

**AMENDMENT NO.2 TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN COUNTY OF MONTEREY, ON BEHALF OF  
NATIVIDAD MEDICAL CENTER  
AND DATABANK IMX LLC (No. A-12015)**

**THIS AMENDMENT NO. 2** to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County"), on behalf of Natividad Medical Center ("NMC"), and Databank IMX, LLC (hereinafter, "CONTRACTOR") (hereinafter "Agreement No. A-12015") is hereby entered into between the County and the CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "parties").

**WHEREAS**, effective June 1, 2010, the parties entered into Agreement No. A-12015 for the provision to NMC of OnBase software license and maintenance services, for a total contract amount not to exceed \$55,000;

**WHEREAS**, effective December 1, 2010, the parties entered into a separate Professional Agreement ("PSA") for the provision to NMC scanner maintenance services, for a total contract amount not to exceed \$86,440.00; and

**WHEREAS**, effective June 1, 2011, the parties entered into Amendment No. 1 to Agreement No. A-12015 (hereinafter, "Amendment No. 1") to extend the term to December 31, 2014, to consolidate the services provided under the PSA with the services provided under Agreement No. A-12015, to add additional scanner maintenance services, OnBase software maintenance services, and professional services, and to add \$143,123.65 for FY 2011-2012, for a total contract amount not to exceed \$229,563.65; and

**WHEREAS**, the parties wish to further amend the Agreement No. A-12015 to identify which scanner maintenance services and OnBase software maintenance services previously provided by Databank IMX to NMC shall continue as of July 1, 2011, to add additional scanner maintenance services, OnBase software maintenance services, project management services, and professional services, and to increase the total maximum liability under Agreement No. A-12015.

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

1. The total amount payable by County to CONTRACTOR under Agreement No. A-12015 shall not exceed the sum of \$548,222.16 for the full term of the Agreement.
2. Exhibit A to Agreement No. A-12015 and Attachment A to Amendment No. 1 are replaced with **Amendment 2 to Exhibit A**. All references in Agreement No. A-

12015, as amended, to Exhibit A shall be construed to refer to **Amendment No. 2 to Exhibit A.**

3. **New Section: 12.0. Section 12.0 is hereby added to the Agreement to read in its entirety as follows:**

**“12.0. 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.”

4. **New Section: 13.0. Section 13.0 is hereby added to the Agreement to read in its entirety as follows:**

**“13.0 INSURANCE.**

13.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the County’s, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

13.02 Qualifying Insurers:

All coverage’s, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A-VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Manager.

13.03 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:

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).

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 \$1,000,000 per occurrence.

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

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).

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).

### 13.04 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 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, which 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, which entitles County, at its sole discretion, to terminate this Agreement immediately."

5. All other terms and conditions of Agreement No. A-12015 shall remain in full force and effect.
6. This Amendment No.2 shall be attached to the Agreement (No. A-12015) and incorporated therein as if fully set forth in the Agreement.
7. The effective date of this Amendment is July 1, 2011.

////

////

////

////

////

////

////

////

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
NMC Contracts/Purchasing Agent

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

By: [Signature]  
Department Head (if applicable)

Date: 9/24/12

By: [Signature]  
Stacy L. Saetta, Deputy County Counsel

Date: 9/13/12

By: [Signature]  
Auditor/Controller

Date: 9-18-12

**CONTRACTOR**

DATA BANK IMX  
Contractor's Business Name\*\*\*

[Signature]  
Signature of Chair, President, or Vice-President

STEVEN AHWOOD General Mgr  
Name and Title

Date: 8/20/12

By: [Signature]  
Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer

BRENDA JOHNSONS Ops Mgr  
Name and Title

Date: 8/20/12

\*\*\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.