



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-12934

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

- a. Authorized the Deputy Purchasing Agent for Natividad Medical Center (NMC) to execute Customer Order No. 1000072635 and accompanying Master Agreement for Pyxis® Products Only, Implementation Timeline, and Schedules (collectively, "the Agreement") with CareFusion Solutions, LLC for the leasing of supply automation inventory management dispensing machines at NMC for the period September 15, 2015 through February 2, 2021 for a total contract amount not to exceed \$769,500, and containing non-standard risk terms regarding limitations on liability, limitation on warranty, and indemnification; and
- b. Authorized the Deputy Purchasing Agent for NMC to execute up to three future amendments to this Agreement where the total amendments do not exceed ten percent (10%) of the original contract amount (\$76,950) and do not significantly change the scope of work.

PASSED AND ADOPTED on this 15th day of September 2015, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, 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 78 for the meeting on September 15, 2015

Dated: September 15, 2015
File ID: A 15-316

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy



Master Agreement For Pyxis[®] Products Only

This Master Agreement (this "Master Agreement"), effective as of the date of CareFusion's signature below (the "Effective Date"), is entered into by and between CareFusion Solutions, LLC (together with its affiliates, "CareFusion") and County of Monterey, DBA Natividad Medical Center ("Customer"), each a "Party" and, collectively, the "Parties." This Master Agreement, as applicable to Pyxis[®] products only, consists of: (i) the General Terms and Conditions below, and (ii) all Schedules (as defined below) which are made a part of this Master Agreement either upon the Effective Date or at a later date upon the execution of an amendment.

The Parties agree as follows:

GENERAL TERMS AND CONDITIONS

1. ORDERING, DELIVERY, AND PAYMENT.

- 1.1. **Customer Orders.** The Parties may enter into various transactions for hardware ("Equipment"), disposables, software licenses, accessories, and other products (collectively, "Products") and/or services ("Services"), which will be provided pursuant to these General Terms and Conditions, as supplemented by Schedules for specific Products and/or Services. CareFusion will set forth the Products and/or Services for each transaction in a customer order ("Customer Order") and a Customer Order may have one or more attachments (each, a "Customer Order Attachment"). Each Customer Order will create a separate contract (each, a "Customer Agreement"), each of which will be deemed to incorporate by reference: (i) these General Terms and Conditions, (ii) any Schedule applicable to the Products and/or Services provided under such Customer Order, and (iii) any Customer Order Attachments.
- 1.2. **Schedules.** Each schedule identified on Exhibit A ("Schedule") is attached to and incorporated by reference into this Master Agreement. Additional Schedules may be added to this Master Agreement by way of a written amendment. In the event of any conflict between the terms of a Schedule or a Customer Order Attachment and the terms of this Master Agreement, the terms of the Schedule or Customer Order Attachment will prevail. Capitalized terms in the Schedules and Customer Order Attachments shall have the same meaning as in these General Terms and Conditions and in the introductory paragraph above.
- 1.3. **Purchase Orders.** If CareFusion accepts a purchase order from Customer for Products and/or Services that are not identified in a Customer Order, then that purchase order will constitute a Customer Order under this Master Agreement, except that any conflicting or additional terms in the purchase order will have no force or effect.
- 1.4. **Delivery; Risk of Loss.** Products will be delivered FOB Destination, freight prepaid to the Customer's address in the applicable Customer Order as soon as commercially reasonable after the Customer Order effective date, or as otherwise mutually agreed in writing. Customer will pay freight charges for special Customer shipping requests and for shipment of parts or supplies not provided under warranty or pursuant to a support program. Upon delivery, Customer will be responsible for loss of or damage to the Product.
- 1.5. **Acceptance.** A Product will be deemed accepted by Customer upon delivery or upon completion of the applicable CareFusion implementation Services, provided that such Product functions substantially in accordance with the specifications of its User Guide (defined below) ("Acceptance" or "Accepted"). Customer may reject a Product only if the Product fails to function substantially in accordance with the specifications of its User Guide. Upon completion of applicable Services, Customer will execute CareFusion's standard confirmation form.
- 1.6. **Payment Terms.** Customer will pay all Accurate Invoices (as defined herein) in full on or before the due date stated therein. For purposes of this Section, an Accurate Invoice is an invoice sent to the County Auditor-Controller, and which has been certified by Customer, at least thirty (30) days prior to the payment due date at the address designated by Customer under the Customer Order accurately reflecting the amount due under the Customer Order. If an invoice does not accurately reflect the amount due under the Customer Order ("Inaccurate Invoice"), then (i) Customer shall notify CareFusion of the Inaccurate Invoice within fifteen (15) days of its receipt; (ii) Customer shall pay any portion of such invoice that is accurate; (iii) the due date for payment of any remaining amounts shall be adjusted to fifteen (15) days after the date an Accurate Invoice is sent to Customer ("Adjusted Due Date"); and (iv) any late charges shall not accrue until after the Adjusted Due Date. Correspondence relating to an Inaccurate Invoice should be addressed to: Attn: Account Receivables, CareFusion, 3750 Torrey View Court, San Diego CA 92130.
- 1.7. **Late Charge.** If Customer does not pay an amount due by the due date, then CareFusion may impose a late charge on the unpaid amount at the rate of one and one-half percent (1.5%) per month or the highest rate allowed by the law (whichever is lower), prorated on a daily basis.
- 1.8. **Taxes.** Prices and fees for Products and/or Services do not include any taxes. Customer will pay when due any sales, use, rental, property, or other taxes or assessments of any kind (including, without limitation, withholding or value-added taxes)

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imposed by any federal, state, local or other governmental entity for Products and/or Services provided under this Master Agreement, excluding taxes based solely on CareFusion's net income (collectively, "Taxes"). Customer will promptly reimburse CareFusion for any Taxes paid by CareFusion, and will hold CareFusion harmless from all claims and expenses arising from Customer's failure to pay any such Taxes. If Customer is exempt from any Taxes, Customer will not be relieved of its obligation to pay such Taxes until Customer provides to CareFusion documentation sufficient to establish Customer's tax-exempt status. Customer will immediately notify CareFusion in writing of any change in its tax status. If Customer's exempt status is challenged by any jurisdiction, then Customer will: (i) immediately notify CareFusion; (ii) resolve the challenge; and (iii) hold CareFusion harmless from all claims and expenses related to any such challenge.

2. PRODUCT USE AND WARRANTY.

- 2.1. **User Guide and Service Manual.** CareFusion will provide to Customer one (1) copy (hard or electronic copy) of the then-current applicable user guide, user manual, or directions for use for each type of Product acquired by Customer (each, a "User Guide"), and one (1) hard copy of the service manual for each type of Alaris Equipment acquired by Customer. Customer may download from the CareFusion website additional copies of the service manual, as needed. Customer may use and reproduce any User Guide and service manual solely for Customer's internal use.
- 2.2. **Warranty.** CareFusion warrants to Customer that for a period of ninety (90) days after Acceptance (except for Alaris Equipment and/or Software, which has a warranty period of one (1) year after Acceptance), the Product will perform substantially in accordance with the specifications of its User Guide (the "Limited Warranty"). If a Product fails to perform in accordance with the Limited Warranty during the warranty period, then Customer will notify CareFusion in writing. In that case, as Customer's sole remedy, CareFusion (at its option) will promptly repair or replace that Product, or any part or portion thereof. **EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION, CAREFUSION DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING UNDER USAGE OF TRADE OR COURSE OF PERFORMANCE).** The Limited Warranty does not apply to any Product that: (i) has been modified, repaired or altered, except by CareFusion; (ii) has not been properly installed, used, handled, operated or maintained in accordance with any handling or operating instructions provided by CareFusion; or (iii) has been subjected to physical or electrical stress, misuse, abuse, negligence, accidents, or causes beyond CareFusion's reasonable control.
- 2.3. **Use of Products; Inspection.** Customer will use Products only: (i) for Customer's internal business purposes and not for resale; (ii) in the manner described in the applicable User Guide; and (iii) in accordance with applicable laws and regulations. Customer will not export, re-export or modify any Product. Customer will not use any software with a Product which was not licensed from or approved by CareFusion. Upon reasonable advance notice by CareFusion, Customer will allow CareFusion to inspect Customer's records regarding use of Products during Customer's regular business hours to verify compliance with the licensing and other terms of this Master Agreement.

3. SOFTWARE, DATA, AND INTELLECTUAL PROPERTY OWNERSHIP.

- 3.1. **Software; Third Party Software.** "Software" means all CareFusion-owned software (e.g., application software, embedded and/or integrated software, interface software, custom drivers) and any related software owned by a third party ("Third Party Software"). CareFusion will license, not sell, Software. CareFusion and its licensors retain all ownership rights in Software.
- 3.2. **Software License.** Subject to the terms and conditions of this Master Agreement and applicable User Guide, CareFusion grants to Customer a limited, non-exclusive, non-transferable license to use Software at Customer's site(s) (as set forth in the applicable Customer Order) during the applicable term, provided that all licensing of Third Party Software will be subject to the terms of the Third Party Software Schedule. Each license granted to Customer is: (i) perpetual, unless a different license term is expressly set forth in the applicable Schedule or Customer Order under which the Software is licensed to Customer; and (ii) subject to termination pursuant to Section 6.1 and Section 6.2 below.
- 3.3. **Software License Restrictions; Scope of Use.** Customer will not: (i) translate, disassemble, decompile, reverse engineer, alter, modify or create any derivative work of any portion of Software; (ii) make any copies of Software or its documentation, except one (1) copy for back-up or archival purposes; (iii) sell, assign, sublicense, distribute, rent, or otherwise transfer Software to a third party; or (iv) separate integrated Software from any Product, or otherwise use integrated Software except as an integrated part of the applicable Product. Without limiting the license restrictions in this Section and as an additional obligation, Customer will adopt and implement reasonable measures to guard against unauthorized use of Software. CareFusion may suspend or revoke user codes, or take other appropriate action, if CareFusion reasonably believes that a security violation has occurred. Scope of use restrictions for Software may be set forth in the applicable Customer Order. CareFusion will measure Customer's scope of use periodically and additional fees will apply if the scope of use is exceeded. Upon CareFusion's reasonable request (no more than once per year), Customer will provide CareFusion with relevant information to verify Customer's scope of use. Customer will provide CareFusion with thirty (30) days prior notice for any

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event affecting Customer's scope of use, such as acquisition of a hospital or construction of a new facility, so CareFusion can adjust Customer's scope of use.

- 3.4. **System Requirements.** For Software-only Products, Customer will use third-party Equipment meeting CareFusion's minimum system requirements (as specified by CareFusion in writing) and will protect its system and the Software from viruses, malware, and intrusion. Customer will perform applicable manufacturer recommended maintenance for such Equipment and maintain such Equipment at the version levels specified by CareFusion in writing.
- 3.5. **Data.** "Data" means, collectively, data contained in the Products, data created or stored through the use of Products, and/or data created or collected during the performance of Services. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E. Subject to the Business Associate Schedule in effect between the Parties as of the Effective Date, Customer grants CareFusion the right to access and use Data for any lawful purpose, including, without limitation, research, benchmarking, and aggregate analysis (i.e., more than one hospital). If Data contains Protected Health Information as defined by 45 C.F.R. § 160.103, then CareFusion will use such Data in conformance with the Privacy Rule and, before disclosing such Data, de-identify such Data pursuant to 45 C.F.R. § 164.514 and dissociate such Data from Customer.
- 3.6. **Intellectual Property Ownership.** All right, title and interest in the intellectual property embodied in the Products and related documentation (including, without limitation, all copyrights, patents, trademarks, trade secrets, trade names, and trade dress), as well as the methods by which the Services are performed and the processes that make up the Services, will belong solely and exclusively to CareFusion or the applicable supplier or licensor. Customer has no rights in any such intellectual property, except as expressly granted in this Master Agreement.

4. INDEMNIFICATION, LIMITATION OF LIABILITY, AND TERMINATION.

4.1. Mutual Indemnification.

- 4.1.1. CareFusion shall indemnify, defend, and hold harmless County of Monterey, its officers, agents, and employees, from and against any and all claims by a third party and any and all liabilities and losses incurred by County on account of such claims (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) caused by CareFusion's negligence or willful misconduct in connection with the performance of this Master Agreement. "CareFusion's performance" includes CareFusion's acts or omissions and the acts or omissions of CareFusion's officers, employees, agents and subcontractors.
- 4.1.2. County of Monterey shall indemnify, defend, and hold harmless CareFusion, its officers, agents, and employees, from and against any and all claims by a third party and any and all liabilities and losses incurred by CareFusion on account of such claims (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) caused by County's negligence or willful misconduct in connection with the performance of this Master Agreement. "County's performance" includes County's acts or omissions and the acts or omissions of County's officers, employees, agents and subcontractors.

4.2 **Intellectual Property Indemnity.** CareFusion will defend, indemnify, and hold harmless Customer and its directors, officers, agents, employees, members, subsidiaries and successors-in-interest against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, reasonable attorneys' fees, experts' fees and court costs, brought by a third party against Customer alleging that a Product used by Customer in accordance with this Master Agreement (including, without limitation, all sub-parts of Sections 2 and 3 of these General Terms and Conditions) infringes any patent, copyright, trade secret, other proprietary right, or intellectual property right of a third party (each, an "Infringement Claim"). As a condition to receiving the defense, Customer will provide written notice to CareFusion promptly after Customer receives actual notice of the Infringement Claim, will allow CareFusion to have sole control of the defense and any related settlement negotiations, and will provide reasonable cooperation upon request. Notwithstanding the foregoing, CareFusion acknowledges and agrees that it will not bind Customer to any obligation or materially adverse outcome without Customer's prior written consent, which shall not be unreasonably withheld or delayed. CareFusion will: (i) pay any damages and costs assessed against Customer (or payable by Customer pursuant to a settlement agreement agreed to in writing by CareFusion) arising out of the Infringement Claim; and (ii) reimburse Customer for its reasonable costs and expenses associated with providing reasonable cooperation. If CareFusion determines that a Product might infringe a third party's intellectual property right, then in addition to defending the Infringement Claim and paying any damages and attorneys' fees as required above, CareFusion will have the option, at its expense and in its sole discretion to: (a) promptly replace or modify the Product without loss of material functionality or performance to make them non-infringing or (b) obtain a license to permit Customer to continue using the Product. Any costs associated with implementing either of the above alternatives will be borne by CareFusion. If after using commercially reasonable efforts CareFusion fails to provide one of the foregoing remedies within one hundred twenty (120) days of notice of the claim ("Cure Period"), Customer shall have the right to terminate the Customer Agreement for the infringing Pyxis Product only with no further liability to CareFusion. During the Cure Period, Customer may by written notice to CareFusion suspend the Monthly Rental and Monthly Support Fees, provided that Customer is not the cause of CareFusion's inability to modify or

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replace the Pyxis Product. Furthermore, if Customer is preventing CareFusion from modifying or replacing the Pyxis Product, then the Parties shall mutually agree to extend the Cure Period to accommodate CareFusion's modification or implementation activities. This Section states Customer's exclusive remedy and CareFusion's total liability to Customer for an Infringement Claim.

5. LIMITATIONS OF LIABILITY; INSURANCE.

- 5.1. **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION LOSS OF BUSINESS OR PROFITS), WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS OF LIABILITY WILL APPLY EVEN IF THERE IS A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS MASTER AGREEMENT OR ANY CUSTOMER AGREEMENT.
- 5.2. **Insurance.** CareFusion will maintain: (i) commercial general liability insurance including Customer as an additional insured, with per occurrence limits and aggregate limits (including, without limitation, any excess or umbrella coverage) of not less than \$2,000,000 and \$5,000,000, respectively; (ii) Products and Completed Operations insurance, including Customer as an additional insured with per occurrence limits and aggregate limits of not less than \$5,000,000 and \$5,000,000 respectively; (iii) professional errors and omissions insurance that contains cyber liability and privacy notification insurance with per occurrence limits and aggregate limits of not less than \$1,000,000 and \$3,000,000; (iv) business automobile liability insurance including Customer as an additional insured, covering all motor vehicle, including owned, leased, and hired vehicles, used in providing services under this Master Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence; and (v) workers' compensation insurance in compliance with statutory requirement and employers' liability insurance in an amount of not less than \$1,000,000 per occurrence. Notwithstanding the foregoing, the Parties understand and agree that CareFusion may self-insure for all or part of the insurance required hereunder. If any of the required policies are written on a claims-made basis, then such policies will be maintained for a period of not less than three (3) years following the termination or expiration of this Master Agreement.

6. TERM; TERMINATION.

- 6.1. **Term.** The term of this Master Agreement will begin on the Effective Date and will terminate as of the last day of the Rental Term (as such term is defined in Section 2 of the Equipment Rental Terms Schedule attached hereto) for the Pyxis[®] products under any Customer Agreement between the Parties.
- 6.2. **Termination for Cause.** Either Party may terminate for cause the then-remaining performance of any Customer Agreement upon written notice if the other Party: (i) fails to comply with any material term or condition of any agreement between the parties; and fails to cure such non-compliance within thirty (30) days (or within ten (10) days for any past due payment) after receipt of written notice providing full details of such non-compliance; (ii) terminates or suspends substantially all of its business activities; or (iii) becomes subject to any bankruptcy or insolvency proceeding. Upon any such termination, CareFusion may repossess Equipment subject to any outstanding payment obligations. Notwithstanding the foregoing, Customer's obligation to pay for any Products that it has Accepted will not be affected by any termination under this Section.
- 6.3. **Termination without Cause.** Either Party may terminate this Master Agreement or Customer Agreement upon thirty (30) days written notice provided that, as of the effective date of any such termination, there are no payments due and no other obligations yet to be performed under any Customer Agreement.
- 6.4. **Termination for Lack of Government Funding.** Notwithstanding any other provision in this Master Agreement or Customer Agreement, if Federal, State or local government terminates or reduces its funding to the County of Monterey for Product or Services that are to be provided under this Master Agreement or any Customer Agreement, Customer, in its sole and absolute discretion after consultation with CareFusion, may elect to terminate the applicable Customer Agreement(s) not less than thirty (30) days prior to the end of Customer's fiscal year, by giving written notice of termination to CareFusion; provided, however: (i) Customer is not granted an appropriation of funds during the Rental Term to meet Customer's obligations under Customer Agreement and operation funds are otherwise not available to satisfy such obligations; (ii) there is no other legal procedure of available funds by or with which payment can be made to CareFusion. Upon such termination, Customer shall have the right to return the Pyxis Products to CareFusion at Customer's expense, to a destination CareFusion directs, in good working condition. Customer shall not thereafter acquire functionally similar equipment for a period of twelve (12) months. In the event, subsequent to such termination, funds are made available to Customer for equipment which is functionally similar to the Pyxis Products, Customer agrees at CareFusion's option, to purchase, lease or otherwise acquire such equipment from CareFusion. Alternatively, Customer and CareFusion may mutually agree to amend the Master Agreement or any Customer Agreement in response to a reduction in Federal, State or local funding.

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7. COMPLIANCE WITH LAWS AND POLICIES.

- 7.1. **Compliance with Laws.** Each Party will comply fully with all applicable federal and state laws and regulations, including but not limited to export laws and regulations of the United States.
- 7.2. **Discounts.** If any discount, credit, rebate or other Product incentive is paid or applied by CareFusion regarding the Products, then it is a “discount or other reduction in price” pursuant to the Medicare/Medicaid Anti-Kickback Statute. Each Party will comply with the “safe harbor” regulations stated in 42 C.F.R. § 1001.952(h).
- 7.3. **Access to Records.** For a period of four (4) years after CareFusion has completed performance under a Customer Agreement, CareFusion will make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives (collectively, the “Requesting Party”), this Master Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to CareFusion under such Customer Agreement (“Access”). If CareFusion pays a subcontractor more than \$10,000 over a twelve (12)-month period to perform such Customer Agreement, then CareFusion will require such subcontractor to permit Access to the Requesting Party.
- 7.4. **Exclusion.** As of the Effective Date, CareFusion is not excluded from participation from any federally-funded health care program (including, without limitation, Medicare and Medicaid) (each, a “Program”). If CareFusion becomes excluded from any Program, then CareFusion will promptly notify Customer. Within thirty (30) days after receipt of such notice and subject to the satisfaction of any remaining payment or other obligations, Customer may cancel this Master Agreement by written notice.
- 7.5. **Customer Policies.** CareFusion and its employees will comply with Customer’s reasonable security rules, policies and procedures provided in writing and agreed to in advance by CareFusion (“Customer Policies”). Customer will notify CareFusion in writing of any material changes to Customer Policies. Any terms of the Customer Policies that are in addition to or conflict with this Master Agreement or any Customer Agreement (e.g., terms related to purchase, delivery, payment, or termination) will have no force or effect unless adopted via a written amendment to this Master Agreement signed by each Party.
- 7.6. **Responsibility for Medical Care.** CareFusion, through its employees and agents (collectively, “CareFusion Personnel”), is not responsible for the delivery of medical care or other services to any patients. Accordingly, Customer will not rely upon CareFusion Personnel to practice medicine or provide patient care.

8. MISCELLANEOUS.

- 8.1. **Performance.** Each Party will bear the cost of its performance of this Master Agreement and each Customer Agreement.
- 8.2. **Confidentiality.** This Master Agreement and any Customer Order are public records subject to disclosure pursuant to a request under the California Public Records Act. Notwithstanding the foregoing, Customer will use reasonable efforts to promptly notify CareFusion and provide reasonable opportunity for CareFusion to request a protective order or in camera inspection in relation to any such request.
- 8.3. **Force Majeure.** If a Party is reasonably prevented from performing an obligation because of fire, flood, wind, earthquake, explosion or other disaster, acts of military authorities, acts of civil authorities unrelated to any violation of law by the Party, war (declared or undeclared), riot, insurrection, act of terrorism, acts of God, revolutions, vandalism, sabotage, nuclear incidents, lightning, weather, epidemics, disruption of public utilities, information systems interruptions or failures, or other cause beyond the Party’s reasonable control (collectively, a “Force Majeure Event”), then that Party will not be in breach during the period that Party is prevented from performing that obligation, provided that the Party: (i) promptly delivers notice to the other Party identifying the Force Majeure Event with the expected duration (including keeping the other Party informed until the Party is able to perform its obligations); and (ii) immediately uses reasonable good faith efforts to perform the obligation notwithstanding the Force Majeure Event.
- 8.4. **Assignment.** Neither Party may assign any rights or obligations under this Master Agreement or any Customer Agreement without the other Party’s prior written consent, which will not be unreasonably withheld provided, however, that either Party may with notice assign all of such Party’s rights and obligations without the other Party’s consent: (i) to an affiliate; or (ii) incident to the transfer of all or substantially all of such Party’s business assets related to the subject matter of the applicable Customer Agreement.
- 8.5. **Notices.** Any notice from one Party to the other Party under this Master Agreement or any Customer Agreement will be in writing and will be deemed to be given: (i) upon delivery, if by hand or by overnight courier; or (ii) three days after mailing, if by certified or registered mail to the receiving Party’s Notice Address below. Either Party may change its Notice Address upon written notice to the other Party.

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- 8.6. **Severability.** If a court or other body of competent jurisdiction declares any term of this Master Agreement or any Customer Agreement invalid or unenforceable, then the remaining terms will continue in full force and effect.
- 8.7. **No Waiver.** No right created by this Master Agreement or any Customer Agreement will be deemed waived unless specifically and expressly waived in a writing signed by the Party possessing the right.
- 8.8. **Governing Law.** This Master Agreement and each Customer Agreement will be governed by the laws of the State identified in Customer's Notice Address below, without reference to its conflict of laws principles.
- 8.9. **Prevailing Party.** The prevailing Party will be entitled to reasonable attorneys' fees, costs and expenses for any claim against the other Party under this Master Agreement or any Customer Agreement.
- 8.10. **Survival.** The obligations set forth in this Master Agreement and each Customer Agreement that by their nature continue and survive will survive any termination or expiration of this Master Agreement.
- 8.11. **Entire Agreement; Amendment.** This Master Agreement and each Customer Agreement sets forth the entire agreement and understanding of the Parties and supersedes all prior written and oral agreements, representations, proposals, and understandings between the Parties regarding the subject matter of this Master Agreement and each Customer Agreement, except that no prior Confidential Disclosure Agreement or contract of a similar nature will be superseded. Any requests for information, requests for proposal, responses to requests for proposals, sales collateral and other information provided by either Party are not binding unless explicitly incorporated by reference into a Customer Order signed by each Party. No modification to this Master Agreement or any Customer Agreement will be effective unless adopted via a written amendment to the same signed by each Party.

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

**COUNTY OF MONTEREY,
DBA NATIVIDAD MEDICAL CENTER**

CAREFUSION SOLUTIONS, LLC

Notice Address:

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

Notice Address:

3750 Torrey View Court
San Diego, CA 92130

State of Incorporation: _____

State of Incorporation: Delaware

By: [Signature]

By: Martin Jukowski

Print: Roy D. Greanier

Print: MARTIN LUKOWSKI

Title: Director Materials

Title: MANAGER, CONTRACTS

Date: 9/16/15

Effective Date: 15 JULY 2015

APPROVED AS TO FORM
[Signature]
SEALY COUNTY CLERK
COUNTY OF MONTEREY

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey 9-1-15

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Exhibit A List of Schedules

Product Line (if applicable)	Schedules
General	Equipment Rental Terms
General	Software Services
General	Third Party Software
General	Business Associate
Pyxis®	Implementation Terms
Pyxis	Support Terms
Pyxis®	Pharmogistics ® Products

The below terms apply to Customer's rental of Rental Equipment (defined below) pursuant to applicable Customer Agreements between the Parties in accordance with Section 1.2 of the Master Agreement.

1. **Definitions.** "Rental Equipment" means the integrated hardware and software Products that Customer is renting pursuant to a Customer Order.
2. **Rental Term.** The "Rental Term" for Rental Equipment equals the time period that CareFusion leases Rental Equipment to Customer pursuant to the applicable Customer Agreement. CareFusion (or its assignee) is the owner of Rental Equipment and Customer is only acquiring a right to possess and use Rental Equipment during the Rental Term, and no other right, title or interest. Title will not transfer to Customer at the end of the Rental Term. The initial Rental Term for Rental Equipment will begin on the Term Begin Date stated in the applicable Implementation Timeline and will continue for the number of months stated in the applicable Customer Agreement, provided that, if there is no Term Begin Date in an Implementation Timeline, then the Term Begin Date will be the first day of the month following the date such Rental Equipment is Accepted. Unless a Party provides sixty (60) days' prior written notice of its intention not to extend the Rental Term, the Rental Term will continue on a month-to-month basis ("Extended Term") at the applicable Rental Fee stated in the then-current Pyxis[®] products price catalog. Either Party may terminate the Extended Term upon thirty (30) days' prior written notice.
3. **Rental Fees.** Customer will pay the Monthly Rental Fee stated in the applicable Customer Order ("Monthly Rental Fee") for each unit of Rental Equipment on the first day of each month during the Rental Term, which obligation is unconditional and non-cancelable. Customer is not entitled to abate or reduce any Monthly Rental Fee for any reason. Customer will pay the Monthly Rental Fee when due regardless of any existing or future setoff or claim that Customer may assert. Additionally, Customer will not assert any setoff or counterclaim against a CareFusion assignee if such assignee commences an action to collect any amount due under the applicable Customer Order.
4. **Risk of Loss.** From the time Customer receives delivery of Rental Equipment until CareFusion accepts return delivery of Rental Equipment, Customer will: (i) be responsible for any loss of or damage to Rental Equipment from any cause other than normal wear and tear, except for any loss or damage caused by CareFusion's negligence; and (ii) obtain and maintain throughout the Rental Term All Risk Property Insurance in an amount equal to the full replacement value for Rental Equipment. Customer will notify CareFusion immediately of any such loss or damage, and will continue to pay Monthly Rental Fee; provided, however, that CareFusion will reasonably cooperate with Customer and Customer's insurer to promptly provide replacement Rental Equipment, subject to Section 13 of the Support Terms Schedule.
5. **Personal Property.** All Rental Equipment is personal property for all purposes. Customer will not allow any Rental Equipment to become a fixture of real property. Customer will take appropriate action as necessary to prevent any third party from acquiring any interest in Rental Equipment or the applicable Customer Order. In addition to performing its obligations under the Taxes provision of the Master Agreement, Customer will reimburse CareFusion for any personal property tax imposed on CareFusion as the lessor.
6. **Use, Maintenance and Repair of Rental Equipment.** Customer will keep and use Rental Equipment only at the delivery address set forth in the Customer Order and will not move it without CareFusion's prior written consent. Customer will allow only competent and duly qualified personnel to operate Rental Equipment. Customer will keep Rental Equipment in good condition and working order, and will allow CareFusion to make engineering changes and Software updates upon reasonable request. Customer will keep all Rental Equipment free and clear of all liens, adverse claims and encumbrances.
7. **Return of Rental Equipment.** If Customer relinquishes possession of any Rental Equipment for any reason (including at the end of the Rental Term), then Customer will: (i) promptly remove all medications, data, and Customer property from such Rental Equipment without damaging such Rental Equipment; (ii) acknowledge receipt of any data device that CareFusion removes from Rental Equipment and tenders to Customer; and (iii) promptly and properly crate and ship Rental Equipment to CareFusion.
8. **Assignment.** Notwithstanding the non-assignment language in the General Terms and Conditions of the Master Agreement, CareFusion may assign, transfer, grant a security interest in, or sell some or all of CareFusion's right to receive payments under a Customer Agreement without Customer's consent (an "Assignment"). Upon an Assignment: (i) Customer will not hold any CareFusion assignee liable for any CareFusion obligation under the applicable Customer Agreement; (ii) the rights of such assignee will not be subject to any claims, counterclaims, defenses or setoffs of any kind whatsoever; (iii) Customer will cooperate with and consent to an Assignment by executing and delivering documents and assurances that CareFusion or its assignee reasonably requests; (iv) Customer will, if requested, make payments due under the applicable Customer Agreement directly to such assignee; and (v) all of Customer's obligations will inure to the benefit of such assignee as well as to CareFusion, and may be enforced by such assignee in its own name or by CareFusion.

9. Termination by CareFusion for Cause. Notwithstanding the termination provisions of the Master Agreement, if Customer fails to: (i) pay any amount required by the applicable Customer Agreement within ten (10) days after CareFusion provides written notice to Customer stating that the payment is past due; or (ii) correct any other non-compliance with the applicable Customer Agreement within thirty (30) days after CareFusion provides written notice to Customer identifying such non-compliance, then CareFusion may, to the extent permitted by applicable law and in addition to and without prejudice to any other remedy available at law or equity: (a) cancel one or more Rental Term(s) and require Customer to make the applicable Rental Equipment available for repossession by CareFusion at a reasonably convenient location; and/or (b) recover from Customer equal to the present value of the unpaid balance of all Monthly Rental Fees for each unexpired Rental Term under the applicable Customer Agreement (calculated using a discount rate of six percent (6%) per annum).

10. Conditional Security Agreement. If a Customer Agreement is determined not to constitute a true lease, then the Customer Agreement will be a security agreement with respect to Rental Equipment and all accessions, substitutions, replacements therefore, and proceeds thereof (including insurance proceeds) will secure all obligations pursuant to the Customer Agreement.

These terms apply to the Software and Software-based services described below that are licensed separately and provided by CareFusion to Customer pursuant to the applicable Customer Agreement between the Parties.

1. CareFusion Software Services. CareFusion provides certain Software and Software-based services ("CareFusion Software Services") to manage information used with (i) operating system software in hardware equipment supplied by CareFusion or other manufacturers ("Operating System Software"), and (ii) software and services provided by third parties ("Third-Party Software Services"). CareFusion Software Services are provided subject to the terms herein, the Master Agreement, and any applicable Customer Order Attachment.

2. Perpetual Use.

2.1. Perpetual License. CareFusion grants Customer a limited, perpetual, non-exclusive, non-transferable license for the CareFusion Software Services specified in the Customer Order. If the number of staffed beds at Customer's site increases by more than ten percent (10%), then CareFusion may increase the total license fees stated in the Customer Order on a pro-rata basis for the specified CareFusion Software Services.

2.2. Maintenance Term. The initial term for maintenance services applicable to each type of CareFusion Software Services will be the period as stated in the Customer Order ("Maintenance Term"). The Maintenance Term is non-cancellable. Unless otherwise stated in a Customer Order, the Maintenance Term for each type of CareFusion Software Services will begin on the date the CareFusion Software Services are Accepted or deemed Accepted..

2.3. Maintenance Fees. Customer will pay Software maintenance fees ("Maintenance Fees") as specified in the Customer Order which will entitle the customer to periodically released Enhancements (defined below) during the Maintenance Term. CareFusion will invoice Customer for installments of the Maintenance Fee on a recurring basis as specified in the Customer Order, commencing at the beginning of the Maintenance Term. CareFusion may, by notice delivered to Customer prior to the commencement of a subsequent Maintenance Term, increase the Maintenance Fee for such period. If the number of staffed beds at Customer's site increases by more than ten percent (10%), then CareFusion may increase the total Maintenance Fees stated in the Customer Order on a pro-rata basis for the specified CareFusion Software Services.

3. Subscription Use.

3.1. Subscription License. Subject to payment of the Subscription Fees (defined below) specified in the Customer Order, CareFusion grants Customer a limited, non-exclusive, non-transferable license for CareFusion Software Services specified in the Customer Order during the valid term of the contract.

3.2. Subscription Term. The initial term for subscription services applicable to each type of CareFusion Software Services will be the period as stated in the Customer Order ("Subscription Term"). The Subscription Term is non-cancellable. Unless otherwise stated in a Customer Order, the Subscription Term for each type of CareFusion Software Services will begin on the date the CareFusion Software Services are Accepted or deemed Accepted.

3.3. Subscription Fees. Customer will pay a subscription fee ("Subscription Fee") as specified in the Customer Order which will entitle the customer to periodically released Enhancements (defined below) and delivery of applicable Software-related services during the Subscription Term. CareFusion will invoice the Customer for installments of the Subscription Fee on a recurring basis as specified in the Customer Order, commencing at the beginning of the Subscription Term. CareFusion may, by notice delivered to Customer prior to the commencement of any subsequent Subscription Term, increase the Subscription Fee for such period. If the number of staffed beds at Customer's site increases by more than ten percent (10%), then CareFusion may increase the Subscription Fee stated in the Customer Order on a pro-rata basis for the specified CareFusion Software Service.

4. CareFusion Responsibilities. Subject to payments of applicable Maintenance Fees or Software Subscription Fees, Customer is entitled to the following support for the most recent version of the Software of the applicable CareFusion Software Service specified in the Customer Order for a period of one (1) year from release of the next version of the Software:

4.1. Enhancements. If, pursuant to CareFusion's maintenance support program, CareFusion generally releases an update to the Software to support the CareFusion Software Services in order to enhance the security or operation of the Software (each an "Enhancement"), then CareFusion will provide the appropriate CareFusion personnel and resources to update the Software. The method of Enhancement delivery will be at the sole discretion of CareFusion. Enhancements will be Software pursuant to this Schedule and the applicable Customer Agreement. Customer will be responsible to ensure that the technical environment into which the Enhancement is delivered has sufficient resources and the Prerequisite Systems (defined below) to support the Enhancement.

4.2. Telephone-based Technical Support. CareFusion will provide telephone-based technical support to Customer during CareFusion's normal business hours.

4.3. Error Correction. CareFusion will use commercially reasonable efforts to correct errors in the Software that materially affect the functionality of the Software.

4.4. Remote Access. Customer will provide CareFusion remote access to the Software installed at Customer facilities through CareFusion's remote access solution. CareFusion will use such access solely to provide the Service. If Customer discontinues the Service, Customer will allow CareFusion to access the Software solely for the purposes of disabling it.

5. Customer Responsibilities.

5.1. CareFusion Implementation Services. Customer will order from CareFusion any implementation services required to implement the CareFusion Software Services as specified in the applicable Customer Order, and will perform all of the Customer obligations specified in the applicable Customer Order Attachment related to the CareFusion implementation services.

5.2. Third-Party Licenses and Implementation Services. Customer will obtain from third-party vendors the applicable licenses and implementation services for Third-Party Software Services as required to establish appropriate technical software interfaces with CareFusion Software Services and Operating System Software.

5.3. Prerequisite CareFusion Systems. If the CareFusion Software Services ordered by Customer require prerequisite software or systems as set forth in applicable user guides or Customer Orders ("Prerequisite Systems"), then Customer will obtain all necessary licenses and software maintenance programs to support the current versions of the Prerequisite Systems.

5.4. Customer Technical Environment. Customer will maintain the technical environment specified by CareFusion in applicable user guides and provided during implementation to support the technical and functional workflow requirements for CareFusion Software Services in Customer's facilities.

5.5. Multi-Facility Maintenance Obligation. If Customer and its affiliates (or related entities and facilities with common CareFusion Software Services) have implemented CareFusion Software Services at multiple facilities or on shared servers operating the CareFusion Software Services, and any such affiliate, related entity or facility fails to renew or pay the applicable Maintenance Fee or Subscription Fee, then CareFusion reserves the right to withhold or cancel the CareFusion Software Services to be provided to Customer or its affiliates, related entities or facilities.

This Schedule governs Customer's access to and use of software or databases owned by a third party (collectively referred to as "Third Party Software"). Customer's right to use such Third Party Software, and the Products which contain them, is subject to compliance with the Master Agreement between the Parties and these terms. In the event of any conflict between these terms and those of any End User License Agreement that may be presented in electronic form during use of the Third Party Software, these terms shall take precedence.

1. GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL THIRD PARTY SOFTWARE

1.1 Ownership. Third Party Software is licensed, not sold, by CareFusion to Customer. All title and intellectual property rights in and to Third Party Software (including, but not limited to, code sequence, logic, structure and screens) and documentation, and in and to any improvements, enhancements, updates, or upgrades thereto, including concepts and technology inherent in Third Party Software, are and at all times shall remain, the sole and exclusive property of a third party and/or its affiliates ("Third Party"). Third Party Software is protected by copyright laws as well as other intellectual property laws and treaties. Customer's possession, use, or access to Third Party Software does not transfer any ownership of Third Party Software nor any intellectual property rights to Customer. All rights not expressly granted under this Schedule are reserved by CareFusion or Third Party. Nothing contained in this Schedule shall be construed directly or indirectly to assign or grant to Customer any right, title or interest in or to trademarks, service marks, copyrights, patents, or trade secrets of Third Party, or any ownership rights in or to the Third Party Software.

1.2 Use. Customer may use Third Party Software only in conjunction with Products and Services provided to Customer by CareFusion, and not as a stand-alone product. The license granted herein does not include a license to use the Third Party Software for development, testing or support purposes.

1.3 Copies. Customer may not make any copies of Third Party Software for any purpose unless expressly authorized by CareFusion. Customer must erase or destroy all Third Party Software upon notice from CareFusion.

1.4 Restrictions. Except as permitted by applicable law, Customer shall not:

- (a) work around any technical limitations in Third Party Software;
- (b) reverse engineer, de-compile, translate, disassemble or otherwise attempt to derive source code from the Third Party Software, in whole or in part (or in any instance where the law permits any such action, Customer shall provide CareFusion at least ninety (90) days advance written notice of its belief that such action is warranted and permitted, and shall provide CareFusion (in conjunction with Third Party) with an opportunity to evaluate if the law's requirements necessitate such action);
- (c) allow access or permit use of the Third Party Software by any user other than that permitted by CareFusion in Customer's license agreement with CareFusion;
- (d) modify or create derivative works based upon Third Party Software;
- (e) publish Third Party Software, or post any portion of it on public bulletin boards, websites, Internet domains, or online chat rooms;
- (f) sell, rent, lease, lend, license, sublicense or otherwise transfer, in whole or in part, Third Party Software or related documentation to any third party;
- (g) use Third Party Software in connection with, through or to an application service provider, or using other similar network hosting methods;
- (h) alter, remove or destroy and will take commercially reasonable steps to prevent the alteration, removal or destruction of, any Third Party copyright notice, trade secret or other proprietary rights notice from Third Party Software

Customer shall provide the same level of security for Third Party Software as it provides for its own products, but in no event less than reasonable care, to prevent third parties from performing such activities.

1.5 Internet-Based Services. Third Party Software may contain components that enable and facilitate the use of certain Internet-based services. Customer acknowledges and agrees that Third Party may automatically check the version of Third Party Software and/or its components that Customer is using and may provide upgrades or supplements to Third Party Software which may be automatically downloaded. No personally-identifiable information will be obtained through these services.

1.6 No Warranties. THIRD PARTY SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CAREFUSION AND THIRD PARTY EXCLUDE AND DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

1.7 Liability Limitations. Customer agrees that, regardless of the form of any claim, neither CareFusion nor Third Party has any liability for damages, whether direct, consequential, special, punitive, indirect or incidental, for anything related to Third Party Software. This limitation also applies even if CareFusion or Third Party should have been aware of the possibility of damages. In no event will CareFusion be liable for any amount in excess of two hundred fifty dollars (\$250.00). The foregoing limitation does not limit CareFusion's indemnification obligations in relation to any other obligations provided in the Master Agreement.

1.8 Termination. Without prejudice to any other rights, CareFusion may terminate this license to use Third Party Software if Customer fails to comply with the terms of this Schedule.

1.9 Export Restrictions. Third Party Software is subject to United States export laws and regulations. Customer must comply with all applicable domestic and international export laws and regulations, including (without limitation) restrictions on destinations, end users and end use.

1.10 U.S. Government Use. Third Party Software is a "commercial component" consisting of "commercial computer software" and "commercial computer software documentation," as such terms are defined in Title 48 of the Code of Federal Regulations. Any use of Third Party Software by the U.S. Government shall be subject to the terms of CareFusion's applicable Government FSS agreement.

2. ADDITIONAL TERMS AND CONDITIONS APPLICABLE ONLY TO LEXI-COMP LICENSED DATABASES

2.1 Limited Right to Print Articles. Customer may print out individual articles containing only insubstantial portions of the Lexi-Comp Licensed Databases ("Databases") for Customer's personal educational use as long as Customer includes a source reference to Lexi-Comp and its copyright notice.

2.2 Updates. If Customer has purchased a Pyxis MedStation™ 3000, 3500 or 4000 system, CareFusion shall provide quarterly updates to the Databases at no additional cost. Other Customers may contact Lexi-Comp directly to procure updated data sets. Customer is responsible for installing any updates.

2.3 Use of Professional Judgment. Customer should consult a variety of information sources before making any treatment decision. Customer should check the product information sheet accompanying each drug or medication to verify conditions of use, and should identify any changes in dosage schedule or contraindications. Information in the Databases is not a substitute for individual patient assessment based upon Customer's examination of each patient and consideration of laboratory data and other factors unique to the patient. Customer bears full responsibility for the appropriate use of the information contained in the Databases.



Schedule Pyxis® Products Implementation Terms

These terms apply to implementation services for Pyxis® Equipment and Pyxis Software Products (collectively, “Pyxis Products”) provided by CareFusion to Customer pursuant to applicable Customer Agreements (or, if applicable, a Rental Agreement or Purchase Agreement) (each, a “Customer Agreement”) between the Parties.

1. **Implementation Terms.** These implementation terms (the “Implementation Terms”), together with the Implementation Timeline attached to a Customer Agreement, describe the process, tasks, responsibilities, completion criteria and deliverables for the Pyxis Products implementation project (“Project”).
 - 1.1. **Overall Project.** The Project consists of the installation of the Pyxis Products at Customer’s site(s).
 - 1.2. **Project Resources.** CareFusion and Customer agree to provide qualified resources throughout the duration of the Project.
2. **Implementation Fees.** Implementation Fees set forth in the applicable Customer Agreement, if any, will be invoiced upon execution of the Customer Agreement by both Parties.
3. **Implementation Activities.** The Project will be completed in stages as set forth in each Implementation Timeline. If a Customer Agreement contains multiple product lines, then separate Implementation Timelines may be included for each product line, as necessary. CareFusion and Customer will complete any applicable technical, infrastructure, and workflow assessment (“Implementation Assessment”) at Customer’s site(s), providing the basis for the implementation activities set forth herein and in each Implementation Timeline (“Implementation Activities”). CareFusion and Customer shall use commercially reasonable efforts to complete the Implementation Activities on or before the applicable Completion Date(s) set forth in the Implementation Timeline(s).
4. **Medication Handling.** CareFusion employees and agents (“CareFusion Personnel”) shall not handle Customer’s medications. Customer must be physically present and capable of observing CareFusion Personnel during any implementation activity in which CareFusion Personnel have access to Customer’s medications. If Customer fails to do so, then CareFusion may re-schedule that activity and, upon invoice, Customer will reimburse CareFusion for expenses related to re-scheduling that activity.
5. **Term Begin Date.** The “Term Begin Date” is set forth in the Implementation Timeline. If the Customer Agreement is for the rental of Pyxis Products, then the Rental Term for each Pyxis Product shall begin on the Term Begin Date. If the Customer Agreement is for the purchase of Pyxis Products, then Customer shall pay the Net Purchase Price for each Pyxis Product within thirty (30) days of the Term Begin Date. If, due to the sole fault of CareFusion, a Pyxis Product is not Accepted (as such term is defined in Section 1.5 (Acceptance) of the General Terms and Conditions of the Master Agreement) until after the Term Begin Date, then the Term Begin Date shall be the first day of the month following the date the Pyxis Product is Accepted. The applicable Completion Dates for the Pyxis Products under a Customer Agreement shall not exceed six (6) months from the Term Begin Date. Notwithstanding the foregoing, if a Pyxis Product is not Accepted by the Term Begin Date for any reason that, in CareFusion’s reasonable discretion, is not the sole fault of CareFusion (each, a “Delayed Product”), then Customer is nonetheless obligated to pay the applicable rental or purchase fee(s) on the Term Begin Date; provided, however, that if a Delayed Product has not been delivered or installed, then Customer may exchange the Delayed Product for an alternate Pyxis® product (“Alternate Product”) of equal or greater value as determined under the then-current Pyxis® product price catalog, subject to the following: (a) if the rental or purchase fee(s) applicable to the Alternate Product is greater than the fee(s) for the Delayed Product, then Customer will pay the difference in such fees in accordance with the terms of the applicable Customer Agreement; (b) Customer will pay any applicable transaction fees, including, without limitation, CareFusion’s costs of manufacturing, shipping and freight; and (c) if the Delayed Product has not been delivered to Customer, CareFusion may, at its sole option, cancel the Customer Agreement for that Pyxis Product.

If previously-installed Pyxis® products are being upgraded or subject to new terms and conditions, then the previously-applicable terms and conditions, including payment terms, for those products shall remain in full force and effect until the Term Begin Date, unless otherwise agreed to in writing by the Parties.
6. **Conditions.** The Completion Dates set forth in an Implementation Timeline are contingent upon CareFusion’s timely receipt of all properly executed contract documents from Customer prior to the applicable Completion Date and the provision of adequate Customer resources as outlined herein. If Customer fails to provide access or otherwise prevents CareFusion from conducting an Implementation Activity, then (i) CareFusion may adjust affected deadlines and re-schedule the activity, and (ii) Customer shall reimburse CareFusion for expenses incurred due to re-scheduling.

These terms apply to support services (“Support”) for Pyxis® Equipment and Integral Software (as such term is defined below) (collectively, “Pyxis Products”) provided by CareFusion to Customer pursuant to the applicable Customer Order between the Parties in accordance with Section 1.2 of the Master Agreement. This Schedule does not apply to Software that is licensed separately by CareFusion under a Customer Order; provided, however, that if Software is commercially released or bundled by CareFusion as an integral part of the Pyxis Products under a Customer Order (“Integral Software”), then the terms of this Schedule will apply to the Integral Software.

- 1. Support Term.** The “Support Term” for a Pyxis Product consists of the number of months stated in the applicable Customer Order, starting from the Term Begin Date stated in the applicable Implementation Timeline. If there is no Term Begin Date in an Implementation Timeline, then the initial Support Term will begin on the first day of the month after the Pyxis Product is Accepted. Unless a Party provides at least sixty (60) days’ prior written notice of its intention not to extend the Support Term, the initial Support Term will continue on a month-to-month basis (“Extended Term”) and the Monthly Support Fee will be based on the month-to-month rate set forth in the then-current Pyxis Product price catalog, less any applicable discounts. Either Party may terminate the Extended Term upon no less than thirty (30) days’ prior written notice.
- 2. Payment of Monthly Support Fees.** Customer will pay the Net Monthly Support Fee stated in the Customer Order (“Monthly Support Fee”) on the first day of each month during the Support Term. CareFusion may increase the Monthly Support Fee once every twelve (12) months by no more than the Consumer Price Index for medical care plus two percent, provided the increase will be effective (i) upon at least ninety (90) days’ written notice to Customer and (ii) as of the anniversary date of the initial Support Term.
- 3. Terms Applicable to Product Support.** The Customer Order identifies the Support Program (e.g., Standard, Advanced, or Elite) and product type (e.g., Pyxis® Equipment or Integral Software). Customer’s and CareFusion’s responsibilities for Support of the Pyxis Products will vary according to the Support Program set forth below.
- 4. Properly Performing.** During the Support Term, CareFusion and Customer, as applicable, will provide Support necessary to keep the Pyxis Products and CareFusion’s side of any applicable interfaces (“Interfaces”) performing in accordance with the material specifications of the applicable User Guide (“Properly Performing”). If CareFusion determines that a Pyxis Product cannot be made Properly Performing through repair services, then CareFusion will replace portions of the Pyxis Equipment or restore the functionality of the Integral Software, as needed. During any Extended Term, CareFusion will use commercially reasonable efforts to restore the functionality of any Pyxis Product which is not Properly Performing, but will have no obligation to replace Equipment or Integral Software.
- 5. Remote Support Services.** CareFusion will provide remote support services (“RSS”) on a 24/7/365 basis through CareFusion’s Technical Support Center (“TSC”). To permit access to the Pyxis Product via RSS, Customer will provide high-speed Internet access and firewall modifications to enable connectivity, if applicable. If Customer’s system, connectivity, or personnel prevent CareFusion from performing RSS on a Pyxis Product, then: (i) any Guaranteed Response Time or Uptime (as defined below) applicable to that Pyxis Product will be void; and (ii) Customer will pay CareFusion on a time and materials basis for any onsite services. Customer will permit CareFusion to install and maintain at Customer’s site the applications necessary to allow the deployment of Updates and Upgrades (as defined below) by RSS. Where RSS is not practical and direct access to equipment is required, Customer will allow CareFusion such access.
- 6. Interface Modification.** If CareFusion modifies an Interface between a Pyxis Product and Customer’s information system as part of Support, then Customer will test the modified Interface within seventy-two (72) hours. Customer’s sole remedy related to Interface functionality will be for CareFusion to modify the Interface to provide full functionality.
- 7. Replacement Parts.** CareFusion will adjust and replace non-consumable parts in Pyxis Equipment, including Pyxis CUBIE® Pockets, which are not Properly Performing for any reason other than an External Cause (as defined below). CareFusion will furnish replacement parts on an exchange basis.
- 8. Preventative Maintenance.** CareFusion will perform onsite preventative maintenance of Pyxis Equipment in accordance with CareFusion’s then-current preventive maintenance schedule.
- 9. Procedure to Obtain CareFusion Support.** Customer will promptly contact TSC by phone or through CareFusion’s on line support services portal if a Pyxis Product is not Properly Performing and Customer has attempted repair in accordance with applicable Customer Obligations as set forth below. TSC will work with Customer to perform initial troubleshooting. If the problem cannot be resolved in a timely manner through telephone and RSS, then Customer will allow CareFusion’s field service representative to perform onsite service. Within 72 hours of completion of any onsite service, Customer will test the connections between the Pyxis Product and Customer’s information system.

10. Standard Support Plan. If Customer elects CareFusion's Standard Support Plan, then the following terms will apply and the terms set forth under the Advanced Support Plan and Elite Support Plan will not apply.

10.1 Customer Obligations. Customer will be responsible for support of the following activities:

- (a) **Server Support.** Customer will provide services for (i) Customer's side of station and server network connectivity, (ii) customer-provided server hardware, and (iii) server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc.
- (b) **System Requirements.** Customer will provide (i) station and server environment, e.g., power and plugs, etc., (ii) Customer data center and network availability, (iii) conformance with minimum server environment requirements for the Pyxis Product(s) as set forth in an applicable Hardware Requirements Schedule, and (iv) a virtual platform approved by CareFusion for all CareFusion-provided Virtual Machine deployments as set forth in an applicable Hardware Requirements Schedule.
- (c) **Peripherals.** Customer will provide support for all non-CareFusion provided peripheral products, e.g., mobile devices.
- (d) **Training Logistics.** CareFusion will inform Customer of training logistic requirements and Customer will provide appropriate resources, space and access to applicable system or equipment at the installation site to support training activities provided by CareFusion to Customer representatives.
- (e) **Virtual Machine (VM) Deployments.** For Integral Software deployed using VM technology, Customer will provide all services for (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the performance of the applicable relational database server (e.g., MSSQL) instance for the Pyxis Product(s) as set forth in the hardware requirements.
- (f) **Active Directory.** For products that support Active Directory capability, Customer will provide integrated Active Directory services and user administration, e.g., passwords, user log-in, etc.
- (g) **Data Backup.** Where applicable, Customer will implement a network data backup capability that is remote to Pyxis Product(s) and in accordance with guidelines provided by CareFusion.
- (h) **Maintenance.** Customer will provide (i) basic product feature support for internal staff, including but not limited to general product use, facility-specific and general system settings and user log-in practices, (ii) basic hardware issue resolution, including drawer "jams" due to overfilling, cleaning of biometric identification devices, network cabling issues, and general equipment cleaning, and (iii) customer-specific network connectivity and configuration.
- (i) **Software Patching.** Customer will schedule and deploy CareFusion-approved software patches to servers (e.g., operating system, anti-virus, and product patches) for Pyxis Products that operate on the Pyxis ES technology platform ("Pyxis ES Products").

10.2 CareFusion Obligations. CareFusion will be responsible for the following Support activities:

- (a) **Maintenance.** CareFusion will provide 24/7/365 support for all Pyxis Products maintenance activities not covered under Section 10.1, Customer Obligations, including but not limited to, (i) all Pyxis Equipment break/fix activities that require a trained service technician for triage, troubleshooting and service part replacement; (ii) server application, (iii) defects in Pyxis Products (iv) station database and operating system services, (v) support for server hardware acquired from CareFusion, and (vi) Interfaces.
- (b) **Software Patching.** CareFusion will schedule and deploy CareFusion-approved software patches for products that are not the responsibility of Customer as set forth in Section 10.1 above (e.g., all stations, servers that are not maintained by Customer).
- (c) **Customer Training.** CareFusion will provide training one time to a mutually agreed-upon number of designated Customer personnel to perform the activities set forth under Section 10.1 above, Customer Obligations item (h) Maintenance.

11. Advanced Support Plan. If Customer elects the Advanced Support Plan, then the following terms will apply and the terms set forth under the Standard Support Plan and Elite Support Plan will not apply.

11.1 Customer Obligations. Customer will be responsible for Support of the following activities:

- (a) **Server Support.** Customer will provide services for (i) Customer's side of station and server network connectivity, (ii) customer-provided server hardware, and (iii) server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc.
- (b) **System Requirements.** Customer will provide (i) station and server environment, e.g., power and plugs, etc., (ii) Customer data center and network availability, (iii) conformance with minimum server environment requirements for the Pyxis Product(s) as set forth in an applicable Hardware Requirements Schedule, and (iv) a virtual platform approved by CareFusion for all CareFusion-provided Virtual Machine deployments as set forth in an applicable Hardware Requirements Schedule.
- (c) **Peripherals.** Customer will provide support for all non-CareFusion provided peripheral products, e.g., mobile devices.
- (d) **Training Logistics.** CareFusion will inform Customer of training logistic requirements and Customer will provide appropriate resources, space and access to applicable system or equipment at the installation site to support training activities provided by CareFusion to Customer representatives.
- (e) **Virtual Machine (VM) Deployments.** For Integral Software deployed using VM technology, if the applicable relational database server (e.g., MSSQL) instance is not housed locally in the CareFusion-provided VM container, then Customer will facilitate services for (i) database backup and recovery activities (to the extent that Customer has met its obligations defined in Section 11.1 (g)), (ii) operating system patches, updates and security, and (iii) the applicable relational database server (e.g., MSSQL) instance. If the applicable relational database server instance is housed locally in the CareFusion-provided VM container then CareFusion shall have these obligations as set forth in Section 11.2 (e).
- (f) **Active Directory.** For products that support Active Directory capability, Customer will provide integrated Active Directory services and user administration, e.g., passwords, user log-in, etc.
- (g) **Data Backup.** Where applicable, Customer will implement a network data backup capability that is remote to Pyxis Product(s) and Integral Software and in accordance with guidelines provided by CareFusion.
- (h) **Maintenance.** Customer will provide (i) basic product feature support for internal staff, including but not limited to general product use, facility-specific and general system settings and user log-in practices, and (ii) customer-specific network connectivity and configuration.
- (i) **Software Patching.** Customer will schedule and deploy CareFusion-approved software patches to servers (e.g., operating system, anti-virus, and product patches) for Pyxis ES Products.

11.2 CareFusion Obligations. CareFusion will be responsible for the following Support activities:

- (a) **Maintenance.** CareFusion will provide 24/7/365 support for all Pyxis Products maintenance activities including but not limited to (i) basic product feature support, (ii) basic hardware issue resolution, including drawer jams, cleaning of biometric identification devices, and network cabling issues, (iii) all Pyxis Equipment break/fix activities that require a trained service technician for triage, troubleshooting and service part replacement, (iv) defects in Pyxis Products, (v) station database and operating system services, (vi) support for server hardware acquired from CareFusion, and (viii) Interfaces.
- (b) **Software Patching.** CareFusion will schedule and deploy CareFusion-approved software patches for products that are not the responsibility of Customer as set forth in Section 11.1 above (e.g., all stations, servers that are not maintained by Customer).
- (c) **Equipment Relocation.** Upon thirty (30) days' written notice from Customer, CareFusion will relocate Pyxis Equipment to another Customer facility within one hundred (100) miles. Relocation services will be provided during normal business hours or as otherwise mutually agreed upon by Customer and CareFusion.

- (d) **Standard Interfaces.** CareFusion will provide scheduled Interface changes, upgrades, and conversions to standard ADT and billing Interfaces for pharmacy and materials management, as well as profile Interfaces for pharmacies where the Pyxis Profile system is in place and replenishment interfaces outbound only for materials management (“Interface Changes”), subject to the following conditions: (i) Interface Changes consist only of adding features and/or functionality to the standard Interfaces; (ii) CareFusion will implement such Interface Changes either remotely or on-site, in its sole discretion, (iii) host conversion Interface Changes will be provided at no additional charge during the Support Term, and (iv) Interface Change conversion assistance to accommodate migrations to new host environments will be provided at no charge during the Support Term; additional interface conversion assistance can be provided as requested by Customer at then-current prices, 24/7 with the exception of federal holidays recognized by CareFusion, less applicable discounts.

Host conversion and Interface modification assistance is provided Monday through Sunday, 24 hours a day as requested by customer with the exception of holidays recognized by CareFusion. Assistance during recognized holidays is available at CareFusion’s established Time and Material rates.

- (e) **Virtual Machine (VM) Deployments.** For Integral Software deployed using VM technology, if the applicable relational database server (e.g., MSSQL) instance is housed locally in the CareFusion-provided VM container, then CareFusion will provide services for (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the applicable relational database server (e.g., MSSQL). If the applicable relational database server instance is not housed locally in the CareFusion-provided VM container then Customer shall have these obligations as set forth in Section 11.1 (e).
- (f) **Customer Training.** CareFusion will provide training one time to a mutually agreed-upon number of designated Customer personnel to perform the activities set forth under Section 11.1, Customer Obligations item (h) Maintenance.

12. Elite Support Plan. If Customer elects CareFusion’s Elite Support Plan, then the following terms will apply and the terms set forth under the Standard Support Plan and Advanced Support Plan will not apply except as set forth herein.

12.1 Customer Obligations. Customer will be responsible for Support of the following activities:

- (a) **Server Support.** Customer will provide services for (i) Customer’s side of station and server network connectivity, (ii) customer-provided server hardware, and (iii) server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc.
- (b) **System Requirements.** Customer will provide (i) station and server environment, e.g., power and plugs, etc., (ii) Customer data center and network availability, (iii) conformance with minimum server environment requirements for the Pyxis Product(s) as set forth in an applicable Hardware Requirements Schedule, and (iv) a virtual platform approved by CareFusion for all CareFusion-provided Virtual Machine deployments as set forth in an applicable Hardware Requirements Schedule.
- (c) **Peripherals.** Customer will provide support for all non-CareFusion provided peripheral products, e.g., mobile devices.
- (d) **Data Backup.** Where applicable, Customer will implement a network data backup capability that is remote to Pyxis Product(s) and in accordance with guidelines provided by CareFusion.

12.2 CareFusion Obligations. CareFusion will be responsible for the following Support activities:

- (a) **Advanced Support Activities.** CareFusion will provide the Support activities set forth in Section 11.2 Advanced Support Plan, CareFusion Obligations, items (a) through (f).
- (b) **Customized Performance Reporting.** CareFusion will provide a quarterly report of Customer’s service call activity, TSC cases and performance related to applicable response time or Uptime guarantees within fifteen (15) business days after each calendar quarter during the Support Term.
- (c) **Station Performance Diagnostics.** CareFusion will provide annual Station Performance Diagnostics services for each Pyxis Equipment device to analyze and, where possible, improve device performance.

- (d) **Direct Access to TSC Manager Representative.** CareFusion will designate a TSC manager who will be available during CareFusion's business hours to respond to Customer's questions or concerns regarding the overall quality of TSC support.
- (e) **Direct Access to Local Service Manager.** CareFusion will designate a local CareFusion Support Service manager who will be available during business hours to discuss Customer's satisfaction with the Support Services and respond to any suggestions Customer may have for improvement.
- (f) **Software Patching.** CareFusion will schedule and deploy CareFusion-approved software patches to stations (e.g., operating system, anti-virus, and product patches). At Customer's request CareFusion will deploy applicable CareFusion product software patches to Customer-owned servers, pending Customer's and CareFusion's review of patch requirements and related system configurations.
- (g) **Station Performance Diagnostics.** For Pyxis ES Products, CareFusion will provide annual Station Performance Diagnostics services for each Pyxis ES Product to analyze and, where possible, improve device performance.
- (h) **Proactive Monitoring.** For Pyxis ES Products, CareFusion will provide continuous 24/7/365 monitoring of Pyxis ES Product performance via Remote Support Services and will proactively notify identified Customer representatives of specific alarms and events that CareFusion has acted upon either to prevent a reactive service condition or to correct a reactive condition that may have occurred.

13. Exclusions and Limitations.

13.1 External Causes. CareFusion is not obligated to perform Support for any part of a Pyxis Product which is not Properly Performing because of: (i) abuse, misuse or vandalism; (ii) unauthorized repairs, including modification, alteration and adjustment; (iii) failure of equipment not supplied by CareFusion; (iii) a computer virus or other disabling code introduced by a source other than CareFusion; (iv) any Support activity that is a Customer obligation as defined under Sections 10.1, 11.1 or 12.1 above ("Customer Obligations"); or (v) Customer prevents or refuses installation of an Update or Upgrade which Customer has purchased or is otherwise entitled to receive (collectively, "External Causes"). If Customer requests that CareFusion attempt to correct a problem with a Pyxis Product attributable to an External Cause, then CareFusion will perform repair services on a time and materials basis at CareFusion's then-current rates and prices.

13.2 Customer Equipment. CareFusion will not be obligated to provide Support for products that are not Pyxis Products, including but not limited to Customer's equipment, software and personal peripheral devices (e.g., mobile devices, printers) used in conjunction with the Pyxis Products.

13.3 Consumables. Support does not include the replacement or installation of consumables, including but not limited to batteries, paper and toner.

13.4 Limitation on Support and Maintenance Activities. Notwithstanding any other provision to the contrary set forth herein, CareFusion shall provide Support and maintenance for the Pyxis Products only with respect to the two (2) most recent Upgrades of the Software.

13.5 Additional Services. Any service not specifically identified herein as a component of the Support Plan elected by Customer under the Customer Order may be provided by CareFusion under separate agreement between the Parties at then-current Time and Materials rates for that service ("Additional Services Agreement").

14. Additional Support Terms.

14.1 Guaranteed Response Time. CareFusion guarantees that a field service representative will arrive at the location of the Pyxis Product within the timeframe set forth in the table below, calculated from the time of dispatch from TSC ("Guaranteed Response Time"). If CareFusion is solely responsible for failing to meet the Guaranteed Response Time, then as Customer's sole and exclusive remedy, CareFusion will apply the credit set forth below, provided that Customer gives written notice to CareFusion within the time period specified below. This subsection does not apply to Support cases for Integral Software only.



Support Type	Guaranteed Response Time	Written Notice to be given by Customer to CareFusion	Guaranteed Response Time Credit
Standard Plan	Within 24 hours	Within 10 days of the end of the calendar month in which dispatch occurred	5% of the Monthly Support Fee for the affected Pyxis Product(s)
Advanced Plan	Within timeframe set forth in applicable Customer Order, either 8 or 24 hours	Within 10 days of the end of the calendar month in which dispatch occurred	20% of the Monthly Support Fee for the affected Pyxis Product(s)
Elite Plan	Within four hours on 95% of onsite service dispatches that calendar month	Within 10 days of the end of the calendar month in which dispatch occurred	5% of the total Monthly Support Fee for all Pyxis Products

14.2 Uptime Guarantee. CareFusion guarantees that a Pyxis Product that is RSS-enabled (“RSS-Enabled Product”) will be Properly Performing (“Up”) no less than the percentage set forth in the table below of the total number of hours during each calendar month of the Support Term (“Uptime Guarantee”). CareFusion will determine if an RSS-Enabled Product is not Up beginning on the date and time that CareFusion identifies such product as not in service for reasons other than: (i) performance of scheduled preventative maintenance; (ii) delays caused by Customer; (iii) External Cause; or (iv) any period that Customer or Customer’s information system does not permit CareFusion to provide Support for such Pyxis Product.

Uptime will be calculated as follows:

Uptime = ((Total # of devices at a site * 24 hrs per day * # days in month)-(Total # of Service Case Hours in the month for that site))/ (Total # of devices at a site * 24 hrs per day * # days in month). “Service Case Hours” means the total number of hours required to resolve a reported issue for a Pyxis Product, from the time a case is opened by the TSC until it is closed.

If CareFusion is solely responsible for not meeting the Uptime Guarantee, then, as Customer’s sole and exclusive remedy, CareFusion will apply the credit set forth in the table below (if any) to the Total Monthly Support Fee(s) for all RSS-Enabled Pyxis Product(s) subject to the Uptime Guarantee provided that: (i) Customer gives written notice to CareFusion within the timeframe specified below; and (ii) CareFusion verifies Customer’s claim. Any credit will be applied in the month following the end of the next business quarter.

Support Type	Uptime Guarantee	Written Notice to be given by Customer to CareFusion	Uptime Guarantee Credit
Standard Plan	None	N/A	N/A
Advanced Plan	97%	Within 30 days of the end of any calendar quarter	5%
Elite Plan	97%	Within 30 days of the end of any calendar quarter	10%

14.3 Updates. “Update” means a bug fix, patch, error correction, virus update, minor enhancement or modification to existing features to maintain the security or operation of the Integral Software. During the Support Term, if CareFusion generally releases an Update to the Integral Software, then CareFusion will install the Update via RSS or by other means chosen by CareFusion and will deliver notice to Customer of the Update. Customer will promptly test the connections between the Pyxis Product and Customer’s information system.

14.4 Upgrades. “Upgrade” means a major enhancement, new feature or other improvement to the Integral Software, but does not include any hardware, Third Party Software, or any other Integral Software that CareFusion generally licenses separately. During the Support Term, if CareFusion generally releases an Upgrade to the Integral Software, then CareFusion will install the Upgrade via RSS or by other means chosen by CareFusion and will deliver notice to Customer of the Upgrade. Customer will promptly test the connections between the Pyxis Product and Customer’s information system.

15. Onsite Support. Customer may cancel scheduled onsite Support by delivering notice to TSC no less than two (2) business days prior to the start date. If Customer fails to provide such notice or otherwise prevents CareFusion from performing scheduled onsite Support, then the Guaranteed Response Time will not be honored, and the Uptime calculation will not include the Service Case Hours associated with that service call. CareFusion employees and agents (“CareFusion Personnel”) shall not handle Customer’s medications. Customer must be present and capable of monitoring CareFusion Personnel during any activity involving Pyxis Products in which medications are present. If Customer fails to do so, then Customer will reimburse CareFusion for any expenses related to re-scheduling such activity.

16. Termination for Cause by CareFusion. Notwithstanding anything to the contrary in the applicable Master Agreement, CareFusion may suspend performance of Support under this Schedule, or cancel one or more Support Terms, upon written notice if Customer: (i) fails to comply with any material term or condition under this Schedule, or fails to make any payment required pursuant to any Customer Order for Pyxis Products; and (ii) fails to cure such non-compliance within thirty (30) days (or within ten days for any past due payment) after receipt of such written notice providing full details of such non-compliance.

17. Conditional Suspension; Termination by Customer. Notwithstanding the termination provisions of the Master Agreement, if a Pyxis Product is not Properly Performing (for a reason other than an External Cause), (as such terms are defined above), for more than thirty (60) consecutive days after Customer has initially contacted the TSC to request Support on that Pyxis Product, then, upon notice from Customer to CareFusion (“Election Notice”), CareFusion will suspend the Rental Term and Support Term for the applicable Pyxis Product, beginning the month in which Customer requested such suspension (“Election Month”) and continuing until the first day of the month following the month in which the Pyxis Product becomes Properly Performing. CareFusion shall reimburse Customer the Monthly Rental and Support Fees paid by Customer for that Pyxis Product for any Election Month.

If a Pyxis Product is not Properly Performing (for a reason other than an External Cause) for more than ninety (90) consecutive days after Customer has initially contacted the TSC to request Service on that Pyxis Product, Customer may notify CareFusion of its desire to terminate the remaining Rental Term and Support Term for the applicable Pyxis Product (“Termination Notice”). CareFusion shall then (i) terminate the remaining Rental and Support Terms, effective on the first day of the month following the month that CareFusion receives such notice; and (ii) de-install and remove the applicable Pyxis Product from Customer's facility. Customer shall then have no further obligation with regard to that Pyxis Product.

18. Business Continuity. CareFusion acknowledges that Customer plans for the continuity of hospital operations during an emergency, especially sustained incidents, and that collaboration with CareFusion is necessary to maintain continuity of operations. Accordingly, Customer may contact the TSC who shall be available 24 hours a day, 7 days a week, in accordance with Sections 5 (Remote Support Services) and Section 9 (Procedure to Obtain CareFusion Support), above.

During an emergency, CareFusion shall use commercially reasonable efforts to provide Customer with available supplies, materials, equipment and/or services on a priority basis. The Parties agree that time is of the essence. The delivery and timing of delivery of CareFusion’s supplies, materials, equipment and/or services will be mutually agreed upon by the Parties at the time of order and will be determined based on availability, need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to CareFusion’s facility, operations and/or equipment, as well as resource availability, will be taken into consideration.



These terms apply to any product listed on a Customer Order that is: (i) Pyxis Pharmogistics® inventory management software, carousel or equipment; (ii) Pyxis PharmoPack® medication packaging and barcoding technology, or (iii) a Pyxis PharmoCode™ barcode labeling system (collectively, "Pharmogistics Products") provided by CareFusion to Customer pursuant to applicable Customer Agreements between the Parties. This Schedule does not apply to any other Product. The Pyxis® Products Support Terms Schedule does not apply to Pharmogistics Products.

1. Installation.

1.1 Action Plan. CareFusion will provide to Customer in writing all site preparation requirements, including physical, electrical and environmental requirements ("Site Requirements"). Taking the Site Requirements into account, Customer and CareFusion will agree in writing on an appropriate site for the proper installation of each item of Pharmogistics Product ("Installation Site").

1.2 Site Preparation. Customer will make any required modifications or improvements to the Installation Site, including, without limitation, removing doors or constructing walls. Customer will provide a receptacle for disposal of packaging material and any other debris. CareFusion will not be required to install any Pharmogistics Product until (i) each Installation Site fully complies with all Site Requirements, and (ii) Customer has obtained any required permits or authorizations ("Permits"). Upon request, Customer will provide written evidence that all Permits have been obtained. Customer is solely responsible for compliance with any applicable building codes.

1.3 Implementation Timeline. Customer and CareFusion will perform their respective implementation activities pursuant to the applicable Implementation Timeline, to be executed by the Parties with the Customer Agreement and attached thereto as a Customer Order Attachment ("Implementation Timeline"). Customer will timely perform its implementation activities (including, without limitation, delivery of medication lists) and will not delay CareFusion's performance of implementation activities. If Customer causes material delay, the Pharmogistics Products will be stored at Customer's expense until implementation activities can resume.

1.4 Implementation Fees. Subject to Section 1.6 (*Payment Terms*) of the General Terms and Conditions, above, CareFusion will invoice Customer for the installation fees for each Pharmogistics Product as stated in the Customer Order ("Implementation Fees") upon both Parties' signature of the Customer Order ("Effective Date").

1.5 Non-Cancellable Order. Customer understands and agrees that Pharmogistics Products are custom made and a Customer Order for a Pharmogistics Product is non-cancelable as of the Effective Date of the Customer Order. If Customer does not complete the installation of a Pharmogistics Product in accordance with the Pharmogistics Implementation Timeline or by an alternative mutually agreed upon date ("Order Default"), then, in addition to and without prejudice to any other remedy available at law or equity, (a) Customer shall be obligated to pay the unpaid balance of all Monthly Rental Fees in accordance with Section 9 of the Equipment Rental Schedule or, if a purchase transaction, the Net Purchase Price set forth in the Customer Order in accordance with the terms of the Pharmogistics Implementation Timeline; and (b) CareFusion will retain the Implementation Fees as damages for the Canceled Order.

1.6 Interfaces. CareFusion will develop its side of the interfaces between the Pharmogistics Software and (i) Customer's Pyxis MedStation® system, and (ii) Customer's pharmacy information system (collectively, "Pharmogistics Interfaces"). CareFusion will prepare file set-up for Customer's wholesaler system to enable re-ordering. Customer will develop any required interface between the Pharmogistics Products and Customer's computer systems, and will ensure that ADU and PhIS vendors cooperate with CareFusion and timely deliver their side of the HL-7 interfaces. CareFusion will interface with PharmoPack® packagers, but not with Customer's existing High Speed Packaging systems. CareFusion will use commercially reasonable efforts to work with Customer's other vendors to ensure Pharmogistics Interfaces perform in accordance with the Master Agreement. If non-standard interfaces are required in relation to the Pharmogistics Interfaces, then CareFusion will determine whether it can develop such interfaces at its then-current pricing, and the Parties will agree on the provision of such interfaces in writing during the implementation activities. CareFusion is not responsible for integration or interfaces other than CareFusion's side of the interfaces, including, without limitation, another vendor's software or interfaces, unless agreed to in a writing signed by both Parties.

1.7 Calibration.

(a) Within thirty (30) days of the "Planning Activity Completion Date" set forth in the Pharmogistics Implementation Timeline, Customer will provide to CareFusion a written or electronic list of all medical drugs and/or nutraceuticals to be packaged using the Pharmogistics Products (the "Pharmaceutical List").

(b) There is no charge for the initial calibration of the Pharmogistics Products prior to completion of the implementation activities for up to a maximum of the number of canisters held in the Pharmogistics Products, including any request to revise the Pharmaceutical List and re-calibrate a canister made within thirty (30) days of the Pharmaceutical List Date. If, at any

time after thirty (30) days from the Pharmaceutical List Date, Customer wishes to revise the Pharmaceutical List and re-calibrate a canister in a Pharmogistics Product to include a new medical drug or nutraceutical, then Customer will (i) deliver to CareFusion a revised Pharmaceutical List, clearly indicating the requested change(s), (ii) pay CareFusion a re-calibration fee of one hundred thirty-two dollars (\$132) per canister plus any applicable shipping and handling charges and (iii) return the canister being re-calibrated. If Customer splits its canister order by providing CareFusion thirty (30) days' notice of its split calibration order before the Pharmaceutical List Date, then Customer may have the remaining canisters calibrated within twelve (12) months from the date of Acceptance of the Pharmogistics Product ("Calibration Period"). Customer will pay for any shipping charges to and from CareFusion's calibration center for the remaining canisters to be calibrated. After the Calibration Period, Customer will pay a fee of one hundred thirty-two dollars (\$132) per canister plus any applicable shipping and handling charges. Calibration and re-calibration fees are subject to change to CareFusion's then-current rates, provided that any fee increase will not occur more than once per year.

1.8 Customer Assistance. Customer will promptly provide any assistance reasonably requested by CareFusion in connection with CareFusion's performance of its obligations, including without limitation, pre-implementation, installation, support or removal of Pharmogistics Products.

1.9 Acceptance Test. The Pharmogistics Products will be deemed to have been correctly installed and accepted ("Accepted") if they perform at the Installation Site(s) in accordance with the specifications outlined in **Exhibit A** ("Specifications"). The date upon which the Pharmogistics Products are Accepted is the "Acceptance Date."

1.10 Training.

- (a) Trained Personnel. CareFusion will provide two four (4) hour onsite training sessions held on a single day per Installation Site ("Customer Trained Personnel"). Customer may designate up to eight (8) pharmacists and/or support technicians for training at each Installation Site. Such training will be provided at a mutually-agreed time to be confirmed in writing and completed no later than thirty (30) days before the Term Begin Date ("Training Date"). Within thirty (30) days of the scheduled Training Date, Customer will provide to CareFusion: (i) the names and contact information for each of its Customer Trained Personnel; (ii) the Installation Site name and address; (iii) the total number of Pharmogistics Products to be installed at the Installation Site; and (d) confirmation of the dates and locations for training activities.
- (b) Additional Training. Any additional training will be provided by CareFusion at its then-current rates plus reasonable out-of-pocket expenses at such time and place as the Parties mutually agree.

2. Support.

2.1 Support Term. The "Support Term" for a Pharmogistics Product consists of any period of time that CareFusion agrees to support the Pharmogistics Product for Customer pursuant to the applicable Customer Order. The period of the initial Support Term for each Pharmogistics Product will be the number of months stated in the Customer Order for that Pharmogistics Product. The initial Support Term for each Pharmogistics Product will commence on the Term Begin Date stated in the Implementation Timeline applicable to that Pharmogistics Product. If there is no Implementation Timeline or if there is no Term Begin Date stated in the Implementation Timeline, then the Term Begin Date for the Support Term will be the first day of the next month following the date that such Pharmogistics Product is Accepted. Unless a Party provides at least sixty (60) days' notice of its intention not to renew the initial Support Term, the initial Support Term will continue on a month-to-month basis ("Extended Term") and the Monthly Support Fee will be based on the month-to-month rate set forth in the then-current Pyxis® products price catalog, less any applicable discounts. Either Party may terminate this continued Support Term effective upon thirty (30) days' prior written notice.

2.2 Payment of Monthly Support Fees. Customer will pay the Net Monthly Support Fee stated in the Customer Order ("Monthly Support Fee") on the first day of each month during the Support Term. CareFusion may increase the Monthly Support Fee annually by no more than the then-current Consumer Price Index for medical care plus two (2) percent, effective as of the anniversary date of the beginning of the initial Support Term.

2.3 Basic Services. CareFusion will provide the following basic support services (collectively, "Services") to Customer for each Pharmogistics Product during the Support Term.

- (a) Properly Performing; Repairs and Replacement Parts. During the Support Term, CareFusion and Customer, as applicable, will provide Services necessary to keep the Pharmogistics Products performing substantially in accordance with the specifications of the applicable Specifications ("Properly Performing"). If CareFusion determines that a Pharmogistics Product cannot be made Properly Performing through repair services, then CareFusion will replace portions of the Pharmogistics Products or restore the functionality of the Pharmogistics Software on an exchange



basis, as needed. All parts furnished by CareFusion will become components of the Pharmogistics Products. During any Extended Term, CareFusion will use commercially reasonable efforts to restore the functionality of any Pharmogistics Product which is not Properly Performing, but will have no obligation to replace the Pharmogistics Product.

- (b) Remote Support Services. CareFusion will provide remote support services (“RSS”) 24 hours a day, 365 days a year through CareFusion’s Technical Support Center (“TSC”). To permit RSS, Customer will provide continuously-connected high-speed Internet access via Secure Socket Layer (Port 443). If Customer’s system, connectivity, or personnel prevent CareFusion from performing RSS on a Pharmogistics Product, then Customer will pay CareFusion on a time and materials basis for any onsite services. Customer will permit CareFusion to install and maintain at Customer’s site the infrastructure necessary to allow the deployment of Updates and Upgrades (as defined below) by RSS.
- (c) Support Procedure. Customer Trained Personnel will be responsible for determining whether the Pharmogistics Products require any repair or maintenance services. CareFusion will provide Customer with knowledge management tools at no additional cost to determine if the reported issue is a known problem or has a known resolution. If Customer Trained Personnel determine that Pharmogistics Product Services by CareFusion are required, such personnel will call 1-877-PHARM-44 (877-742-7644) to report trouble with the Pharmogistics Products. Customer Trained Personnel will provide the following information: (i) detailed description of problem; (ii) trouble-shooting that has been performed by Customer Trained Personnel, and (iii) contact information of Customer Trained Personnel reporting the problem.
- (d) Consumables. Services do not include the acquisition, replacement or installation of consumables, including without limitation, batteries, paper, toner, printer ribbon and labels.
- (e) Preventative Maintenance. At Customer’s request, CareFusion will perform on-site preventative maintenance of Pharmogistics Products in accordance with CareFusion’s internal preventive maintenance schedule (as modified from time to time) for each Pharmogistics Product.
- (f) Software Updates and Upgrades. If CareFusion generally releases an Update or Upgrade to the Pharmogistics Software, then CareFusion will install the Update or Upgrade, deliver notice to Customer of the Update or Upgrade, and Customer will promptly perform an audit of the proper communication of transactions between the Pharmogistics Product and Customer’s information system. An “Update” will include bug fixes, patches, error corrections, virus updates, minor enhancements or modifications to existing features to maintain the security or operation of the Pharmogistics Software. An “Upgrade” will include new applications, functionality enhancements or other improvements to the Pharmogistics Software; provided however, that an Upgrade will not include any hardware, third party software, or any software that CareFusion generally licenses as a separate product from the Pharmogistics Software.

2.4 Exclusions. CareFusion has no obligation to provide any Services for Pharmogistics Products due to errors, malfunctions or defects arising from: (i) abuse, neglect or misuse; (ii) use of unauthorized parts or failure to maintain the Pharmogistics Products in accordance with CareFusion’s written instructions; (iii) installation, relocation or re-installation of the Pharmogistics Products or Pharmogistics Software by anyone other than CareFusion; (iv) unauthorized modifications, enhancements or additions made by anyone other than CareFusion; (v) causes other than ordinary use under normal conditions, including without limitation, accident, fire or water damage, air conditioning failure or humidity control failure; (vi) failure by Customer to maintain the Site Requirements; or (vii) use of the Pharmogistics Products or Pharmogistics Software with any equipment, accessories, components, consumables or software not provided by CareFusion specifically for use with such Pharmogistics Products or Pharmogistics Software (unless previously approved in writing by CareFusion). Any services provided by CareFusion with respect to any of the foregoing exclusions or for any other cause that is not attributable to CareFusion will be billed to Customer at CareFusion’s then-current rates.

3. Warranty. Notwithstanding anything to the contrary in the Master Agreement, the following provisions apply to the Pharmogistics Products:

3.1 Limited Warranty. CareFusion warrants to Customer that: (i) the Pharmogistics Products, as originally delivered by CareFusion and in normal service and under normal conditions, will be free from defects in material and workmanship and will conform with the Specifications applicable to such Pharmogistics Products for ninety (90) days from the Acceptance Date (the “Equipment Warranty”); (ii) the Pharmogistics Software, as originally delivered by CareFusion, will conform with the Specifications applicable to the Pharmogistics Software during the ninety (90) day period from the Acceptance Date; (iii) Pharmogistics Software will be free of material defects; (iv) the Pharmogistics Software is compatible with hardware provided by CareFusion and with

Customer's environment so long as Customer's environment complies with the Site Requirements; (v) that the Pharmogistics Software will not include any disablers, time-bombs, including encrypted software keys, Trojan horses and any other such virus or other instructions of any kind designed to terminate or disrupt the operation of the Pharmogistics Software (the "Software Warranty"); and (vi) all repairs made to the Pharmogistics Products will be free from defects in material and workmanship for a period of ninety (90) days after completion (the "Service Warranty," and collectively with the Equipment Warranty and Software Warranty, the "Pharmogistics Warranties").

3.2 Remedies. CareFusion's exclusive obligation and liability, and Customer's exclusive remedy, for breach of the Equipment Warranty are for CareFusion to promptly repair or replace (at its option), free of charge, the defective part(s) of the applicable Pharmogistics Product. CareFusion's exclusive obligation and liability, and Customer's exclusive remedy, for non-conformance with the applicable Specifications of the Software Warranty, are for CareFusion to promptly use reasonable efforts to correct or provide workarounds pre-approved in writing by Customer or re-install the non-conforming Pharmogistics Software, free of charge, provided that Customer has given to CareFusion sufficient details to enable CareFusion to recreate or simulate the non-conformance. CareFusion's exclusive obligation and liability, and Customer's exclusive remedy, under the Service Warranty are for CareFusion to promptly re-perform, at CareFusion's expense, the Services.

3.3 Warranty Conditions. Any claim by Customer under any of the Pharmogistics Warranties will be made promptly to CareFusion in writing prior to the expiration of the applicable Pharmogistics Warranty period set forth above. Failure by Customer to notify CareFusion prior to the end of such applicable Pharmogistics Warranty period will result in the loss by Customer of any and all benefits associated with the applicable Pharmogistics Warranty. The Pharmogistics Warranties are made to and for the benefit of Customer only. The applicable Pharmogistics Warranty period will not be extended for any reason whatsoever, including the suspension of the use of any Pharmogistics Product(s) because of repair, examination or any other reason, unless directly caused by CareFusion.

3.4 Warranty Exclusions. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH HEREIN, CAREFUSION DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES REGARDING THE PHARMOGISTICS PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING UNDER USAGE OF TRADE OR COURSE OF PERFORMANCE.

4. General.

4.1 Change in System Settings. CareFusion will notify Customer in advance of any changes to system settings to be made by CareFusion personnel, except in emergency situations, in which case CareFusion will notify Customer in writing via email within two (2) business days of such changes.

4.2 Relocation of Pharmogistics Products. Upon request, CareFusion will relocate and re-install a Pharmogistics Product at CareFusion's then-current rates provided that the new installation site meets the applicable Site Requirements and Customer has obtained any Permits. Customer will be solely responsible for, and CareFusion will have no liability or obligation with respect to, restoring the original Installation Site and the premises after the removal of any Pharmogistics Products.

Subcontractors. CareFusion may, in its sole discretion, engage one or more subcontractors to perform any of its duties, including without limitation, implementation activities, training and support, provided that CareFusion will remain responsible for any such subcontractor's performance.

Exhibit A Specifications

1. Statement of Purpose:

- 1.1. *The following document outlines and describes the functionalities for Pharmogistics® Version 1.0 software.*
- 1.2. *The following document outlines and describes the hardware functionalities for hardware elements that are essential to the proper operation of the Pharmogistics® inventory control system.*
- 1.3. Contents:
 - 1.3.1. Operational Workflow (2)
 - 1.3.2. Inventory Control (3)
 - 1.3.3. Reporting (4)

- 1.3.4. Hardware (5)
- 1.3.5. User and Role Based Security (6)

2. Operational Workflow:

- 2.1. *This section describes the operational workflow associated with order processing, special medication identification, medication file and carousel set-up, medication file maintenance, and downtime operations.*
- 2.2. Orders:
 - 2.2.1. Order types include, but are not limited to:
 - 2.2.1.1. New orders
 - 2.2.1.2. Cart-fill
 - 2.2.1.3. Missing medication or re-dispense
 - 2.2.1.4. Automated Dispensing Cabinet fills, stock-outs and critical lows, pended OMNL
 - 2.2.1.5. Remote locations
 - 2.2.1.6. Multi-part
 - 2.2.2. Medication picks must be validated by bar-code scan.
 - 2.2.3. If bar-code scan cannot be performed, a pharmacist sign-off must be available, which utilizes:
 - 2.2.3.1. ID and Password
 - 2.2.4. Must be able to stage orders based on order type prioritization.
 - 2.2.4.1. Order types are given priority during software set up.
 - 2.2.4.2. Ability to manually override to force a pick of any item at any time.
 - 2.2.5. Ability to create visible differentiation both on-screen and on-label to discern between fill types, and special medications.
- 2.3. Specific functionalities based on order type:
 - 2.3.1. ADU Filling:
 - 2.3.1.1. Global quantity rounding by med; rounding on inbound ADU transactions to round; 6 or < round to nearest 5, 7 or > round to nearest 10. Can turn-off/on at Item and/or Station Level in Pharmogistics®.
 - 2.3.2. ADU Stock-outs:
 - 2.3.2.1. Ability to disable stock-out labels based on med or location.
 - 2.3.2.2. Ability to control time delay between duplicate stock-out requests sent to carousel.
 - 2.3.3. ADU Critical-lows:
 - 2.3.3.1. Ability to control time delay between duplicate critical low requests sent to carousel.
 - 2.3.3.2. If critical low is still in transaction log will update the request to most current quantity. If already picked will ignore based a determined timeframe.
- 2.4. "Special Search" ability to locate specific transactions in the Transaction Queue
- 2.5. "Instant Pick" of any pick transaction enables priority over-ride picking of specific desired transactions
- 2.6. Manual Pick ability for non-electronic order request
- 2.7. Ability to put a single or group of transactions on "HOLD" and to individually or multi-select their release from "HOLD"
- 2.8. Timer to auto-release items on HOLD by transaction priority.
- 2.9. User deleted transactions recorded in Transaction History
- 2.10. "Special Medication" Identification:
 - 2.10.1. "Special Medications" are hospital and AHFS identified medications that require special handling. These include, but are not limited to:
 - 2.10.1.1. Look-alike, sound-alike medications (SALA/ LASA)
 - 2.10.1.2. High-Risk Medications
 - 2.10.1.3. Chemotherapy agents
 - 2.10.1.4. Hospital non-formulary medications
 - 2.10.2. Unique bin labels for special medications.
- 2.11. Mobile PC and printer technologies for managing off-carousel inventory that can also control carousels when needed.
- 2.12. Labels (dispense type and special medication identification):
 - 2.12.1. Ability to differentiate dispense types through label variation:
 - 2.12.1.1. reverse printing
 - 2.12.1.2. different fonts
 - 2.12.1.3. label border printing
- 2.13. Pharmogistics® includes and embedded WYSIWYG Label Designer
- 2.14. Designated "Exceptions Orders"
- 2.15. List barcode types available to be printed by Pharmogistics® label printers.
 - 2.15.1.1. Linear (1-D)
 - 2.15.1.2. 2-D Stacked
 - 2.15.1.3. 2-D Matrix
 - 2.15.1.4. RSS
- 2.16. Ability to set drug characteristic flags in the medication file
- 2.17. Downtime:
 - 2.17.1. Software downtime:
 - 2.17.1.1. Describe how to operate when there is a software downtime (whether scheduled or unexpected)
Utilize an alphabetic item location listing and the carousel onboard manual controls to position the carousel.
 - 2.17.2. Hardware downtime:

2.17.2.1. Describe how to operate when there is a hardware downtime (whether scheduled or unexpected)

Please see below for various scenarios

2.17.2.2. Carousels:

2.17.2.2.1. Carousel workstation: Technician has several options. They can control the carousel using another PC that is configured in the Pharmogistics software as enabled to control a carousel or they can use the mobile PC to control the carousel.

2.17.2.2.2. Carousel mechanically: the Technician will use the carousels onboard controls to position the carousel to the required shelf or will utilize the manufacturer recommended downtime instructions. The Pharmogistics® software can be operated in "Off-line Mode" which allows it to function completely normally with the exception it will not control or position the carousel shelves.

2.17.2.3. Scanners:

2.17.2.3.1. Hand-held units: - there are multiple units provided so it is highly unlikely all units will be down concurrently and there is a Scan Override option.

2.17.2.3.2. Carousel-units: follow manufacturer prescribed instructions to operate carousel.

3. Inventory Control:

3.1. This section describes the inventory control functions available in the Pharmogistics® Version 1.0 software including, but not limited to: Remote Location ordering, wholesaler purchasing, receiving, restocking, cycle counting, nursing unit returns, cost tracking, and medication expiry or recall handling.

3.2. Ordering:

3.2.1. Remote location ordering:

3.2.1.1. Remote location formularies maintained at drug ID level.

3.2.1.2. Allow satellite-based ordering to order above/below min/max, but limit to certain satellites and users.

3.2.1.3. Create a demand list in remote locations using handheld.

3.2.1.4. Create a demand list in remote locations by using web-based ordering utility with the ability to print local formulary to "walk the shelves".

3.2.1.5. Remote Location "Split Ordering" capability

3.2.2. Wholesaler Purchasing:

3.2.2.1. Allow adjustment of purchase order quantities prior to submission to wholesaler.

3.2.2.2. Ability to review meds not ordering but under max/over min as well as over max meds want to view this info at purchase order creation time-

3.2.2.3. Ability for unit dose quantity to suggest bulk order or propose to repack.

3.2.2.4. Automated inventory order development predicated on QOH, QIR, QOO, OP, Re-order Point and replenishment to PAR

3.2.2.5. Perpetual Inventory for medications including QOH, QIR, QOO, OP, PAR and Re-order Point

3.2.2.6. Supports conversions between purchasing units and dispensing units

3.2.2.7. Supports mapping of multiple NDC's to a single medication ID (in-house numbering system)

3.2.2.8. Ability to define and manage an unlimited number of inventory locations

3.2.2.9. Separate PO created for each Inventory Storage Area

3.2.2.10. Export Distributor Orders from Pharmogistics to wholesale distributor system

3.2.2.11. Ability to create distributor orders from a central or other location

3.3. Receiving:

3.3.1. Allow adjustment of restock quantity during restock function.

3.3.2. Allow stock clerks to receive simultaneously.

3.3.3. Automated process for importing wholesale distributor invoices into Pharmogistics once exported from the wholesale distributor system

3.3.4. "Auto-receive All/Post Process Exceptions" functionality (option) so distributor orders can be wheeled directly to the carousel(s) for restocking

3.3.5. "Auto-receive All/Preprocess Exceptions" functionality (option) to address order exceptions prior to wheeling distributor orders to the carousel(s) for restocking

3.3.6. "Manual Receive" (option) that enables bar code scanning of all receive items against the electronic distributor invoice, capturing LOT# and Expiration Date if embedded with the bar code or manually entered by the user when not. Receiving Label printed to facilitate presorting/staging of items by the ISA & Shelf to maximize restocking efficiency

3.3.7. Direct Distributor "PO-Flip"

3.4. Restocking:

3.4.1. Restock is a separate function from Return.

3.4.2. A bulk item and a unit of use item can be tied to the same internal medication ID.

3.4.2.1. This functionality should allow for bulk items and unit of use items to be stored in separate locations and facilitate the unit-dose re-packaging process.

3.4.2.2. Stock-to-Light & Location

3.5. Cycle Counting:

3.5.1. Electronically track cycle count activities and provide reporting capability.

3.5.2. Accept quantity "0" during cycle count.

3.5.3. Ability to schedule and force a cycle count during pick, restock, or return process.

3.6. Nursing Unit Returns:

- 3.6.1. Ability to scan returned items to simply know what carousel med needs to be returned to and to sort to bin, does not build hold queue so then can process all returns as instant returns.
- 3.6.2. Return is separate function from Restock.
- 3.6.3. Allow adjustment of return quantity during return function.
- 3.7. Cost Tracking:
 - 3.7.1. Store and track following cost fields based on NDC:
 - 3.7.1.1. Current replacement cost.
 - 3.7.1.2. Average cost by "each".
 - 3.7.1.3. Keep parent-child relationship between bulk and unit of use.
 - 3.7.1.4. Automated electronic cost import for updates from contract costs or other electronic sources.–This will be captured from invoices.–
 - 3.8. Medication Expiry and Recall Handling:
 - 3.8.1. Tracking of lot numbers and expiration dates. (Captured during Manual Distributor Order Receiving or optionally during any inventory restock/return).
 - 3.8.2. Creation of Alerts based on recalled lot number (admin will enter affected lot number and the software will search for that lot across the system. If we have received said lot number it will create a report of the possible locations – carousel, off-carousel shelving, satellites, and ADCs – based on distribution data since Lot # received.
 - 3.9. Forced cycle counts checks to limit expired medications in the carousel.
 - 3.10. Ability to identify hospital non-formulary medications:
 - 3.10.1. By using flags in the product set-up.
 - 3.10.2. Special labels during dispense.
 - 3.10.3. Bin-label identification.
- 4. **Reporting:**
 - 4.1. *This section will describe reporting capabilities and requested reports based on category. The requested reports is a running list and the expectation is that it will be expanded as needs are discovered. Customer and CareFusion will collaborate on report creation and definition on an ongoing basis.*
 - 4.2. Specific Report requests by category:
 - 4.2.1. Purchasing:
 - 4.2.1.1. Current replacement cost.
 - 4.2.1.2. Receiving History
 - 4.2.1.3. Invoiced/Received/Restocked Reconciliation Report
 - 4.2.2. Inventory:
 - 4.2.2.1. Overstock Inventory Reports
 - 4.2.2.2. Physical Inventory Valuation Reporting
 - 4.2.3. Operational Reports:
 - 4.2.3.1. Proposed list of meds needing to be repacked based on unit-dose qty.
 - 4.2.3.2. Scan override report
 - 4.2.3.3. Transaction History detail and summary reporting
 - 4.2.3.4. Workload statistics:
 - 4.2.3.4.1. Fill transactions by type, time of day and day of week.
 - 4.2.3.4.2. Employee performance reports:
 - 4.2.3.4.2.1. Overrides by employee.
 - 4.2.3.4.2.2. Picks per timeframe by user, including pick type.
 - 4.2.3.4.3. Carousel idle time by time of day.
 - 4.2.4. Medication management:
 - 4.2.4.1. Time since last cycle count.
 - 4.2.4.2. Cycle count variance
 - 4.2.4.3. Non-formulary
 - 4.2.4.4. Ability to print Remote Location Invoices and Delivery Address Labels
- 5. **Hardware:**
 - 5.1. *This section describes desired hardware functionality as it specifically relates to operations. This section WILL NOT describe the full hardware functionality.*
 - 5.2. Our current display includes the SLOT# in front of the bin, Qty and Location.
 - 5.3. Scanner capability for scanning of med vs label to validate correct med on dispense.
- 6. **User and Role Based Security:**
 - 6.1. *This section will describe the security set-up, roles, privileges and maintenance available in Pharmogistics® Version 1.0*
 - 6.2. Allow granular user-role-privilege set up.
 - 6.3. All functions at the most granular level should be available for use to create a dynamic security environment.

End of items to be included in PHARMOGISTICS® Version 1.0

I. PharmoPack® High Speed Medication Packaging and Labeling Software and System – high speed oral solid medication packaging and barcode labeling system.

Pyxis PharmoPack® Acceptance Criteria

- 1 Installation**
 - a. Packager unit is assembled and in place
 - b. All peripheral equipment is in place and secure
 - c. All equipment is set up and connected
- 2 Performance**
 - a. Software is loaded onto system
 - b. Communication with all components is verified
- 3 Packaging Performance**
 - a. Produce filled packages with all canisters with no errors
 - b. Produce filled packages with Manual Device Unit (MDU) tray with no errors
 - c. Produce filled packages with Free Shape Packaging (FSP) system with no errors
 - d. Packet edge alignment must be +/- 2mm for all tests
 - e. Packaging rate must meet or exceed 50 packages per minute
- 4 Canister Performance**
 - a. Drop three packets from each installed canister with no errors
 - b. Confirm operation of Flexible Numeric Display (FSN) and Smart Chip System
 - c. All canisters labeled with medication information
 - d. If barcode is present on canister – scan 10 times with no error
 - e. Each canister will have a desiccant installed
- 5 Printing Performance**
 - a. Print must be clear and legible
 - b. Barcodes on packages must be able to be scanned by Pharmogistics equipment
- 6 Operational Performance**
 - a. Packager accepts and processes electronic fill requests
 - b. All order types are processed and meds are dispensed correctly
 - c. MDU tray filling reports print correctly
 - d. FSP labels and reports print correctly
 - e. All machine movements occur smoothly
 - f. All indicator lights and alarms operate correctly
 - g. Canister refill notification works correctly
 - h. Inventory counts decrement when dispensed correctly
- 7 Installation**
 - a. All covers are in place and secure
 - b. All cabling is in place and secure

End of items to be tested on the Pyxis PharmoPack® System

II. PharmoCode™ Barcode Labeling Software and System – system that applies barcode labels to medications.

PharmoCode™ Acceptance Criteria

- 1 Installation**
 - a. Barcode Labeling unit is assembled and in place
 - b. All peripheral equipment is in place and secure
 - c. All equipment is set up and connected
- 2 Performance**
 - a. Software is loaded onto system
 - b. Communication with all components is verified
- 3 Barcode Labeling Performance**
 - a. Produce Circle Labels with no errors

- b. Produce Tab/Flag Labels with no errors
 - c. Produce assorted Rectangular Labels with no errors
- 4 Printing Performance**
- a. Print must be clear and legible
 - b. Barcodes on packages must be able to be scanned by Pharmogistics equipment
- 5 Installation**
- a. All covers are in place and secure
 - b. All cabling is in place and secure

End of items to be tested on the PharmoCode™

BUSINESS ASSOCIATE AGREEMENT SCHEDULE

This Business Associate Agreement ("Agreement"), effective 17 July, 2015 ("Effective Date"), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center ("Covered Entity") and CareFusion Solutions, LLC, together with its subsidiaries and related legal entities ("Business Associate") (each a "Party" and collectively the "Parties").

Business Associate provides certain services for Covered Entity ("Services") pursuant to one or more underlying agreements ("Underlying Agreement") that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity ("PHI"). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the "Privacy Rule"), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations ("HITECH"). Business Associate acknowledges that, pursuant to HITECH, to the extent Business Associate receives PHI and is a Business Associate in its performance of the Services according to the meaning set forth in 45 C.F.R. § 160.104, then 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Cal. Civil Code §§ 56 *et seq.* ("CMIA"), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. If Covered Entity is required to comply with the "Identity Theft Red Flags and Address Discrepancies under Fair and Accurate Credit Transactions Act of 2003," as promulgated and enforced by the Federal Trade Commission [16 C.F.R. Part 67811 ("Red Flag Rule")], then to the extent Business Associate is performing an activity in connection with one or more "covered accounts" (as defined in the Red Flags Rule) pursuant to the Agreement, then the Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("Red Flag Rules").

This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("E PHI"), shall be handled. The Parties further acknowledge that State statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. **DEFINITIONS**

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as set forth in the Underlying Agreement of which this Agreement is a part or requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the Standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(l);

(g) de-identify any PHI obtained by Business Associate under this Agreement pursuant to 45 C.F.R. § 164.514 and use such de-identified data in accordance with 45 C.F.R. § 164.502(d), provided that Business Associate obtains prior written approval from Covered Entity for any proposed use or disclosure that is not permitted in the Underlying Agreement. .

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only (i) as permitted or required by this Agreement or the Underlying Agreement, (ii) as otherwise Required by Law, or (iii) as otherwise expressly permitted in writing by Covered Entity;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within five (5) business days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach. Business Associate will reimburse Covered Entity for reasonable and actual expenses Covered Entity incurs in notifying Individuals, the media, and governmental entities of a Breach, including up to one (1) year of credit monitoring services for affected individuals, , to the extent caused by or attributable to Business Associate or Business Associate's

subcontractors' or agents' negligent acts or omissions (including failure to perform its obligations under this Agreement).

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to adhere to the substantially the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure as required by 45 C.F.R. § 164.528 and, within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. Business Associate shall provide the Covered Entity with the information required by 45 C.F.R. § 164.528(b)(2). In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within thirty (30) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within thirty (30) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained by Business Associate in a Designated Record Set:

(i) Upon fifteen (15) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon thirty (30) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) In the event that Business Associate is engaged to perform an activity in connection with any "covered account" as defined in 16 C.F.R. § 681.1 (as applicable to Covered Entity as a "creditor" and therefore to Business Associate as a "service provider" providing any service directly to Covered Entity), Business Associate shall comply with the Red Flag Rules, if applicable, or develop policies and procedures to detect and prevent identity theft in connection with the provision of the Services. ;

(k) To the extent permitted by law and if there is a reasonable risk that Covered Entity's PHI may need to be disclosed, notify the Covered Entity within ten (10) business days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall reasonably cooperate with the Covered Entity in such challenge. Covered Entity shall be responsible for all costs related to such cooperation, unless Business Associate is the subject of or a named party to

the investigation or litigation;

(1) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security.

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any successful Security Incident involving EPHI of which Business Associate becomes aware within five (5) business days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall have the meaning set forth at 45 C.F.R. § 164.304.. Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that this section shall constitute notice, and no additional notification to Covered Entity of such unsuccessful Security Incidents is required, provided that no such incident results in unauthorized access, use or disclosure of PHI. In the event of a successful Security Incident, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) promptly notify Business Associate in writing of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI. Upon such notice, any such limitation(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

(c) promptly notify Business Associate in writing of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Upon such notice, any such change(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

(d) promptly notify Business Associate in writing of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may

affect Business Associate's use or disclosure of PHI. Upon such notice, any such change(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice; and

(e) Promptly notify Business Associate, in writing, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Upon such notice, any such restriction(s) shall apply solely to Business Associate's use and disclosure of PHI following its receipt of the notice;

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and the applicable underlying agreement(s) granting Business Associate access to PHI and which gives rise to the breach if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(1) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. Except as otherwise provided in this Section 5.2, this Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or other applicable law or regulation is materially amended in a manner that changes the obligations of Business Associates or Covered Entity, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Notwithstanding the foregoing, if Covered Entity and Business Associate have not amended this Agreement to address a law or final regulation that becomes effective after the Effective Date and that is applicable to this Agreement, then upon the effective date of such law or regulation (or any portion thereof) this Agreement shall be amended automatically and deemed to incorporate such new or revised provisions as are necessary for this Agreement to be consistent with such

law or regulation and for Covered Entity and Business Associate to be and remain in compliance with all applicable laws and regulations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express Courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

CareFusion Solutions, LLC
3750 Torrey View Court
San Diego, CA 92130
Attn: Legal Department/BAA Compliance
Phone: 858.617.2000
Fax:

If to Covered Entity, to:

Attn: Roy D. Creamier
Phone: 831 - 783 - 2621
Fax: 831 - 757 - 2592



Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts: Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be Originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Business Associate shall indemnify, defend, and hold harmless the Covered Entity, its officers, agents, and employees from any claim asserted against Covered Entity by a third party for any actual and direct liability, loss, injury, cost, expense, penalty or damage (collectively, "Losses"), solely to the extent such Losses were directly caused by or arising out of, or in connection with, performance of this BAA by Business Associate and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the Covered Entity. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

5.8 Relationship to Underlying Services Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of the Underlying Agreement, the provision of this

Agreement shall control.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

CAREFUSION SOLUTIONS, LLC

By: *Matt G*

Print Name: *Matthew Geis*

Print Title: *Contracts*

Date: *7/17/15*

COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD MEDICAL CENTER

By:.

Print Name: *_ Roy D Creamier*

Print Title: *_ Director Materials Management*

Date: *July 10th, 2015*