

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND PICIS CLINICAL SOLUTIONS, INC.**

THIS AMENDMENT TO THE AGREEMENT, entered into this _____ day of _____, 2016 ("Amendment Effective Date"), by and between the COUNTY OF SAN MATEO, hereinafter called "County," and PICIS CLINICAL SOLUTIONS, INC, hereinafter called "Contractor."

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an agreement with Optum Clinical Solutions Inc., hereinafter "Agreement", for software maintenance services on June 17, 2014 for the San Mateo Medical Center for the term July 1, 2014 through June 30, 2017, in an amount not to exceed \$255,000 by Resolution 073235; and

WHEREAS, the parties amended the agreement on March 17, 2015, extending the term one year to June 30, 2018, and adding software license and services terms and conditions, travel & expense policy, hourly rate, anesthesia software pricing and the following Contractor's software programs: OR Scheduling Manager, Anesthesia Information Management System option, PulseCheck Professional Billing Interface and TouchPoint 2.0 option. The maximum County obligation for the agreement was increased by \$1,298,000 for a new maximum amount of \$1,553,000 by Resolution 073701; and

WHEREAS, the parties hereby acknowledge that Optum Clinical Solutions Inc. was sold on June 17, 2015; Optum Clinical Solutions Inc. continued to be the entity with which County had a contractual agreement; and

WHEREAS, Optum Clinical Solutions, Inc. changed its name to Picis Clinical Solutions, Inc. on July 15, 2015; and

WHEREAS, the parties agree that the new name Picis Clinical Solutions Inc. shall be substituted for Optum Clinical Solutions as the Contractor under the Agreement; and

WHEREAS, Contractor is the manufacturer, and/or authorized reseller, of certain software programs listed on Exhibit A hereto and County desires to license/sublicense such software programs from Contractor; and

WHEREAS, the parties further amend the Agreement to license the following Contractor's software programs: Health Information Exchange, TouchPoint 2.0, and Supply Cabinet HL7 Bidirectional Interface.

In the event of any conflict between the terms of this Amendment and the Agreement, the order of precedence shall be, in decreasing order: this Amendment NO 2, Amendment NO 1 and then the Agreement dated June 17, 2014.

Now, therefore, it is agreed by the parties to this Amendment NO.2 that the Agreement and Amendment NO. 1 shall be amended as follows:

1. Exhibits and Attachments

The following exhibits are attached to this Amendment NO. 2 and incorporated into this Amendment NO 2 by this reference:

Exhibit A— Software Programs and
Exhibit B— Payment Terms

2. Services to be performed by Contractor

In consideration of the payments set forth in this Amendment NO. 2 and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Amendment NO. 2 and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Amendment NO. 2, and in Exhibit A of this Amendment NO. 2, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B of this Amendment NO. 2.

In no event shall County's fiscal obligation under this Amendment NO. 2 for Contractor license, services and maintenance described in Exhibit B of this Amendment NO. 2 exceed \$353,155.00 (increased by \$13,155.00). In no event shall County's fiscal obligation for Contractor license, services and maintenance described in Amendment NO.1, Attachment A of the Agreement exceed \$560,513.00 (increased by \$33,513.00). In no event shall County's total fiscal obligation under the Agreement exceed \$1,599,668 (increased by \$46,668.00). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owned by the County at the time of contract termination or expiration.

4. Disentanglement

Paragraphs two and three of Amendment 1 Exhibit A. Section 8.2 of the Agreement are hereby deleted and replaced as follows.

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, except for termination due to a material breach of County regardless of timing of the termination. Upon termination or expiration of this Agreement, County shall, within thirty twelve (12) months, return all copies of all Software, Data Products, Documentation and related user materials to Picis. With Picis' consent (via e-mail), County may certify that it has ceased using and has destroyed the Software, Data Products and Documentation, rather than return them. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that County is up to date with payments owed to Contractor and that County shall pay Contractor on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree the specific electronic format. Upon any termination of the Agreement, except for termination due to a material breach regardless timing of the termination, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue to receive from Contractor all maintenance and support services, at the then-applicable rates provided, however, the annual support and maintenance fees are paid in advance on a monthly basis during such time.

5. Price Protection

The Price Protection as described in Amendment NO.1 Section 6 of the Amendment NO. 1 dated March 17, 2015 is hereby extended to May 31, 2016.

6. General

This Amendment NO. 2, supersedes any contrary or inconsistent provisions of the Agreement, Amendment NO 1, and any prior amendments. As amended the Agreement and Amendment NO. 1, shall remain in full force and effect. In witness of and in

agreement with this Amendment NO 2's terms, the parties, by their duly authorized representatives, affix their respective signatures:

COUNTY OF SAN MATEO

By: _____

President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____

Clerk of Said Board

Picis Clinical Solutions, Inc.



Contractor's Signature

Date: 03/16/2016 _____

Exhibit A Software Programs

In consideration of the payments set forth in Exhibit B of this Amendment NO. 2, Exhibit A of the Amendment NO.1 is revised to add the following Software services and deliverables provided by the Contractor:

1. The license/sublicense and use of the Software Programs indicated in Section 2 below shall be governed by and subject to the terms and conditions of Amendment NO. 1. The terms and conditions of the End User Agreement (InterSystems) are applied to the additional sub licensed software TouchPoint 2.0 only and are attached hereto and made a part of this Exhibit A.

2. Software Programs

A. Health Information Exchange (HIE) Bi Directional 2.0 Interface (Requires ED PulseCheck 5.2v and TouchPoint 2.0)

B. TouchPoint 2.0 powered by InterSystems (Required for HIE 2.0, ADT Outbound 2.0, and ADT Syndromic Surveillance Outbound 2.0 interfaces; ED PulseCheck 5.2v or later version required)

C. Supply Cabinet HL7 Bidirectional Interface (Supports a bidirectional flow of item usage between OR Manager and a supply cabinet vendor. Sold with OR Manager only)

3. Professional Services

Contractor shall provide the following professional services: fixed fee, installation and remote training required for HIE support, TouchPoint 2.0 installation, and Supply Cabinet HL7 Interface installation including preference cards.



SUBSCRIPTION LICENSE AND SERVICES AGREEMENT

1. This InterSystems Agreement is between InterSystems Corporation ("ISC") and the end user ("you") that has ordered license(s) to use ISC's software (the "Licensed Software") and services ("Services") from ISC.
2. Upon ISC's acceptance of your order (the "Effective Date") which shall not be unreasonably withheld, ISC shall grant to you a nontransferable and nonexclusive license to use the Licensed Software internally solely in the conduct of your business (the "License") during the Term. The term hereof (the "Term") shall begin on the Effective Date and terminate automatically on the earlier of the last day of the final period for which ISC has received the proper fee (the "Subscription Fee") for your License and Services. If you have ordered a fixed term subscription, this Agreement may only be terminated in accordance with paragraph 5 below. Services shall be provided in accordance with InterSystems terms and conditions in effect on the date such Services are invoiced. If you ordered through an Application Partner ("AP"), you may only use the Licensed Software and Services in conjunction with such AP's software.
3. ISC hereby warrants to you that (i) the Licensed Software does not infringe on any patent that has been issued prior to the Effective Date, (ii) ISC has the right to license the Licensed Software to you pursuant to the terms hereof, (iii) the Licensed Software will operate substantially in accordance with ISC's documentation relating there to for the earlier of one year following the Effective Date or the Term, and (iv) all Services shall be performed in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with ISC's documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. **ISC SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO YOU AS TO THE CONDITION, MERCHANTABILITY, TITLE, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR SERVICES.** Your exclusive remedy for a breach of warranties (ii), (iii) and (iv) above shall be for ISC to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Services, as applicable. In the event of a breach of warranty (i) above your exclusive remedy shall be ISC's (a) modification of the Licensed Software, (b) procuring a license for you to use the Licensed Software or (c) termination of your License, at ISC's sole discretion.
4. ISC's liability to you shall in no event exceed the portion of the Subscription Fee received by ISC in respect of the specific Licensed Software or Services on account of which such liability

arose. In no event shall ISC be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.

5. Either party may terminate this ISC Agreement with 10 days written notice upon the other party's breach. In addition, you may terminate this Agreement upon 30 days written notice if ISC discontinues support for the Platform on which the Licensed Software Operates. You shall be liable for all fees relating to Licensed Software or Services provided prior to termination, and Sections 4, 5, 6, 7 and 8 hereof shall survive termination or expiration of this Agreement. Your rights to use the Licensed Software cease upon termination or expiration of this Agreement.

6. The Licensed Software and related documentation are and shall remain the sole property of ISC. You may make one copy of the Licensed Software for backup purposes only. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by ISC or its affiliates contained in or relating to the Licensed Software, Services or this business relationship. You agree to allow ISC or its representatives to audit your use of the Licensed Software upon five (5) days' written notice by ISC. You agree to provide access to your premises and otherwise cooperate with ISC in such audit.

7. This ISC Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA.

8. You agree to comply with all applicable laws and U.S. export control or similar laws with respect to use of the Licensed Software and technical data. The English version of this Agreement shall control unless otherwise required by local law.

9. This InterSystems Subscription and License Services Agreement and the associated InterSystems terms and conditions, in effect as of the date of invoice of your InterSystems Subscription Fee, constitute the entire InterSystems agreement between you and ISC relating to the subject matter hereof and supersedes any prior understandings between ISC and customers as well as any purchase orders or similar documents that may be submitted between ISC and you. ISC shall have the right to transfer or assign this InterSystems Agreement without your consent.

Exhibit B Payment Terms

In consideration of the Software Programs provided by Contractor as described in this Amendment, Exhibit A of the Agreement is revised to add the following payment terms and conditions:

1. Fees - (Annual Maintenance Fees are subject to the CPI provisions of the Agreement, specifically Amendment 1 Exhibit B III A 2 – which is CPI not to exceed 3%.)

A. Health Information Exchange (HIE) Bi Directional 2.0 Interface

One time license fee \$1,000.00

Professional Services Fixed Fee \$4,125.00

Annual Maintenance Fee \$250.00 (25% of license fee)

B. TouchPoint 2.0

Annual license fee \$3,000.00

Annual Maintenance Fee of \$750 (25% of Annual license fee)

C. Supply Cabinet HL7 Bidirectional Interface

One time license fee \$18,000 (\$20,000 fee discounted by 10%)

Professional Services Fixed Fee \$5,363

Annual Maintenance Fee of \$5,000 (25% of pre-discounted license fee)

2. Payment Terms

Annual License Fees – Fifty percent (50%) invoiced net 30 upon Amendment Effective Date. Upon Go-Live the remaining balance prorated to the next June 30th, thereafter invoiced net 30 annually on each July 1st prorated for any partial year.

One time License Fees - Fifty percent (50%) invoiced net 30 upon Amendment Effective Date and invoiced net 30 Fifty percent (50%) upon Go-Live.

Professional Service Installation Fees - Fifty percent (50%) invoiced net 30 upon Amendment Effective Date and invoiced net 30 Fifty percent (50%) upon Go-Live or 180 days from County acceptance [in writing] of Software in test environment whichever comes first.

Annual Maintenance Fee – The initial annual maintenance fee commences/invoiced net 30 upon Go-Live prorated to the next June 30th, thereafter invoiced net 30 annually on each July 1st prorated for any partial year, not to extend past June 30, 2018.

Invoicing - All invoices must include clear description of line item, percentage being invoiced, and the executed resolution number.