# COUNTY OF MONTEREY
## PURCHASE ORDER

**PURCHASE ORDER NUMBER**

B960975038

Date 01 05 09    Page: 01

☐ "X" indicates confirming order - do not duplicate

```
V
E    PICIS INC
N
D    100 QUANNAPOWITT PKWY STE 405
O    WAKEFIELD       MA01880
R
```

```
B
I    NATIVIDAD MEDICAL CENTER
L    P O BOX 81611
L    SALINAS  CA  93912-1611
T    ATTN: ACCOUNTS PAYABLE
O    831-755-4238
```

```
S
H    NATIVIDAD MEDICAL CENTER
I    1441 CONSTITUTION BLVD
P    SALINAS, CA 93906
T
O
```

VENDOR #:  PICIS          A
BUYER:

DELIVERY REQUIRED BY   06 30 09     TERMS:  NET 30 DAYS
F.O.B.   DESTINATION                REF. #:

## SPECIAL INSTRUCTIONS

PURCHASE ORDER number and SHIP TO department must be shown on all invoices, packages, bills of lading and correspondence. **Submit all invoices in triplicate. *Do not include more than one purchase order on an invoice.**

California sales tax must be invoiced as a separate item.
Refer to additional conditions, instructions and terms on the back of this document.
For questions or concerns regarding this Purchase Order, please refer to above Bill To contact information
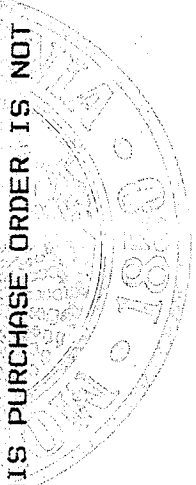
## COMMENTS:

### CHARGE THIS PURCHASE ORDER TO THESE ACCOUNTS

| LINE NO. | FUND | BUDGET UNIT | ORGANI-ZATION | ACCOUNT | JOB NO. | COST CODE | AMOUNT |
|---|---|---|---|---|---|---|---|
| 01 | 091 | 960 | 8481 | 9660 | | E660 | 260,000.00 |

| ITEM NO. | QUANTITY ORDERED/UNIT | DESCRIPTION | UNIT PRICE | TOTAL PRICE |
|---|---|---|---|---|
| 001 | | BLANKET ORDER FOR THE PERIOD 07/01/08 THRU 06/30/09 PER BOARD OF SUPERVISORS 12-9-08 APPROVAL OF AGREEMENT NO. A-11330 WITH PICIS INC. FOR PROVIDING OPERATING ROOM MANAGEMENT SOFTWARE AT NMC IN AN AMOUNT NOT TO EXCEED $352,418. ALL SERVICES SHALL BE PROVIDED IN ACCORDANCE WITH TERMS, CONDITIONS, AND EXHIBITS OF THE APPROVED COUNTY OF MONTEREY AGREEMENT. TERM OF THE AGREEMENT 12-15-08 THROUGH 12-14-2010 UNLESS SOONER TERMINATED PURSUANT TO THE TERMS OF THE AGREEMENT. THE TOTAL OF THIS PURCHASE ORDER IS NOT TO EXCEED $260,000. | | 260,000.00 |

**TOTAL ORDER**    260,000.00

THIS ORDER SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE BACK OF THIS DOCUMENT.

BY AUTHORIZED
PURCHASING AGENT _____

**ORIGINAL VENDOR**

Contracts/Purchasing Division
168 W. Alisal St. 3rd Floor, Salinas, CA 93901

# BOARD REPORT AUTHORIZATION - ROUTING FORM

| Agenda Date | December 9, 2008 | | Consent | Yes |
|---|---|---|---|---|
| Contact Person | Michael Jobin, CIO | | Scheduled | |
| | William T. Foley, CEO | | | |
| Phone | 755-4354 | | Noticed | |
| Department | Natividad Medical Center | | Time needed | |
| Subject | a. Approve and Authorize the NMC Purchasing Manager to execute an agreement between Picis, Inc. and Natividad Medical Center (NMC) for the period, December 15, 2008 to December 14, 2010, to provide Operating Room Management software consisting of OR Scheduling, Perioperative Nursing Record, Preference Card Management, Standard and Ad-hoc Reports and Interfaces between hospital HCIS in an amount not to exceed $352,418; and <br> b. Direct the Auditor-Controller to amend the FY 2008-09 Natividad Medical Center Budget Unit 960 to reflect the changes in appropriations as outlined in the Board Order. (4/5 Vote Required). | | | |

| Yes | No | CHECK LIST |
|---|---|---|
| X | | **4/5ths Vote Required:** Required to transfer appropriations from contingencies; cancel reserves; increase estimated revenues/appropriations; adopt interim (urgency) ordinances; and for other matters (seek direction from County Counsel). |
| | X | **Contract:** CAO-Risk Management has reviewed and signed the contract. |
| X | | **Contract:** County Counsel has reviewed and signed the contract. |
| X | | **Contract:** Auditor-Controller has reviewed and signed the contract. |
| | X | **Budget Amendment:** The item includes a budget amendment. |

| APPROVED BY: | Yes/No | By | Date | Comments |
|---|---|---|---|---|
| Dept. Finance Manager | | | | |
| County Counsel | Yes | *signature* | 11/25/08 | Approved prior version. This one has correct cost center on bd. order. |
| CAO Human Resources | | | | |
| Information Technology | | | | |
| CAO Budget Analyst | Yes | *signature* | 12/1 | |

| REQUIRED REVIEWERS | CAO Budget Analyst | County Counsel | CAO HR | Information Technology |
|---|---|---|---|---|
| Contracts over $100k & Contracts under $100k with changes | X | X | | |
| Budget adjustments | X | | | |
| Personnel actions | X | | X | |
| Grant applications | X | | | |
| Non-standard computer projects | X | | | X |
| Planning/land use (non-budget issues) | | X | | |
| Ordinances | | X | | |
| Resolutions declaring emergencies | | X | | |
| All other reports | X | | | |

**Routing instructions:** Route the routing form, complete board report, and all attachments as indicated above for appropriate review and approval. The CAO-Budget Analyst is the last reviewer of reports and must receive reports at least three (3) working days prior to the Clerk to the Board's submission deadline (does not apply to non-budget Planning Department and land use items). **Submission instructions:** Board reports must be submitted to the Clerk to the Board and entered into LegisStream by noon Monday (8 days) prior to the Board of Supervisors meeting. Reports without the required signatures will not be accepted. Late reports will be held over to a future meeting unless the County Administrative Officer or his/her designee provides authorization.

# MONTEREY COUNTY BOARD OF SUPERVISORS

| MEETING: | December 9, 2008 | AGENDA NO.: |
|---|---|---|
| SUBJECT: | a. Approve and Authorize the NMC Purchasing Manager to execute an agreement between Picis, Inc. and Natividad Medical Center (NMC) for the period, December 15, 2008 to December 14, 2010, to provide Operating Room Management software consisting of OR Scheduling, Perioperative Nursing Record, Preference Card Management, Standard and Ad-hoc Reports and Interfaces between hospital HCIS in an amount not to exceed $352,418; and<br><br>b. Direct the Auditor-Controller to amend the FY 2008-09 Natividad Medical Center Budget Unit 960 to reflect the changes in appropriations as outlined in the Board Order. (4/5 Vote Required). | |
| DEPARTMENT: | Natividad Medical Center | |

## RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Approve and authorize the NMC Purchasing Manager to execute an agreement between Picis, Inc. and Natividad Medical Center (NMC) for the period, December 15, 2008 to December 14, 2010, to provide Operating Room Management software consisting of OR Scheduling, Perioperative Nursing Record, Preference Card Management, Standard and Ad-hoc Reports and Interfaces between hospital HCIS in an amount not to exceed $352,418; and

b. Direct the Auditor-Controller to amend the FY 2008-09 Natividad Medical Center Budget Unit 960 to reflect the changes in appropriations as outlined in the Board Order. (4/5 Vote Required).

## SUMMARY/DISCUSSION:

Picis OR Manager is a comprehensive operating room management system that automates each step of the perioperative process, including surgical scheduling, perioperative documentation, supply chain management and revenue management. It provides the data needed to reduce costs, maximize resources, help clinicians improve patient outcomes and analyze the costs of delivering care.

OR Manager automates surgical scheduling with tools to schedule cases, rearrange bookings, check for conflicts and communicate changes or important notifications to staff by fax or e-mail. OR Manager maximizes operating room time and helps increase the accuracy of schedules, which promotes better utilization of resources.

Next, OR Manager provides comprehensive online nursing perioperative charting and leverages existing investments in IT and NMC information systems. The system provides full integration of data from preoperative and intraoperative care and the post anesthesia care unit (PACU), and it updates fields automatically while interfacing with existing NMC clinical information systems. The system automates both clinical and administrative documentation for optimum efficiency. OR Manager's customer-defined documentation screens provide flexibility in recording and analyzing data because users design and maintain them. Virtually any field within OR Manager's documentation screens can be used in reporting, allowing managers to easily add fields and analyze data to measure performance, track problems and meet Joint Commission requirements.

Throughout the process, OR Manager tracks supplies, simplifies billing and inventory control and significantly reduces waste. Nurses can quickly track supplies, update preference cards and transmit data to a materials management system, where this information automatically decrements inventory and triggers reorders. OR Manager also calculates supply and nonsupply costs and transmits patient charges to billing automatically upon verification.

Finally, OR Manager saves time and money by integrating charges generated during the perioperative process with the current NMC billing systems. Flexible features calculate charges for a patient's entire perioperative stay, using an unlimited number of billing and costing rules and accommodating billing differences that can vary. Once a surgical case is complete, OR Manager transmits supply use, OR time, procedures, equipment, staffing and other data directly to NMC's billing system, allowing patient charges to be calculated and communicated seamlessly. This approach helps reduce lost charges and improve the accuracy and timeliness of patient charges. Through a business case analysis, OR Manager will yield a full return on investment in sixty months.

Several modifications to the standard PSA are incorporated into this contract. The first modification extends the contingency of the effective date of the contract to allow contractor to provide insurance documentation as set forth in Section 9.0. In section 5.03, language was added to specify "...with respect to software and professional services" for the performance standards. In section 7.1, the termination clause begins with the maintenance term of the agreement. Software, once purchased cannot be terminated. The termination is on the ongoing maintenance only. In section 7.2, good cause is defined as described in Section 11 of Appendix A. In Section 8, the indemnification terms are modified to cover only liability resulting from Contractor's gross negligence or willful misconduct, and work being furnished under Contractor's control in connection with performance of this agreement. Section 10.05 (Royalties and Inventions) was removed and is covered under license agreement found in Exhibit A. The vendor's license agreement contains more detail when dealing with the rights, royalties and inventions of software. In addition, the usage of vendor language is common when purchasing software.

## OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel participated in contract negotiations and approved the agreement as to form and content. The Auditor-Controller has reviewed and approved the contract as to fiscal provisions.

## FINANCING:

Estimated costs over the two year Agreement is $352,418. Estimated cost for fiscal year 08-09 is $330,000. NMC requests an appropriation increase to Budget Unit 960 Fiscal Year 2008-09 Adopted budget in the amount of $330,000 which will be funded out of the net equity of NMC at 6-30-08. No additional funding will be required from the County General Fund.

Prepared by:
Michael Jobin
Chief Information Officer

William T. Foley
Chief Executive Officer

November 24, 2008

Attachments: Board Order; Agreement

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

**Agreement No: A – 11330; Budget No: 08/09 – 079**

a.  Approve and authorize the NMC Purchasing Manager to execute an   )
    Agreement between Picis, Inc. and Natividad Medical Center (NMC)   )
    for the period December 15, 2008 to December 14, 2010, to provide   )
    Operating Room (OR) Management software consisting of OR   )
    Scheduling, Perioperative Nursing Record, Preference Card   )
    Management, Standard and Ad-hoc Reports and Interfaces between   )
    hospital HCIS in an amount not to exceed $352,418; and   )
b.  Direct the Auditor-Controller to amend Fiscal Year 2008-09 Natividad   )
    Medical Center Budget Unit 960 to reflect the changes in appropriations   )
    as outlined in the Board Order (4/5th Vote Required).   )

Upon motion of Supervisor Salinas, seconded by Supervisor Potter, and carried by those members present, the Board hereby:

a.  Approved and authorized the NMC Purchasing Manager to execute an Agreement between Picis, Inc. and Natividad Medical Center (NMC) for the period December 15, 2008 to December 14, 2010, to provide Operating Room (OR) Management software consisting of OR Scheduling, Perioperative Nursing Record, Preference Card Management, Standard and Ad-hoc Reports and Interfaces between hospital HCIS in an amount not to exceed $352,418; and
b.  Directed the Auditor-Controller to amend Fiscal Year 2008-09 Natividad Medical Center Budget Unit 960 to reflect the changes in appropriations as follows: (4/5th Vote Required).

| Appropriations | | | |
|---|---|---|---|
| Account | Description | Amount | Action |
| 091 960 9660 6469 | Other Professional & Special Services | $330,000 | Increase |

PASSED AND ADOPTED this 9th day of December, 2008, by the following vote, to wit:
AYES:       Supervisors Armenta, Calcagno, Salinas, Mettee-McCutchon, Potter
NOES:       None
ABSENT:     None

I, Denise Pennell, Interim 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 74 for the meeting on December 9, 2008.

Dated:  December 12, 2008                    Denise Pennell, Interim Clerk of the Board of Supervisors
                                             County of Monterey, State of California

                                             By _____
                                                          / Deputy

## **AM Natividad** MEDICAL CENTER
## <u>COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES</u>
## <u>(MORE THAN $100,000)</u>

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

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

1.  **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: **Provide** Software,, Professional Services and Maintenance Services for Contractor's OR Manager related products.

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 **$352,418.**

3.  **TERM OF AGREEMENT.** The term of this Agreement is from December 15, 2008 to December 14, 2010 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.

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**

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 other wise 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.  CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than thirty (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

Administrator or his or her designee 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 thirty (30) days of receiving the certified invoice.

6.2. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement; and then only in accordance with any applicable County policies.

## 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.

8. **INDEMNIFICATION:** CONTRACTOR shall indemnify, defend and hold harmless, NMC and the County of Monterey (hereinafter "County"), it officers, agents and employees from any and all claims, liability, 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 looses arise out of the sole negligence or willful misconduct of NMC. "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 that 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 other 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 Insurance 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 and 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 or $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. <u>Royalties and Inventions</u>. 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, sate, 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 an 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.

---

**FOR NATIVIDAD MEDICAL CENTER:**            **FOR CONTRACTOR:**


Contracts/Purchasing Manager
_____            _____
            Name and Title                               Name and Title

1441 Constitution Blvd. Salinas, CA. 93906
_____            _____
            Address                                        Address
831.755.4111
_____            _____
            Phone                                           Phone

# 15. MISCELLANEOUS PROVISIONS.

15.1. <u>Conflict of Interest</u>. 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. <u>Amendment</u>. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.

15.3. <u>Waiver</u>. 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. <u>Contractor</u>. 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. <u>Disputes</u>. CONTRACTOR shall continue to perform under this Agreement during any dispute.

15.6. <u>Assignment and Subcontracting</u>. 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. <u>Successors and Assigns</u>. 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. <u>Compliance with Applicable Law</u>. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.9. <u>Headings</u>. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10. <u>Time is of the Essence</u>. Time is of the essence in each and all of the provisions of this Agreement

15.11. <u>Governing Law</u>. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. <u>Non-exclusive Agreement</u>. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. <u>Construction of Agreement</u>. 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. <u>Counterparts</u>. 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. <u>Integration</u>. 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.

*This space is left blank, intentionally*

**IN WITNESS WHEREOF,** County, NMC, and Contractor have executed this Agreement as of the day and year written below.

<table>
<tr><td>

**NMC**

By: _____
Purchasing Manager

Date: _____12/11/08_____

By: _____
Department Head (*if applicable*)

Date: _____

By: _____
Board of Supervisors (*if applicable*)

Date: _____

**Approved as to Legal Content and Legal Form**

By: _____
WILLIAM M. LITT
Deputy County Counsel

Date: _____11/24/08_____

**Approved as to Fiscal Provisions**

By: _____
Auditor/Controller

Date: _____11-24-08_____

</td><td>

**CONTRACTOR**

_____Picis, Inc._____
Contractor's Business Name*

By: _____

_Melissa Cruz, EVP & CFO_
Name and Title

Date: _____10/27/08_____

By: _____

_Christine Cournoyer, President & COO_
Name and Title

Date: _____10/27/08_____

</td></tr>
</table>

County Board of Supervisors' Agreement Number: _____.

*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. 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. 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.

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[1]Approval by Risk Management is necessary only if changes are made in Paragraphs 8 or 9.
[2]Approval by County Counsel is necessary only if changes are made to the standard provisions of the PSA.

# ∘ ⊶ ρICIS

**THIS LICENSE AND SERVICES AGREEMENT** made as of the 15th day of December, 2008, is by and between **Picis, Inc.**, a Delaware Corporation, having its principal place of business at 100 Quannapowitt Parkway, Suite 405, Wakefield, MA, 01880 hereinafter referred to as "Licensor", and **Natividad Medical Center, wholly owned and operated by the County of Monterey, California,** with place of business at 1441 Constitution Boulevard, Salinas, CA 93906 hereinafter referred to as "Licensee."

WHEREAS, Licensor has created certain software programs and provides certain services associated with such software programs, and Licensee desires to license certain of Licensor's software programs and purchase certain of Licensor's services;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

1.  **DEFINITIONS.** The following terms are used in this Agreement with the meanings set forth below. Other terms are defined in the body of this Agreement.

1.1  "Agreement" shall mean this License and Services Agreement, and any exhibits and schedules attached hereto.

1.2  "Annual Fees" shall mean the License Fees for Other Products that are paid on an annual basis as set forth in a Supplemental Software and Services Agreement.

1.3  "Closed Loop System" means any system that provides medical care without human intervention.

1.4  "Component Test" shall mean completion of the test performed by Licensee on the Software Programs as indicated in the project plan to ensure that Licensee's configurations will allow the Software Programs to perform in accordance with the Specifications.

1.5  "Designated Facility" shall mean, with respect to the Software Programs, the physical location of the facility or facilities indicated in the applicable Supplemental Software and Services Agreement at which such Software Programs are licensed for use.

1.6  "Effective Date" shall mean the date of this Agreement as first set forth above and the date of each applicable Supplemental Software and Services Agreement.

1.7  "Error" shall mean, with respect to any Software Program, a material failure of such Software Program to conform to the Specifications as then in effect for such Software Program.

1.8  "Fees" shall mean the Professional Services Fees, License Fees, Annual Fees and Maintenance Fees, collectively.

1.9  "Go-Live-Date" shall mean the date a Software Program is available to Licensee for use in a production environment..

1.10  "License Fees" shall mean, with respect to any Software Program, the fees payable by Licensee to use such Software Program as indicated in the applicable Supplemental Software and Services Agreement.

1.11  "Maintenance Fees" shall mean, with respect to any Software Program, the fees payable by Licensee for the Maintenance Services associated with such Software Programs as indicated in the applicable Supplemental Software and Services Agreement.

1.12  "Maintenance Services" shall mean the maintenance services with respect to the Software Programs that are described in Exhibit 1 hereto.

1.13  "Modification" shall mean all modifications, enhancements, updates, derivative works, and translations of or to the Software Programs, the Other Products, and the Specifications.

1.14  "Other Products" shall mean, if applicable, the additional products or third party software being purchased by Licensee from Licensor as specified in a Schedule to the Supplemental Software and Services Agreement under such terms and conditions as are defined from time to time.

1.15    "Professional Services" shall mean, with respect to any Software Program, the implementation services, business transformation services, training services and any other applicable professional services to be provided by Licensor with respect to such Software Programs as indicated in the applicable Supplemental Software and Services Agreement.

1.16    "Professional Services Fees" shall mean, with respect to any Software Programs, the fees payable by Licensee for the Professional Services associated with such Software Programs as indicated in the applicable Supplemental Software and Services Agreement.

1.17    "Services" shall mean the Professional Services and Maintenance Services, collectively.

1.18    "Services Fees" shall mean, with respect to any Services, the fees payable by Licensee for each of the Services, as applicable, as indicated in the applicable Supplemental Software and Services Agreement.

1.19    "Software Program(s)" shall mean Licensor's proprietary computer software products for use on the supported hardware in machine readable object code form only, including the Specifications, and any Modifications, Error corrections, and new releases provided to Licensee as part of Maintenance Services, as specified in any Supplemental Software and Services Agreement. The Software Program may, if applicable, include Other Products that are provided in connection with the Software Programs pursuant to authority granted to Licensor by such third parties or through sublicense agreements with Licensee.

1.20    "Specifications" shall mean user manuals and written system specifications supplied by Licensor for the Software Programs and Licensor's interface specifications located at https://users.picis.com, or as otherwise updated by Licensor as part of Maintenance Services.

1.21    "Starter Set" means and includes but is not limited to screens, user definable fields and reports, and as may be further described herein.

1.22    "Supplemental Software and Services Agreement" shall mean with respect to any Software Program, the Supplemental Software and Services Agreement entered into hereunder and incorporated herein, under which Licensor licenses such Software Programs to Licensee and Licensee licenses such Software Programs from Licensor.

1.23    "Supplemental Software and Services Agreement Date" shall mean the date a completed and signed Supplemental Software and Services Agreement is signed by Licensee.

**2.    ORDERS FOR SOFTWARE AND SERVICES**
2.1     Licensee may order the Software Programs and Services by submitting a signed Supplemental Software and Services Agreement to Licensor or for Services only via the Change of Scope process in Section 6 or a Sales Order. Each Supplemental Software and Services Agreement and each license granted and/or Services provided thereunder shall be subject to the terms and conditions of this Agreement except as specifically provided therein.

2.2     Licensee will be responsible for the purchase, installation and support of any hardware and third party software, excluding the Other Products, if any, necessary to operate the Software Programs. A Supplemental Software and Services Agreement may set forth the hardware and third party software configuration required to operate the Software Programs subject thereto.

**3.    GRANT OF LICENSE**
3.1     Licensor hereby grants to Licensee and Licensee hereby accepts, a perpetual, limited, non-exclusive, non-transferable right and license for Licensee, including its employees and authorized agents at the Designated Facility(s), to use, solely for Licensee's internal business purposes, the Software Programs, excluding Other Products, listed in the Supplemental Software and Services Agreement, and any Modifications and documentation related thereto, subject to the terms and conditions of this Agreement. The license grants to the Other Products shall be as set forth in their applicable Sublicense Agreements, which shall be attached to the applicable Supplemental Software and Services Agreement. The registered or unregistered trademarks used to describe the Software Programs are and shall at all times remain the sole and exclusive property of Licensor or Licensor's respective third party software supplier, as well as all right, title, and interest to such Software Programs shall at all times remain the property of Licensor or any third party software supplier. Licensee acknowledges that any breach of this Agreement by its employees or authorized agents shall constitute a breach by Licensee.

3.2     Licensor, in its sole discretion, may provide a Starter Set for certain of its Software Programs, excluding Other Products, licensed herein to assist the Licensee in their implementation of such Software Programs. This Starter Set is being licensed on an "**AS IS**" basis and Licensor shall not be liable for any use of such Starter Set in a production environment

3.3    **U.S. Government Restricted Rights**.  If Licensee is an agency of the United States Government, or the license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Licensee agrees that the Software Programs are provided with restricted rights, pursuant to applicable regulations.

## 4.   RESTRICTIONS

4.1    The Software Programs may only be used by Licensee in furtherance of Licensee's internal operations at a Designated Facility. Licensee's use of the Software Programs at a facility that is not a Designated Facility is a violation and breach of this Agreement; however, Licensee may, with Licensor's prior written consent, change a Designated Facility or add additional Designated Facilities; provided that in each case, (i) Licensee executes a new Supplemental Software and Services Agreement which names the new facility as a Designated Facility;  (ii) Licensee pays any applicable Professional Services Fees as requested by Licensee and, (iii) pays any additional License or Maintenance Fees that may be required to add a Designated Facility.

4.2    Licensee shall not, and shall not permit its employees or authorized agents to, (i) copy or otherwise reproduce the Software Programs in whole or in part, except for such copying as is essential for archival, test and system recovery purposes; (ii) modify, adapt, disassemble, decompile, or otherwise reverse engineer the Software Programs or any part thereof (or otherwise attempt to create or divulge any related source code); (iii) create Modifications; or (iv) use the Software Programs in any manner to provide services to any third party or any facility other than a Designated Facility. For purposes of clarification, Licensee shall not be prohibited from remotely accessing the Software Program, provided such remote access is to provide services for a Designated Facility and otherwise in compliance with this Agreement.

4.3    Except as otherwise provided in this Agreement, Licensee shall not, and shall not permit its employees or authorized agents to, sell, lease, assign, sublicense or otherwise transfer the Software Programs or any portion thereof, or this Agreement or any Supplemental Software and Services Agreement.

4.4    If applicable to Licensee and provided Licensee enters into any applicable sublicense or other relevant agreements for the Other Products, as may be required by the vendors of the Other Products (hereinafter referred to as the "**Sublicense Agreements**") and subject to the terms and conditions of this Agreement, Licensor is granted a sublicense with respect to the Other Products designated in a Supplemental Software and Services Agreement.

4.5    In the event Licensee chooses to participate in a field test agreement or similar arrangement with Licensor involving a pre-release version of a Software Program, Licensee agrees that such Software Program shall be used in a test environment only and not in a production environment.  Any use of a pre-release version of a Software Program in a production environment shall be solely at Licensee's own risk and Licensor shall not be liable for any use outside the test environment.

4.6    Licensee may not video tape or otherwise record any of Licensor's training classes or product demonstrations.

## 5.   INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY

5.1    As between Licensor and Licensee, Licensee agrees that Licensor is the sole owner and has all right, title and interest in and to the Software Programs or the rights to such Software Programs, including any Modifications, Specifications, training materials and documentation related thereto.  Nothing in this Agreement shall change Licensor's or any of its licensor's ownership rights to its respective intellectual property, including but not limited to the Software Programs, the Other Products, the Modifications and the Specifications.  Any intellectual property rights arising from the provision of the Services related to the Software Programs shall vest automatically in Licensor.

5.2    "**Confidential Information**" means any trade secret or other non-public information of a disclosing party (the "**Disclosing Party**"), whether of a technical, business, or other nature (including, without limitation, information relating to the Disclosing Party's technology, software, products or offerings, services, designs, methodologies, business or marketing plans, finances, customers, prospects or other matters), that is disclosed to the receiving party (the "**Receiving Party**") during the term of this Agreement and that the Receiving Party, due to the nature of the information being disclosed or the manner in which it is disclosed, would be reasonably inferred, based on industry standards and prudent business judgment, to be confidential and/or proprietary to the Disclosing Party. For the avoidance of doubt, Confidential Information also includes any information that is protected by applicable law, statute, or regulation, including the Health Insurance Portability and Accountability Act.

Except as required by federal, state, or local law or regulation, or by court order, Licensee and Licensor hereby agree to maintain the confidentiality of Confidential Information using at least the same degree of care and security as each uses to maintain the confidentiality of its own Confidential Information. The parties will at all times preserve and protect such Confidential Information and any other proprietary or non-public information of the other party.

Confidential Information does not include information, technical data or know-how which (i) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's files and records immediately prior to the time of disclosure, or (ii) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any improper inaction or action of the Receiving Party, or (iii) is approved by the Disclosing Party, in writing for release, or (iv) is obtained by the Receiving Party from a third party without breach of any obligation to the Disclosing Party, or (v) is independently developed by the Receiving Party, as shown by documentation created contemporaneously with such independent development. Confidential Information may be disclosed by law or court order; provided, that the Receiving Party must promptly notify the Disclosing Party of any information received from the Disclosing Party which the Receiving Party is required to disclose to a third party seeking a court order, and must take reasonable steps to minimize the extent of such disclosure.

5.3     Licensee acknowledges that the Software Programs, together with the ideas and expressions thereof, contain proprietary and Confidential Information of Licensor, and that Licensor is disclosing such proprietary and/or Confidential Information only on a need to know basis to Licensee. Licensee shall not cause or permit the decompilation, disassembly or reverse engineering of the Software Programs or its components or the disclosure, copying, loan, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise) or other dissemination of the Software Programs. In addition, Licensee shall not cause or permit the dissemination of Licensor's Confidential Information in whole or in part, including but not limited to the Specifications, source code, and object code, in any manner to any third party without the prior written consent of the Licensor and shall only provide such Confidential Information to its employees and authorized users on a need to know basis and subject to the terms of this Agreement, except as required by federal, state, or local law or regulation, or by court order.

5.4     Licensee, its employees and authorized agents shall keep the Software Programs confidential and take all commercially reasonable precautions to prevent the Software Programs from being copied or reproduced, in whole or in part, by any person, firm or corporation at any time without the prior written consent of the Licensor, and to provide that no unauthorized persons shall have access to the Software Programs, and Licensee will take appropriate action, by instruction, agreement or otherwise, with any persons permitted access to the Software Programs, including representatives of Licensee, to restrict the disclosure, duplication or reproduction of the Software Programs so as to enable Licensee to satisfy its obligations hereunder. Licensee shall limit use of and access to the Software Programs to those employees and agents of Licensee directly involved in the use of the Software Programs and Licensee shall take all reasonable steps to safeguard the system and to ensure that no persons authorized to have access to the Software Programs shall take any action in violation of this Agreement. Licensee shall promptly report to Licensor any actual or suspected violation of this section and shall take further steps as may reasonably be requested by Licensor to prevent or remedy any such violation.

5.5     Licensee shall not alter or remove any copyright, trade secret, patent, trademark, proprietary and/or other legal notices contained on or in copies of the Software Programs and shall reproduce all such notices on or in all copies permitted to be made under this Agreement.

5.6     Licensee agrees to keep the terms and conditions of this Agreement, and all matters pertaining to pricing, incentives and financial information under this Agreement, confidential, except as required by federal, state, or local law or regulation, or by court order.

## 6.  SERVICES

6.1     <u>PROFESSIONAL SERVICES</u>. Professional Services will be provided to Licensee as set forth in a Statement of Work, other applicable Schedules attached to each Supplemental Software and Services Agreement, or as otherwise set forth in this Agreement.

6.1.1   Licensee agrees to provide the resources and perform the responsibilities assigned to it, in a timely manner, pursuant to the Statement of Work and any key project milestones or applicable milestone dates. Failure by Licensee to provide resources or perform its responsibilities to meet such key project milestones or milestone dates shall not relieve Licensee of any payment obligation as set forth in this Agreement or any accompanying Supplemental Software and Services Agreement.

6.1.2   If Licensee causes a delay in the start of the kick-off meeting as set forth in the Statement of Work (the "**Implementation Start**") under any Supplemental Software and Services Agreement beyond 180 days from the Supplemental Software and Services Agreement Date, Licensor may, at its discretion, charge Licensee for Services provided by Licensor that are in excess of Implementation Services to be provided by Licensor under the Statement of Work and which are caused by Licensee's delay in the Implementation Start past the 180 day time period via the Change of Scope process in Section 7, subject to Section 2 of the County of Monterey and Natividad Medical Center Agreement for Professional Services

**6.1.3** If after the Implementation Start, Licensee delays the performance of the Professional Services by Licensor as set forth in a Statement of Work, Licensee shall be responsible for payment to Licensor for Services beyond the expected implementation completion date (the **"Implementation Completion"**) on a time and materials basis to complete the Professional Services based on Licensor's then current hourly rates to be invoiced on a monthly basis.

**6.2** ADDITIONAL PROFESSIONAL SERVICES. Licensor may provide, upon Licensee's written request, additional Professional Services to Licensee, at times mutually agreed by both parties, at Licensor's then current hourly rate plus travel and out-of-pocket expenses consistent with the Monterey County Travel Policy.

6.3 MAINTENANCE SERVICES. Provided that Licensee has paid the applicable Maintenance Fees, Maintenance Services will be provided by Licensor as described in Exhibit 1.

6.4 CHANGE OF SCOPE At any time during the provision of Professional Services, should Licensee desire Licensor to provide any additional Services in the form of a modification of or a change to the Professional Services already contracted for under this Agreement or Supplemental Software and Services Agreement, Licensor and Licensee shall comply with the following:

6.4.1 Submission of Request. Licensee shall submit to Licensor in writing all requests by Licensee for any such additional Services which alter, amend, add to, or delete from the Professional Services and/or time, and/or place of performance (hereinafter referred to as "**Change Order Request**") under this Agreement. Such requests shall include, but may not be limited to, added services, changes in agreed upon project timelines, delays in key milestone events, requests for re-performance of training or other services not contracted with Licensor.

6.4.2 Review/Acceptance of Change Order Procedure. Licensor will evaluate and respond to a Change Order Request at no additional charge to Licensee within ten (10) business days following Licensor's receipt of the Change Order Request. Licensor's written response shall include a statement of the availability of Licensor's personnel and resources, the impact, if any, on the Go-Live-Date and the change in costs, if any (hereinafter referred to as the "**Change Order Form**"). Licensor in its sole discretion may refuse to accept any Change Order Request. Licensor shall charge Licensee for any accepted Change Order Requests at Licensor's then current time and materials rate for the Services provided and invoice Licensee for Services Fees as incurred on a monthly basis. Should Licensee elect to authorize such Change Order Form, Licensee will within ten (10) business days of receiving the Change Order Form, provide Licensor with a signed copy of the Change Order Form on behalf of Licensee or request additional information or revisions to such Change Order Form at which time such document, upon the execution by Licensor, shall become a valid Change Order Form, which shall be incorporated into and become part of this Agreement.

6.4.3 Performance. Upon Licensor's receipt of the signed Change Order Form from Licensee, Licensor shall commence performance pursuant to the terms of the Change Order Form. Licensor shall not be obligated to perform any additional Services in advance of a signed Change Order Form from Licensee.

6.4.4 Binding Agreement. For the purposes of this Agreement, each Change Order Form signed by both parties shall be deemed incorporated into and part of this Agreement and each such Change Order Form shall constitute a formal amendment to this Agreement adjusting Fees and completion date as finally agreed upon for each signed Change Order Form.

**7. WARRANTIES**
7.1 Licensor warrants that:
(i) it is authorized to grant the license(s) to the Software Programs hereunder;
(ii) upon the Go-Live Date and for a period of thirty (30) days thereafter, the Software Programs will function in substantial conformance with the written Specifications.

7.2 Licensor's entire liability and Licensee's exclusive remedy for any breach by Licensor of the warranty in Section 7.1(ii) shall be for Licensor to provide the necessary functionality within 30 days of written notification of the Error by repairing the Software Programs, provided that Licensee supplies such additional information regarding the Error as Licensor may reasonably request, and further provided that the Error is not caused by (i) any Modification by Licensee of the Software Programs; (ii) use of the Software Programs in combination with hardware or software not supplied, recommended or authorized by Licensor; (iii) improper or unauthorized use of the Software Programs; (iv) any failure of the Software Programs due to external causes such as, but not limited to, power failures or electrical surges; or, (iv) use of the Software Programs in a manner inconsistent with the Specifications or this Agreement. If Licensor determines that Licensor is unable to repair the Software Programs as required by this Section 7.2, Licensor may refund to Licensee License Fees paid for the Software Program containing the Error.

7.3     The above warranties are the only warranties made by Licensor with respect to the performance of the Software Programs or results that may be obtained by the use thereof. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE PROGRAMS AND THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE.

## 8. INDEMNIFICATION FOR INFRINGEMENT

8.1     Licensor will defend at its expense and hold Licensee harmless from and against any third-party action brought against Licensee to the extent it is based on a claim that the Software Programs (excluding Other Products), when used in accordance with this Agreement, infringes a United States copyright, patent or trademark, and, at its option, will settle any such action or will pay any final judgment awarded therein, provided that (i) Licensor shall be notified promptly in writing by Licensee of any notice of any such claim; (ii) Licensor shall have the sole control of the defense of any such action and all negotiations for settlement or compromise; and (iii) Licensee shall cooperate fully with Licensor in the defense, settlement or compromise of such claim.

8.2     If the Software Program is, or in Licensor's opinion might be, subject to a claim of infringement as set forth above, Licensor may, at its option and expense, (i) procure for Licensee the right to continue using the Software Programs, (ii) modify the Software Programs so that it becomes non-infringing or (iii) terminate the licenses granted hereunder, accept return of the Software Programs, and grant Licensee a refund of the applicable License Fees paid therefore with respect to the infringing software, based on a straight-line five year amortization schedule from the Effective Date.

8.3     Licensor has no liability to Licensee under this Section to the extent that any infringement, or any claim thereof, is based upon (i) use of the Software Programs in combination with equipment or software not supplied or approved by Licensor hereunder where the Software Programs themselves would be non-infringing, (ii) use of the Software Programs in an application or environment for which it was not designed or contemplated under this Agreement, (iii) use of any Software Programs other than the most recent release of the Software Programs provided to Licensee by Licensor, or (iv) Modifications of the Software Programs by anyone other than Licensor.

8.4     THIS SECTION 8 STATES LICENSOR'S ENTIRE LIABILITY FOR ANY INFRINGEMENT BY THE SOFTWARE PROGRAMS OR ANY PART THEREOF.

## 9. FEES AND PAYMENT

9.1     Fees are specified in the Supplemental Software and Services Agreement and shall be invoiced and paid in U.S. Dollars. All invoices submitted to Licensee are due and payable to Licensor within 30 days of the invoice date. The Fees, reimbursements and charges set forth in this Agreement or in a Supplemental Software and Services Agreement are exclusive of, and Licensee shall be responsible for, applicable federal, state or local sales, use and like taxes. Unless Licensee provides adequate proof of exemption from such taxes, Licensee shall pay or reimburse Licensor for any such taxes, and Licensor may add such taxes to any invoices submitted to Licensee by Licensor. Licensee shall pay all personal property taxes, if any, assessed against the Software Programs after delivery to Licensee. If Licensee is a tax-exempt entity, Licensee will provide Licensor with a copy of its current tax exempt certificate within five (5) business days from the Effective Date of this Agreement.

9.2     Unless otherwise set forth in the Supplemental Software and Services Agreement, with respect to the License Fees and Implementation Fees specified in the Supplemental Software and Services Agreement, Licensee agrees to pay Licensor as follows: twenty-five (25%) percent on signing of the Supplemental Software and Services Agreement, twenty-five (25%) percent on the sooner of the installation of the Software Programs identified in the Supplemental Software and Services Agreement on Licensee's hardware or 90 days from the Supplemental Software and Services Agreement Date, twenty-five (25%) percent on the sooner of completion of Component Test on the initial Software Program or 180 days from the Supplemental Software and Services Agreement Date, and twenty-five (25%) percent on the sooner of the Go-Live Date on the initial Software Program or 270 days from Supplemental Software and Services Agreement Date. Licensee shall make the payments in full and without deduction to Licensor as specified in this Agreement and in the Supplemental Software and Services Agreement.

9.3     Licensee acknowledges that, unless expressly provided for in this Agreement, no refunds or credits shall be provided to Licensee for any Software Programs or Services, including but not limited to Services provided prior to, during, or post Implementation, for orders placed and/or received or for any Services provided to Licensee.

9.4     TRAVEL AND OUT OF POCKET EXPENSES. Licensee shall reimburse Licensor for all out-of pocket expenses, including, without limitation, travel, meals and lodging expenses incurred by Licensor in providing Services for the

Software Programs or any updates or enhancements thereto as set forth in the Monterey County Travel Policy attached as Exhibit 3. Licensor shall invoice Licensee on a monthly basis for such expenses, and payment shall be due within thirty (30) days of receipt by the Monterey County Auditor-Controller's Office of an invoice.

9.5 Licensor on-site visits (including training dates and all scheduled training classes at Licensor's corporate offices) are mutually agreed upon by Licensor and the Licensee at the start of the implementation project. Once these on-site visits have been agreed upon by the Licensee and Licensor, Licensee must notify Licensor at least three (3) weeks prior to the scheduled date of Licensee's desire to change the date. Licensee will be responsible for any lost billable time and any non-refundable travel expenses, consistent with the Monterey County Travel Policy, that have been incurred by Licensor as a result of the changed schedule. If the Licensee cancels an on-site visit within three (3) weeks of a scheduled date, Licensor reserves the right to charge for lost billable time related to the cancelled on-site visit at Licensor's then-current rates and to charge for any non-refundable expenses incurred by Licensor. Licensor will inform Licensee of required training preparation. Licensor will notify Licensee at least three (3) weeks prior to a scheduled training date if the Licensee is not deemed prepared for a scheduled training.

## 10. LIMITATION OF LIABILITY

10.1 Except as set forth in Section 8, Licensor's maximum liability arising out of, or relating to, the creation, license, supply or use of the Software Programs or the provision of Services, or otherwise related to this Agreement, whether based upon warranty, contract, tort, or otherwise, shall not exceed the total License Fees received by Licensor from Licensee in connection with the matter giving rise to the claim. In no event shall Licensor be liable for costs of procurement of substitute products or services, loss of profits, loss or inaccuracy of data, or loss of use, or any special, incidental, exemplary or consequential damages, of whatever nature arising out of or relating to this Agreement, or arising out of or relating to the use, negligent use or non-use of the Software Programs by Licensee, its employees and agents, even if Licensor has been advised of the possibility of such damages and notwithstanding any failure of essential purpose.

10.2 Licensee agrees that Licensor shall not be liable for any financial loss or for any claim or demand against the Licensee by any other party. The parties agree that Licensor does not provide medical services to patients and that Licensee's use of the Software Programs does not affect the Licensee's obligations to exercise independent medical judgment in rendering health care services to patients. Licensor shall have no responsibility as a result of this Agreement for decisions made or actions taken or not taken in the conduct of Licensee's business, rendering patient care, or for information provided to insurance companies, governmental agencies or other payors. Licensee agrees not to utilize the Software Programs in any Closed Loop System. Use of Licensor's Software Programs requires Licensee to exercise independent clinical judgment in the delivery of patient care. Licensee acknowledges that any reliance upon the Software Programs by Licensee or any third party shall not diminish Licensee's responsibility for patient care. Licensee acknowledges and agrees that Licensee and its end users are (i) responsible for verifying the critical outputs of the Software Programs (including, but not limited to, output in the form of data) that Licensee and its end-users know or should know has a potential negative impact on patient care; (ii) shall not rely solely on the Software Programs for data that Licensee or its end users know or should know may negatively impact patient care; and, (iii) shall not rely upon the Software Programs as the sole means of communicating life threatening or critically important results, including but not limited to, lab, pathology or radiology results. Licensee shall defend, indemnify and hold Licensor and its directors, officers, employees, agents, and suppliers harmless from and against all claims, liabilities and expenses (including legal fees) related to any claims with respect to the matters set forth in this Section 10, including, but not limited to, negligence or malpractice claims arising out of or resulting from the use or non-use of the Software Programs by Licensee or any of its agents or employees.

10.3 No action, regardless of form, arising out of the services under this Agreement may be brought by either party more than four years after the cause of action has occurred or a party has learned of such cause of action, whichever occurs later.

## 11. TERM AND TERMINATION

11.1 The term of the licenses granted to the Licensee hereunder shall commence upon the Effective Date or, if applicable, the Supplemental Software and Services Agreement Date for purchases made by Licensee after the Effective Date of this Agreement, and shall terminate (i) in the non-breaching party's discretion if a party breaches any material term of this Agreement and such breach is not corrected or substantially cured within thirty (30) days after receipt of Notice from the non-breaching party; (ii) in Licensor's discretion if Licensee fails to pay any Fees when due, and such failure to pay is not cured within thirty (30) days after receipt of Notice from Licensor; (iii) in the non-breaching party's discretion if a party breaches its obligations with respect to confidential information; or, (iv) upon sixty (60) days prior written Notice if a party ceases its business operations, makes an assignment for the benefit of creditors, or files for bankruptcy.

11.2 Upon termination of this Agreement or any part thereof, the licenses to any Software Programs being terminated shall automatically cease, all outstanding Fees owed by Licensee to Licensor associated with such termination shall be immediately due and payable, and Licensee shall return the Software Programs and related documentation, together with any Licensor Confidential Information and shall certify in writing by an officer of the Licensee that all such copies, documentation and Licensor Confidential Information have been returned, destroyed and/or deleted from Licensee's computer and storage facilities (including offsite and disaster recovery service centers, remote hosting systems and remote user computers) and are no longer in use. Licensee may retain one copy of the Software Programs for archival purposes only.

## 12. GENERAL

12.1 NOTICE. Notices, requests and other communications required pursuant to this Agreement shall be deemed to have been duly given only if hand delivered or sent by courier or overnight delivery service, U.S. mail (return receipt requested and postage prepaid), in each case to the address set below or to another address as each party may designate from time to time (hereinafter referred to as "Notice"). If not received sooner, Notice shall be deemed received five (5) days after the date sent. Notices under this Agreement are to be provided as follows:

If to Licensor: Picis, Inc.
        Attn.:   Chief Legal Officer & General Counsel
                Picis, Inc.
                100 Quannapowitt Parkway, Suite 405
                Wakefield, MA
                Fax No.: 781 557 2311

With a copy to:
        Attn.:   Contracts Manager
                Picis, Inc.
                100 Quannapowitt Parkway, Suite 405
                Wakefield, MA
                Fax No.: 781 557 2213

If to the Licensee:
        Attn.:   CEO
                Natividad Medical Center
                1441 Constitution Boulevard
                Salinas, CA 93906

12.2 AUTHORIZATION. Each party represents that the execution, delivery and performance of this Agreement has been duly authorized by such party, and that the person signing on each party's behalf has the power and authority to do so.

12.3 AUDIT. Licensor may perform an audit of Licensee's usage of the Software Programs to verify use in accordance with the terms of this Agreement and/or any Supplemental Software and Services Agreement. The audit may be conducted (i) once every calendar year or (ii) in the event Licensor has a good faith reason to believe Licensee is utilizing the Software Programs in an unauthorized manner or more broadly than specified in this Agreement and/or any Supplemental Software and Services Agreement. Licensor will notify Licensee at least ten (10) business days in advance of Licensor's desire to perform an onsite audit and such audit will be conducted at a schedule agreed upon by both parties. Such audit shall be at Licensor's expense; however, in the event the audit reveals that Licensee is in violation of the usage terms of the Agreement, Licensee shall reimburse Licensor for such expenses and promptly pay Licensor for any additional License Fees and accrued Maintenance Fees not properly licensed or paid, such Fees will be invoiced at Licensor's then current rate.

12.4 BUSINESS ASSOCIATES ADDENDUM. Licensor and Licensee agree to comply with the provisions of the Business Associates Addendum attached hereto as Exhibit 2.

12.5 FORCE MAJEURE. Neither party shall be liable for any delay or failure to perform its obligations hereunder if such delay or failure to perform is due to any cause or condition reasonably beyond its control and not caused by such party's negligence.

12.6 PURCHASE ORDER. If any purchase order submitted by Licensee purports to vary or supplement the terms and conditions of this Agreement or any Supplemental Software and Services Agreement, the terms and conditions of

                Picis-Natividad Med Ctr Lic and Serv Agmt Final 081022.doc

this Agreement and the Supplemental Software and Services Agreement shall nonetheless control, and no provision of such purchase order shall be applicable or binding upon the parties, unless such term or condition is specifically agreed to in writing by Licensor.

12.7    PUBLICITY. Except as set forth below, each party agrees not to publicly display or disseminate any publication, advertisement, press release or other materials that may use or display the trade names or trademarks of the other party or otherwise identify the other party without the other party's prior approval, which approval shall not be unreasonably withheld.

   12.7.1    Licensor may include the Licensee's name and logo in Licensor's published customer lists, website and material.

   12.7.2    Licensee agrees to the following during the term of this Agreement. Licensor agrees to submit to Licensee all written copy/content proposed for use in press releases, case studies or byline articles described below for Licensee's approval prior to such copy/content is made public.

      12.7.2.1 Approve Licensor's press release for publication that announces Licensee's selection of Licensor's software applications;
      12.7.2.2 After Go-Live Date has been achieved,
         12.7.2.2.1    approve a case study that documents Licensee's use of the Software Programs and its associated business / clinical value for use on Licensor's website, in published materials and in selected publications;
         12.7.2.2.2    approve Licensor's press release that announces Licensee's results from deploying the Software Programs.

12.8    DISPUTE RESOLUTION.
   12.8.1    Escalation. The parties shall make good faith efforts to first resolve internally any dispute under this Agreement, except those disputes relating to infringement of intellectual property rights or confidentiality, by escalating it to higher levels of management as set forth below.

   12.8.2    The issue management process provides a structured and consistent approach to manage issues for this Agreement and any associated Statements of Work. The process will facilitate how issues and disputes are raised, communicated, resolved, and escalated. All Licensor and Licensee team members have access to the process through their leadership.

   12.8.3    "Dispute Resolution Procedure": The parties' respective contacts below shall attempt to resolve any Disputes between the parties in the first instance. A "Dispute" shall mean any dispute, controversy, or claim that arises or occurs between the parties in relation to any thing or matter arising out of or in connection with this Agreement. If the Level 1 contacts are unable to resolve the dispute within five (5) business days, it shall be escalated to the next level, and shall continue to escalate to each level thereafter until the procedure is exhausted or the Dispute has been resolved.
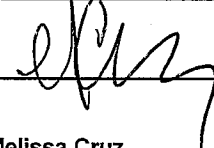
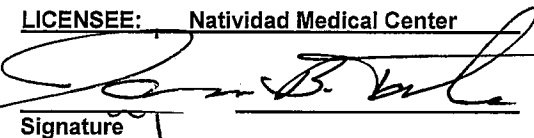| Level | For Licensor | For Licensee |
|-------|--------------|--------------|
| 1 | Project Manager or Client Services | Project Manager |
| 2 | Sr VP, Professional Services or Sr VP, Client Operations | Department Director / Administrator |
| 3 | Chief Legal Officer or designee | Legal Representative |
| 4 | Chief Operating Officer | Chief Information Officer |

12.9    GOVERNING LAW; JURISDICTION & VENUE. The existence, validity and construction of this Agreement shall be governed by the laws of the State of California and that exclusive jurisdiction of disputes between the parties hereto shall be vested in the courts of the State of California or the Federal District Court for the Northern District of California.

12.10   SEVERABILITY.  The unenforceability or invalidity of any provision shall not affect the force and validity of the remaining provisions and such invalid provisions shall be deemed severed from this Agreement and, if permissible and upon the mutual agreement of the parties hereto, be replaced with terms which as closely as possible approximate the interest and economic intent of such invalid provisions.

12.11   DISCLAIMER OF AGENCY.  This Agreement does not constitute a partnership agreement, nor does it authorize either Licensor or Licensee to serve as a legal representative or agent of the other.  Neither Licensor nor Licensee will have any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other.

12.12   ENTIRE AGREEMENT.   It is expressly agreed that the provisions set forth herein constitute all the understandings and Agreements between the parties.   Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreements are of no force and effect.  No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto. The exhibits attached hereto and any Supplemental Software and Services Agreements by and between Licensor and Licensee are incorporated herein by reference and are an integral part of the Agreement and shall be read and interpreted together with the Agreement as a single document.  This Agreement, consisting of all of the pages of this instrument, together with the Exhibits and any Supplemental Software and Services Agreements, together with its respective schedules, with respect thereto, constitutes the entire, final and exclusive agreement of the parties and merges all previous communications between them with respect to the subject matter hereof.

12.13   SURVIVAL.  Sections 1, 3, 4, 5, 10, 11, and 12 shall survive termination of this Agreement.

**IN WITNESS WHEREOF,** the terms and conditions of this Agreement are accepted and agreed to by Licensor and Licensee and the parties have caused this Agreement to be executed and each individual whose signature appears below hereby warrants that they are duly authorized to execute this Agreement on the behalf of the party that they represent.
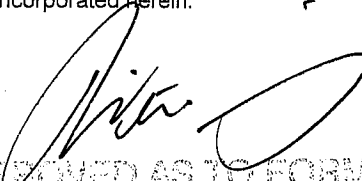
This Agreement may be signed in two (2) or more counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

| **LICENSOR:**   Picis, Inc. | **LICENSEE:**   Natividad Medical Center |
|---|---|
| **Signature** | **Signature** |
| Melissa Cruz | _Names B. Tatum_ |
| **Printed Name** | **Printed Name** |
| CFO | _Director Purchasing_ |
| **Title** | **Title** |
| 10/27/08 | DEC 1 1 2008 |
| **Date** | **Date** |

The following Exhibits are made part of this Agreement and incorporated herein.

   Exhibit 1 – Maintenance Services
   Exhibit 2 – Business Associates Addendum
   Exhibit 3 – Travel and Expense Policy

11/24/08

APPROVED AS TO FORM AND LEGALITY

WILLIAM M. LITT
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

# EXHIBIT 1: MAINTENANCE SERVICES

1.   SCOPE OF MAINTENANCE SERVICES

1.1 In consideration of Licensor performing the Maintenance Services, Licensee shall pay to Licensor the Maintenance Fees associated with such Maintenance Services (referred to in this Agreement as the "Maintenance Fee") as specified in the Supplemental Software and Services Agreement at the commencement of the Initial Maintenance Term and which shall be invoiced and paid annually in advance of each Renewal Term.  Maintenance Fees may increase once annually in Licensor's discretion, and shall not exceed five (5%) percent of the previous year's Maintenance Fee.  Maintenance Services may be withheld by Licensor in the event Licensee fails to make payment of the Maintenance Fee within thirty (30) days of the due date.  Licensee shall reimburse Licensor for all out of pocket expenses, including without limitation, travel, meal and lodging expenses, incurred by Licensor in connection with its providing Maintenance Services as set forth in Exhibit 3.  Licensor shall invoice Licensee on a monthly basis for such out of pocket expenses and payment by Licensee shall be made within thirty (30) days of receipt by the Monterey County Auditor-Controller's Office of an  invoice .

1.2 Maintenance Terms.  The initial term of the Maintenance Services shall commence on the installation of each Software Program on Licensee's hardware or ninety (90) days from the Supplemental Software and Services Date, whichever first occurs, and continue for one (1) year thereafter unless terminated as provided below (in this Agreement referred to as the "Initial Maintenance Term").  Thereafter, the term for Maintenance Services shall renew automatically for one (1) year terms (herein referred to as a "Renewal Maintenance Term," and all terms together, the "Maintenance Term"), provided that: (a) Licensee has paid all applicable Maintenance Fees (b) Licensee is in compliance with its obligations hereunder; and (c) neither party provides written Notice of its termination of Maintenance Services at least thirty (30) days in advance of the effective termination date.  Licensee agrees that if it discontinues and then resumes Maintenance Services, it will be required to pay Licensor the entire Maintenance Services Fee for the period of discontinuance, plus the Maintenance Services Fee for the term of the Maintenance Services then commencing.

1.3 Maintenance Services.

1.3.1   Software Maintenance.  Licensor will use commercially reasonable efforts to correct any reproducible defects that Licensee reports to Licensor in the most current Version and the Version immediately preceding the most current Version of the Software Programs.  In this Agreement, "Version" shall mean the most current commercially available form of the Software Programs.  Licensor shall not be obligated to perform Maintenance Services for any defects resulting from (i) Licensee's Modification of the Software Programs or use thereof in combination with software not provided by Licensor; (ii) improper or unauthorized use of the Software Programs; (iii) use of the Software Programs with a hardware or software configuration that does not comply with Licensor's configuration standards for that Version of the Software Programs; or, (iv) external causes including, but not limited to, power failures or electric surges; provided however that, if Licensor chooses to perform Maintenance Services for defects resulting from the items listed above, such Maintenance Services shall be billed to Licensee at Licensor's then-current time and materials rate.

1.3.2   Versions.  Licensor may from time to time issue new Versions and documentation if any, of the Software Programs as part of this maintenance agreement.  Such Version to include bug fixes, service packs, improvements and/or modifications to the Software Programs, which are marketed as standard features or functionality of the Software Programs and not marketed as new products, options or additional modules.  Licensee shall promptly install at the Authorized Location such Versions as they become available to Licensee.  Licensor shall support the current Version and the immediately prior Version of the Software Programs.  Licensor shall provide Licensee with a minimum of six (6) months prior notification of the retirement of any versions which are older than the current or immediately prior Versions of the Software Programs.  Licensor shall make available telephone and remote assistance to Licensee during the installation of a new Version during Licensor's normal business hours.  After hours remote assistance shall be charged at Licensor's then current published after hour support rates.  Licensee's request for on-site assistance for the installation of a new Version shall be chargeable at Licensor's then current time and materials rate.

1.3.3   Environments.  Licensor shall support the Software Programs in the production environment and test environments only.

1.3.4   Telephone and Web-Based Support.  Licensor will provide telephone and electronic technical support for the Software Programs, 24 hours a day, 365 days a year, to Licensee's designated and trained personnel.  In addition, Licensor will provide emergency support to any authorized user of the Software Programs for the purpose of error recovery and to assist in determining the cause of any malfunction.  Notwithstanding

the foregoing, Licensee shall ensure that all authorized users seek assistance from Licensee's designated support representatives prior to contacting Licensor. Licensee shall internally resolve all routine questions about the Software Programs (e.g., questions regarding user passwords; logging on; network problems) prior to contacting Licensor. If Licensor reasonably determines that Licensee's users are repeatedly failing to observe this protocol, Licensor reserves the right, after providing Licensee with written Notice of such determination and providing Licensee with a reasonable opportunity to rectify Licensee's failure to follow protocol, to charge Licensee for such calls at Licensor's then-current rates. Where applicable, Licensee's shall be given access to the Picis user website at www.picis.com (or as otherwise updated) for help desk access, technical information, downloads of database queries, Picis knowledge base, frequently asked questions, and application requests.

1.3.5 <u>System Monitoring</u>. Licensor may periodically perform remote diagnostic and audit services to monitor the performance of the Software Programs, to maintain diagnostic files, to monitor use of the Software Programs and to control levels of automatic diagnostic reporting.

1.3.6 <u>Device Drivers.</u> Licensee shall have access to all Licensor RS232 connected device drivers available for download from the Picis User's web site at https://users.picis.com Licensee is responsible for the implementation of device drivers. Licensee shall pay to Licensor any time and materials charges, and out-of-pocket expenses incurred by Licensor for any Services performed by Licensor, at the request of Licensee, for the implementation of device drivers.

1.4 <u>Response and Resolution Time Frames</u>. Licensee shall report all incidences of Errors (in this Agreement referred to as "Incident Reports") to Licensor in a timely manner using the electronic or telephone support procedures described in Section 1.3.4 above. After consulting with Licensee and after reviewing such Incident Report, Licensor shall classify all Errors with the Software Programs that are reported by Licensee to Licensor by Severity Level. Based upon an Error's severity classification, Licensor shall then address such Error in accordance with the process set forth below and Licensee acknowledges that Licensors ability to resolve is dependent upon the availability of Licensees staff to support the resolution process as well as in providing remote access to Licensee's systems.

| Software Programs Issue Severity | Total Time to Respond/Resolve |
|---|---|
| **Level 1** – System is down; major functionality is not working; material data loss or data corruption; unable to document a record; and end users unable to perform essential functions. (e.g. unable to document record) | Initial response to Software Programs within 1 hour, Immediate attention by responding staff member; updates to Licensee as applicable until resolved; Issue to be resolved or workaround suggested within 24 hours. |
| **Level 2** – System intermittently unable to perform essential functions, moderate to severe impact on documentation (e.g. intermittent slowness, periodic crashing and corruption of standing database tables) | Initial response to Software Programs issues within 2 hours, Immediate attention by responding staff member; updates to Licensee as applicable until resolved; Issue to be resolved or workaround suggested within 48 hours. |
| **Level 3** - Small number of end users intermittently unable to perform non-essential functions; Application functions and continues to be used (e.g. intermittently receive error message when booking a patient from one workstation) | Initial response to Software Programs issues within 24 hours; updates to Licensee as applicable until resolved; Issue to be resolved or workaround suggested in 96 hours. |
| **Level 4** - Does not impact the delivery of documentation, does not impact the validity of data in the application (e.g. spelling error, misalignment of data on screen). Application clarifications and enhancement requests. | Acknowledge receipt of issue within one week, Licensor resource assigned. Licensor work collaboratively with Licensee to resolve the issue. Software Program corrections are queued and evaluated by Picis for inclusion in a future service pack or version release. |

2. <u>EXCLUDED SERVICES</u>. Maintenance Services shall not include the following:

2.1 <u>Hardware Maintenance</u>. Licensor shall not be responsible for maintaining and purchasing any hardware used in conjunction with the Software Programs.

2.2 <u>Third-Party Software Support</u>. Licensor shall not be required to provide support for any software, including without limitation any Licensee written applications, pre-release programs, non-current versions of the Software Programs,

third party software or software provided by hardware manufacturers, other than the Software Programs; provided, however, that, if applicable to Licensee, with respect to the Other Products, Licensor shall (i) with respect to any issue that Licensor reasonably determines to be within its technical expertise, use commercially reasonable efforts to correct the problem giving rise to such issue; and, (ii) with respect to any other issue which Licensee reports to Licensor, communicate the existence of such issue to the applicable provider of such Other Products and use commercially reasonable efforts to coordinate the correction of the problem giving rise to such issue with the applicable provider of such Other Products.

2.3 <u>Training</u>. Licensor shall not be required to provide any training as a part of Maintenance Services.

2.4 <u>Routine Procedures</u>. Licensor shall not be required to perform any routine operational procedures such as database backups of Licensee's network server, the generation of reports, the servicing of printers or the resetting of hardware.

2.5 <u>Network Management Services</u>. Licensor shall not be required to perform network operating system installation, maintenance, management, or any related troubleshooting.

3. <u>ON-SITE SERVICES</u>. On-site services are not included as part of Maintenance Services unless it is determined by Licensor, in its sole discretion, that on-site services are required to resolve of an Error. If Licensee requests on-site services, Licensor will evaluate and respond to Licensees request within ten (10) business days. If Licensor agrees to perform the requested on-site services, Licensee shall pay for such services at Licensor's then-current time and material rates plus out of pocket expenses consistent with the Monterey County Travel Policy.

4. <u>ACCESS</u>. Maintenance Services are contingent upon Licensor's ability to obtain remote access to the Software Programs at the Designated Facility. Licensee's failure to provide such access shall immediately relieve Licensor of any responsibility to provide Maintenance Services, other than telephone support, until access is available. Licensee shall continuously provide the following equipment and access:

4.1 <u>Network Connection</u>. Licensee shall provide Licensor with remote access to the Licensee network and servers associated with the Software Programs in a manner reasonably acceptable to Licensor and the Licensee.

4.2 <u>Security</u>. Licensee shall provide Licensor with all login names, passwords, network rights and security information required to provide Maintenance Services. If Licensee must change any access provisions, Licensee shall immediately notify Licensor of such changes. Licensee's failure to provide such information shall relieve Licensor of its responsibility to provide Maintenance Services until the correct information is provided to Licensor.

4.3 <u>Hardware</u>. Licensee 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. Licensee's Internet server must be operational at all times and physically accessible to Licensor's designated staff as necessary, in order for Licensor to provide Maintenance Services under this Agreement.

4.4 <u>Physical Access</u>. Licensee shall provide access rights to Licensor including full rights to all Software Programs, resources and adequate rights to access the server running the Software Programs. Subject to Licensee's standard and reasonable security procedures, Licensee shall provide Licensor and its agents physical access to all equipment and software associated with the Software Programs throughout each Maintenance Term.

5. <u>TEST ENVIRONMENT</u>. Licensee acknowledges and agrees that if Licensee requests to migrate the Version of the Software Programs running in its test environment to Licensee's production environment, such migration may result in the temporary unavailability of the Software Programs in Licensee's production environment.

# EXHIBIT 2: BUSINESS ASSOCIATES ADDENDUM

## I. DEFINITIONS FOR USE IN THIS ADDENDUM

(a) Agreement. "Agreement" shall mean the License and Services Agreement entered into by Business Associate and Covered Entity on December 15, 2008, into which this Addendum is incorporated by reference.

(b) Business Associate. "Business Associate" shall mean Picis, Inc.

(c) Covered Entity. "Covered Entity" shall mean Natividad Medical Center.

(d) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(e) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(f) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 160.103.

(h) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(i) Any terms used, but not otherwise defined in this Addendum, shall have the same meaning as those terms in the Privacy Rule.

## II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

(b) Business Associate agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the electronic Protected Health Information other than as provided for by this Addendum.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.

(d) Business Associate agrees to promptly provide notice to Covered Entity of any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware, but in no event shall the notice be given later than five (5) business days after Business Associate becomes aware of such use or disclosure. Notice shall be provided in writing to: Chief Information Officer, Natividad Medical Center, 1441 Constitution Boulevard, Salinas, CA 93906.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

(f) Within five (5) days of a request from Covered Entity, Business Associate shall provide access to Covered Entity or, as requested by Covered Entity, to an Individual, to Protected Health Information about such Individual contained in any Designated Record Set maintained by Business Associate, in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make; within ten (10) days following receipt of a written request by Covered Entity, any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.

(h) Business Associate agrees to promptly make available internal practices, books, and records, including policies and procedures and Protected Health Information; relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity to the Covered Entity, or to the Secretary, or an individual designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Within ten (10) days of notice by the Covered Entity to Business Associate that it has received a request for an accounting of disclosures of Protected Health Information regarding an Individual, Business Associate shall make available to the Covered Entity such information as is in Business Associate's possession and is needed to make the accounting required by 45 C.F.R.S 164.528. At a minimum, 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 Protected Health Information, and if known, the address of such entity or person, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of such disclose which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to the Covered Entity. It shall be the Covered Entity's responsibility to prepare and deliver any such accounting requested after Covered Entity receives the information from Business Associate.

### III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

(a)      Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(b)      Except as otherwise limited in this Addendum, Business Associate may use the Protected Health Information internally for the proper management and administration of Business Associate.

(c)      Except as otherwise limited in this Addendum, Business Associate may disclose Protected Health Information as required by law.

(d)      Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(e)      Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

### IV. OBLIGATIONS OF COVERED ENTITY PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS

(a)      Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b)      Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c)      Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(b)      Covered Entity agrees to use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the electronic Protected Health Information other than as provided for by this Addendum.

### V. TERM AND TERMINATION

(a)      Term. The Term of this Addendum shall be effective as of the Effective Date of the Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b)      Termination for Cause. In addition to and notwithstanding any other provisions in the Agreement addressing termination, upon Covered Entity's knowledge of a material breach of the terms of this Addendum by Business Associate, Covered Entity shall, in its sole discretion:

     (1)      Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

     (2)      Immediately terminate the Agreement; or

     (3)      If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c)      Effect of Termination.

     (1)      Except as provided in paragraph (2) of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the Protected Health Information. Business Associate shall be responsible for ensuring subcontractors or agents of Business Associate also comply with the provisions of Section V(c).

     (2)      In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written certification of such, along with a description of the conditions that make return or destruction infeasible. Upon such determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

### VI. MISCELLANEOUS

(a)      Regulatory References. A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

(b)    Amendment. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c)    Survival. The obligations of Business Associate under Section V(c) of this Addendum shall survive the termination of the Agreement.

(d)    Interpretation. Any ambiguity in this Addendum or the Agreement itself shall be resolved to permit Covered Entity to comply with the Privacy Rule.

# EXHIBIT 3:  TRAVEL EXPENSE POLICY

**The current IRS / GSA Guidelines for travel are as follows:**

- Lodging:      $133/ day
- Meals         $64/ day
- Mileage       50.5 cents / mile

# SUPPLEMENTAL SOFTWARE AND SERVICES AGREEMENT

This Supplemental Software and Services Agreement (hereinafter referred to as the "Supplement") is entered into as of the 15th day of December, 2008 (hereinafter referred to as the "Supplemental Software and Services Agreement Date") by and between Picis, Inc. ("Licensor") and Natividad Medical Center, wholly owned and operated by the County of Monterey, California ("Licensee"), and is a supplement to the License and Services Agreement by and between Licensor and Licensee dated as of the 15th day of December, 2008 (hereinafter referred to as the "Agreement").

**WHEREAS**, Licensor is the manufacturer of certain Software Programs listed on Schedule A hereto and Licensee desires to license such Software Programs from Licensor;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1.  **License.** The license and use of the Software Programs indicated on Schedule A as being purchased hereunder shall be governed by and subject to the terms and conditions of the Agreement. This Supplement is hereby made part of and incorporated into the Agreement by this reference. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Agreement.

2.  **Fees.** The Fees associated with Licensee's license of the Software Programs shall be as follows and paid to Licensor by Licensee in accordance with the Agreement and in accordance with Schedule A:

| | |
|---|---|
| License Fee | $46,500 |
| Interface License Fee | $35,000 |
| Professional Services Fee | $205,125 |
| Total License and Professional Services Fee | $286,625 |
| | |
| Total Annual Maintenance Fee | $17,460 |

3.  **Designated Facility/Facilities.** The Designated Facility/Facilities shall be the Natividad Medical Center located at 1441 Constitution Boulevard, Salinas, CA.

4.  **Licensee Billing Address:**

    Accounts Payable
    Natividad Medical Center
    1441 Constitution Boulevard
    Salinas, CA 93906

5.  **Hardware and Third Party Software Specifications.** "Hardware and Third Party Software Specifications", are specific to the Software Programs listed in Schedule A and shall be set forth on Schedule B ("Hardware and Third Party Software Specifications").

6.  **Statement of Work.** Attached is a "Statement of Work" (as set forth in Schedule C), which outlines the Professional Services to be provided to Licensee by Licensor as part of the proposed implementation of the Software Programs.

7.  **Conflict.** In the event of any discrepancy between the terms of this Supplemental Software and Services Agreement and the terms of the Agreement, the terms of this Supplemental Software and Services Agreement shall apply.
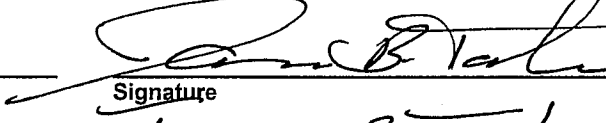
**IN WITNESS WHEREOF**, the terms and conditions of this Supplemental Software and Services Agreement are accepted and agreed to by Licensor and Licensee and the parties have caused this Supplemental Software and Services Agreement to be executed and each individual whose signature appears below hereby warrants that they are duly authorized to execute this Supplemental Software and Services Agreement on the behalf of the party that they represent.

This Supplement may be signed in two (2) or more counterparts, each of which shall be deemed an original and which shall together constitute one agreement.

LICENSOR:___Picis, Inc.___

Signature

_____Melissa Cruz_____
Printed Name

_____CFO_____
Title

_____10/27/08_____
Date

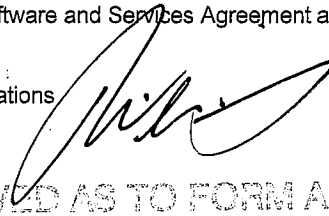LICENSEE:_____Natividad Medical Center____

Signature

James B. Tatum
Printed Name

Director Purchasing
Title

DEC 1 1 2008
Date

The following Schedules are made part of this Supplemental Software and Services Agreement and incorporated herein.

    Schedule A – Pricing
    Schedule B – Hardware and Third Party Software Specifications
    Schedule C – Statement of Work

11/24/08

APPROVED AS TO FORM AND LEGALITY
WILLIAM M. LITT
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Page 2

## SCHEDULE A - Pricing

| Software Programs | Fees |
| --- | --- |
| **OR Manager (SKU # 4235)**<br>Includes: OR Scheduling, Perioperative Nursing Record,<br>Preference Card Management, Standard and Ad-hoc reports. | $62,000 |
| **OR Manager - Web Access (SKU # 4236)**<br>Includes: Permitting a surgeon or office staff to review surgeon's patient/surgery schedule and booking activities and permits the reservation (holding a time slot without conflict checking) of a patient for a surgical procedure via MS Internet Explorer. Included if installed as part of OR Manager. Implementation fees apply if installed separately. Requires Web Server. | Included |
| **Case Record Upload Text/HL7 Outbound Interface (SKU # 4261)**<br>Text file or HL7 message containing case record information. | Included |
| **Software Programs Sub Total:** | **$62,000** |

### Interfaces

| | Fees |
| --- | --- |
| **Standard Extracts Inbound Interface (incl ADM, BAR, MIS, MM and MRI) from Meditech (IDB) (SKU # 4400_12)**<br>Sold with OR Manager only | $12,000 |
| **MM (Patient Issues and Inventory Requisitions) Keypunch Outbound Interface to Meditech (SKU # 4445_12)**<br>Sold with OR Manager only | $15,000 |
| **BAR (Batches) Keypunch Interface to Meditech (SKU # 4481_12)**<br>Sold with OR Manager only | $8,000 |
| **Interface License Fees Total:** | **$35,000** |
| **Professional Services Fees**<br>Professional Services Fees: 1) are based on the Statement of Work and project plan for the products purchased attached as Schedule C; | $205,125 |
| **Services Fee Total:** | **$205,125** |

**TOTALS**

| | |
|---|---|
| **Software Programs License Fees:** | $62,000 |
| Discount 25%**: | ($15,500) |
| **Total Interfaces License Fees:** | <u>$35,000</u> |
| **Total License Fees:** | $81,500 |
| **Total Professional Services Fees:** | <u>$205,125</u> |
| **Total:** | <u>$286,625</u> |
| **Total Annual / Maintenance Fees:** | $17,460 |

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The Annual Maintenance Fee shall be 18% of the Software Program List Price.

Interfaces are provided as per Licensor's standard interface Specifications

**Discount is valid until December 15, 2008.

# SCHEDULE B – Hardware and Third Party Software Specifications

<div align="center">

**PICIS**
**System Configuration**
**OR Manager**              Revision:     1.0

</div>

| Item | Purpose | Description | Quantity |
|------|---------|-------------|----------|
| 1 | *Database Server* | Pentium 4 - 3GHz or Higher 2-Way Processor Server Upgradeable to 4-Way(recommended) | 1 |
| | | Internal CD-ROM Backup Unit capable of backing up the database and system files. 2 GB RAM | |
| | *Database storage* | 200 GB (useable disk space) RAID 10 | |
| | | (2) 36 GB SCSI Hard Drives mirrored - OS (1) 144 GB SCSI Hard Drive - online backups. | |
| | | Picis prefers the O/S to be on its own physical device rather than on a logical segment of the hardware RAID array to enhance performance. | |
| | *Operating System* | Microsoft® Windows® Server 2003 Standard Edition | |
| | *Database Management* | Microsoft® SQL Server 2000™ Standard Edition with SP4 Microsoft® SQL Server 2005™ Standard Edition with SP2 | |
| | *Other Software Required* | Outlook client with Internet mail capabilities required for automated error reporting. pcAnywhere v11.5 or higher or comparable remote administration software(Remote Desktop/Terminal Services). | |
| | *Notes* | Server must be dedicated to the Picis application. Online backups will be performed by SQL Server then moved to tape. The online backup disk or directory needs to be the same size as the SQL data store. The online backup should be configured on its own channel to enhance performance. | |
| 2 | *Background Processor(s)* | Pentium 4 - 3GHz or Higher Processor 512 MB RAM 10 GB (available disk space) | 4 |
| | *Operating System* | Microsoft® Windows® XP Professional SP2. VMWare for Virtualization | |
| | *Other Software Required* | pcAnywhere v11.5 or higher or comparable remote administration software(Remote Desktop/Terminal Services). | |
| 3 | *Workstation Hardware* | Pentium 4 - 2GHz or Higher Processor 512 MB RAM 4 GB (available disk space) | *tbd* |
| | *Operating System* | Microsoft® Windows® XP Professional SP2 | |

These specifications are recommended for the current version of the CareSuite software. The specifications may be subject to change upon the release of a new version of the CareSuite software.

### Network Hardware Specifications

The Picis system requires a dedicated 100 Mbps Full Duplex Ethernet connection using the TCP/IP protocol.

Any other configuration will not be compliant. Picis declines any responsibility regarding overall performance of the system if the specifications listed above are not observed.

For support purposes and for uploading updates, we request that the facility provide a VPN Site to Site tunnel. Picis does not support the installation of VPN client software on any workstations. If this is not possible, minimum of (2) modem connections using US Robotics 56k external modems with Windows 2000 or 2003 Remote Access Server will be required.

### Minimum Hardware / 3rd Party Software Requirements

Picis is neither a manufacturer nor vendor of hardware or third party software. The customer is solely responsible for the purchase, installation and maintenance of these products. The following specifications are provided as recommendations of minimal processing and storage capacity based on preliminary understanding of customer requirements (i.e. number of workstations and applications purchased) respective to Picis application performance requirements for the Picis product line. As a general rule, customers are recommended to procure the most powerful hardware that their budget permits which meets or exceeds Picis requirements.

Any hardware or software pricing provided by Picis is intended to be used as an estimate for budgetary planning purposes only. Picis recommends that the customer utilize their preferred vendor of hardware and third party software for the most current pricing related to these specifications.

### Data Size and Hardware Recommendations

This document reviews the Picis hardware configuration analysis performed for sizing your SQL server. All hardware configurations are based on Microsoft SQL standards and recommendations. Processor and memory utilization are estimated and configured by comparing the size of your site to other live Picis sites of the same size. Data store size for SQL is estimated for one year of growth from the day of "go live". The estimate is obtained by researching current live sites. The following criteria are evaluated when determining hardware and sizing recommendations.

- Number of OR suites
- Number of OR Bookings
- Number of facilities
- Number of case records
- Number of years the database has been live
- Number of workstations
- Amount of memory at the time of implementation and at the time of evaluation
- Number of processors at the time of implementation and at the time of evaluation.

As your database grows and additional users or facilities are added incremental disk space, memory, and processors may be necessary.

Performance of the SQL server and response time to the workstation is calculated using SQL standard response times. These response times will vary depending on the existing network traffic. Growth of your SQL server running the Picis product is also based and configured on SQL standards.

Many customers have expressed the desire to predict when additional hardware will be necessary based on actual site usage. The following information is referenced from Microsoft Tech Net and will assist with this initiative

### CPU and Memory Management

Two of the main components that you will manage are the CPU and memory. These components are managed much as they would be for any Microsoft Windows® 2000/2003 server.

### CPU Planning

Processor planning is fairly straightforward. Monitor your current CPU utilization (\Processor(_Total)\% Processor Time). If the average is over 50 percent, if you have frequent peak usage periods when the current CPU utilization spikes over 90 percent, or if you have a situation in which the usage spikes and stays up for a while, then you should consider adding either additional processor(s) or faster processors. In general, the processors you choose should be able to deliver the speed implied in your other system purchases. If your system is highly specialized and filled with processor-intensive activities, you will become aware of that as you observe the system over time. Examples of such activities include extensive or frequent usage of Data Transformation Services, or anything involving many calculations (science, accounting, and so on). SQL Server is a CPU-intensive application, so look for processors with a large high-speed cache. Always get the fastest and newest when it comes to processing power. The processor allows the rest of the server to do its job well.

If you have a dedicated SQL Server computer, use all of the processors for SQL Server. If your system is running applications in addition to SQL Server (such as Microsoft Commerce Server), then consider restricting SQL Server from using one or more processors. Otherwise, allow SQL Server and Windows to balance across all processors, as they were designed to do.

### Memory Planning

While the sum of all hardware together dictates the capacity of a system, memory serves mainly to optimize data access. SQL Server uses memory to store execution plans, store data pages between uses, and so on. Without enough memory, you will incur more disk I/O in reading data. If your system does many reads, you might reduce disk I/O by significantly increasing your memory, because the data will then remain in cache. Insufficient memory, or over-allocation of memory, can result in paging. Memory plays an important role in SQL Server, and it is a resource you should carefully monitor.

For systems for which reads are the highest priority (decision support systems or DSS), more memory is better. Memory can be used to compensate for disk I/O, and large amounts of memory can significantly decrease the number of disks (spindles) you will need to achieve high performance.

For systems for which writes are the highest priority (on line transaction processing or OLTP), memory is still an important part of the system, but you may benefit more from the addition of disk spindles, and more or faster controller channels, rather than memory. To be sure, you will need to carefully monitor your system to see which resources are in highest demand.

### Disk Planning

The important point to remember about data storage is that the number of disks is far more important than the total storage size of the disks. One big physical disk may hold all your data, but it still has only one disk arm to execute, individually, each data request. The more disk arms you have, the better off you will be. So, when you

Page 3

size for new disks, do a quick check to be sure this is enough drive space; but spend more time on analyzing how many spindles you really need. For example, if your system performs a lot of transactions, you will enhance performance by adding more spindles (provided there is sufficient memory and CPU to support the system).

When you are ordering your hardware, request a specific number of disks, rather than a specific amount of disk space. You want to have many smaller disks rather than fewer larger disks. If you have external storage, go for the fastest array controller card, and one that has multiple channels. Look at this card as a potential bottleneck: If you have many spindles, you need to invest in a card that can support them. How much performance you get will be directly proportional to the quality of the controller, and the type of I/O your system produces.

In OLTP, you can have more disks per controller card, which means the disk spends more time looking for the data, and the controller channel will not become so saturated.

In DSS, where more of the queries are apt to be sequential reads, you will need more controller channels for a smaller set of disk drives. Also remember that memory is a good way increase I/O in a DSS system.

*For more information on all of these topics, please see SQL Server Books Online. Also see Inside Microsoft SQL Server 2000 and Microsoft SQL Server 2000 Administrator's Companion.*

| Item | Purpose | Description | Quantity |
|------|---------|-------------|----------|
| 1 | *Web Access* | Pentium 4 - 3GHz Processor | 1 |
| | | 1 GB RAM | |
| | | 36GB mirrored disks | |
| | *Operating System* | Microsoft® Windows® Server 2003 Standard Edition | |
| | *Notes* | Microsoft Internet Information Server | |
| | | Valid Server certificate for SSL(Secure Sockets Layer) | |
| | | Microsoft Internet Explorer 6.0 | |
| | | If web solution is intranet based, SSL is not required | |

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## SCHEDULE C – Statement of Work

# Picis OR Manager Statement of Work

## Description

This Statement of Work (the "SOW") is made part of the Agreement to which it is attached between Picis, Inc. (the "Licensor" or "Picis") and **Natividad Medical Center,** (the "Licensee" or "Client") and specifies the Professional Services to be provided by Picis.

Picis has priced the Professional Services Fee based on responses from the Client's staff which have been provided to the Picis sales team. Appendix A documents the basis for the implementation as scoped. In some cases enhanced implementation and/or Business Transformation services, which are in excess of the Picis best practice, may have been identified, priced, and included in the services as scoped. As the implementation proceeds further, changes to the Professional Services Fee which were not contemplated in this Statement of Work or in the Agreement, may require Change Orders to be agreed to and signed by both parties per the Agreement.

Terms not defined in this Statement of Work are defined in the License and Service Agreement or the Supplemental License and Service Agreement.

## SOW Fees

The Professional Services Fee for the Services provided under this Statement of Work shall be as follows:

| Best Practice Professional Services Fee | $ 205,125 |
|---|---|
| Total Professional Services Fee | $ 205,125 |

| Date: | Version: |
|---|---|
| May 21, 2008 | 1 |

## Designated Facilities

The Professional Services will be performed at the following facilities:

| Facility name: | Facility address: |
|---|---|
| Natividad Medical Center | 1441 Constitution Blvd<br>Salinas, CA 93906 |

# PICIS

## Project Objective

The Client will be implementing the Software Programs indicated in Schedule A of the Agreement.
The total project duration is not to exceed fourteen (14) months.

## Project Goals

The overall goals of this Statement of Work and the representative project plan are designed to a) develop a stable information management system incorporating the Client's unique practice of patient care into the Picis environment through product configuration and to b) complete the project on time and within budget. This project is being designed to provide an effective toolset for the Client's employees with immediate clinical and time saving benefits. All the work accomplished within the scope of this project will be completed to minimize the redundancy of work required during the roll-out of the Picis Software Programs to the Client's department(s).

## Implementation Methodology & Process

Picis' Professional Services have been designed to provide a successful implementation of the Picis Software Programs. These services are built on best practices accumulated from hundreds of successful implementations.

Led by the Picis project management office, Picis employs a combination of on-site and off-site project tasks that are shared between the Picis Project Team and the Client Project Team. The Client is required to assign a counterpart team who can work with the Picis clinical and technical experts throughout the project. The methodology includes knowledge transfer of key information needed to successfully implement and maintain the Picis Software Programs.

### Project Team

The Picis Project Manager, Process Consultant(s), Technical Lead, Interface Specialist, and Learning Specialist team members are assigned to work with the Client's counterparts to implement the Picis Software Programs. The Picis Project Team consists of highly-qualified resources who have extensive experience, many of whom hold certifications in their respective areas.

- PMP-certified Project Managers
- RNs, OR Nurses, Nurse Managers, Scheduling Managers, and individuals with other medical software vendor experience
- Microsoft Certified Systems Engineers (MCSE) with SQL Server, database, and HL-7 experience
- Resources with Management Information System (MIS) or Computer Engineering degrees
- Learning Specialists knowledgeable in adult education best practice following American Society for Training and Development (ASTD) standards

The Picis Project Team is responsible for a) knowledge transfer related to the products being licensed, b) documentation of the Client's current state and envisioned future state through Picis-

facilitated process mapping, c) guidance and advice on incorporating future state recommendations into the Client's use of the Picis Software Programs being implemented, and d) the Picis activities designated within the project plan.

The Client Project Team is responsible for a) knowledge transferred/gained through Picis-provided training, b) assignment and investment in the resources designated under the Client Project Team within this Statement of Work, c) knowledge transfer to the Picis Project Team of the current state and envisioned future state as it relates to the use of the Picis Software Programs being implemented, and d) the client activities designated within the project plan.

Guided by Project Management Institute (PMI) principles, Picis projects are identified and managed by four phases: Initiation, Build, Test, and Activation/Go Live.

### *Initiation Phase*

As soon as possible after contract execution, the Client needs to order the hardware required to operate the Picis Software Programs and assure installation prior to the scheduled kickoff meeting. **The Client must have these servers installed and tested at least two (2) weeks prior to the scheduled kickoff meeting.** Additionally, the Client should already have designated the Client Project Team consisting of counterparts for the Picis Project Team shown above and as outlined on the following pages.

During this phase, the Client attends a formal Wakefield-based training class at the Picis headquarters to get an understanding of the Picis implementation methodology and key decisions that should be made during the implementation project.

As one of the first activities, a visit is conducted by an experienced clinical Picis Process Consultant and Picis Technical Lead to evaluate current patient care processes throughout the department(s) receiving Picis Software Programs. A two day visit will be provided to assess the current patient care processes throughout the Perioperative departments thus enhancing the implementation of Picis Software Programs. One process mapping visit is provided per database. After the visit, a report will be developed which will identify the current state and the envisioned future state with Picis product functionality implemented. The intent of this visit and report is a high level overview. Picis will not be evaluating detailed processes for major process changes. Picis will, however, provide recommendations on product use that may enhance or improve current practices. In addition to the process mapping report, Picis will provide the Visio flow charts developed as a result of the process mapping. It is then the Client's responsibility to update the Visio documents throughout the implementation process. A technical presentation and walk through, provided by a Picis Technical Lead, may also be included in this visit or may be scheduled at another time.

Subsequent to hardware installation at the Client's site and the process mapping visit, the kickoff meeting will be conducted. This will be an opportunity for Picis to demonstrate the features of the application(s) for the Client Project Team and department(s) involved.

Prior to the kickoff meeting, the Picis Project Manager reviews a representative project plan for any changes. The Client is either a) expected to sign-off on this project plan at the kickoff meeting to validate the accuracy of this project plan, or immediately following the kickoff meeting is b) expected to modify this representative project plan scope from identified changes resulting from the process mapping and kickoff visits so that implementation activities can continue without delay. Kickoff meeting attendees from the Client's side include the Project Manager, Project Sponsor, Department Managers/Directors, and the Clinical Team.

# PICIS

**Build Phase**

The Build Phase involves the site-specific configuration of tables and files that will drive application behavior consistent with the future state designed by the Process Consultant in the process mapping visit. The Picis best practice approach assumes the Client Project Team will build the application with consulting and training from the Picis Project Team.

During this phase, the Client attends on-site configuration sessions conducted by the Picis Process Consultants and Picis Technical Leads (if applicable). Training is provided to ensure that the Client Project Team is able to maintain the system after the go-live event.

Picis Process Consultants are available on-site and off-site to review best practices and make additional recommendations to ensure the Picis Software Programs meet the Client's requirements. Off-site build checks are conducted at frequent intervals by the Process Consultant to validate the build and assess whether or not this phase is progressing on track.

**Test Phase**

The Test Phase includes two forms of validation:
- Component test – Picis assists the Client in testing the application to be sure it functions as expected departmentally based on Build Phase activities.
- Integrated test – Picis assists the Client in testing all products and interfaces in the Client's environment.

**Activation/Go-Live Phase**

In preparation for the go-live event, Picis will assist the Client with a "mock go-live", i.e. parallel validation testing event. During this time, double charting occurs whereby the Client charts in the system being replaced by Picis Software Programs and, in parallel, charts in the Picis Software Programs. Results are reviewed in a controlled environment to ensure that the Picis Software Programs are working as expected.

After the system is fully tested and users are trained, a "go/no-go" decision is made jointly by Picis and the Client. Once the decision is made to proceed, on-site activation support is provided by Picis to ensure any issues are quickly resolved. After the system is stable and knowledge transfer has occurred, the project is formally transitioned from the Picis Project Team to Picis support.

## Technical Services

Technical services include software delivery and installation, configuration of the Virtual Private Network (VPN) tunnel for Picis support, interface delivery, technical system administrator training, and reporting/printing support.

The Client is responsible for meeting Picis' minimum requirements for hardware, networking, and 'connection' to the Picis application as outlined in the Hardware and Third Party Software Specifications attached to the Agreement.

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*Interfaces*

Interfaces included as part of this Statement of Work are as indicated on Schedule A of the Supplemental License and Service Agreement.

The level of effort required to install these interfaces assumes that the Client will meet the Picis specifications for standard interfaces and that the Client has the appropriate number of technical resources committed to the project. The standard specifications are referenced within the Agreement. Any additional effort requiring custom changes will require a Change Order, and once approved by Picis, may be billed at the then current time and materials rate for services performed, as well as any travel and out-of-pocket expenses, if applicable.

## Key Project Milestones

Picis' best practice implementation process provides a foundational plan beginning with the Initiation Phase followed by the Build Phase onto the Test Phase and culminating in the Activation/Go-Live Phase. Various milestones will occur during the project. These are key achievements and often gateways to further activity. Definitions and elements of these milestones follow in the table below:

| Milestone | Definition |
|---|---|
| Contract Execution | Completed and executed contracts (by both parties) are received in the Picis office. |
| Software Installation | Installation of the Picis Software Programs, namely the databases, servers, and background processors, on the Client's hardware. |
| Component Test | Component test is the validation of each individual component working to technical specification in and of itself. |
| Integration Test | Integration test is the key testing cycle wherein the Client tests all the components in unison with real-world scenarios and environments to validate the system. The system is ready for Go-Live at this point and will be frozen in preparation for user training and Go-Live. |
| Parallel Validation Test | Mock Go-Live whereby charting is performed in both the existing system (manual system or in the system being replaced) and in the Picis Software Programs. |
| Activation/Go-Live | Availability for use of the Picis Software Programs for production data by the Client's end users. |

Picis and the Client have agreed to the overall timelines including the elapsed time of the project; however, exact milestone dates may vary based on the mutual agreement of both parties. See following appendices:

- Appendix B, Representative Key Project Timeline
- Appendix C, Client Resource Schedule
- Appendix D, Key Deliverables and Client Dependencies.

# PICIS

## Project Governance

Following Project Management Institute guidelines, Picis assigns a Project Manager at the beginning of the implementation engagement. The Picis Project Manager is responsible for creating the final project plan and project workbook for the project in cooperation with the Client Project Manager. In addition, the Picis Project Manager will serve as the coordination point for all activities per the communication plan.

The Communication Plan includes frequent and consistent contact.

Primary Contacts
- Project communication is to be coordinated through the Picis Project Manager and Client Project Manager. These two resources work closely together and are the control points for project communication.

Weekly Project Status Meetings
- Weekly meetings serve as the primary mechanism for full team communication. The Picis Project Manager leads these meetings, with agenda items sent 24 hours in advance to the Picis Project Manager from the Client Project Manager.

Weekly Project Core Team Meetings
- Weekly meetings are the primary mechanism for internal client team communication. The Client Project Manager leads these meetings.

Monthly Executive Steering Committee Status Reviews
- Executive status meetings are the primary mechanism to communicate the project's overall status to the Client's executive and physician leadership. Both Project Managers will coordinate these meetings, with the Client scheduling the attendees and meeting times.

## Picis Project Team

Picis will provide a highly skilled team of resources which will ensure the success of the implementation at the Client's site.

### Project Manager (PM)

This resource provides management oversight and control of project personnel and also manages the Project Plan for the Picis Project Team and the Client Project Team. The Picis Project Manager is responsible for driving project communications, forecasting, reporting, and coordination of activities.

**Key Responsibilities:**

- Co-owns the project with the Client Project Manager and manages the Picis Project Team to successful project completion
- Establishes and manages the client relationship
- Acts as the single point-of-contact for all project related activity

# PICIS

- Manages the overall progress, use of resources, and initiates corrective action where necessary
- Ensures that the correct Picis resources are assigned to the project and manages their engagement
- Facilitates communications with stakeholders both internally within Picis and externally with the Client

## Process Consultant (PC)

This resource provides the Client with workflow and process best practice suggestions as well as assists with the development of their configurable database. Process Consultants are responsible for providing the Client with the appropriate tools and resources to successfully implement the Picis Software Programs. Process Consultants are experts in all aspects of the product line for which they are responsible.

### Key Responsibilities:

- Demonstrates major Picis Software Programs
- Provides the Project Managers with product specific solutions and suggestions throughout the implementation project
- Demonstrates an understanding of business requirements for the department automating the specific Picis Software Programs
- Provides guidance to clinical and non-clinical users for planning, building, configuring, and training purposes
- Provides assessment overview documentation of current state and future state (process mapping report)
- Provides best practice recommendations and professional delivery options based on the Picis Software Programs being implemented

## Technical Project Lead (TL)

This Picis resource assists the Project Manager in the creation of the technical aspects of the project plan and is responsible for delivering the technical components on time and operational across the Picis Software Programs.

### Key Responsibilities:

- Assists the Picis Project Manager with the technical aspects of the project plan, communicates progress reports, "after action" reports, end-of-project reports, and follow-up action recommendations
- Escalates any of the Client's technical concerns to the Picis Project Manager for resolution
- Manages the overall progress and use of internal resources
- Initiates corrective action where necessary for the technical aspects of the project
- Manages technical risks, including development of contingency plans, and ensures appropriate mitigation is in place
- Works with technical support teams at Picis when necessary
- Participates on the routinely-scheduled project conference calls along with other members of the Project Team

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- Works with Picis product management and Picis software project management to coordinate deployment and delivery plans, including tools for new releases when necessary

### Picis Report Writer Specialists (PRW)

Picis Report Writer specialists provide Crystal report training at the Picis Wakefield office.

### Picis Expert Resources (PER)

The Picis Expert Resources are experienced implementation specialists with administrative, clinical, and technical background. During the kickoff meeting's project plan review, the Picis Project Manager will work with the Client Project Manager and Process Team Leader to assign and plan for necessary expert resources to support the timeline.

### Picis Client Solutions Administrator (CSA)

The Client Solutions Administrator servers as the primary day to day support contact for the Client after project completion and the transition to Picis Support has occurred. At key milestones during the implementation project, the CSA learns the site specific requirements incorporated into the Picis Software Programs so that upon transition to Picis Support, the CSA is well positioned to support the Client's live system. The CSA is the primary support point of contact upon transition to Picis support and as such, eventually replaces the Picis Project Manager and Process Consultant as the primary contact for the Client Project Team. The CSA is the counterpart to the Hospital Process Team Leader/System Administrator.

#### Key Responsibilities:

- Serves as primary support person for the Client upon transition to Picis Support
- Coordinates access to continuing services

## Client Project Team

A corresponding team of resources will need to be assigned and provided by the Client to perform the client-designated activities on the final project plan, and to provide feedback and input to the Picis Project Team. Though Picis has provided significant resources to achieve a successful Go-Live of the Picis Software Programs in the agreed upon timelines, there are fundamental roles and activities that must be owned within the Client's organization. The following are the Team Members expected to be provided by the Client. The Client's FTE requirements are specified in Appendix C hereto.

### Client/Hospital Project Manager (HPM)

The Client Project Manager is primarily responsible for the Client activities designated on the agreed upon final project plan. This is a part time role throughout the project timeline and requires a dedicated resource. This resource can be an internal resource with prior experience in the implementation of automated clinical systems or an outside resource brought in specifically to manage this project.

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The Client Project Manager will work with the Picis Project Manager to execute against the detailed final project plan. This includes both the design and building of the automated systems, as well as the myriad of tasks that must be accomplished. Other responsibilities of the Client Project Manager include the coordination of hardware procurement and deployment, integration with existing internal departments and systems, creation of training and testing plans, parallel runs, and go-live planning. In addition, the Client Project Manager plays a key role in coordinating the schedule of resources from various ancillary departments who are needed sporadically during the project. The Client Project Manager will ensure that tasks are completed in a timely manner and that the appropriate resources are allocated to complete all tasks. **To that end, it is essential for the Client Project Manager to be empowered with corporate decision-making authority.**

### Key Responsibilities:

- Reviews and updates the Project Plan on a regular basis and shares weekly (daily as needed) status reports with appropriate team members
- Manages and communicates project change management
- Maintains open and timely communication between project leaders and coordinates needs with Picis project manager
- Confirms all pre-requisite tasks are completed prior to all scheduled visits by Picis assigned resources
- Manages and coordinates internal resources for project
- Maintains on-going communication with the Client's leadership and management team to ensure that information needs are met throughout the organization

### *Process Team Leader (HPTL)*

This resource is ideally a clinical analyst with in-depth knowledge of the administrative and clinical workflow, administrative and documentation requirements within the Client's organization. This resource should be a part time dedicated resource on the Client Project Team. This resource should also have experience with systems analysis and design, as well as strong computer skills. This role requires excellent communication skills, especially for providing ongoing translation between technical people and clinical people. We strongly suggest that this resource comes from within the clinical department, is recognized as a leader, is respected by their peers, and that their opinion is valued within the organization. This resource is also referred to as the System Administrator. Picis highly recommends that there is a back-up resource for the HPTL/System Administrator.

### Key Responsibilities:

- Performs workflow studies, documentation analysis, and designs automated workflows to incorporate new system capabilities
- Provides input related to process change management requirements
- Selects, leads, and trains the Client Project Team and Super Users
- Provides on-going information and feedback to clinical champions
- Makes configuration changes to the Picis Software Programs with input and feedback from end users as appropriate
- Ensures that the installed system meets the clinical requirements of the institution
- Ensures that quality data is collected for meaningful reporting to ensure return on investment

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### Technical Leader (HTL)

The Technical Leader should provide comprehensive oversight to the implementation of the Picis Software Programs. This is a part-time role that at times during the implementation may require full time dedication to the project. This resource is ultimately responsible for the support and maintenance of the technical layer during and after implementation. This role requires excellent troubleshooting skills and in-depth knowledge of the internal technical infrastructure and existing systems.

#### Key Responsibilities:

- Ensures the technical success of the implementation
- Reviews and manages hardware requirements
- Installs, configures, and support workstations
- Installs OS and 3rd party software as well monitor the servers
- Defines and sets up system alerts and system maintenance protocols
- Defines the security procedures, defines and manages user accounts on the network, and other system resources
- Ensures that appropriate training is provided to operations and help desk personnel

### Database Administrator (HDBA)

The Database Administrator is a key resource that monitors and maintains the SQL Database. This resource will generally have SQL Database experience and knowledge of server and database management. This is a part-time resource during the implementation project and requires on-going part-time support post-implementation. This resource can also participate in application support and on-call rotation.

#### Key Responsibilities:

- Monitors and maintains the SQL Database server
- Monitors dB performance and growth
- Ensures that all recommended schedule task are in process and ensures that a strategy is documented for back up and recovery procedures
- Assists with troubleshooting and provides input to Picis engineers as needed

### Crystal/Access Technical Support

Technical support will be needed during the project to define, create and test internal custom reports. Depending on the scope of the reporting needs of the organization, this may require multiple resources during the implementation and will require on-going support post-implementation. These technical resources need to have experience in the creation of SQL views, have experience with Crystal or Access.

#### Key Responsibilities:

- Works with Client Project Team to create requisite reports to meet the organization's information requirements

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## Project Team Members

The Project Team members should represent the various constituencies within the Surgical department, including scheduling, pre-admissions, admissions, OR, PACU, as well as billing, materials management, and information technology departments. All of these team members will provide input to the Client Project Manager and Client Team Leader to ensure that the system represents the requirements of all the areas involved. The Project Team Members will provide core content and input to build the system. The Project Team Members will train the Super Users and may also be Super Users for their own areas.

## Super User

A Super User should be an end user who has strong computer skills and/or great enthusiasm for automating the patient record. Super Users will learn and maintain advanced end user knowledge of the Picis Software Programs. Super Users will help train end users. Select Super Users will also serve as unit representatives as a Project Team Member to ensure that content and design of the system will be usable on their respective units. It is recommended that the organization maintain one (1) Super User for every 8-10 end users. Ideally, at least one (1) Super User should be available on every shift. Due to the heavy training responsibility, the Super User should ideally be a respected and experienced preceptor/mentor that will provide end user training.

### Key Responsibilities:

- Maintains advanced knowledge of Picis Software Programs and related policies and procedures
- Serves as "floor" support during the Go Live event to support end users' use of the newly-installed Picis Software Programs
- Provides first-line support to end users after the Go-Live event; troubleshoots system issues
- Trains end users
- Serves as the first point of contact for end users who have questions about the system and/or related policies and procedures

## Clinical Champion(s)

The Clinical Champion should be a highly respected or powerful clinical leader who creates groundswell enthusiasm for the new system and assists with change management surrounding the acceptance of a new computer system. The Clinical Champion may also serve as a Super User to help train end users. This resource may provide or analyze usability feedback resulting from the initial configuration process in collaboration with the Team Leader.

### Key Responsibilities:

- Reviews planned design and provides clinical feedback
- Assists in change management
- Assists with creation of and review of policies & procedures surrounding computerized documentation
- Educates colleagues and promotes enthusiasm for the project

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## Training

As part of the Picis implementation methodology, product training is provided for the members of the core Client Project Team. This immediate and extensive best practice knowledge-transfer process enables the Client Project Team to make highly informed, effective decisions very early in the project lifecycle.

### Training at Picis Site

The following Picis-provided training classes are included as part of this Statement of Work and are required to be attended by appropriate client staff at our Wakefield, MA office.

- Project Manager Certification Training, 2 days –1 attendee
  - Attendance: At the first available class after contract execution or within 75 days of contract execution, whichever comes first
- Crystal Report Training for OR Manager, 2 days – 1 attendee
  - Attendance: Within 45 days prior to screen build completion
- Technical System Training, 1 day – 2 attendees
  - Attendance: Within 30 days prior to software installation date

### Training at the Client Site

The following Picis-provided training classes are included as part of this Statement of Work and are required to be attended by appropriate client staff.

### Provided for the Project Team – up to eight (8) attendees per class

- OR Manager Spreadsheet Training, 1 day
- OR Manager Dictionary, Security, and Screen Building Training, 3 days
- OR Manager Preference Card Training, 3 days
- OR Manager Billing Rules and Case Costing Training, 2 days

### Provided for the Core Project (Build)Team – up to eight (8) attendees per class

- OR Manager Application Training, 3 days

### Remote Training – up to eight (8) attendees per class

- OR Manager Web Access, 2 hour WebEx

The Client understands and will take full responsibility to meet and/or exceed the required classroom set-up as required for on-site Picis training. The classroom set-up includes one (1) computer per each client attendee and one (1) computer for each Picis trainer.

Additionally, Picis' training standards require that we have a ratio of one (1) Picis trainer to up to eight (8) client attendees.

Picis will provide consultative guidance on the design and execution of end user training. Actual execution of end user training assessments, education sessions, end user certifications or customization of education materials is the responsibility of the Client and is not included in this Statement of Work.

The Picis Project Manager will work with the Client to determine the correct staff and timing.

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## Project Assumptions

This Statement of Work and pricing are based upon the following key assumptions. Should these assumptions prove to be incorrect, or if the Client is unable to comply with these assumptions, then Picis reserves the right to restructure the services described within this Statement of Work to accommodate the revised mutually agreed to assumptions and adjust the Professional Services Fee accordingly.

- Prices are based upon timely decision making and the Client's resource commitment under Appendix C, Client Resource Schedule, to support the elapsed time illustrated under Appendix B, Key Project Timeline.
- Pricing assumes standard: templates, configurations, database, printouts, interfaces, reports, training, and device drivers when applicable.
- Pricing assumes the Client will roll-out workstations for additional facilities when applicable.
- Confirmation forms will be used to track progress during the course of the implementation at the control gates shown in the timeline. The Client will be required to sign-off as project milestones are completed to ensure that the Client and Picis have both completed the appropriate work to move onto the next milestone.
- All implementation services will be provided during normal business hours, appropriate to the Client's time zone. Any work that must be scheduled outside of normal business hours are considered to be in excess of the scoped fixed fee package and will be billable at Picis' standard after hour's rate(s) per the Client's License and Services Agreement.
- Training classrooms for Super User and end user training have one (1) computer per Super User or end user attendee and one (1) computer per each Picis instructor and per each client instructor. Note that Super User trainer is provided by Picis; whereby end user training is provided by the Client.
- Travel and lodging expenses are not included in the Professional Services Fee and will be billed as incurred consistent with the Monterey County Travel Policy.
- The Client will provide the Picis Project Team workspace with access to telephone and internet capability (with parity) to existing client resources.
- The Client agrees to use the Picis on-line issue management system to communicate all issues, questions, and requests as the primary means of reporting issues, receiving updates, and managing an issue list.

## Out of Scope

Any deliverables or services not listed in this SOW or the Agreement are considered out of scope for this Statement of Work and will require mutual agreement through a Change Order in order to be included in the timeline or affect the agreed upon project plan.

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**IN WITNESS WHEREOF,** authorized representatives of the parties have signed this Statement of Work.

Client: _Natividad Medical Center_       Picis, Inc._____

By: _James B. Tatum_                     By: _____

Name: _James B. Tatum_                   Name: _Melissa Cruz_

Title: _Director Purchasing_             Title: _CFO_

Date: _DEC 1 1 2008_                     Date: _10/27/08_

Business Address: _1441 (Constitution Blvd)_   Business Address:
_Salinas, CA 93906_                            100 Quannapowitt Parkway, Suite 405
_11/24/08_                                     Wakefield, MA  01880

APPROVED AS TO FORM AND LEGALITY
WILLIAM M. LITT
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Page 14

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## Appendix A: Basis for Professional Services Fee

| OR Manager with Web Access | Best Practice Services |
|---|---|
| Duration | 12 months to Activation/Go-Live Event |
| Database and Facilities | Single Database/Single Facility |
| Process Mapping | Single per database/system |
| Preference Cards | The Client builds manually (estimate 100 per 40 hours) |
| Interfaces | • Case Record Upload Text/HL7 Outbound Interface (SKU #4261)<br>• Standard Extracts Inbound Interface (incl ADM, BAR, MIS, MM and MRI) from Meditech (IDB) (SKU #4400_12)<br>• MM (Patient Issues and Inventory Requisitions) Keypunch Outbound Interface to Meditech (SKU #4445_12)<br>• BAR (Batches) Keypunch Interface to Meditech (SKU #4481_12)<br><br>And as Specified in Schedule A |
| Testing Support, On-site: OR Manager | • Single visit for component testing, with 1 resource for 3 days<br>• Single visit for integration testing, with 1 resource for 3 days<br>• Single visit for parallel validation testing, with 1 resource for 3 days |
| Activation/Go-Live, On-site: OR Manager | Single Go-Live Event<br>• 1 resource for 3 days, OR Manager |
| OR Manager Reports<br><br>Modifications to the following five (5) standard reports provided the Client requests desired modifications within the first two (2) months of the Build Phase, so that the Client can test these reports during Integration Testing. | • Daily Schedule Report<br>• Manage Bookings and Case Record Listing Report<br>• Formatted Case List based on Query<br>• Medication Reconciliation Report<br>• Case Record Report<br>All of the above modifications will not exceed 80 hours; modification requests after the above specified time period will be at the Client's then current time and materials rate. |

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## Appendix B: Key Project Timeline

| | Initiation Phase | Build Phase | End User* Training | Web Access |
|---|---|---|---|---|
| | Hardware & Interfaces | Test Phase | Activation/Go-Live Phase | Transition to Picis Support |

| Month 1 | Month 2 | Month 3 | Month 4 | Month 5 | Month 6 | Month 7 | Month 8 | Month 9 | Month 10 | Month 11 | Month 12 | Month 13 | Month 14 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|

HW Servers Installed & Tested

Process Mapping

Software Installed

Kickoff/Build & Configuration Training; OR Manager

Interfaces Installed

Component & Integration Test

End* User Training

Parallel Test & Go-Live

Web Access

Transition to Picis Support

* NOTE: End User Training is provided by the client's Super Users

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## Appendix C: Client Resource Schedule
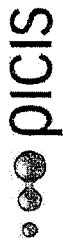
| OR Manager Hospital Resources - FTE | Mo 1 | Mo 2 | Mo 3 | Mo 4 | Mo 5 | Mo 6 | Mo 7 | Mo 8 | Mo 9 | Mo 10 | Mo 11 | Mo 12 | Mo 13 | Mo 14 | Mo 15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| HPM - Hospital Project Manager | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 0.50 |
| HTL - Technical Leader | 1.00 | 1.00 | 0.50 | 0.50 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | 0.50 | 0.50 | 0.50 | 0.25 |
| Clinical Champion | - | - | 0.20 | 0.20 | 0.20 | 0.20 | 0.20 | 0.20 | 0.20 | 0.20 | 0.20 | 0.50 | 0.50 | 0.20 | - |
| Project Team Member - Pref Cards (100/wk) | 0.50 | 0.50 | - | - | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 0.25 | 0.25 | 0.25 | 0.10 |
| HPTL - Process Team Leader - OR Manager (Builds System) | 0.25 | 0.25 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 0.50 | 0.25 |
| Project Team Member(s) - OR Manager (provides input to Build decisions) | 0.50 | 0.50 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 0.50 | 0.50 | - |
| Crystal Technical Support | - | - | - | - | - | - | - | - | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 |
| HDBA - Database Administrator | - | - | - | - | 0.10 | 0.10 | 0.10 | 0.10 | - | - | - | - | - | - | - |
| Super User (ratio of 1 for 8-10 staff) | - | - | - | - | - | - | - | - | - | tbd | tbd | tbd | tbd | tbd | - |
| **Totals:** | 3.25 | 3.25 | 3.70 | 3.70 | 4.55 | 4.55 | 4.55 | 4.55 | 4.70 | 4.70 | 4.70 | 4.50 | 4.00 | 3.20 | 1.35 |

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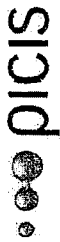
## Appendix D: Key Deliverables and Client Dependencies

| Initiation Key Deliverables | Build Key Deliverables | Test Key Deliverables | Activation/Go-Live Key Deliverables |
|---|---|---|---|
| Project Plan | Product Training Workshops | Testing Advice and Guidance (Component & Integration) | Testing Advice and Guidance (Parallel Validation) |
| Project Workbook | Progress Checks | Modifications Based Upon Testing Results | Production Environment Established |
| Process Mapping Report | | | Guidance on Go-Live Plan |
| Hardware Placement Recommendation | | | Go-Live Support |
| Software Installed | Advice and Guidance on Best Practice Configuration | Application Training | |
| Interfaces Installed | | | Transition to Picis Support |
| Implementation Build Tools | | | |
| Kickoff Meeting | | | |
| **Key Client Dependencies** | **Key Client Dependencies** | **Key Client Dependencies** | **Key Client Dependencies** |
| Hardware Tested and Installed | Workstation Roll-out Plan | Component Testing | Parallel Testing/Validation |
| Attendance and Active Participation (Process Mapping and Kickoff Meeting) | Resources Designated under Appendix C | Integration Testing | Detail Plan for Test-to-Production Move |
| Add Additional Information to Project Workbook | Subject Matter Expertise to Assist/Support Project Team Members | Training Schedule Plan | Policies and Procedures Documentation |
| | Fully Built System | Attendance and Active Participation – Application Training and End User Training | Contingency Plan |
| Sign-off on Project Plan | Sign-off on Build Phase | Sign-off on Testing Phase | Sign-off on Go-Live Plan |
| | | | Sign-off on Transition to Picis Support |

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/06/08

| PRODUCER | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | |
|---|---|---|
| William Gallagher Associates<br>Insurance Brokers, Inc.<br>470 Atlantic Avenue<br>Boston, MA 02210 | | |
| | INSURERS AFFORDING COVERAGE | NAIC # |
| INSURED<br><br>Picis, Inc.<br>100 Quannapowitt Parkway<br>Suite 405<br>Wakefield, MA 01880 | INSURER A: St. Paul Fire & Marine Insurance Co. | 24767 |
| | INSURER B: Travelers Indemnity Co. of IL. | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | ADD'L INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|---|---|---|---|---|---|---|---|
| A | | GENERAL LIABILITY<br>[X] COMMERCIAL GENERAL LIABILITY<br>[ ] CLAIMS MADE [X] OCCUR<br><br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [ ] PRO-JECT [ ] LOC | TE06903841 | 07/31/08 | 07/31/09 | EACH OCCURRENCE | $1,000,000 |
| | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $1,000,000 |
| | | | | | | MED EXP (Any one person) | $10,000 |
| | | | | | | PERSONAL & ADV INJURY | $1,000,000 |
| | | | | | | GENERAL AGGREGATE | $2,000,000 |
| | | | | | | PRODUCTS - COMP/OP AGG | $2,000,000 |
| A | | AUTOMOBILE LIABILITY<br>[ ] ANY AUTO<br>[ ] ALL OWNED AUTOS<br>[ ] SCHEDULED AUTOS<br>[X] HIRED AUTOS<br>[X] NON-OWNED AUTOS | MA06900603 | 07/31/08 | 07/31/09 | COMBINED SINGLE LIMIT (Ea accident) | $1,000,000 |
| | | | | | | BODILY INJURY (Per person) | $ |
| | | | | | | BODILY INJURY (Per accident) | $ |
| | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | GARAGE LIABILITY<br>[ ] ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | $ |
| | | | | | | OTHER THAN AUTO ONLY: EA ACC | $ |
| | | | | | | AGG | $ |
| A | | EXCESS/UMBRELLA LIABILITY<br>[X] OCCUR [ ] CLAIMS MADE<br><br>[ ] DEDUCTIBLE<br>[X] RETENTION $ 10,000 | TE06903841 | 07/31/08 | 07/31/09 | EACH OCCURRENCE | $10,000,000 |
| | | | | | | AGGREGATE | $10,000,000 |
| | | | | | | | $ |
| | | | | | | | $ |
| | | | | | | | $ |
| B | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?<br>If yes, describe under SPECIAL PROVISIONS below | HKUB5157M77808 | 07/31/08 | 07/31/09 | [X] WC STATU-TORY LIMITS [ ] OTH-ER | |
| | | | | | | E.L. EACH ACCIDENT | $500,000 |
| | | | | | | E.L. DISEASE - EA EMPLOYEE | $500,000 |
| | | | | | | E.L. DISEASE - POLICY LIMIT | $500,000 |
| A | | OTHER Errors and Omissions | TE06903841 | 07/31/08<br>Deductible | 07/31/09<br>100,000 | $10,000,000 | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

| CERTIFICATE HOLDER | CANCELLATION |
|---|---|
| County of Monterey<br>Natividad Medical Center<br>1441 Constitution Boulevard<br>Salinas, CA 93906 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL __30__ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.<br>AUTHORIZED REPRESENTATIVE |

# IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

# DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

# ADDITIONAL INSURED – MASSACHUSETTS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

| Endorsement effective | Policy No.<br>MA06900513 |
|---|---|
| Named Insured<br>PICIS, INC. | Countersigned By |

(Authorized Representative)

Changes in Liability Coverage:

Who Is An Insured is changed to include the person or organization named in this endorsement, but only for "bodily injury" or "property damage" resulting from the acts or omissions of:

1. You, while using a covered "auto."

2. Any other person, while using a covered "auto" with your permission.

Additional insured:

# MONTEREY COUNTY
## VENDOR REGISTRATION FORM

RETURN THIS FORM TO:
General Services Dept. • Purchasing Division • 168 W. Alisal St. • Salinas • CA • 93901
PH (831) 755-4990   FAX (831) 755-4959

**BUSINESS NAME**  Name  *Picis, Inc*
                   DBA

**TAXPAYER IDENTIFICATION**  Federal Employer ID No  *36-4375169*   or  Social Security No
(Enter Applicable Number)

**BUSINESS ORGANIZATION**  ☒ Corporation - *See attach Executive Team.*
(Check one and follow            President                    Vice President
the instructions)

                                 Secretary                    Treasurer

              ☐ Subsidiary of - _____
                 (Parent Company)

              ☐ Partnership - _____    _____
                               Partner Name             Partner Name

                               _____    _____
                               Partner Name             Partner Name

              ☐ Sole Proprietorship - _____
                               Owner Name
                 dba (if applicable): _____

**BUSINESS LOCATION**  Street Address *100 Grannaprawit Parkway, Suite 405*
(Must be Completed)

              City *Wakefield*        State *MA*    Zip Code *01880*
              PO Box (if applicable)            E-mail address

              Telephone No.               Fax No
              *(781) 557-3000*           *(781) 557-2213*

**PAYMENT TERMS**    *Net 30 day*        Discounts Offered: *∅*

**BUSINESS TYPE**    ☐ Retail              ☐ Minority / Woman Owned
(Check applicable boxes)  ☐ Wholesale       ☐ Veteran Owned
                     ☐ Distributor         ☐ Small Business
                     ☒ Manufacturer

**LICENSES**         Contractor's License No  *N/A*

Revised 2/26/2006                                                    1

# MONTEREY COUNTY
## VENDOR REGISTRATION FORM

RETURN THIS FORM TO:

General Services Dept. • Purchasing Division • 168 W. Alisal St. • Salinas • CA • 93901
PH (831) 755-4990   FAX (831) 755-4969

Carefully examine the "List of Commodities". List the <u>DESCRIPTION</u> and <u>NUMERIC CODE</u> of each Commodity [product &/or Service(s)] that you wish to provide the county. (See attached list.)

| Numeric Code | Description |
|---|---|
| 1  290 | 1  Computer Software for Microcomputer |
| 2 | 2 |
| 3 | 3 |
| 4 | 4 |
| 5 | 5 |
| 6 | 6 |
| 7 | 7 |
| 8 | 8 |
| 9 | 9 |
| 10 | 10 |

Use the spaces below for Commodities / Merchandise <u>not listed</u> OR <u>to clarify</u> a commodity you have already selected [Please feel free to attach any additional information you would like us to have ( ie Brochures, Line Cards, etc .)]

Medical software for Critical Care,
Anesthesia, Operating Room and
Emergency Departments

PREPARED BY:

Printed / Typed Name  Melissa Cruz

Signature

Telephone No  (781) 557-3000

Printed / Typed Title  CFO

Date  7/7/08

Revised 2/28/2006

2

**Form W-9**
(Rev. December 2000)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer**
**Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Please print or type

Name (See Specific Instructions on page 2.)
*Prcis Inc.*

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box: ☐ Individual/Sole proprietor ☑ Corporation ☐ Partnership ☐ Other ▶ ....................

Address (number, street, and apt. or suite no.)
*100 Quannapowitt Parkway, Suite 405*

City, state, and ZIP code
*Wakefield MA. 01880*

Requester's name and address (optional)

List account number(s) here (optional)

**Part I  Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number
| | | | + | | + | | | |

or

Employer identification number
*3 6 4 3 7 5 1 6 9*

**Part II  .For U.S. Payees Exempt From Backup Withholding (See the instructions on page 2.)**
▶

**Part III  Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here
Signature of U.S. person ▶ *Goari C. Costa*
Date ▶

## Purpose of Form

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

What is backup withholding? Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or

2. You do not certify your TIN when required (see the Part III instructions on page 2 for details), or

3. The IRS tells the requester that you furnished an incorrect TIN, or

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

## Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Cat. No. 10231X

Form W-9 (Rev. 12-2000)