



## Monterey County Board of Supervisors

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

### Board Order

#### Agreement No. A-14127

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

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute an agreement with West Interactive Services Corporation for patient notification services at NMC for an amount not to exceed \$100,000 with an agreement term October 1, 2018 through September 30, 2023.
- b. Approved the NMC Chief Executive Officer's recommendation to accept non-standard indemnification, insurance and limitations on liability provisions within the agreement.

PASSED AND ADOPTED on this 25th day of September 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips, Parker and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, 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 81 for the meeting September 25, 2018.

Dated: September 25, 2018

File ID: A 18-401

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

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Joel G. Pablo, Deputy

**Natividad** MEDICAL CENTER  
County of Monterey Agreement for Services  
(Not to Exceed \$100,000)

This Agreement (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital (hereinafter, "NMC"), and **West Interactive Services Corporation** hereinafter "CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the "Parties.").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

**GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED;** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: Notification Services

**PAYMENTS BY NMC;** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000.

**TERM OF AGREEMENT;** the term of this Agreement is from **October 1, 2018** through **September 30, 2023** unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

NMC reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

**SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS;** the following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A: Scope of Services/Payment Provisions
- Exhibit B: Business Associate Agreement
- Exhibit C: Addendum No. 1

**1. PERFORMANCE STANDARDS:**

- 1.1. ~~CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC. (See addendum)~~
- 1.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

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**2. PAYMENT CONDITIONS:**

~~2.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement. (See addendum)~~

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2.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County (NMC) and the CONTRACTOR.

~~2.3. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoices shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor Controller for payment. The County Auditor Controller shall pay the amount certified within 30 days of receiving the certified invoice. (See addendum)~~

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2.4. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

**3. TERMINATION:**

~~3.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination. (See addendum)~~

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~~3.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement. (See addendum)~~

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**4. INDEMNIFICATION:**

~~4.1. CONTRACTOR shall indemnify, defend, and hold harmless NMC (hereinafter "County"), its officers, agents and employees from any claim, liability, loss injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The CONTRACTOR shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement. (See addendum)~~

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**5. INSURANCE:**

5.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor. (See addendum)

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- 5.2. Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.
- 5.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:
- 5.4. Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Exemption/Modification (Justification attached; subject to approval)

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

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Exemption/Modification (Justification attached; subject to approval)

- 5.6. Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Exemption/Modification (Justification attached; subject to approval)

~~5.7. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement. (See addendum)~~

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~~(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)~~

~~Exemption/Modification (Justification attached; subject to approval)~~

## 6. Other Insurance Requirements:

~~6.1. All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement. (See addendum)~~

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6.2. Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

6.3. **Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.**

6.4. Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

~~6.5. CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately. (See addendum)~~

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7. RECORDS AND CONFIDENTIALITY:

~~7.1. Confidentiality: CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement. (See addendum)~~

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~~7.2. NMC Records: When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement. (See addendum)~~

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7.3. Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

~~7.4. Access to and Audit of Records: NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement. (See addendum)~~

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8. Royalties and Inventions: NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.

~~9. Non-Discrimination: During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination. (See addendum)~~

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10. Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor. (See addendum)

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11. Independent Contractor: In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.
12. Notices: Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

**NATIVIDAD MEDICAL CENTER:**

Natividad medical Center  
 Attn: Contracts Division  
 Natividad Medical Center  
 1441 Constitution Blvd  
 Salinas, CA. 93906  
 FAX: 831-757-2592

**CONTRACTOR:**

Name: West Interactive Services Corp.  
 Attn: General Counsel  
 Address: 11808 Miracle Hills Dr.  
 City, State, Zip: Omaha, NE 68154  
 FAX: \_\_\_\_\_  
 Email: \_\_\_\_\_

**MISCELLANEOUS PROVISIONS:**

- 13.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 13.2 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 13.3 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 13.4 Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- ~~13.5 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. (See addendum)~~
- ~~13.6 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of~~

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~~NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement. (See addendum)~~

- 13.7 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 13.8 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 13.9 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 13.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 13.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 13.12 Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 13.13 Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 13.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 13.15 Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 13.16 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

*Signature Page to follow*

NATIVIDAD MEDICAL CENTER

By: [Signature]  
Gary R. Gray, DO, CEO

Date: 10/1/18

APPROVED AS TO LEGAL PROVISIONS

By: [Signature]  
Monterey County Deputy County Counsel

Date: 8-1-18

APPROVED AS TO FISCAL PROVISIONS

By: [Signature]  
Monterey County Deputy Auditor/Controller

Date: 8-3-18

CONTRACTOR

West Interactive Services Corporation  
Contractor's Business Name\*\*\* (see instructions)

[Signature]  
Signature of Chair, President, or Vice-President

Nate Brogan, President  
Name and Title

Date: 7-23-18

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Jan Madsen CFO  
Name and Title

Date: 7-23-18

\*\*\*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 (two 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 (two 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 (one signature required).

**EXHIBIT A: SCOPE OF SERVICES/ PAYMENT PROVISIONS**

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**I. Description of All Services to be Rendered by CONTRACTOR:**  
Notification services (Appointment reminder calls, Text messages and e-mail) will be used by NMC's departments to remind patients of their appointment(s).

**II. CONTRACTOR Obligations:**

- CONTRACTOR shall notify NMC in advance if there will be any interruption in services during the effective dates of the agreement.
- CONTRACTOR shall invoice NMC for successful notifications only.

**III. NMC Obligations:**

- NMC must have prior consent to contact each wireless phone number delivered by NMC for delivering notifications.

**IV. Pricing/Fees:**

Description	Rate	
Appointment Reminder Calls	\$0.12	Per call
Text Messages	\$0.12	Per text
E-mail	\$0.12	Per e-mail
Call Transfers	\$0.12	Per minute

- **One-time fee of \$276.96 to be invoiced as "one-time fee".**
- **Monthly minimum of \$100.00**
- **NMC shall not be invoiced for unsuccessful notifications**
- CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.
- Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.
- County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.
- No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

## **Exhibit B:**

### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) effective October 1, 2018 (“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 West Interactive Services Corporation (“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 attempted or successful Security Incident of which Business Associate becomes aware; and (iii) any successful 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 successful Security Incident or unauthorized access, acquisition, Use, or Disclosure of PHI, or Breach that it discovers and shall provide a summary of its investigation to Covered Entity, upon written request. If Business Associate or Covered Entity determines that such Security Incident or unauthorized access, acquisition, Use, or Disclosure, or Breach occurs, then Business Associate shall comply with the requirements of Section 3.1(a)(i) below;

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(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. Pursuant to the limitations of liability set forth in the underlying Service Agreement, 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, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, public relations costs, attorney fees, and costs of mitigating the harm for affected individuals whose PHI or Personal Information has or may have been compromised as a result of the Breach;

(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. In addition, Business Associate shall promptly make available to Covered Entity such books, records, or other information relating to the Use and Disclosure of PHI for purposes of determining whether Business Associate has complied with this BAA or maintains adequate security safeguards, upon reasonable written request by Covered Entity;

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(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

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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.**

(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, and represents and warrants that it shall comply, with HIPAA and the HITECH Act. Business Associate shall comply with all 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 done in a manner 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 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 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 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.

## **4. TERM AND TERMINATION**

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**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 determines in good faith that Business Associate has breached a material term of this BAA, Covered Entity may either: (i) immediately terminate this BAA and any underlying Services Agreement; or (ii) terminate this BAA and any underlying Services Agreement within thirty (30) days of Business Associate's receipt of written notice of such breach, if the breach is not cured to the satisfaction of Covered Entity and within the time agreed upon by the parties.

**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

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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:

West Interactive Services Corporation  
Attn: General Counsel  
11808 Miracle Hills Drive  
Omaha, NE 68154  
Phone: 800-644-4266  
Fax: 402-963-1550

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

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supervise, manage, contract, direct, procure, perform, or cause to be performed all Business Associate obligations under this BAA.

**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.** Business Associate shall indemnify, defend, and hold harmless the Covered Entity, its officers, agents, and employees from any third party claim, liability, loss, injury, reasonable costs or expenses, penalty or damage, including costs incurred by the County with respect to any investigation, enforcement proceeding, or third party action, arising out of, or in connection with, a violation of this BAA or a Breach that is attributable to an act or omission of Business Associate and/or its agents, members, employees, or Subcontractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. This provision is in addition to, and independent of, any indemnification provision in any related or other agreement between the Parties. Business Associate's maximum cumulative liability and Covered Entity's exclusive remedy for any claim arising out of or related to a breach of this Agreement shall be as set forth in the underlying Service Agreement.

**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. In the event of any conflict or inconsistency between a provision of this BAA and a provision of any other agreement between Business Associate and Covered Entity, the provision of this BAA shall control unless the provision in such other agreement establishes additional rights for Business Associate or additional duties for or restrictions on Business Associate with respect to PHI, in which case the provision of such other agreement will control.

**5.10 Insurance.** In addition to any general and/or professional liability insurance required of Business Associate, Business Associate agrees to obtain and maintain, at its sole expense, liability insurance on an claim basis, covering any and all third party claims, liabilities, demands, damages, losses, reasonable costs and expenses arising from a breach of the obligations of Business Associate, its officers, employees, agents and Subcontractors under this BAA. Such insurance coverage will be maintained for the term of this BAA, and a copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity at Covered Entity's written request.

**5.11 Legal Actions.** Promptly, but no later than five (5) business days after notice thereof, Business Associate shall advise Covered Entity of any actual or potential action, proceeding, regulatory or governmental orders or actions, or any material threat thereof that becomes known to it that may affect the interests of Covered Entity or jeopardize this BAA, and of any facts and circumstances that may be pertinent to the

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prosecution or defense of any such actual or potential legal action or proceeding, except to the extent prohibited by law.

**5.12 Audit or Investigations.** Promptly, but no later than five (5) calendar days after notice thereof, Business Associate shall advise Covered Entity of any audit, compliant review, or complaint investigation by the Secretary or other state or federal agency related to compliance with HIPAA, the HITECH Act, or the California Confidentiality Laws.

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.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

By: Nate Brogan

By: 

Print Name: Nate Brogan


Print Name: Corey Kay

Print Title: President

Print Title: CEO

Date: 7/23/18

Date: 10/1/18

  
Nate Brogan  
Dep CEO  
8/4/18

**Exhibit C:**

**ADDENDUM NO. 1**

**TO AGREEMENT BY AND BETWEEN WEST INTERACTIVE SERVICES CORPORATION AND THE COUNTY OF MONTEREY ON BEHALF OF NATIVIDAD MEDICAL CENTER FOR NOTIFICATION SERVICES**

This Addendum No. 1 (“Addendum #1”), dated as of October 1, 2018, amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter “Agreement”) by and between West Interactive Services Corporation (hereinafter “CONTRACTOR” or “Provider” or “WISC”) and the County of Monterey, on behalf of Natividad Medical Center (hereinafter “NMC” or “Client” or “Customer”). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, NMC and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

**I. Paragraph 1.1 under “PERFORMANCE STANDARDS”, shall be amended to:**

1.1 CONTRACTOR agrees that CONTRACTOR and Contractor’s agents, employees, and if applicable, subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.

**II. Paragraph 2.1 under “PAYMENT CONDITIONS”, shall be amended to:**

2.1 Prices shall remain firm for the first three (3) years of the Agreement and, thereafter, may be adjusted annually as provided herein. Except as set forth in Exhibit A, NMC (Monterey County) does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.

**III. Paragraph 2.3 under “PAYMENT CONDITIONS”, shall be amended to:**

2.3 Client agrees to pay for the services in accordance with the rates set forth in - Exhibit A: Scope of Services/ Payment Provisions. Services will be billed based

shall submit to the NMC Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. The Parties agree to remit the invoice via electronic transmission and for the purposes of this Agreement, the receipt date shall be defined as the day WISC electronically remits the invoice to Client (the "Invoice Receipt Date") thirty (30) days shall begin on that electronic transmission date.

**IV. Paragraph 3.1 under "TERMINATION", shall be amended to:**

- 3.1. During the term of this Agreement, either party may terminate the Agreement for any reason by giving written notice of termination to the other party at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

**V. Paragraph 3.2 under "TERMINATION", shall be amended to:**

- 3.2 If Client terminates any Order Form for cause, WISC will reimburse Client for any applicable amounts prepaid by Client under such Order Form and Client shall be relieved of any future payments related to the terminated Order Form. Otherwise, upon any termination of this Agreement or any Order Form, Client shall pay for all services rendered up to the date of termination, and any future amounts due under the Order Form for the entire Order Form Term. The parties agree and acknowledge that WISC has made pricing concessions based on the provisions agreed to herein and that any shortfall payments due are a fair approximation of the damages that would be caused to WISC and do not constitute a penalty.

**VI. Paragraph 4 "INDEMNIFICATION", shall be amended to:**

- 4.1 Client shall indemnify, defend and hold WISC and its Affiliates and their officers, directors and employees harmless from any and all third-party claims, actions, suits, proceedings, costs, expenses, liabilities, and damages (including punitive, treble and enhanced damages and reasonable attorneys' fees) arising out of, connected with or resulting from: (i) a breach by Client of any term of this Agreement; (ii) the Client Systems and Materials; or (iii) a claim by any customer of Client or any party called on Client's or its Client's behalf relating to any defect in any product or service offered by Client or any of its Clients.

WISC will defend, at its expense, a third-party action, suit, or proceeding against Client ("Claim") to the extent such Claim is based upon an allegation that the Licensed Materials, as of their delivery date under this Agreement, infringe a valid United States patent. WISC makes no representations, provides no warranties, and assumes no responsibilities for the use, sale, placement, or other disposition by Client of products incorporating the Licensed Materials under this Agreement. WISC's liability to the Client will not extend to infringement caused by use of the Licensed Materials as an element of a patented product or process. Client will hold WISC, its affiliates and their officers, directors, employees, and agents harmless against all liabilities, demands, damages, expenses, or losses arising out of or resulting from any misuse of the Licensed Materials.

The party claiming indemnification shall: (i) provide prompt written notice to the indemnifying party of any claim in respect of which the indemnity may apply; (ii) relinquish control of the defense of the claim to the indemnifying party; and (iii) provide the indemnifying party with all assistance reasonably requested in defense of the claim. The indemnifying party shall be entitled to settle any claim without the written consent of the indemnified party so long as such settlement only involves the payment of money by the indemnifying party and in no way affects any rights of the indemnified party.

The Client, in order to be indemnified to the extent stated, must operate within the instructions and technical limits provided or approved by WISC. WISC shall have no indemnity obligation for (1) WISC-furnished licensed materials that have been used with or in combination with hardware or software not furnished by WISC; and (2) any claim or any portion of any claim that arises from Client's reckless, wanton, wrongful, or otherwise negligent acts.

Nothing herein shall require WISC to indemnify the Client for any claim or any portion of any claim that arises from the reckless, wanton, wrongful, or otherwise negligent acts of the Client.

Client shall indemnify, defend and hold Provider, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from Provider following Client's instructions in sending the Messages or Client's breach of any representation and warranty set forth in this Section.

**VII. Paragraph 5.1 under, "INSURANCE", shall be amended to:**

**5.1. Evidence of Coverage:**

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate.

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

**VIII. Paragraph 5.7 under, "INSURANCE", shall be amended to:**

5.7. Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$2,000,000 per claim and in the aggregate, to cover liability for errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Exemption/Modification (Justification attached; subject to approval)

**IX. Paragraph 6.1 under "Other Insurance Requirements", shall be amended to:**

6.1 All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

**X. Paragraph 6.5 under "Other Insurance Requirements", shall be amended to:**

6.5 CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have ten (10) calendar days to

send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

**XI. Paragraph 7.1 under "RECORDS AND CONFIDENTIALITY", shall be amended to:**

- 7.1. Confidentiality: Each party and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. Each party shall not disclose any confidential records or other confidential information received from the other party or prepared in connection with the performance of this Agreement, unless the other party specifically permits the party to disclose such records or information. Each party shall promptly transmit to the other party any and all requests for disclosure of any such confidential records or information. Each party shall not use any confidential information gained by the party in the performance of this Agreement except for the sole purpose of carrying out their obligations under this Agreement.

**XII. Paragraph 7.2 under "RECORDS AND CONFIDENTIALITY", shall be amended to:**

- 7.2. NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement. Notwithstanding the foregoing, CONTRACTOR shall not be required to return or destroy any NMC records contained on any data recovery, business continuity, or backup systems and such obligations by CONTRACTOR shall suffice until such time as any NMC records are purged in accordance with CONTRACTOR'S normal purge process.

**XIII. Paragraph 7.4 under "RECORDS AND CONFIDENTIALITY", shall be amended to:**

- 7.4 Access to and Audit of Records: NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three (3) years after final payment under the Agreement. Any such audit must be

conducted upon reasonable notice, prior written request, and during normal business hours.

**XIV. Paragraph 9 "NON-DISCRIMINATION", shall be amended to:**

9. Non-Discrimination: During the performance of this Agreement, Contractor, and if applicable, its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

**XV. Paragraph 10 "COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT", shall be amended to:**

10. Compliance with Terms of State or Federal Grant: If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor. For the avoidance of doubt, this Section is not applicable to the services under this Agreement.

**XVI. Paragraph 13.5 under "MISCELLANEOUS PROVISIONS" shall be amended to:**

- 13.5 Disputes. The Parties acknowledge and agree that in the event of a disputed portion of any invoiced amount, WISC will continue to provide the Services and will not discontinue Services during any disputed invoice period.

**XVII. Paragraph 13.6 under "MISCELLANEOUS PROVISIONS" shall be amended to:**

- 13.6 Assignment and Subcontracting. Neither party shall assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the other party. None of the services covered by this Agreement shall be subcontracted without the prior written approval of both parties. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement pursuant to the limitations of liability set forth herein.

**ADDITIONAL TERMS AND CONDITIONS:**

- I. LIMITATIONS OF LIABILITY –EXCEPT AS OTHERWISE PROVIDED HEREIN, CLIENT UNDERSTANDS AND AGREES THAT THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”; AND WISC AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. IN NO EVENT WILL WISC, OR ITS SUPPLIERS OR AFFILIATES, BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA OR PROFITS, OR COST OF COVER ARISING OUT OF, OR RESULTING FROM THE SERVICES, THIS AGREEMENT OR ANY ORDER FORM REGARDLESS OF THE LEGAL THEORY OF RECOVERY, EVEN IF WISC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDING CLAIMS OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR INDEMNIFICATION OBLIGATIONS, WISC’S MAXIMUM CUMULATIVE LIABILITY AND CLIENT’S EXCLUSIVE REMEDY FOR ANY CLAIMS WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO SERVICES OR THIS AGREEMENT WILL BE LIMITED TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). FOR INDEMNIFICATION OBLIGATIONS RELATED TO THE BAA, WISC’S MAXIMUM LIABILITY SHALL BE FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00).
  
- II. License: Subject to Client’s compliance with the terms and conditions of this Agreement and applicable Order Form, WISC hereby grants Client a non-exclusive license during the applicable Order Form Term to use the Services set forth in the applicable Order Form (the “Licensed Materials”). Except as specifically set forth herein, the parties agree that WISC or its suppliers retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the services, including without limitation all technology, telephone numbers, web addresses, software, or systems relating to the services. Client agrees not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to the services. Use of third party provided services is subject to the license agreement of such provider. Other than using the services for where Client is an active participant, Client may not resell the services or otherwise generate income from the services.
  
- III. Maintenance of Service: WISC agrees to provide and maintain the Services in a workmanlike manner customary for service providers in the industry. Client agrees to provide information reasonably required by WISC to perform Services, including as applicable, but not limited to: scripts; program content and materials; Client or third party databases; any Client websites, social media sites, and accounts related thereto (whether or not created by or subject to services from WISC); forecasts; current process performance statistics; Client or third party software, hardware, systems, routing and network addresses and configurations; and key contacts for problem escalation (collectively the “Client Systems and Materials”).

IV. Responsibility for Accounts and Messages:

- a. Client is responsible for maintaining the confidentiality of Client's accounts, owner numbers, codes, passwords and personal identification numbers used in conjunction with the Services and for all uses of the Services in association with Client's accounts whether or not authorized by Client. Client agrees to immediately notify WISC of any unauthorized use of Client's account of which Client becomes aware.
- b. Client represents and warrants that: the Client Systems and Materials, , all content regarding Client's programs, and use of the Services will be in compliance with all laws, rules, regulations, orders, permits, agreements, and licenses; Client specifically acknowledges and agrees that WISC has not and is not expected to provide Client with any analysis, interpretation or advice regarding the compliance of any aspect of Client's Systems and Materials or programs (or execution of any program through the Services) with any laws, rules, regulations, guidelines or third party rights. Upon request, Client shall provide reasonable proof of compliance with the provisions set forth in this section and WISC shall have no obligation to provide Services where WISC reasonably believes that Client has not so complied.
- c. Client represents and warrants that: (i) Client is solely responsible for the prerecorded or text message (the "Messages"); (ii) has the legal right to use and send all Messages to the recipients; (iii) the timing and purpose of all Messages, campaigns and programs are in compliance with all applicable laws, rules and regulations; (iv) Provider's use of the Messages as directed shall not violate the rights of any third party or any law, rules or regulation.
- d. Client has prior express consent to contact each wireless phone number delivered by Client to Provider in connection with the provision of any Services delivering a prerecorded or text message ("Notification Services") and the intended contact Recipient is the current subscriber to, or the non-subscriber customary user of, the wireless phone number. Upon request by Provider, Client shall promptly provide, in writing, proof of prior express consent and Client's processes for consent management.
- e. If the Messages are initiated to induce the purchase of goods or services or to solicit a charitable contribution ("Solicitations"), Client has incorporated an interactive opt-out mechanism as part of the program; Client has, unless an exemption applies, obtained from the Recipient of any Solicitation an express written agreement that meets the requirements set forth in Section 310.4(b)(1)(v)(A) of the FTC's Telemarketing Sales Rule and Section 64.1200(f)(8) of the FCC's Telephone Consumer Protection Act Rules.
- f. The Parties agree that, where Provider reasonably believes Client may not have complied with the provisions of this Section or with all laws, rules and regulations, Provider may, at its option (i) scrub all numbers against any appropriate data base

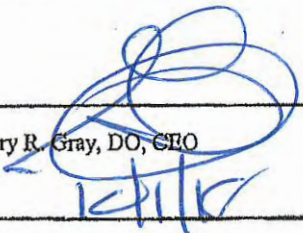

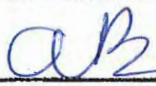
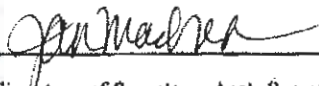
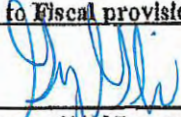
deemed necessary to remove all wireless phone numbers and promptly notify Client of such action, (ii) insert an interactive opt-out mechanism and pass the resulting data to Client, and/or (iii) temporarily suspend Services related to the compliance concern.

- V. If Client is a Covered Entity, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and provides individually identifiable health information or PHI (each as defined by HIPAA) to WISC as a Business Associate (as defined by HIPAA), then the Business Associate Agreement ("BAA") dated **September 1, 2018** between the parties is incorporated by reference herein.
- VI. Neither party shall be liable for delays and/or defaults under this Agreement or any Order Form (other than Client's obligation to pay fees) due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of god or of the public enemy; fire or explosion; flood; stability or availability of the Internet; actions of the elements; telecommunication system failure; war; epidemic; acts of terrorism; riots; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or their labor disturbances; total or partial failure of transportation, delivery facilities, or supplies; acts or requests of any governmental authority; or any other cause beyond its reasonable control, whether or not similar to the foregoing, both parties agree to use best efforts in meeting the terms and conditions of this agreement.

*The remainder of this page was intentionally left blank.*

*~ Signature page to follow ~*

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

<u>Natividad Medical Center</u>	<u>West Interactive Services Corporation</u>
	
Gary R. Gray, DO, CEO	Signature of Chair, President or Vice-President
Date 8-1-18	Nate Bogan, President Printed Name and Title
<u>Approved as to Legal Provisions:</u>	7-23-18 Date
	
Monterey County Deputy County Counsel	Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer
Date	Jan Madsen CFO
<u>Approved as to Fiscal provisions:</u>	Printed Name and Title 7-23-18
	Date
Monterey County Chief-Deputy Auditor-Controller	<u>Signature Instructions</u>
Date 8-3-18	For 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 (two signatures required).