



RENEWAL & AMENDMENT 8  
TO THE  
**SOFTWARE LICENSE AND SERVICES AGREEMENT**

THIS AMENDMENT to the Software License and Services Agreement, dated August 9, 2010 (the "Agreement") between 3M Company and its subsidiaries (hereinafter referred to as "3M") having an office at 575 West Murray Boulevard, Murray, Utah 84123-4611 and Natividad Medical Center (hereinafter referred to as "Customer" or "Client") with offices at 1441 Constitution Boulevard, Salinas, CA 93906-3100 is effective on the date last signed ("Amendment Effective Date").

Client and 3M agree that the above referenced Agreement is amended as follows:

1. Except as provided in this Amendment, all terms and conditions of the above referenced Agreement will remain in full force and effect; provided, however, in the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control. Capitalized terms, not otherwise defined herein, shall have the meanings assigned to them in the Agreement. No amendment or modification of this Amendment shall be effective unless signed by authorized representatives of both parties. This Agreement, as amended, constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior oral and written agreements, representations and understandings between the parties concerning such subject matter.
2. Definitions. All references in the Agreement to "Client" or "Customer" shall mean and refer to Natividad Medical Center.
3. Assignment to 3M Health Information Systems, Inc. Under this Agreement, 3M Health Information Systems, Inc. has always been the sole entity performing all obligations hereunder. As such, this Agreement, and all rights and obligations, past and present, are assigned to 3M Health Information Systems, Inc., with offices located at 575 West Murray Blvd, Murray, UT 84123. Client shall look exclusively to 3M Health Information Systems, Inc. for performance under this Agreement. All references in the Agreement to "3M" shall mean and refer to 3M Health Information Systems, Inc. The parties acknowledge and agree that the foregoing assignment does not constitute a novation and 3M Health Information Systems, Inc. represents and warrants that it has the full power, capacity and authority to make the assignment set forth herein and to enter into and perform the Agreement as of the Amendment Effective Date.
4. Fees, Costs and Expenses.
  - a. Amendment Sum. 3M will charge, and Client will pay, a fixed price for all software, products, license, support and services provided or performed by 3M or its agents pursuant to this Amendment equal to the amount of \$242,021.41 (the "Amendment Sum"). Notwithstanding anything contrary in the Agreement, including Section 8.7 (Taxes), except for the Amendment Sum or as otherwise agreed pursuant to a valid modification of the Agreement, there are no other fees, costs, taxes or expenses to be paid by Client under this Amendment. Any fees, costs, taxes or expenses in excess of the Amendment Sum must be set forth in a written amendment signed by both parties.
5. No Expenses. The parties acknowledge and agree that (i) as of the Amendment Effective Date, there are no pending travel of other reimbursable expenses to be submitted by 3M under the Agreement, and (ii) 3M shall not incur any, nor shall Client be responsible for, any travel or other reimbursable expenses in the course of its performance under the Agreement as of the Amendment Effective Date.
6. AMEND Section 2.4 of the terms and conditions to DELETE the sixth and seventh sentences of Section 2.4 in its their entirety.
7. ADD Section 2.4.1 to the terms and conditions:

"2.4.1 Upon thirty (30) day notice, and no more than once every twelve (12) months during the Term, during Client's regular business hours and without material disruptions to Client's operation, Client shall allow 3M, or a third-party designated by 3M, to inspect and audit applicable books and records available in Client's ordinary course of business to verify Client's compliance with its obligations regarding the scope of the License and use of 3M Information under this Agreement. The foregoing review right shall not afford 3M or any auditor any right to directly access and manipulate Customer's systems. All such access and use will be done by Client personnel. In addition to payment of the fees associated with an excess use at the rates under this Agreement, the cost of any audit conducted by a third-party shall be paid for by Client if the audit reveals a violation of 3M's Intellectual Property Rights, or unauthorized release or use of 3M Information., provided that such third party audit costs may not exceed \$25,000. In the event third party audit costs are payable by Client under this Agreement, the parties agree to execute an amendment to this Agreement that sets forth the amount of such costs. Should Client fail to sign an amendment, 3M will invoice Client for the costs under this Agreement. All information obtained during the course of a review under this Section shall be subject to the terms of this Agreement and the BAA."
8. AMEND Section 2.5 of the terms and conditions to ADD the following to the end of the Section:

"The parties acknowledge and agree that, as of the Amendment Effective Date, there is no Third Party Content provided to Customer by 3M that is accompanied by its own license agreement.

9. AMEND Section 4.2.2 of the terms and conditions to ADD the following to the end of the Section:

“Customer’s Operational Information shall also include Client Data. 3M shall not remove the trademarks, trade names or any proprietary markings from any Operational Information or other materials delivered to or accessed by 3M pursuant to this Agreement, and will cause them to appear on all copies made by 3M authorized hereunder.”

10. ADD Section 4.2.3 to the terms and conditions:

“4.2.3 Security Incident. “Security Incident” shall have the same meaning as set forth in 45 C.F.R. § 164.304. In the event of a Security Incident that may impact or involve Client’s instances of, access to, or use of 3M Software, Services, Equipment, or the network connectivity between 3M and Client, or any Client PHI, Client Data, or Client Confidential Information 3M shall notify Client without unreasonably delay, but in no event later than five (5) days from the date of the discovery. 3M is not required to notify Client of unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of 3M’s information system.”

11. ADD Section 4.3 to the terms and conditions:

“4.3 Injunctive Relief. Each party acknowledges that due to the unique nature of the other party’s confidential information (3M Information and Operational Information, collectively “Confidential Information”), the disclosing party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.”

12. ADD Section 4.4 to the terms and conditions:

“4.4 Return of Confidential Information. On the disclosing party’s written request or upon expiration or termination of this Agreement for any reason, the receiving party will promptly: (a) return or destroy, at the disclosing party’s option, all originals and copies of all documents and materials it has received containing the disclosing party’s Confidential Information; and (b) deliver or destroy, at the disclosing party’s option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in machine-readable form, prepared by the receiving party, prepared under its direction, or at its request from the documents and materials referred to in subparagraph (a), and provide a notarized written statement to the disclosing party certifying that all documents and materials referred to in subparagraphs (a) and (b) have been delivered to the disclosing party or destroyed, as requested by the disclosing party.”

13. ADD Section 7.5 to the terms and conditions:

“7.5 Exclusions. The limitations and exclusions of liability in Sections 7.1, 7.2 and 7.3 shall not apply to nor limit the parties liability for a party’s breach of its confidentiality obligations under this Agreement, including those set forth in Section 4, a party’s breach of its data privacy and security obligations under this Agreement, a party’s breach of the BAA, a Security Incident involving 3M Information, PHI, or Client Data in 3M’s possession, custody or control, or 3M’s indemnification obligations under the Agreement, including those set forth in Sections 6.2 and 10.20 of the Agreement and Section 7(i) of the BAA.”

14. ADD Section 8.8 to the terms and conditions:

“8.8 Fees. All fees for 3M Software, Services, or Equipment, or any other products or services hereunder shall be charged by 3M, and paid by Customer, only at mutually agreed upon rates set forth in this Agreement or a valid amendment modification to this Agreement.”

15. AMEND Section 8.5 of the terms and conditions to RESTATE the third sentence of Section 8.5 in its entirety as follows:

“Nothing in this Agreement shall be interpreted to entitle 3M to assess, charge or collect late charges, fees or interest against Customer for any amounts due under this Agreement.”

16. DELETE Exhibit B, the Software and Services Schedule, and REPLACE with the attached Exhibit B.

17. DELETE Section 9.1.1 of the terms and conditions and REPLACE with the following:

“9.1.1 License Term Extension. Client agrees to license the Software listed in this Agreement from 3M for an extended One (1) Year term beginning on August 9, 2020 and ending August 8, 2021 (“Extended Term”). After the Extended Term, this Agreement, and the License(s) granted thereunder, shall automatically terminate unless Client, upon sixty (60) days prior written notice, requests renewal. Such renewal, if any, would be priced at 3M’s then-current list price, less any applicable discount. 3M, at its option, may elect not to renew the Agreement by providing Customer with ninety (90) days notice of its intent not to renew prior to the expiration of the Extended Term.”

18. AMEND Section 10.2 of the terms and conditions to DELETE the first sentence and ADD the following to the end of the Section:

“10.2 Notwithstanding anything to the contrary in this Agreement, no changes, amendments or modifications to this Agreement, including any terms set forth in any shrink-wrap, click-wrap, click-through, click-accept, online terms, privacy policies or website terms, (collectively, “Additional Terms”) shall be effective unless in writing and signed by both parties. 3M acknowledges and agrees that all Additional Terms must



be set forth in a written amendment to this Agreement and only Customer's Chief Executive Officer, with authorization by the County of Monterey Board of Supervisors, may enter into agreements on its behalf and that no other personnel may bind Customer. "

19. AMEND Section 10.5 of the terms and conditions to ADD the following to the end of the Section:

"For purposes of this Agreement, the "Coronavirus" (also referred to as COVID-19) does not constitute a force majeure event as contemplated by this Section. This Agreement is being affirmed by the parties after the onset of the Coronavirus outbreak and event, and 3M has entered into its commitments with knowledge of the impacts and potential impacts of this event and has agreed to deliver the Software, Services, Documents, and Equipment in the manner and time, and for the price agreed to herein."

20. AMEND Exhibit C, Business Associate Agreement to ADD Section 7.i:

"i. Indemnification. Each Party ("Indemnifying Party") shall indemnify, defend, and hold harmless the other Party, its officers, agents, and employees ("Indemnified Party") from any claim, liability, loss, injury, cost, expense, penalty or damage, including costs incurred by the Indemnified Party with respect to any investigation, enforcement proceeding, or third-party action, arising out of, or in connection with, a violation of this Agreement or a Breach that is attributable to an act or omission of Indemnifying Party and/or its agents, members, employees, or Subcontractors, except to the extent caused by the Indemnified Party or its agents. This provision is in addition to, and independent of, any indemnification provision in any Underlying Agreement(s) between the Parties. This Section is not subject to any limitation on liability in the applicable Underlying Agreement(s)."

Each party acknowledges that it has read this Amendment, and when applicable, each Exhibit, and Attachment hereto, and understands the changes affecting the Agreement. To indicate the parties' acceptance and agreement to be bound by the terms and conditions of this Amendment and the Agreement, as modified herein, 3M and Customer have executed this Amendment on the date(s) indicated below, to be effective as of the date first indicated above.

NATIVIDAD MEDICAL CENTER

3M HEALTH INFORMATION SYSTEMS, INC.

BY

BY

NAME

NAME

John Mathison

TITLE

TITLE

VP of HIS Operations

DATE

DATE

July 16, 2020

PLEASE EMAIL OR FAX YOUR PURCHASE ORDER IN THE AMOUNT OF \$242,021.41 AND THE SIGNED AMENDMENT TO: hisilverspringcontractrequests@mmm.com OR (651) 732-8469

FOR 3M INTERNAL USE ONLY

ISSUE DATE:	GPO:	BATCH NUMBER:	CLIENT SITE ID:	AGREEMENT NUMBER:	CLIENT EMR:
5/28/2020 TA	*****	023096	2930399	001553-10 SLSA	
REVISION DATE:	SLA TYPE: SLSA 04/09				

Approved as to form. 7 28 2020

3M™ AND THE 3M LOGO ARE TRADEMARKS OR REGISTERED TRADEMARKS OF 3M. THE PRODUCT NAMES MENTIONED HEREIN ARE PROTECTED UNDER ONE OR MORE TRADEMARKS OF 3M OR OF THEIR RESPECTIVE OWNERS. COPYRIGHT © 3M COMPANY 2020. ALL RIGHTS RESERVED

Deputy County Counsel

Approved for fiscal terms  
7-28-2020



PROPRIETARY 3M CONFIDENTIAL TRADE SECRET, COMMERCIAL OR FINANCIAL INFORMATION.  
Do not release or disclose any information in this Schedule under any Open Records Act, Freedom of Information Act, or equivalent law.  
Release or disclosure is prohibited without 3M consent. Immediately report any request to 3M.

## EXHIBIT B

S/O ITEM	CPU ACTION	SKU	AUTHORIZED SITE(S) PRODUCT DESCRIPTION	SITE TYPE LIST FEE	TOTAL 1 <sup>ST</sup> YR ANNUAL & ONE TIME FEE
268879	Networking	--	NATIVIDAD MEDICAL CENTER--1441 CONSTITUTION BLVD, SALINAS, CA , HI2930399	Install/Access Site	
1.	Renew	APC	APCfinder Software	\$14,964.72	\$14,964.72
2.	Renew	APDRGCAS	Advanced Analyzer	\$29,790.65	\$29,790.65
3.	Renew	C&RSNOAA	Coding, Classification, and Reimbursement System without Advanced Analyzer	\$69,750.33	\$69,750.33
4.	Renew	CODREF	<u>Coding Reference Software†</u>	\$6,854.84	\$6,854.84
5.	Renew	CODREFPL	<u>Coding Reference Plus Software†</u>	\$5,703.11	\$5,703.11
6.	Renew	CONNSFT BAS	Connections Software Basic	\$3,030.00	\$3,030.00
7.	Renew	MND CA A&B	Medical Necessity Dictionaries CA A&B	\$33,124.99	\$33,124.99
8.	Renew	MND MED CA	Medical Necessity Dictionaries Medi-Cal	\$33,124.99	\$33,124.99
9.	Renew	PCRS	Physician Coding And Reimbursement System	\$14,581.00	\$14,581.00
10.	Renew	RCS APR CAMED	Reimbursement Calculation Software APR Med-Cali	\$4,317.11	\$4,317.11
11.	Renew	S-APR-DRG	S-All Patient Refined DRG Software	\$26,779.67	\$26,779.67
SITE SUBTOTAL:					\$242,021.41

The Parties agree the License and obligations for the above Software and Services start on August 9, 2020, and will be billed in accordance with the Agreement.

## FEE SUMMARY:

FIRST YEAR ANNUAL SOFTWARE LICENSE & SUPPORT FEES:	\$242,021.41
*TOTAL ONE TIME, IMPLEMENTATION & TRAINING FEES:	\$0.00
**TOTAL CONSULTING SERVICES FEES:	\$0.00
<b>TOTAL THIS AMENDMENT:</b>	<b>\$242,021.41</b>

THE FEES LISTED ABOVE ARE GUARANTEED FOR A PERIOD OF NINETY (90) DAYS FROM THE ISSUE DATE OF THIS AMENDMENT OR DECEMBER 31, 2020, WHICHEVER OCCURS FIRST, UNLESS THIS AMENDMENT IS FULLY EXECUTED PRIOR TO.

Deletion = ◆ Underscored Text = Addition I&T = Implementation and Training PI = Phone Installed CI = Client Installed

Client acknowledges that due to 3M's obligation to communicate the renewal License fees in advance of the conclusion of the license Term of this Agreement, some Software items licensed or Services purchased by Client on amendment(s) issued after the Issue Date, shown below, will not be included in the Schedule above, and Client agrees such products should be renewed with the Software and Services contemplated hereinabove, provided the parties sign a written amendment for the same in accordance with the Agreement. In such event, the license for the Software item(s) or the Service(s) having annual reoccurring fees, for which Client has licensed from 3M after the Issue Date of this Amendment, will be extended to be coterminous with the Extended Term defined by this Amendment only upon the mutual agreement of the parties, as set forth in a signed written amendment to the Agreement.