



Monterey County Board of Supervisors

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Board Order

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez to:

Agreement No. A-12934; Amendment No. 1

- a. Authorize the Deputy Purchasing Agent for Natividad Medical Center (NMC) or his designee to execute amendment No. 1 to the master agreement (A-12934) with Carefusion Solutions, LLC adding the Pyxis product known as BD Cato Medication Workflow Solutions, a medication workflow management system, and adding additional terms and conditions associated with BD Cato.
- b. Approve NMC Chief Executive Officer's recommendation to accept non-standard indemnification, limitation of liability, and limitation of warranty provisions within the BD Cato Medication Workflow Solutions Schedule.
- c. Authorize the Deputy Purchasing Agent for NMC or his designee to execute Customer Order 1000141289 for the BD Cato software subscription for a sixty (60) month term effective upon implementation (estimated to be on or about April 30, 2020), subject to extension on a month to month basis until terminated for a total amount not to exceed \$265,740.
- d. Authorize the Deputy Purchasing Agent at NMC to execute the Implementation Timeline to Customer Order 1000141289.
- e. Authorize the Deputy Purchasing Agent at NMC to execute any future modified Implementation Timelines to Customer Order 1000141289 which may arise due to unforeseen scheduling changes and which do not cause an increase to the total cost.

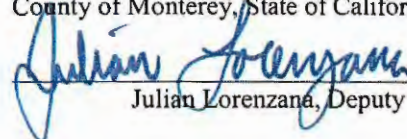
PASSED AND ADOPTED on this 19th day of November 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Lopez, Phillips, Parker and Adams
NOES: None
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting November 19, 2019.

Dated: November 19, 2019
File ID.: A 19-393
Agenda Item No.: 21

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


Julian Lorenzana, Deputy



First Amendment to Master Agreement

Effective as of the date signed by the last party below (the "Effective Date"), this first amendment ("Amendment") modifies the Master Agreement dated July 15, 2015 executed by and between CareFusion Solutions, LLC (together with its affiliates, "CareFusion") and County of Monterey, DBA Natividad Medical Center ("Customer"), each a "Party" and, collectively, the "Parties"

The Parties agree as follows:

1. **Additional Schedules.** The Schedules listed below are added to the Master Agreement, and shall apply as appropriate to the Products and/or Services identified in Customer Orders entered into pursuant to the Master Agreement

Product Line (if applicable)	Schedules
Pyxis™	BD Cato Medication Workflow Solutions

2. **Miscellaneous.** This Amendment, and each Schedule listed in the table above, set forth the entire agreement and understanding of the Parties with respect to the subject matter of this Amendment, and supersedes all prior and/or contemporaneous discussions, agreements and understandings of every kind and nature between the Parties regarding the subject matter of this Amendment. Unless expressly modified by this Amendment, the terms and conditions of the Master Agreement shall remain the same. In the event of any conflict between this Amendment and the Master Agreement, this Amendment shall control.

Each person signing below represents that he/she intends, and has the authority, to bind his/her respective Party to this Amendment to the Master Agreement.

COUNTY OF MONTEREY
DBA NATIVIDAD MEDICAL CENTER
#1525201

CAREFUSION SOLUTIONS, LLC

Notice Address:

Address: 1441 Constitution Blvd.
City, State Zip: Salinas, CA 93906

Notice Address:

3750 Torrey View Court
San Diego, CA 92130

State of Incorporation: California

State of Incorporation: Delaware

By: Andrea Rosenberg

By: [Signature]

Print: Andrea Rosenberg

Print: Soraya Mateos

Title: Assistant Administrator

Title: MMS Capital Contracting

Date: 12/2/15

Date: 10/17/2019

*Reviewed & approved to form
Stacy
Dep. Co. Counsel
10/25/15*

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey 10/25/19



Schedule Dispensing Products BD Cato™ Medication Workflow Solutions

In accordance with Section 1.2 of the General Terms and Conditions of this Master Agreement, this Schedule will apply to any Customer Order for Equipment, Software and Services that together are identified as the BD Cato™ Medication Workflow Solution. This Schedule will not apply to any other Product or Service.

Capitalized terms not defined in this Schedule have the meanings given them in the General Terms and Conditions of this Master Agreement.

1. Equipment

1.1. Delivery; Risk of Loss. CareFusion shall deliver the Equipment to Customer DAP (Incoterms 2010) Customer's site. Risk of loss or damage to the Equipment will pass to Customer upon delivery, title to the Equipment will pass to Customer as provided in Sections 4.2(b) and 5.2 hereof.

1.2. Possession and Use. Customer shall have the exclusive right to possess and use the Equipment during the Term only at the delivery address set forth in the Customer Order. Customer shall use the Equipment in compliance with all applicable federal, state, and local laws and regulations and in accordance with applicable manufacturer guidelines and specifications.

2. Software

2.1. Grant of License. CareFusion hereby grants to Customer a license to use the Software as set forth in Section 3.2 of this Master Agreement, provided, however, that the term of the license will be the Term (defined herein).

3. Services

3.1. Implementation

a) **CareFusion Services.** CareFusion shall provide Services to Customer for the installation and implementation of the Products in accordance with (i) a plan that CareFusion and Customer shall jointly develop based on the timeline specified in the Customer Order (the "Implementation Timeline") and the processes and requirements customarily used by CareFusion in implementations of comparable scope and complexity (the "Implementation Plan"), and (ii) any other requirements specified in the Customer Order (the "Implementation Services").

b) **Customer Obligations.** Customer shall: (i) perform the activities and deploy the resources specified in the Implementation Plan (including personnel in the numbers, for the time periods, and with the capabilities, experience, and authority necessary to carry out Customer's responsibilities under the Implementation Plan), (ii) provide all hardware and software (including, without limitation, interfaces and operating system software) required for the installation, implementation and operation of the Products, as specified in the User Guide, the Implementation Plan, and the Customer Order, (iii) provide the necessary physical and technical environment for the Products as set forth in the User Guide, and (iv) cause its personnel to complete the training provided by CareFusion pursuant to the Implementation Plan.

3.2 Support. CareFusion shall provide Customer with Services described in this Section 3.2 for support and maintenance of Software and Equipment ("Support Services"), as specified in the Customer Order and subject to Customer's payment of the applicable Support Services Fees (defined herein). CareFusion may modify, but may not materially diminish, Support Services from time to time to conform to the services that CareFusion generally provides to other customers for the Products.

a) **Technical Support.** CareFusion shall provide remote support 24 hours a day, 365 days a year through CareFusion's Technical Support Center ("TSC") and shall use commercially reasonable efforts to provide bug fixes, patches and error corrections for the Software as necessary to keep the Products performing substantially in accordance with the applicable User Guide. CareFusion shall use commercially reasonable efforts to provide such Services in accordance with the following response times:



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BD Cato™ Medication Workflow Solutions**

Priority	Initial Call Back (hours)	Update Interval (days)
Urgent – Core features or functions are unavailable to a majority of users, impairing delivery of patient care or critically disrupting business operations	1	2-4
High – Core features or functions are unavailable to many users, or non-core features or functions are unavailable to a majority of users, significantly disrupting business operations	4	4-8
Medium – Non-core features or functions are unavailable to many users, disrupting business operations	24	48
Low – Non-core features or functions are unavailable to a small number of users, routine requests for assistance with features or functions	48	72

- b) **Software Maintenance.** CareFusion shall provide Customer with all generally released (i) bug fixes, patches and error corrections, (ii) modifications to the Software that make minor improvements to existing features or functions (“Updates”), and (iii) modifications to the Software that make major improvements to existing features or functions or add new features or functions (“Upgrades”). The Parties shall reasonably cooperate in the scheduling, installation and testing of Updates and Upgrades.
- c) **Equipment Services.** Customer shall promptly notify the TSC if any Equipment ceases to operate in conformance with the applicable User Guide. CareFusion shall seek to confirm the non-conformity and, if confirmed, shall deliver replacement Equipment or commence onsite repair of the non-conforming Equipment within 72 hours of confirmation. Customer shall immediately cease use of Equipment confirmed to be non-conforming and shall dispose of it in accordance with applicable laws, regulations and Customer Policies, including such laws, regulations and policies pertaining to chemotherapeutic agents and contaminated materials. Customer may exercise any and all of CareFusion’s rights under product warranties given by any third party suppliers of the Equipment. CareFusion shall make all such warranties available to Customer at <https://cp.carefusion.com> or by other reasonable means.
- d) **Customer Responsibilities**
 - (i) Customer shall maintain the Equipment in good working order and repair and in as good condition as existed at the date Customer accepted the Equipment, ordinary wear, tear, casualty unrelated to the fault of the Customer and obsolescence excepted. Customer shall maintain the Equipment in compliance with all applicable federal, state, and local laws and regulations and in accordance with applicable manufacturer guidelines and specifications. Without limiting the generality of the foregoing, Customer shall periodically calibrate the scales included as part of the Equipment. Customer shall permit only competent and duly qualified personnel to operate the Equipment. Customer shall keep the Equipment at the delivery address set forth in the Customer Order and shall not move it without CareFusion’s prior written consent.
 - (ii) To enable CareFusion’s remote administration of bug fixes, patches, error corrections, Updates and Upgrades, Customer shall permit CareFusion to install the requisite infrastructure at Customer’s site and shall provide CareFusion with secure remote access to its internal network in accordance with the applicable User Guides. CareFusion may administer bug fixes, patches, error corrections, Updates or Upgrades onsite from time to time if such access is interrupted, on Customer’s reasonable request and on a time and materials basis at CareFusion’s then-current rates and prices.
 - (iii) Customer shall give CareFusion reasonable written notice of any update or upgrade to Customer’s information system. If the functionality of any Software interface may be impaired as a result of such update or upgrade, CareFusion shall, on Customer’s request, use reasonable commercial efforts to modify the interface to restore functionality, on a time and materials basis at CareFusion’s then-current rates and prices.
 - (iv) Upon any Update or Upgrade or any repair or replacement of Equipment, Customer shall promptly, and in any event prior to use in its production environment, validate the affected Products in accordance with CareFusion’s validation protocol, test the connections between the affected Products and Customer’s information system, and notify CareFusion in writing of any performance issues.



Schedule Dispensing Products BD Cato™ Medication Workflow Solutions

- e) **Exclusions** CareFusion is not obligated to provide Support Services (i) with respect to issues resulting from abuse, misuse or vandalism of Products, unauthorized repair, modification, alteration, or adjustment of Products, malfunction or failure of equipment not supplied by CareFusion, malware not introduced by CareFusion, or Customer's failure to fulfill the obligations set forth in Section 3.2(d), or (ii) for Products that are, are operating on, or are interoperating with a version of Software other than the then-current version or the first or second immediately preceding version. Notwithstanding the foregoing, CareFusion may from time to time, at Customer's request, provide Support Services for such issues and such Products on a time and materials basis at CareFusion's then-current rates and prices

4. Fees

4.1. **Subscription Fees** On or before the "term begin date" specified in the Customer Order (or, if no such date is stated, the first day of the calendar month immediately following the date the Equipment is Accepted) and on or before the first day of each calendar month thereafter during the Term, Customer shall pay the monthly fees stated in the Customer Order for the possession and use of the Equipment (the "Equipment Fee"), the license to use the Software granted in Section 2 (the "Software License Fee"), the Implementation Services (the "Implementation Services Fee"), and the Support Services (the "Support Services Fee," and together with the Equipment Fee, the Software License Fee, and the Implementation Services Fee, the "Subscription Fee")

4.2. Fee Adjustments

- a) **Extended Term** On commencement of the Extended Term (defined herein), if any, Customer's obligation to pay the Implementation Services Fee will terminate, and the amount of the Subscription Fee will be the sum of the applicable, then-current list prices of the Equipment Fee, Software License Fee, and Support Services Fee, less any discounts to which Customer may then be entitled, provided, however, that CareFusion may increase the Equipment Fee, the Software License Fee, or the Support Services Fee, or any of them, at any time during the Extended Term on not less than 30 days' written notice
- b) **FMO Option** If Customer elects to return the Equipment pursuant to the FMO Option, effective as of the first day of the month immediately following the date of Customer's notice of such election, Customer's obligation to pay the Equipment Fee and the Software License Fee for any Software that operates only with the Equipment will terminate, title to the Equipment will automatically transfer to Customer, and Customer shall promptly dispose of the Equipment in accordance with all applicable laws, regulations and Customer Policies, including such laws, regulations and policies pertaining to chemotherapeutic agents and contaminated materials

5. Term and Termination

5.1. **Term** The "Term" of a Customer Order will be the period of time stated therein, beginning on the "term begin date" specified therein (or, if no such date is stated, the first day of the calendar month immediately following the date the Equipment is Accepted) The Term will continue after the end of the initial Term for successive one-month periods (the "Extended Term"), subject to termination by either Party, at any time and for any reason, on not less than 60 days' written notice

5.2. **Post-Termination** Upon expiration or termination of the Term (a) the license to use the Software granted in Section 2 will terminate, and Customer shall promptly remove the Software from all Customer information systems and return (or, at CareFusion's election, destroy) all copies of the Software and User Guides to CareFusion, (b) Customer shall immediately discontinue use of the Equipment, title to the Equipment will automatically transfer to Customer, and Customer shall promptly dispose of the Equipment in accordance with all applicable laws, regulations and Customer Policies, including such laws, regulations and policies pertaining to chemotherapeutic agents and contaminated materials, and (c) Customer shall promptly pay any and all unpaid Implementation Services Fees, Equipment Fees, Software License Fees, and Support Services Fees, including any and all such fees owing for the remainder of the original Term



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6. Disclaimer of Warranties and Liabilities

- 6.1.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN **SECTION 2.2** OF THE GENERAL TERMS AND CONDITIONS OF THIS MASTER AGREEMENT, THE PRODUCTS ARE PROVIDED “AS IS” CAREFUSION DOES NOT WARRANT THAT THE PRODUCTS WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION, WILL OPERATE IN ALL COMBINATIONS SELECTED BY CUSTOMER, OR WILL MEET THE REQUIREMENTS OF CUSTOMER WITHOUT LIMITING THE FOREGOING, CAREFUSION MAKES NO WARRANTY WITH RESPECT TO ANY SOFTWARE OR HARDWARE PROVIDED BY CUSTOMER OR ANY THIRD PARTY, WHETHER OR NOT SPECIFICALLY RECOMMENDED BY CAREFUSION OR INTEROPERATING WITH THE PRODUCTS
- 6.2.** NEITHER THE RECEIPT, PROCESSING, STORAGE, TRANSMISSION, NOR DISPLAY OF INFORMATION BY THE PRODUCTS CONSTITUTES THE PRACTICE OF MEDICINE BY CAREFUSION THE PRODUCTS AS PROVIDED BY CAREFUSION COMPRISE A TOOL TO BE USED BY CUSTOMER’S CLINICAL STAFF IN THE PERFORMANCE OF THEIR PROFESSIONAL RESPONSIBILITIES, THE PRODUCTS DO NOT REPLACE THEIR PROFESSIONAL SKILL OR JUDGMENT. CUSTOMER IS SOLELY RESPONSIBLE FOR THE CARE OF ITS PATIENTS THE USE OF THE PRODUCTS FOR ANY PURPOSE RELATED TO SUCH CARE OR OTHERWISE IS NOT IN ANY WAY CONTROLLED BY CAREFUSION CUSTOMER IS RESPONSIBLE FOR VERIFYING THE ACCURACY, COMPLETENESS, AND PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS CUSTOMER ASSUMES ALL RISKS AND LIABILITIES ASSOCIATED WITH THE USE OF SUCH INFORMATION, WHETHER SUCH INFORMATION IS USED ALONE OR IN COMBINATION WITH OTHER INFORMATION
- 6.3.** NOTWITHSTANDING **SECTION 4.1** OF THE GENERAL TERMS AND CONDITIONS OF THIS MASTER AGREEMENT, CAREFUSION SHALL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER WITH RESPECT TO ANY SUIT, CLAIM OR DEMAND FOR INJURIES OR DAMAGES OF ANY KIND SUSTAINED BY CUSTOMER, ANY EMPLOYEE OF CUSTOMER, ANY MEMBER OF CUSTOMER’S CLINICAL STAFF, ANY PATIENT, OR ANY OTHER PERSON ARISING FROM OR RELATED TO (A) PATIENT CARE OR THE EXERCISE OF PROFESSIONAL JUDGMENT AND SKILL, (B) THE ACCURACY, COMPLETENESS, OR PERTINENCE OF ANY PHARMACOLOGICAL, MEDICAL, PATIENT, LEGAL OR OTHER INFORMATION ENTERED IN, RECEIVED BY, PROCESSED BY, STORED IN, TRANSMITTED BY, PRODUCED BY, DISPLAYED BY, OR USED IN CONNECTION WITH THE PRODUCTS, OR (C) CUSTOMER’S MAINTENANCE OF EQUIPMENT UNDER **SECTION 3.2(d)(i)** OR CUSTOMER’S DISPOSAL OF EQUIPMENT UNDER **SECTIONS 4.2(b)** OR **5.2**.