

SUPPLEMENTAL SOFTWARE AND SERVICES AGREEMENT - # 3 – EXIT-WRITER

This Supplemental Software and Services Agreement (hereinafter referred to as the "Supplement") is made as of the ___ day of _____, 20__ (hereinafter referred to as the "Supplemental Software and Services Agreement Date") between Picis, Inc., having its principal office at 100 Quannapowitt Parkway, Suite 405, Wakefield, MA 01880 (hereinafter referred to as "Licensor") and the County of San Mateo and San Mateo Medical Center having its principal office at 400 County Center, Redwood City, CA 94063 and 222 West 39th Avenue, San Mateo, CA 94403 (hereinafter referred to collectively as "Licensee"), and is a supplement to the License and Services Agreement by and between Licensor and Licensee dated as of the 6th day of December, 2005 (hereinafter referred to as the "Agreement").

WHEREAS, Licensor is the manufacturer of certain Software Programs listed on Schedule A - #3 – Exit-Writer hereto and Licensee desires to license such Software Programs from Licensor;

WHEREAS, pursuant to Government Code Section 31000, Licensee may contract with independent contractors for the furnishing of Services to or four Licensee or any department thereof;

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

1. The license and use of the Software Programs indicated on Schedule A - #3 – Exit-Writer as being purchased hereunder shall be governed by and subject to the terms and conditions of the Agreement. This Supplement is hereby made part of and incorporated into the Agreement by this reference. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Agreement.
2. **Payment Terms.** Licensee agrees to pay Licensor the License Fee as follows: fifty (50%) percent on signing of the Supplemental Software and Services Agreement, and fifty (50%) on Go-Live. All invoices submitted to Licensee are due and payable to Licensor within 35 days of the invoice date.

The annual Maintenance Fees shall be due one (1) year after Go-Live of Exit-Writer and annually thereafter.

3. **Designated Facility/Facilities.** The Designated Facility/Facilities shall be the San Mateo Medical Center.
4. **Licensee Billing Address:**

County of San Mateo
Information Services Department
455 County Center, 3rd Floor
Redwood City, CA 94063

5. The parties agree to remove Epic Discharge Instructions from Schedule A - of the Agreement. Licensor will have no further obligation under the Agreement for Epic Discharge Instructions.
6. The maximum costs to Licensee for all Licensor Software Programs and Services provided under this Supplement, including all Exhibits, Supplements, and Schedules shall not exceed \$21,000 unless mutually agreed by the parties and shall increase the not-to-exceed amount under the Agreement by \$21,000. The parties will mutually determine, on a case-by-case basis, whether any future amendments will increase the cap or not change the cap set forth herein.
7. The Software Programs shall be delivered by electronic download.
8. In the event of any discrepancy between the terms of this Supplemental Software and Services Agreement and the terms of the Agreement, the terms of the Agreement shall apply.

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

LICENSOR: Picis, Inc.

LICENSEE: County of San Mateo

Signature

Signature

R. Scott Lentz
Printed Name

Printed Name

CFO
Title

Title

Date

“Effective Date”

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

- Schedule A - #3 – Exit-Writer – Pricing
- Schedule B – #3 - Exit-Writer Sublicense Agreement

SCHEDULE A to Supplemental Software and Services Agreement - #3 – EXIT-WRITER

Other Products	Fees
Exit-Writer Discharge Instructions (SKU # 2147)	\$5,000
Total Annual Maintenance Fee	\$5,000

Annual ED Census: 30,000

SCHEDULE B

<insert Exit-Writer Sublicense>

SUBLICENSE

For the use of the Exit-Writer™ Instruction Set

1. DEFINITIONS

For purposes of this Agreement:

- 1.1.** “PHA” means Parker Hill Associates, Inc., a California corporation that makes the Exit-Writer™ Patient Discharge Instruction software and its components (“EW Software”), a portion of which is being sublicensed under this Agreement.
- 1.2.** “EW Content” means the set of Emergency Medicine patient discharge instructions in English and Spanish that are a component of the EW Software.
- 1.3.** “PICIS Software” means PICIS’ proprietary Emergency Department Management System that is licensed under the master agreement to which this Sublicense is appended.

2. GRANT OF SUBLICENSE

In conjunction with and as part of its licensing of the PICIS Software to the Licensee, Picis, Inc. (“PICIS”) hereby grants to the Licensee a limited, non-exclusive, non-transferable sublicense to use the EW Content as provided to Licensee with the PICIS Software for the purpose of creating discharge instructions for distribution to patients and for related medical-record keeping purposes only at the Licensee’s locations (“Site”) designated in the PICIS master agreement (“Master Agreement”) to which this Sublicense is appended

3. OWNERSHIP

Licensee acknowledges that ownership and title to all intellectual property rights, including trademarks, copyright, and trade secret rights in the EW Content belong to Parker Hill Associates, Inc or its affiliates. Licensee may make one (1) backup copy of EW Content; otherwise, Licensee may not distribute or electronically transmit any copies of the EW Content or individual instruction documents therein, except as provided in **Section (2)**. Furthermore, Licensee is expressly prohibited from placing, or allowing to be placed, the EW Content, or any portion thereof for public availability on the Internet.

4. PAYMENTS

- 4.1** Licensee shall pay PICIS the annual license fee (“License Fee”) as stated in PICIS’ invoice to Licensee in consideration for the initial one-year term, which shall begin on the date of installation (“Install Date”) as determined by PICIS, and shall terminate one (1) year thereafter.
- 4.2** In the event of an addition, deletion, or other change in the Site(s) at which the EW Content is used, the parties shall execute an addendum to the Master Agreement indicating the altered Site provisions of this Agreement. If the total License Fee payable to PICIS increases due to any such change in the Site(s), Licensee shall pay the pro rata portion of such increase that relates to the remaining portion of the current annual license period.
- 4.3** This Agreement shall renew annually for periods of one (1) year each at the then current price designated by PICIS, unless either party gives written notice of its intent not to

renew this Agreement at least sixty (60) days prior to the end of the then current term.

5 WARRANTIES

5.1 Limited Warranties. PHA REPRESENTS AND WARRANTS TO LICENSEE THAT:

- a) PHA IS THE DEVELOPER AND OWNER OF THE EW CONTENT; AND THAT, IF ANY PARTS OF THE EW CONTENT HAVE BEEN LICENSED FROM A THIRD PARTY, THEN PHA WARRANTS THAT IT IS AUTHORIZED TO SUBLICENSE THESE PORTIONS TO LICENSEE.
- b) PICIS HAS THE AUTHORITY TO GRANT THE SUBLICENSE GRANTED BY THIS AGREEMENT.
- c) THE EW CONTENT AS DELIVERED BY PHA TO LICENSEE, AND ITS USE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, WILL NOT INFRINGE OR VIOLATE ANY COPYRIGHTS, TRADEMARKS, TRADE SECRETS OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY.
- d) THE EW CONTENT WILL PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS OR DOCUMENTATION.

5.2 Limited Remedies. If it is reasonably determined that the EW Content does infringe or violate a third party's proprietary rights,

- a) PHA shall, at its own expense and option, promptly (i) procure the right to continue using the EW Content or portion thereof; (ii) replace, modify or remove the infringing portion of the EW Content so that it becomes non-infringing, without limiting the current functionality of the EW Content; or (iii) terminate the license granted hereunder, and grant a refund of the License Fees paid, prorated based on the months remaining in the current license term.
- b) Notwithstanding the foregoing, PICIS and PHA will not be liable for a claim of infringement based on (i) use of other than the latest unmodified release of the EW Content shipped; (ii) use or combination of the EW Content with non-PICIS and PHA material if infringement would not have occurred without the combination, and (iii) use of the EW Content after receiving notice of a claim that it infringes the rights of a third party and after PICIS and PHA has provided a solution as provided in the preceding paragraph of this provision.

5.3. Disclaimer of Warranties.

- a) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE EW CONTENT IS LICENSED "AS IS". THERE ARE NO WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, CONDITIONS, GUARANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING. EACH PARTY HEREBY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY WARRANTY, CONDITION, GUARANTY OR REPRESENTATION MADE BY THE OTHER EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.
- b) Although PHA makes reasonable efforts to ensure the accuracy and reliability of the EW Content, Licensee acknowledges that PHA and PICIS, and its Affiliates, and their respective officers, directors, and employees will not be held liable for any damages suffered or incurred by Licensee or any third Person arising out of: (a) any faults, interruptions or delays in the EW Content or its delivery, (b) any use of or reliance on

the EW Content by any person, or (c) any inaccuracies, errors or omissions in the EW Content, however such faults, interruptions, delays, inaccuracies, errors or omissions arise. Furthermore, there are no warranties, guarantees or representations given to the Licensee regarding the readability or conformance to any standards of medical practice. The Licensee assumes the entire risk as to the use and consequence of using the EW Content. The Licensee is responsible for determining the correctness and appropriateness of the content of each and every discharge instruction given to each patient, based on the medical condition and needs of said patient and for making additions or corrections to individual instructions as needed, including but not limited to specific follow-up advice and warning signs not already listed in the EW Content.

6. CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

In no event shall PICIS, PHA or their affiliates, agents, suppliers, or licensors be liable to Licensee or any third party for any indirect, incidental, special or consequential damages, including, without limitation, damages arising from use of the EW Content whether or not PICIS or PHA has been informed of the possibility of damages in advance of their occurrence. Notwithstanding anything to the contrary, the aggregate and cumulative liability of PICIS, PHA, and their licensors and suppliers for direct and proven damages hereunder shall in no event exceed the amount of License Fees paid by Licensee under this Agreement during the twelve (12) months immediately prior to the date on which the alleged damages were claimed to have been incurred, regardless of the form of action or claim. This limitation applies to all causes of action in the aggregate, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, personal injury, misrepresentation and other torts.

7. INSURANCE AND INDEMNIFICATION

Licensee warrants that it carries sufficient liability insurance to cover potential claims arising from patient care as it relates to use of the EW Content. Licensee agrees to defend, indemnify and hold both PICIS and PHA, their officers, directors, employees, agents and attorneys harmless from and against any and all claims, actions, losses or damages, including fees of attorneys, accountants and other professionals, arising out of or in connection with this Agreement or use of the EW Content.

8. TERM, RENEWAL AND TERMINATION AND EXPIRATION

8.1 This Agreement shall begin on the Effective Date and, unless earlier terminated as provided herein, shall expire concurrently with the expiration or termination of its license to use the PICIS Software.

8.2 Either party may terminate this Agreement at any time upon thirty (30) days' prior written notice to the other party.

8.3 If the agreement between PICIS and PHA, which grants the right for PICIS to sublicense EW Content to Licensee, terminates or expires, then this Agreement will continue in force and Licensee may continue to use the EW Content so long as:

- i) This Agreement remains in effect, and
- ii) PICIS continues to pay the applicable License Fee to PHA on behalf of Licensee.

8.4 Upon expiration or termination of this Agreement for any reason, the Licensee agrees to destroy all copies of the EW Content in the Licensee's possession and to certify to PICIS and PHA in writing, within thirty (30) days, over the signature of Licensee's Administrator or Assistant Administrator, that it has done so; except that, Licensee may

retain one printed or electronic copy of the EW Content for medical record-keeping purposes only.

8.5 Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies under this Agreement, both at law and in equity.

9. SURVIVAL OF OBLIGATIONS

All obligations relating to the following terms will survive expiration or termination of this Agreement for any reason:

- Ownership (**Section 3**)
- Consequential Damages and Limitation of Liability (**Section 6**)
- Insurance & Indemnification (**Section 7**)
- Additional Provisions (**Section 11**)

10. ARBITRATION

Except for the right of any party to apply to a court of competent jurisdiction for injunctive relief, any controversy or claim arising out of or related to this Agreement shall be resolved by binding arbitration in Sonoma County, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including, if applicable, any expedited rules therein, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties shall mutually select an arbitrator who will be skilled in the healthcare information technology industry. The arbitrator shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The arbitrator shall not have the authority to award exemplary or punitive damages.

11. ADDITIONAL PROVISIONS

11.1 This Agreement shall be governed by the laws of the State of California without regard to any provisions relating to conflicts of laws. Any action or proceeding arising out of or related to this Agreement shall be brought exclusively in a state or federal court of competent jurisdiction located in Sonoma County, California.

11.2 In any legal proceedings to enforce this Agreement, the prevailing party will have the right to recover from the other its costs and reasonable fees, expenses of attorneys, accountants and other professionals, including costs, fees and expenses on appeal.

11.3 Assignment. Neither party may assign or transfer this Agreement, whether in whole or part, or any of its rights or obligations under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld or delayed; except that either party may transfer all its rights and obligations to a successor-in-interest upon a merger, reorganization, change of control, acquisition or sale of all or substantially all its assets. Any attempted assignment without such written consent shall be null and void

11.4 No Waiver. No waiver of any provision of this Agreement nor any rights or obligations of any party hereunder (whether by omission, delay or otherwise) will be effective unless in writing and signed by the party waiving compliance, and such waiver will be effective only in the specific instance, and for the specific purpose, stated in such writing. No waiver of breach of, or default under, any provision of this Agreement will be deemed a waiver of any other provision, or of any subsequent breach or default of the same provision, of this Agreement.

11.5 Severability. If any portion of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

11.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Agreement.

11.7 Notices. Notices, copies of notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given only if sent by certified U.S. mail (return receipt requested and postage prepaid), or by a nationally recognized priority mail service (requiring signature of receipt), in each case to the following addresses:

if to PHA:

David B. Campell, MD
Parker Hill Associates, Inc.
160 Wikiup Drive, Suite 205
Santa Rosa, CA 95403

If to PICIS:

Contract Manager
Picis, Inc.
100 Quannapowitt Parkway, Suite 405
Wakefield, MA 01880

All notices shall be effective on the date and time contained in the above described documentation of receipt, or five (5) days after the date sent, whichever is earlier.