

**AMENDMENT NO. 1  
TO MASTER AGREEMENT  
BETWEEN NET HEALTH SYSTEMS, INC. AND  
NATIVIDAD MEDICAL CENTER  
FOR  
REHABILITATION DOCUMENTATION SOFTWARE AND LICENSES (REDOC)**

This Amendment No. 1 to the Master Agreement ("Agreement") which was effective on August 31, 2016 is entered into by and between the **County of Monterey (hereinafter "COUNTY")**, on behalf of **Natividad Medical Center (hereinafter "CUSTOMER")**, and **Net Health Systems, Inc. (hereinafter "NET HEALTH")**. Collectively, COUNTY, CUSTOMER and NET HEALTH are referred to as the "Parties", with respect to the following:

**RECITALS**

**WHEREAS**, CUSTOMER and NET HEALTH entered into an Agreement with respect to one or more Purchase Schedule(s) for a subscription to use rehabilitation software (ReDoc) and licenses, with a Purchase Schedule Initial Term commencing on August 31, 2016 and continuing for a period of one (1) year following CUSTOMER's acceptance of the Licensed Software with a total Agreement amount not to exceed \$55,950;

**WHEREAS**, CUSTOMER accepted the Licensed Software on January 30, 2017 and therefore, the Purchase Schedule Initial Term will expire on January 29, 2018;

**WHEREAS**, the Parties wish to amend the Agreement to add a Speech Language Pathology (SLP) software license as per page 1 of the Purchase Schedule marked as "Exhibit A-1 page 1" attached hereto this Amendment No. 1 commencing on August 31, 2017 through January 29, 2018 with a fee of \$1,025; and

**WHEREAS**, the Parties further wish to amend the Agreement to extend the Purchase Schedule Initial Term for an additional one (1) year period commencing on January 30, 2018 through January 29, 2019 for a revised full Agreement Term August 31, 2016 through January 29, 2019 to allow CUSTOMER continued use of the ReDoc and SLP software and licenses as stated in the Agreement to be billed going forward as per page 2 of the Purchase Schedule marked as "Exhibit A-1 page 2" attached hereto this Amendment No. 1 with an Annual Fee total of \$42,660 for a revised total Agreement amount not to exceed \$99,635 and to include an updated Business Associates Agreement as an attachment to the Agreement.

**AGREEMENT**

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

1. As of the Amendment No.1 Effective Date, CUSTOMER and NET HEALTH agree that the Agreement is amended to add the Purchase Schedule marked as "Exhibit A-1 page 1" attached hereto which adds a Speech Language Pathology (SLP) software license to CUSTOMER's use of the Licensed Software. CUSTOMER's payment of Fees for the new SLP software license are payable in accordance with Exhibit A-1 page 1.
2. Effective January 30, 2018, the Purchase Schedule marked as "Exhibit A-1 page 2" attached hereto shall govern CUSTOMER's use of the Licensed Software (along with the terms and conditions of the Agreement) for a Term commencing on January 30, 2018 and continuing through January 29, 2019.

3. "EXHIBIT B (Business Associate Agreement)" attached to the Agreement shall be replaced with the revised "EXHIBIT B (Business Associate Agreement)" attached hereto this Amendment No. 1.
4. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 1 and shall continue in full force and effect as set forth in the Agreement.
5. A copy of this Amendment No. 1 shall be attached to the Agreement.
6. This Amendment No. 1 shall be effective August 31, 2017 (the "Amendment No. 1 Effective Date").

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 1 on the basis set forth in this document and have executed this Amendment No. 1 on the day and year set forth herein.

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Gary R. Gray, DO, CEO

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

**APPROVED AS TO LEGAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy County Counsel

\_\_\_\_\_  
Name

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

**APPROVED AS TO FISCAL PROVISIONS**

By: \_\_\_\_\_  
Monterey County Deputy Auditor-Controller

\_\_\_\_\_  
Name

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

**CONTRACTOR**

**NET HEALTH SYSTEMS, INC.**

CONTRACTOR's Business Name

*\*Signature instructions below*

By: \_\_\_\_\_  
(Signature of: Chair, President, or Vice-President)

PATRICK L. COLLETTI - PRESIDENT  
Name and Title

Date: AUGUST 17, 2017

By: \_\_\_\_\_  
(Signature of: Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

CHRISTOPHER F. HAYES  
Name and Title

Date: AUGUST 17, 2017

**\*Signature Instructions:**

If CONTRACTOR is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (2 signatures required).

If CONTRACTOR is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (2 signatures required).

If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (1 signature required).

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 1 on the basis set forth in this document and have executed this Amendment No. 1 on the day and year set forth herein.

**NATIVIDAD MEDICAL CENTER**

By: \_\_\_\_\_  
Gary R. Gray, DO, CEO

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

**APPROVED AS TO LEGAL PROVISIONS**

By: AB  
Monterey County Deputy County Counsel  
AB Breerton  
Name

Date: Aug 17, 2017

**APPROVED AS TO FISCAL PROVISIONS**

By: [Signature]  
Monterey County Deputy Auditor-Controller  
Gary K. Gibbons  
Name

Date: 8-17-17

**CONTRACTOR**

**NET HEALTH SYSTEMS, INC.**

CONTRACTOR's Business Name

*\*Signature instructions below*

By: \_\_\_\_\_  
(Signature of: Chair, President, or Vice-President)

\_\_\_\_\_  
Name and Title

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

By: \_\_\_\_\_  
(Signature of: Secretary, Asst. Secretary, CFO,  
Treasurer, or Asst. Treasurer)

\_\_\_\_\_  
Name and Title

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

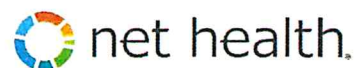
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If CONTRACTOR is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (2 signatures required).

If CONTRACTOR is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (2 signatures required).

If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (1 signature required).

**EXHIBIT A-1 Page 1  
TO  
Master Agreement**



**PURCHASE SCHEDULE**

This PURCHASE SCHEDULE ("Purchase Schedule") is entered into and made effective this 31st day of August 2017 ("Purchase Schedule Effective Date") by and between Net Health Systems, Inc. ("Net Health") and The County of Monterey on behalf of Natividad Medical Center ("CUSTOMER") in connection with and subject to the Purchase Schedule Agreement with an effective date of August 31, 2016 executed between the parties (the "Agreement").

Annual Subscription							
Concurrent with PS dated 8/31/2016							
Item Code	Description - Authorized Site/Providers	Qty	One-Time Fees / Unit	Total One-Time Fees	Annual Fees / Unit	Total Annual Fees	
ReDoc	1 SLP Full-Time License 5 Month Term: 8/31/2017 - 1/29/2018	1	\$0	\$0	\$1,025	\$1,025	
<b>TOTAL FEES ON PURCHASE SCHEDULE</b>				<b>\$0</b>		<b>\$1,025</b>	
Type of Users	PT	PTA	OT	COTA	SLP	SLPA	Total
Clinical Users (Greater than or equal to 40 hrs/month)					1		1
Clinical Users (Less than 40 hrs/month)							0
Student Users							0
<b>Total Clinical Subscription Users</b>							<b>1</b>
<b>Clerical/Administrative Users</b>							<b>0</b>
<b>Total Users</b>							<b>1</b>
FOTO # of Locations for OM							n/a
Inphonite Credits per Month							0

**Purchase Schedule Initial Term.** The Purchase Schedule Initial Term shall commence upon the Purchase Schedule Effective Date and shall continue through January 29, 2018.

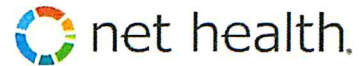
**Payment Terms.** Annual Fees are payable by CUSTOMER to Net Health upon execution of this Purchase Schedule. Expenses are billed separately and payable in accordance with the Agreement. Net Health accepts payment by check, credit card and ACH. Additional fees will apply to payments made by credit card.

**CUSTOMER IS RESPONSIBLE FOR PAYMENT OF ALL FEES SET FORTH ON THIS PURCHASE SCHEDULE.**

IN WITNESS WHEREOF, CUSTOMER and Net Health have executed this Purchase Schedule to be effective as of the Purchase Schedule Effective Date.



**EXHIBIT A-1 Page 2**  
**TO**  
**Master Agreement**



**PURCHASE SCHEDULE**

This PURCHASE SCHEDULE ("Purchase Schedule") is entered into and made effective this 30th day of January, 2018 ("Purchase Schedule Effective Date") by and between Net Health Systems, Inc. ("Net Health") and The County of Monterey on behalf of Natividad Medical Center ("CUSTOMER") in connection with and subject to the Master Agreement with an effective date of August 31, 2016 executed between the parties (the "Agreement").

ANNUAL SUBSCRIPTION								
INITIAL TERM (NUMBER OF YEARS)				1				
Item Code	Description - Authorized Site/Providers			Qty	One-Time Fees / Unit	Total One-Time Fees	Annual Fees / Unit	Total Annual Fees
ReDoc	ReDoc Enterprise Subscription Outpatient - Version 7 Interfaced to Meditech (ADT/DFT/Results)			1	\$0	\$0	\$36,600	\$36,600
ReDoc	1 Full Time SLP License (Term: 1/30/2018 - 1/29/2019)			1	\$0	\$0	\$2,460	\$2,460
	Inphonite Appointment Reminder System - 1500 Credits			1	\$0	\$0	\$3,600	\$3,600
TOTAL FEES ON PURCHASE SCHEDULE						\$0		\$42,660
Type of Users		PT	PTA	OT	COTA	SLP	SLPA	Total
Clinical Users (Greater than or equal to 40 hrs/month)		6	1	3	0	4	0	14
Clinical Users (Less than 40 hrs/month)		3	0	1	0	1	0	5
Student Users		0	0	0	0	0	0	0
Total Clinical Subscription Users								19
Clerical/Administrative Users		3						0
Total Users								22
FOTO # of Locations for OM								n/a
Inphonite Credits per Month								1500

**Purchase Schedule Initial Term.** The Purchase Schedule Initial Term shall commence upon the Purchase Schedule Effective Date and shall continue for the number of years set forth above.

**Payment Terms.** Annual Fees are payable by CUSTOMER to Net Health on or before the Purchase Schedule Effective Date. Net Health will invoice CUSTOMER prior to the Purchase Schedule Effective Date and CUSTOMER shall promptly submit such invoice to the office of the Auditor-Controller for the County of Monterey and payments shall be due no later than thirty days thereafter. Expenses are billed separately and payable in accordance with the Agreement. Net Health accepts payment by check, credit card and ACH. Additional fees will apply to payments made by credit card.

**CUSTOMER IS RESPONSIBLE FOR PAYMENT OF ALL FEES SET FORTH ON THIS PURCHASE SCHEDULE.**

IN WITNESS WHEREOF, CUSTOMER and Net Health have executed this Purchase Schedule to be effective as of the Purchase Schedule Effective Date.

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") effective August, 2017 ("Effective Date"), is entered into by and among between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and Net Health Systems, Inc. ("Business Associate") (each a "Party" and collectively the "Parties").

### RECITALS

A. WHEREAS, Business Associate provides certain Services for Covered Entity that involve the Use and Disclosure of Protected Health Information ("PHI") that is created, received, transmitted, or maintained by Business Associate for or on behalf of Covered Entity.

B. WHEREAS, The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and their implementing regulations, including the Standards for the Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), the Breach Notification Standards, 45 C.F.R. Part 160 and 164 subparts A and D (the "Breach Notification Rule"), and the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (the "Security Rule"), (collectively "HIPAA"), all as amended from time to time.

C. WHEREAS, The Parties are also committed to complying with the California Confidentiality Laws (defined below).

D. WHEREAS, To the extent that Business Associate is performing activities in connection with covered accounts for or on behalf of Covered Entity, the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules").

E. WHEREAS, The Privacy and Security Rules require Covered Entity and Business Associate to enter into a business associate agreement that meets certain requirements with respect to the Use and Disclosure of PHI. This BAA, sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI") shall be handled, in accordance with such requirement.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, the Parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**1.1** All capitalized terms used in this BAA but not otherwise defined shall have the meaning set forth in the Privacy Rule, the Breach Notification Rule, or the Security Rule.

(a) “Breach” shall have the same meaning as “breach” as defined in 45 C.F.R. § 164.402 and shall mean the access, acquisition, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule that compromises the privacy or security of the PHI; the term “Breach” as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of a patient’s “medical information” as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a “breach of the security of the system” under Cal. Civil Code §1798.29.

(b) “California Confidentiality Laws” shall mean the applicable laws of the State of California governing the confidentiality of PHI or Personal Information, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq.), the patient access law (Cal. Health & Safety Code §123100 et seq.), the HIV test result confidentiality law (Cal. Health & Safety Code §120975, et seq.), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code §5328, et seq.), and the medical identity theft law (Cal. Civil Code 1798.29).

(c) “Protected Health Information” or “PHI” shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual; (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information that can be used to identify the individuals, and (iii) is provided by Covered Entity to Business Associate or created, maintained, received, or transmitted by Business Associate on Covered Entity’s behalf. **PHI includes EPHI.**

(d) “Services” shall mean the services for or functions on behalf of Covered Entity performed by Business Associate pursuant to a Services Agreement between Covered Entity and Business Associate to which this BAA applies.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, Business Associate may:

(a) Use or Disclose PHI to perform Services for, or on behalf of, Covered Entity, provided that such Use or Disclosure would not violate the Privacy or Security Rules, this BAA, or California Confidentiality Laws;

(b) Use or Disclose PHI for the purposes authorized by this BAA or as otherwise Required by Law;

(c) Use PHI to provide Data Aggregation Services for the Health Care Operations of Covered Entity, if required by the Services Agreement and as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*



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

(e) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted under 45 C.F.R. § 164.504(e)(4)(ii), provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and be Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and that such person will notify the Business Associate of any instances of which such person is aware that the confidentiality of the information has been breached;

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

(g) De-identify any PHI obtained by Business Associate under this BAA in accordance with 45 C.F.R. § 164.514 and Use or Disclose such de-identified information only as required to provide Services pursuant to the a Services Agreement between the Parties, or with the prior written approval of Covered Entity.

### **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

**3.1. Responsibilities of Business Associate.** With regard to its Use and/or Disclosure of PHI, Business Associate shall:

(a) Notify the Privacy Officer of Covered Entity, in writing, of: (i) any Use and/or Disclosure of the PHI that is not permitted or required by this BAA; (ii) any Security Incident of which Business Associate becomes aware; and (iii) any suspected Breach. Such notice shall be provided within five (5) business days of Business Associate's discovery of such unauthorized access, acquisition, Use and/or Disclosure. Notwithstanding the foregoing, the Parties acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and unsuccessful log-in attempts. The Parties acknowledge and agree that this Section 3.1(a) constitutes notice by Business Associate to Covered Entity of such ineffective Security Incidents and no additional notification to Covered Entity of such ineffective Security Incidents is required, provided that no such Security Incident results in a Breach. A ransomware attack shall not be considered an ineffective Security Incident and shall be reported to Covered Entity, irrespective of whether such Security Incident results in a Breach. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or suspected Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or suspected Breach constitutes a Breach, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

(i) Business Associate shall provide a supplemental written report in accordance with 45 C.F.R. § 164.410(c), which shall include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used or Disclosed during the Breach, to Covered Entity without unreasonable delay, but no later than five (5) business days after discovery of the Breach;

(ii) Covered Entity shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and, if applicable, the media. Business Associate shall assist with the implementation of any decisions by Covered Entity to notify individuals or potentially impacted individuals;

(b) In consultation with the Covered Entity, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper access, acquisition, Use, or Disclosure, Security Incident, or Breach. Business Associate shall take prompt corrective action, including any action required by applicable State or federal laws and regulations relating to such Security Incident or non-permitted access, acquisition, Use, or Disclosure. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing any required notification to affected individuals, appropriate government agencies, and, if necessary the media;

(c) Implement appropriate administrative, physical, and technical safeguards and comply with the Security Rule to prevent Use and/or Disclosure of EPHI other than as provided for by this BAA;

(d) Obtain and maintain a written agreement with each of its Subcontractors that creates, maintains, receives, Uses, transmits or has access to PHI that requires such Subcontractors to adhere to the substantially the same restrictions and conditions with respect to PHI that apply to Business Associate pursuant to this BAA;

(e) Make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the Use and/or Disclosure of PHI received from, created, maintained, or transmitted by Business Associate on behalf of Covered Entity to the Secretary of the Department of Health and Human Services ("Secretary") in a time and manner designated by the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule;

(f) Document Disclosures of PHI and information related to such Disclosure and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the Disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the Disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI Disclosed;

and (iv) a brief statement of the purpose of such Disclosure which includes an explanation of the basis for such Disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within ten (10) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) Subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this BAA, the PHI in its possession and retain no copies, including backup copies;

(h) Disclose to its Subcontractors or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) If all or any portion of the PHI is maintained in a Designated Record Set:

(i) Upon ten (10) days' prior written request from Covered Entity, provide access to the PHI to Covered Entity to meet a request by an individual under 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for access to PHI from an Individual; and

(ii) Upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526. Business Associate shall notify Covered Entity within ten (10) days of its receipt of a request for amendment of PHI from an Individual;

(j) If applicable, maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) To the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(l) Unless prohibited by law, notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge; and

(m) Maintain policies and procedures materially in accordance with State Confidentiality Laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

### **3.2 Business Associate Acknowledgment.**

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

(a) Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

(b) Business Associate further acknowledges that it is obligated by law to comply with HIPAA and the HITECH Act. Business Associate shall comply with applicable California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA or the HITECH Act.

(c) Business Associate further acknowledges that uses and disclosures of protected health information must be consistent with NMC's privacy practices, as stated in NMC's Notice of Privacy Practices. The current Notice of Privacy Practices can be retrieved online at: <http://www.natividad.com/quality-and-safety/patient-privacy>. Business Associate agrees to review the NMC Notice of Privacy Practices at this URL at least once annually while doing business with NMC to ensure it remains updated on any changes to the Notice of Privacy Practices NMC may make.

**3.3 Responsibilities of Covered Entity.** Covered Entity shall, with respect to Business Associate:

(a) Provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) Notify Business Associate in writing of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI;

(c) Notify Business Associate in writing of any changes in, or withdrawal of, the consent or authorization of an individual regarding the Use or Disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI; and

(d) Notify Business Associate in writing of any restrictions on Use and/or Disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

(f) To the extent that individual authorization is required for any use or disclosure of PHI contemplated under the Services Agreement, Covered Entity shall obtain such authorization prior to requesting that Business Associate make such use or disclosure.

#### **4. TERM AND TERMINATION**

**4.1 Term.** This BAA shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Section 4. Certain provisions and



requirements of this BAA shall survive its expiration or other termination as set forth in Section 5 herein.

**4.2 Termination.** If Covered Entity or Business Associate determines in good faith that the other Party has breached a material term of this BAA, the non-breaching Party may either: (i) immediately terminate this BAA and any underlying Services Agreement if cure is not possible; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of the breaching Party's receipt of written notice of such breach, if the breach is not cured by the non-breaching Party within such thirty (30) day period.

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

**4.4 Effect of Termination.** Upon termination or expiration of this BAA for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(J) if, and to the extent that, it is feasible to do so. Prior to returning the PHI, Business Associate shall recover any PHI in the possession of its Subcontractors. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity with a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its Subcontractors. In such event, Business Associate shall: (i) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or carry out its legal responsibilities; (ii) return to Covered Entity the remaining PHI that the Business Associate maintains in any form; (iii) continue to extend the protections of this BAA to the PHI for as long as Business Associate retains PHI; (iv) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI not feasible and subject to the same conditions as set out in Section 2 above, which applied prior to termination; and (v) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## **5. MISCELLANEOUS**

**5.1 Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 2.1, 4.4, 5.7, 5.8, 5.11, and 5.12 shall survive termination of this BAA until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this BAA, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

**5.2 Amendments; Waiver.** This BAA may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of HIPAA, the HITECH Act, or California Confidentiality Laws is materially amended in a manner that changes the obligations of the Parties, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect

to the revised obligations. Further, no provision of this BAA shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

**5.3 No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**5.4 Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Net Health \_\_\_\_\_  
Attn: \_\_\_\_\_ Legal  
Department \_\_\_\_\_  
40 24<sup>th</sup> Street, Pittsburgh, PA  
15222 \_\_\_\_\_  
Phone: 1-800-411-6281 \_\_\_\_\_

If to Covered Entity, to:

Natividad Medical Center  
Attn: Compliance/Privacy Officer  
1441 Constitution Blvd.  
Salinas, CA 93906  
Phone: 831-755-4111  
Fax: 831-755-6254

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

**5.5 Counterparts; Facsimiles.** This BAA may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

**5.6 Relationship of Parties.** Notwithstanding anything to the contrary in the Services Agreement, Business Associate is an independent contractor and not an agent of Covered Entity under this BAA. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**5.7 Choice of Law; Interpretation.** This BAA shall be governed by the laws of the State of California. Any ambiguities in this BAA shall be resolved in a manner that allows Covered Entity and Business Associate to comply with the Privacy Rule, the Security Rule, and the California Confidentiality Laws.

**5.8 Indemnification.** Subject to the indemnification procedures set forth below, Business Associate shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any third party claim, liability, loss, injury, cost, expense, penalty or damage, including reasonable costs incurred by the County with respect to any investigation, enforcement proceeding, or third party governmental action, arising out of, or in connection with, a material violation of this BAA or a Breach to the extent attributable to an act or omission of Business Associate and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. County's right to defense and/or indemnification hereunder is conditioned upon the following: prompt notice to Business Associate and demand for payment of any claim for which indemnity and/or defense is sought; control of the selection of counsel, investigation, preparation, and defense thereof by Business Associate; and reasonable cooperation by the County, at Business Associate's request and expense, in the defense of the claim. County shall have the right to participate in the defense of a claim by Business Associate with counsel of the County's choice at the County's expense. County shall have the sole right and discretion to settle, compromise, or otherwise resolve any and all claims, liabilities, losses, damages, cost, expenses, penalties or damages for which it is indemnified under this Section 5.8, regardless of whether the County has tendered its defense to Business Associate. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Parties.

**5.9 Applicability of Terms.** This BAA applies to all present and future Service Agreements and Business Associate relationships, written or unwritten, formal or informal, in which Business Associate creates, receives, transmits, or maintains any PHI for or on behalf of Covered Entity in any form whatsoever. This BAA shall automatically be incorporated in all subsequent agreements between Business Associate and Covered Entity involving the Use or Disclosure of PHI whether or not specifically referenced therein.

**5.10 Intentionally omitted.**

**5.11 Intentionally omitted**

**5.12 Intentionally omitted.**

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf as of the Effective Date.

*Approved by the County of Monterey Board of Supervisors on 11/01/16  
and revised on 12/09/16*

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

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

Print Name PATRICK L COLLETTI

Print Title PRESIDENT

Date: AUGUST 17, 2017

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

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

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

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



**BUSINESS ASSOCIATE**

**COVERED ENTITY**

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

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

Print Name \_\_\_\_\_

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

Print Title \_\_\_\_\_

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


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

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

Reviewed as to fiscal provisions

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

8-17-17

  
Clerk  
8-17-17