

**AMENDMENT NO. 1  
TO SERVICES AGREEMENT  
BETWEEN FOLEY & LARDNER, LLP AND  
NATIVIDAD MEDICAL CENTER  
FOR  
INDEPENDENT CONSULTING AND LEGAL SERVICES WITH RESPECT  
TO HEALTHCARE MATTERS**

This Amendment No. 1 to the Services Agreement (“Agreement”) which was effective on July 1, 2015 is entered into by and between the County of Monterey (hereinafter “COUNTY”), on behalf of Natividad Medical Center (hereinafter “NMC”), and Foley & Lardner, LLP (hereinafter “CONTRACTOR”). Collectively, COUNTY, NMC and CONTRACTOR are referred to as the “Parties”, with respect to the following:

**RECITALS**

**WHEREAS**, the County of Monterey on behalf of Natividad Medical Center and Foley & Lardner, LLP entered into an Agreement for independent consulting and legal services with respect to healthcare matters for with a term July 1, 2015 through June 30, 2017 and a total Agreement amount not to exceed \$600,000; and

**WHEREAS**, the Parties currently wish to amend the Agreement to extend it for an additional one (1) year period through June 30, 2018 to allow for services to continue for a revised full Agreement term of July 1, 2015 through June 30, 2018 as per the revised Scope of Services attached hereto as “Exhibit A-1 per Amendment No. 1”, and to include a Business Associates Agreement as an attachment to this Agreement with an increase of \$630,000 to the Agreement total for a revised total Agreement amount not to exceed \$1,230,000.

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

The Agreement is hereby renewed on the terms and conditions as set forth in the original Agreement incorporated herein by this reference, except as specifically set forth below.

1. The first sentence of Section 1 / Paragraph titled, “SERVICES TO BE PROVIDED” shall be amended to the following:  
*“NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in EXHIBIT A-1 in conformity with the terms of this Agreement.”*
2. Section 2 / Paragraph titled, “PAYMENTS BY NMC” shall be amended to the following:  
*“NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT A-1 as per Amendment No. 1 attached hereto this Amendment No. 1 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 \$1,230,000.”*
3. The first sentence of Section 3.1 / under Paragraph titled, “TERM OF AGREEMENT” shall be amended to the following:  
*“The term of this Agreement is from July 1, 2015 through June 30, 2018 unless sooner terminated pursuant to the terms of this Agreement.”*

4. Section 4/ Paragraph titled, “ADDITIONAL PROVISIONS/EXHIBITS” shall be amended to the following:

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

**Exhibit A-1: Revised Scope of Services/Payment Provisions as per Amendment No. 1**

*(Replaces Exhibit A: Scope of Services/Payment Provisions attached to the original Agreement)*

**Exhibit B: County Travel Policy**

**Exhibit C: Business Associates Agreement”**

5. Except as provided herein, all remaining terms, conditions and provisions of the original Agreement are unchanged and unaffected by this Amendment No. 1 and shall continue in full force and effect as set forth in the original Agreement.
6. A copy of this Amendment No. 1 shall be attached to the original Agreement.
7. This Amendment No. 1 shall be effective when signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 1 on the basis set forth in this document and have executed this Amendment No. 1 on the day and year set forth herein.

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Gary R. Gray, DO, CEO

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

**APPROVED AS TO LEGAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy County Counsel  
*Stacy Saetta*  
Name

Date: 5/23/17

**APPROVED AS TO FISCAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Chief Deputy Auditor-Controller  
*Gary K. Giboney*  
Name

Date: 5-24-17

**CONTRACTOR**

**Foley & Lardner, LLP**

CONTRACTOR's Business Name

*\*Signature instructions below.*

By: \_\_\_\_\_  
(Signature of: Chair, President, or Vice-President)

Jeff Atkin, Office Managing Partner  
Name and Title

Date: 5-8-17

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

Diane Ung, Partner  
Name and Title

Date: May 8, 2017

***\*Signature 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 (2 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 (2 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 (1 signature required).

**Foley & Lardner, L.L.P.**

*July 1, 2015 through June 30, 2018*

**I. CONTACT INFORMATION**

CONTRACTOR: Diane Ung  
Foley & Lardner, L.L.P.  
555 South Flower Street  
Suite 3500  
Los Angeles, CA 90071-2411  
(213) 972-4669

County of Monterey: Stacy L. Saetta  
Deputy County Counsel  
Office of the Monterey County  
Counsel  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901  
(831) 755-5045

**II. SERVICES TO BE PERFORMED.**

NMC hereby hires CONTRACTOR to render independent legal services to NMC, subject to the terms of this Agreement. CONTRACTOR shall perform said services faithfully and well, when needed by and as requested by NMC. The services to be performed under this Agreement shall consist of providing legal advice with respect to healthcare matters, including Medicaid financing for safety net providers, healthcare transactions, and technology, privacy, and security matters. CONTRACTOR shall perform only such services as are within the expertise of the individual attorneys on CONTRACTOR's staff, and CONTRACTOR shall notify NMC promptly if any work requested is beyond such expertise. CONTRACTOR shall diligently provide such legal services as are necessary and approved by NMC in a professional, timely manner. CONTRACTOR shall perform all of its services with due regard to ethical guidelines and the client's interests.

**III. PAYMENT PROVISIONS**

- A. NMC shall pay CONTRACTOR according to Section 6, PAYMENT CONDITIONS, of this agreement.
- B. CONTRACTOR shall bill NMC for the professional services of its attorneys at their standard hourly billing rate offered to public agencies.

**JULY 1, 2015 – JUNE 30, 2017**

<b><u>PERSONNEL</u></b>	<b><u>TYPE</u></b>	<b><u>OFFICE</u></b>	<b><u>HOURLY RATE</u></b>
Diane Ung	Partner	LA	\$630
Judy Waltz	Partner	SF	\$695
Richard Rifenkark	Partner	LA	\$590
Chris Rossman	Partner	Detroit	\$600
Elizabeth Elson	Of Counsel	LA	\$595
Alexis Bortniker	Senior Counsel	Boston	\$560
Leeann Habte	Senior Counsel	LA	\$530

**OTHER PARTNERS**

(All Offices) \$500 -- \$775

**OTHER OF COUNSEL**

(All Offices) \$595 -- \$750

**SENIOR COUNSEL**

(All Offices) \$465 -- \$595

**ASSOCIATES**

(All Offices) \$300 -- \$580

**PARALEGALS**

(All Offices) \$275 -- \$325

**SUMMER ASSOCIATES**

(All Offices) \$250

Rates reflect discount from the firm's 2015-16 published rates.

**JULY 1, 2017 – JUNE 30, 2018**

<b><u>PERSONNEL</u></b>	<b><u>TYPE</u></b>	<b><u>OFFICE</u></b>	<b><u>HOURLY RATE</u></b>
Diane Ung	Partner	LA	\$650
Judy Waltz	Partner	SF	\$695
Alexis Bortniker	Senior Counsel	Boston	\$615
Anil Shankar	Senior Counsel	LA	\$565
Claire Marblestone	Associate	LA	\$465
Adam Hepworth	Associate	LA	\$445

**OTHER PARTNERS**

(All Offices)

\$530 -- \$795

**OTHER OF COUNSEL**

(All Offices)

\$595 -- \$775

**SENIOR COUNSEL**

(All Offices)

\$465 -- \$695

**ASSOCIATES**

(All Offices)

\$300 -- \$625

**PARALEGALS**

(All Offices)

\$275 -- \$325

**SUMMER ASSOCIATES**

(All Offices)

\$250

Rates reflect discount from the firm's 2017-18 published rates.

- C. CONTRACTOR shall submit an invoice to NMC no later than the 30<sup>th</sup> of the month following the month of service. Invoices shall be submitted to:

Stacy L. Saetta  
Deputy County Counsel  
Office of the Monterey County Counsel  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901

**IV. ADDITIONAL PROVISIONS**

- A. No Conflict of Interest. CONTRACTOR agrees that it shall not represent a client in a matter involving an interest that is either actually or potentially adverse to the County of

Monterey that creates a conflict pursuant to the applicable ethical rules, without the County's written consent.

- B. Maximum Liability. The maximum amount to be paid by NMC to CONTRACTOR under this agreement shall not exceed not exceed the sum of \$1,230,000. This amount may be amended by written agreement between the parties, subject to approval by the Board of Supervisors. CONTRACTOR shall notify County Counsel in writing when fifty percent (50%) and seventy-five percent (75%) of the maximum liability has been spent.
- C. Reimbursement for Expenses.
1. NMC shall reimburse CONTRACTOR for all actual and necessary expenses pursuant to the County Travel Policy, a copy of which is attached to the Agreement as Exhibit B.
  2. NMC will not reimburse CONTRACTOR for any non-attorney staff time or overtime for secretarial, clerical, or word processing, costs connected with preparing required status reports, time spent to provide information for a fee audit, or for work not authorized by NMC.
- D. Direction from County Counsel. CONTRACTOR shall report to and receive direction from County Counsel in providing advice under this Agreement. If CONTRACTOR prepares any County documents in the performance of services under this Agreement, including but not limited to County resolutions, staff reports, and memoranda to the Board of Supervisors or other County legislative or advisory bodies, CONTRACTOR shall provide such drafts to County Counsel for review and consultation prior to finalizing any such drafts.
- E. Reporting Requirements. CONTRACTOR shall provide NMC with such reports as may be requested by NMC in connection with the performance of services hereunder.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) effective \_\_\_\_\_, 20 \_\_\_\_ (“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 Foley & Lardner LLP (“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 (“E PHI”) shall be handled, in accordance with such requirement.

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

### AGREEMENT

#### 1 DEFINITIONS

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



## EXHIBIT C

(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 legal services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

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

Unless otherwise limited herein, Business Associate may:

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

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

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

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

## EXHIBIT C

(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 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;

(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;

## EXHIBIT C

(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, upon the reasonable determination of Covered Entity, 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. In order to be reimbursed by Business Associate, Covered Entity must provide to Business Associate a written accounting of Covered Entity's actual costs and, to the extent applicable, copies of receipts or bills with respect thereto. Covered Entity agrees to provide Business Associate with a reasonable opportunity to review and provide comment upon any notifications to Individuals, the media, the Secretary of Health and Human Services ("Secretary"), or state agencies associated with such Breach prior to their release;

(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 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. Notwithstanding the foregoing, Business Associate may limit the scope of any such audit as necessary to ensure that Business Associate does not breach the attorney-client privilege or any other confidentiality obligation with respect to information maintained by Business Associate on behalf of its other clients;

## EXHIBIT C

(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 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

## EXHIBIT C

(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**

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

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

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

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (vi) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities. The Parties hereby acknowledge and agree that, except in certain limited circumstances, in the event of the termination of the attorney-client relationship between Covered Entity and Business Associate, it will not be feasible for Business Associate to return to Covered Entity or destroy PHI, and Business Associate will need to retain such PHI so that Business Associate can substantiate its Services, for quality control, risk management, and insurance requirements, in accordance with Business Associate's record retention policy. Business Associate and its subcontractors, if any, shall follow the restrictions of this Agreement regarding PHI retained by them, respectively, and shall limit further Uses and Disclosures to those purposes that make return or destruction infeasible.

## **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

EXHIBIT C

provision of HIPAA, the HITECH Act, or California Confidentiality 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:

Foley & Lardner LLP  
Attn: Will Lopez, Deputy General Counsel  
90 Park Avenue  
New York, NY 10016  
Phone: 212.682.7474  
Fax: 212.687.2329

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

## EXHIBIT C

supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**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 the reasonable costs of 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 directly arising from 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 thirty (30) business days after notice thereof, Business Associate shall advise Covered Entity of any actual action, proceeding, regulatory or governmental orders or actions, that becomes known to it that may affect the interests of Covered Entity under this BAA or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the prosecution or defense of any such actual legal action or proceeding, except to the extent prohibited by law or to the extent doing so would compromise Covered Entity's ethical duty of confidentiality or loyalty.



EXHIBIT C

**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.

**5.13 Attorney-Client Relationship.** Notwithstanding anything to the contrary contained herein, the Parties, recognizing that Business Associate serves as legal counsel to Covered Entity, hereby agree that nothing contained in this Agreement:

(a) Waives the attorney-client, work-product, or any other privilege that may be invoked by, or is applicable to, either Party;

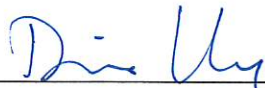
(b) Imposes any duties or obligations on Business Associate that are inconsistent with Business Associate's duties and obligations to Covered Entity as a client of Business Associate, including, without limitation, any obligation of confidentiality or other obligation imposed on Business Associate under ethical rules applicable to the Parties' attorney-client relationship or otherwise at law; or

(c) Limits either Party's right or ability to adequately conduct discovery in any arbitration or litigation proceeding.

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: <u></u>	By: _____
Print Name <u>Diana Ung</u>	Print Name: <u>Gary R. Gray</u>
Print Title <u>Partner</u>	Print Title: <u>Chief Executive Officer</u>
Date: <u>May 8, 2017</u>	Date: _____