

## FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the “**Amendment**”) is made and entered into as of July 1, 2018, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and CEP AMERICA-CALIFORNIA, a California General Partnership, d.b.a. VITIVITY (formerly known as California Emergency Physicians Medical Group) (“**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 July 1, 2016 (the “**Agreement**”) pursuant to which Contractor provides professional services in the Specialty to Emergency Department patients.
- C. Hospital and Contractor desire to amend the Agreement to extend the term for an additional twenty-four (24) months and to add Three Million Five Hundred Sixty Three Thousand Six Hundred and Twenty One Dollars (\$3,563,621) to the amount payable for services during the extended term.

### 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 1.2.** Section 1.2 of the Agreement is hereby added to read in its entirety as follows:

“**1.2 Coverage Services.** Contractor shall provide a sufficient number of qualified Group Physicians to be immediately available to provide all physician services required for provision of patient care in and operation of the ED twenty-four (24) hours per day, seven (7) days per week in accordance with the staffing patterns set forth in **Exhibit 1.2**, as modified by mutual agreement of the Parties from time to time (the “**Coverage Services**”). In accordance with the American College of Surgeons trauma center requirements and guidelines (“**ACS Requirements**”), Contractor shall:

- (a) ensure at least one (1) Group Physician is physically present in the ED at all times;
- (b) ensure each Group Physician is board-certified in the Specialty;

(c) ensure each Group Physician has current Advanced Trauma Life Support (ATLS) training;

(d) provide one (1) Group Physician designated by the Hospital's Trauma Director to be the liaison ("**Program Liaison**") to Hospital's trauma program (the "**Program**"); and

(e) ensure the Program Liaison participates in trauma committees and is present in at least fifty percent (50%) of the committee meetings."

3. **Exhibit 1.2.** **Exhibit 1.2** to the Agreement is hereby amended to read in its entirety and attached hereto **Exhibit 1.2.**

4. **Section 1.6.** Section 1.6 of the Agreement is hereby added to read in its entirety as follows:

**"1.6 Additional Services.** Contractor shall provide to Hospital those additional services set forth in **Exhibit 1.6** (the "**Additional Services**"), upon the terms and subject to the conditions set forth in this Agreement. The Professional Services, Coverage Services, Director Services, RME Services, Teaching Services, and Additional Services are sometimes referred to collectively in this Agreement as the "**Services.**"

5. **Section 1.25.** Section 1.25 is hereby added to the Agreement to read in its entirety as follows:

**"1.25 Scribes.** To enhance quality and efficiency of care of patients in the Department, Contractor may, at its expense, hire scribes to assist Group Physicians at the Hospital in data capture during their provision of care. Scribes shall be under the direct and exclusive supervision of Contractor and Group Physicians. Contractor shall adequately train all scribes and ensure that each scribe meets minimum qualifications determined by Contractor. Contractor shall establish all procedures necessary to assure the consistency and high quality of scribe performance. Scribes shall comply with all laws and regulations and Hospital policies and procedures. All salaries, wages, taxes, insurance, workers' compensation insurance, retirement and other fringe benefits, and expenses of any kind or character incident to the scribes' employment shall be the responsibility and obligation of Contractor."

6. **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 total amount payable by Hospital to Contractor under this Agreement shall not exceed the sum of Six Million Five Hundred Seventy Six Thousand Two Hundred Seventy Seven Dollars (\$6,576,277).”

7. **Exhibit 2.1.** **Exhibit 2.1** to the Agreement is hereby amended to read in its entirety and attached hereto **Exhibit 2.1.**

8. **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 July 1, 2016 (the “**Effective Date**”), and shall continue until June 30, 2020 (the “**Expiration Date**”), subject to the termination provisions of this Agreement.”

9. **Section 6.27.** Section 6.27 is hereby added to the Agreement to read in its entirety as follows:

**“6.27 Intellectual Property.** Each party acknowledges and agrees that the other party is the sole and exclusive owner of any and all Confidential Information, platforms, websites, practices, protocols and other technology or intellectual property rights created or developed by or on behalf of such party (a) prior to the date of this Agreement (“**Pre-Existing Materials**”) or (b) independently and outside of the scope of this Agreement (“**New Materials**”). In the case of Contractor, Pre-Existing Materials specifically includes the On Duty ® platform. Except as expressly set forth in this Agreement, each party retains all right, title and interest in and to its Pre-Existing Materials and New Materials, and neither party will reproduce, sell, transmit, publish, broadcast, disseminate, distribute or otherwise use or exploit the other party’s Pre-Existing Materials or New Materials without such party’s prior written consent. The parties do not contemplate engaging in any development, including joint development, of technology or intellectual property under this Agreement. To the extent the parties decide to engage in any such development, the development and the ownership of any resulting technology and intellectual property will be the subject of a separate agreement or an amendment to this Agreement to be mutually agreed upon by the parties in writing.”

10. **Section 6.28.** Section 6.28 is hereby added to the Agreement to read in its entirety as follows:

**“6.28 Operational, Utilization and Quality Data.** Hospital, through its third party vendor, shall provide Contractor with core measure and patient specific data in electronic format as it becomes available, in accordance with specifications

received from Contractor (collectively “**Operational Data**”). Operational Data shall include, but is not limited to the following:

- Patient Quality Data
- Patient Outcome Data
- Patient satisfaction reports, including EDCAHPS
- Inpatient CMS Core Measure Data

Contractor may use Operational Data for purposes that include, but are not limited to, monitoring operational, utilization, patient outcome and quality performance of the ED and improvement efforts related to health care operational processes and patient outcomes and satisfaction.

11. **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.

12. **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.


13. **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**

CEP AMERICA-CALIFORNIA, a California General Partnership, d.b.a. VITUIITY

By:   
Its Theo Koury, MD, President

Date: April 19, 2018

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

**NATIVIDAD MEDICAL CENTER**

\_\_\_\_\_  
Deputy Purchasing Agent

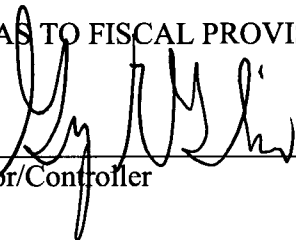
Date: \_\_\_\_\_, 20\_\_

**APPROVED AS TO LEGAL PROVISIONS:**

  
Stacy Saetta, Deputy County Counsel

Date: 4/30, 2018

**APPROVED AS TO FISCAL PROVISIONS:**

  
Deputy Auditor/Controller

Date: 5-1, 2018

**Exhibit 1.2**

**ED STAFFING**

Contractor shall provide a sufficient number of qualified Group Physicians, Physician Assistants and/or Nurse Practitioners to be immediately available to provide all Services required for provision of patient care in and operation of the ED twenty-four (24) hours per day, seven (7) days per week. The initial minimum staffing pattern is as follows and may be modified from time to time with mutual agreement of Parties to ensure patient safety, quality care, high efficiencies and patient satisfaction.

1. Group Physician (Parties are currently contemplating 8.1 FTE Group Physicians):

Monday-Friday	41.5 hours per day	
Saturday-Sunday	40 hours per day	(4)-10 hour shifts per day

2. Physician Assistant / Nurse Practitioner (Parties are currently contemplating 10.1 FTE PAs, or 18,250 hours/year):

Monday-Saturday	50 hours per day	(5)-10 hour shifts per day
Sunday	40 hours per day	(4)-10 hour shifts per day

## Exhibit 2.1

### COMPENSATION

#### For the period July 1, 2018 to June 30, 2019:

1. **Coverage Stipend.** As compensation for the Coverage Services rendered pursuant to this Agreement, Hospital shall pay to Contractor the amount of Seventy Seven Thousand Six Hundred and Five Dollars (\$77,605) per month (the “**Coverage Stipend**”), provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.
2. **Rapid Medical Evaluation Services.** As compensation for RME Services, Hospital shall pay to Contractor the amount of Fifty Four Thousand Two Hundred Sixty Six Dollars (\$54,266) per month (the “**RME Compensation**”).
3. **Annual RME Staffing Adjustment.** The Parties recognize that the RME Staffing is based on patient volumes in the ED. For every patient visit below the Base Number of Visits, Contractor shall pay Hospital an amount equal to Twenty-Five Dollars (\$25) per visit (the “**Annual RME Staff Adjustment**”).
  - a. The RME Staffing Adjustment owed by Contractor shall not exceed One Hundred Thousand Dollars (\$100,000) per Contract Year and shall be paid annually.
  - b. For purposes of this Agreement, the “**Base Number of Visits**” shall mean the number of ED visits based on published Hospital data, calculated using the prior Contract Year’s same twelve (12) month period.
  - c. For purposes of this Agreement, “**Contract Year**” shall mean (i) from the Execution Date until the Expiration Date; and (ii) thereafter, each consecutive twelve (12) month period for the remainder of the term of this Agreement.

#### For the period July 1, 2019 to June 30, 2020:

1. **Coverage Stipend.** As compensation for the Coverage Services rendered pursuant to this Agreement, Hospital shall pay to Contractor the amount of Seventy Nine Thousand Nine Hundred Thirty Three Dollars (\$79,933) per month (the “**Coverage Stipend**”), provided, however, that Contractor is in compliance with the terms and conditions of this Agreement.
2. **Rapid Medical Evaluation Services.** As compensation for RME Services, Hospital shall pay to Contractor the amount of Fifty Five Thousand Eight Hundred Eighty Four Dollars (\$55,894) per month (the “**RME Compensation**”).
3. **Annual RME Staffing Adjustment.** The Parties recognize that the RME Staffing is based on patient volumes in the ED. For every patient visit below the Base Number of Visits, Contractor shall pay Hospital an amount equal to Twenty-Five Dollars (\$25) per visit (the “**Annual RME Staff Adjustment**”).

- a. The RME Staffing Adjustment owed by Contractor shall not exceed One Hundred Thousand Dollars (\$100,000) per Contract Year and shall be paid annually.
- b. For purposes of this Agreement, the “**Base Number of Visits**” shall mean the number of ED visits based on published Hospital data, calculated using the prior Contract Year’s same twelve (12) month period.
- c. For purposes of this Agreement, “**Contract Year**” shall mean (i) from the Execution Date until the Expiration Date; and (ii) thereafter, each consecutive twelve (12) month period for the remainder of the term of this Agreement

4. **Incentive Compensation.** Contractor shall be eligible for an incentive bonus of up to eight percent (8%) of the aggregate annual Coverage Stipend payable to Contractor for the Coverage Services provided by Group Physicians under this agreement (the “**Incentive Compensation**”). Such Incentive Compensation shall be paid on an annual basis and shall be calculated as follows using data collected during the preceding twelve (12) months.

Quality Initiative	Measure*	Target Performance	Incentive	Target Performance	Maximum Incentive
Performance Improvement (data collected from Hospital’s third party vendor Analytics MD)	Discharged Patients Length of Stay <sup>1</sup>	<150minutes	0.5%	<145 minutes	1%
	Median Admitted Patients Length of Stay <sup>2</sup>	Median less 5 minutes	0.5%	<270 minutes	1%
	Sepsis Bundle Compliance	>52%	1.0%	>65%	2%

Measure*	Target	Incentive	Target	Incentive	Target	Incentive
Percent of patients who Left Without Being Seen (LWBS)	≤2%	.5%	≤1.5%	.75%	≤1%	1%

---

<sup>1</sup> Defined as median time from patient arrival in ED to departure from the ED (discharged patients only).  
<sup>2</sup> Defined as median time from patient arrival in ED to departure from the ED (admitted patients only).



Quality Initiative	Measure*	Target Performance	Incentive	Target Performance	Maximum Incentive
Patient Satisfaction** (data collected from Hospital's third party vendor)	Overall Quality of Doctor's Care	≥90%	2%	≥90%	4%
	Doctor's Understanding and Caring				
	Doctor's Instructions/Explanations of Treatment/Tests				
	Overall Teamwork Between Doctors, Nurses and Staff	Good/ Very Good/ Excellent		Very Good/ Excellent	

\*Performance improvement and patient satisfaction questions may be deleted and/or replaced with new questions in order to comply with the quality program and Hospital's quality and or performance standards.

5. **Timing.** Hospital shall pay the compensation due for 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 Services were performed, Hospital shall not be obligated to pay Contractor for 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".