

Agreement No. 09797

**BEFORE THE BOARD OF SUPERVISORS IN AND FOR THE
COUNTY OF MONTEREY, STATE OF CALIFORNIA**

Approve and authorize the CEO of Natividad Medical)
Center sign an agreement with Medical Information)
Technology, Inc. for the Meditech system)
implementation project.)

Upon motion of Supervisor Potter, seconded by Supervisor Lindley, and carried by those members present, effective May 25, 2004, the Board hereby approves and authorizes the CEO of Natividad Medical Center sign an agreement with Medical Information Technology, Inc. for the Meditech system implementation project.

PASSED AND ADOPTED this 25th day of May 2004, by the following vote, to wit:

AYES: Supervisors Arementa, Calcagno, Lindley, Johnsen, Potter

NOES: None

ABSENT: None

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at Page -- of Minute Book 72, on May 25, 2004.

DATED: June 3, 2004

SALLY R. REED, Clerk of the Board of
Supervisors, County of Monterey, State of
California

By:

Ann D. Anderson
Deputy

Medical Information Technology, Inc.

Health Care Information System Software Agreement

AGREEMENT made this 19th day of July, 2004 by and between MEDICAL INFORMATION TECHNOLOGY, INC., a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at MEDITECH Circle, Westwood, Massachusetts 02090 (hereinafter called MEDITECH) and Natividad Medical Center, an acute care teaching hospital wholly owned and operated by the County of Monterey, a political subdivision of the State of California, duly organized and existing under the laws of the State of California and having its principal place of business at 1441 Constitution Boulevard, Salinas, CA 93912-1611 (hereinafter called Customer).

WHEREAS MEDITECH has developed and continues to enhance a version of computer software designed to operate in a "client-server" environment, which version, together with any physical embodiment thereof and related documentation (incorporated in this Agreement as Exhibits II through XXI), are together hereinafter called LICENSED SOFTWARE, and WHEREAS Customer desires to obtain from MEDITECH the right to use such LICENSED SOFTWARE in its operations at the facility(ies) listed in Article II,

NOW THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I - GENERAL TERMS & CONDITIONS

A. RESPONSIBILITIES AND WARRANTIES OF MEDITECH

1. MEDITECH agrees to deliver, implement and service the LICENSED SOFTWARE all as more fully described in this Agreement. Subject to the terms and conditions hereof and upon payment in full to MEDITECH of the license and implementation fees for each line item of LICENSED SOFTWARE listed in Article II, MEDITECH hereby grants to Customer a non-exclusive, perpetual license to use each such line item. MEDITECH warrants that the LICENSED SOFTWARE shall have capabilities equal to the capabilities described in Exhibits II through XXI and will operate in substantial conformity with such descriptions when delivered to Customer and installed on Customer's MEDITECH-approved computer network (the major components of which are recited on Exhibit I hereof).
2. MEDITECH warrants to Customer that it is the developer and sole owner of the LICENSED SOFTWARE. In the event of any suit or claim against Customer by any third party for damages and/or injunctive relief contesting ownership of the LICENSED SOFTWARE by MEDITECH and/or Customer's rights under this Agreement, MEDITECH agrees at its own expense to defend Customer against such suit or claim and to hold Customer harmless from the expenses of such defense and from any court-awarded judgments resulting from such suit or claim, provided that Customer furnishes written notice to MEDITECH of the commencement of such suit or the presentation of such claim within fifteen (15) days of notice thereof to Customer. Further, if, because of such suit or claim, the LICENSED SOFTWARE is held to constitute an infringement of any United States copyright or patent and use of the LICENSED SOFTWARE by Customer is thereby enjoined, MEDITECH shall, at its own expense, either procure for Customer the right to continue using the LICENSED SOFTWARE or replace the same with a non-infringing product, substantially conforming to that described herein, or modify the same so that it shall be non-infringing, provided that the service described in Article IV has not been terminated.
3. MEDITECH acknowledges that certain material which will come into its possession or knowledge in connection with this Agreement includes confidential or proprietary information of Customer or Customer's patients (hereinafter called "Protected Information"). MEDITECH agrees to hold all Protected Information in confidence, to use it only in connection with performance under this Agreement and to disclose it only to those of its employees that require access thereto for such performance or as may otherwise be required by law. In addition, MEDITECH shall use appropriate safeguards to prevent other use or disclosure of Protected

Information and shall promptly report to Customer any other use or disclosure of Protected Information of which it becomes aware. MEDITECH shall ensure that any agents of MEDITECH, including but not limited to subcontractors, to whom it provides Protected Information agree to the same restrictions and conditions as apply to MEDITECH with respect to such Protected Information. Upon the written request of the United States Department of Health and Human Services, MEDITECH shall make its internal practices, books and records relating to the use and disclosure of Protected Information provided to MEDITECH by Customer available to the Secretary of Health and Human Services (or his or her designee or duly authorized representative), at MEDITECH's Massachusetts facility and at times convenient for MEDITECH, to the extent required for determining compliance with Federal privacy and security regulations. Upon Customer's written request MEDITECH shall return to Customer (when reasonably possible) or destroy any Protected Information.

B. RESPONSIBILITIES OF CUSTOMER

1. Customer shall pay to MEDITECH the line item fee (license fee plus implementation fee) for each line item of ~~LICENSED SOFTWARE~~ as follows:

- 10% due upon execution of this Agreement
- 40% due upon software delivery
- 40% due 90 days following software delivery
- 10% due 180 days following software delivery

Each payment for each line item will be separately due and payable without regard to other line items.

In the event a payment due MEDITECH under this Paragraph is delinquent for a period of sixty (60) days from its due date, and MEDITECH so notifies Customer in writing, and the delinquency is not cured within thirty (30) days thereafter, then, upon MEDITECH's written notice, Customer will cease to use the LICENSED SOFTWARE until such time as all payments then due are paid. Such cessation of use shall not relieve Customer of any obligations under this Agreement, including the obligation to make all payments specified herein.

2. During the period in which MEDITECH makes available the service described in Article IV, Customer will pay to MEDITECH the monthly service fees stated in Article II. These fees will commence upon the attainment of Live Status for each line item of LICENSED SOFTWARE. "Live Status" is defined for each line item as the date on which such line item is used in Customer's daily operations utilizing real patient/hospital data. Twenty-four (24) months after the date of this Agreement these fees may be increased by MEDITECH at any time by providing thirty (30) days written notice of such increase to Customer.

Service fee invoices are issued on the first of each month in which the service is to be made available, with payment terms of net fifteen (15) days. If payment of any service fee invoice is delinquent for a period of forty-five (45) days from its due date, MEDITECH's obligations stated in Article IV may be suspended until all delinquencies have been cured to the satisfaction of MEDITECH.

3. Customer agrees to limit access to the LICENSED SOFTWARE to those of its staff, employees and other affiliated healthcare professionals who must have access thereto to properly use the same in Customer's operations. Further, Customer agrees to notify MEDITECH promptly and fully in writing of the circumstances concerning any possession, use or study of the LICENSED SOFTWARE by any person, corporation or other entity (other than Customer's staff, employees and other affiliated healthcare professionals) including, but not limited to, the name(s) and address(es) of such person(s), corporation(s), or other entities. Customer agrees that it will not, at any time, without written permission of MEDITECH, copy, duplicate, or permit others to copy or duplicate the LICENSED SOFTWARE, except to the extent required for the creation of backup copies of the LICENSED SOFTWARE as described in Exhibits II through XXI.
4. Customer acknowledges that certain material which will come into its possession or knowledge in connection with this Agreement includes confidential or proprietary information of MEDITECH (including, without limitation, the terms and conditions of this Agreement), disclosure of which to third parties may be damaging to MEDITECH. Customer agrees to hold all such material in confidence, to use it only in connection with performance under this Agreement and to release it only to those persons that require access thereto for such performance or as may otherwise be required by law. In addition, Customer shall use appropriate safeguards to prevent other use or disclosure of confidential or proprietary information of MEDITECH and shall promptly

report to MEDITECH any other use or disclosure of such information of which it becomes aware.

5. If Customer is a tax-exempt entity, then, upon execution of this Agreement, Customer will provide to MEDITECH a copy of its current tax exemption certificate for each applicable taxing authority which has approved Customer's tax-exempt status. If Customer is not a tax-exempt entity, Customer acknowledges that it (and not MEDITECH) shall be responsible for the payment of any and all taxes (including, but not limited to, sales, use, and excise taxes and excluding taxes based on MEDITECH's income) imposed by the applicable taxing authorities to which Customer is subject.
6. Not later than sixty (60) days prior to the earliest delivery date listed in Article II, Customer will install and connect to its computer network, at Customer's expense, a minimum of one BRI (ISDN) line (or other MEDITECH-approved connectivity solution) as well as a separate telephone line (equipped with an RAS modem for emergency use only), in conformity with MEDITECH's specifications, and will provide MEDITECH with access thereto for the resolution of system problems in accordance with the applicable sections of Article III and IV. Customer shall maintain such ISDN service (or other MEDITECH-approved connectivity solution) and provide MEDITECH with access thereto until such time as the service described in Article IV is terminated for all line items of LICENSED SOFTWARE.

C. RESTRICTIONS ON TRANSFER

The LICENSED SOFTWARE shall at all times remain the property of MEDITECH and the license of use granted herein specifically excludes any right of reproduction, sale, lease, sublicense, or other transfer or disposition of the LICENSED SOFTWARE by Customer except as otherwise expressly stated herein. The rights granted hereunder are granted to Customer only and are not assignable to any other person, corporation or entity, except that, upon the transfer by sale, merger, or corporate re-organization, of substantially all of the assets of Customer to a successor organization, this Agreement and the rights and obligations of Customer hereunder may be assigned to such successor. Customer agrees to notify MEDITECH promptly in writing of the transfer to such successor and of the assumption by such successor of Customer's obligations and responsibilities as described in this Agreement.

D. LIMITATION OF LIABILITY

Customer acknowledges that the LICENSED SOFTWARE provided by MEDITECH constitutes part of a hospital information system to be used by Customer, its staff, employees and other affiliated healthcare professionals in the performance of their professional responsibilities and is in no way intended to replace their professional skill and judgement. Customer agrees that it is solely responsible for the care of its patients and that the use of the LICENSED SOFTWARE for any purpose related to such care cannot in any way be controlled by MEDITECH. Customer is responsible for verifying the accuracy and completeness of any medical or other similar information contained in, entered into, or used in connection with the LICENSED SOFTWARE. Customer agrees to hold MEDITECH harmless from any liability arising from improper or flawed operation or use of the LICENSED SOFTWARE. In no event will MEDITECH be liable for any consequential damages, lost profits or lost revenues sustained by Customer, or for any suit or claim or demand against Customer by any other party, except as stated in Article I(A)(2), above.

E. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and permitted assigns of the parties hereto.

F. LEGAL CONSTRUCTION

The validity and effect of this Agreement shall be determined in accordance with the laws of the State of California.

ARTICLE II - DELIVERY

The LICENSED SOFTWARE listed below is being licensed to Customer to service the specific information-processing needs of the following inpatient facility(ies):

- 1) Natividad Medical Center, operating at 1441 Constitution Boulevard, Salinas, CA 93912-1611

Depending on which software is being licensed, MEDITECH's license fees are determined by the total number of governmentally-licensed beds at the above facility(ies) or the total number of users for physicians' practices affiliated with Customer. Any use of the LICENSED SOFTWARE beyond the restrictions set forth in this Agreement will require payment of additional fees to MEDITECH which will be determined in accordance with MEDITECH's standard rates.

MEDITECH agrees to deliver the LICENSED SOFTWARE, including associated documentation, to Customer on or about the specified delivery dates for use at the above facility(ies). Additional copies of documentation will be provided by MEDITECH at its then standard rates; in the alternative, Customer may reproduce copies of the documentation so long as access to any such copies is restricted in accordance with this Agreement.

LICENSED SOFTWARE LINE ITEMS	Delivery Date	License Fee	Implementation Fee	Line Item Fee	Service Fee	Exhibits
Admissions Module	12/31/2004	32,400	20,000	52,400	324	II
EPI & Medical Records Module	12/31/2004	32,400	12,000	44,400	324	III
MRI Conversion (OV Format)	01/31/2005	10,000		10,000		III
Case Mix Management Option	12/31/2004	32,400	7,000	39,400	324	IV
ABS Conversion	01/31/2005	12,000		12,000		IV
Demographic Recall Conversion	01/31/2005	10,000		10,000		IV
3M Encoder Interface	01/31/2005	15,000		15,000	150	IV
APC Interface	01/31/2005	15,000		15,000	150	IV
Billing/Accounts Receivable Module	12/31/2004	48,600	60,500	109,100	486	V
Bill/Remit to 3rd Party	01/31/2005	16,200	31,000	47,200	162	V
B/AR Conversion (Detail, OV Format)	01/31/2005	17,000		17,000		V
General Ledger Module	11/30/2004	32,400	17,000	49,400	324	VI
Accounts Payable Module	12/31/2004	16,200	8,500	24,700	162	VII
Fixed Assets Accounting Module	11/30/2004	16,200	3,500	19,700	162	VIII
Materials Management Module	12/31/2004	32,400	22,000	54,400	324	IX
MM Dispensing System Interface	01/31/2005	15,000		15,000	150	IX
Laboratory Module (includes 6 instrument interfaces)	12/31/2004	48,600	40,500	89,100	486	X
15 Add'l Lab/Micro Instrument Interfaces	01/31/2005	45,000		45,000	450	X
MEDINET: Send Orders & Receive Results	01/31/2005	20,000		20,000	200	X
Microbiology Module (includes 1 instrument interface)	12/31/2004	32,400	25,500	57,900	324	XI
Blood Bank Module	12/31/2004	48,600	28,500	77,100	486	XII
Anatomical Pathology Module	12/31/2004	16,200	25,500	41,700	162	XIII
Community-Wide Scheduling Module	02/28/2005	16,200	19,000	35,200	162	XIV
Order Entry Module	12/31/2004	48,600	37,500	86,100	486	XV
Pharmacy Module	12/31/2004	32,400	26,500	58,900	324	XVI
Pha Formulary Interface	12/31/2004	7,500		7,500	75	XVI
Pha Dispensing System Interface	01/31/2005	15,000		15,000	150	XVI
Imaging & Therapeutic Services	12/31/2004	48,600	32,000	80,600	486	XVII
Executive Support System	03/31/2005	48,600	10,500	59,100	486	XVIII
Budgeting & Forecasting Option	03/31/2005	16,200	7,000	23,200	162	XIX
Enterprise Medical Record	12/31/2004	97,200	37,500	134,700	972	XX
Authorization and Referral Management	03/31/2005	32,400	20,000	52,400	324	XXI
Carry Forward				1,418,200	8,777	

LICENSED SOFTWARE LINE ITEMS	Delivery Date	License Fee	Implementation Fee	Line Item Fee	Service Fee	Exhibits
Balance Carried Forward				1,418,200	8,777	
Separate Outpatient Campus Option (1)	12/31/2004	16,200		16,200	162	
On Site Dictionary Training (2)			200,000	200,000		
Totals				1,634,400	8,939	

Notes:

- (1) With this feature Customer may utilize the LICENSED SOFTWARE to service the computerized information processing needs of any outpatient clinic affiliated with Customer's operations at the facility(ies) listed in Article II, which use shall not be construed as a violation of any restrictions imposed by this Agreement, provided that such use is in all other respects in conformity with all terms and conditions of this Agreement.
- (2) Includes on site dictionary training for all line items except Executive Support System, Budgeting & Forecasting and Authorization and Referral Management. Travel to MEDITECH by Customer personnel is required for MIS, Report Writer, Executive Support System, Budgeting & Forecasting and Authorization and Referral Management. Payment terms are ten percent (10%) upon execution of this Agreement and ninety percent (90%) on the earliest delivery date listed in Article II above.

ARTICLE III - IMPLEMENTATION

A. IMPLEMENTATION PERIOD

"Implementation Period" is defined for each line item of LICENSED SOFTWARE as the period commencing on execution of this Agreement and ending upon the attainment of Live Status for such line item. As detailed in the attached Schedule A, during this period MEDITECH will provide support and assistance to Customer and Customer will make available sufficient resources so that the joint goal of a successful implementation of the LICENSED SOFTWARE at Customer's site is achieved.

B. IMPLEMENTATION SUPPORT

- As stated in Schedule A, MEDITECH will provide implementation support to insure successful implementation of the LICENSED SOFTWARE. If this support is determined to be insufficient, MEDITECH will provide additional support at no additional cost (other than travel and out-of-pocket expenses).
- Subsequent to execution of this Agreement MEDITECH and Customer will each assign Project Coordinator(s) who will be the other's main contact during the implementation process. The Coordinators will schedule an Orientation Meeting to occur at Customer's site. At this meeting the relationship between MEDITECH and Customer will be detailed through the development of a firm schedule for all implementation tasks; actual dates will be finalized by Customer's personnel working with members of the MEDITECH Implementation Team and will follow the delivery dates recited in Article II and the "go-live" time frame described in Schedule A.

C. CORRECTION OF PROGRAM ERRORS

At no additional cost to Customer MEDITECH agrees to correct, during normal business hours, any program errors reported by Customer. Program errors are defined as failures of the LICENSED SOFTWARE to operate in substantial conformity with the descriptions of such operation in Exhibits II through XXI. Any modifications of the LICENSED SOFTWARE made by anyone other than MEDITECH shall relieve MEDITECH of all obligations under this Paragraph.

D. EXPENSES

In connection with the support and assistance described herein, Customer agrees to reimburse MEDITECH for MEDITECH's actual and reasonable travel and out-of-pocket expenses, including the costs of coach-class air transportation, motor vehicle transportation, food and lodging (and reasonable incidentals incurred in association therewith), and for dial-up telephone expenses. These expenses will be billed to Customer separately, as incurred, with payment terms of net thirty (30) days. MEDITECH will itemize each invoice by category for each major type of expense.

In addition, for various line items of LICENSED SOFTWARE, Customer's personnel may visit MEDITECH's facility for training as stated in Schedule A. Travel and out-of-pocket expenses incurred by Customer during such visits shall be borne by Customer.

ARTICLE IV - SERVICE

The service described herein shall commence upon the attainment of Live Status for each line item listed in Article II and will continue indefinitely until either MEDITECH or Customer terminates same by providing sixty (60) days written notice to the other. Termination of service by either party eliminates the duties and obligations of both parties detailed in this Article, in Article I(A)(2) and in Article I(B)(2) of this Agreement.

A. ROUTINE/EMERGENCY SERVICE

MEDITECH will make available to Customer both routine and emergency service via telephone contact for the purpose of resolving system problems originating in the LICENSED SOFTWARE or Customer's computer network, which will be addressed as follows:

1. If the problems result from program errors in the LICENSED SOFTWARE, MEDITECH shall correct such program errors and shall exercise its best efforts to assure that the same is accomplished as expeditiously as possible. Program errors are defined as failures of the LICENSED SOFTWARE to operate in substantial conformity with descriptions of such operation in Exhibits II through XXI.
2. If the problems originate from incorrect use of the LICENSED SOFTWARE or from a computer equipment malfunction which results in data base errors which may require MEDITECH's assistance for correction, MEDITECH will generally provide such assistance, however, depending on the efforts to be expended, MEDITECH reserves the right to charge Customer for the associated consulting time. Incorrect use of the LICENSED SOFTWARE is defined as data processing procedures not in conformity with such procedures as described in Exhibits II through XXI.
3. If the problems originate in Customer's computer network or in software not covered by this Article or result from modifications to the LICENSED SOFTWARE made by any one other than MEDITECH, MEDITECH's responsibility shall be limited to providing assistance and advice to enable Customer to determine appropriate remedial action to be taken by Customer or others (not by MEDITECH) to resolve such problems.

Routine service shall be available between 8:30 a.m. and 5:30 p.m., Monday through Friday, Eastern Time, excluding Federal holidays. For those line items of LICENSED SOFTWARE which have been transferred to the MEDITECH Client Services Division, the hours will be extended until 10:00 p.m. Emergency service will be available at any other time and at no additional cost for any line items that have attained Live Status.

B. EDUCATIONAL SERVICE

1. After the Implementation Period for each line item of LICENSED SOFTWARE, if Customer requests additional training in the use of such LICENSED SOFTWARE, MEDITECH shall provide this training at MEDITECH's then standard rates. Further, MEDITECH regularly conducts workshops and seminars to continue to educate its customers in the use of the LICENSED SOFTWARE. Customer shall be entitled to attend these workshops and seminars at no additional cost (other than its own travel and out-of-pocket expenses). In addition, so long as the service described in this Article has not been terminated, Customer shall automatically be a member of the MEDITECH Information Exchange Customer Program.

2. Upon Customer's written request and at no additional cost to Customer, MEDITECH's Client Services Division will perform Operational Assessments (for various associated software modules). MEDITECH will review Customer's use of the LICENSED SOFTWARE, make recommendations for any necessary improvements, and provide Customer with a detailed written report of its findings and recommendations. MEDITECH will perform Operational Assessments not more frequently than once per year, following the attainment of Live Status for all LICENSED SOFTWARE line items. In the event that an Operational Assessment is performed at Customer's site, Customer will be responsible for MEDITECH's travel and out-of-pocket expenses.

C. ENHANCEMENT SERVICE

At no additional cost MEDITECH shall make available to Customer all enhancements of the LICENSED SOFTWARE, when applicable, which MEDITECH makes generally available to its other customers. MEDITECH acknowledges that Federal and State governments may mandate compliance by Customer with various regulatory requirements, some of which may necessitate modifications to the LICENSED SOFTWARE. Therefore, MEDITECH will, as far as technically feasible and within a reasonable period of time, modify the specific software capabilities of the LICENSED SOFTWARE documented within the attached Exhibits II through XXI so that Customer may comply with mandated Federal and State requirements to which it is subject. (NOTE: MEDITECH reserves the right to charge Customer for additional functional capabilities beyond that documented in Exhibits II through XXI, however, MEDITECH will exercise its best efforts to minimize any such charges).

D. EXPENSES

In connection with the service described herein, if travel to Customer's site is necessary, Customer agrees to reimburse MEDITECH for any actual and reasonable travel and out-of-pocket expenses, however, no travel will be initiated without Customer's prior approval. Customer also agrees to reimburse MEDITECH for the reasonable costs of dial-up telephone expenses. These expenses will be billed to Customer separately, as incurred, with payment terms of net thirty (30) days.

E. CUSTOMIZATION SERVICE

If customization of the LICENSED SOFTWARE beyond that described in Exhibits II through XXI is requested by Customer and assented to by MEDITECH, which assent will not be unreasonably withheld, then:

1. Customer, with advice from MEDITECH, will specify in writing all parameters necessary for MEDITECH to modify the LICENSED SOFTWARE and MEDITECH will furnish to Customer a written price quotation for such customization; and
2. If Customer assents to such price quotation, then Customer and MEDITECH will enter into a separate agreement for delivery to Customer of the requested customization.

ARTICLE V - OTHER TERMS & CONDITIONS

A. PRICE PROTECTION

MEDITECH will guarantee price protection for additional software line items for a period of twenty-four (24) months from the date of this Agreement provided that Customer orders such items within twenty-four (24) months and accepts delivery thereof within thirty-six (36) months of the date of this Agreement. Customer has the option of acquiring any or all of the software listed below:

<u>Software</u>	<u>License Fee</u>	<u>Service Fee</u>	<u>Implement Fee</u>
Payroll/Personnel Module	\$ 32,400	\$ 324	\$ 22,000
Emergency Department Management Module	48,600	486	45,000
Bedside Medication Verification Option	32,400	324	15,000
Operating Room Management	32,400	324	33,500
Patient Care System	48,600	486	43,000
Physician Care Manager	97,200	972	62,500
Patient Discharge Instructions	16,200	162	5,000
Patient Education Software	48,600	486	4,000
Medical & Practice Management (20 Providers)	50,000	500	10,000
Quality Management and Risk Management	32,400	324	25,000
Data Archiving	48,600	486	40,000
Data Repository	48,600	486	23,000
Cost Accounting Module	32,400	324	16,500

This price protection is for standard software modules as described in MEDITECH's standard program documentation. If MEDITECH adds any major enhancements to any of the above line items during this 24-month period such that the module becomes a new product and a charge is associated with such product, then Customer will be responsible for any such additional charges.

B. WORKER'S COMPENSATION AND LIABILITY INSURANCE

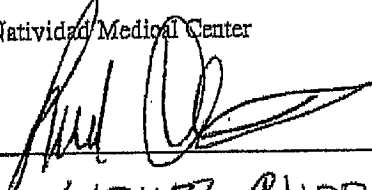
MEDITECH and Customer each shall maintain, throughout the performance of its obligations under this Agreement, a policy of worker's compensation insurance with such limits as may be required by the applicable statutory regulations to which it is subject, and a policy or policies of comprehensive general liability insurance insuring against liability for injury to, and death of, persons, and damage to, and destruction of, property arising out of or based upon acts or omissions of MEDITECH and Customer or any of its principals, subcontractors or their respective officers, directors, employees, agents, successors and assigns. MEDITECH agrees to provide evidence of insurance annually upon Customer's written request therefor.


C. The attached Schedule B contains additional terms and conditions and is hereby incorporated herein.

ARTICLE VI - ENTIRE AGREEMENT

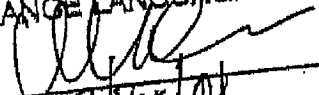
This Agreement, including Exhibits I through XXI and Schedules A and B, is the entire agreement between the parties hereto with reference to the subject matter hereof. Warranties, expressed or implied, regarding the LICENSED SOFTWARE are exclusively as stated herein; any and all prior or contemporaneous warranties, representations, understandings or agreements are specifically and intentionally excluded. This Agreement may not be modified or amended except by an Amendment in writing between the parties. The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement shall not prevent a subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.


IN WITNESS WHEREOF each party has executed this Agreement as a sealed instrument this _____ day of July, 2004.

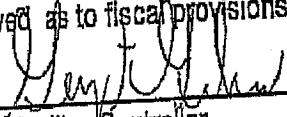
Customer	Natividad Medical Center
By	
Name	LIONEL CHROWICK
Title	CFO

MEDITECH	Medical Information Technology, Inc.
By	
Name	Lawrence A. Polimeno
Title	Vice Chairman

RISK MANAGEMENT
COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

By: 
Date: 7/28/04

APPROVED AS TO FORM:

LEROY W. BLANKENSHIP
Assistant County Counsel

Reviewed as to fiscal provisions

Auditor/Controller
County of Monterey

7-29-04

EXHIBIT "A"

INSURANCE & INDEMNIFICATION PROVISIONS

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

II. INSURANCE.

A. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

1. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

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

2. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

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

Justification: Business Automobile Liability Insurance is not required. The use of an automobile is not included in or necessary to the performance of the scope of services required by this Agreement. Therefore, the hospital does not foresee any potential liability risks associated with this justification.

3. Workers' Compensation Insurance, if CONTRACTOR employs others in the

performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

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

Justification: Contractor provides a subscription service and none of the contractor/vendor's employees are physically on site to perform any services. Therefore contractor will only be required to carry \$500,000 Workman's Compensation Insurance for each Accident, Employee and Disease.

4. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

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

B. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37

10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy that would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

~~CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement that entitles County, at its sole discretion, to terminate this Agreement immediately.~~

EXHIBIT I

COMPUTER NETWORK CONFIGURATION

Computer network configuration to be determined by Customer in conjunction with MEDITECH and subject to MEDITECH's approval. Prior to placing a firm order for the components of the computer network configuration, Customer will provide to MEDITECH for review and final approval a written description of the components it intends to order, including computers, network, non-MEDITECH software, etc.

SCHEDULE A

STAFFING AND IMPLEMENTATION GUIDE

(document provided under separate cover)

SCHEDULE "B"

1. PAYMENT CONDITIONS

MEDITECH shall submit to the Contract Administrator an invoice on a form mutually acceptable to the parties. Invoices shall be submitted on a monthly basis, and/or as set forth in this Agreement. The invoice shall set forth the amounts claimed by MEDITECH, together with an itemized basis for the amounts claimed. The Contract Administrator or his/her designee shall promptly submit such invoice for payment. Payment shall be made within 30 days after receipt of the invoice.

2. RECORDS AND CONFIDENTIALITY

2.01. County records. When this Agreement expires or terminates, MEDITECH shall return to County any County records which MEDITECH utilized or received from County to perform services under this Agreement.

2.02. Maintenance of records. MEDITECH shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed by MEDITECH under this Agreement. MEDITECH shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then MEDITECH shall retain said records until such action is resolved.

2.03. Access to and audit of records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of MEDITECH and its subcontractors related to services provided under this Agreement. Pursuant to Government Code § 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

3. NON-DISCRIMINATION

During the performance of this Agreement, MEDITECH shall not unlawfully discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical disability, medical condition, marital status, age (over 40), or sexual preference, either in MEDITECH's employment practices or in the furnishing of services to recipients. MEDITECH shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. MEDITECH shall, during the performance of this Agreement, fully comply with all federal, state, and local laws and regulations that prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

4. INDEPENDENT MEDITECH

In the performance of work, duties, and obligations under this Agreement, MEDITECH is at all times acting and performing as independent contractor and not as employees of the County. No offer or obligation of permanent employment with the County or particular County department or

agency is intended in any manner, and MEDITECH shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits.

5. NOTICES

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail or by nationally-recognized overnight mail service to the County's and MEDITECH's contract administrators at the addresses listed at the beginning of this Agreement.

6. GENERAL PROVISIONS

6.01 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by all the parties hereto.

6.02 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

6.03 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

6.04 Authority. Any individual executing this Agreement on behalf of an entity represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such entity and bind the entity to the terms and conditions of the same.