

**PROFESSIONAL SERVICES AGREEMENT**

**by and between**

**SOUTHERN MONTEREY COUNTY MEMORIAL HOSPITAL, a California nonprofit  
corporation, d.b.a. GEORGE L. MEE MEMORIAL HOSPITAL (“MMH”)**

**and**

**NATIVIDAD MEDICAL CENTER (“NMC”)**

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”) is entered into as of June 1, 2017, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**NMC**”), and SOUTHERN MONTEREY COUNTY MEMORIAL HOSPITAL, a California nonprofit corporation, d.b.a. GEORGE L. MEE MEMORIAL HOSPITAL (“**MMH**”). County, NMC, and MMH are sometimes referred to in this Agreement as a “**Party**” or, collectively, as the “**Parties**.”

### RECITALS

- A. MMH is the owner and operator of a general acute care hospital located in King City, California, and operates various outpatient clinics (collectively, the “**Clinics**”) under its acute care license.
- B. NMC employs, contracts with, or otherwise engages medical professionals (collectively, “**Physicians**” and each, a “**Physician**”), each of whom is a physician duly licensed and qualified to practice medicine in the State of California (“**State**”). Each Physician is board certified for the practice of medicine in the specialty of obstetrics and gynecology and family practice with obstetrics (the “**Specialty**”).
- C. MMH agrees to provide professional consultation and treatment of patients who present to the Clinics (collectively, the “**Patients**”), without regard to any consideration other than medical condition.
- D. MMH and NMC desire that NMC, through the services of the Physicians, provide professional Specialty services in the Clinics on the terms and conditions described herein.
- E. MMH has considered the following factors in determining the necessity and amount of compensation payable to NMC pursuant to this Agreement:
1. The nature of NMC’s duties as contemplated by this Agreement.
  2. Physicians’ qualifications.
  3. The difficulty in obtaining a qualified physician to provide the services described in this Agreement.
  4. The benefits to MMH’s community resulting from Physicians’ performance of the services described in this Agreement.
  5. The economic conditions locally and in the health care industry generally.

## AGREEMENT

### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I. NMC'S OBLIGATIONS

##### **1.1     Services.**

(a) NMC shall provide the professional services to Patients and those additional services to MMH described in Exhibit 1.1(a) (the “**Physician Services**”), by its employed physician(s), upon the terms and subject to the conditions set forth in this Agreement.

(b) NMC shall provide an NMC employee acceptable to MMH to act as Chief Medical Officer. The Chief Medical Officer shall perform the medical direction and administrative services as set forth in Exhibit 1.1(b) upon the terms and subject to the conditions set forth in this Agreement (“**Chief Medical Officer Services**”). The Professional Services and Chief Medical Officer Services are sometimes referred to collectively in this Agreement as the “**Services.**”

**1.2     Availability.** On or before the first (1st) day of each month, NMC shall inform MMH of Physicians’ schedule of availability to perform the Physician Services during the following month. Physicians shall use their best efforts to adjust such schedule of availability if reasonably requested by MMH in order to meet MMH’s needs for the Services. Chief Medical Officer Services shall be provided as required to fulfill requirements set forth in Exhibit 1.1(b) and as required by the Joint Commission.

**1.3     Medical Staff.** NMC agrees that each Physician providing the Services shall first be a member in good standing and active on the MMH’s medical staff (“**Medical Staff**”) and have and maintain all clinical privileges at MMH necessary for the performance of Physician’s obligations under this Agreement. If, as of the Effective Date (as defined in Section 5.1), any Physician is not a member in good standing or active on the Medical Staff or does not hold all clinical privileges at MMH necessary for the performance of Physician’s obligations hereunder, such Physician shall have a reasonable amount of time, which in no event shall exceed sixty (60) calendar days from the Effective Date, to obtain such membership and/or clinical privileges; and provided, however, that, at all times, Physician has been granted privileges to perform the Services. MMH agrees to reimburse NMC for all costs paid by NMC to the Physicians for such Physician’s Medical Staff and reappointment fees for each NMC Physician providing Services at MMH during the term of this Agreement. Any Physician may obtain and maintain medical staff privileges at any other hospital or health care facility at Physician’s sole expense.

**1.4     Medical Records.** NMC agrees to cause the Physicians to prepare complete, timely, accurate and legible medical and other records with respect to the Physician Services provided by Physicians under this Agreement, in accordance with the MMH Rules and Medical Staff Bylaws, including documentation of compliance with patient informed consent requirements. All such information and records relating to any MMH patient shall be: (i) prepared on forms developed, provided or approved by MMH; and (ii) the sole property of MMH. NMC agrees to take immediate action, whether by instruction, direction or discipline, if a Physician fails to comply with the requirements of this Section. If an approved Physician



requires more than two instructions in any month or more than four over a six month period, NMC, at MMH's request, shall replace the otherwise approved Physician with a different provider.

**1.5 Records Available to NMC.** Subject to a patient's request to transfer medical records, medical records for all patients seen by NMC Physicians during the term of this Agreement shall remain with MMH. Both during and after the term of this Agreement, MMH shall permit NMC and NMC's agents on behalf of the Physicians for purpose of patient care to inspect and/or duplicate, at NMC's sole cost and expense, any medical chart and record to the extent necessary to meet NMC's professional responsibilities to patients, to assist in the defense of any malpractice or similar claim to which such chart or record may be pertinent, and/or to fulfill requirements pursuant to provider contracts to provide patient information; provided, however, such inspection or duplication is permitted and conducted in accordance with applicable legal requirements and pursuant to commonly accepted standards of patient protected health information confidentiality. NMC shall be solely responsible for maintaining patient confidentiality with respect to any information which NMC obtains pursuant to this Section.

**1.6 Physicians.** NMC shall employ, contract with, or otherwise engage Physicians. NMC has initially engaged those Physicians listed (and identified by NPI number) on Exhibit 1.6 to provide the Services, which Physicians are hereby approved and accepted by MMH, subject to receipt of Medical Staff privileges. NMC may from time to time engage one (1) or more additional Physicians (including locum tenens physicians) to provide the Services under this Agreement, subject to MMH's prior written approval. Only those Physicians approved by the MMH, with Medical Staff membership, shall provide Services to MMH under this Agreement.

**1.7 Use of Space.** MMH shall provide Physician(s) with suitable space to perform the Services. MMH shall remain responsible for the overall operation of the Services and shall maintain such space and facilities in good and sanitary order, condition, and repair.

**1.8 Equipment.** MMH shall furnish such equipment and supplies necessary for Physician(s) to perform the Services. MMH will be responsible for ensuring that the equipment so used by Physician(s) pursuant to this Agreement is maintained in good operating order, including any necessary maintenance and/or repairs.

**1.9 Services and Supplies.** MMH shall provide or arrange for the provision of janitorial services, housekeeping services, laundry and utilities, together with such other services, including medical records supplies and software, administrative and engineering services, and expendable supplies as MMH and NMC agree is necessary for the proper operation and conduct of the Services.

## **ARTICLE II.** **COMPENSATION**

**2.1 Compensation.** MMH shall pay to NMC the amount determined in accordance with Exhibit 2.1 (the "Compensation"), upon the terms and conditions set forth therein. The



total amount payable by MMH to NMC under this Agreement shall not exceed the sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).

**2.2 Billing and Collection.** MMH shall have the sole and exclusive right to bill and collect for any and all Services rendered to Patients by NMC or any Physician under this Agreement. MMH shall have the sole and exclusive right, title and interest in and to accounts receivable with respect to such Services.

(a) **Assignment of Claims.** NMC hereby assigns (or reassigns, as the case may be) to MMH all claims, demands and rights of NMC for any and all Services rendered by NMC pursuant to this Agreement. NMC shall take such action and execute such documents (e.g., CMS Forms 855R and 855I), as may be reasonably necessary or appropriate to effectuate the assignment (or reassignment, as the case may be) to MMH of all claims, demands and rights of NMC for any and all Services rendered by NMC pursuant to this Agreement.

(b) **Cooperation with Billing and Collections.** NMC shall cooperate with MMH in the billing and collection of fees with respect to Services rendered by NMC. Without limiting the generality of the foregoing, NMC shall cooperate with MMH in completing such claim forms with respect to Services rendered by NMC pursuant to this Agreement as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors.

(c) **MMH as Exclusive Source for Compensation for Services.** NMC shall seek and obtain compensation for the performance of Services only from MMH. NMC shall not, bill, assess or charge any fee, assessment or charge of any type against any MMH patient or any other person or entity for Services rendered by NMC pursuant to this Agreement. NMC shall promptly deliver to MMH any and all compensation, in whatever form, that is received by NMC or any Physician for Services rendered by NMC or any Physician pursuant to this Agreement, including any amount received from any Managed Care Organization (as defined below) for Services rendered by NMC or any Physician pursuant to this Agreement.

(d) **Limited Joint and Several Liability.** MMH and NMC acknowledge that they will be jointly and severally liable for any Medicare and Medicaid programs or any other Federal health care program, as defined at 42 U.S.C. Section 1320a-7b(f) (collectively, the “**Federal Health Care Programs**”) overpayments relating to claims with respect to Services furnished by NMC pursuant to this Agreement. The foregoing is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the Parties’ respective indemnification obligations under this Agreement.

### **ARTICLE III. INSURANCE AND INDEMNITY**

**3.1 Insurance Coverage Requirements.** NMC shall maintain in effect throughout the term of this Agreement, at NMC’s sole cost and expense, a policy or policies of insurance, covering NMC and each Physician.

### **3.2 Indemnification.**

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

(b) **Indemnification by NMC.** NMC agrees to defend, indemnify, and hold harmless MMH, to the extent permitted by applicable law, from and against any and all claims liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with NMC's performance of this Agreement, unless such claims, liabilities, or losses arise out of the negligence or willful misconduct of MMH. "NMC's performance" includes NMC's acts or omissions and the acts or omissions of NMC's officers, employees, agents and subcontractors, including the Physicians.

(c) **MMH Services.** MMH shall retain professional and administrative responsibility for the operation of the Clinics, as and to the extent required by Title 22, California Code of Regulations, Section 70713. MMH's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of the Parties under this Agreement, including, without limitation, the obligations under the insurance and indemnification provisions set forth in this Article III.

**3.3 Survival of Obligations.** The Parties' obligations under this Article III shall survive the expiration or termination of this Agreement for any reason.

## **ARTICLE IV.** **RELATIONSHIP BETWEEN THE PARTIES**

**4.1 Independent Contractor.** NMC and each Physician is and shall at all times be an independent contractor with respect to MMH in the performance of NMC's and Physician's obligations under this Agreement. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, partnership, lease or landlord/tenant relationship between MMH and NMC or MMH and any Physician.

**4.2 Limitation on Control.** MMH shall neither have nor exercise any control or direction over any Physician's professional medical judgment or the methods by which any



Physician performs professional medical services.

**4.3 Practice of Medicine.** NMC and MMH acknowledge that MMH is neither authorized nor qualified to engage in any activity which may be construed or deemed to constitute the practice of medicine. To the extent that any act or service required of, or reserved to, MMH in this Agreement is construed or deemed to constitute the practice of medicine, the performance of such act or service by MMH shall be deemed waived or unenforceable, unless this Agreement can be amended to comply with the law, in which case the Parties shall make such amendment.

**4.4 Referrals.** NMC and the Physicians shall be entitled to refer patients to any hospital or other health care facility or provider deemed by NMC or the Physicians best qualified to deliver medical services to any particular patient. Nothing in this Agreement or in any other written or oral agreement between MMH and NMC or the Physicians, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patients or business to MMH or any Affiliate. In the event that any governmental agency, any court or any other judicial body of competent jurisdiction, as applicable, issues an opinion, ruling or decision that any payment, fee or consideration provided for hereunder is made or given in return for patient referrals, either Party may at its option terminate this Agreement with three (3) days' notice to the other Party. NMC's rights under this Agreement shall not be dependent in any way on the referral of patients or business to MMH or any Affiliate by NMC, Physician or any person employed or retained by NMC.

**4.5 Cooperation.**

(a) The Parties recognize that, during the term of this Agreement and for an undetermined time period thereafter, certain risk management issues, legal issues, claims or actions may arise that involve or could potentially involve the Parties and their respective employees and agents. The Parties further recognize the importance of cooperating with each other in good faith when such issues, claims or actions arise, to the extent such cooperation does not violate any applicable laws, cause the breach of any duties created by any policies of insurance or programs of self-insurance, or otherwise compromise the confidentiality of communications or information regarding the issues, claims or actions. As such, the Parties hereby agree to cooperate in good faith, using their best efforts, to address such risk management and legal issues, claims, or actions.

(b) The Parties further agree that if a controversy, dispute, claim, action or lawsuit (each, an "**Action**") arises with a third party wherein both the Parties are included as defendants, each Party shall promptly disclose to the other Party in writing the existence and continuing status of the Action and any negotiations relating thereto. Each Party shall make every reasonable attempt to include the other Party in any settlement offer or negotiations. In the event the other Party is not included in the settlement, the settling Party shall immediately disclose to the other Party in writing the acceptance of any settlement and terms relating thereto, if allowed by the settlement agreement.

**4.6 No Joint Employment of Physicians.** Nothing contained in this Agreement shall be construed as agreement the Parties are or consent treatment as joint employers. NMC is solely

responsible for the employment with the Physicians provided hereunder and NMC agrees to defend, hold harmless and indemnify MMH pursuant to the indemnify obligations set forth in Section 3.2(b) for all claims for compensation, claims for workers' compensation, wage and hour, meal or rest breaks, payment of overtime or other employment claims asserted by Physicians related to the services provided herein. Further, NMC agrees to provide sufficient Workers Compensation and Employment Practices Liability coverage for such claims, as applicable for services by Physicians hereunder.

## **ARTICLE V.**

### **TERM AND TERMINATION**

**5.1    Term.** This Agreement shall become effective on July 1, 2017 (the “**Effective Date**”), and shall continue until June 30, 2020 (the “**Expiration Date**”), subject to the termination provisions of this Agreement.

**5.2    Termination for Cause.** Either Party shall have the right to terminate this Agreement upon breach of this Agreement by the other Party where the breach is not cured within thirty (30) calendar days after one Party gives written notice of the breach to the other Party.

**5.3    Removal of NMC Physicians Upon MMH Request.** Upon written request by MMH, NMC shall immediately remove any Group Physician from furnishing any Services under this Agreement who:

(a) has his or her Medical Staff membership or clinical privileges at MMH or any other health care facility restricted for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) violates, or causes any other person or entity to violate, MMH operating policies or corporate integrity program;

(c) engages in conduct that, in MMH's good faith determination, (i) jeopardizes the mental or physical health, safety or well-being of any person, whether patient or staff member or other MMH's physicians, (ii) is materially detrimental to the operation of the MMH including the inability to work effectively with other MMH program and departments, or (iii) damages the reputation of MMH;

(d) fails to satisfy one or more of the professional standards and qualifications set forth in this Agreement;

(e) is charged with a felony, fraud, controlled substances, or moral turpitude, or any crime relevant to the provision of professional services or the practice of medicine;

(f) fails to comply with any other material terms or conditions of this Agreement after being given written notice of that failure and a reasonable opportunity to comply;



(g) is unable or reasonably expected to be unable to provide the Services for a period in excess of thirty (30) consecutive days or sixty (60) days in the aggregate over any three (3) month period; or

(h) is determined by MMH, in its sole discretion, to be incompatible with MMH operations, including inability to communicate with other MMH staff and Medical Staff in manner deemed in the best interest of the MMH, the Clinics and its patients.

#### **5.4 Effect of Removal of a Group Physician.**

(a) The removal of any Physician from furnishing Services under this Agreement shall not have any effect upon the Medical Staff membership or clinical privileges of such Physician.

(b) Upon the removal of a Physician from furnishing Services under this Agreement, such Physician shall not be entitled to any "fair hearing" or any other similar hearing or appellate review under any provision of the Medical Staff Bylaws, except to the extent MMH reasonably determines that such removal is reportable pursuant to the State's Medical Board pursuant to the reporting requirements set forth in the State.

(c) Upon the removal of a Physician from furnishing Services under this Agreement, NMC shall obtain, at its cost and expense, a substitute for the removed Physician or demonstrate to MMH's satisfaction NMC's ability to continuously perform the Services without a substitute. Failure to do so shall constitute a material breach of this Agreement.

(d) A Physician who has been removed from furnishing Services under this Agreement may be reinstated as a Physician eligible to provide Services only upon the prior written approval by MMH, which approval may be given, withheld or conditioned by MMH in its sole and absolute discretion. If MMH withholds approval with respect to any such Physician, such Physician shall not be entitled to any "fair hearing" or any other hearing or appellate review under any provision of the Medical Staff Bylaws, except to the extent MMH reasonably determines that such removal is reportable pursuant to the State's Medical Board pursuant to the reporting requirements set forth in the State.

#### **5.4 Termination or Modification in the Event of Government Action.**

(a) If the Parties receive notice of any Government Action, the Parties shall attempt to amend this Agreement in order to comply with the Government Action.

(b) If the Parties, acting in good faith, are unable to make the amendments necessary to comply with the Government Action, or, alternatively, if either Party determines in good faith that compliance with the Government Action is impossible or infeasible, this Agreement shall terminate ten (10) calendar days after one Party notifies the other of such fact.

(c) For the purposes of this Section, “**Government Action**” shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to MMH, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would:

- (i) constitute a violation of 42 U.S.C. Section 1395nn (commonly referred to as the Stark law) if NMC or any Physician referred patients to MMH or any Affiliate of MMH;
- (ii) prohibit MMH or any Affiliate of MMH from billing for services provided to patients referred to by NMC or any Physician; or
- (iii) subject MMH or NMC, any Physician, or any Affiliate of MMH, or any of their respective employees or agents, to civil or criminal prosecution (including any excise tax penalty under Internal Revenue Code Section 4958), on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

(d) For the purposes of this Agreement, “**Affiliate**” shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with MMH.

**5.5 Termination without Cause.** Either Party may terminate this Agreement without cause, expense or penalty, effective sixty (60) calendar days after written notice of termination is given to the other Party.

**5.6 Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration of this Agreement, and (ii) those rights and obligations which expressly survive termination or expiration of this Agreement. This Section 5.5 shall survive the expiration or termination for any reason of this Agreement.

**5.7 Return of Property.** Upon any termination or expiration of this Agreement, NMC shall immediately return to MMH all of MMH’s property, including MMH’s equipment, supplies, furniture, furnishings and patient records, which is in NMC’s or any Physician’s possession or under NMC’s or any Physician’s control.

**5.8 Request for Disclosure.** If either Party receives a request or demand to disclose books, documents or records relevant to the Services provided pursuant to this Agreement for the purpose of a government audit or investigation, the noticed Party shall immediately and no later than two (2) business days after receipt of such request or demand, notify the other Party in writing of the nature and scope of such request or demand. Each Party shall make available to the other Party, upon written request, all such books, documents and records.



**5.9 Verification of Costs.** If and to the extent required by United States Code Title 42 Section 1395(x)(v)(I), until the expiration of four (4) years after the termination of this Agreement, the Parties shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or upon the request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided by NMC to MMH.

If either Party carries out its duties under this Agreement through a subcontractor, with a value or cost of Ten Thousand (\$10,000) or more over a twelve (12)-month period, with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs.

## **ARTICLE VI.** **GENERAL PROVISIONS**

**6.1 Amendment.** This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties and attached to this Agreement.

**6.2 Assignment.** This Agreement is entered into by MMH in reliance on the professional and administrative skills of NMC. NMC shall be solely responsible for providing the Services and otherwise fulfilling the terms of this Agreement, except as specifically set forth in this Agreement. Neither Party may assign any interest or obligation under this Agreement without the other Party's prior written consent. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

**6.3 Compliance with HIPAA.** NMC and Physicians shall comply with the obligations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and all rules and regulations promulgated thereunder (collectively, "HIPAA," the obligations collectively referred to herein as "**HIPAA Obligations**"). The HIPAA Obligations shall survive the expiration or termination of this Agreement for any reason.

**6.4 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**6.5 Dispute Resolution.** In the event of any dispute, controversy, claim or disagreement arising out of or related to this Agreement or the acts or omissions of the Parties

with respect to this Agreement (each, a **“Dispute”**), the Parties shall resolve such Dispute as follows:

(a) **Meet and Confer.** The Parties shall, as soon as reasonably practicable, but in no case more than ten (10) days after one Party gives written notice of a Dispute to the other Party (the **“Dispute Notice”**), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the Parties (the **“Meet and Confer”**). The obligation to conduct a Meet and Confer pursuant to this Section does not obligate either Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable Laws protecting statements, disclosures or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such Laws.

(b) **Arbitration.** If any Dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Parties shall submit such Dispute to arbitration conducted by Judicial Arbitration and Mediation Services, Inc. (**“JAMS”**), or other arbitration and/or mediation services company as agreed to by the Parties, in accordance with the following rules and procedures:

- (i) Each Party may commence arbitration by giving written notice to the other Party demanding arbitration (the **“Arbitration Notice”**). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of actions alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.
- (ii) The arbitration shall be conducted in the County in which the MMH is located and in accordance with the commercial arbitration rules and procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) to the extent such rules and procedures are not inconsistent with the provisions set forth in this Section. In the event of a conflict between any rules and/or procedures of JAMS (or other arbitration company as mutually agreed to by the Parties) and the rules and/or procedures set forth in this Section, the rules and/or procedures set forth in this Section shall govern.
- (iii) The arbitration shall be conducted before a single impartial retired member of the JAMS panel of arbitrators (or panel of arbitrators from such other arbitration company as mutually agreed to by the Parties) covering the County in which the MMH is located (the **“Panel”**). The Parties shall use their good faith efforts to agree upon a mutually acceptable arbitrator within thirty (30) days after delivery of the Arbitration Notice. If the Parties are unable to agree upon a mutually acceptable arbitrator within such time



period, then each Party shall select one arbitrator from the Panel, and those arbitrators shall select a single impartial arbitrator from the Panel to serve as arbitrator of the Dispute.

- (iv) The Parties expressly waive any right to any and all discovery in connection with the arbitration; provided, however, that each Party shall have the right to conduct no more than two (2) depositions and submit one set of interrogatories with a maximum of forty (40) questions, including subparts of such questions.
- (v) The arbitration hearing shall commence within thirty (30) days after appointment of the arbitrator. The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute, and the Evidence Code of the State shall apply to all testimony and documents submitted to the arbitrator. The arbitrator shall have no authority to amend or modify the limitation on the discovery rights of the Parties or any of the other rules and/or procedures set forth in this Section. As soon as reasonably practicable, but not later than thirty (30) days after the arbitration hearing is completed, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the Parties and their respective legal counsel.
- (vi) Any Party may apply to a court of competent jurisdiction for entry and enforcement of judgment based on the arbitration award. The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by the Arbitration Act of the State.
- (vii) The fees and costs of JAMS (or other arbitration company as mutually agreed to by the Parties) and the arbitrator, including any costs and expenses incurred by the arbitrator in connection with the arbitration, shall be borne equally by the Parties, unless otherwise agreed to by the Parties.
- (viii) Except as set forth in Section 6.5(b)(vii), each Party shall be responsible for the costs and expenses incurred by such Party in connection with the arbitration, including its own attorneys' fees and costs; provided, however, that the arbitrator shall require one Party to pay the costs and expenses of the prevailing Party, including attorneys' fees and costs and the fees and costs of experts and consultants, incurred in connection with the arbitration if the arbitrator determines that the claims and/or position of a Party were frivolous and without reasonable foundation.

(c) **Waiver of Injunctive or Similar Relief.** The Parties hereby waive the right to seek specific performance or any other form of injunctive or equitable relief or remedy arising out of any Dispute, except that such remedies may be utilized for purposes of enforcing this Section and sections governing Compliance with HIPAA of this Agreement. Except as expressly provided herein, upon any determination by a court or by an arbitrator that a Party has breached this Agreement or improperly terminated this Agreement, the other Party shall accept monetary damages, if any, as full and complete relief and remedy, to the exclusion of specific performance or any other form of injunctive or equitable relief or remedy.

(d) **Injunctive or Similar Relief.** Notwithstanding anything to the contrary in this Section, the Parties reserve the right to seek specific performance or any other form of injunctive relief or remedy in any state or federal court located within the County in which the MMH is located for purposes of enforcing this Section and sections governing Compliance with HIPAA of this Agreement. NMC hereby consents to the jurisdiction of any such court and to venue therein, waives any and all rights under the Laws of any other state to object to jurisdiction within the State, and consents to the service of process in any such action or proceeding, in addition to any other manner permitted by applicable Law, by compliance with the notices provision of this Agreement. The non-prevailing Party in any such action or proceeding shall pay to the prevailing Party reasonable fees and costs incurred in such action or proceeding, including attorneys' fees and costs and the fees and costs of experts and consultants. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction), whether or not the action or proceeding proceeds to final judgment or award.

(e) **Survival.** This Section shall survive the expiration or termination of this Agreement.

**6.6 Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

**6.7 Exhibits.** The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated by reference into this Agreement, wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

**6.8 Force Majeure.** Neither Party shall be liable for nonperformance or defective or late performance of any of its obligations under this Agreement to the extent and for such periods of time as such nonperformance, defective performance or late performance is due to reasons outside such Party's control, including acts of God, war (declared or undeclared), terrorism, action of any governmental authority, civil disturbances, riots, revolutions, vandalism, accidents, fire, floods, explosions, sabotage, nuclear incidents, lightning, weather, earthquakes, storms, sinkholes, epidemics, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, information systems interruptions or failures, breakdown of machinery or strikes (or similar nonperformance, defective performance or late performance of employees,



suppliers or subcontractors); provided, however, that in any such event, each Party shall use its good faith efforts to perform its duties and obligations under this Agreement.

**6.9 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State.

**6.10 Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

**6.11 Meaning of Certain Words.** Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns shall include the plural and vice versa. Unless otherwise specified: (i) "days" shall be considered "calendar days;" (ii) "months" shall be considered "calendar months;" and (iii) "including" means "including, without limitation" in this Agreement and its exhibits and attachments.

**6.12 No Third Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

**6.13 Notices.** All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL). Notice shall be deemed given when sent, if sent as specified in this Section, or otherwise deemed given when received. In each case, notice shall be delivered or sent to:

If to MMH, addressed to:

GEORGE L. MEE MEMORIAL HOSPITAL  
300 Canal Street  
King City, California 93930

If to NMC, addressed to:

NATIVIDAD MEDICAL CENTER  
1441 Constitution Blvd., Bldg. 300  
Salinas, California 93906  
Attention: Deputy Purchasing Agent

**6.14 Representations.** Each Party represents with respect to itself that: (a) no representation or promise not expressly contained in this Agreement has been made by any other Party or by any Parties' agents, employees, representatives or attorneys; (b) this Agreement is not being entered into on the basis of, or in reliance on, any promise or representation, expressed or implied, other than such as are set forth expressly in this Agreement; and (c) Party has been represented by legal counsel of Party's own choice or has elected not to be represented by legal counsel in this matter.

**6.15 Severability.** If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and such severance shall have no effect upon the enforceability of the remainder of this Agreement.

**6.16 Statutes and Regulations.** Any reference in this Agreement to any statute, regulation, ruling, or administrative order or decree shall include, and be a reference to any successor statute, regulation, ruling, or administrative order or decree.

**6.17 Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

*[signature page follows]*



The Parties have executed this Agreement on the date first above written, and signify their agreement with duly authorized signatures.

**MMH**

SOUTHERN MONTEREY COUNTY  
MEMORIAL HOSPITAL, a California  
nonprofit corporation, d.b.a. GEORGE L.  
MEE MEMORIAL HOSPITAL

By:   
Its CEO

Date: 4/28/17, 20\_\_

**NMC**

NATIVIDAD MEDICAL CENTER

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

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

APPROVED AS TO LEGAL PROVISIONS:

\_\_\_\_\_  
Stacy Saetta, Deputy County Counsel

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

APPROVED AS TO FISCAL PROVISIONS:

\_\_\_\_\_  
Deputy Auditor/Controller

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

**Exhibit 1.1(a)**

**PHYSICIAN SERVICES**

NMC, through the services of Physicians, shall:

In the Specialty of obstetrics and gynecology:

Provide patient care services to clinic patients, initially one (1) to two (2) eight (8) hour days per week. The Physician Services shall be provided to patients at MMH's locations at:

The Women's Center  
400 Canal Street Suite C  
King City, CA 93930

King City Clinic  
210 Canal St.  
King City, CA 93930

Greenfield Clinic  
467 El Camino Real  
Greenfield, CA 93927



**Exhibit 1.1(b)**

**CHIEF MEDICAL OFFICER SERVICES**

NMC shall cause its employee, Debi H. Siljander M.D., to perform the role of Chief Medical Officer who shall provide the following services:

1. Oversee and guide implementation of Medical Staff clinical initiatives;
2. Oversee coordination of clinical care and patient safety improvement;
3. Work with MMH's Chief Information Officer to support clinical informatics implementation
4. Interface with MMH's Board of Trustees, administration, medical staff, physicians, allied health staff, and case management staff;
5. Define performance objectives and metrics for Medical Staff and any departments reporting to Chief Medical Officer;
6. Collaborate with other departments to create and improve systems for organizational goals and patient care delivery;
7. Support change strategy that will positively impact the culture to make it patient and family focused; and
8. Review and approve monthly activity reports for service chiefs prior to payment of any applicable stipends.

NMC shall cause the Chief Medical Officer to provide the Chief Medical Officer Services on site one (1) Day per week or otherwise provided and supported by time entries substantially in the form of the Medical Director Log attached hereto as Attachment 1.1 b. For the purposes of this Agreement, a "Day" shall mean a minimum of eight (8) hours.

**Deliverable**

Within sixty (60) days from the date of Services, or as soon as possible given varying schedules, the Chief Medical Officer shall meet with each regular member of the Medical Staff to understand current issues, what is going well, what can be improved and provide written recommendations to MMH's Chief Executive Officer. The Chief Medical Officer Services shall be provided at the MMH's location at:

Mee Memorial Hospital  
300 Canal Street  
King City, CA 93930

**Exhibit 1.6**

**PHYSICIANS/PROVIDERS**

<b>Physician</b>	<b>NPI Number</b>
Peter J. Chandler, M.D.	1477594406
Michelle Liamidi, M.D.	1861661258
Diane E. Sanchez, M.D.	1144263021



## **Exhibit 2.1**

### **COMPENSATION**

1. **Physician Services.** MMH shall pay to NMC the amount of Two Hundred Twenty-One Dollars (\$221) per hour for those Physician Services in the Specialty provided to Patients rendered by NMC under this Agreement; provided, however, that NMC is in compliance with the terms and conditions of this Agreement.
2. **Chief Medical Officer Services.** MMH shall pay to NMC the amount of One Thousand Eight Hundred Seventeen Dollars (\$1,817) per Day for those Chief Medical Officer Services provided under this Agreement, subject to confirmation through a written service log. Notwithstanding the foregoing or the time entered on the service log, NMC shall limit the Chief Medical Officers to one Day per week, and time spent in excess thereof shall not be paid by MMH to NMC unless otherwise agreed in writing by MMH.
3. **Timing.** MMH shall pay the compensation due for Services performed by NMC after NMC's submission of the monthly invoice of preceding month's activity and time report in accordance with this Agreement.