

PARTICIPATING HOSPITAL AGREEMENT



THIS PARTICIPATING HOSPITAL AGREEMENT (“Agreement”) is made and entered into as of the Effective Date as it appears on the signature page of this Agreement, by and between AMERICA’S CHOICE PROVIDER NETWORK, LLC d/b/a ACPN, a Michigan limited liability company (hereinafter referred to as “ACPN”) and County of Monterey, a political subdivision of the State of California, on behalf of the County owned and operated Natividad Medical Center (hereinafter referred to as “HOSPITAL”).

WHEREAS, ACPN is organized for the purpose of developing and operating a national Health Care Network that can be utilized by ACPN’s Clients to deliver Covered Services to Members of a Health Benefit Plan in a quality cost efficient manner.

WHEREAS, HOSPITAL agrees to participate in such national Health Care Network as a participating provider allowing ACPN Clients and Members access to health and medical care.

WHEREAS, HOSPITAL desires to contract with ACPN to provide services to ACPN Client’s Members and to accept as payment in full for such rendered services the amounts set forth in section 4 of this Agreement.

NOW THEREFORE, in consideration of mutual promises and covenants set forth herein, the parties agree as follows;

1. Definitions

- 1.1. Covered Services shall include all services for which benefits are available under the terms of a Health Benefit Plan that are deemed to be Medically Necessary.
- 1.2. Non-Covered Services shall include all services which are not Covered Services and are not reimbursable under the terms of a Health Benefit Plan including, but not limited to, those services that are alternative or experimental, non-medical, or were denied at the time of verifying eligibility and benefits.
- 1.3. Health Benefit Plan is a policy, contract, or agreement entered into, or issued by, a Client to provide, deliver, pay for, or reimburse any costs of health care services, such as individual and group health, workers compensation, auto liability and Medicare Advantage plans.
- 1.4. Health Care Network is a group of participating providers that are available to provide Covered Services to Members according to terms of a Health Benefit Plan.
- 1.5. Medically Necessary means medical and related healthcare services recommended and/or prescribed by a healthcare provider which are (1) rendered for the diagnosis or care and treatment of a medical condition, (2) appropriate and necessary for the symptoms, diagnosis, or treatment of a medical condition, (3) non-experimental and within generally accepted standards of medical care in the medical community, and (4) not primarily for the convenience of the patient or healthcare provider.
- 1.6. HOSPITAL refers to all providers and locations rendering Covered Services to Members in the HOSPITAL’s name and that are bound to the terms and conditions of this Agreement upon HOSPITAL’s authorized signature and execution of this Agreement.
- 1.7. Members are a policyholder, subscriber or individual participating in a Health Benefit Plan.
- 1.8. Clients are ACPN payers that have direct or indirect contractual access to ACPN participating providers. Clients include but are not limited to insurance carriers, third party administrators, self-insured employers, health maintenance organizations, workers compensation organizations, managed care organizations, and Taft Hartley funds.

- 1.9. Provider Reference Guide is the manual of rules, policies and procedures of ACPN as provided to HOSPITAL.
- 1.10. Billed Charges are the actual charges for Covered Services provided to Members.
- 1.11. Fee Schedule means a schedule of maximum reimbursement amounts pursuant to claims payment for Covered Services as stipulated and mandated by state or federal governments.
- 1.12. Clean Claim means a completed UB04 or HCFA/CMS 1500 (or successor form), as applicable, or other standard billing format containing all information reasonably required by Clients for adjudication.

2. Obligations of ACPN

- 2.1. ACPN agrees to make available to HOSPITAL a current list of ACPN's Clients that may be accessed on the Internet via ACPN's Provider Portal at <http://payers.acpnusa.com/>.
- 2.2. ACPN agrees to make available to HOSPITAL a current Provider Reference Guide that may be accessed on the Internet via ACPN's Provider Portal at <http://payers.acpnusa.com/>.
- 2.3. ACPN agrees to maintain a participating provider database for ACPN directories.
- 2.4. ACPN stipulates and mandates that all Explanation of Benefits (EOBs) and Explanation of Review (EORs) must contain a reference to ACPN utilization by Clients in order for this Agreement to apply. Payments made to HOSPITAL utilizing the ACPN reimbursement rate set forth in Section 4.1, herein, without appropriately identifying such utilization on the payment remittance shall be determined to be invalid and HOSPITAL may seek payment from the ACPN Client at its full billed charges.
- 2.5. HOSPITAL hereby acknowledges and understands that ACPN is not liable for payment of Covered Services under any circumstance. Any and all payments for services are the sole responsibility of ACPN's Client. Provided however, ACPN represents and warrants that it has the contractual ability to bind the Clients to the terms of this Agreement and to cause them to be responsible for their resulting obligations hereunder.
- 2.6. ACPN shall assist HOSPITAL as requested to ensure that ACPN Clients adhere to the terms of the Agreement. In the case of any ACPN Client that becomes delinquent in its payment obligations to HOSPITAL, ACPN agrees to use its best efforts to assist HOSPITAL in enforcing this Agreement and to maintain an active role in the resolution until such a resolution is reached.
- 2.7. ACPN shall market, advertise and promote Provider to ACPN Clients.

3. Obligations of Provider

- 3.1. HOSPITAL shall provide Covered Services to ACPN Members within the scope of the provider's license, certification, and specialty.
- 3.2. HOSPITAL hereby maintains the right to bill and obtain payment for any and all Non-Covered Services from Members.
- 3.3. HOSPITAL agrees to adhere to all applicable state and federal laws.
- 3.4. HOSPITAL shall make best effort to provide Covered Services in the same manner, with the same availability, and in accordance with the same standards as provided to other patients and without discrimination based on subjects including but not limited to sources of payment of services, race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, age, handicapped or lawful employment.
- 3.5. ACPN delegates all credentialing to the HOSPITAL. HOSPITAL will adhere to all credentialing standards and responsibilities as set forth in the industry and according to all applicable State and Federal laws. Proof of credentialing will be made available to ACPN if such request becomes necessary.
- 3.6. HOSPITAL agrees to notify ACPN of any and all changes, additions and deletions as it pertains to the demographics requested in Exhibit A of this Agreement for the purposes of maintaining a

participating provider database for ACPN directories. Notification may be submitted to ACPN electronically at updates@acpnusa.com or via the US Postal Service or other nationally recognized mail service to the mailing address as it appears in the signature page of this Agreement.

- 3.7. HOSPITAL agrees to always maintain the appropriate professional malpractice insurance at the appropriate standards required law. Proof of such coverage will be made available to ACPN upon such request.
- 3.8. HOSPITAL shall submit claims to ACPN Clients as promptly as possible, preferably within 90 days following date of service or discharge, as applicable. Claims submitted after one year from the date of service or discharge may be denied for untimely filing.
- 3.9. HOSPITAL agrees that this Agreement only pertains to services billed by Natividad Medical Center. The terms of this Agreement do not apply to other departments of the County of Monterey.
- 3.10. HOSPITAL hereby maintains the right to specifically exclude an ACPN Client from accessing the reimbursement rates and other rights of Clients under this Agreement prior to the execution of or at any point during the effective term of this Agreement upon written notice to ACPN.

4. Compensation and Covered Services

- 4.1. HOSPITAL agrees to accept from ACPN Clients as payment in full for Covered Services rendered to Members as follows;
 - 4.1.1. ~~RATES~~ off HOSPITAL's billed charges for Individual, and Group Health.
 - 4.1.2. ~~REDACTED~~ off HOSPITAL's billed charges for Workers Compensation and Auto Liability in states with no existing mandated Fee Schedules for Workers Compensation and Auto Liability.
 - 4.1.3. ~~RATES REDACTED~~ discount below state and federal mandated Fee Schedules for Workers Compensation and Auto Liability in states with pre-existing mandated Fee Schedules.
 - 4.1.4. ~~RATES REDACTED~~ discount below the Office of Workers Compensation Program (OWCP) federal mandated Fee Schedule for Workers Compensation claims that fall under OWCP.
 - 4.1.5. Payment of ~~RATES REDACTED~~ above the federal mandated Fee Schedule for Medicare Advantage.
- 4.2. ACPN Clients must make payments to HOSPITAL within thirty (30) calendar days or less upon receipt of Clean Claim.
- 4.3. ACPN is not responsible for claim payment. HOSPITAL shall look solely to ACPN Clients for payment and shall accept such payment as payment in full, except for coinsurance, copayments, deductibles, and fees for non-Covered Services that the ACPN Member is responsible for paying according to the terms of the Member's Health Benefit Plan.
- 4.4. In the event an ACPN Client fails to make timely payment in full to HOSPITAL for Covered Services under the terms of this Agreement, ACPN will assist HOSPITAL in obtaining payment. Furthermore, failure to remit payment within the time period set forth in Section 4.2, above, shall result in ACPN Client losing the discounted rates set forth in Section 4.1, above, and HOSPITAL may seek payment from the ACPN Client at its full billed charges.
- 4.5. If HOSPITAL has a pre-existing, direct contractual relationship or enters into a direct contractual relationship with any ACPN Client; such contractual relationship shall supersede the terms and conditions of this Agreement thus rendering the compensation criterion of Section 4 and correlating subsections inapplicable.

5. Term and Termination

- 5.1. This Agreement shall become effective as of the Effective Date, and shall continue in effect for a period of one (1) year after which this Agreement shall automatically renew for continuous

periods of one (1) year. Either party shall have the right to terminate this Agreement without cause at any time with ninety (90) days written notice.

- 5.2. Either party may terminate this Agreement immediately upon notice to the other in the event the other party declares bankruptcy, or is no longer authorized to provide the services it is required to provide under this Agreement.
- 5.3. Either party may terminate this Agreement upon at least thirty (30) days prior written notice to the other party in the event the other party is in breach of any material term of this Agreement, provided however that such termination shall be rescinded in the event the breaching party cures the breach to the non-breaching party's reasonable satisfaction within such thirty (30) day period.
- 5.4. In addition, HOSPITAL may terminate this Agreement as to one or more Clients in the event that the Client fails or ceases to pay claims for Covered Services and HOSPITAL has not received timely payment for Covered Services, so long as HOSPITAL notifies ACPN in writing of the non-payment and Client fails to cure within thirty (30) days of HOSPITAL's notice to ACPN.
- 5.5. In any case of termination, whether with cause or without cause, HOSPITAL shall continue to provide Covered Services in accordance with this Agreement to Members who shall be receiving medical care until the conclusion of any and all treatment for a specific medical condition or discharge.

6. Indemnification

- 6.1. Each party agrees to indemnify the other party for, and to defend and hold harmless the other party from, any claims, causes of action, or costs, including but not limited to reasonable attorneys' fees, arising out of the indemnifying party's alleged or actual negligence or otherwise improper performance of its obligations.

7. Assignment

- 7.1. Either party shall have the right to assign any and all of its rights and/or obligations under this Agreement to any third party with the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. Governing Law

- 8.1. This Agreement shall be governed by the laws of the State of California. Disputes between parties shall be resolved by informal meetings and discussions in good faith. In the event that a dispute cannot be resolved between the parties, the parties agree to submit the matter to binding arbitration in Monterey County, California, under the arbitration rules and regulations of Judicial Arbitration and Mediation Services, Inc.(JAMS)

9. Independent Contractors

- 9.1. Each party is at all times an independent legal entity to the other party. Nothing in this Agreement shall be construed to make or determine either party agents of, employees of, servants of, or joint ventures with the other party.
- 9.2. ACPN and HOSPITAL have contracted for the sole purpose of carrying out the terms and conditions of this Agreement.

10. Non-Exclusivity

- 10.1. Nothing in this Agreement is intended to or shall be determined to prevent either party from entering into substantially similar relationships with other entities substantially similar to the other party.

11. Waiver of Rights

11.1. Either party's failure to exercise any right reserved under the terms of this Agreement shall not act as a waiver of such right.

12. Force Majeure

12.1. The duties and obligations of the parties to this Agreement are limited in the event of circumstances beyond their control, such as major disaster, epidemic, war, complete or partial destruction of facilities, disability of a significant number of staff, or significant labor dispute. In such event, the parties hereto agree to use their best efforts under the circumstances to fulfill their duties and obligations under this Agreement.

13. Confidentiality

13.1. Except as otherwise provided herein, information and materials provided by either party shall be treated as confidential and be used only as permitted by this Agreement. This provision includes this Agreement and its terms, conditions, negotiations, rate information, client lists and any administrative manuals. Neither party will disclose such information and materials or use them except as may be required to carry out its respective obligations under this Agreement or as permitted by law.

13.2. Each party shall comply with all applicable laws and regulations regarding maintenance and disclosure of medical records and any other Protected Health Information (PHI). In particular, each party shall be compliant with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended periodically, and maintain compliance with applicable Privacy Laws.

13.3. Medical Records. Each party shall maintain the confidentiality of any and all medical records in their possession. Such information shall only be released or disseminated in accordance with the appropriate authorization of the patient whose medical condition is reflected in such medical record or as otherwise permitted by applicable state or federal law.

14. Agreement

14.1. This Agreement including Exhibit A contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior Agreements and understandings, expressed or implied, oral or written. Any material change to this Agreement's language or rates must be in writing and signed by a duly authorized representative of ACPN and Provider.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, both parties have read and understand this Agreement, and agree to abide by the terms and conditions as of the date set forth hereunder.

In accordance with the preamble of this Agreement, the Effective Date is 09/01/16.

HOSPITAL AUTHORIZATION

Authorized Signature Date of Signature
Gary R. Gray, DO Chief Executive Officer

Printed Name Title
County of Monterey, on behalf of Natividad Medical Center

Name of Hospital
94-6000524

Federal Tax Identification Number
1441 Constitution Boulevard, Salinas, CA 93906

Mailing Address

ACPN AUTHORIZATION

Authorized Signature Date of Signature

Printed Name Title
2831 St. Rose Parkway, Suite 200 – 309, Henderson NV 89052

Mailing Address

County of Monterey approved BAA attached

APPROVED AS TO FORM
[Signature]
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

**ACPN PARTICIPATING HOSPITAL AGREEMENT - EXHIBIT "A"
HOSPITAL DEMOGRAPHICS AND LOCATION(S)**

Natividad Medical Center

Name of Hospital

General Acute, Inpatient Mental Health, Inpatient Acute Rehabilitation, Outpatient, Clinics

Type of Hospital

CLAIM TYPE SUBMISSION:(circle one) HCFA UB BOTH

94-6000524

1205863255

Tax ID Number

Billing NPI Number

CAQH Number *(if applicable)*

PRIMARY ADDRESS

1441 Constitution Boulevard

Street

Suite

Salinas

CA

93906

City

State

Zip

(831) 755-4111

(831) 755-6254

Phone

Fax

Gary R. Gray, DO

(831) 783-2504

graygr@natividad.com

Contact Person

Phone

Email Address

BILLING ADDRESS

1441 Constitution Boulevard

Street

Suite

Salinas

CA

93906

City

State

Zip

(831) 783-2345

(831) 755-4087

Phone

Fax

Vince Carr

(831) 783-2345

carrvj@natividad.com

Contact Person

Phone

Email Address

List below or attach hereto all of the facility and/or ancillary locations that are to be included as part of this Agreement, including their demographics as requested in this Exhibit A, above. If physicians are to be included as part of this Agreement, please also include their degree and specialty(s). Electronic listings are accepted.

1441 Constitution Boulevard

Salinas, CA 93906

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective September 1, 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 AMERICA'S CHOICE PROVIDER NETWORK (“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 two (2) 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, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. 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 two (2) 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 twenty-one (21) 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 cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal 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.

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 two (2) 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 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 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 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.

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:

Attn: _____
Phone: _____
Fax: _____

If to Covered Entity, to:

Natividad Medical Center

1441 Constitution Blvd.

Salinas, CA 93906

Attn: NMC Contracts Division

Phone: (831) 755-4111

Fax: (831) 757-2592

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. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor 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. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

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.

[BUSINESS ASSOCIATE]

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

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____