

ADDENDUM
to Agreement (“Agreement”)
by and between Clinisys, Inc. (“CONTRACTOR”), and County of Monterey, on behalf of its
Health Department (“County”)

Both parties agree to the following changes to the County of Monterey Standard Agreement (the “Agreement”):

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1. Capitalized Terms. The capitalized terms used in this Addendum shall have the same meanings as those set forth in the Agreement unless otherwise defined herein.
 2. Except as modified by this Addendum, the terms and conditions of the Agreement shall remain in full force and effect.
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1. Section 5.0, PERFORMANCE STANDARDS: Section 5.0 is hereby deleted in its entirety and replaced with the following:

5.01 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 the County, or immediate family of an employee of the County.

5.02 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.

5.03 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 County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5.04 Software Warranty. Provided County is current on its obligations for Support, Contractor warrants that the Software set forth in the relevant Order conform(s) in all material respects to the Contractor’s Documentation (defined below) for ninety (90) days from Live Operation of the Software.

5.05 Services Warranty. Contractor warrants that all Services will be performed in a workmanlike manner consistent with generally accepted industry standards and will conform to the specifications set forth in an Order for ninety (90) days from performance of the Services.

5.06 Third Party Software and Hardware Warranty. Any warranties applying to the Third-Party Software or Hardware are limited to those, if any, offered in the Third Party EULA or by the relevant Hardware manufacturer. Contractor makes no warranties of any kind with respect to Third Party Software or Hardware.

5.07 Exclusions. Use of any Software and/or SaaS not in compliance with the Contractor's Documentation or this Agreement is a material breach of this Agreement and voids all Contractor warranties as to the relevant Software and/or SaaS and relieves Contractor of any obligation to provide the Subscription or Support.

5.08 Remedies. Prior to expiration of the applicable warranty period, County must notify Contractor in writing detailing any alleged breach of any of the foregoing warranties. Within thirty (30) days of receipt of such notice or such other period as the parties may agree: (i) for Software or SaaS, Contractor will correct the non-conformance; or (ii) for Services, Contractor will re-perform any non-conforming Services. If the non-conformance cannot be accomplished with reasonable commercial efforts, Contractor or County may terminate the applicable License, Subscription or Services and County will be refunded: (1) the License Fees paid for the applicable Software and any pre-paid Support Fees, (2) Subscription Fees pre-paid for SaaS for the remaining Subscription Term and/or (3) Fees paid for the applicable Services. If County elects not to terminate the License or Subscription for the affected portion of the Software, SaaS or Services, County waives all warranty rights set forth herein. The foregoing constitutes County's sole remedies and Contractor's sole obligation in the event of any warranty claim hereunder.

5.09 Warranty Exclusions. EXCEPT AS SET FORTH IN THIS SECTION 5, NEITHER CONTRACTOR NOR ITS AFFILIATES MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SAAS, SERVICES, SUPPORT, HARDWARE OR THIRD-PARTY SOFTWARE PURCHASED HEREUNDER. CLINISYS AND ITS AFFILIATES EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL IMPLIED AND EXPRESS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor does not represent that the operation of the Software, HARDWARE, THIRD PARTY SOFTWARE OR SaaS will be uninterrupted or error-free OR THAT ALL ERRORS WILL BE CORRECTED.

2. Section 8.0, INDEMNIFICATION: Section 8.0 is hereby deleted in its entirety and replaced with the following:

Section 8.0, INDEMNIFICATION and LIABILITY LIMITATION

8.1 **By Contractor:** Provided County is current on its obligations, Contractor will defend and indemnify County against any third party claim asserted in its entirety that the Software and SaaS (“Covered Goods”) infringes any United States trademark, patent, copyright, or Trade Secret, in which event Contractor may, for the affected Covered Goods, at its sole option and expense: (i) obtain for the County the right to continue use; or (ii) replace or modify to correct the Covered Good(s) while giving substantially equivalent functionality. If the remedies in (i) or (ii) are not reasonably available, County may: (a) terminate the relevant Subscription and Contractor will provide a pro-rated refund of applicable prepaid Subscription fees; or (b) terminate the License for the affected portion of Software, and Contractor will refund the applicable License Fees paid based on a three (3) year straight-line depreciation from Live Operation and provide a prorated refund of applicable prepaid Support fees. Notwithstanding any terms in this Section 8, Contractor will have no liability for infringement claims, and County must defend and indemnify Contractor, if the alleged infringement is based on or arises from (u) County’s Data; (v) combination or use of the Covered Goods with any third party product, service or data; (w) the modification of the Covered Goods by anyone other than Contractor; (x) the use of the Covered Goods not in accordance with the Documentation, System Requirements, or this Agreement; (y) the use of other than the then most current Release, or; (z) failure to use a Release developed to remedy an alleged infringement claim generally made available by Contractor to its clients under Subscription or Support. **THE FOREGOING STATES CONTRACTOR’S ENTIRE LIABILITY AND COUNTY’S EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT.**

8.2 **By County:** County will defend and indemnify Contractor and its Affiliates, employees, agents, contractors, and licensors against any and all claims, damages, costs and liabilities arising from or related to (i) any misuse of the Software, Third Party Software and/or SaaS by County and/or its Authorized Users; (ii) claims that Contractor’s authorized use of County’s Confidential Information violates applicable law and/or infringes upon the rights of any individual to which the County Confidential Information relates; and/or (iii) introduction of malicious software, malware or the like into Contractor’s systems (including the SaaS) by County.

8.3 **Limitation of Liability:** EACH PARTY’S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY, WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT, WARRANTY OR OTHER LEGAL THEORY, WILL BE THOSE PROVIDED IN THIS AGREEMENT. IN NO EVENT SHALL THE COUNTY OR CONTRACTOR (INCLUDING ITS AFFILIATES, SUPPLIERS OR SUBCONTRACTORS) BE LIABLE FOR (I) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES; (II) LOST PROFITS, LOSS OF USE OR LOSS OF REVENUE (WHETHER DIRECT OR

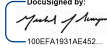
INDIRECT); (III) DAMAGE TO OR LOSS OF DATA; (IV) LOSS OF GOODWILL; OR (V) CLAIMS AGAINST A PARTY FROM OTHERS EXCEPT FOR AMOUNTS FOR WHICH A PARTY IS INDEMNIFIED PURSUANT TO THIS CONTRACT, IN ALL CASES EVEN IF KNOWN OR FORESEEABLE. EXCEPT FOR AMOUNTS FOR WHICH A PARTY IS INDEMNIFIED PURSUANT TO THIS CONTRACT, THE TOTAL AGGREGATE LIABILITY OF EACH PARTY WILL NOT EXCEED FIVE TIMES (5X) THE CHARGES PAID OR PAYABLE TO CONTRACTOR UNDER THIS CONTRACT DURING THE THREE (3) MONTHS PRECEDING THE ACCRUAL OF THE CLAIM.

- 4. **Section 13.0 COMPLIANCE WITH APPLICABLE LAWS:** Section 13.3 is hereby deleted in its entirety.
- 5. **Section 16.0 MISCELLANEOUS PROVISIONS:** Section 16.09 **Time is of the Essence** is hereby deleted in its entirety.

COUNTY OF MONTEREY

Clinisys, Inc.

Authorized Signature:


Authorized Signature: 

By: _____ Date: _____
(Title of Signer)

By: President & CEO Date: 6/27/2023 | 4:26 PM PDT
(Title of Signer)

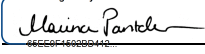
Approved as to Fiscal Provisions:

Authorized Signature: 

By:  Date: 6/29/2023 | 11:51 AM PDT
Auditor-Controller

By: Chief Financial Officer Date: 6/27/2023 | 8:27 PM PDT
(Title of Signer)

Approved as to Legal Form:

By:  Date: 6/29/2023 | 11:02 AM PDT
County Counsel