File ID A 13-128 No. 36

Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-11740

Upon motion of Supervisor Salinas, seconded by Supervisor Potter and carried by those members present, the Board of Supervisors hereby:

a. Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute the Second Amendment to Professional Services Agreement with Joel Weinstein MD to provide general services at NMC extending the term to June 30, 2015 and adding $807,200 for a revised total Agreement amount not to exceed $1,400,000 in the aggregate (for the period July 1, 2011 to June 30, 2015).
b. Authorized the Purchasing Manager for NMC to execute to sign up to three (3) amendments to this agreement where the total amendments do not exceed 10% of the original contract amount, and do not significantly change the scope of work.

PASSED AND ADOPTED on this 25th day of June 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas and Potter
NOES: None
ABSENT: Supervisor Parker

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on June 25, 2013.

Dated: June 27, 2013
File Number: A 13-128

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy

SECOND AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT (the **"Amendment"**) is made and entered into as of June 1, 2013, by and between COUNTY OF MONTEREY (**"County"**) on behalf of NATIVIDAD MEDICAL CENTER (**"Hospital"**), and JOEL WEINSTEIN M.D., an individual (**"Contractor"**) with respect to the following:

RECITALS

A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California under its acute care license.

B. Contractor and Hospital have entered into that certain Professional Services Agreement dated July 1, 2011 as amended on July 1, 2012 (collectively the **"Agreement"**) pursuant to which Contractor provides Emergency Department Call Coverage.

C. Hospital and Contractor desire to amend the Agreement to include Clinic and Non-Clinic Services to the Agreement and to increase the maximum liability by $807,200 for the additional twenty four (24) months of the Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Hospital and Contractor agree as follows:

1. **Defined Terms**. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. **Exhibit 1.1(a)**. Exhibit 1.1(a) to the Agreement is hereby amended and restated to read in its entirety as attached hereto as **Exhibit 1.1(a)**.

3. **Section 2.1**. Section 2.1 to the Agreement is hereby amended and restated to read in its entirety as follows:

> **"2.1 Compensation.** Hospital shall pay to Contractor the amount determined in accordance with **Exhibit 2.1** (the **"Compensation"**), upon the terms and conditions set forth therein. The total amount payable by Hospital to Contractor under this Agreement shall not exceed One Million Four Hundred Thousand Dollars ($1,400,000) for the full term of the agreement."

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

5. **Section 5.1**. Section 5.1 to the Agreement is hereby amended and restated to read in its entirety as follows:

"**5.1** **Term.** This Agreement shall become effective on July 1, 2011 (the "**Effective Date**"), and shall continue until June 30, 2015 (the "**Expiration Date**"), subject to the termination provisions of this Agreement."

6. **Section 6.3**. Section 6.3 to the Agreement is hereby amended and restated to read in its entirety as follows:

"**6.3** Section intentionally left blank."

7. **Exhibit 6.4**. Exhibit 6.4 to the Agreement is hereby replaced in its entirety as attached hereto as **Exhibit 6.4**.

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

9. **Continuing Effect of Agreement**. Except as herein provided, all of the terms and conditions of the Agreement remain in full force and effect from the Effective Date of the Agreement.

10. **Reference**. After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

[signature page follows]

IN WITNESS WHEREOF, Hospital and Contractor have executed this Amendment as of the day and year first written above.

CONTRACTOR

JOEL WEINSTEIN, M.D., an individual

Date: 5/30, 2013

Tax I.D. No._____

NATIVIDAD MEDICAL CENTER

_____
Purchase Order Number

By: _____
Contracts /Purchasing Manager

Date: 6-28, 2013

By: _____
Natividad Medical Center Representative

Date: 5/31, 2013

APPROVED AS TO LEGAL FORM:
CHARLES J. McKEE, County Counsel

_____
Stacy Saetta, Deputy County Counsel

Date: 6/5, 2013

Reviewed as to fiscal provisions

_____
Auditor-Controller
County of Monterey 6-6-13

Exhibit 2.1

COMPENSATION

1. **Coverage Services.** Hospital shall pay to Contractor an amount equal to One Thousand Five Hundred Dollars ($1,500) per Coverage Shift of Coverage Services, inclusive of follow-up and inpatient rounding as necessary during the twenty (24) hour period, provided pursuant to this Agreement (the **"Coverage Services Compensation"**).

2. **Clinic Services.** Hospital shall pay to Contractor for Professional Services provided by Contractor to Clinic patients (**"Clinic Services"**) an amount equal to Seven Hundred Dollars ($700) per Half-Day Clinic (the **"Clinic Compensation"**). For purposes of this Agreement, a **"Half-Day Clinic"** shall mean a minimum of four (4) hours per day in the Clinic providing Clinic Services. Contractor shall provide a minimum of one (1) Half Day Clinic per week for the term of the Agreement.

3. **Timing.** Hospital shall pay the Coverage Services Compensation and Clinic Compensation after Contractor's submission of the monthly invoice of preceding month's activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is "30 days after receipt of the certified invoice in the Auditor-Controller's Office".

4. **Travel Reimbursement**. Hospital shall reimburse Contractor for mileage associated with Coverage and Clinic Services at a rate not to exceed the current IRS approved rate.

5. **Non-Clinic Services.** Hospital shall pay to Contractor for Professional Services provided by Contractor to patients who are not Coverage Services Patients; Clinic Patients or Uninsured/MIA Patients (as defined below) at NMC (**"Non-Clinic Services"**) an amount equal to ninety-five percent (95%) of the actual reimbursement received by Hospital for such services (the **"Non-Clinic Compensation"**). Hospital shall calculate the Non-Clinic Compensation on a monthly basis and be subject to bi-annual reconciliation in accordance with this Section 4.

(a) **Monthly Advances**. Hospital shall advance to Contractor, each month during the term of this Agreement, an amount equal the estimated amount of the Non-Clinic Compensation payable to Contractor, as determined in good faith by the Hospital (the **"Advance(s)"**).

(b) **Monthly Reconciliation.** Within thirty (30) days after the end of each month during the term of the Agreement (each, a **"Compensation Period"**), Hospital shall compare the aggregate Advances during such Compensation Period to the aggregate Non-Clinic Compensation for such Compensation Period. In the event the aggregate Advances during such Compensation Period exceed the aggregate Non-Clinic Compensation for such Compensation Period, Hospital shall withhold from each of the next Advance(s) otherwise payable to

Contractor an amount equal to the difference between the aggregate Advances during such Compensation Period and the aggregate Non-Clinic Compensation for such Compensation Period. In the event the aggregate Non-Clinic Compensation during any such Compensation Period exceeds the aggregate Advances during such Compensation Period, Hospital shall pay to Contractor, in addition to the next Advance payable to Contractor, an amount equal to the difference between the aggregate Non-Clinic Compensation for such Compensation Period and the aggregate Advances during such Compensation Period. Hospital shall conduct the first reconciliation pursuant to this Section 4(c) ninety (90) days after the Effective Date.

(c) **Non-Clinic Compensation Reports**. Hospital shall provide Contractor with a monthly report (each, a **"Report"**) that demonstrates the calculation of the Non-Clinic Compensation payable under this Agreement. If Contractor disagrees with any aspect of any such Report, Contractor shall, thirty (30) days after receipt of such Report, prepare and deliver to Hospital a written statement setting forth in reasonable detail Contractor's objections to the times stated in the Report. If Hospital does not receive such a written statement within such thirty (30) day period, Contractor shall be deemed to have agreed with each and every aspect of such Report.

6. **Non-Clinic Uninsured/MIA Services**. Hospital shall pay to Contractor an amount equal to then-current (as of the date of service), hospital-based, Medicare Physician Fee Schedule for the service or procedure (the **"Uninsured/MIA Compensation"**). The Uninsured/MIA Compensation shall be Contractor's sole and exclusive compensation for Uninsured/MIA Services (defined below) provided by Contractor pursuant to this Agreement and Contractor shall not seek further compensation from any other source. Contractor shall be paid on the CPT codes submitted and verified by Hospital professional billing office coders.

(a) For purposes of this Agreement, **"Uninsured/MIA Services"** shall mean medically necessary professional medical services that are rendered to patients at Hospital, other than Clinic patients, who: (i) have been identified by Hospital as patients who are designated as Medically Indigent Adults (**"MIA"**); or (ii) are not insured for medical care by any third-party payor (collectively, the **"Uninsured/MIA Patients"**).

(b) Procedures with the following modifiers will be reimbursed at the Medicare allowable rate using the current established Medicare guidelines for reimbursement when using the modifier:

(i) Procedures that are or could be billed with the modifier -22 (unusual procedural services) will not be considered for additional reimbursement to be paid to Contractor; rather the procedure will be reimbursed at the Medicare allowable and if other modifiers are used, the procedure will be paid at the current established Medicare reimbursement rate applying Medicare guidelines for those modifiers.

(ii) If modifier -52 (reduced services) and/or -53 (discontinued services) is/are needed for billing, the percentage of the Medicare allowable to be paid to Contractor will be determined by the Hospital physician billing manager and the Hospital Chief Medical Officer (CMO).

(iii) Unless a code is specifically designated as an add-on code, the Medicare rules for multiple procedure guidelines shall apply (*i.e.*, the main procedure will be paid at one hundred percent (100%) and subsequent procedures will be paid at fifty percent (50%), consistent with Medicare reimbursement guidelines for modifiers.

(c) The Parties intend that Hospital will pay for Uninsured/MIA Services only if the Uninsured/MIA Patient has no means of paying for those services (*e.g.*, independent wealth, third-party payor, etc.). If it is later determined that an Uninsured/MIA Patient or a third-party payor will pay for the Uninsured/MIA Services the following shall apply:

(i) Hospital shall have the sole and exclusive right to bill, collect and own any and all fees that might be collected for Uninsured/MIA Services provided by Contractor pursuant to this Agreement. Contractor hereby grants Hospital the right to retain any and all collections received by Hospital for Contractor's Uninsured/MIA Services. In the event that Contractor receives any payment from third-party payors for Uninsured/MIA Services that Contractor furnishes pursuant to this Agreement, Contractor shall promptly turn over such payments to Hospital. Contractor shall designate Hospital as Contractor's attorney-in-fact for billing for Uninsured/MIA Services provided by Contractor pursuant to this Agreement.

(ii) For any procedure without an established RVU value and/or not listed procedure (*e.g.*, x stop), Hospital will reimburse Contractor based upon Hospital's reimbursement from a payor if Hospital has received payment from a payor. In the event no payment is received from a payor, no reimbursement will be made to Contractor.

(iii) The Parties agree to resolve any and all billing, collection and reimbursement disputes as expeditiously as possible, up to and including the dispute resolution procedure outlined in this Section 5. If a claim is disputed by a payor, Contractor will make every effort to assist the Hospital billing manager to resolve the claim, If the claim is denied by the payor, and no payment is received within twelve (12) months of the service date, the amount of the disputed claim will be adjusted (recouped) from future payments due to Contractor after the twelve (12) month period.

(iv) Hospital will adjust future invoices if Hospital is unable to recover payment for surgery/treatment due to a procedure being classified by a payor as non payable (*e.g.*, it is considered experimental, represents non-covered services, is categorized as medically unnecessary, or is otherwise excluded from coverage), or if Contractor is found to have breached a necessary reimbursement procedure (*e.g.*, scheduling a procedure from its office and not obtaining the authorization for the procedure to be performed at Hospital). No payment will be allowed to Contractor in these circumstances. At its discretion and at its sole cost and expense, Contractor may appeal to the payor any determination that a procedure is non-payable.

7. **Encounter Submissions.** For Non-Clinic Services and Uninsured/MIA Services, Hospital shall pay to Contractor the Monthly Advances and Uninsured/MIA Compensation, respectively, so long as Contractor submits information relating to its patient encounters as follows:

(i) Contractor will complete an encounter charge form at the time a service is provided, or within twenty-four (24) hours of that service.

(ii) After Contractor completes an encounter charge form, the Contractor will keep one copy and deposit a copy of the encounter charge form in a Hospital charge collection box.

(iii) Hospital physician billing staff will pick up encounter charge forms daily (Monday – Friday) from the Hospital charge collection box.

(iv) Hospital will check both the diagnosis and the documentation to verify coding on encounter forms for one hundred percent (100%) of encounters. This review will require Contractor to dictate patient visit notes into the Hospital dictation system within twenty-four (24) hours of completion of an encounter so that documentation available is for review of the encounter charge form. Any encounter charge form for which there is not an accompanying dictated patient visit note shall not be reviewed by Hospital until the patient visit note is submitted to the Hospital Physician Billing Manager. The sole exception to the dictation requirement shall be when Contractor is using CPT code 99024 for post operative visits and is not expecting payment for the visit, in which case the Contractor physician can hand write the visit note.

(v) Hospital will sign off on "clean" coded charges and forward for data entry.

(vi) Hospital's Physician Billing Manager will notify of disputed coding within five (5) business days of the daily pick-up of the encounter charge form, and will work with Contractor to resolve the dispute so that the claim may be filed within the filing deadlines established by the applicable payor. Hospital's Physician Billing Manager will also notify Contractor of any encounter charge forms for which there is no correlating dictated note within two (2) business days of the daily pick-up of the encounter charge form.

(vii) Contractor will return corrected charges within five (5) business days of receipt from Hospital's Physician Billing Manger.

(viii) For undisputed charges, charges will be entered by Hospital within five (5) business days. Hospital will make every effort during the last week of the month to get as many charges as possible entered into the system for that month's invoice. Contractor will be notified if an issue arises which prevents timely entry of charges. Disputed charges will be entered within five (5) business days of the final date of dispute resolution between Contractor and Hospital, and paid only after entry of the charges following resolution of the dispute.

(ix) In the event of a dispute regarding the appropriateness of a code or modifier, or similar technical billing issue, which cannot be resolved informally by the parties, the parties shall jointly designate an independent third party billing expert to review and make a recommendation regarding the issue. The cost of such expert shall be shared equally by the parties, Hospital shall give such recommendation great weight but, as the billing entity, shall have ultimate discretion in resolving such issue.

(x) Charges entered through the last day of the month will be the charges considered for payment for that month's invoice. Charges appearing on a given month's invoice may be for dates of service provided in a different month.

(xi) Hospital's Physician Services staff will generate the encounter report necessary to create the invoice. The encounter report will be based on the Hospital information system (currently MediTech) generated date/stamp for all charges entered by the Hospital physician billing staff as of the last day of the prior month, in accordance with Section 6(x) of this Exhibit.

(xii) The Hospital Physician Services staff will create and send the following documents to the Contractor on or before the twelfth (12^{th}) day of the month: (i) an "Encounter Summary Sheet" detailing worked performed by Contractor for the previous month, and (ii) a single invoice for all the work performed by Contractor during that month.

(xiii) Within three (3) business days of receiving it, Contractor will review the encounter report and invoice, discuss any disputes with the Hospital Physician Billing Manager and/or the Hospital Physician Services, accept and sign off on the invoice and return all documents to the Hospital Physician Services.

(xiv) Upon receipt of the accepted and signed invoice, the Hospital Physician Services will review the encounter charge forms and invoices, approve them, and initiate routing process to be completed within fifteen (15) days.

(xv) Once Contractor approves the monthly invoice and submits it to Hospital, Hospital will have forty-five (45) days to pay the invoice, resulting in a maximum of fifteen (15) days from submission of the invoice by Contractor to Hospital for Hospital to submit a certified invoice to the County Auditor Controller's office for payment; the Auditor Controller shall issue payment within thirty (30) days upon receipt in the Auditor Controller's Office.

8. **Excluded Patients**.

(a) This Agreement, including the compensation provisions set forth in this Exhibit 2.1, shall apply only to Professional Services provided by Contractor to patients who present to the Hospital or Clinic as Hospital patients (inpatient, outpatient and/or ED patient). This Agreement shall not apply to patients referred to the Hospital or Clinic from any Contractor office or private practice (**"Excluded Patients"**).

(b) Contractor shall be solely responsible for billing and collecting the professional component with respect to all Professional Services provided to Excluded Patients at Hospital or Clinic (**"Excluded Services"**). Contractor shall bill Excluded Patients and third party payors for the professional component with respect to the Excluded Services at its own expense and under its own provider number, except where direct patient billing is otherwise prohibited. In the event that Contractor receives any payment for Excluded Services from County, Contractor shall promptly return such payment to County.

(c) Contractor shall identify Excluded Patients by writing "Excluded Patient" on the encounter charge form at the time the Excluded Service is provided, or within twenty-four (24) hours of that service, and provide a copy to Hospital.

(d) Contractor shall, to the extent permitted by law and permitted by any third party payor agreements with Hospital or Clinic, and permitted by the terms of this Agreement, look exclusively to Excluded Patients, or those third party payors responsible for the payment of the professional component, as the sole source of its compensation for the Excluded Services provided at Hospital. In no case shall Hospital pay any amount to Contractor with respect to the Excluded Services.

(e) Contractor shall follow government program regulations on patient billing for patients covered by Medicare, Medicaid and other such programs. Contractor shall cease any billing practices which violates these regulations, and shall indemnify County for all damages, costs, expenses, and losses incurred by County, including but not limited to attorneys' fees, as a result of any violation.

(f) County shall have the right to disapprove the use by Contractor of any collection agency which engages in conduct which results in the unreasonable annoyance or harassment of patients. Contractor shall either cure this problem or discharge the collection agency within thirty days following written notice of disapproval by County. Contractor shall, if this problem occurs a second time, discharge the collection agency within thirty (30) days following written notice of disapproval by County."

Exhibit 6.4

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (**"Exhibit"**) supplements and is made a part of this Agreement by and between Hospital (**"Covered Entity"** or **"CE"**) and Contractor (**"Business Associate"** or **"BA"**).

(A) Unless otherwise specified in this Exhibit, all capitalized terms used in this Exhibit shall have the meanings established for purposes of HIPAA or HITECH, as applicable. Specific statutory or regulatory citations used in this Exhibit shall mean such citations as amended and in effect from time to time.

1. **"Electronic Protected Health Information"** shall mean Protected Health Information that is transmitted or maintained in electronic media.

2. **"HIPAA"** shall mean the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d through 1320d-8, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.

3. **"HITECH"** shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.

4. **"Protected Health Information"** shall mean the term as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, the CE by BA pursuant to performance of the Services.

5. **"Privacy Rule"** shall mean the federal privacy regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and E).

6. **"Security Rule"** shall mean the federal security regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and C).

7. **"Services"** shall mean the Professional Services, the Coverage Services, the Teaching Services, and the Additional Services, collectively, as defined in the Agreement.

8. **"Unsecured Protected Health Information"** shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the regulations or guidance issued pursuant to 42 U.S.C. § 17932(h)(2).

(B) With regard to BA's use and disclosure of Protected Health Information:

1. BA may use and disclose Protected Health Information as reasonably required or contemplated in connection with the performance of the Services, excluding the use or further disclosure of Protected Health Information in a manner that would violate the requirements of the Privacy Rule, if done by the CE. Notwithstanding the foregoing, BA may use and disclose Protected Health Information for the proper management and administration of BA as provided in 45 C.F.R. § 164.504(e)(4).

2. BA will not use or further disclose Protected Health Information other than as permitted or required by this Exhibit, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or as otherwise Required by Law.

3. BA will implement and use appropriate administrative, physical, and technical safeguards to (1) prevent use or disclosure of Protected Health Information other than as permitted or required by this Exhibit; (2) reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that BA creates, receives, maintains, or transmits on behalf of the CE; and (3) comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.

4. BA will, without unreasonable delay, report to the CE (1) any use or disclosure of Protected Health Information not provided for by this Exhibit of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (2) any Security Incident affecting Electronic Protected Health Information of which BA becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).

5. BA will, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, notify the CE of any Breach of Unsecured Protected Health Information. The notification shall include, to the extent possible (and subsequently as the information becomes available), the identification of all individuals whose Unsecured Protected Health Information is reasonably believed by BA to have been Breached along with any other available information that is required to be included in the notification to the Individual, the Secretary, and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164 (Subparts A, D, and E).

6. BA will ensure that any subcontractors or agents to whom BA provides Protected Health Information agree to the same restrictions and conditions that apply to BA with respect to such Protected Health Information. To the extent that BA provides Electronic Protected Health Information to a subcontractor or agent, it will require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information consistent with the requirements of this Exhibit.

7. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information in accordance with 45 C.F.R. § 164.524.

8. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will provide an electronic copy of such Protected Health Information in accordance with 42 U.S.C. § 17935(e).

9. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information for amendment and incorporate any amendments to such information as directed by the CE, all in accordance with 45 C.F.R. § 164.526.

10. BA will document and make available the information required to provide an accounting of disclosures of Protected Health Information, in accordance with 45 C.F.R. § 164.528.

11. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will make an accounting of disclosures of such Protected Health Information in accordance with the requirements for accounting of disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(c).

12. BA will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining the CE's compliance with the Privacy Rule.

13. BA will limit any request, use, or disclosure by BA of Protected Health Information, to the extent practicable, to the Limited Data Set of such Protected Health Information (as defined in 45 C.F.R. § 164.514(e)(2)), or, if the request, use, or disclosure by BA of Protected Health Information, not in a Limited Data Set, is necessary for BA's performance of the Services, BA will limit the amount of such Protected Health Information requested, used, or disclosed by BA to the minimum necessary to accomplish the intended purpose of such request, use, or disclosure, respectively as set forth by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)).

14. BA will not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by 42 U.S.C. § 17935(d).

15. BA will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).

16. BA will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).

(C) In addition to any other obligation set forth in this Agreement, including this Exhibit, the CE agrees that it will: (1) not make any disclosure of Protected Health Information to BA if such disclosure would violate HIPAA, HITECH, or any applicable federal or state law or regulation; (2) not request BA to use or make any disclosure of Protected Health Information in any manner that would not be permissible under HIPAA, HITECH, or any applicable federal or state law or regulation if such use or disclosure were done by the CE; and (3) limit any disclosure of Protected Health Information to BA, to the extent practicable, to the Limited Data Set of such Protected Health Information, or, if the disclosure of Protected Health Information that is not in a Limited Data Set is necessary for BA's performance of the Services, to limit the disclosure of such Protected Health Information to the minimum necessary to accomplish the intended purpose of such disclosure, as set forth by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)).

(D) If either the CE or BA knows of either a violation of a material term of this Exhibit by the other party or a pattern of activity or practice of the other party that constitutes a material breach or violation of this Exhibit, the non-breaching party will provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. In the event that the breaching party does not cure the breach or end the violation on or before thirty (30) days after receipt of the written notice, the non-breaching party may do the following:

(i) if feasible, terminate this Agreement; or

(ii) if termination of this Agreement is infeasible, report the issue to the Secretary.

(E) BA will, at termination of this Agreement, if feasible, return or destroy all Protected Health Information that BA still maintains in any form and retain no copies of Protected Health Information or, if such return or destruction is not feasible (such as in the event that the retention of Protected Health Information is required for archival purposes to evidence the Services), BA may retain such Protected Health Information and shall thereupon extend the protections of this Exhibit to such Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible.

(F) Any other provision of this Agreement that is directly contradictory to one or more terms of this Exhibit shall be superseded by the terms of this Exhibit to the extent and only to the extent of the contradiction and only for the purpose of the CE's and BA's compliance with HIPAA and HITECH. The terms of this Exhibit, to the extent they are unclear, shall be construed to allow for compliance by the CE and BA with HIPAA and HITECH.

(G) **Indemnification.** Each party, CE and BA, will indemnify, hold harmless and defend the other party to this Exhibit from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, active or passive negligence, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Exhibit; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the party's performance under this Exhibit.

In addition, the CE agrees to compensate BA for any time and expenses that BA may incur in responding to requests for documents or information under HIPAA, HITECH, or any regulations promulgated under HIPAA or HITECH.

Nothing contained in this Exhibit is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third-party beneficiary under or by reason of this Exhibit.

Hospital

Signature: _____

Date: 5/31/13

Contractor

Signature: _____

Date: 8/30/2013