health the amounts provided for in the applicable Purchase Schedule (the "Fee(s)") and in accordance with the payment terms set forth in this Agreement and in the applicable Purchase Schedule. Except for termination by CUSTOMER pursuant to Section 8(a), all payment obligations under this Agreement are non-cancelable and non-refundable.

(b) Set Up and Training Fees. Unless otherwise provided in the applicable Purchase Schedule, CUSTOMER shall pay to Net Health a one-time fee stated in the applicable Purchase Schedule for setup of the Licensed Software and for the onsite training at the CUSTOMER'S facility. If CUSTOMER chooses any Saturday or Sunday training, it will cost an additional \$500.00 per day payable to Net Health. CUSTOMER shall also reimburse Net Health for expenses incurred by Net Health including, but not limited to, travel, airfare, hotel, mileage, transportation, meals, etc. in accordance with the County of Monterey's Travel Policy located online at <http://www.co.monterey.ca.us/auditor/policies.htm> ). If CUSTOMER cancels or reschedules training less than fifteen (15) days prior to the scheduled date of such training, the CUSTOMER will be charged the greater of (i) a \$2500.00 fee with respect to each such cancelled or rescheduled training, or (ii) an amount equal to the monthly Fees for the applicable Licensed Software during the length of any such delay in training

**5. CUSTOMER ACCEPTANCE.** CUSTOMER shall be deemed to have accepted the Licensed Software upon the earlier of (i) the completion of training as provided in the applicable Purchase Schedule and/or the delivery to Net Health of a Certificate of Training Completion (a copy of which can be provided to CUSTOMER upon request); (ii) 30 days after the date upon which the Licensed Software first becomes available to CUSTOMER; or (iii) CUSTOMER uses any component or functionality of the Licensed Software for patient, commercial or production purposes.

**6. CUSTOMER RESPONSIBILITIES.**

(a) CUSTOMER shall be responsible for the following, unless otherwise set forth in the applicable Purchase Schedule: adherence to specified electrical requirements; running all cable and phone connections for the Licensed Software; and all data conversion (if applicable).

(b) CUSTOMER will participate fully in the implementation, including attending training sessions, performing applicable file builds, and complying with other reasonable Net Health instructions regarding the implementation. In no event shall CUSTOMER delay the start of implementation of the applicable Licensed Software beyond ninety (90) days after the applicable Purchase Schedule Effective Date. In the event CUSTOMER delays the completion of the implementation of the Licensed Software or

Interface(s) beyond six months from the applicable Purchase Schedule Effective Date, for each month thereafter until the Licensed Software or Interface(s) is fully implemented and accepted by CUSTOMER, CUSTOMER shall pay to Net Health fifty percent of the monthly Fees, or one-twenty-fourth of the annual Fees due for the Licensed Software or Interface, as applicable. The Term with respect to Licensed Software or Interface(s) shall not commence until accepted by CUSTOMER.

(c) Net Health will not be responsible for any issues resulting from CUSTOMER'S failure to comply with the parties' mutually agreed upon plan for implementing the Licensed Software.

(d) CUSTOMER acknowledges that the Licensed Software may use, incorporate or access Third Party Products, or that CUSTOMER may use, incorporate or access Third Party Products in conjunction with CUSTOMER's use of the Licensed Software, or any other product or service provided to CUSTOMER by Net Health. All Third Party Products provided by Net Health shall be listed in the Purchase Schedule. To the extent so listed, Net Health warrants it has the right to license such Third Party Product to CUSTOMER under this Agreement.

To the extent CUSTOMER uses, incorporates or accesses any Third Party Products that are not licensed by Net Health to CUSTOMER, CUSTOMER represents it has obtained and covenants it will obtain the necessary licenses from the applicable third party vendors to use such Third Party Products and agrees that Net Health shall not be liable for CUSTOMER's failure to obtain such licenses. Net Health makes no representation or warranty with respect to any such Third Party Products not licensed by Net Health to CUSTOMER. Net Health shall not be liable for any damages, costs, or expenses, direct or indirect, arising out of the performance or failure to perform of these Third Party Products. "Third Party Products" includes, but is not limited to, any product, technology, tool, database, software, works, coding scheme or other intellectual property developed or owned by a third party.

(e) CUSTOMER agrees that it shall use the Licensed Software solely in a manner that complies with this Agreement and all applicable laws.

## **7. CONFIDENTIALITY.**

(a) Net Health acknowledges that CUSTOMER is a public hospital and the Master Agreement in its entirety may be reviewed by the public. Except where disclosure is required by law, including disclosures pursuant to a request under the California Public Records Act, each party agrees that all information supplied by one party and its affiliates and agents (collectively, the "Disclosing Party") to the other ("Receiving Party") including, without limitation, (a) source code, prices, trade secrets, mask works, databases, designs and techniques, models, displays and manuals; (b) any unpublished information concerning research activities and plans, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, or strategic plans, and unpublished financial information, including information concerning revenues, profits, and profit margins; (c) any information relating to customers, patients, business partners, or personnel; (d) Protected Health Information (as defined in 45 C.F.R. § 160.103); and (e) the Licensed Software, will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed intentionally or unintentionally or marked as "confidential" or "proprietary" ("Confidential Information"). The foregoing

definition shall also include any Confidential Information provided by either party's contractors, subcontractors, agents, or vendors. To be deemed "Confidential Information", trade secrets and mask works must be plainly and prominently marked with restrictive legends. In the event that a party or any of its representatives are requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Confidential Information of the other party, each party agrees that it will provide the other party with prompt notice of such request(s) so that it may seek appropriate protective order and/or waive compliance with the provisions of the Agreement.

(b) Each party recognizes the importance of the other party's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section 7 (Confidentiality) and elsewhere in this Agreement, including Exhibit B (Business Associate Agreement). Accordingly, each Party agrees as follows: (a) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance; (b) the Receiving Party may disclose or provide access to its responsible employees, agents, and consultants who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder; and (c) the Receiving Party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees, agents, or consultants who are bound by an obligation of confidentiality no less restrictive than set forth in this Agreement to ensure that such employees, agents, and consultants protect the confidentiality of Confidential Information, including this Section 7 (Confidentiality) and including Exhibit B (Business Associate Agreement.). The Receiving Party will require its employees, agents, and consultants not to disclose Confidential Information to third-parties, including without limitation customers, subcontractors, or consultants, without the Disclosing Party's prior written consent, will notify the Disclosing Party immediately of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information.

(c) Net Health recognizes and acknowledges the sensitive and confidential nature of Protected Health Information received from, or created or received by Net Health on behalf of, CUSTOMER and agrees that the use and disclosure of Protected Health Information will be governed by the parties' Business Associate Agreement (Exhibit B).

## **8. TERMINATION.**

(a) Termination for Breach. If CUSTOMER commits a material breach of this Agreement and persists in such failure for a period of thirty (30) days after receiving written notice thereof from Net Health, Net Health may terminate this Agreement upon written notice to CUSTOMER and CUSTOMER shall pay all remaining Fees from the date of termination to the end of the current Term. If Net Health commits a

material breach of this Agreement and persists in such failure for a period of thirty (30) days after receiving written notice thereof from CUSTOMER, CUSTOMER may terminate this Agreement upon written notice to Net Health and Net Health shall (i) return all CUSTOMER data pursuant to the provisions of the Master Agreement and (ii) will refund CUSTOMER a pro rata portion of any Fees paid in advance but unused as of the effective date of termination.

(b) Termination by Notice. During the term of this Agreement, either party may terminate the Agreement for any reason by giving written notice of termination to the other party 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 by Net Health, Net Health will refund CUSTOMER a pro rata portion of any Fees paid in advance but unused as of the effective date of termination..

(c) Termination in Response to Non-Appropriation of County Funding. Notwithstanding any other provision of this Agreement, CUSTOMER shall not be obligated for Net Health's performance hereunder or by any provision of this Agreement during any of CUSTOMER's future fiscal years unless and until the Monterey County Board of Supervisors appropriates funds for this Agreement in CUSTOMER's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. CUSTOMER shall notify Net Health in writing of any such non-allocation of funds at the earliest possible date.

## 9. WARRANTIES.

(a) Licensed Software. Net Health warrants that the Licensed Software will substantially conform in all material respects with the requirements of this Agreement.

(b) Viruses and Disabling Mechanisms. Net Health shall use commercially reasonable measures to screen the Licensed Software to avoid introducing any virus or other destructive programming that are designed (1) to permit unauthorized access or use by third parties to the software installed on CUSTOMER's systems, or (ii) to disable or damage CUSTOMER's systems.

(c) Services. Net Health warrants that all services provided by Net Health to CUSTOMER under this Agreement, including attached Purchase Schedule, shall be performed in a workmanlike manner.

(d) No Litigation. Net Health further warrants there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.

(e) Compliance with Applicable Law. Net Health warrants that the services provided under this Agreement, including attached Purchase Schedule, shall comply with applicable federal and state laws and regulations.

(f) Authority. Each party hereto has the full power, capacity and authority to enter into and perform the Agreement and to make the grant of rights contained herein.

**10. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY.**

(a) THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY NET HEALTH. NET HEALTH MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION, REGARDING LICENSED SOFTWARE, THIRD PARTY PRODUCTS, OR ANY MAINTENANCE OR SUPPORT SERVICES RELATED THERETO, DEVELOPMENT OR INTERFACES AND NET HEALTH SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) (1) In no event shall either party be liable to the other for any loss of profits, any incidental, special, punitive, exemplary, or consequential damages; or any claims or demands brought against such other party. (2) Each party's total liability with respect to all causes of action together will not exceed four times (4.0x) the amounts paid to Net Health for the applicable Licensed Software under the applicable Purchase Schedule. The limitation of liability set forth in (b)(2) above shall not apply to (i) any claims against CUSTOMER for infringement of Net Health's intellectual property, including without limitation copyrights in the Software; (ii) damages, costs, and expenses arising out of breach of the confidentiality and data security provisions by either party; and (iii) damages arising out of and costs and expenses to be paid pursuant to the parties' respective indemnification obligations (collectively, the "Excluded Claims"). Net Health's total liability with respect to all Excluded Claims shall not, under any circumstances, exceed the coverage amounts of available insurance under the applicable policies set forth in Section 22 of this Agreement.

**11. OWNERSHIP OF RIGHTS.** By executing this Agreement, CUSTOMER acknowledges that Net Health is the owner of all right, title and interest in any derivative works of and improvements upon Licensed Software, regardless of any assistance or involvement by agents or employees of CUSTOMER in any such improvements or derivations. CUSTOMER shall retain ownership of all CUSTOMER data input by CUSTOMER including the Protected Health Information uploaded to the Licensed Software.

**12. Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party except as follows: Net Health may assign this Agreement provided such assignment (i) is in writing, (ii) states that the assignee is accepting all obligations of Net Health under this Agreement and agrees to be bound by and discharge the Agreement's terms, conditions, and obligations as if it were the original party hereto, and (iii) Net Health, the assignee entity, or both agree in writing to support the Licensed Software throughout the Term.

**13. Intentionally Omitted.**

**14. EXHIBITS.** This Agreement contains Exhibit A and Exhibit B which is incorporated herein by reference.

**15. FORCE MAJEURE.**



(a) Neither Net Health nor CUSTOMER shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement, including any Purchase Schedule, to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such party's reasonable control (a "Force Majeure Event"), including, without limitation, acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions.

(b) If a party wishes to claim protection with respect to a Force Majeure Event, it shall as soon as possible following the occurrence or date of such Force Majeure Event, notify the other party of the nature and expected duration of the force majeure event and shall thereafter keep the other party informed until such time as it is able to perform its obligations.

**16. Intentionally Omitted.**

**17. INTEGRATION.** This Agreement, including Exhibit A and Exhibit B attached hereto, constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or written. This Agreement may be modified only by a writing signed by both parties.

**18. Availability of the Licensed Software.** Subject to the terms and conditions of the Agreement, Net Health shall use its best efforts to make the Licensed Software available to CUSTOMER, twenty-four (24) hours a day, seven (7) days a week throughout the term of the applicable Purchase Schedule. CUSTOMER agrees that from time to time the Licensed Software may be inaccessible or inoperable for various reasons, including, but not limited to, (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Net Health may undertake from time to time; (iii) CUSTOMER hardware, network issues and/or infrastructure problems; (iv) acts or omissions of CUSTOMER that are not permitted in accordance with the Agreement, that are not permitted in accordance with Net Health's documentation, or that are not consistent with customary usage of the industry; (v) failure of services not provided or managed by Net Health; or (vi) causes beyond the control of Net Health or which are not reasonably foreseeable by Net Health, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). Net Health shall use commercially reasonable efforts to provide forty-eight (48) hours advance notice to CUSTOMER in the event of any scheduled Downtime.

**19. Support and Maintenance.** Net Health will provide CUSTOMER with support and maintenance for the Licensed Software. If during the Term, the Licensed Software materially fails to conform to the then current written technical specifications as provided by Net Health Net Health will, as part of its maintenance and support, use commercially reasonable efforts to correct the non-conformity, provided the Licensed Software has not been modified by CUSTOMER, CUSTOMER is on the then most current, or next to most current version of the Licensed Software, the Licensed Software is being used in accordance with the Agreement and the non-conformity can be verified by Net Health

**20. Data Backup and Disaster Recovery.** Net Health shall perform or cause to be performed daily backups of CUSTOMER's data. Throughout the Term of this Agreement Net Health shall maintain a Disaster Recovery Plan for the Licensed Software (the "DR Plan"), and implement such DR Plan in the event of any unplanned interruption of the Licensed Software. Net Health shall test, review and update the DR Plan on an annual basis using industry standard practices as guidance.

**21. Indemnification.**

a. Indemnification by Net Health: Intellectual Property Infringement. Net Health agrees to defend, or at its option, settle any claim by a third party against CUSTOMER (the "Claim"), alleging that the use of the Licensed Software (alone and not in combination with any other device) infringes upon any intellectual property rights of such third party; provided, CUSTOMER notifies Net Health in writing of the Claim within thirty (30) days of becoming aware of the Claim and gives Net Health exclusive control of such defense or settlement, at Net Health's expense, and all information and assistance necessary to enable Net Health to defend or settle such Claim. Net Health shall be relieved of liability for any Claim based on the use of the Licensed Software other than in compliance with the terms of this Agreement and/or other than as implemented, modified or directed by Net Health. In the event such an infringement is found, or in the opinion of Net Health, may be found, Net Health may at its option and expense, procure the right for CUSTOMER to continue use of the Licensed Software, replace or modify the Licensed Software to make it non-infringing, or, terminate this Agreement and the applicable Purchase Schedule and refund to CUSTOMER the pro rata portion of any Fees paid in advance but unused as of the effective date of termination. THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND.

b. Indemnification by Net Health: Other claims. Net Health shall indemnify, defend, and hold harmless CUSTOMER, its officers, agents and employees from any third party claim, liability, loss, injury or damages arising out of, or in connection with, the negligent or wrongful acts or omissions of Net Health and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by CUSTOMER. It is the intent of the parties to this Agreement to provide the broadest possible coverage for CUSTOMER. Net Health shall reimburse CUSTOMER for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Net Health is obligated to indemnify, defend and hold harmless CUSTOMER under this Agreement.

c. Indemnification by CUSTOMER. CUSTOMER shall indemnify, defend, and hold harmless Net Health, its officers, agents and employees from any third party claim, liability, loss, injury or damages arising out of, or in connection with, the negligent or wrongful acts or omissions of CUSTOMER and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by Net Health. It is the intent of the parties to this Agreement to provide the broadest possible coverage for Net Health. CUSTOMER shall reimburse Net Health for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which CUSTOMER is obligated to indemnify, defend and hold harmless Net Health under this Agreement.

## 22. Insurance

### A. Evidence of Coverage:

Net Health shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

This evidence of coverage shall be sent to Natividad Medical Center's Contracts/Purchasing Department, unless otherwise directed.

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 that A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Natividad Medical Center's Contracts/Purchasing Manager.

Insurance Coverage Requirements: Net Health shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- b. **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.
- c. **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 \$500,000 per occurrence.
- d. **Workers' Compensation Insurance**, in accordance with applicable statutory limits.

## II. OTHER INSURANCE REQUIREMENTS:

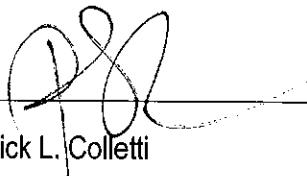
- a. All insurance required by this Agreement shall be an admitted insurer authorized to transact insurance business in the State of California.
- b. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of Net Health'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 Net Health's insurance.**

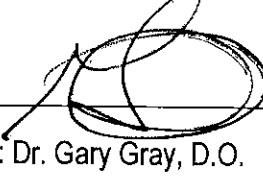
- c. Prior to the execution of this Agreement by CUSTOMER, Net Health shall deliver certificates of insurance and additional endorsements to Natividad Medical Center's Contracts/Purchasing Department, showing that Net Health has in effect the insurance required by this Agreement. Net Health shall file a new or amended certificate of insurance within thirty (30) calendar days after any material 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.
  
- d. Net Health shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement.

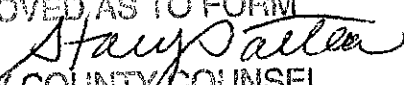
**IN WITNESS WHEREOF**, the parties hereto have caused this Master Agreement to be executed on the date first written above.

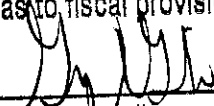
**NET HEALTH SYSTEMS, INC.**

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

By:   
Name: Patrick L. Colletti  
Title: President  
Date: 8/1/2014

By:   
Name: Dr. Gary Gray, D.O.  
Title: Chief Executive Officer  
Date: 8/31/14

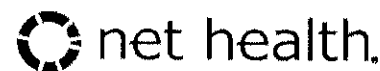
APPROVED AS TO FORM  
  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions  
  
Auditor-Controller  
County of Monterey 8-29-14

**EXHIBIT A  
TO  
MASTER AGREEMENT**

**PURCHASE SCHEDULE**

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**TO**  
**Master Agreement**  
**PURCHASE SCHEDULE**



This PURCHASE SCHEDULE ("Purchase Schedule") is entered into and made effective this 31st day of August, 2016 ("Purchase Schedule Effective Date") by and between Net Health Systems, Inc. ("Net Health") and The County of Monterey, on behalf of Natividad Medical Center ("CUSTOMER") in connection with and subject to the Master Agreement with an effective date of August 31, 2016 executed between the parties (the "Agreement").

Term				Type			
1 Year				ANNUAL SUBSCRIPTION			
Item Code	Description - Authorized Site/Providers	Qty	One-Time Fees / Unit	Total One-Time Fees	Annual Fees / Unit	Total Annual Fees	
	ReDoc Enterprise Subscription Outpatient - Version 7 - Interfaced to Meditech (ADT/DFT/Results)	1	\$0	\$0	\$36,600	\$36,600	
	<b>Initial Start-up Fee includes:</b> Installation of the Licensed Software, staff training, Net Health interface work, and 2 day onsite at go-live support	1	\$15,000	\$15,000			
	Set-up fee: Inphonite Appointment Reminder System	1	\$750	\$750			
	Inphonite Appointment Reminder System - 1,500 Credits (see details below)	1			\$3,600	\$3,600	
<b>TOTAL FEES ON PURCHASE SCHEDULE</b> (Applicable Taxes and Expenses Billed Separately)					\$15,750		\$40,200
<b>Deposit Required Upon Execution of This Purchase Schedule:</b> (See below)				\$55,950.00			
Type of Users	PT	PTA	OT	COTA	SLP	SLPA	Total
Clinical Users (Greater than or equal to 40 hrs/month)	6	1	3	0	3	0	13
Clinical Users (Less than 40 hrs/month)	3	0	1	0	1	0	5
Student Users	0	0	0	0	0	0	0
<b>Total Clinical Subscription Users</b>							<b>18</b>
<b>Clerical/Administrative Users</b>	<b>3</b>						<b>3</b>
<b>Total Users</b>							<b>21</b>
FOTO # of Locations for OM							n/a
Inphonite Credits per Month (includes capability for outbound calls and texts in English and Spanish)							1500

**Payment Terms.** For the Licensed Software and Interface(s) set forth in this Purchase Schedule, as applicable, CUSTOMER shall pay to Net Health the one-time Fees, plus the first payment of annual Fees at the time of execution of this Purchase Schedule. Annual Fees are payable by CUSTOMER to Net Health on an annual basis and shall commence upon acceptance. Net Health will invoice CUSTOMER on or about the first (1<sup>st</sup>) calendar day of the month for each new annual period. CUSTOMER shall promptly submit such invoice to the office of the Auditor-Controller for the County of Monterey and payments shall be due no later than thirty days thereafter. CUSTOMER's deposit of the first payment of annual Fees will be applied to CUSTOMER's first year of use of the Licensed Software, or interface(s), as applicable. Expenses are billed separately and payable in accordance with the Agreement. Net Health accepts payment by check, credit card and ACH. Additional fees will apply to payments made by credit card.

The Initial Term of this Purchase Schedule shall commence upon execution of this Purchase Schedule and continue for a period of one (1) year following CUSTOMER's acceptance of the Licensed Software in accordance with Section 5 of the Agreement.

In order to be effective, this Purchase Schedule must be executed by CUSTOMER on or before August 31, 2016.

**CUSTOMER IS RESPONSIBLE FOR PAYMENT OF ALL FEES SET FORTH ON THIS PURCHASE SCHEDULE.**

IN WITNESS WHEREOF, CUSTOMER and Net Health have executed this Purchase Schedule to be effective as of the Purchase Schedule Effective Date.

Net Health Systems, Inc.

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

Name: Patrick L. Colletti

Title: President

Date: 8/1/2016

The County of Monterey, on behalf of Natividad Medical Center

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

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

Title: CEO

Date: 8/31/16

EXHIBIT B  
TO  
MASTER AGREEMENT

**BUSINESS ASSOCIATE AGREEMENT**



## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective August 31, 2016 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center (“Covered Entity”) and Net Health Systems, Inc., a Pennsylvania corporation (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

### 1. **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

### 2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

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

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

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

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

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

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within five (5) business days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

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

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

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

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

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, Business Associate shall provide the Covered Entity with the following information, to the extent known: (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 five (5) 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 Agreement the PHI in its possession and retain no copies, including backup copies;

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

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

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

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

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

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

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

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

*BAA Approved by County BOS 09/16/14. Revised on 09/30/14*

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

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

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

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within five (5) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

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

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

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

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

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

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

(f) To the extent that individual authorization is required for any use or disclosure of PHI contemplated under the Services Agreement, Covered Entity shall obtain such authorization prior to requesting that Business Associate make such use or disclosure.

#### 4. TERMS AND TERMINATION

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

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

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

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

## 5. MISCELLANEOUS

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

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

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

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

If to Business Associate, to:

Net Health  
40 24<sup>th</sup> Street  
Pittsburgh, PA 15222  
Attn: Legal Department

If to Covered Entity, to:

NMC  
Attn: Andrea Rosenberg  
1441 Constitution Blvd,  
Salinas CA 93906

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

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

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Subject to the indemnification procedures set forth below, Business Associate shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any third party claim, liability, loss, injury, cost, expense, penalty or damage, including reasonable costs incurred by the County with respect to any investigation, enforcement proceeding, or third party governmental action, arising out of, or in connection with, a material violation of this BAA or a Breach to the extent attributable to an act or omission of Business Associate and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. County's right to defense and/or indemnification hereunder is conditioned upon the following: prompt notice to Business Associate and demand for payment of any claim for which indemnity and/or defense is sought; control of the selection of counsel, investigation, preparation, and defense thereof by Business Associate; and reasonable cooperation by the County, at Business Associate's request and expense, in the defense of the claim. County shall have the right to participate in the defense of a claim by Business Associate with counsel of the County's choice at the County's expense. County shall have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, liabilities, losses, damages, cost, expenses, penalties or damages for which it is indemnified under this Section 5.7, regardless of whether the County has tendered its defense to Business Associate. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Parties.

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

*Net Health Systems, Inc.*

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

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

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

Print Name: PATRICK COLLETTI

Print Name: BOY COY

Print Title: PRESIDENTIAL COO

Print Title: CEO

Date: 8/1/2016

Date: 8/3/16