

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the “**Amendment**”) is made and entered into as of January 1, 2015, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and KALLE VARAV, M.D., A PROFESSIONAL CORPORATION, a California professional corporation (“**Contractor**”) with respect to the following:

RECITALS

- A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California under its acute care license.
- B. Contractor and Hospital have entered into that certain Professional Services Agreement dated effective as of January 1, 2013, and as amended effective January 1, 2014 (collectively, the “**Agreement**”), pursuant to which Contractor provides professional consultation and treatment to Clinic Patients.
- C. Hospital and Contractor desire to amend the Agreement to extend the term and increase the amount payable for services provided under the Agreement by Two Hundred Thousand Dollars (\$200,000).
- D. Hospital and Contractor desire to correct the Contractor’s name to KALLE VARAV, M.D., A PROFESSIONAL CORPORATION.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Hospital and Contractor agree as follows:

1. **Defined Terms**. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. **Section 2.1**. Section 2.1 to the Agreement is hereby amended to read in its entirety as follows:

“**2.1 Compensation**. Hospital shall pay to Contractor the amount determined in accordance with **Exhibit 2.1** (the “**Compensation**”), upon the terms and conditions set forth therein. The amount payable by Hospital to Contractor under this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000) for the full term of the Agreement.”

3. **Exhibit 2.1**. Exhibit 2.1 to the Agreement is hereby deleted and replaced in its entirety and attached hereto as **Exhibit 2.1**.

4. **Section 2.2.** A new subsection (f) to Section 2.2 of the Agreement is hereby added to read in its entirety as follows:

“(f) **Joint and Several Liability.** Hospital and Contractor acknowledge that they will be jointly and severally liable for any Federal Health Care Program overpayments relating to claims with respect to NMC Services furnished by Contractor pursuant to this Agreement. The foregoing is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the Parties’ respective indemnification obligations under this Agreement.”

5. **Section 3.5.** Section 3.5 to the Agreement is hereby amended to read in its entirety as follows:

3.5 Right to Offset Insurance Costs.

(a) In the event that Contractor does not purchase or otherwise have the liability insurance set forth in this Section at any time during the term of this Agreement, and without limiting any rights or remedies of County, County may at its option and within its sole discretion provide the liability insurance required by this Section and continue to pay the premiums therefor. If Contractor does not promptly reimburse all such amounts, then County shall have the right to withhold and offset the compensation due to Contractor under this Agreement, in addition to such other rights or privileges as County may have at law or in equity.

(b) The County’s option to provide such insurance and to offset the compensation otherwise due to the Contractor shall also apply to the “Tail Coverage” referenced in Section 3.3, including for general liability if during the term of the Agreement such coverage has been written on a claims made basis, which is required to remain effective after the expiration or termination of this Agreement for any reason.”

6. **Section 5.1.** Section 5.1 to the Agreement is hereby amended to read in its entirety as follows:

5.1 Term. This Agreement shall become effective on January 1, 2013 (the “**Effective Date**”), and shall continue until December 31, 2016 (the “**Expiration Date**”), subject to the termination provisions of this Agreement.”

7. **New Section 5.8.** A new Section 5.8 is hereby added to the Agreement to read in its entirety as follows:

“5.8 Termination or Amendment in Response to Reduction of Government Funding. Notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to the County for services that are to be provided under this Agreement, County, in its sole and absolute discretion after consultation with the Contractor, may elect to terminate this Agreement by giving written notice of termination to Contractor effective immediately or on such other date as County specifies in the notice. Alternatively, County and Contractor may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.”

8. **Exhibit 6.3.** Exhibit 6.3 to the Agreement is hereby deleted and replaced in its entirety and attached hereto as **Exhibit 6.3.**

9. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10. **Continuing Effect of Agreement.** Except as herein provided, all of the terms and conditions of the Agreement remain in full force and effect from the Effective Date of the Agreement.


11. **Reference.** After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

[signature page follows]

IN WITNESS WHEREOF, Hospital and Contractor have executed this Amendment as of the day and year first written above.

CONTRACTOR

KALLE VARAV, M.D., A PROFESSIONAL CORPORATION, a California professional corporation

By: 
Its President

Date: 11/23/14, 2014

By: _____
Its _____

Date: _____, 20__

NATIVIDAD MEDICAL CENTER

Kelly O'Keefe, M.D., PhD, FCAP, Interim
CEO / Deputy Purchasing Agent

Date: _____, 20__

APPROVED AS TO LEGAL PROVISIONS:

Stacy Saetta, Deputy County Counsel

Date: _____, 20__

APPROVED AS TO FISCAL PROVISIONS:

Deputy Auditor/Controller

Date: _____, 20__

Exhibit 2.1

COMPENSATION

1. **Professional Services.** Hospital shall pay to Contractor the amount of One Hundred Ninety Dollars (\$190) per hour for Professional Services provided to Clinic Patients (the “**Clinic Services**”) rendered by Contractor under this Agreement; provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.

2. **Non-Clinic Services.**

(a) Hospital shall pay to Contractor for Professional Services provided by Contractor to Non-Clinic Patients (“**Non-Clinic Services**”) an amount equal to ninety-five percent (95%) of the actual reimbursement received by Hospital for such services (the “**Non-Clinic Compensation**”). Hospital shall calculate the Non-Clinic Compensation on a monthly basis and be subject to bi-annual reconciliation in accordance with this Section 3.

(b) **Monthly Advances.** Hospital shall advance to Contractor, each month during the term of this Agreement, an amount equal the estimated amount of the Non-Clinic Compensation payable to Contractor, as determined in good faith by the Hospital (the “**Advance(s)**”).

(c) **Monthly Reconciliation.** Within thirty (30) days after the end of each month during the term of the Agreement (each, a “**Compensation Period**”), Hospital shall compare the aggregate Advances during such Compensation Period to the aggregate Non-Clinic Compensation for such Compensation Period. In the event the aggregate Advances during such Compensation Period exceed the aggregate Non-Clinic Compensation for such Compensation Period, Hospital shall withhold from each of the next Advance(s) otherwise payable to Contractor an amount equal to the difference between the aggregate Advances during such Compensation Period and the aggregate Non-Clinic Compensation for such Compensation Period. In the event the aggregate Non-Clinic Compensation during any such Compensation Period exceeds the aggregate Advances during such Compensation Period, Hospital shall pay to Contractor, in addition to the next Advance payable to Contractor, an amount equal to the difference between the aggregate Non-Clinic Compensation for such Compensation Period and the aggregate Advances during such Compensation Period. Hospital shall conduct the first reconciliation pursuant to this Section 3(c) ninety (90) days after the Effective Date.

(d) **Non-Clinic Compensation Reports.** Hospital shall provide Contractor with a monthly report (each, a “**Report**”) that demonstrates the calculation of the Non-Clinic Compensation payable under this Agreement. If Contractor disagrees with any aspect of any such Report, Contractor shall, thirty (30) days after receipt of such Report, prepare and deliver to Hospital a written statement setting forth in reasonable detail Contractor’s objections to the times stated in the Report. If Hospital does not receive such a written statement within such thirty (30) day period, Contractor shall be deemed to have agreed with each and every aspect of such Report.

3. **Non-Clinic Uninsured/MIA Services.** Hospital shall pay to Contractor an amount equal to then-current (as of the date of service), hospital-based, Medicare Physician Fee Schedule for the service or procedure (the “**Uninsured/MIA Compensation**”). The Uninsured/MIA Compensation shall be Contractor’s sole and exclusive compensation for Uninsured/MIA Services (defined below) provided by any Group Physician pursuant to this Agreement and Contractor shall not seek further compensation from any other source. Contractor shall be paid on the CPT codes submitted and verified by Hospital professional billing office coders.

(a) For purposes of this Agreement, “**Uninsured/MIA Services**” shall mean medically necessary professional medical services that are rendered to patients at Hospital, other than Clinic Patients, who: (i) have been identified by Hospital as patients who are designated as Medically Indigent Adults (“**MIA**”); or (ii) are not insured for medical care by any third-party payor (collectively, the “**Uninsured/MIA Patients**”).

(b) Procedures with the following modifiers will be reimbursed at the Medicare allowable rate using the current established Medicare guidelines for reimbursement when using the modifier:

(i) Procedures that are or could be billed with the modifier 22 (unusual procedural services) will not be considered for additional reimbursement to be paid to Contractor; rather the procedure will be reimbursed at the Medicare allowable and if other modifiers are used, the procedure will be paid at the current established Medicare reimbursement rate applying Medicare guidelines for those modifiers.

(ii) If modifier 52 (reduced services) and/or 53 (discontinued services) is/are needed for billing, the percentage of the Medicare allowable to be paid to Contractor will be determined by the Hospital physician billing manager and the Hospital Chief Medical Officer (CMO).

(iii) Unless a code is specifically designated as an add-on code, the Medicare rules for multiple procedure guidelines shall apply (*i.e.*, the main procedure will be paid at 100% and subsequent procedures will be paid at 50%), consistent with Medicare reimbursement guidelines for modifiers.

(c) The Parties intend that Hospital will pay for Uninsured/MIA Services only if the Uninsured/MIA Patient has no means of paying for those services (*e.g.*, independent wealth, third-party payor, etc.). If it is later determined that an Uninsured/MIA Patient or a third-party payor will pay for the Uninsured/MIA Services the following shall apply:

(i) Hospital shall have the sole and exclusive right to bill, collect and own any and all fees that might be collected for Uninsured/MIA Services provided by any Group Physician pursuant to this Agreement. Contractor hereby grants Hospital the right to retain any and all collections received by Hospital for Contractor's Uninsured/MIA Services. In the event that Contractor or any Group Physician receives any payment from third-party payors for Uninsured/MIA Services that Contractor or Group Physician furnishes pursuant to this Agreement, Contractor shall promptly turn over such payments to Hospital. Contractor shall designate Hospital as Contractor's attorney-in-fact for billing for Uninsured/MIA Services provided by Contractor and each Group Physician pursuant to this Agreement.

(ii) For any procedure without an established RVU value and/or not listed procedure (*e.g.*, x stop), Hospital will reimburse Contractor based upon Hospital's reimbursement from a payor if Hospital has received payment from a payor. In the event no payment is received from a payor, no reimbursement will be made to Contractor.

(iii) The Parties agree to resolve any and all billing, collection and reimbursement disputes as expeditiously as possible, up to and including the dispute resolution procedure outlined in this Section 4. If a claim is disputed by a payor, Contractor will make every effort to assist the Hospital billing manager to resolve the claim, If the claim is denied by the payor, and no payment is received within twelve (12) months of the service date, the amount of the disputed claim will be adjusted (recouped) from future payments due to Contractor after the twelve (12) month period.

(iv) Hospital will adjust future invoices if Hospital is unable to recover payment for surgery/treatment due to a procedure being classified by a payor as non payable (*e.g.*, it is considered experimental, represents non-covered services, is categorized as medically unnecessary, or is otherwise excluded from coverage), or if Contractor is found to have breached a necessary reimbursement procedure (*e.g.*, scheduling a procedure from its office and not obtaining the authorization for the procedure to be performed at Hospital). No payment will be allowed to Contractor in these circumstances. At its discretion and at its sole cost and expense, Contractor may appeal to the payor any determination that a procedure is non-payable.

4. **Encounter Submissions.** For Non-Clinic Services and Uninsured/MIA Services, Hospital shall pay to Contractor the Monthly Advances and Uninsured/MIA Compensation, respectively, so long as Contractor submits information relating to its patient encounters as follows:

(a) Group Physicians will complete an encounter charge form at the time a service is provided, or within twenty-four (24) hours of that service.

(b) After a Group Physician completes an encounter charge form, the Physician will keep one copy to submit to Contractor's Practice Manager, and deposit a copy of the encounter charge form in a Hospital charge collection box.

(c) Hospital physician billing staff will pick up encounter charge forms daily (Monday – Friday) from the Hospital charge collection box.

(d) Hospital will check both the diagnosis and the documentation to verify coding on encounter forms for one hundred percent (100%) of encounters. This review will require Group Physicians to dictate patient visit notes into the Hospital dictation system within twenty-four (24) hours of completion of an encounter so that documentation available is for review of the encounter charge form. Any encounter charge form for which there is not an accompanying dictated patient visit note shall not be reviewed by Hospital until the patient visit note is submitted to the Hospital Physician Billing Manager. The sole exception to the dictation requirement shall be when a Group Physician is using CPT code 99024 for post operative visits and is not expecting payment for the visit, in which case the Contractor physician can hand write the visit note.

(e) Hospital will sign off on "clean" coded charges and forward for data entry.

(f) Hospital's Physician Billing Manager will notify Contractor's Practice Manager of disputed coding within five (5) business days of the daily pick-up of the encounter charge form, and will work with Contractor to resolve the dispute so that the claim may be filed within the filing deadlines established by the applicable payor. Hospital's Physician Billing Manager will also notify Contractor's Practice Manager of any encounter charge forms for which there is no correlating dictated note within two (2) business days of the daily pick-up of the encounter charge form.

(g) Contractor's Practice Manager will return corrected charges within five (5) business days of receipt from Hospital's Physician Billing Manager.

(h) For undisputed charges, charges will be entered by Hospital within five (5) business days. Hospital will make every effort during the last week of the month to get as many charges as possible entered into the system for that month's invoice. Contractor will be notified if an issue arises which prevents timely entry of charges. Disputed charges will be entered within five (5) business days of the final date of dispute resolution between Contractor and Hospital, and paid only after entry of the charges following resolution of the dispute.

(i) In the event of a dispute regarding the appropriateness of a code or modifier, or similar technical billing issue, which cannot be resolved informally by the parties, the parties shall jointly designate an independent third party billing expert to review and make a recommendation regarding the issue. The cost of such expert shall be shared equally by the parties, Hospital shall give such recommendation great weight but, as the billing entity, shall have ultimate discretion in resolving such issue.

(j) Charges entered through the last day of the month will be the charges considered for payment for that month's invoice. Charges appearing on a given month's invoice may be for dates of service provided in a different month.

(k) Hospital's Physician Services staff will generate the encounter report necessary to create the invoice. The encounter report will be based on the Hospital information system (currently MediTech) generated date/stamp for all charges entered by the Hospital physician billing staff as of the last day of the prior month, in accordance with Section 5(d)(x) of this Exhibit.

(l) The Hospital Physician Services staff will create and send the following documents to the Contractor's practice manager on or before the twelfth (12th) day of the month: (i) an "Encounter Summary Sheet" detailing worked performed by each individual Group Physician for the previous month, and (ii) a single invoice for all the work performed by all Group Physicians during that month.

(m) Within three (3) business days of receiving it, Contractor's Practice Manager will review the encounter report and invoice, discuss any disputes with the Hospital Physician Billing Manager and/or the Hospital Physician Services, accept and sign off on the invoice and return all documents to the Hospital Physician Services.

(n) Upon receipt of the accepted and signed invoice, the Hospital Physician Services will review the encounter charge forms and invoices, approve them, and initiate routing process to be completed within fifteen (15) days.

(o) Once Contractor approves the monthly invoice and submits it to Hospital, Hospital will have forty-five (45) days to pay the invoice, resulting in a maximum of fifteen (15) days from submission of the invoice by Contractor to Hospital for Hospital to submit a certified invoice to the County Auditor Controller's office for payment; the Auditor Controller shall issue payment within thirty (30) days upon receipt in the Auditor Controller's Office.

5. **Excluded Patients.**

(a) This Agreement, including the compensation provisions set forth in this Exhibit 2.1, shall apply only to Professional Services provided by Contractor to patients who present to the Hospital or Clinic as Hospital patients (inpatient, outpatient and/or emergency department patient). This Agreement shall not apply to patients referred to the Hospital or Clinic from any Contractor office, Group Physician, or private practice of any Group Physician ("**Excluded Patients**")."

(b) Contractor shall be solely responsible for billing and collecting the professional component with respect to all Professional Services provided to Excluded Patients at Hospital or Clinic ("**Excluded Services**"). Contractor shall bill Excluded Patients and third party payors for the professional component with respect to the Excluded Services at its own expense and under its own provider number, except where direct patient billing is otherwise prohibited. In the event that Contractor receives any payment for Excluded Services from County, Contractor shall promptly return such payment to County.

(c) Contractor shall identify Excluded Patients by writing "Excluded Patient" on the encounter charge form at the time the Excluded Service is provided, or within twenty-four (24) hours of that service, and provide a copy to Hospital.

(d) Contractor shall, to the extent permitted by law and permitted by any third party payor agreements with Hospital or Clinic, and permitted by the terms of this Agreement, look exclusively to Excluded Patients, or those third party payors responsible for the payment of the professional component, as the sole source of its compensation for the Excluded Services provided at Hospital. In no case shall Hospital pay any amount to Contractor with respect to the Excluded Services.

(e) Contractor shall follow government program regulations on patient billing for patients covered by Medicare, Medicaid and other such programs. Contractor shall cease any billing practices which violates these regulations, and shall indemnify County for all damages, costs, expenses, and losses incurred by County, including but not limited to attorneys' fees, as a result of any violation.

(f) County shall have the right to disapprove the use by Contractor of any collection agency which engages in conduct which results in the unreasonable annoyance or harassment of patients. Contractor shall either cure this problem or discharge the collection agency within thirty days following written notice of disapproval by County. Contractor shall, if this problem occurs a second time, discharge the collection agency within thirty (30) days following written notice of disapproval by County.

6. **Timing.** Hospital shall pay the compensation due for Clinic Services performed by Contractor after Contractor's submission of the monthly invoice of preceding month's activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Clinic Services were performed, Hospital shall not be obligated to pay Contractor for Clinic Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is "30 days after receipt of the certified invoice in the Auditor-Controller's Office".

Exhibit 6.3

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective January 1, 2015 (“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 **KALLE VARAV, M.D., A PROFESSIONAL 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 CMLA;

(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) upon twenty (20) business days' prior written request, 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's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within twenty (20) business 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) business 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) business 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 twenty (20) business 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 twenty (20) business 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) business 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

(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 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 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) business 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:

Kalle Varan, MD

Attn:

Tel: 831 372-7246

Fax: 831 372-7859

If to Covered Entity, to:

Natividad Medical Center
1441 Constitution Blvd, Bldg 300
Salinas, CA 93906

Attn: Kelly O'Keefe, CEO

Tel: 831.755.2553

Fax: 831.755.6297

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. The parties agree that Section 3 of the Agreement between the Parties shall control in the event of a claim, loss, or material breach of this Agreement by either Party.

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]

[COVERED ENTITY]

By: _____	<i>Kalle Varav Jha</i>	By: _____
Print Name: _____	<i>Kalle Varav</i>	Print Name: _____
Print Title: _____	<i>President</i>	Print Title: _____
Date: _____	<i>11/23/17</i>	Date: _____