



## Master Agreement

This Master Agreement (this "Master Agreement"), effective as of the date of CareFusion's signature below (the "Effective Date"), is entered into by and between **CareFusion Solutions, LLC** (together with its affiliates, "CareFusion") and the County of Monterey on behalf of **Natividad Medical Center** ("Customer"), each a "Party" and, collectively, the "Parties". This Master Agreement consists of: (i) the General Terms and Conditions below, and (ii) all Schedules (as defined below) which are made a part of this Master Agreement either upon the Effective Date or at a later date upon the execution of an amendment.

The Parties agree as follows:

### GENERAL TERMS AND CONDITIONS

#### 1. Ordering, Delivery, and Payment.

- 1.1 **Customer Orders.** The Parties may enter into various transactions for hardware ("Equipment"), software licenses, accessories, and other products (collectively, "Products") and/or services ("Services"), which will be provided pursuant to these General Terms and Conditions, as supplemented by Schedules for specific Products and/or Services. CareFusion will set forth the Products and/or Services for each transaction in a customer order ("Customer Order") and a Customer Order may have one or more attachments (each, a "Customer Order Attachment"). Each Customer Order will create a separate contract (each, a "Customer Agreement"), each of which will be deemed to incorporate by reference: (i) these General Terms and Conditions, (ii) any Schedule applicable to the Products and/or Services provided under such Customer Order, and (iii) any Customer Order Attachments.
- 1.2 **Schedules.** Each schedule identified on Exhibit A ("Schedule") is attached to and incorporated by reference into this Master Agreement. Additional Schedules may be added to this Master Agreement by way of a written amendment. In the event of any conflict between the terms of a Schedule or a Customer Order Attachment and the terms of this Master Agreement, the terms of the Schedule or Customer Order Attachment will prevail. Capitalized terms in the Schedules and Customer Order Attachments shall have the same meaning as in these General Terms and Conditions and in the introductory paragraph above.
- 1.3 **Purchase Orders.** If CareFusion accepts a purchase order from Customer for Products and/or Services that are not identified in a Customer Order, then that purchase order will constitute a Customer Order under this Master Agreement, except that any conflicting or additional terms in the purchase order will have no force or effect.
- 1.4 **Delivery; Risk of Loss.** Products will be delivered FOB Destination, freight prepaid to the Customer's address in the applicable Customer Order as soon as commercially reasonable after the Customer Order effective date, or as otherwise mutually agreed in writing. Customer will pay freight charges for special Customer shipping requests and for shipment of parts or supplies not provided under warranty or pursuant to a support program. Upon delivery, Customer will be responsible for loss of or damage to the Product.
- 1.5 **Acceptance.** A Product will be deemed accepted by Customer upon delivery or upon completion of the applicable CareFusion implementation Services, provided that such Product functions substantially in accordance with the specifications of its User Guide (defined below) ("Acceptance" or "Accepted"). Customer may reject a Product only if the Product fails to function substantially in accordance with the specifications of its User Guide. Upon completion of applicable Services, Customer will execute CareFusion's standard confirmation form.
- 1.6 **Payment Terms.** Customer will pay all Accurate Invoices (as defined herein) in full on or before the due date stated therein. For purposes of this Section, an Accurate Invoice is an invoice sent to the County Auditor-Controller, and which has been certified by Customer, at least thirty (30) days prior to the payment due date at the address designated by Customer under the Customer Order accurately reflecting the amount due under the Customer Order. If an invoice does not accurately reflect the amount due under the Customer Order ("Inaccurate Invoice"), then (i) Customer shall notify CareFusion of the Inaccurate Invoice within fifteen (15) days of its receipt, (ii) Customer shall pay any portion of such invoice that is accurate; (iii) the due date for payment of any remaining amounts shall be adjusted to fifteen (15) days after the date an Accurate Invoice is sent to Customer ("Adjusted Due Date"). Correspondence relating to an Inaccurate Invoice should be addressed to: Account Receivables, CareFusion, 3750 Torrey View Court, San Diego CA 92130.
- 1.7 **Late Charge.** Intentionally omitted.
- 1.8 **Taxes.** Prices and fees for Products and/or Services do not include any taxes. Customer will pay when due any sales, use, rental, property, or other taxes or assessments of any kind (including, without limitation, withholding or value-added taxes) imposed by any federal, state, local or other governmental entity for Products and/or Services provided under this Master Agreement, excluding taxes based solely on CareFusion's net income (collectively, "Taxes"). Customer will promptly



reimburse CareFusion for any Taxes paid by CareFusion, and will hold CareFusion harmless from all claims and expenses arising from Customer's failure to pay any such Taxes. If Customer is exempt from any Taxes, Customer will not be relieved of its obligation to pay such Taxes until Customer provides to CareFusion documentation sufficient to establish Customer's tax-exempt status. Customer will immediately notify CareFusion in writing of any change in its tax status. If Customer's exempt status is challenged by any jurisdiction, then Customer will: (i) immediately notify CareFusion; (ii) resolve the challenge; and (iii) hold CareFusion harmless from all claims and expenses related to any such challenge.

## **2. Product Use and Warranty.**

**2.1 User Guide and Service Manual.** CareFusion will provide to Customer one (1) copy (hard or electronic copy) of the then-current applicable user guide, user manual, or directions for use for each type of Product acquired by Customer (each, a "User Guide"), and one (1) hard copy of the service manual for each type of Alaris Equipment acquired by Customer. Customer may download from the CareFusion website additional copies of the service manual, as needed. Customer may use and reproduce any User Guide and service manual solely for Customer's internal use.

**2.2 Warranty.** CareFusion warrants to Customer that for a period of ninety (90) days after Acceptance (except for Alaris Equipment and/or Software, which has a warranty period of one (1) year after Acceptance and Respiratory Equipment, which is subject to the warranty period set forth in the applicable User Guide), the Product will perform substantially in accordance with the specifications of its User Guide (the "Limited Warranty"). If a Product fails to perform substantially in accordance with the specifications of its User Guide during the applicable warranty period, then Customer will notify CareFusion in writing. In that case, as Customer's sole remedy, CareFusion (at its option) will promptly repair or replace that Product, or any part or portion thereof. **EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION, CAREFUSION DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING UNDER USAGE OF TRADE OR COURSE OF PERFORMANCE).** The Limited Warranty does not apply to any Product that: (i) has been modified, repaired or altered, except by CareFusion; (ii) has not been properly installed, used, handled, operated or maintained in accordance with any handling or operating instructions provided by CareFusion; (iii) has been subjected to physical or electrical stress, misuse, abuse, negligence, accidents, or causes beyond CareFusion's reasonable control.

**2.3 Use of Products; Inspection.** Customer will use Products only: (i) for Customer's internal business purposes and not for resale; (ii) in the manner described in the applicable User Guide; and (iii) in accordance with applicable laws and regulations. Customer will not export, re-export or modify any Product. Customer will not use any software with a Product which was not licensed from or approved by CareFusion. Upon reasonable advance notice by CareFusion, Customer will allow CareFusion to inspect Customer's records regarding use of Products during Customer's regular business hours to verify compliance with the licensing and other terms of this Master Agreement.

## **3. Software, Data, and Intellectual Property Ownership.**

**3.1 Software; Third Party Software.** "Software" means all CareFusion-owned software (e.g., application software, embedded and/or integrated software, interface software, custom drivers) and any related software owned by a third party ("Third Party Software"). CareFusion will license, not sell, Software. CareFusion and its licensors retain all ownership rights in Software.

**3.2 Software License.** Subject to the terms and conditions of this Master Agreement and applicable User Guide, CareFusion grants to Customer a limited, non-exclusive, non-transferable license to use Software at Customer's site(s) (as set forth in the applicable Customer Order) during the applicable term, provided that all licensing of Third Party Software will be subject to the terms of the Third Party Software Schedule. Each license Customer acquires from CareFusion for use of the embedded Software is valid only for use with the particular unit of Product, identified by serial number, within which it is embedded. Each license granted to Customer is: (i) perpetual, unless a different license term is expressly set forth in the applicable Schedule or Customer Order under which the Software is licensed to Customer; and (ii) subject to termination pursuant to **Section 6.1** and **Section 6.2** below.

**3.3 Software License Restrictions; Scope of Use.** Customer will not: (i) translate, disassemble, decompile, reverse engineer, alter, modify or create any derivative work of any portion of Software; (ii) make any copies of Software or its documentation, except one (1) copy for back-up or archival purposes; (iii) sell, assign, sublicense, distribute, rent, or otherwise transfer Software to a third party (iv) separate integrated Software from any Product, or otherwise use integrated Software except as an integrated part of the applicable Product; or (v) unless otherwise approved in writing, use the Software in conjunction with any CareFusion-manufactured Product that was not provided to Customer by CareFusion or a CareFusion authorized party.



Without limiting the license restrictions in this Section and as an additional obligation, Customer will adopt and implement reasonable measures to guard against unauthorized use of Software. CareFusion may suspend or revoke user codes, or take other appropriate action, if CareFusion reasonably believes that a security violation has occurred. Scope of use restrictions for Software may be set forth in the applicable Customer Order. CareFusion will measure Customer's scope of use periodically and additional fees will apply if the scope of use is exceeded. Upon CareFusion's reasonable request (no more than once per year), Customer will provide CareFusion with relevant information to verify Customer's scope of use. Customer will provide CareFusion with thirty (30) days prior notice for any event affecting Customer's scope of use, such as acquisition of a hospital or construction of a new facility, so CareFusion can adjust Customer's scope of use.

- 3.4 System Requirements.** For Software-only Products, Customer will use third-party Equipment meeting CareFusion's minimum system requirements (as specified by CareFusion in writing) and will protect its system and the Software from viruses, malware, and intrusion. Customer will perform applicable manufacturer recommended maintenance for such Equipment and maintain such Equipment at the version levels specified by CareFusion in writing.
- 3.5 Data.** "Data" means, collectively, data contained in the Products, data created or stored through the use of Products, and/or data created or collected during the performance of Services. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E. Subject to the Business Associate Agreement with an effective date of July 17, 2015 between the Parties, Customer grants CareFusion the right to access and use Data for any lawful purpose, including, without limitation, research, benchmarking, and aggregate analysis (i.e., more than one hospital). If Data contains Protected Health Information as defined by 45 C.F.R. §160.103, then CareFusion will use such Data in conformance with the Privacy Rule and, before disclosing such Data, de-identify such Data pursuant to 45 C.F.R. §164.514 and dissociate such Data from Customer.
- 3.6 Intellectual Property Ownership.** All right, title and interest in the intellectual property embodied in the Products and related documentation (including, without limitation, all copyrights, patents, trademarks, trade secrets, trade names, and trade dress), as well as the methods by which the Services are performed and the processes that make up the Services, will belong solely and exclusively to CareFusion or the applicable supplier or licensor. Customer has no rights in any such intellectual property, except as expressly granted in this Master Agreement.
- 4. Indemnification, Limitation of Liability, and Termination.**
- 4.1 Mutual Indemnification.** CareFusion shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents, and employees, from and against any and all claims by a third party and any and all liabilities and losses incurred by County on account of such claims (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) caused by CareFusion's negligence or willful misconduct in connection with the performance of this Master Agreement. "CareFusion's performance" includes CareFusion's acts or omissions and the acts or omissions of CareFusion's officers, employees, agents and subcontractors.
- 4.2** County of Monterey shall indemnify, defend, and hold harmless CareFusion, its officers, agents, and employees, from and against any and all claims by a third party and any and all liabilities and losses incurred by CareFusion on account of such claims (including damages to property and injuries to or death of persons, court costs, and reasonable attorney's fees) caused by County's negligence or willful misconduct in connection with the performance of this Master Agreement. "County's performance" includes County's acts or omissions and the acts or omissions of County's officers, employees, agents and subcontractors.
- 4.3 Intellectual Property Indemnity.** CareFusion will defend, indemnify, and hold harmless Customer and its directors, officers, agents, employees, members, subsidiaries and successors-in-interest against any claim, action, proceeding, liability, loss, damage, cost, or expense, including without limitation, reasonable attorneys' fees, experts' fees and court costs, brought by a third party against Customer alleging that a Product used by Customer in accordance with this Master Agreement (including, without limitation, all subparts of **Sections 2 and 3** of these General Terms and Conditions) infringes any U.S. patent, copyright, trade secret, or other proprietary right of a third party (each, an "Infringement Claim"). As a condition to receiving the defense, Customer will provide written notice to CareFusion promptly after Customer receives actual notice of the Infringement Claim, will allow CareFusion to have sole control of the defense and any related settlement negotiations, and will provide reasonable cooperation upon request. CareFusion will: (i) pay any damages and costs assessed against Customer (or payable by Customer pursuant to a settlement agreement agreed to in writing by CareFusion) arising out of the Infringement Claim; and (ii) reimburse Customer for its reasonable costs and expenses associated with providing reasonable cooperation. If CareFusion determines that a Product might infringe a third party's intellectual property right, then CareFusion will have the option, at its expense and in its sole discretion, to: (a) promptly replace or modify the Product without loss of material functionality or performance to make them non-infringing or (b) obtain a license to permit Customer to continue using the



Product. Any costs associated with implementing either of the above alternatives will be borne by CareFusion. If after using commercially reasonable efforts CareFusion fails to provide one of the foregoing remedies within one hundred twenty (120) days of notice of the claim ("Cure Period"), Customer shall have the right to terminate the Customer Agreement for the infringing Product only with no further liability to CareFusion. During the Cure Period, Customer may by written notice to CareFusion suspend the Monthly Support Fees, provided that Customer is not the cause of CareFusion's inability to modify or replace the Product. This Section states Customer's exclusive remedy and CareFusion's total liability to Customer for an Infringement Claim.

**5. Limitations of Liability: Insurance.**

**5.1 Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION LOSS OF BUSINESS OR PROFITS), WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS OF LIABILITY WILL APPLY EVEN IF THERE IS A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS MASTER AGREEMENT OR ANY CUSTOMER AGREEMENT.

**5.2 Insurance.** CareFusion will maintain: (i) commercial general liability insurance including Customer as an additional insured, with per occurrence limits and aggregate limits (including, without limitation, any excess or umbrella coverage) of not less than \$2,000,000 and \$5,000,000, respectively; (ii) Products and Completed Operations insurance including Customer as an additional insured with per occurrence limits and aggregate limits of not less than \$5,000,000 and \$5,000,000 respectively; (iii) professional errors and omissions insurance that contains cyber liability and privacy notification insurance with per occurrence limits and aggregate limits of not less than \$1,000,000 and \$3,000,000; and (iv) if applicable, business automobile liability insurance including Customer as an additional insured, covering all motor vehicles, including owned, leased, and hired vehicles, used in providing services under this Master Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence; v. workers' compensation insurance in compliance with statutory requirement and employers' liability insurance in an amount of not less than \$1,000,000 per occurrence. Notwithstanding the foregoing, the Parties understand and agree that CareFusion may self-insure for all or part of the insurance required hereunder. If any of the required policies are written on a claims-made basis, then such policies will be maintained for a period of not less than three (3) years following the termination or expiration of this Master Agreement.

**6. Term and Termination.**

**6.1 Term:** The term of this Master Agreement is effective as of the date of CareFusion's signature below through March 22, 2021. Thereafter, this Master Agreement shall automatically renew for successive one (1) year periods unless Customer provides CareFusion written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then-current initial or renewal term. Notwithstanding the foregoing, during the term of any Customer Order executed by the Parties before the effective date of expiration of this Master Agreement, this Master Agreement and applicable Schedules will continue to govern the Customer Orders, unless otherwise agreed upon by the Parties in writing, subject to earlier termination as set forth herein.

**6.2 Termination for Cause.** Either Party may terminate for cause the then-remaining performance of any Customer Agreement upon written notice if the other Party: (i) fails to comply with any material term or condition of any agreement between the parties; and fails to cure such non-compliance within thirty (30) days (or within ten (10) days for any past due payment) after receipt of written notice providing full details of such non-compliance; (ii) terminates or suspends substantially all of its business activities; or (iii) becomes subject to any bankruptcy or insolvency proceeding. Upon any such termination, CareFusion may repossess Equipment subject to any outstanding payment obligations. Notwithstanding the foregoing, Customer's obligation to pay for any Products that it has accepted will not be affected by any termination under this Section.

**6.3 Termination without Cause.** Either Party may terminate this Master Agreement upon thirty (30) days written notice if there are no payments due and no other obligations yet to be performed under any Customer Agreement.

**6.4 Termination for Lack of Government Funding.** Notwithstanding any other provision in this Master Agreement, if Federal, State or local government terminates or reduces its funding to the County of Monterey for Product or Services that are to be provided under this Master Agreement, Customer, in its sole and absolute discretion after consultation with CareFusion, may elect to terminate the applicable Customer Agreement not less than thirty (30) days prior to the end of Customer's fiscal year, by giving written notice of termination to CareFusion.

**7. Compliance with Laws and Policies.**



## Master Agreement

- 7.1 Compliance with Laws.** Each Party will comply fully with all applicable federal and state laws and regulations, including but not limited to export laws and regulations of the United States.
- 7.2 Equal Opportunity.** The Parties shall comply with the following equal opportunity clause: To the extent not exempt, each Party shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontracts take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
- 7.3 Discounts.** If any discount, credit, rebate or other Product incentive is paid or applied by CareFusion regarding the Products, then it is a “discount or other reduction in price” pursuant to the Medicare/Medicaid Anti-Kickback Statute. Each Party will comply with the “safe harbor” regulations stated in 42 C.F.R. §1001.952(h).
- 7.4 Proper Reporting of Discounts and Pricing.** The prices under a Customer Agreement may reflect “discounts or other reduction in price” as that term is used in the “safe harbor” regulations in the Medicare/Medicaid Anti-Kickback Statute, 42 C.F.R. § 1001.952(h). The Parties hereto shall: (i) comply with all applicable laws and regulations relating to the accounting, application, and proper reporting of discounts and pricing under the Customer Agreement, including but not limited to the requirements of the discount “safe harbor” located at 42 C.F.R. § 1001.952(h); (ii) properly report and appropriately reflect all prices paid under the Customer Agreement net of all discounts required by applicable laws and regulations, including but not limited to on Medicare, Medicaid and state agency cost reports; and (iii) retain a copy of the Customer Agreement and all other documentation regarding the Customer Agreement, together with the invoices for purchase of Products thereunder and shall permit representatives of the U.S. Department of Health & Humans Services or any relevant state agency access to such records upon request.
- 7.5 Access to Records.** For a period of four (4) years after CareFusion has completed performance under a Customer Agreement, CareFusion will make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives (collectively, the “Requesting Party”), this Master Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to CareFusion under such Customer Agreement (“Access”). If CareFusion pays a subcontractor more than \$10,000 over a twelve (12)-month period to perform such Customer Agreement, then CareFusion will require such subcontractor to permit Access to the Requesting Party.
- 7.6 Exclusion.** As of the Effective Date, CareFusion is not excluded from participation from any federally-funded health care program (including, without limitation, Medicare and Medicaid) (each, a “Program”). If CareFusion becomes excluded from any Program, then CareFusion will promptly notify Customer. Within thirty (30) days after receipt of such notice and subject to the satisfaction of any remaining payment or other obligations, Customer may cancel this Master Agreement by written notice.
- 7.7 Customer Policies.** CareFusion and its employees will comply with Customer’s reasonable security rules, policies and procedures provided in writing and agreed to in advance by CareFusion (“Customer Policies”). Customer will notify CareFusion in writing of any material changes to Customer Policies. Any terms of the Customer Policies that are in addition to or conflict with this Master Agreement or any Customer Agreement (e.g., terms related to purchase, delivery, payment, or termination) will have no force or effect unless adopted via a written amendment to this Master Agreement signed by each Party.
- 7.8 Responsibility for Medical Care.** CareFusion, through its employees and agents (collectively, “CareFusion Personnel”), is not responsible for the delivery of medical care or other services to any patients. Accordingly, Customer will not rely upon CareFusion Personnel to practice medicine or provide patient care.
- 8. Miscellaneous.**
- 8.1 Performance.** Each Party will bear the cost of its performance of this Master Agreement and each Customer Agreement.
- 8.2 Confidentiality.** This Master Agreement might be considered a public record subject to disclosure pursuant to a request under the California Public Records Act (the “Act”). Notwithstanding the foregoing, Customer will use reasonable efforts to promptly notify CareFusion and provide reasonable opportunity for CareFusion to request a protective order or in camera inspection in relation to any request for information related to this Agreement pursuant to the Act. Additionally, except to the extent required by law, including, without limitation, the Act, neither Party will disclose to a third party the terms of, nor issue



## Master Agreement

any public statement regarding, this Master Agreement or any Customer Agreement without the other Party's prior written approval.

- 8.3 Force Majeure.** If a Party is reasonably prevented from performing an obligation because of fire, flood, wind, earthquake, explosion or other disaster, acts of military authorities, acts of civil authorities unrelated to any violation of law by the Party, war (declared or undeclared), riot, insurrection, act of terrorism, acts of God, revolutions, vandalism, sabotage, nuclear incidents, lightning, weather, epidemics, disruption of public utilities, information systems interruptions or failures, or other cause beyond the Party's reasonable control (collectively, a "Force Majeure Event"), then that Party will not be in breach during the period that Party is prevented from performing that obligation, provided that the Party: (i) promptly delivers notice to the other Party identifying the Force Majeure Event with the expected duration (including keeping the other Party informed until the Party is able to perform its obligations; and (ii) immediately uses reasonable good faith efforts to perform the obligation notwithstanding the Force Majeure Event.
- 8.4 Assignment.** Neither Party may assign any rights or obligations under this Master Agreement or any Customer Agreement without the other Party's prior written consent, which will not be unreasonably withheld; provided, however, that either Party may with notice assign all of such Party's rights and obligations without the other Party's consent: (i) to an affiliate; or (ii) incident to the transfer of all or substantially all of such Party's business assets related to the subject matter of the applicable Customer Agreement.
- 8.5 Notices.** Any notice from one Party to the other Party under this Master Agreement or any Customer Agreement will be in writing and will be deemed to be given: (i) upon delivery, if by hand or by overnight courier; or (ii) three (3) days after mailing, if by certified or registered mail to the receiving Party's Notice Address below. Either Party may change its Notice Address upon written notice to the other Party.
- 8.6 Severability.** If a court or other body of competent jurisdiction declares any term of this Master Agreement or any Customer Agreement invalid or unenforceable, then the remaining terms will continue in full force and effect.
- 8.7 No Waiver.** No right created by this Master Agreement or any Customer Agreement will be deemed waived unless specifically and expressly waived in a writing signed by the Party possessing the right.
- 8.8 Governing Law.** This Master Agreement and each Customer Agreement will be governed by the laws of the State identified in Customer's Notice Address below, without reference to its conflict of laws principles.
- 8.9 Prevailing Party.** The prevailing Party will be entitled to reasonable attorneys' fees, costs and expenses for any claim against the other Party under this Master Agreement or any Customer Agreement.
- 8.10 Survival.** The obligations set forth in this Master Agreement and each Customer Agreement that by their nature continue and survive will survive any termination or expiration of this Master Agreement.
- 8.11 Entire Agreement; Amendment.** This Master Agreement and each Customer Agreement sets forth the entire agreement and understanding of the Parties and supersedes all prior written and oral agreements, representations, proposals, and understandings between the Parties regarding the subject matter of this Master Agreement and each Customer Agreement, except that no prior Confidential Disclosure Agreement or contract of a similar nature will be superseded. Any requests for information, requests for proposal, responses to requests for proposals, sales collateral and other information provided by either Party are not binding unless explicitly incorporated by reference into a Customer Order signed by each Party. No modification to this Master Agreement or any Customer Agreement will be effective unless adopted via a written amendment to the same signed by each Party.



## Master Agreement

Each person signing below represents that he/she intends, and has the authority, to bind his/her respective Party to this Master Agreement.

**NATIVIDAD MEDICAL CENTER****Notice Address:**

1441 Constitution Blvd.  
Salinas, CA 93906

State of Incorporation: California

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

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

**CAREFUSION SOLUTIONS, LLC****Notice Address:**

3750 Torrey View Court  
San Diego, CA 92130

State of Incorporation: Delaware

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

Print: \_\_\_\_\_

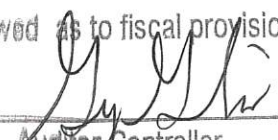
Title: \_\_\_\_\_

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

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions

  
\_\_\_\_\_  
Auditor-Controller  
County of Monterey

3-4-16

**Exhibit A**  
**List of Schedules**

<b>Product Line</b> <b>(if applicable)</b>	<b>Schedules</b>
MedMined <sup>®</sup>	MedMined Services



These terms apply to the data surveillance, alerts and related reporting services (“Services”) provided by CareFusion to Customer. The term “CareFusion Coordination Engine (“CCE”)” means software that provides an integration engine (which includes data transfer) to provide these Services.

## **1. Description of Services.**

### **1.1 MedMined Surveillance Advisor provides the following information:**

- (a) Infection Prevention Surveillance: provides hospital-wide electronic surveillance and workflow tools to identify potential healthcare-associated infections (“HAIs”) and facilitate reporting of HAI data to the National Healthcare Safety Network (“NHSN”); includes clinical analytics reporting and consulting services on patterns from complex, clinical data sets.
- (b) Medication Stewardship Surveillance: facilitates hospital-wide surveillance efforts on medication stewardship, such as tracking potential adverse clinical events through comprehensive alerts and queries, and reporting tools on trends and intervention analyses regarding adverse drug events, and antimicrobial stewardship.

### **1.2 Pyxis Advisor: allows development of alerts for viewing on the Pyxis MedStation 4000 System.**

**1.3 Automated Ventilator-Associated Event (“VAE”) Surveillance Module** : provides a way to automate the tracking, trending, and aggregation of ventilator-associated event data using the NHSN VAE algorithm.

**1.4 MedMined Public Health Reporting Service**: Supports Meaningful Use Stage 2 Public Health Reporting requirements for lab reporting, syndromic surveillance and immunization reporting by monitoring hospital data to identify cases required for submission to public health agencies and auto-transmitting the necessary information to the appropriate jurisdiction.

## **2. Implementation Services; Technical Assistance**

**2.1 Kickoff Conference**. Within ten (10) business days after execution of the applicable Customer Order, Customer will schedule and complete a conference call between its information technology project manager and CareFusion’s installation team (the “Kickoff Conference”).

**2.2 Implementation**. If applicable, within ten (10) business days after the Kickoff Conference, CareFusion will install the CCE application into the environment the Customer provides for the CCE application.

**2.3 Customer Data Transfer**. Within twenty (20) business days after implementation of the CCE application, Customer will initiate real-time transfer of HL7 data (e.g., admit-discharge-transfer, laboratory, pharmacy and surgery) and admit-discharge-transfer messages and a health information system (“HIS”) census and a surgery file in accordance with the applicable User Guide.

**2.4 Configuration and Testing**. CareFusion will assist Customer to manage and complete installation, configuration and testing of the HL7 and surgery message capture, census report capture and quality assurance processes.

**2.5 Technical Assistance**. On a time and materials basis, CareFusion will reconfigure data capture routines and provide other technical assistance that may be required as a result of changes to interface specifications or information systems.

**3. Application Service Provider (“ASP”) Services**. During the Term (as defined below), CareFusion will provide Customer with the following ASP Services:

**3.1 Data Transport**. CareFusion will transport secured encrypted Customer data from the CCE to the CareFusion MedMined Data Center.

**3.2 Telephone Support**. CareFusion will provide telephone support Monday–Friday, 7:00 a.m.–7:00 p.m. Central Time. Support requests may be logged after-hours at (888) 742-1108 or via e-mail at [clinsupport@CareFusion.com](mailto:clinsupport@CareFusion.com).

### **3.3 Training.**

#### **(a) MedMined University (classroom training).**

- i. Infection Prevention: CareFusion will provide Customer’s Infection Control staff with clinical training materials via classroom setting. CareFusion will provide a two day training seminar at CareFusion’s facility in Birmingham, Alabama (referred to as “MedMined University”) for up to two staff members per site within Customer’s hospital network. Transportation, hotel accommodations, meals and airport transfers are included. Additional personnel may attend at a cost of \$1,500.00 per person, which includes tuition, hotel accommodations, meals and airport transfers only.
- ii. Medication Stewardship. CareFusion will provide Customer’s Pharmacy staff with clinical training materials. CareFusion will provide MedMined University training for up to two staff members per site within Customer’s hospital

## Schedule MedMined® Services

network. Transportation, hotel accommodations, meals and airport transfers are included. Additional personnel may attend at a cost of \$1,500.00 per person, which includes tuition, hotel accommodations, meals and airport transfers only.

- (b) MedMined Surveillance Advisor web based training: CareFusion will provide Customer-identified staff with clinical training materials. CareFusion will provide web-based training for Customer-identified staff members per site within Customer's hospital network.
- (c) Pyxis Advisor: CareFusion will provide Customer's Pharmacy and Nursing Education Staff with clinical training materials and web-based training only.
- (d) Automated VAE Surveillance: CareFusion will provide Customer's infection prevention and respiratory therapy staff with clinical training materials and web-based training only.
- (e) MedMined Public Health Reporting Service: CareFusion will provide Customer's infection prevention and/or laboratory staff with clinical training materials and web-based training only.
- (f) No additional cost to Customer for CareFusion on-going web based trainings. No additional cost to Customer for CareFusion onsite trainings, including travel charges.

#### 4. Maintenance.

**4.1 Responsibilities.** If a Service is provided via a virtual server solution, then Customer is responsible for any hardware maintenance and support on Customer's hardware, except to the extent due to the acts or omissions of CareFusion.

**4.2 Monitoring.** CareFusion will monitor the data feeds and alert Customer of any significant interruptions or abnormalities.

**4.3 Remote Access.** CareFusion requires remote access to the CCE for administrative and support purposes. CareFusion uses software which runs locally on the CCE. The local agent makes outbound SSL connections to CareFusion data centers to allow remote connectivity for designated CareFusion support staff for administration purposes. This agent provides auditing and session recording capabilities.

**4.4 Hardware Support.** Intentionally omitted.

**4.5 Other Software.** Any additional software installed by Customer on the CCE server must be approved by CareFusion IT Operations Department to safeguard software provided by MedMined® Services, which approval shall not be unreasonably withheld, conditioned or delayed.

#### 5. Error Correction and Downtime.

**5.1 Error Correction.** If there is a material error in any Service, then CareFusion will use commercially reasonable efforts to correct that error within a commercially reasonable time. In addition, if Customer cannot access the web-based portal for any Service due to a material error and CareFusion's error correction activities exceed one business day, then CareFusion will provide daily status updates to Customer on such error correction activities.

During the term hereof, CareFusion agrees that the Service(s) will have an uptime of at least 99%. Scheduled maintenance (for upgrades, patches, etc.) will not be calculated as part of this figure.

**5.2 Scheduled Downtime.** CareFusion will use commercially reasonable efforts to minimize the number of occasions that the CCE will be impaired or disrupted, provided that such occasions are within CareFusion's reasonable control. Notwithstanding the foregoing, Customer acknowledges that the CCE will have 0.5% (or 44 hours) of scheduled downtime within a one-year period. CareFusion will schedule CCE downtime during non-peak hours (e.g., between 10:00 p.m. – 6:00 a.m. Central Time) and provide Customer with 72 hours prior notice before such scheduled downtime.

**5.3 Unscheduled Downtime.** Customer acknowledges that CareFusion does not and cannot control the flow of Customer data to and from the CCE. Unscheduled downtime of a Service may occur due to disruptions in Internet services provided or controlled by third parties ("Unscheduled Downtime"). CareFusion will use commercially reasonable efforts to take actions it deems appropriate to avoid or remedy Unscheduled Downtime, including, without limitation, using industry-standard virus controls. CareFusion does not guarantee that Unscheduled Downtime will not occur.

**5.4 System Change Downtime.** Customer acknowledges that CareFusion does not and cannot control a disruption in the flow of Customer data to and from the CCE caused by Customer system changes or Customer system downtime ("Customer System Issues").

**6. Electronic Data.** CareFusion is not responsible for any inaccuracies in Customer's data, or if such data is not kept up-to-date and/or duly integrated with Customer's applications ("Customer Data Issues"). Customer Data Issues may cause unnecessary alerts and/or no alert when it may be warranted by a patient's actual condition. If Customer requests that CareFusion attempt to correct a Service problem attributable to any Customer Data Issue, then: (i) CareFusion will promptly use commercially reasonable efforts to



## Schedule MedMined® Services

restore the Service; (ii) CareFusion will provide an invoice to Customer stating the charges for the services and parts used on a time and materials basis at CareFusion's then-current rates and prices ("Time and Materials Fees"); and (iii) Customer will pay the Time and Materials Fees pursuant to Section 1.6 of the Master Agreement.

**7. Service Misuse.** Customer acknowledges and agrees that the Services are not intended to replace professional clinical judgment. Treatment decisions should never be based strictly or solely on information provided by a Service. It is important that patients' conditions continue to be monitored by Customer and confirmed through clinical expertise, review of a patient's chart, medication history, laboratory results, and physical observance. Misuse of a Service without the foregoing review and/or lack of clinical expertise may lead to an adverse drug event. Only licensed healthcare providers who are authorized and trained to use a Service should do so. Customer remains solely responsible for setting protocol and for clinical decisions to be used in case of a given alert (standard or customized).

**8. CAREFUSION IS NOT RESPONSIBLE FOR, AND DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO, UNSCHEDULED DOWNTIME, CUSTOMER SYSTEM ISSUES, CUSTOMER DATA ISSUES AND SERVICE MISUSE.** This Section is in addition to, and does not supersede, the Limitations of Liability in the Master Agreement.

**9. Fees and Invoicing.** In consideration of CareFusion's performance of the Service(s), Customer will pay CareFusion the fees stated in the applicable Customer Order (the "Fees"). On or after the Effective Date of the applicable Customer Order, CareFusion will deliver an invoice to Customer for the Implementation Fee. On a monthly basis after the Start Date, CareFusion will deliver to Customer an invoice for the Monthly Fees (in advance of the applicable month). For purposes of the Customer Order, "Year" means 12 months from the beginning of the Start Date identified in the applicable Customer Order.

**10. Payment.** Customer will make all payments to "CareFusion" and mail them to CareFusion, MedMined Services, 25565 Network Place, Chicago, IL 60673-1255.

### **11. Term**

**11.1 Term.** The term of any Service will commence on the Start Date identified in the applicable Customer Order and will continue for sixty (60) months ("Initial Term").

**11.2 Reinstatement.** If CareFusion terminates any Service pursuant to the Master Agreement, then Customer will pay a reinstatement fee as a condition to resuming such Service.

Exhibit A
**MEDMINED® SERVICES IMPLEMENTATION OVERVIEW**

<b>ID</b>	<b>Task Name</b>	<b>Prerequisites (ID)</b>	<b>Responsible Party</b>
1	Customer Agreement fully executed	N/A	Customer/CareFusion
2	Project kickoff conference call	1	Customer/CareFusion
3	CCE configuration and installation	2	Customer/CareFusion
4	Provision, review and acceptance of test data	3	Customer/CareFusion
5	Provision, review and acceptance of production data	4	Customer/CareFusion
6	Infection Prevention Surveillance implementation	5	Customer/CareFusion
7	Infection Prevention Surveillance production release	6	CareFusion
8	Infection Prevention Surveillance end user training	7	Customer/CareFusion
9	Medication Stewardship Surveillance implementation	5,7	Customer/CareFusion
10	Medication Stewardship Surveillance production release	9	CareFusion
11	Medication Stewardship Surveillance end user training	10	Customer/CareFusion
12	Additional data feeds implementation	5,7	Customer/CareFusion
13	Additional data feeds production release	12	Customer/CareFusion
14	Additional data feeds end user training	13	Customer/CareFusion





## Customer Order MedMined<sup>®</sup> Services

The terms of this Customer Order apply to the MedMined Service(s) ("Service(s)") provided by CareFusion to Customer pursuant to the applicable Customer Agreement between the Parties.

**1. Start Date.** The applicable Service(s) will begin on the implementation date of real-time transfer of Customer Data to the MedMined Data Center. Fees are based on reported patient discharge data.

**2. Service(s).**

☒ MedMined Surveillance Advisor Service

Facility Name	Address	Fee	Year 1 Monthly Fee	Year 2 Monthly Fee	Year 3 Monthly Fee	Year 4 Monthly Fee	Year 5 Monthly Fee	Total Fee
Natividad Medical Center	1441 Constitution Blvd. Salinas, CA 93906	Service Fee	\$2,955.08	\$3,043.75	\$3,135.08	\$3,229.08	\$3,326.00	\$188,267.88
		Implementation and Training Fees	\$291.97	\$291.97	\$291.97	\$291.97	\$291.97	\$17,518.20

☒ Automated Ventilator-Associated Event Surveillance Module

Facility Name	Address	Fee	Year 1 Monthly Fee	Year 2 Monthly Fee	Year 3 Monthly Fee	Year 4 Monthly Fee	Year 5 Monthly Fee	Total Fee
Natividad Medical Center	1441 Constitution Blvd. Salinas, CA 93906	Service Fee	\$580.83	\$598.25	\$616.17	\$634.67	\$653.67	\$37,003.08
		Implementation and Training Fees	\$41.67	\$41.67	\$41.67	\$41.67	\$41.67	\$2,500.20

☒ MedMined Public Health Reporting Service

Facility Name	Address	Fee	Year 1 Monthly Fee	Year 2 Monthly Fee	Year 3 Monthly Fee	Year 4 Monthly Fee	Year 5 Monthly Fee	Total Fee
Natividad Medical Center	1441 Constitution Blvd. Salinas, CA 93906	Service Fee	\$645.33	\$664.67	\$684.67	\$705.17	\$726.33	\$41,114.04
		Implementation and Training Fees	\$41.67	\$41.67	\$41.67	\$41.67	\$41.67	\$2,500.20

The total fees for all MedMined Services identified above are \$288,903.60.

**Each person signing this Customer Order represents that he/she intends to and has the authority to bind his/her Party to this Customer Order.**

**NATIVIDAD MEDICAL CENTER**

**CAREFUSION SOLUTIONS, LLC**

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

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

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## BUSINESS ASSOCIATE AGREEMENT SCHEDULE

This Business Associate Agreement ("Agreement"), effective 17 July, 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 CareFusion Solutions, LLC, together with its subsidiaries and related legal entities ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") pursuant to one or more underlying agreements ("Underlying Agreement") 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, to the extent Business Associate receives PHI and is a Business Associate in its performance of the Services according to the meaning set forth in 45 C.F.R. § 160.104, then 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, Cal. 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. If Covered Entity is required to comply with the "Identity Theft Red Flags and Address Discrepancies under Fair and Accurate Credit Transactions Act of 2003," as promulgated and enforced by the Federal Trade Commission [16 C.F.R. Part 67811 ("Red Flag Rule")], then to the extent Business Associate is performing an activity in connection with one or more "covered accounts" (as defined in the Red Flag Rule) pursuant to the Agreement, then 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 set forth in the Underlying Agreement of which this Agreement is a part or requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the Standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement pursuant to 45 C.F.R. § 164.514 and use such de-identified data in accordance with 45 C.F.R. § 164.502(d), provided that Business Associate obtains prior written approval from Covered Entity for any proposed use or disclosure that is not permitted in the Underlying Agreement.

### **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 (i) as permitted or required by this Agreement or the Underlying Agreement, (ii) as otherwise Required by Law, or (iii) as otherwise expressly permitted in writing by Covered Entity;

(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. Business Associate will reimburse Covered Entity for reasonable and actual expenses Covered Entity incurs in notifying individuals, the media, and governmental entities of a Breach, including up to one (1) year of credit monitoring services for affected individuals, to the extent caused by or attributable to Business Associate or Business Associate's

subcontractors' or agents' negligent acts or omissions (including failure to perform its obligations under this Agreement).

(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 substantially the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure as required by 45 C.F.R. § 164.528 and, within thirty (30) 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. Business Associate shall provide the Covered Entity with the information required by 45 C.F.R. § 164.528(b)(2). In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within thirty (30) 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 thirty (30) 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 by Business Associate in a Designated Record Set:

(i) Upon fifteen (15) 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 thirty (30) 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) In the event that Business Associate is engaged to perform an activity in connection with any "covered account" as defined in 16 C.F.R. § 681.1 (as applicable to Covered Entity as a "creditor" and therefore to Business Associate as a "service provider" providing any service directly to Covered Entity), Business Associate shall comply with the Red Flag Rules, if applicable, or develop policies and procedures to detect and prevent identity theft in connection with the provision of the Services. ;

(k) To the extent permitted by law and if there is a reasonable risk that Covered Entity's PHI may need to be disclosed, notify the Covered Entity within ten (10) 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 reasonably cooperate with the Covered Entity in such challenge. Covered Entity shall be responsible for all costs related to such cooperation, unless Business Associate is the subject of or a named party to



the investigation or litigation;

(1) 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 successful 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 have the meaning set forth at 45 C.F.R. § 164.304. Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that this section shall constitute notice, and no additional notification to Covered Entity of such unsuccessful Security Incidents is required, provided that no such incident results in unauthorized access, use or disclosure of PHI. In the event of a successful Security Incident, 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) promptly notify Business Associate in writing 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. Upon such notice, any such limitation(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

(c) promptly notify Business Associate in writing 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. Upon such notice, any such change(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

(d) promptly notify Business Associate in writing 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. Upon such notice, any such change(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice; and

(e) Promptly notify Business Associate, in writing, 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. Upon such notice, any such restriction(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

#### 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 the applicable underlying agreement(s) granting Business Associate access to PHI and which gives rise to the breach if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

#### 5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(I) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. Except as otherwise provided in this Section 5.2, 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 other applicable law or regulation is materially amended in a manner that changes the obligations of Business Associates or Covered Entity, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such



law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations. 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:

CareFusion Solutions, LLC  
3750 Torrey View Court  
San Diego, CA 92130  
Attn: Legal Department/BAA Compliance  
Phone: 858.617.2000  
Fax:

If to Covered Entity, to:

Attn: Roy D. Creamier  
Phone: 831 - 783 - 2621  
Fax: 831 - 757 - 2592



Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts: Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be Originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Business Associate shall indemnify, defend, and hold harmless the Covered Entity, its officers, agents, and employees from any claim asserted against Covered Entity by a third party for any actual and direct liability, loss, injury, cost, expense, penalty or damage (collectively, "Losses"), solely to the extent such Losses were directly caused by or arising out of, or in connection with, performance of this BAA by Business Associate and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the Covered Entity. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

5.8 Relationship to Underlying Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Underlying Agreement, the provision of this

Agreement shall control.

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.

CAREFUSION SOLUTIONS, LLC

By: *Matthew Geis*

Print Name: Matthew Geis

Print Title: Contracts

Date: 7/17/15

COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD MEDICAL CENTER  
By:.

Print Name: Roy D Creamier

Print Title: Director Materials Management

Date: July 10<sup>th</sup>, 2015