# analytics

**Ɱ Natividad**
MEDICAL CENTER

## analyticsMD / Natividad – Software Services Agreement

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|---|---|
| **analyticsMD, Inc.**<br>520 San Antonio Road #100<br>Mountain View, CA 94043 | *analyticsMD Contact:*<br>Mudit Garg<br>mudit@analyticsmd.com<br>+1 (206)-218-5417 |

**Customer**

| Customer Name & Address | 1441 Constitution Blvd, Salinas, CA 93912-1611 | | |
|---|---|---|---|
| Business Contact | Dr. Gary Gray | Technical Contact | David Hathaway |
| BC Email | graygr@natividad.com | TC email | HathawayD@natividad.com |
| BC Phone | 831-7554196 | TC Phone | |

| Description | Subscription Term | Recurring Fees | One time Fee | Total |
|---|---|---|---|---|
| analyticsMD License | ED Module (up to average of 150 visits / day) | $105,000 / year / hospital | $15,000 per hospital | $120,000 |
| Charter Customer Discount* | 12 month discount + Gratis license to DecisionOS | ($29,000) | | ($29,000) |
| **Total Due** | | **$76,000\* / year / hospital** | **$15,000** | **$91,000** |
| Training | 8 hours of webex training session included in upfront setup; | | | |
| Contract Terms | One year term. Optional renewal for a period of 1 year, NMC will be notified 60 days prior to expiry. *Pricing may change at time of renewal based on ED volume | | | |
| Payment Terms | License fee paid upfront annually; Monterey County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. | | | |
| *Notes | *The charter program discount is applicable for selected customers that sign up within 30 days of the invitation. In exchange for being the program the customer will:*<br>• *Participate in reference calls*<br>• *Participate in marketing results from the deployment* | | | |

This Order is submitted by Customer for Order Confirmation and is governed by the attached terms and conditions, which are hereby incorporated by reference.

<u>analyticsMD, Inc.:</u>

By: _____

Name: Mudit Garg

Title: CEO

Date: 10/07/2015

<u>Customer:</u>

By: _____

Name: _____

Title: CEO

Date: _____

Reviewed as to fiscal provisions

_____
Auditor-Controller
County of Monterey   10-29-15

ABrereton
Deputy County Counsel
10-29-15

**SOFTWARE SERVICES AGREEMENT**

## analyticsMD Terms and Conditions of Service

These Terms and Conditions, together with all applicable Order Confirmations between the parties, are an agreement that is made and entered into as of the earliest date of Customer's counter-signature on a AnalyticsMD Order Form (such counter-signature creates the "Order Confirmation" and the date of counter-signature is the "Effective Date") by and between AnalyticsMD, Inc. ("AnalyticsMD"), and the Customer identified in the applicable Order Confirmation(s) ("Customer"). The parties hereby agree as follows:

## 1. Definitions.

**1.1 "Affiliate."** With respect to Customer, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with Customer, which agrees in writing to be bound by all the obligations of Customer hereunder.

**1.2 "Users."** The number of identifiable unique persons consisting of Customer's personnel and outside consultants who are authorized to access and use the Services, as specified in the applicable Order Confirmation(s). Users may include Customer's third party consultants, outsourcers, contractors and other service providers.

**1.3 "Company Technology."** The computer hardware, software and other tangible equipment and intangible computer code necessary to deploy and serve the Services via the Site.

**1.4 "Customer Data."** Customer's information or other primary data processed, stored or transmitted by, in or through the Services, including without limitation personal information relating to the Customer's personnel, customers, and prospective customers such that the identity of such persons is apparent or can reasonably be determined from such personal information. Customer Data may include "Protected Health Information" and/or "Electronic Protected Health Information" as such terms are defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act.

**1.5 "Internet Data Centers."** Any of the facilities owned or controlled by Company and used by Company to provide the Services. These facilities house the Company Technology used for the provision of Services.

**1.6 "Proprietary Rights."** Any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property.

**1.7 "Services"** A yearly subscription service that provides daily feedback on hospital operations. The services can include (but are not necessarily limited to) dashboards and data visualizations to be used by the staff that provide access to predefined metrics, collaboration mechanisms to share

these visualizations within the organization, an alert system that enables users to track metrics when away from their computers, root cause identification mechanisms to allow users to algorithmically and intelligently detect process variations that are resulting in meaningful performance deviations, forecasting and machine learning techniques that predict patient and activity flows, practitioner- and employee-level performance report cards that determine operational performance at an individual level, and any updates or upgrades to such services which may be generally released by Company to Customer from time to time. Services are designed to achieve optimal performance on recent releases of Google Chrome, Mozilla Firefox, and Microsoft Internet Explorer version 9 and above. Customer browsers should be Javascript enabled.

**1.8 "Site."** Company's analyticsMD.com website (and its subdomains) including the Company Technology.

**2. Subscription License Grant.** Subject to the terms and conditions hereof, during the term hereof, Company hereby grants to Customer and its Affiliates only to the extent of Users and solely for Customer's internal business purposes a non-exclusive, non-transferable, non-assignable, worldwide right and license, without the right to sublicense, to access the Site and use the Services. All rights not expressly granted to Customer herein are expressly reserved by Company.

**3. Use Restrictions.** Customer covenants and agrees that its use of the Services will be in a manner consistent with this Agreement and with all applicable laws and regulations, including trade secret, copyright, trademark, and export control laws. Without limiting the generality of the foregoing, Customer shall not, nor shall it permit or assist others, (i) to abuse or fraudulently use the Services; (ii) to process or permit to be processed the data of any third party that is not expressly authorized herein to access and use the Services; and (iii) to attempt to copy, reverse-engineer, decompile, disassemble, create a derivative work from, or otherwise attempt to derive the source codes of any part of the Company Technology; or (iv) to access, alter, or destroy any information of any customer of Company by any fraudulent means or device, or attempt to do so.

**4. Security.** Customer shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of its link to the Internet. As part of the Services, Company shall implement reasonable security procedures consistent with prevailing industry standards to protect Customer Data from unauthorized access (the "Security Standard"). Provided that Company is in compliance with the Security Standard, the parties agree that Company shall not, under any circumstances, be held responsible or liable for situations (i) where data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Company at the time. Company will promptly report to Customer any unauthorized access to Customer Data promptly upon discovery by Company, and Company will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Customer Data is required, Customer shall be solely responsible for any and all such notifications at its expense.

**5. Access to Services.** Company will permit access to the Services only over the Internet using access codes assigned by Company. Access codes will be deemed the Confidential Information of both parties. Customer shall be solely responsible for providing all Internet access, hardware, browsers, and other software necessary to access and login to the Site and Services.

**6. Customer Data and Backups.** Company shall make daily and weekly encrypted backups (the "Backups") of Customer Data archived with the Company Technology. Backups shall be stored off-site; daily backups will be retained for one (1) week and weekly backups will be retained for four (4) weeks. Subject to compliance with all applicable laws, Company may anonymize Customer Data and use it in aggregated form to improve the Company's products and services.

**7. Monitoring of Customer's Use.** Company reserves the right to internally monitor Customer's usage of the Site and Services for the purposes of troubleshooting and maintaining and improving the Services.

**8. Purchase of Additional Services.** Customer may elect to purchase rights for additional Users and/or additional services by entering into a new Order Confirmation from time to time. Such additional purchases shall be governed by the terms and conditions hereof. Customer agrees that, absent Company's express written acceptance thereof, the terms and conditions contained in any purchase order or other document issued by Customer to Company for the additional purchases, shall not be binding on Company to the extent that such terms and conditions are additional to or inconsistent with those contained in this Agreement.

**9. Subscription Fees.** Customer shall pay to Company periodic subscription fees for the Services and technical support services provided hereunder in accordance with the applicable Order Confirmations. AnalyticsMD shall submit to the Customer's Contract Administrator an invoice on a form acceptable to Customer. If not otherwise specified, the AnalyticsMD may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by AnalyticsMD for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as Customer approves in conformity with this Agreement, and shall promptly submit such invoice to the Monterey County Auditor-Controller for payment. The Monterey County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. .

**10. Taxes.** All fees are exclusive of taxes or duties. If Company is required to pay or collect any federal, state, local, value added, tax or duty on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on Company's net income, then such taxes and/or duties shall be billed to and paid by Customer immediately upon receipt of Company's invoice and supporting documentation for the taxes or duties charged.

**11. Technical Support, Training, and Consulting Services.** Company shall provide technical support in the form of responses to questions by email or telephone at no additional charge. Additionally, Company will provide initial training upon deployment as described in the applicable Order Confirmation

**12. Proprietary Rights Ownership.** Ownership of the Proprietary Rights embodied in the Site, Services, and Company Technology shall remain exclusively vested in and be the sole and exclusive property of Company and its licensors. Customer may choose to provide Company with suggestions, ideas, enhancement requests, feedback, recommendations or other information specifically relating to the Service ("Feedback") and if Customer does provide Customer with Feedback, Customer also grants Company a worldwide fully paid-up right and license to fully exploit the Feedback. The analyticsMD.com domain name, product names and logos associated with the Services are trademarks of Company or third parties, and no right or license is granted to use them.

**13. Mutual Exchange of Confidential Information.** The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this Section terms governing the use and protection of certain information one party ("Owner") may disclose to the other party ("Recipient").

**13.1 Definition of Confidential Information.** For purposes hereof, "Confidential Information" means (i) the terms and conditions hereof, (ii) non-public aspects of Company's Site and the operation thereof, Company Technology, and the Services and additional services provided by Company, and Company's business and technical information, and data, (iii) Customer Data, and non-public aspects of Customer's technology, computer programs, and business and technical information, and primary data. In addition, Confidential Information includes information which, although not related to the Services or this Agreement, is nevertheless disclosed hereunder, and which, in any case, is disclosed by an Owner or its affiliate to Recipient in document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a legend, is provided to Recipient within thirty (30) days of the initial disclosure.

**13.2 Restrictions on Use and Disclosure.** Recipient may use Confidential Information of Owner only for the purposes of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this Agreement and only to its employees or contractors who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure.

**13.3 Exclusions.** The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by Recipient from a third party free to disclose it without obligation to Owner, (iv) is independently developed by a party as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Owner. The Recipient may disclose Confidential Information of Owner pursuant to the requirements of a governmental agency or by operation of law, provided that

such Recipient gives Owner written notice thereof as soon as practicable and reasonably cooperates with Owner to contest such disclosure.

**13.4 HIPAA HITECH Compliance.** Company shall comply with (i) HIPAA as amended by HITECH, and (ii) the terms and conditions of the Business Associate Agreement mutually entered between the parties (if applicable).

**14. Customer Representations and Warranties.** Customer represents and warrants that (i) the performance of its obligations and use of the Services (by Customer and its Users) will not violate any applicable laws, or regulations of the United States, or (ii) cause a breach of any agreements with any third parties or unreasonably interfere with the use by other Company customers of Company services. Customer acknowledges that (i) Company does not monitor the content of the information passing through the Services for purposes of verifying accuracy or legal compliance, and (ii) Customer will use commercially reasonable efforts to ensure that the information it and its Users transmit thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force. In the event of any breach by Customer of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Company will have the right to suspend immediately any Services if deemed reasonably necessary by Company to prevent any harm to Company and its business. Company will provide notice to Customer and an opportunity to cure, if practicable, depending on the nature of the breach. Once cured, Company will promptly restore the Services.

**15. Company Representations and Warranties.** Company represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between Company and any third parties. In the event of a breach by Company of the foregoing warranties, Customer's sole remedy is termination of this Agreement upon written notice to Company.

**16. Limited Warranty.** Company represents and warrants that the Services will: (i) conform to all material operational features as described in the applicable Order Confirmation, ("Limited Warranty"),. Customer's sole and exclusive remedy for breach of this Limited Warranty shall be the prompt correction of non-conforming Services at Company's sole expense. The service level warranty set forth in Exhibit A ("Service Level Warranty") states Customer's sole and exclusive remedy for any performance failure of the Services in terms of levels of service.

**17. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND EACH PARTY SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND DATA ACCURACY.

**18. Intellectual Property Indemnity.** Except for third party software including without limitation open source software, Company will indemnify, defend and hold harmless Customer and its Affiliates from and against any loss, damage or expense arising out of a third-party claim made against Customer that the Company Technology or Services infringe on any U.S.

intellectual property right of a third party; provided, however, that (i) Company is notified in writing of such claim promptly after such claim is made upon Customer; and (ii) Company shall have the right to control any defense and investigation of the claim. In no event shall Customer settle any such claim without Company's prior written approval. Company shall have no liability or obligation if the claim arises from (i) any alteration or modification to the Company Technology or Services other than by Company, (ii) any combination of the Company Technology or Services by Customer with other programs or data not furnished by Company, or (iii) any use by Customer of the Company Technology or Services that is prohibited by this Agreement or otherwise outside the scope of use for which the Company Technology or Services are intended.

**19. Options for Infringement Claims.** If any party is enjoined from using the Company Technology, or if Company believes that the Company Technology may become the subject of a claim of intellectual property infringement, Company, at its option and expense, may: (i) procure the right for Customer to continue to use the Services; (ii) replace or modify the Company Technology so as to make it non-infringing; provided, however, that the Services continue to conform to the descriptions and/or specifications provided in the applicable Order Confirmation; or (iii) terminate this Agreement, in which case Company shall refund to Customer any and all subscription fees paid in advance by Customer for those Services not provided by Company and provide, at Customer's request and free of charge, the Customer Data in a database document format. This Section and the preceding Section sets forth the entire liability of Company to Customer for any infringement by the Company Technology or Services of any intellectual property right of any third party. Notwithstanding the foregoing, this Section does not apply to third party software including without limitation open source software.

**20. Limitation of Liability.** EXCEPT FOR INDEMNITY OBLIGATIONS ESPRESSLY PROVIDED HEREIN AND ANY VIOLATION OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCTS LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY CAUSING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR VIOLATION OF CONFIDENTIALITY OR BREACH OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID AND PAYABLE IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. .

**21. Term and Termination.** This Agreement shall have an initial term ("Initial Term") that commences on the Effective Date and expires on the expiration of the last subscription or license term set forth in a valid Order ConfirmationThe term of this agreement will be for a period of one (1) year with the option to extend the agreement for two (2) additional one (1) year periods. Rate changes are not binding unless mutually agreed upon in writing by both parties. Customer will be notified of expiry 60 days prior to end term date. Each party may terminate this Agreement upon thirty (30) days prior written notice to the other party if the other party materially breaches this Agreement and fails to correct the breach within such niney (90 day period, provided, however, that Company may terminate this Agreement upon ninety (90 days

prior written notice in the event Customer fails to pay Fees when due per agreed payment terms and fails to correct such non-payment within such ninety (90) day period. Each party may terminate this Agreement upon written notice if the other party ceases to conduct business (except for a temporary cessation caused by Force Majeure), becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within sixty (60) days, or makes an assignment for the benefit or its creditors. Notwithstanding anything to the contrary, in the event of termination under this Section, all amounts due under this Agreement shall be due immediately and paid within sixty (60) days of such termination.

**22. Return of Materials.** Within sixty (60) days of the expiration or termination of any license under any Order Confirmation, Customer shall return to Company any materials provided by Company.

**23. Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email or facsimile (provided delivery is confirmed), or U.S. Mail (registered or certified only), return receipt requested, in each case to the address set forth on the initial page hereof or at such other addresses as shall be designated in writing by either party to the other in accordance with this Section. Such notice will be deemed to be given when received.

**24. Assignment.** Customer shall not assign this Agreement or any right or interest under this Agreement, , without Company's prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

**25. Continuing Obligations.** The following obligations shall survive the expiration or termination hereof and the distribution grace period provided above: (i) any and all warranty disclaimers, limitations of liability and indemnities granted by either party herein, (ii) any covenant granted herein for the purpose of determining ownership of, or protecting, the Proprietary Rights, including without limitation, the Confidential Information of either party, or any remedy for breach thereof, and (iii) the payment of taxes, duties, or any money to Company hereunder.

**26. Force Majeure.** Neither party shall be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures. Notwithstanding anything to the contrary contained herein, if either party is unable to perform hereunder for a period of thirty (30) consecutive days, then the other party may terminate this Agreement immediately without liability by thirty (30) days written notice to the other.

**27. Miscellaneous.** This Agreement shall be construed under the laws of the State of California, without regard to its principles of conflicts of law. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, understandings, and agreements. This Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time

any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

## 29. Insurance.

Evidence of Coverage:
Prior to commencement of this Agreement, AnalyticsMD 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, AnalyticsMD upon request shall provide a certified copy of the policy or policies.

Executed by the insurance carrier shall accompany the certificate. In addition, AnalyticsMD upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to Natividad Medical Center's Contracts/Purchasing Department, unless otherwise directed. AnalyticsMD shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and Natividad Medical Center has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of AnalyticsMD.

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 that A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Natividad Medical Center's Contracts/Purchasing Manager.

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

A. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form 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.

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

C. Workers' Compensation Insurance, If CONTRACTOR employs other 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

## EXHIBIT A

## <u>SERVICE LEVEL AGREEMENT</u>

**1. Definitions.**

**1.1 "Basic Support Request."** Any support request that is not a critical issue, such as user profile settings, view setup, metric creation, feature use, non-critical troubleshooting, and password resets.

**1.2 "Critical Support Request."** Any support request that is a critical issue, such as unexpected server downtime, loss of data, or a suspected security breach.

**1.3 "Downtime."** Any period where the Services are not available to the end users, regardless of reason.

**1.4 "Exempt Downtime."** Downtime where the parties have previously agreed upon the time and duration of such Downtime. Only Downtime occurring during such previously-agreed period shall be deemed to be Exempt Downtime. Exempt Downtime may also consist of regularly scheduled events if such events are communicated in advance.

**1.5 "Service Level."** The measurements upon which the quality of Services is measured.

**1.6 "Unscheduled Downtime."** All Downtime that is not Exempt Downtime.

**2. Procedures.** The establishment of Service Levels will be accomplished as follows:

**2.1 Commencement.** Service Levels are established as provided herein and will be measured starting on the "go live" date for the Services. Service Level reporting will be put into effect starting on the "go live" date for the Services.

**2.2 Service Level Changes.** The Parties may agree to add, delete or modify Service Levels. All such changes must be mutually agreed to in writing. Should new technology or improved measurement capabilities be deployed by Company that impact the Service Level reports, Company and Customer will agree upon a new measurement process and amend this Exhibit as appropriate. Should Company and Customer agree to implement a new reporting mechanism, Company and Customer will establish new Service Levels to be aligned with the new reporting mechanism.

**2.3 Downtime Incident Reporting.** Upon receipt of a written request from Customer for a prior calendar month requesting information regarding a specific instance of Downtime, Company will provide Customer with a related incident report from which Customer may determine any Downtime.

**2.4 Excused Failures.** Failure to meet Service Levels will not be deemed to be a failure by Company if one of the following conditions exist: (i) the failure is mutually agreed not to be the fault of Company; (ii) the failure of Customer to carry out relevant obligations causing the failure; (iii) failure of equipment not provided by or maintained by Company; or (iv) Force Majeure Events.

**3. Availability.** The Services shall be online and available 99% of the time, excluding Exempt Downtime, as calculated for each calendar month.

**4. Support.**

**4.1 Basic Support.** Customers may submit a Basic Support Request through email and expect a response within 24-48 hours. Company targets a turnaround time of 72 hours from initial contact to a remedy of a Basic Support Request. Response times to Basic Support Requests that involve creation of new metrics not included in the initial deployment may extend longer, depending on the technical complexity of the requested metric and the volume of such requests from Customer.

**4.2 Critical Support.** A Customer experiencing a critical issue may submit a Critical Support Request through an email marked "urgent" and expect a response within 24 hours. Company targets a turnaround time of 24 hours from initial contact to a remedy of a Critical Support Request.

**EXHIBIT B**
SCOPE OF SERVICES/PAYMENT PROVISIONS

**A.     Description of All Services to be Rendered by AnalyticsMD:**

Subject to the term hereof, AnalyticsMD hereby grants to NMC a non-exclusive and non-transferable charter license to use AnalyticsMD's decisionOS, accessed by Customer's internet browser.

**B.     AnalyticsMD Obligations:**

A. Setup, Training and Software Modifications

    1. Provide up to 8 hour sessions of WebEx training for Customer's administrators for use of the subscription service. Set up an account on AnalyticsMD Internet Server for use of the online software, which will include the following but is not limited to:

        a. analyticsMD will consist of the following:

- Dashboards and data visualizations to be used by the staff that provide access to predefined metrics
- Ability to set alerts that notify if certain metrics deviate
- Ability to create 3 decision recipes for specific data driven interventions
- Ability to create practitioner and employee-level performance report cards that determine operational performance at an individual level
- Any updates or upgrades to such services which may be generally released by Company to Customer from time to time

    2. Provide reasonable troubleshooting/debugging assistance as necessary.

B. System Configuration and Accessibility

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

    2. AnalyticsMD will approve the use of Internet Explorer current version plus the previous two versions and all subsequent releases of Microsoft Internet Explorer Browser.

        - All upgrades to the AnalyticsMD software, licensed by Licensee, will be provided to Licensee free of charge.

    3. analyticsMD provides 128 bit encryption for browser sessions.

C. Other AnalyticsMD Services
    1. AnalyticsMD takes no responsibility for any changes, modifications or enhancements made to the software listed in this agreement by Licensee or another third party or entity other than AnalyticsMD.
    2. Restoration of User Data: If corruption or deletion of user data has occurred due to hardware, operating system, software malfunction, or operator error, during the term hereof AnalyticsMD will assist Licensee in restoration of such data upon the following conditions:

        i. AnalyticsMD is required to keep adequate backups of the software and all Licensee data stored on AnalyticsMD server(s).

    Licensee agrees that AnalyticsMD is neither responsible nor liable for the loss or corruption of user data regardless of the reason for such loss.

**C.**     **Customer Obligations:**
    A. Licensee will participate in all training offered by AnalyticsMD on their software product.
    B. Licensee will work cooperatively with AnalyticsMD in defining the necessary requirements for all stated modifications.

**D.**     **Software Warranty**

AnalyticsMD will make every reasonable attempt to provide a fully functioning product. However, AnalyticsMD is not responsible for bugs in Microsoft Internet Explorer or any other software utilized by Licensee. AnalyticsMD makes no warranty about the compatibility of its software with any other software programs that Licensee is using.

**E.**     **Fees:**
    For services provided in this agreement for analyticsMD's decisionOS, as outlined above, Licensee shall pay analyticsMD a fee of ninety one thousand dollars (USD $91,000.00).

    Payment by Licensee will be made within thirty (30) days of either the approval invoice received by the Monterey County Auditor/Controller's Office or the acceptance of this agreement, whichever is later. Invoices for software modifications, user training, and the reimbursement of reasonable travel expenses in accordance with the Monterey County Travel Policy shall be paid within thirty (30) days of the approved invoice received by the Monterey County Auditor/Controller's office.

**F.**     **Entire Agreement**
    The Software Services Agreement, this scope and any addendum hereto constitute the entire agreement between the parties with regard to subject matter contained herein.

**G.  General**

A.  Inability to Perform. A party shall not be required to perform its obligations under this agreement, or be liable for its failure to perform if nonperformance is caused by an Act of God, war, civil disturbance, terrorism, strike, work stoppage, transportation contingencies, power failures, laws, regulations, ordinances, acts or orders of any governmental agency or official thereof, or any cause not within the control of such party.

B.  Payment amounts and due dates of payment, defined herein, are not contingent upon Licensee's credit arrangements with any third party whatsoever, i.e., leasing, loans, personal loans, etc.

C.  The  above signed representative of each party hereby warrants and represents that he or she has been duly authorized to execute this agreement on behalf of such party.