



## Monterey County

### Board Order

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

#### Agreement No.: A-13073

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta 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 Clinical Computer Systems, Inc. for support services for the OBIX Perinatal Data Systems Services at NMC for an amount not to exceed \$130,394 for the term April 1, 2016 through March 31, 2021; and
- b. Authorized the Deputy Purchasing Agent for NMC or his designee to execute up to three (3) future amendments to the agreement which do not significantly alter the scope of work and do not cause an increase of more than ten percent (10%) of the original cost of the agreement per each amendment.

PASSED AND ADOPTED on this 22nd day of March 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 79 for the meeting on March 22, 2016.

Dated: March 22, 2016  
File ID: A 16-055

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

By Denise Hancock  
Deputy

 **Natividad** MEDICAL CENTER  
**COUNTY OF MONTEREY AGREEMENT FOR SERVICES**  
**(MORE THAN \$100,000)**

This Agreement for Services (hereinafter "Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "the County"), on behalf of Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County, and Clinical Computer Systems, Inc. (hereinafter "CONTRACTOR").

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

1. **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: Support of the OBIX Perinatal Data Systems at Natividad Medical Center.
2. **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 **\$130,394**.
3. **TERM OF AGREEMENT.**
  - 3.1. The term of this Agreement is from April 1, 2016 through March 31, 2021 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.
  - 3.2. NMC reserves the right to cancel this Agreement, or an extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause immediately.
4. **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:** Software License Terms and Conditions
5. **PERFORMANCE STANDARDS.**
  - 5.1. 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.

- 5.2. 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.
- 5.3. 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.

## **6. PAYMENT CONDITIONS.**

- 6.1. Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provide in this paragraph. NMC does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.2. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days 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.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.
- 6.5. CONTRACTOR shall 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 the amounts claimed, and such other information pertinent to the invoice. NMC 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.

## **7. TERMINATION.**

- 7.1. 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.
- 7.2. 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.

- 7.3 NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## **8. INDEMNIFICATION.**

- 8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## **9. INSURANCE.**

### **9.1 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.

- 9.2 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.

- 9.3 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:

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.

- ☐ Exemption/Modification (Justification attached; subject to approval).

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 \$1,000,000 per occurrence.

- ☐ Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs others 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.

- ☐ Exemption/Modification (Justification attached; subject to approval).

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.

- ☐ Exemption/Modification (Justification attached; subject to approval).

#### 9.4 Other Requirements:

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.

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.

**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.** The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

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 (5) 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.

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.

## **10. RECORDS AND CONFIDENTIALITY.**

- 10.1 **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.

- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.
11. **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.
12. **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.
13. **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.

14. **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: Clinical Computer Systems, Inc.

Attn: Contracts Dept.

Address: 715 Tollgate Road

City, State, Zip: Elgin, IL 60123

FAX: 847-622-0880

Email: contracts@obix.com

**15. MISCELLANEOUS PROVISIONS.**

- 15.1 **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.
- 15.2 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 15.3 **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.
- 15.4 **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.



15.5 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.

- 15.6 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 NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.7 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.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.
- 15.13 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.
- 15.14 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.
- 15.15 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.
- 15.16 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.

**NATIVIDAD MEDICAL CENTER**

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

Date: 3/25/16

**APPROVED AS TO LEGAL PROVISIONS**

By: [Signature]  
Monterey County Deputy County Counsel

Date: March 7, 2016

**APPROVED AS TO FISCAL PROVISIONS**

By: [Signature]  
Monterey County Deputy Auditor/Controller

Date: 3-8-16

**CONTRACTOR**

**Clinical Computer Systems, Inc.**

Contractor's Business Name\*\*\* (see instructions)

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

Kim Sell, President  
Name and Title

Date: 2/19/16

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

Mark W. Russell, VP-Finance  
Name and Title

Date: 2/19/16

**\*\*\*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).

|                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                              |                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
|  <b>CLINICAL COMPUTER SYSTEMS</b><br><small>INCORPORATED</small> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>EXHIBIT A</b><br><u>Headquarters Contact Information:</u> Phone: (888) 871-0963<br>715 Tollgate Road, Elgin, IL 60123 Fax: (847) 622-0880 |                                                                               |
| For: Natividad Medical Center<br>1441 Constitution Blvd<br>Salinas, CA 93906                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Date: 2/17/16                                                                                                                                |                                                                               |
| Attn: <b>Karen Medalen</b><br>CC: <b>Charles Harris</b>                                                                                           | <u>e-mail address:</u><br><a href="mailto:medalenk@natividad.com">medalenk@natividad.com</a><br><a href="mailto:harriscl@natividad.com">harriscl@natividad.com</a>                                                                                                                                                                                                                                                                                                                                                                                                                                 | Title:<br>Title:                                                                                                                             |                                                                               |
| From: <b>Lauren Brown</b>                                                                                                                         | Phone: (888) 871-0963                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Fax: (847) 622-0880                                                                                                                          | Email: <a href="mailto:lauren.brown@obix.com">lauren.brown@obix.com</a>       |
| Renewal Term: <u>April 1, 2016</u> through <u>March 31, 2021</u><br>BPY Level: 2750                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                              |                                                                               |
| <u>Quantity</u>                                                                                                                                   | <u>Description</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                              |                                                                               |
| 1                                                                                                                                                 | <b><u>Gold Software Support Program:</u></b><br>This program includes all the features of our Platinum Software Support Program except travel and on-site labor and limited site tailoring of documentation modules (customization). On-site labor is available at our current time and materials rates. Customization is only available with our Platinum Support. If you have reasonable local software support capabilities from your internal technical departments, this Gold Program may allow you to budget a lower annual cost for OBIX software support compared to the Platinum Program. |                                                                                                                                              |                                                                               |
|                                                                                                                                                   | <u>Term Dates</u><br>Year 1 April 1, 2016 through March 31, 2017<br>Year 2 April 1, 2017 through March 31, 2018<br>Year 3 April 1, 2018 through March 31, 2019<br>Year 4 April 1, 2019 through March 31, 2020<br>Year 5 April 1, 2020 through March 31, 2021                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                              | <u>Price</u><br>\$ 15,697<br>\$ 15,697<br>\$ 15,697<br>\$ 41,036<br>\$ 42,267 |
|                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Five-Year Total: \$ 130,394</b>                                                                                                           |                                                                               |

Services shall be paid at the beginning of each term and within 30 days of receipt of a certified invoice by the County Auditor-Controller.

**(EXHIBIT A CONTINUED)**  
**SUPPORT SERVICES**

The products ("Products") covered under Support Services include all Software ("Software") purchased by NMC from VENDOR.

1. COVERAGE

1.1 Software Support Services. Software Support Services shall include the following:

1.1.1 Software Updates. VENDOR shall provide and NMC shall accept and in a promptly commercially reasonable time install VENDOR's periodic modifications, revisions, new versions and updates to the Software modules which NMC has purchased up to that date, which VENDOR, in its sole discretion, incorporates into those Software modules without additional charge. All modifications, revisions, new versions and updates provided hereunder shall be considered part of the Software within the meaning of this Agreement.

1.1.2 Software Maintenance. Subject to the limitations set forth in Section 4 of this Exhibit, VENDOR will use commercially reasonable efforts to correct any reproducible errors constituting Complete System Downtime and Partial System Downtime that NMC reports to VENDOR in the most current version and the version immediately preceding the current version of VENDOR's Software. For these purposes, the current version is the most current commercially available version of the Software.

1.1.3 Software Training. VENDOR and NMC will use reasonable commercial efforts to ensure that the appropriate personnel of NMC shall receive training to the extent required to reasonably familiarize NMC and its designated personnel with the Software and with updates thereto.

Training on minor updates and/or upgrades may be provided remotely using internet based remote conferencing tools. In the event NMC requests on-site training services which normally would be offered by remote conferencing, NMC shall pay VENDOR's travel and accommodation expenses. Other training will be on an as requested basis and will be charged at VENDOR's then prevailing rates.

1.1.4 Telephone Support. VENDOR shall make available to NMC toll free telephone support to assist in the implementation and/or utilization of the Software. Such service will be available 24 hours a day, 365 days a year to NMC's designated and trained personnel. NMC shall internally resolve all routine questions about VENDOR's Software (e.g. logging on, passwords, network problems) prior to contacting VENDOR.

1.1.5 Types of Software Support Services. CHECK ONE OF THE BOXES BELOW TO DESIGNATE WHETHER YOU WANT PLATINUM OR GOLD SOFTWARE SUPPORT SERVICES.

☐ **Platinum Software Support Services.** Our Platinum Software Support Services is a complete on-site support commitment that provides clinicians/users with a single point of contact for all OBIX software-related issues. The Platinum Agreement includes:

- 24/7/365 Toll-free technical phone support
- Travel and on-site labor as required to support the Software
- Staff refresher education on all Software
- OBIX System webinars and CE webinars
- Customization of documentation modules on a one-time-per-year requested basis
- Software updates to improve existing system features and functions
- Regulatory enhancements as required

☒ **Gold Software Support Services.** Gold Support Services may allow you to budget a lower annual cost for Software support. Gold Software Support Services includes all of the features of the Platinum Support Services **except travel and on-site labor and Customization of documentation modules. Customization is not available unless NMC is under a Platinum Support plan.** Travel and onsite labor is available at VENDOR's current time and materials rates.

1.2 Response Time. Response time will be provided in accordance with the VENDOR Service Level Terms attached hereto as Appendix A.

## 2. TERM

2.1 Term of Software Support Services. The Software Support Services provided hereunder shall commence on April 1, 2016 and shall remain in full force and effect for an initial period of sixty (60) months (the "Term"). NMC shall issue a 5-year purchase order to VENDOR for support and VENDOR will invoice NMC annually using that purchase order number. Alternatively, NMC may issue a purchase order to VENDOR on an annual basis sixty (60) days prior to the expiration of the previous purchase order

2.2 Failure To Perform. If VENDOR fails to perform in any material respect, or observe any material term or condition under Support Services, NMC shall provide VENDOR with written notice thereof. If VENDOR fails to cure such failure within thirty (30) days or, if the cure shall require more than thirty (30) days, commence to cure such failure within such thirty (30) days, NMC may terminate Support Services without penalty and receive a pro rata refund of service fees from the date of notice.

2.3 Restoration of Services. If, after NMC has terminated Software Support Services pursuant to Sections 2.1 , NMC desires to restore services under this Agreement or under

a new Support Services Agreement, then, NMC shall first pay to VENDOR a restoration charge (the "Charge") equal to fifty percent (50%) of the fee that VENDOR would have been entitled to under this Agreement for the period commencing as of the date of termination of such Support Services by NMC and ending as of the date of restoration of such services under this Agreement or a new Agreement.

3. SERVICE FEES, PAYMENT TERMS AND TAXES

NMC hereby agrees to pay the annual service fee for Software Support Services provided under this Agreement ("Service Fees"), within thirty (30) days of certification of invoice. The Service Fees are as follows:

- Year One (through March 31, 2017): \$15,697
- Year Two (4/1/17 thru 3/31/18): \$15,697
- Year Three (4/1/18 thru 3/31/19): \$15,697
- Year Four (4/1/19 thru 3/31/20): \$41,036
- Year Five (4/1/20 thru 3/31/21): \$42,267

In addition the Service Fees will increase on a pro-rata basis if additional software is purchased during the term of this Agreement. In the event NMC renews the Support Services at the end of the Term, the renewal price will be negotiated between the Parties in accordance with Section 6 of the Agreement.

Service Fees exclude sales, use, excise or other similar taxes. Consequently, in addition to the fees set forth herein, the amount of any present or future sales, use, excise, value-added, privilege or other similar tax, however designated or levied, applicable to the products or service furnished hereunder, or based on the fees charged or based on gross revenue, and any taxes or amounts in lieu thereof or payable by VENDOR, with respect to the foregoing, exclusive of taxes based on VENDOR income, shall be paid by NMC. In lieu thereof, NMC shall provide VENDOR with a tax-exemption certificate in a form acceptable to the appropriate taxing authorities. At VENDOR's option, contract coverage does not start until payment has been received.

4. ITEMS NOT COVERED

Fetal monitor interconnect cables and/or other equipment listed under Miscellaneous in the Price Quote, if any, are considered consumables and are not covered by this warranty. Maintenance required to repair damages, malfunctions, service failures or Products performance caused by the following are not covered by this Agreement: (i) misuse, abuse, neglect, improper or unauthorized installation, operation, maintenance, repair, alteration or modification of Products by NMC, its employees, agents, contractors, representatives, invitees or any other persons engaged by NMC other than VENDOR and its contractors; (ii) failure to follow the manufacturer's or VENDOR's installation, operation or maintenance instructions set forth in the On-Site Technical Reference Manual, the Site Preparation Manual, the User Manual and the On-

Site Clinical Education Manual; (iii) use of hardware that does not comply with VENDOR's hardware configurations set forth in the On-Site Technical Reference Manual and the Site Preparation Manual; or (iv) accident or unusual destruction or degradation of Products or parts thereof due to physical environment or electrical or electronic noise environment or by power failure, surge or fluctuations, or air conditioning failure or malfunction; or (v) safety and performance monitoring programs (e.g. anti-virus software) not installed by VENDOR that degrades the performance of VENDOR's Products. In such instances, VENDOR may agree to perform maintenance services on a time-and-materials basis.

#### 5. PERFORMANCE WARRANTY

VENDOR WARRANTS THAT THE SERVICES PROVIDED HEREIN WILL BE PERFORMED IN A DILIGENT AND WORKMANLIKE MANNER BY INDIVIDUALS OF SUITABLE TRAINING AND SKILL IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY PRACTICES. EXCEPT AS SET FORTH ABOVE, VENDOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE.



## Appendix A to the Agreement

### SERVICE LEVEL TERMS

This Appendix defines “normal” response scenarios and describes CLINICAL COMPUTER SYSTEMS INC. (“VENDOR”) levels of service delivered to fulfill its obligations under the Agreement. VENDOR will use commercially reasonable efforts to maintain the following response times: (1) telephone response time within 30 minutes of NMC notification of the problem; (2) VPN or other comparable remote access support within 45 minutes provided NMC is making access available; (3) on-site support within 24 hours for Complete System Downtime (as hereinafter defined); and (4) next business day for Partial System Downtime. Response times for onsite service needs are the same day or the next day and/or can depend on transportation availability, and severity of problem NMC is encountering.

Under Platinum Support Service, on-site response is provided without cost. If NMC has chosen Gold Support Service, the next day onsite service will be provided one day after a purchase order is issued (P.O. number provided by NMC on telephone to VENDOR tech support) for the on site labor to VENDOR.

*Complete System Downtime.* A “Complete System Downtime” exists when a key/significant portion of or the entire system is experiencing an outage that precludes critical work from being done (e.g. when the entire systems is inoperable - fetal monitor signal acquisition for display and/or archival or charting are interrupted on a system-wide basis). Other examples include server Software crashes, or database-wide information corruption and incorrect writing of critical fields, or database information corruption for a single patient. Actual repair times will depend upon the nature and description of problem prior to arrival and, related to this, the assumption that diagnosis led to correct parts being brought by the technician, accessibility to system, unit census, etc.

Most software related incidents are resolved using remote connectivity tools. In the event that remote connectivity tools provide to be insufficient to correct a particular software problem, VENDOR personnel will provide on-site service. **Notwithstanding the above, all reasonable commercial efforts will be made to resolve a Complete System Downtime (those described in the preceding paragraph) the same day.**

*Partial System Downtime.* A “Partial System Downtime” is a condition that constitutes an immaterial defect or error in one or more functions or deployments that do not affect a significant part of or the entire system. Non-exclusive examples would include failure of a single server display, a single room not capturing fetal monitor data, minor deviations that do not result in input/output errors, cosmetic problems, minor bugs, annoyances and misspellings. Cosmetic preferences, such as color choice, do not constitute an error or defect.

Most software related incidents are resolved using remote connectivity tools. In the event that remote connectivity tools provide to be insufficient to correct a particular software problem, VENDOR personnel will provide on-site service within the following business day (not to exceed 48 hours) subject to the requirements of the preceding paragraph.

Notwithstanding the above, all reasonable commercial efforts will be made to resolve critical issues (those described in the preceding paragraph) the same day.

In the event the failure is not system critical, response plans are made to repair the problem within three business days. These types of failures include items that do not affect a significant part of or the entire system (e.g. a single workstation is malfunctioning).

NMC is responsible for routine maintenance. This is typically but not exclusively related to environmental issues such as power, air temperature, filter cleaning, or placement of repair equipment.

ACCESS. Maintenance services are contingent upon VENDOR's ability to obtain remote access to the software programs at the Designated Site as set forth in the Price Quote. NMC's failure to provide such access shall immediately relieve VENDOR of any responsibility to provide maintenance services, other than telephone support or on-site support (at NMC's cost for time, travel, housing), until access is available. NMC shall continuously provide the following equipment and access:

Network Connection. NMC shall provide VENDOR with remote access to the NMC network and servers associated with the software programs in a manner reasonably acceptable to VENDOR and NMC.

Security. NMC shall provide VENDOR with all login names, passwords, network rights and security information required to provide maintenance services. If NMC must change any access provisions, NMC shall immediately notify VENDOR of such changes.

Hardware. NMC shall provide and maintain hardware adequate for the operation of the software programs in safe, environmentally-controlled premises supplied with adequate and constant electrical power. NMC's internet server must be operational at all times and physically accessible to VENDOR's designated staff as necessary.

Physical Access. NMC shall provide access rights to VENDOR including full rights to all software programs, resources and adequate rights to access the server running the software programs. Subject to NMC's standard and reasonable security procedures, if VENDOR is onsite, NMC shall provide VENDOR and its agents physical access to all equipment and software associated with the software programs throughout each term of this Agreement.

Test Environment. NMC acknowledges and agrees that if NMC requests to migrate the Version of the software programs running in its test environment to NMC's production environment, such migration may result in the temporary unavailability of the software programs in NMC's production environment.

VENDOR's 99% PERFORMANCE UPTIME GUARANTEE: If NMC believes that the system performance is not up to expected standards, VENDOR agrees with NMC to carefully track system performance. If requested by NMC in writing, VENDOR will track and quantify system

downtime related to all service calls we receive. When service calls received are closed, an applicable downtime will be defined and quantified (in 1/2 hour increments).

VENDOR expects 99% uptime performance related to the avoidance of Complete System Downtime. In the event that Complete System Downtime exceeds 87.6 hours during the period of a calendar year (99%), for each 24 hours of Complete System Downtime beyond the 87.6 allowable hours, VENDOR will extend the systems warranty (or Support Services Agreement following the warranty period) by 1 month without cost to NMC. VENDOR expects all OBIX Systems to have a reasonable but limited amount of Partial System Downtime. For every 48 hours of Partial System Downtime, VENDOR will add 1 hour towards the total number of annual Complete System Downtime hours.

Above downtime calculations do not apply when VENDOR recommended standards for implementation are not followed. Additionally, they will not apply when the downtime is determined to be the result of any software or hardware items not provided by VENDOR or if NMC infrastructure (networking issues) is determined to be the primary cause of the downtime.

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("Agreement"), effective April 1, 2016 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and Clinical Computer Systems, Inc. ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. 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"). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI"), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

**1. DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

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

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for 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 the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner 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 persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which 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);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

### **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) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within five (5) business days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) 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, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. 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 five (5) business 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 twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents 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 by Business Associate:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; 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;

(j) 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) notify the Covered Entity within five (5) business days of the Business Associate's receipt of any request or subpoena for PHI, unless prohibited by law. 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;

(l) maintain a formal security program materially in accordance with all applicable data

security and privacy 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

The 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.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within five (5) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

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 limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) 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;

(d) 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

(e) notify Business Associate, in writing and in a timely manner, 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. TERMS AND TERMINATION**

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement 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 Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. 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 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 or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

#### **5. MISCELLANEOUS**

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, 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 Agreement 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 the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement 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 Agreement 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:  
Clinical Computer Systems, Inc.

715 Tollgate Road

Elgin, IL 60213

Attn:

Phone:

Fax:

If to Covered Entity, to:  
Natividad Medical Center

1441 Constitution Blvd.

Salinas, CA 93906

Attn: Contracts Division

Phone: 831-755-4111

Fax: 831-757-2592

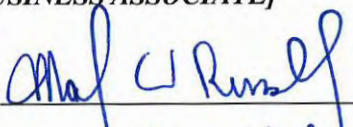
Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight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

5.5 Counterparts; Facsimiles. This Agreement 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 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

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

*[BUSINESS ASSOCIATE]*

By:   
Print Name: MARK W. RUSSELL  
Print Title: VP. FINANCE  
Date: 2/19/16

*COUNTY OF MONTEREY, ON BEHALF OF  
NATIVIDAD MEDICAL CENTER*

By:   
Print Name: Gary Gray  
Print Title: CEO  
Date: 3/25/16

## EXHIBIT C

### SOFTWARE LICENSE TERMS & CONDITIONS

These Software License Terms & Conditions shall apply to all Software purchased by NMC from CONTRACTOR.

#### 1. GENERAL

These general terms and conditions govern the sale by VENDOR of goods and services included herein and in the Exhibits. NMC may use the Products only at the "Designated Site." For the purposes of this Agreement the term "Designated Site" means the physical location of the facility or facilities indicated by VENDOR in the VENDOR Price Quote as well as via remote access by authorized users and affiliated physician practices. For the purposes of this Agreement, the term "Products" means the Software (as hereinafter defined) and the Miscellaneous equipment sold to NMC under this Agreement (e.g. cables). No addition or modification to these terms and conditions will be binding on either party unless agreed to in writing signed by an authorized representative from each party. Other terms and conditions that may be contained in an invoice, purchase order or other document do not apply.

#### 2. PAYMENT TERMS

Payment by NMC for purchase of any additional Software shall be made in accordance with VENDOR's Price Quote. VENDOR reserves the right to suspend any further performance under this Agreement in the event payment is not made within sixty (60) days of due date. No payment by offset is permitted unless approved by VENDOR in a signed writing.

#### 3. DELIVERY TERMS

Delivery terms are prepay and add with respect to shipping costs and FOB Destination with respect to risk of loss and title transfer, except that title to all intellectual property rights associated with the Products (e.g., software and other proprietary rights) remains with VENDOR (or its suppliers and licensors), and such Products are made available or licensed only for use by NMC pursuant to this Agreement. NMC is responsible for all stolen, lost or damaged items subsequent to delivery and such items will be replaced only at NMC's expense. Acknowledged shipping dates are approximate only and based on prompt receipt of all necessary information from NMC.

#### 4. SOFTWARE LICENSE

4.1 VENDOR software programs shall be referred to herein as the "Software". The Software incorporates application programs copyrighted and/or licensed by VENDOR. Use of VENDOR's Software constitutes acceptance of the terms and conditions herein. VENDOR hereby grants and NMC hereby accepts upon the terms and conditions set forth herein, a limited non-transferable, non-assignable, nonexclusive license for the use of the Software and Documentation (the "License") in the quantities, subject to the birth per year limitations set forth in VENDOR's Price Quote. "Documentation" means i.e. the

user manuals, training aids, installation guides, and technical documents with respect to the Software.

4.2 Subject to the terms of this Agreement, this License authorizes NMC and its employees and authorized agents to use the Software for NMC's internal operations but only in machine-readable form; and only at the Designated Site. If not otherwise purchased from VENDOR, NMC will be responsible for the purchase, installation and support of any hardware and third party software necessary to operate the Software.

4.3 The copyright, the ideas and expressions thereof contained in the Software and all physical embodiments thereof, and materials supplied hereunder in connection therewith and all registered or unregistered trademarks related to the Software are acknowledged by NMC to be confidential and proprietary information owned by VENDOR. No ownership in, or title to, the Software or any intellectual property rights related thereto is transferred to NMC and NMC has no interest in or right to use the Software or such proprietary information or materials except in accordance with the terms of the license granted in this Agreement. NMC, its employees, contractors, and agents may not modify, enhance, update or create derivative works from the Software or permit others to do so. NMC, its employees, contractors, and agents may not translate, reverse engineer, reverse compile, reverse assemble or otherwise attempt to discern the source code or create derivative works of the Software or permit others to do so. All changes, modifications or improvements made or developed with regard to the Software by VENDOR, whether or not made or developed at NMC's request and any of the foregoing made by NMC, its employees, contractors, and agents even though not permitted hereby, shall remain the property of VENDOR. NMC hereby assigns all its rights to such changes, modifications, and improvements to VENDOR. NMC shall have the right to use any such changes, modifications, and improvements that are delivered to NMC by VENDOR pursuant to the terms of this Agreement. NMC agrees that it will not provide or make available to other than those of its employees and contractors required to use the Software in its business, the Software, or any part thereof, including any physical embodiment thereof, or any material supplied by VENDOR in connection therewith, including, but not limited to, flowcharts, logic diagrams and object or source code, in any form. NMC shall take all reasonable steps necessary to protect the confidentiality of the Software and all other information or products supplied to NMC by VENDOR and shall be responsible for any breach of confidentiality or the other provisions of this Section 4.3 by its employees, contractors, and agents. NMC agrees to notify its employees, contractors, and agents who have access to the Software and other material provided in connection therewith of the confidentiality obligations herein and shall require such persons to agree to keep such Software and information confidential. NMC will not remove, or permit to be removed, from any item included in the Software or any materials related thereto any proprietary, confidential, or copyright notices, markings, or legends placed thereon by VENDOR.

4.4 Implementation Software; Backups; User's Manuals. At the time of installation, VENDOR will provide NMC with one machine-readable version of the Software for implementation purposes. Such Software will be provided in a machine-readable form (optical, hard disk, ftp, etc.). NMC may create copies of the Software for backup purposes. The original and any copies (in whole, or in part) of the Software provided or made under this Agreement shall remain the property of VENDOR.

For disaster recovery purposes, NMC is encouraged to back up the Software on all client machines.

NMC may copy the User's Manuals provided by VENDOR in such quantities as reasonably may be required for operation of the Software within the scope of this Agreement but shall keep the same confidential as required by Section 4.3 hereof.

4.5 Infringement. VENDOR shall defend any action brought against NMC to the extent that it is based on a claim that the Software, used within the scope of the License granted hereunder, infringes a copyright or other intellectual property right in the United States. VENDOR agrees to indemnify and hold NMC harmless from any and all costs and damages awarded against NMC in any such action provided NMC notified VENDOR promptly in writing of the claim. It is agreed further that in the event of alleged infringement of a copyright or other intellectual property right in the United States arising out of the use of the Software used within the scope of the License granted hereunder, VENDOR will participate fully in, be responsible for and control the defense and/or settlement of such claims at VENDOR's sole discretion. In the event of a claim or infringement of a copyright or other intellectual property right in the United States associated with the use of the Software, VENDOR, at its option, may procure for NMC the right to continue using the Software or may replace or modify the same to make it non-infringing. In the event VENDOR is unable to provide one of the foregoing remedies, NMC shall return to VENDOR the Software and related Documentation and, subject to the other limitations, qualifications and conditions herein, VENDOR shall refund to NMC a pro-rata amount paid by NMC for the Software based upon a 5-year depreciation. VENDOR shall have no liability for any claim of copyright infringement if (1) such infringement would be avoided had NMC loaded the latest release of the Products with equivalent functionality and performance made available to NMC at that time, or (2) if such infringement is related to the use of VENDOR's Software with other software or data not provided by VENDOR and such infringement would be avoided by using the Software alone, or (3) if the Software has been modified by a party other than VENDOR, or (4) such infringement is based upon the use of the Software in violation of this Agreement. This paragraph states the entire liability of VENDOR with respect to infringement of any copyrights or other intellectual property right by the Software or any parts thereof, and VENDOR shall have no liability with respect to any other intellectual property rights.

## 5. ACCEPTANCE OF INSTALLATION

At the time the Software is available to NMC in the production environment ("Installation"), NMC shall complete its "Acceptance of Installation" as set forth below. Acceptance of Installation shall occur following thirty (30) Error Free Run Days. For these purposes "Error Free Run Days" means that the Software operates for thirty (30) consecutive days without an "Error" as hereinafter defined. All acceptance tests will be executed at NMC's site on hardware and equipment as configured by VENDOR. Errors uncovered by NMC shall be documented and submitted to VENDOR for corrections. All corrections of Errors shall be made within thirty (30) days, except as otherwise agreed to by NMC and VENDOR. VENDOR shall notify NMC when such corrections have been made and NMC shall commence retesting of the Software and complete such retesting as soon as possible, but no later than ten (10) days after NMC has been

notified of such corrections. If, after such period, the Software runs for thirty (30) consecutive days without an Error, NMC shall accept the OBIX System. If the Software still fails to pass the acceptance test, NMC shall notify VENDOR in writing and VENDOR shall have an additional thirty (30) days to correct such errors. If, after such period, the Software runs for thirty (30) consecutive days without an Error, NMC shall accept the OBIX System. An "Error" means an item or items that cause the OBIX System not to perform in conformity with VENDOR's standard marketing information. Expressly excluded from the definition of Error are (a) cosmetic items or minor deviations that do not result in input/output errors; and (b) errors caused by external factors such as hardware performance issues or failures, communications interruption, NMC operator error, or other items outside the direct control of VENDOR that affect the way the OBIX System performs.

## 6. WARRANTY

### 6.1 OBIX Software Warranty

(a) VENDOR warrants that the Software will perform in accordance with VENDOR's published User Manual prepared and issued by VENDOR during the Included Support Term as set forth in the Price Quote (the "Warranty Period"). For these purposes, Included Support Term begins at Acceptance of Installation. VENDOR warrants that it has the right to confer the license of the Software.

(b) NMC shall remain fully responsible for the accuracy of information obtained from the use of the Software, and the use of such information.

6.2 Service. VENDOR warrants that during the Included Support Term services provided under Section 7 hereof, will be performed in a diligent and workmanlike manner by individuals of suitable training and skill in accordance with generally accepted industry practices. Such warranty terminates at the end of the Included Support Term as defined in the Price Quote. Thereafter, services and any warranty with respect thereto will be provided pursuant to the Support Services Agreement. Fetal monitor interconnect cables and/or other equipment listed under Miscellaneous in the Price Quote, if any, are considered consumables and are not covered by this warranty. All other warranties relative to provided services are disclaimed.

6.3 NMC Specifications. VENDOR does not warrant and will not be liable for any design, materials, or construction criteria furnished or specified by NMC and incorporated into the Products or for Products made by or sourced from other manufacturers or vendors specified by NMC. Any warranty applicable to such NMC-specified products will be limited solely to the warranty, if any, extended by the original manufacturer or vendor other than VENDOR to the extent permissible thereunder.

6.4 Remedies. Satisfaction of the above warranties and any other claim regarding the Product will be limited, at VENDOR's option, to the replacement, repair, correction or modification of the Products, or issuance of a credit for the purchase price of the Products involved, and where applicable, only after the return of such Products with VENDOR's written consent.

6.5 General. Warranty satisfaction is available and the Support Services need to be performed, only if (a) VENDOR is promptly notified in writing; and (b) any alleged defect has not been caused by (i) misuse, abuse, neglect, movement, improper or unauthorized installation, operation, maintenance, repair, alteration or modification of the Products by NMC, its employees, agents, contractors, representatives, invitees or any other persons engaged by NMC other than VENDOR and its contractors; (ii) failure to follow the manufacturer's or VENDOR's installation, operation or maintenance instructions as provided in the manuals previously delivered to NMC (On-Site Technical Reference Manual, Site Preparation Manual, OBIX User Manual, and On-Site Clinical Education Manual); (iii) use of hardware that does not comply with VENDOR's hardware configuration as described in the On-Site Technical Reference Manual; or (iv) accident, or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment or by power failure, surge or fluctuations or air conditioning failure; or (v) safety and performance monitoring programs (e.g. anti-virus software) not installed by VENDOR that degrades the performance of VENDOR's Products; or (c) NMC is not in a material breach under this Agreement.

6.6 THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE, AND EXTEND ONLY TO NMCS PURCHASING FROM VENDOR OR ITS APPOINTED DISTRIBUTOR.

## 7. SUPPORT SERVICES

For the Included Support Term, VENDOR shall provide NMC with the support services equivalent to the Platinum Support Services set forth in the Support Services Agreement. After the Included Support Term any extended services shall be provided to NMC pursuant to the Agreement.

## 8. LIMIT OF LIABILITY Intentionally deleted.

## 9. MEDICAL DECISION MAKING

NMC acknowledges that the Products are a comprehensive system for central, bedside and remote Electronic Fetal Monitoring ("EFM") that includes archiving, point-of-care charting, single-click management reports and internet-based physician access. NMC acknowledges and agrees that the Products do not make diagnoses; rather the Products are only a tool to assist a competent medical professional in the provision of such medical professional's services. The Products are not a substitute for clinical assessment diagnosis and treatment by a licensed medical professional. NMC is solely responsible for the correct utilization of the Products and any medical decisions made in relation thereto are exclusively the responsibility of NMC. The parties agree that VENDOR does not provide medical services to patients and that NMC's use of the Products does not affect NMC's obligations to exercise independent medical judgment in rendering health care services to patients. VENDOR shall have no responsibility as a result of

this Agreement for decisions made or actions taken or not taken in rendering medical care or for information provided to insurance companies, governmental agencies or other payors. NMC acknowledges and agrees that NMC and its end users (i) shall not rely upon the Products (including, but not limited to, output in the form of data) if NMC or its end users know or should know that the Products are operating in a manner that could have a material negative impact on patient care; (ii) shall not rely upon the Products as the sole means of communicating life threatening or critically important results, such as lab, pathology or radiology results, and (iii) shall remain fully responsible for the use of information obtained from the software. NMC shall defend, indemnify and hold VENDOR harmless from and against all claims, liabilities and expenses (including attorney's fees) related to any claims with respect to the matters set forth in this Section, including, but not limited to, negligence or malpractice claims arising out of or resulting from the use or non-use of the Products by NMC or any of its agents or employees.

#### 10. PHYSICAL PREMISES

NMC assumes the costs of providing any modifications to the building services (e.g. power, cooling, cabling) necessary to accommodate the installation and operation of the Products. NMC insures that the necessary connection features are available to enable its fetal heart monitors to be connected via digital interface to VENDOR's OBIX™ System. In addition, NMC shall install the wiring and other physical site requirements necessitated by VENDOR's specifications in accordance with the On-Site Technical Reference Manual and Site Preparation Manual as previously provided to NMC.

#### 11. QUOTATIONS

Written quotations are valid for the time period defined in the Price Quote. Verbal quotations expire the same day they are made. All typographical and clerical errors are subject to correction.

#### 12. PRICES

Prices and other information shown in any VENDOR publication (including product catalogs and brochures) are subject to change without notice and confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. NMC will pay or reimburse VENDOR for all sales, use, excise or similar taxes assessed in connection with NMC's purchase or license of the Products. In lieu thereof, NMC shall provide VENDOR with a tax-exemption certificate in a form acceptable to the appropriate taxing authorities.

#### 13. CHANGES

NMC-related order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to VENDOR's prior written approval and adjustments in price, scheduling, and other affected terms and conditions. In any event, VENDOR reserves the right to reject any change that it deems unsafe, technically inadvisable, or inconsistent with established engineering or quality guidelines and standards, or incompatible with VENDOR's design or manufacturing capabilities.

#### 14. RETURNS



All returns of Products will be subject to prior VENDOR written approval. Nonwarranty returns of unused and salable Products for credit will be subject to VENDOR's return policies equal to fifteen percent (15%) of the sale price of the Products plus demonstrated sales costs. Products returned under warranty must be properly packed and shipped to VENDOR-specified locations. Shipping containers must be clearly marked per VENDOR's instruction and shipped freight prepaid by NMC.

15. ORDER CANCELLATION

An order may be cancelled by NMC prior to shipment only by written notice and upon payment to VENDOR of cancellation and restocking charges equal to fifteen percent (15%) of the sales price plus demonstrated sales costs. Cancellation charges associated with orders for custom Products or Products specifically processed to NMC's specification may equal the actual selling price of the Products.

16. FORCE MAJEURE

Except with respect to NMC's payment obligations hereunder, if either party is prevented, hindered or delayed in the performance or observance of any of its obligations under this Agreement by reason of a causes beyond its reasonable control, including without limitation, accident, fire, lightning, water, flood, tornado, windstorm, hail, earthquake, explosion, smoke, aircraft, epidemics, quarantines, restrictions, motor vehicle, collapse of building, strike or labor dispute, acts of God, the elements of war, acts of terrorism, civil disturbances, acts of civil or military authorities or the public enemy, pest damage, riot, vandalism, power failure, surge or fluctuations, air conditioning failure or malfunction, delays in transportation, inability to secure parts or raw materials, transportation facilities, fuel or energy shortages or any act or omission of communications carriers ("Force Majeure Event"), that party will be excused from any further performance or observance of the obligations so affected for as long as such Force Majeure Event prevails and that party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. The party affected by a Force Majeure Event will advise the other party in reasonable detail of the Force Majeure Event (including the estimated duration of the Force Majeure Event) as promptly as practicable (and in any event within three (3) Business days after occurrence of the Force Majeure Event) and keep the other party reasonably apprised of progress in resolving the Force Majeure Event. In the event of any such delay, performance date(s), due dates and deadlines will be extended for that length of time as may be necessary to compensate for the delay.

17. GOVERNMENT CLAUSES AND CONTRACTS

No government contract regulations or clauses will apply to the Products or this Agreement or act to bind VENDOR unless specifically agreed to by VENDOR in writing at VENDOR's headquarters.

18. EXPORT CONTROL

Products and associated materials supplied or licensed under this Agreement may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations. NMC agrees that it will not export the Products.

19. DISPUTES

The parties will attempt in good faith promptly to resolve any dispute arising out of this Agreement by negotiations between representatives who have authority to settle the controversy. If unsuccessful, the parties further will attempt in good faith to settle the dispute by nonbinding third-party mediation, with fees and expenses of such mediation apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms of this Agreement. These procedures are the exclusive procedures for the resolution of all such disputes between the parties. Notwithstanding the foregoing, this Section shall not apply to issues for which a party can or does seek injunctive relief.

20. CHOICE OF LAW; EXCLUSIVE JURISDICTION

The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of California, without reference to its conflicts of laws principles. Any action (whether by arbitration or in court) arising under this Agreement shall be brought exclusively in the state and federal courts located in the State of California.

21. ASSIGNMENT

See Section 15.6 of the Agreement.

22. LANGUAGE

The parties acknowledge that they have required that this Agreement be drawn up in English. In the event of a conflict between the English and other language versions of this Agreement, the English version will prevail.

23. HIPAA BUSINESS ASSOCIATES PROVISIONS

If VENDOR is a "Business Associate" of NMC within the meaning of the privacy regulations under HIPAA, the parties agree that their activities hereunder shall be consistent with the Business Associate Agreement attached as Exhibit B, which shall govern any conflict or inconsistency with this Agreement.

24. NOTICE

See Section 14 of the Agreement.

25. NMC'S OTHER OBLIGATIONS

25.1 Installation, Education and Related Obligations. NMC's obligations for installation, education and additional details are set forth in VENDOR's On-Site Technical Reference Manual, Site Preparation Manual, OBIX User Manual, and the On-Site Clinical Education Manual as the same may be amended or restated from time to time. NMC agrees to comply with such obligations. NMC agrees to report to VENDOR in writing the number of births per year at NMC's Designated Site upon each anniversary

date of the date of this Agreement or VENDOR may obtain the information from an outside source if not provided by NMC.

25.2 VPN Access. NMC and VENDOR shall mutually work together to provide VENDOR with Virtual Private Network (VPN) access at the start of any implementation process. If NMC fails to provide VPN access within such time period or if NMC removes VPN access while the Products are under warranty or support, VENDOR may be unable to provide support until access is restored.

25.3 Email Functionality. NMC shall provide VENDOR with inbound and outbound email functionality at the start of any implementation process. This functionality allows VENDOR Product to communicate and provide error logs to NMC and VENDOR. If NMC fails to provide email functionality within such time period or if NMC removes email functionality while the Products are under warranty or support, VENDOR may be unable to provide support until functionality is restored.

25.4 External Firewall Port. NMC shall provide VENDOR with a defined external firewall port at the start of any implementation process.

25.5 Vendor Credentialing. NMC agrees to reimburse VENDOR promptly upon submission to NMC for all costs incurred by VENDOR associated with NMC-required vendor credentialing of VENDOR's employees.

## 26. DEFAULT AND TERMINATION

Either party shall be in default of its obligations under this Agreement in the event of (a) non-performance of any of its covenants, obligations, or liabilities contained or referred to in this Agreement or attached exhibits, such non-performance has not been cured within thirty (30) days, except that any non-payment default which must be cured within fifteen (15) days, following written notice to the other party ; (b) such party's cessation of business operations; or (c) dissolution, insolvency, appointment of a receiver, assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against such party. Remedies of the parties are subject to the limitations set forth in this Agreement, in the event of default by either party, the other party shall have the right to exercise any remedy available at law.

Upon termination of this Agreement for any reason or in the event NMC has procured and placed into production alternative software to supplant VENDOR's Software, the License to the Software shall immediately terminate and NMC shall cease the use of the Software or any part of it and shall delete the same. At VENDOR's request, NMC shall provide VENDOR with a written certification that NMC has ceased the use of the Software except as provided herein, executed by a duly authorized officer of NMC.

NMC acknowledges that any breach of its obligations under this Agreement might cause irreparable harm for which there is no adequate remedy at law. Accordingly, NMC agrees that, upon any breach of this Agreement, VENDOR is entitled to injunctive and other equitable relief, without the need to post any bond, in addition to such remedies as may be available at law.

27. MISCELLANEOUS

27.1 Purchase Orders For Multiple Hospitals. In the event NMC is delivering purchase order(s) pursuant to multiple Price Quotes for multiple hospitals or facilities, VENDOR and NMC agree that they intend the provisions of this Agreement to apply to each hospital/facility on an individual and separate basis with respect to the purchase order, and/or Price Quote, applicable thereto. If a purchase order is received in the future from an affiliated facility, the Adoption Agreement Form will be executed by the facility so that the terms and conditions herein will apply.

27.2 Representation of Power. In the event NMC is delivering multiple purchase orders pursuant to multiple Price Quotes for multiple hospitals, NMC hereby represents and warrants that (i) it has the power to enter into this Agreement on behalf of each such hospital; and (ii) this Agreement is enforceable against each such hospital in accordance with its terms.

27.3 Debarment Certification. VENDOR represents and warrants to NMC that (a) VENDOR is not excluded from any federal health care program, as defined under 42 USC §1320a-7b(f), for the provision of items or services for which payment may be made under a federal healthcare program; (b) to its knowledge, no basis for exclusion from any health care program exists; (c) VENDOR has not arranged or contracted (by employment or otherwise) with any employee, contractor or agent that VENDOR knows are excluded from participation in any federal health care program; and (d) no final adverse action, as such term is defined under 42 USC §1320a-7e(g), has occurred or is pending or threatened against VENDOR or to VENDOR's knowledge against any employee, contractor or agent engaged to provide items or services under this Agreement (collectively "Exclusions/Adverse Actions"). VENDOR, during the term of the Agreement, shall notify NMC of any Exclusions/Adverse Actions or any basis thereof within fifteen (15) days of its learning of any such Exclusions/Adverse Actions or any basis therefore.

28. AMENDMENT

See Section 15.2 of the Agreement.

29. NO WAIVER

See Section 15.3 of the Agreement.

30. SEVERABILITY

If any portion of this Agreement is found to be invalid or unenforceable, the parties hereto agree that the remaining portions shall remain in full force and effect. The parties hereto further agree that in the event such invalid or unenforceable portion is an essential part of this Agreement, if reasonable, they will immediately begin good faith negotiations for a replacement provision.

31. COUNTERPARTS

See Section 15.14 of the Agreement.

### 32. CONFIDENTIAL INFORMATION

32.1 During the Term of this Agreement, VENDOR and NMC may have access to the other's Confidential Information. "Confidential Information" means information that either party may consider to be confidential and/or a trade secret, including, but not limited to, preexisting NMC information, patient information, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, NMC lists and other information about NMCs, product information, concepts, and compilations of data and any other information given from one party to the other. The contents of this Agreement shall be deemed Confidential Information.

32.2 Each party will use the other's Confidential Information only to perform its obligations under, or for purposes related to, this Agreement. Neither party will use the other's Confidential Information for the benefit of a third party. Each party: (a) will maintain the confidentiality of the other's Confidential Information in the same manner in which it protects its own information of like kind, but in no event will either party take less than reasonable precautions to prevent the unauthorized use or disclosure of the Confidential Information; (b) is authorized to disclose or allow access to the other's Confidential Information only to its employees, agents, contractors, consultants, auditors and subcontractors on a need to know basis, provided that all such agents, contractors, consultants, auditors and subcontractors have written confidentiality obligations to that party at least as restrictive as those in this Agreement; and (c) is responsible for any unauthorized disclosure or use of, or access to, the other party's Confidential Information.

32.3 The confidentiality provisions of this Agreement do not apply to information that is entirely in the public domain other than through fault of the party against whom this section is enforced; was known to the party prior to access to the information through no breach of any obligation of confidentiality; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the other party; is created by that party's employees independently of the other party's Confidential Information; or is required to be disclosed or pursuant to court order, legal regulation or applicable law, provided written notice is given to the other party of such requirement as soon as practicable and reasonable assistance is rendered to the other party, if requested, at the other party's expense, to limit such disclosure to the minimum required by such court order, legal regulation or applicable law. The parties agree that this Agreement and all attachments and exhibits to the Agreement are subject to disclosure under the California Public Records Act (the "PRA"), unless exempt by law thereto, and do not require advance written notice prior to disclosure pursuant to a valid PRA request.

32.4 The provisions of this Section will survive termination of this Agreement and will inure to the benefit of the parties and their successors and assigns.

### 33. PUBLICITY

Neither party will use the other party's name, trademarks or service marks or refer to the other party directly or indirectly in any NMC list, advertising, promotional materials, media release,

public announcement or public disclosure relating to this Agreement or its subject matter to the extent the materials in such media release, announcement or disclosure have not previously been made publicly available, without the other party's prior written permission to do so.

34. SURVIVAL

Any terms of this Agreement that would, by their nature, survive expiration or termination of this Agreement (including, but not limited to, any rights of VENDOR to payment obligations by NMC for an uncured default) will so survive, including, without limitation, all provisions relating to ownership, indemnification, confidentiality, privacy and limitations of liabilities.