

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

AGREEMENT FOR PROVISION OF
IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
BETWEEN
COUNTY OF ORANGE
AND
CERNER CORPORATION
MAY 2, 2012 THROUGH JUNE 30, 2013

THIS AGREEMENT entered into this 2nd day of May, 2012, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and CERNER CORPORATION a Missouri For-Profit Corporation (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

WITNESSETH:

WHEREAS, it is the desire of COUNTY to upgrade the current Integrated Records Information System (the "System") through a fixed price Agreement, which provides for the licensing and installation of software; system documentation; conversion of data; all phases of testing; on-site training per specifications; and warranties;

WHEREAS, both Parties acknowledge that a separate agreement for "Provision of Maintenance and Software Support Services" exists between the Parties and certain sections of said agreement shall be referenced and their terms and conditions incorporated herein;

WHEREAS, this Agreement specifies the contractual terms and conditions by which COUNTY will obtain the software; installation of software; conversion of data; all phases of testing as specified in the Scope of Work (SOW); warranty and on-site training, per SOW specifications, for providing the enhancement and upgrade to the System. The detailed statement of work and technical specifications for the System are fully set forth and incorporated herein as exhibit B;

WHEREAS, CONTRACTOR shall commence the work of the SOW after receipt of the Notice to Proceed Letter, which is issued by the HCA/Contract Development and Management Division upon the Orange County Board of Supervisor's approval. CONTRACTOR shall then commence work and continue until this Agreement, inclusive of any mutually agreed upon Amendments, has been performed;

WHEREAS, the term of this Agreement, providing for, but not limited to, completion of specific functionality requirements and upgrades as more fully described herein, shall commence from the date of approval by COUNTY, through June 30, 2013;

WHEREAS, the parties agree that for purposes of paragraph XV.C. of this Agreement, that CONTRACTOR is not an individual contractor;

//

1 WHEREAS, CONTRACTOR is agreeable to the rendering of such Services and licenses on the
2 terms and conditions hereinafter set forth:

3
4 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

5 //
6 //
7 //
8 //
9 //
10 //
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //
29 //
30 //
31 //
32 //
33 //
34 //
35 //
36 //
37 //

CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	//
37	//
Title Page	1
Contents	3
Referenced Contract Provisions	5
I. Alteration of Terms	6
II. Attorney's Fees	6
III. Business Associate Terms and Conditions.....	6
IV. Choice of Law and Forum	12
V. Compliance.....	13
VI. Conflict of Interest	15
VII. Confidentiality	16
VIII. Contractor Limitation of Liability.....	17
IX. Delegation and Assignment	17
X. Employee Eligibility Verification	18
XI. Facilities, Payments and Services.....	18
XII. Indemnification and Insurance	19
XIII. Information Management Tools	21
XIV. Inspections and Audits	21
XV. Licenses and Law	22
XVI. Literature and Advertisements	23
XVII. Maximum Obligation.....	23
XVIII. Nondiscrimination	23
XIX. Notices.....	24
XX. Protective Equipment	25
XXI. Records Management and Maintenance	25
XXII. Severability	26
XXIII. Status of Contractor	26
XXIV. Term	26
XXV. Termination	27
XXVI. Waiver of Default or Breach	30
XXVII. Warranties	30
XXVIII. Work Product	31
XXIX. Purchase Orders	31

1	XXX. F.O.B. Prices	32
2	XXXI. Headings Not Controlling	32
3	Signature Page	33
4		
5	<u>EXHIBIT A</u>	
6	I. Definitions	1
7	II. Patent / Copyright Materials	3
8	III. Title of Data	4
9	IV. California Public Records Act	4
10	V. Payments.....	4
11	VI. Reports and Meetings	7
12	VII. Responsibility of Contractor	7
13	VIII. Services	7
14	IX. Standards of System Performance	11
15		
16	<u>EXHIBIT B</u>	
17	Scope of Work Specifications	28 Pages
18		
19	<u>EXHIBIT C</u>	
20	Licensed, Sub-Licensed Software and Equipment Inventory.....	1 Page
21		
22	<u>EXHIBIT D</u>	
23	Cerner.com Restricted Access Agreement.....	2 Pages
24		
25	<u>EXHIBIT E</u>	
26	Pass Through Provisions.....	23 Pages
27	//	
28	//	
29	//	
30	//	
31	//	
32	//	
33	//	
34	//	
35	//	
36	//	
37	//	

REFERENCED CONTRACT PROVISIONS

Term: May 2, 2012 through June 30, 2013

Maximum Obligation: \$772,144.00

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange

Health Care Agency

Contract Development and Management

405 West 5th Street, Suite 600

Santa Ana, CA 92701

Attn: Contract Administrator

CONTRACTOR: Cerner Corporation

2800 Rockcreek Parkway

Kansas City, Missouri 64117

Attn: President

CONTRACTOR's Insurance Coverages:

Coverage Minimum Limits

Workers' Compensation Statutory

Employer's Liability \$1,000,000

Professional Liability \$1,000,000

Comprehensive General Liability Insurance \$1,000,000

Comprehensive Automobile Liability Insurance, \$1,000,000

Covering the owned, non-owned and hired (Combined Single Limit)

Automobile hazards, including any COUNTY- loaned vehicles

//

//

//

//

//

//

//

//

1 **I. ALTERATION OF TERMS**

2 A. This Agreement, together with Exhibits A., B., C., D., and E., incorporated herein by reference,
3 fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the
4 subject matter of this Agreement. All other prior proposals, offers, discussions, preliminary
5 understandings, and other communications relative to this Agreement, oral or written, shall be
6 considered superseded, and any such terms, conditions or provisions are effective only to the extent that
7 they have been negotiated as part of this Agreement.

8 B. No addition to or alteration of the terms of this Agreement or any Exhibit(s), whether written or
9 verbal, made by the parties, their officers, employees or agents shall be valid unless made in the form of
10 a written amendment to this Agreement, which shall be formally approved and executed by both parties.

11 **II. ATTORNEYS' FEES**

12 In the event that any arbitration or legal action is brought with respect to the subject of this
13 Agreement, the prevailing party in such arbitration or legal action shall be entitled to receive reasonable
14 attorneys' fees, as well as costs of the arbitration or legal action, in addition to any other relief it may
15 receive.
16

17 **III. BUSINESS ASSOCIATE TERMS AND CONDITIONS**

18 **A. GENERAL PROVISIONS AND RECITALS**

19 1. The parties agree that the terms used, but not otherwise defined below, shall have the same
20 meaning as those terms in the HIPAA as it may exist now or be hereafter amended.
21

22 2. It is agreed by both parties that CONTRACTOR is a Business Associate of COUNTY for
23 the purposes of this Agreement.

24 3. It is understood by both parties that the Health Information Technology for Economic and
25 Clinical Health Act ("HITECH") made certain provisions of the HIPAA Security and Privacy Rules
26 apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY).
27 CONTRACTOR shall therefore at all times be in compliance with the applicable provisions of both the
28 Privacy and the Security Rules as are described in Subparagraphs B.4. and B.5. below, and is
29 responsible for complying with the issued regulations for said rules to the extent applicable to
30 CONTRACTOR, as they currently exist or are hereafter amended, for purposes of safeguarding any
31 Protected Health Information (PHI) used or generated by CONTRACTOR consistent with the terms of
32 this agreement.

33 4. It is understood by both parties that the Privacy Rule does not pre-empt any state statutes,
34 rules or regulations that impose more stringent requirements with respect to confidentiality of PHI.

35 5. COUNTY wishes to disclose certain information to CONTRACTOR pursuant to the terms
36 of this Agreement, some of which may constitute PHI as defined in Subparagraph B.6. below.

37 6. COUNTY and CONTRACTOR intend to protect the privacy and provide for the security of

1 PHI disclosed to the CONTRACTOR pursuant to this Agreement, in compliance with HIPAA and the
2 regulations promulgated thereunder by the U.S. Department of Health and Human Services as they may
3 now exist or be hereafter amended.

4 B. DEFINITIONS

5 1. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information
6 in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of
7 the Protected Health Information.

8 a. For purposes of this definition, compromises the security or privacy of the Protected
9 Health Information means poses a significant risk of financial, reputational, or other harm to the
10 Individual.

11 b. A use or disclosure of Protected Health Information that does not include the identifiers
12 listed at §164.514 (e) (2), date of birth, and zip code does not compromise the security or privacy of
13 protected health information.

14 c. Breach excludes:

15 1) Any unintentional acquisition, access, or use of Protected Health Information by a
16 workforce member or person acting under the authority of a covered entity or a business associate, if
17 such acquisition, access, or use was made in good faith and within the scope of authority and does not
18 result in further use or disclosure in a manner not permitted under the Privacy Rule.

19 2) Any inadvertent disclosure by a person who is authorized to access Protected
20 Health Information at a covered entity or business associate to another person authorized to access
21 Protected Health Information at the same covered entity or business associate, or organized health care
22 arrangement in which the covered entity participates, and the information received as a result of such
23 disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.

24 3) A disclosure of Protected Health Information where a covered entity or business
25 associate has a good faith belief that an unauthorized person to whom the disclosure was made would
26 not reasonably have been able to retain such information.

27 2. "Designated Record Set" shall have the meaning given to such term under the Privacy Rule,
28 including, but not limited to, 45 CFR Section 164.501.

29 3. "Individual" shall have the meaning given to such term under the Privacy Rule, including,
30 but not limited to, 45 CFR Section 160.103 and shall include a person who qualifies as a personal
31 representative in accordance with 45 CFR Section 164.502(g).

32 4. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health
33 Information at 45 CFR Part 160 and Part 164, Subparts A and E.

34 5. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected
35 Health Information at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C."

36 6. "Protected Health Information" or "PHI" shall have the meaning given to such term under
37 the Privacy Rule, including, but not limited to, 45 CFR Section 160.103, as applied to the information

1 created or received by Business Associate from or on behalf of Covered Entity.

2 7. “Required by Law” shall have the meaning given to such term under the Privacy Rule,
3 including, but not limited to, 45 CFR Section 164.103.

4 8. “Secretary” shall mean the Secretary of the Department of Health and Human Services or
5 his or her designee.

6 9. “Unsecured Protected Health Information” means Protected Health Information that is not
7 rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a
8 technology or methodology specified by the Secretary of Health and Human Services in the guidance
9 issued on the HHS Web site.

10 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

11 1. CONTRACTOR agrees not to use or disclose PHI other than as permitted or required by
12 this Agreement or as required by law.

13 2. CONTRACTOR agrees to use appropriate safeguards to prevent use or disclosure of PHI
14 other than as provided for by this Agreement.

15 3. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
16 known to CONTRACTOR of a use or disclosure of PHI by CONTRACTOR in violation of the
17 requirements of this Agreement.

18 4. CONTRACTOR agrees to report to COUNTY within ten (10) business days any use or
19 disclosure of PHI not provided for by this Agreement of which CONTRACTOR becomes aware.

20 5. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it
21 provides PHI received from COUNTY, or created or received by CONTRACTOR on behalf of
22 COUNTY, agrees to the same restrictions and conditions that apply through this Agreement to
23 CONTRACTOR with respect to such information.

24 6. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
25 written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by
26 COUNTY, to an Individual in order to meet the requirements under 45 CFR Section 164.524.

27 7. CONTRACTOR agrees to make any amendment(s) to PHI in a Designated Record Set that
28 COUNTY directs or agrees to pursuant to 45 CFR Section 164.526 at the request of COUNTY or an
29 Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR
30 agrees to notify COUNTY no later than ten (10) calendar days after said amendment is completed.

31 8. For purposes of the Secretary determining COUNTY’s compliance with the Privacy Rule,
32 CONTRACTOR agrees to make internal practices, books, and records, including policies and
33 procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by
34 CONTRACTOR on behalf of COUNTY, available to COUNTY and the Secretary, in a time and
35 manner as determined by COUNTY, consistent with the direction of the Secretary.

36 9. CONTRACTOR agrees to document any disclosures of PHI and to make information
37 related to such disclosures available as would be required for COUNTY to respond to a request by an

1 Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

2 10. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY,
3 within thirty (30) day of request by COUNTY that information collected in accordance with this
4 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
5 disclosures of PHI in accordance with 45 CFR Section 164.528.

6 11. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
7 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
8 B.1.c. above.

9 D. SECURITY RULE

10 1. Security. CONTRACTOR shall establish and maintain appropriate administrative, physical
11 and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and
12 availability of electronic PHI. CONTRACTOR shall follow generally accepted system security
13 principles and the requirements of the final HIPAA rule pertaining to the security of PHI.

14 2. Agents and Subcontractors. CONTRACTOR shall ensure that any agent, including a
15 subcontractor, to whom it provides electronic PHI, agrees to implement reasonable and appropriate
16 safeguards to protect the PHI.

17 3. Security Incidents. CONTRACTOR shall report any “security incident” of which it
18 becomes aware to COUNTY. For purposes of this agreement, a security incident means the attempted
19 or successful unauthorized access, use, disclosure, modification, or destruction of information or
20 interference with system operations. This does not include trivial incidents that occur on a daily basis,
21 such as scans, “pings,” or unsuccessful attempts to penetrate computer networks or servers maintained
22 by CONTRACTOR.

23 E. BREACH DISCOVERY AND NOTIFICATION

24 1. Following the discovery of a Breach of Unsecured Protected Health Information,
25 CONTRACTOR shall notify COUNTY of such Breach, however both parties agree to a delay in the
26 notification if so advised by a law enforcement official, pursuant to 45 CFR 164.412.

27 2. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which the
28 Breach is known to the CONTRACTOR, or by exercising reasonable diligence, would have been known
29 to CONTRACTOR.

30 3. CONTRACTOR shall be deemed to have knowledge of a Breach if the Breach is known, or
31 by exercising reasonable diligence would have known, to any person who is an employee, officer, or
32 other agent of the CONTRACTOR, as determined by federal common law of agency.

33 4. CONTRACTOR shall provide the notification of the Breach of Unsecured Protected Health
34 Information without unreasonable delay, and in no case later than ten (10) business days after
35 CONTRACTOR’s discovery of a Breach.

36 5. CONTRACTOR’s notification may be written or oral, but, if oral, shall be followed by
37 written notification confirming the oral notification within twenty-four (24) hours of said notification.

1 Thereafter, CONTRACTOR shall provide written notification containing the contents stated below
2 within five (5) business days. CONTRACTOR shall be required to provide any other information
3 relevant to the Breach in writing as soon as the information is available.

4 6. CONTRACTOR's notification shall include, to the extent possible:

5 a. The identification of each Individual whose unsecured protected health information has
6 been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed
7 during the Breach,

8 b. Any other information that COUNTY is required to include in the notification to
9 Individual it must provide pursuant to 45 CFR §164.404 (c), at the time CONTRACTOR is required to
10 notify COUNTY, or promptly thereafter as this information becomes available, even after the regulatory
11 sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

12 1) A brief description of what happened, including the date of the Breach and the date
13 of the discovery of the Breach, if known;

14 2) A description of the types of Unsecured Protected Health Information that were
15 involved in the Breach (such as whether full name, social security number, date of birth, home address,
16 account number, diagnosis, disability code, or other types of information were involved);

17 3) Any steps Individuals should take to protect themselves from potential harm
18 resulting from the Breach; and

19 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
20 mitigate harm to Individuals, and to protect against any future Breaches.

21 7. The Parties may agree that CONTRACTOR shall provide notice to the Individual as
22 required in 45 CFR § 164.404 if it is reasonable to do so under the circumstances.

23 8. In the event that CONTRACTOR is responsible for a Breach of Unsecured Protected
24 Health Information, in violation of the Privacy Rule, CONTRACTOR shall have the burden of
25 demonstrating that CONTRACTOR made all notifications to COUNTY as required by the Breach
26 Notification regulations, or in the alternative, that the use or disclosure did not constitute a Breach as
27 defined in 45 CFR § 164.402.

28 9. CONTRACTOR shall maintain documentation of its risk assessment of the application of
29 an exception to demonstrate that the notification was not required in accordance with CONTRACTOR's
30 policies and procedures, but in no event less than six (6) years.

31 10. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
32 Breach to permit COUNTY to meet its notification obligations under the HITECH Act, as soon as
33 practicable, but in no event later than twenty (20) calendar days after reporting the initial Breach to the
34 COUNTY.

35 11. CONTRACTOR shall continue to provide all additional pertinent information about the
36 Breach to COUNTY as it may become available, in reporting increments of fifteen (15) calendar days
37 after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable

1 requests for further information, or follow-up information after report to COUNTY, when such request
2 is made by COUNTY.

3 12. CONTRACTOR shall bear the expense of any notifications associated with the Breach
4 should the Breach be caused due to CONTRACTOR's negligence or willful misconduct.

5 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

6 1. Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose PHI to
7 perform functions, activities, or services for, or on behalf of, COUNTY as specified in this Agreement,
8 provided that such use or disclosure would not violate the Privacy Rule if done by COUNTY.

9 2. CONTRACTOR is permitted to use PHI as necessary for the proper management
10 and administration of CONTRACTOR or to carry out legal responsibilities of CONTRACTOR.
11 (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

12 3. CONTRACTOR is permitted to disclose PHI received from COUNTY for the proper
13 management and administration of CONTRACTOR or to carry out legal responsibilities of
14 CONTRACTOR, provided:

15 a. The disclosure is required by law; or

16 b. CONTRACTOR obtains reasonable assurances from the person to whom the PHI is
17 disclosed that it will be held confidentially and used or further disclosed only as required by law or for
18 the purposes for which it was disclosed to the person, the person will use appropriate safeguards to
19 prevent unauthorized use or disclosure of the PHI, and the person immediately notifies CONTRACTOR
20 of any instance of which it is aware in which the confidentiality of the Information has been Breached.
21 (ref. 45 C.F.R. 164.504(e)(4)(ii)).

22 4. CONTRACTOR is also permitted to use or disclose PHI to provide data aggregation
23 services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of
24 COUNTY.

25 G. OBLIGATIONS OF COUNTY

26 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
27 privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may
28 affect CONTRACTOR's use or disclosure of PHI.

29 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by
30 an Individual to use or disclose PHI, to the extent that such changes may affect CONTRACTOR's use
31 or disclosure of PHI.

32 3. COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of PHI
33 that COUNTY has agreed to in accordance with 45 CFR Section 164.522, to the extent that such
34 restriction may affect CONTRACTOR's use or disclosure of PHI.

35 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that
36 would not be permissible under the Privacy Rule if done by COUNTY.

37 H. BUSINESS ASSOCIATE TERMINATION

1 1. In addition to the rights and remedies provided in Paragraph XXV of this Agreement, upon
2 COUNTY's knowledge of a material breach by CONTRACTOR of the requirements of this Paragraph,
3 COUNTY shall either:

4 a. Provide an opportunity for CONTRACTOR to cure the material breach or end the
5 violation and terminate this Agreement if CONTRACTOR does not cure the material breach or end the
6 violation within thirty (30) business days; or

7 b. Immediately terminate this Agreement if CONTRACTOR has breached a material term
8 of this Agreement and cure is not possible; or

9 c. If neither termination nor cure is feasible, COUNTY shall report the violation to the
10 Secretary of the Department of Health and Human Services.

11 2. Upon termination of this Agreement, all PHI provided by COUNTY to CONTRACTOR, or
12 created or received by CONTRACTOR on behalf of COUNTY, shall either be destroyed or returned to
13 COUNTY as provided in Paragraph XXV of this Agreement, and in conformity with the Privacy Rule.

14 a. This provision shall apply to PHI that is in the possession of subcontractors or agents of
15 CONTRACTOR.

16 b. CONTRACTOR shall retain no copies of the PHI.

17 c. In the event that CONTRACTOR determines that returning or destroying the PHI is
18 infeasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
19 destruction infeasible. Upon joint determination by COUNTY and CONTRACTOR that return or
20 destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to such
21 PHI and limit further uses and disclosures of such PHI to those purposes that make the return or
22 destruction infeasible, for so long as CONTRACTOR maintains such PHI.

23
24 **IV. CHOICE OF LAW AND FORUM**

25 A. The formation, interpretation and performance of this Agreement shall be governed by the laws
26 of the State of California, provided that no article of this Agreement shall be interpreted for or against a
27 party because that party or its legal representative drafted such article, and this Agreement shall be
28 construed as if jointly prepared by the parties. No lawsuit pertaining to any matter arising under or
29 growing out of this Agreement shall be instituted in any state other than California. Unless subject to
30 the Paragraph below, any legal proceeding with respect to this Agreement shall be filed in the
31 appropriate court of the State of California in Orange County, California.

32 B. If any dispute concerning a question of fact arising under the terms of this Agreement is not
33 disposed of within a reasonable period of time by CONTRACTOR's Project Manager and County's
34 Project Director, such matter shall be brought to the attention of COUNTY's Agency Director or his
35 designee. If agreement cannot be reached through this application, either party may assert its other
36 rights and remedies within this Agreement or within an arbitration action brought pursuant to
37 Paragraph D. hereof.

1 C. COUNTY and CONTRACTOR agree that, in the event of a dispute notwithstanding, they will
2 continue without delay to carry out all their responsibilities under this Agreement, which are not
3 affected by the dispute.

4 D. In the event of a dispute between the parties, CONTRACTOR and COUNTY agree to work
5 cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels.
6 In the event that a resolution at such management levels does not occur, either party may submit the
7 dispute to binding arbitration in Orange County, California under the then-prevailing rules of the
8 American Arbitration Association, Inc., a New York corporation. Unless either party shall object
9 arbitration shall be through a single arbitrator who shall be experienced in information technology
10 matters. Judgment upon any award in such arbitration may be entered and enforced in any court of
11 competent jurisdiction. Notwithstanding any provision of this Agreement to the contrary, each party
12 acknowledges that any breach of any of its obligations with respect to the other party's proprietary rights
13 will result in an irreparable injury for which money damages will not be an adequate remedy and that, in
14 such event, the non-breaching party shall be entitled to injunctive relief in addition to any other relief a
15 court may deem proper.

16
17 **V. COMPLIANCE**

18 A. ADMINISTRATOR has established a Compliance Program for the purpose of ensuring
19 adherence to all rules and regulations related to federal and state health care programs.

20 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant
21 ADMINISTRATOR Policies and Procedures relating to the Compliance Program.

22 2. CONTRACTOR shall ensure that its employees, subcontractors, interns, volunteers, and
23 members of Board of Directors or duly authorized agents, if appropriate, performing services directly
24 relative to this Agreement ("Covered Individuals") are made aware of ADMINISTRATOR's Policies
25 and Procedures.

26 B. CONTRACTOR has the option to adhere to ADMINISTRATOR's Compliance Program or
27 establish its own.

28 1. If CONTRACTOR elects to have its own Compliance Program then it shall submit a copy
29 of its Compliance Program, Code of Conduct, and relevant policies and procedures to
30 ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.

31 2. ADMINISTRATOR's Compliance Officer shall advise CONTRACTOR if
32 CONTRACTOR's compliance program is accepted. If CONTRACTOR's program is not accepted,
33 CONTRACTOR shall take necessary action to meet said standards or shall be asked to acknowledge
34 and agree to the ADMINISTRATOR's Code of Conduct and Compliance Program.

35 3. Upon approval of CONTRACTOR's Compliance Program by ADMINISTRATOR's
36 Compliance Officer, CONTRACTOR shall ensure that Covered Individuals are made aware of
37 CONTRACTOR's Policies and Procedures.

1 4. If CONTRACTOR elects to use its own Compliance Program, failure of CONTRACTOR
2 to submit its Compliance Program, Code of Conduct, and relevant policies and procedures shall
3 constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar
4 days of such notice from ADMINSTRATOR shall constitute grounds for termination of this Agreement
5 as to the non-complying party.

6 C. CODE OF CONDUCT - Under the direction of the ADMINISTRATOR's Office of
7 Compliance, a Code of Conduct for adherence by all ADMINISTRATOR's employees and contract
8 providers has been developed.

9 1. If CONTRACTOR elects to adhere to ADMINISTRATOR's Compliance Program, then
10 within thirty (30) calendar days of award of this Agreement, CONTRACTOR shall submit to
11 ADMINISTRATOR a signed acknowledgement and agreement that CONTRACTOR shall comply with
12 the "ADMINISTRATOR Contractor Code of Conduct."

13 2. If CONTRACTOR elects to adhere to ADMINISTRATOR's Compliance Program, then
14 failure of CONTRACTOR to timely submit the acknowledgement of the ADMINISTRATOR's
15 Contractor Code of Conduct shall constitute a material breach of this Agreement, and failure to cure
16 such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall constitute
17 grounds for termination of this Agreement as to the non-complying party.

18 D. CONTRACTOR shall screen all Covered Individuals employed or retained to provide Services
19 directly related to this Agreement to ensure that they are not designated as "Ineligible Persons," as
20 defined hereunder. Screening shall be conducted against the General Services Administration's List of
21 Parties Excluded from Federal Programs and the Health and Human Services/Office of Inspector
22 General List of Excluded Individuals/Entities.

23 1. Ineligible Person shall be any individual or entity who:

24 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in the
25 federal health care programs;

26 b. has been convicted of a criminal offense related to the provision of health care items or
27 services and has not been reinstated in the federal health care programs after a period of exclusion,
28 suspension, debarment, or ineligibility.

29 2. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
30 CONTRACTOR shall not hire or engage any Ineligible Person to provide Services directly relative to
31 this Agreement.

32 3. CONTRACTOR screens all current Covered Individuals in June of 2012 to ensure that they
33 have not become Ineligible Persons.

34 4. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
35 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
36 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual providing
37 Services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an

1 Ineligible Person.

2 5. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
3 federal and state funded health care services by contract with COUNTY in the event that they are
4 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.
5 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
6 CONTRACTOR shall remove such individual from responsibility for, or involvement with,
7 ADMINISTRATOR business operations related to this Agreement.

8 6. CONTRACTOR shall notify ADMINISTRATOR within five (5) business days if a
9 Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after
10 being sanction screened. Such individual or entity shall be promptly removed from participating in any
11 activity associated with this Agreement.

12 E. COMPLIANCE TRAINING - ADMINISTRATOR shall make General Compliance Training
13 and Provider Compliance Training, where appropriate, available to Covered Individuals.

14 1. CONTRACTOR shall use its best efforts to encourage completion by Covered Individuals
15 performing at least one hundred sixty (160) hours of Services on-site for COUNTY; provided, however,
16 that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete
17 all Compliance Trainings when offered.

18 2. Such training will be made available to Covered Individuals within thirty (30) calendar
19 days of employment or engagement.

20 3. Such training will be made available to each Covered Individual annually.

21 4. Each Covered Individual attending training shall certify, in writing, attendance at
22 compliance training. CONTRACTOR shall retain the certifications. Upon written request by
23 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

24 F. Subject to the provisions of Section XV.B., the parties hereby agree that CONTRACTOR shall
25 attempt to meet State regulations when they exceed Federal requirements, and when COUNTY notifies
26 CONTRACTOR in writing of such requirements. CONTRACTOR shall notify COUNTY in writing
27 within thirty (30) days of notice from COUNTY of CONTRACTOR'S determination if they are able to
28 meet the identified State regulations. Should CONTRACTOR be unable to meet said State regulations,
29 either Party may terminate this Agreement as outlined in Section XXV. of this Agreement.

30
31 **VI. CONFLICT OF INTEREST**

32 A. The Orange County Board of Supervisors' policy prohibits its public employees from engaging
33 in activities involving conflict of interest. CONTRACTOR shall exercise reasonable care and diligence
34 to prevent any actions or conditions that could result in a conflict with the best interest of COUNTY.
35 This obligation shall apply to CONTRACTOR, CONTRACTOR's officers, employees and agents,
36 relatives, sub-tier contractors, and third parties associated with accomplishing Services hereunder as
37 outlined in the California Political Reform Act of 1974 and Government Code 87103.

1 B. CONTRACTOR's efforts shall include, but not be limited to, establishing precautions to prevent
2 its officers, employees and agents from making, receiving, providing, or offering gifts, entertainment,
3 payments, loans, or other considerations, which could be deemed to appear to influence individuals to
4 act contrary to the best interest of COUNTY.

5
6 **VII. CONFIDENTIALITY**

7 A. All records and information concerning any and all matters referred to CONTRACTOR by
8 COUNTY shall be considered as Confidential Information and kept confidential by CONTRACTOR
9 and CONTRACTOR's officers, employees, agents, subcontractors, and sub-tiers. Confidential
10 Information obtained by either party in the performance of this Agreement shall be treated as strictly
11 confidential and shall not be used by the other for any purpose other than the performance of this
12 Agreement.

13 B. Except as expressly permitted by this Agreement, CONTRACTOR and COUNTY will not, nor
14 will they permit their respective employees, agents, attorneys or independent contractors to, disclose
15 other than as provided in this Agreement, use, copy, distribute, sell, license, publish, reproduce or
16 otherwise make available Confidential Information of the other party. CONTRACTOR and COUNTY
17 will each:

18 1. Secure and protect the other party's Confidential Information by using the same or greater
19 level of care than it uses to protect its own confidential and proprietary information of like kind, but in
20 no event, less than a reasonable degree of care, and

21 2. Advise each of their respective employees, agents, attorneys and independent contractors
22 who have access to such Confidential Information of the terms of this Section VII.

23 C. Notwithstanding the foregoing, either party may disclose the other party's Confidential
24 Information to the extent required by applicable law or regulation or by order of a court or other
25 governmental entity, in which case such party will so notify the other party as soon as practicable and in
26 any event at least thirty (30) days prior to such party making such required disclosure.

27 D. Upon execution of this Agreement and subject to the terms and conditions set forth in Exhibit
28 D., CONTRACTOR agrees to grant to COUNTY licensed access to the restricted portions of
29 Cerner.com. Cerner.com contains certain copyrighted and proprietary and confidential information.
30 COUNTY hereby agrees to take responsibility for any breach of these terms and conditions by
31 COUNTY or COUNTY's employees, officers, agents, attorneys or representatives.

32 E. Both parties do hereby agree that CONTRACTOR's client list is considered proprietary, and as
33 such CONTRACTOR shall only be obligated to supply to COUNTY, upon request, such information to
34 which CONTRACTOR has received permission from the client to do so.

35 //

36 //

37 //

VI. CONTRACTOR LIMITATION OF LIABILITY

1
2 A. Except as provided in Subparagraph XII.H. (in cases where COUNTY is liable to a third party
3 for such third party's consequential damages), in no case shall CONTRACTOR be liable for any
4 special, incidental or consequential damages based upon breach of warranty, breach of contract,
5 negligence, strict tort, or any other legal theory. Such excluded damages include, but are not limited to,
6 loss of profits, loss of savings or revenue, loss of use of the Equipment, Sublicensed Software, Licensed
7 Software, or the System of which they are part, or any associated equipment, cost of capital, cost of any
8 substitute equipment, facilities or services, downtime, the claims of third parties, and injury to property.

9 B. To the extent that any end-user warranties passed through to COUNTY contains liability
10 limitations with respect to Equipment, Sublicensed Software and Maintenance, such limitations shall
11 state the total maximum liability of CONTRACTOR (and then only to the extent that CONTRACTOR
12 can collect from the supplier for COUNTY's benefit) and each supplier with respect to Equipment,
13 Sublicensed Software and Maintenance.

14 C. Except as provided in Subparagraph XII.H., notwithstanding any other provision herein,
15 CONTRACTOR's maximum liability for all claims whatsoever arising under this Agreement shall be
16 limited to the amount paid by COUNTY to CONTRACTOR for Services under this Agreement.

IX. DELEGATION ASSIGNMENT, AND SUBCONTRACTS

17
18
19 A. CONTRACTOR may not delegate or assign the obligations hereunder, either in whole or in
20 part, without prior written consent of COUNTY; provided, however, obligations undertaken by
21 CONTRACTOR pursuant to this Agreement may be carried out by means of subcontracts, provided
22 such subcontracts meet the requirements of this Agreement as they relate to the service or activity under
23 subcontract.

24 B. For CONTRACTORS which are for-profit organizations, any change in the business structure,
25 including but not limited to, the sale or transfer of more than fifty percent (50%) of the assets or stocks
26 of CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship,
27 or a change in fifty percent (50%) or more of CONTRACTOR's directors at one time shall be deemed
28 an assignment pursuant to this Paragraph. Any attempted assignment or delegation in derogation of this
29 Paragraph shall be void.

30 C. COUNTY may assign this Agreement to any successor governmental agency or authority upon
31 written notice to CONTRACTOR, but no such assignment shall be construed to expand the permitted
32 scope of use hereunder.

33 D. In the event CONTRACTOR is allowed to subcontract, COUNTY shall look to
34 CONTRACTOR for results of its subcontractors. CONTRACTOR agrees to be responsible for all the
35 subcontractor's acts and omissions to the same extent as if the subcontractors were employees of
36 CONTRACTOR.

37 //

1 E. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
2 pursuant to this Agreement and the terms of this Agreement shall prevail over those of all such
3 subcontracts or assignments.

4 F. Nothing contained in this Paragraph shall be construed to prohibit CONTRACTOR from
5 acquiring Equipment or Sublicensed Software (or services related thereto) from the Equipment's and
6 Sublicensed Software's manufacturers or third party providers or to require CONTRACTOR to obtain
7 approval for such acquisitions.

8
9 **X. EMPLOYEE ELIGIBILITY VERIFICATION**

10 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state
11 statutes and regulations regarding the employment of aliens and others and to ensure that employees
12 performing work under this Agreement meet the citizenship or alien status requirement set forth in
13 federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work
14 hereunder, all verification and other documentation of employment eligibility status required by federal
15 or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act
16 of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended.
17 CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed
18 by the law.

19
20 **XI. FACILITIES, PAYMENTS AND SERVICES**

21 A. CONTRACTOR agrees to provide the activities and reports in accordance with Exhibit A. to
22 this Agreement. CONTRACTOR shall operate continuously throughout the term of this Agreement.

23 B. Compensation shall be in the amount and paid pursuant to the terms of Section V. of Exhibit A.
24 to this Agreement.

25 C. CONTRACTOR agrees to accept the specified compensation as full remuneration for the
26 licensing of all Licensed Software and the performing all Services and furnishing all staffing and
27 materials and other expenses called for as set forth under this Agreement; and for any reasonably
28 foreseeable difficulties, which may arise or be encountered in the execution of the Services until
29 fulfillment of this Agreement; and for performance by CONTRACTOR of all its duties and obligations
30 hereunder.

31 D. Payment shall be made to CONTRACTOR within thirty (30) calendar days upon the receipt by
32 the COUNTY's Auditor Controller of an approved invoice. COUNTY agrees to process all requests for
33 payment by CONTRACTOR within five (5) business days.

34 //
35 //
36 //
37 //

XII. INDEMNIFICATION AND INSURANCE

1
2 A. CONTRACTOR agrees to indemnify, defend and hold COUNTY and its officers, directors,
3 employees, and agents (“COUNTY INDEMNITEES”) harmless from any claims, liabilities obligations,
4 judgments, causes of actions, costs and expenses (including reasonable attorneys’ fees) which are
5 asserted against the COUNTY arising out of the use of the System by COUNTY or arising out of or
6 resulting from CONTRACTOR’s performance under this Agreement, where such injury or claim is
7 caused by the negligence of CONTRACTOR, its officers, employees or agents; provided however that
8 the foregoing indemnity shall not apply if COUNTY has not used the System in accordance with the
9 Documentation and applicable standards of good clinical practice. If judgment is entered against
10 CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active
11 negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that
12 liability will be apportioned as determined by the court. Neither party shall request a jury
13 apportionment.

14 B. COUNTY agrees to indemnify, defend and hold CONTRACTOR, its officers, employees,
15 agents, directors, members, shareholders and/or affiliates harmless from any claims, liabilities,
16 obligations, judgments, causes of actions, costs and expenses (including reasonable attorney’s fees)
17 which are asserted against CONTRACTOR arising out of the use of the System by COUNTY or
18 resulting from COUNTY’s performance under this Agreement where such injury or claim is caused by
19 the negligence of COUNTY, its officers, employees or agents; provided however, that the foregoing
20 indemnity shall not apply if COUNTY has used the System in accordance with the Documentation and
21 applicable standards of good clinical practice. If judgment is entered against COUNTY and
22 CONTRACTOR by a court of competent jurisdiction because of the concurrent active negligence of
23 CONTRACTOR, COUNTY and CONTRACTOR agree that liability will be apportioned as determined
24 by the court. Neither party shall request a jury apportionment.

25 C. Each party agrees to provide the indemnifying party with written notification of any claim
26 related to services provided by either party pursuant to this Agreement within thirty (30) calendar days
27 of notice thereof, and in the event the indemnifying party is subsequently named party to the litigation,
28 each party shall cooperate with the indemnifying party in its defense.

29 D. Without limiting CONTRACTOR’s indemnification, CONTRACTOR warrants that it shall
30 maintain in force at all times during the term of this Agreement, the policy or policies of insurance
31 covering its operations placed with reputable insurance companies in amounts as specified on Page 5 of
32 this Agreement.

33 E. COUNTY warrants that it is self-insured or maintains policies of insurance placed with
34 reputable insurance companies licensed to do business in the State of California which insures the perils
35 of bodily injury, medical, professional liability, and property damage. Upon request by
36 CONTRACTOR, COUNTY shall provide evidence of such insurance.

37 //

1 F. All insurance policies except Workers' Compensation and Employer's Liability, shall contain
2 the following clauses:

3 1. "The County of Orange is included as an additional insured with respect to the operations of
4 the named insured performed under contract with the County of Orange."

5 2. "It is agreed that any insurance maintained by the County of Orange shall apply in excess
6 of, and not contribute with, insurance provided by this policy."

7 3. "This insurance shall not be canceled, limited or non-renewed until after thirty (30)
8 calendar days written notice has been given to Orange County HCA/Contract Development and
9 Management, 405 West 5th Street, Suite 600, Santa Ana, CA 92701-4637."

10 G. Certificates of Insurance and endorsements evidencing the above coverages and clauses shall be
11 mailed to COUNTY as referenced on Page 5 of this Agreement within thirty (30) calendar days of
12 approval of this Agreement by the Orange County Board of Supervisors, and at any other time during
13 the period of this Agreement as requested by ADMINISTRATOR

14 H. CONTRACTOR warrants that it has authority to grant COUNTY licenses to use the Licensed
15 Software described in this Agreement and that the Licensed Software does not infringe upon or violate
16 any United States patent, copyright, trade secret, trademark or any other proprietary right of any third
17 party.

18 1. In the event of any claim by any third party against the COUNTY with respect to the breach
19 of the foregoing, COUNTY shall within five (5) business days notify CONTRACTOR in writing, and
20 CONTRACTOR agrees to indemnify, save harmless and defend the COUNTY at the expense of
21 CONTRACTOR from and against any and all suits, judgments, costs, damages, losses, claims, demands,
22 actions, causes of actions, proceedings, expenses or liabilities of any nature which were asserted or
23 brought against or incurred by the COUNTY arising from or out of such claim, whether or not such
24 claim is successful. CONTRACTOR shall have sole control of the defense of any such action and all
25 negotiations for its settlement or compromise; provided, however, that any settlement or compromise
26 shall provide for a full release of COUNTY.

27 2. If an injunction is obtained against COUNTY's use of any item of Licensed Software by
28 reason of an infringement described above, or if in CONTRACTOR's reasonable opinion any item of
29 Licensed Software is likely to become the subject of a claim of such infringement, CONTRACTOR will
30 at its option and at its own expense procure the right for COUNTY to continue using the item of
31 Licensed Software which is the subject of the infringement claim, replace or modify such item so that it
32 becomes non-infringing while retaining the full functionality in all material respects or grant COUNTY
33 a refund of all fees paid by the COUNTY for the Licensed Software (depreciated over a five-year,
34 straight line basis) in exchange for termination of any related license and the return of such item of
35 Licensed Software.

36 3. CONTRACTOR shall not have any obligation to COUNTY under any provision of this
37 Paragraph H if the infringement claim is based upon the use of any item of Licensed Software in

1 combination with any software program or equipment, or any part thereof, not furnished or
2 recommended in writing by CONTRACTOR, or the use of Licensed Software in a manner or
3 environment to which it is not operating in as of the Effective Date.

4 4. COUNTY'S rights under this Paragraph H constitute its sole and exclusive remedy and
5 CONTRACTOR's sole and exclusive obligations with respect to any infringement of any proprietary
6 rights of any third party claimed by virtue of any use by the COUNTY of the Licensed Software.

7
8 **XIII. INFORMATION MANAGEMENT TOOLS**

9 A. COUNTY acknowledges and agrees that CONTRACTOR has not represented that the System
10 has the ability to diagnose disease, prescribe treatment or perform other tasks that constitute the practice
11 of medicine or of other professional disciplines. COUNTY acknowledges that CONTRACTOR;

12 1. Has no control of or responsibility for COUNTY's use of the Content, and

13 2. Has no liability to any person or institution for any change made to or data or information
14 added to Content by COUNTY or any party other than CONTRACTOR.

15 B. In addition, all Content has been developed and reviewed by CONTRACTOR based upon
16 published data and the experiences of qualified professionals whenever possible; however, it is
17 COUNTY'S responsibility to validate all Content against its standard operating procedures, and all
18 federal, state and local regulations. CONTRACTOR will not be responsible for any errors,
19 misstatements, inaccuracies, or omissions in the Content delivered to COUNTY, although every effort
20 has been made to ensure its quality and accuracy. To the extent CONTRACTOR discovers a material
21 error, misstatement, inaccuracy, or omission in its Content, CONTRACTOR will notify COUNTY
22 through CONTRACTOR's standard notification procedures.

23
24 **XIV. INSPECTIONS AND AUDITS**

25 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
26 of the State of California, the Secretary of the United States Department of Health and Human Services,
27 the Comptroller General of the United States, or any other of their authorized representatives, shall have
28 access to any books, documents, and records of CONTRACTOR that are directly pertinent to this
29 Agreement, as necessary to audit and verify CONTRACTOR's charges to COUNTY hereunder. Such
30 persons may at all reasonable times inspect the records.

31 B. CONTRACTOR shall actively participate and cooperate with any person specified in
32 subparagraph A. above in any evaluation provided pursuant to this Agreement, and shall provide the
33 above-mentioned persons adequate office space to conduct such evaluation.

34 C. AUDIT RESPONSE:

35 If the audit reveals that money is payable from one party to the other, that is, reimbursement by
36 CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds
37 shall be due and payable from one party to the other within sixty (60) calendar days of receipt of the

1 audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is
 2 not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
 3 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
 4 reimbursement due COUNTY.

6 **XV. LICENSES AND LAW**

7 A. CONTRACTOR, its officers, agents, employees, and subcontractors shall, throughout the term
 8 of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and
 9 exemptions necessary for the provision of the Services hereunder and required by the laws and
 10 regulations of the United States State of California, COUNTY, and any other applicable governmental
 11 agencies. CONTRACTOR shall notify ADMINISTRATOR within five (5) business days and in writing
 12 of its inability to obtain or maintain, irrespective of the pendency of any appeal, such permits, licenses,
 13 approvals, certificates, waivers and exemptions. Said inability shall be cause for termination of this
 14 Agreement.

15 B. CONTRACTOR shall comply with all laws, rules or regulations applicable to the Services
 16 provided hereunder as any may now exist or be hereafter changed. The cost of compliance with any
 17 such laws, rules or regulations will be made free of charge to COUNTY, if made available generally and
 18 at no charge to CONTRACTOR's customer base. For federal requirements not made generally
 19 available at no charge, the cost of compliance will be prorated among CONTRACTOR's customer base
 20 in the United States. If any new requirements apply to COUNTY's state only, the cost of compliance
 21 will be prorated among CONTRACTOR's customers in that state for the applicable Services. If such
 22 requirements apply only to COUNTY's county or municipality, the cost of compliance will be charged
 23 to COUNTY, provided however that COUNTY shall provide its approval of any required changes prior
 24 to CONTRACTOR's making such changes and incurring any associated fees. With respect to the cost
 25 of compliance as described in this paragraph, the cost will be assessed to COUNTY in the form of a
 26 one-time fee. For updates to meet federal and state requirements where CONTRACTOR assesses
 27 COUNTY fees, CONTRACTOR will provide COUNTY with notice of such fee and documentation
 28 citing the applicable laws, rules and/or regulations and requiring such change.

29 **C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:**

30 1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days
 31 of the award of this Agreement:

32 a. In the case of an individual contractor, his/her name, date of birth, social security
 33 number, and residence address;

34 b. In the case of a contractor doing business in a form other than as an individual, the
 35 name, date of birth, social security number, and residence address of each individual who owns an
 36 interest of ten percent (10%) or more in the contracting entity;

37 c. A certification that CONTRACTOR has fully complied with all applicable federal and

1 state reporting requirements regarding its employees;

2 d. A certification that CONTRACTOR has fully complied with all lawfully served Wage
3 and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

4 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
5 subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
6 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
7 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement;
8 and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
9 grounds for termination of this Agreement.

10 3. It is expressly understood that this data will be transmitted to governmental agencies
11 charged with the establishment and enforcement of child support orders, or as permitted by federal
12 and/or state statute.

13
14 **XVI. LITERATURE AND ADVERTISEMENTS**

15 A. Any written information or literature, including educational or promotional materials,
16 distributed by CONTRACTOR or COUNTY to any person or organization for purposes directly or
17 indirectly related to this Agreement must be approved in advance and in writing by the other party
18 before distribution. For the purposes of this Agreement, distribution of written materials shall include,
19 but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media
20 such as the Internet.

21 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
22 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this
23 Agreement must be approved in advance and in writing by ADMINISTRATOR.

24 C. Nothing contained herein shall be construed to prohibit CONTRACTOR from showing the
25 COUNTY as a client on CONTRACTOR's client list or from reporting the transaction pursuant to
26 requirements of appropriate government agencies (e.g., the SEC).

27
28 **XVII. MAXIMUM OBLIGATION**

29 The Maximum Obligation of COUNTY for services provided in accordance with this Agreement is
30 as specified in the Referenced Contract Provisions of this Agreement.

31
32 **XVIII. NONDISCRIMINATION**

33 A. EMPLOYMENT

34 1. CONTRACTOR shall ensure that applicants are employed, and that employees are treated
35 during employment, without regard to their ethnic group identification, race, religion, ancestry, color,
36 creed, sex, marital status, national origin, age (40 and over), sexual preference, medical condition, or
37 physical or mental disability. Such action shall include, but not be limited to, the following:

1 employment, upgrade, demotion or transfer; recruitment or recruitment advertising; layoff or
 2 termination; rate of pay or other forms of compensation; and selection for training, including
 3 apprenticeship. There shall be posted in conspicuous places, available to employees and applicants for
 4 employment, notices from CONTRACTOR and/or the United States Equal Employment Opportunity
 5 Commission setting forth the provisions of Equal Opportunity clause.

6 2. All solicitations or advertisements for employees placed by or on behalf of
 7 CONTRACTOR shall state that all qualified applicants will receive consideration for employment
 8 without regard to their ethnic group identification, race, religion, ancestry, color, creed, sex, marital
 9 status, national origin, age (40 and over), sexual preference, medical condition, or physical or mental
 10 disability. Such requirement shall be deemed fulfilled by use of the phrase "an equal opportunity
 11 employer."

12 3. In the event of non-compliance with this paragraph or as otherwise provided by federal and
 13 state law, this Agreement may be terminated or suspended in whole or in part and subcontractors may be
 14 declared ineligible for further contracts involving federal or state funds.

15 B. SERVICES, BENEFITS, AND FACILITIES - CONTRACTOR shall not discriminate in the
 16 provision of Services, the allocation of benefits, or in the accommodation in facilities on the basis of
 17 ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age
 18 (40 and over), sexual preference, medical condition, or physical or mental disability in accordance with
 19 Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964 (42 U.S.C.A.
 20 §2000d); the Age Discrimination Act of 1975 (42 U.S.C.A. §6101); and Title 9, Division 4, Chapter 6,
 21 Article 1 (§10800, et seq.) of the California Code of Regulations, and all other pertinent rules and
 22 regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all
 23 may now exist or be hereafter amended or changed.

24 C. PERSONS WITH DISABILITIES - CONTRACTOR agrees to comply with the provisions of
 25 Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of
 26 discrimination against qualified persons with disabilities in all programs or activities, as implemented in
 27 Title 45, Code of Federal Regulations, Section 84.1 et seq., as they exist now or may be hereafter
 28 amended together with succeeding legislation.

29 D. RETALIATION - Neither CONTRACTOR, nor its employees or agents, shall intimidate,
 30 coerce, or take adverse action against any person for the purpose of interfering with rights secured by
 31 federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise
 32 participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights
 33 secured by federal or state law.

34 **XIX. NOTICES**

35
 36 A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements
 37 authorized or required by this Agreement shall be effective:

1 1. When written and deposited in the United States mail, first class postage prepaid and
2 addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed
3 by ADMINISTRATOR;

4 2. When faxed, transmission confirmed;

5 3. When sent by electronic mail; or

6 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel
7 Service, or other expedited delivery service.

8 B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of
9 this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed,
10 transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United
11 Parcel Service, or other expedited delivery service.

12 C. Either party, including subcontractors, shall notify the other party, in writing, upon becoming
13 aware of any occurrence of a serious nature which may expose either party or any of such other parties
14 to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of
15 negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR or any
16 subcontractors.

17 D. Any and all notices, requests, demands, and other communications contemplated, called for,
18 permitted, or required to be given hereunder shall be in writing, except through the course of the parties'
19 routine exchange of information and cooperation during the term of the Services.

20
21 **XX. PROTECTIVE EQUIPMENT**

22 COUNTY shall supply to CONTRACTOR representatives who work at or visit the COUNTY site
23 the same protective equipment and clothing that COUNTY employees use and wear when operating in
24 the same or comparable environments owned or controlled by the COUNTY.

25
26 **XXI. RECORDS MANAGEMENT AND MAINTENANCE**

27 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
28 of this Agreement, prepare, maintain and manage records appropriate to the Services provided and in
29 accordance with this Agreement and all applicable requirements.

30 B. CONTRACTOR shall ensure appropriate financial records related to cost reporting,
31 expenditure, revenue, billings, etc., are prepared and maintained accurately and appropriately.

32 C. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and
33 security of personally identifiable information (hereinafter "PII") and/or protected health information
34 (hereinafter "PHI"). CONTRACTOR shall, ten (10) business days of discovery of a breach of privacy
35 and/or security of PII and/or PHI by CONTRACTOR, notify ADMINISTRATOR of such breach by
36 telephone and email or facsimile.

37 D. CONTRACTOR may be required to pay any costs associated with a breach of privacy and/or

1 security of PII and/or PHI, including but not limited to the costs of notification, to the extent such breach
2 is due to CONTRACTOR's sole fault.

3 E. CONTRACTOR shall retain all financial records for a minimum of four (4) years from the
4 commencement of the contract, unless a longer period is required due to legal proceedings such as
5 litigations and/or settlement of claims.

6 F. CONTRACTOR shall make records available upon request pertaining to the costs of Services,
7 participant fees, charges, billings, and revenues available at one (1) location within the limits of the
8 County of Orange.

9 G. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR
10 may provide written approval to CONTRACTOR to maintain records in a single location, identified by
11 CONTRACTOR.

12 H. CONTRACTOR may be required to retain all records involving litigation proceedings and
13 settlement of claims respecting this Agreement for a longer term which will be agreed to by the parties.
14

15 **XXII. SEVERABILITY**

16 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
17 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
18 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
19 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain
20 in full force and effect, and to that extent the provisions of this Agreement are severable.
21

22 **XXIII. STATUS OF CONTRACTOR**

23 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
24 wholly responsible for the manner in which it performs the Services required of it by the terms of this
25 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
26 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
27 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
28 or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR
29 assumes exclusively the responsibility for the acts of its employees, agents, consultants, or
30 subcontractors as they relate to the Services to be provided during the course and scope of their
31 employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be
32 entitled to any rights or privileges of COUNTY employees and shall not be considered in any manner to
33 be COUNTY employees.
34

35 **XXIV. TERM**

36 The term of this Agreement shall commence and terminate as specified in the Referenced Contract
37 Provisions of this Agreement, unless otherwise sooner terminated as provided in this Agreement;

1 provided, however, each party shall be obligated to perform such duties as would normally extend
2 beyond this term, including but not limited to, obligations with respect to confidentiality,
3 indemnification, audits, reporting and accounting.

4
5 **XXV. TERMINATION**

6 A. **TERMINATION BY COUNTY:** COUNTY shall have the right to terminate this Agreement
7 upon written notice to CONTRACTOR upon the occurrence of any of the following events:

8 1. **Contingent Funding;**

9 a. Any obligation of COUNTY under this Agreement is contingent upon the following:

10 i. The continued availability of federal, state and county funds for reimbursement of
11 COUNTY's expenditures, and

12 ii. Inclusion of sufficient funding for the Services hereunder in the applicable budget
13 approved by the Board of Supervisors.

14 b. In the event such funding is subsequently reduced or terminated, COUNTY may
15 terminate or renegotiate this Agreement upon one hundred twenty (120) calendar days written notice
16 given CONTRACTOR. COUNTY agrees to provide CONTRACTOR reasonable notice of any changes
17 in funding and to pay CONTRACTOR for any ongoing work being performed by CONTRACTOR
18 through to a reasonable point of termination. COUNTY agrees to return the portion of any products to
19 CONTRACTOR not paid for in full should funding for this initiative be discontinued.

20 2. **Breach of Agreement;**

21 a. The failure to comply with any of the material articles, conditions, covenants, or
22 provisions of this Agreement shall be a material breach of this Agreement. In such event of a material
23 breach by CONTRACTOR, COUNTY's ADMINISTRATOR:

24 i. Shall afford CONTRACTOR written notice of the breach and ten calendar days time
25 period within which to cure the breach thereafter, unless such breach is related to an error in the
26 Licensed Software, in which case, CONTRACTOR shall have a period of sixty (60) days to cure the
27 breach; and

28 ii. May, in its sole discretion and in addition to any other remedies available at law, in
29 equity or otherwise specified in this Agreement, discontinue payment to CONTRACTOR (but
30 COUNTY will continue to perform its other obligations hereunder) for and during the period in which
31 CONTRACTOR is in breach; and

32 iii. Offset against any monies billed by CONTRACTOR but yet unpaid by COUNTY
33 those monies disallowed pursuant to the above.

34 b. In the event of a material breach by CONTRACTOR, in addition to the above and other
35 remedies, COUNTY reserves the right to terminate this Agreement in accordance with this Section
36 XXV., all of the foregoing subject to Section IV.B. hereof. Subject to Section IV.C, COUNTY may
37 continue to discontinue payments pending a decision of the Arbitrator.

1 3. Insolvency;

2 a. CONTRACTOR becomes insolvent or has availed itself of, or has been subjected to by
3 any third party, a proceeding in bankruptcy, in which CONTRACTOR is named debtor and same has
4 not been discharged or terminated within sixty (60) days;

5 b. CONTRACTOR liquidates, dissolves or ceases doing business;

6 B. TERMINATION BY CONTRACTOR: CONTRACTOR shall have the right to terminate this
7 Agreement upon written notice to COUNTY upon the occurrence of any of the following events:

8 1. Breach of Agreement;

9 a. The failure to comply with any of the material articles, conditions, covenants, or
10 provisions of this Agreement shall be a material breach of this Agreement. In such event of a material
11 breach by COUNTY, CONTRACTOR:

12 i. Shall afford COUNTY written notice of the breach and a ten (10) calendar days time
13 period within which to cure the breach thereafter; and

14 ii. May, in its sole discretion and in addition to any other remedies available at law, in
15 equity or otherwise specified in this Agreement, discontinue Services to COUNTY for and during the
16 period in which COUNTY is in breach; and

17 2. Insolvency;

18 COUNTY becomes insolvent or has availed itself, or has been subjected to by any third party, a
19 proceeding in bankruptcy, in which COUNTY is named debtor and same has not been discharged or
20 terminated within sixty (60) days.

21 3. In the event that this contract is terminated due to an uncured default of the COUNTY's
22 hereunder, CONTRACTOR may declare all contract payments to the end of the COUNTY's then
23 current fiscal year to be due, including any delinquent contract payments from prior budget years. In no
24 event shall CONTRACTOR be entitled to the remedy of acceleration of the total contract payments due
25 over the term of this Agreement. The parties acknowledge and agree that the limitations set forth above
26 are required by Article 16, section 18 of the California Constitution. Notwithstanding the foregoing,
27 CONTRACTOR may have other rights or civil remedies to seek relief due to the COUNTY's default
28 under this Agreement. Such rights or remedies may include a right to continue the COUNTY's
29 responsibility to perform under this Agreement and sue for payments as they become due.

30 C. RIGHTS UPON TERMINATION BY COUNTY FOR CAUSE;

31 If this Agreement terminates pursuant to Subparagraphs A. and/or B. of this Section the following shall
32 apply:

33 1. COUNTY shall identify all copies of the Licensed Software furnished hereunder.

34 2. Within thirty (30) days after receiving notice from COUNTY that the Licensed Software, and
35 any other products provided by CONTRACTOR that COUNTY has not paid for, are available in a
36 secure location at COUNTY's site for pick-up by CONTRACTOR, CONTRACTOR shall within thirty
37 (30) days refund to COUNTY payments made for the Licensed Software hereunder (depreciated over a

1 five-year straight line basis). COUNTY shall then within thirty (30) days release to CONTRACTOR
2 the materials described above. CONTRACTOR shall be responsible for the costs of removal of such
3 items.

4 D. ORDERLY TERMINATION;

5 1. After receipt of a written Notice of Termination by COUNTY for lack of appropriation or a
6 Notice of Termination by CONTRACTOR, CONTRACTOR shall submit to COUNTY a termination
7 invoice. Such invoice shall be submitted no later than thirty (30) days from the effective date of
8 termination, unless one or more extensions in writing are granted by COUNTY upon request of
9 CONTRACTOR made in writing within such thirty (30) day period or authorized extension thereof.
10 Upon any such termination, COUNTY agrees to pay CONTRACTOR for all products and Services
11 delivered or performed prior to termination, which meet the requirements of this Agreement provided,
12 however, that such compensation shall not exceed the total compensation set forth in this Agreement as
13 the total compensation may be reduced by payments already otherwise made and as further reduced by
14 work not terminated.

15 2. Upon such termination or other expiration of this Agreement, each party shall within thirty
16 (30) days return to the other all papers, materials and other properties and Confidential Information of
17 the other held by each for purposes of execution of this Agreement. In addition, each party will assist
18 the other party in orderly termination of this Agreement and the transfer of all assets, tangible and
19 intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.

20 E. LIQUIDATED DAMAGES:

21 1. It is agreed by and between CONTRACTOR and COUNTY that if this Agreement is not
22 fully and completely performed within the time frames as specified in the Agreement, damage will
23 thereby be sustained by COUNTY. It is agreed that CONTRACTOR will pay to COUNTY liquidated
24 damages as set forth hereunder.

25 2. The sum of one thousand dollars (\$1,000) per work day for each and every work day delay
26 due to CONTRACTOR's failure to perform the identified Services pursuant to this Agreement, provided
27 the maximum aggregate amount of the liquidated damages that CONTRACTOR shall be obligated to
28 pay is fifty thousand dollars (\$50,000). In the event liquidated damages as set forth herein are not paid
29 by CONTRACTOR, COUNTY will deduct the amount thereof from any monies due to
30 CONTRACTOR under this Agreement.

31 3. This Paragraph may be invoked at the sole option of COUNTY by notification to
32 CONTRACTOR by certified return receipt mail.

33 4. If this Agreement is not fully and completely performed within the time frames set forth
34 herein, COUNTY shall have the right to increase the time frame for such performance and to waive the
35 liquidated damages as set forth herein. Nothing herein shall be construed as giving CONTRACTOR a
36 right to extra time for performance or waive any other right or remedy of COUNTY for
37 CONTRACTOR's breach or failure to perform.

1 F. Upon termination, CONTRACTOR's and COUNTY's obligations pursuant to the Payments
2 Paragraph of Exhibit A. to this Agreement shall be adjusted to reflect the early termination. The
3 termination of this Agreement under this paragraph or under Section XXV. of this Agreement shall not
4 affect in any way the duties that either party owes the other party, pertaining to Services provided during
5 the term of this Agreement which would or could extend beyond the date this Agreement terminates.

6 G. REMEDIES NOT EXCLUSIVE: Except as otherwise expressly provided herein, the remedies
7 for breach set forth in this Agreement are cumulative as to one another and as to any others provided by
8 law, rather than exclusive; and, except as otherwise expressly provided herein the expression of certain
9 remedies in this Agreement does not preclude resort by either party to any other remedies provided by
10 law.

11 H. FORCE MAJEURE: Neither party shall be assessed with liquidated damages during any delay
12 beyond the time named for the performance of this Agreement caused by an act of God, war, civil
13 disturbance, labor dispute, or other similar cause beyond its reasonable control, provided such party
14 gives the other party written notice of the cause of the delay within ten calendar days of the start of the
15 delay. Notice shall be given in accordance with Section XIX. of this Agreement.

16 **XXVI. WAIVER OF DEFAULT OR BREACH**

17
18 Waiver of any default shall not be considered a waiver of any subsequent default. Waiver of any
19 breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach.
20 Waiver of any default or any breach shall not be considered a modification of the terms of this
21 Agreement.

22 **XXVII. WARRANTIES**

23 **A. EQUIPMENT, SOFTWARE AND SYSTEM:**

24
25 1. Pass-Through Provisions: CONTRACTOR shall assign and pass through to COUNTY any
26 Equipment and / or Sublicensed Software end-user warranties set forth by the supplier of such
27 Equipment and /or Sublicensed Software purchased through this Agreement. CONTRACTOR shall
28 interface directly with said supplier of any Equipment and / or Sublicensed Software in the event of any
29 breach of any such warranty as COUNTY may notify CONTRACTOR.

30 2. CONTRACTOR's Warranty: CONTRACTOR warrants that, beginning upon the date of
31 First Productive Use and until the time COUNTY is on Support under the separate agreement for
32 "Maintenance and Software Support Services", for Services associated with this Agreement, the
33 Licensed Software will, perform in all material respects, the functions to which both parties have
34 mutually agreed to when operated in accordance with the documentation and in the environment for
35 which CONTRACTOR designed the Licensed Software to operate.

36 In the event of a breach of this warranty, CONTRACTOR will repair or replace the failing
37 item of Licensed Software so that it does perform in accordance with such warranty. If, however, after

1 repeated efforts (not to exceed three months from the date CONTRACTOR receives written notice from
 2 COUNTY concerning the warranty breach), CONTRACTOR is unable to repair or replace the failing
 3 item of Licensed Software so that it performs in accordance with such warranty and the failing item of
 4 Licensed Software is material to the operation of the entire System, COUNTY may, at
 5 CONTRACTOR's expense, return the failing item of Licensed Software and receive a refund of all
 6 license fees paid (calculated on a five-year straight line depreciated basis) as well as any System Support
 7 fees paid for the item of Licensed Software since the failure was first reported to CONTRACTOR.
 8 COUNTY's rights under this paragraph constitute its sole and exclusive remedy and contractor's sole
 9 and exclusive obligations with respect to any breach of this warranty.

10 3. CONTRACTOR Disclaimer of All Other Warranties; The CONTRACTOR warranties
 11 contained in this Agreement and the Exhibits hereto extend to and are for the benefit of COUNTY and
 12 its permitted successors and assigns only. CONTRACTOR makes no representations or warranties
 13 concerning either any Equipment, or Sublicensed Software (or other programs supplied to COUNTY by
 14 CONTRACTOR and which are directly licensed to COUNTY by a third party, or which are supplied by
 15 a third party to COUNTY), the Licensed Software, the System, subscription services, Maintenance or
 16 Support, nor does CONTRACTOR undertake any further obligations whatsoever. The foregoing
 17 warranties are in lieu of, and CONTRACTOR hereby expressly disclaims, all other warranties, both
 18 express and implied, including but not limited to the implied warranties of merchantability and of fitness
 19 for a particular purpose and non-infringement with respect to any and all products or Services (or
 20 portions thereof provided hereunder.

21 B. Each party represents and warrants that the person executing this Agreement on behalf of and
 22 for such party is an authorized agent who has actual authority to bind such party to each and every term,
 23 condition and obligation of this Agreement and that all requirements of such party have been fulfilled to
 24 provide such actual authority.

25 26 **XXVIII. WORK PRODUCT**

27 Title to all Work Product is and will remain the sole and exclusive property of CONTRACTOR.
 28 CONTRACTOR may use such Work Product for internal purposes as well as for other clients, so long
 29 as CONTRACTOR does not use any Confidential Information belonging to COUNTY.
 30 CONTRACTOR hereby grants to COUNTY a non-exclusive, non-transferable license to use the Work
 31 Product supplied to COUNTY by CONTRACTOR for COUNTY's own internal purposes and for no
 32 other purpose whatsoever.

33 34 **XXIX. PURCHASE ORDERS**

35 If COUNTY submits its own form of purchase order to request Licensed Software, Sublicensed
 36 Software, Equipment and/or professional services specifically relating to this Agreement and including
 37 but not limited to the Services, any and all terms and conditions (except with respect to the payment

1 provisions of such purchase order) which may appear on such purchase order are of no force or effect
2 and shall be superseded by the terms and conditions of this Agreement.

3
4 **XXX. F.O.B. PRICES**

5 Equipment is priced F.O.B. the manufacturer's plant. CONTRACTOR will arrange, pre-pay, and
6 invoice COUNTY for insurance and shipping with respect to delivery of the Equipment.
7 CONTRACTOR will provide documentation substantiating such actual insurance and shipping costs
8 with the invoice. If COUNTY has agreed in writing to a shipment date, COUNTY agrees to pay all
9 cancellation, re-stocking, storage and additional transportation fees incurred as a result of failure to
10 accept delivery of the Equipment or Sublicensed Software, except if such failure to accept delivery is a
11 result of the COUNTY examining the Equipment or Sublicensed Software in a timely manner and
12 determining that it is not as contracted for in which case CONTRACTOR agrees to pay such fees.

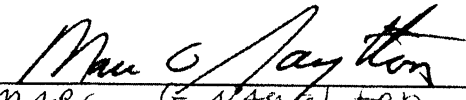
13 **XXXI. HEADINGS NOT CONTROLLING**

14 Headings used in this Agreement are for reference purposes only and shall not be considered in
15 construing this Agreement.

16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //
29 //
30 //
31 //
32 //
33 //
34 //
35 //
36 //
37 //

1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange, State
2 of California.

3
4 CERNER CORPORATION

5
6 BY: 
7 MARC G. NAUGHTON

DATED: 3-22-2012

8 TITLE: Exec VP + CFO

9
10 BY: 
11 MARC E. ELKINS

DATED: 3-22-2012

12 TITLE: ASSISTANT SECRETARY

13
14 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
15 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
16 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
17 or by-laws whereby the board of directors has empowered said authorized individual to act on its behalf by his or her
18 signature alone is required by HCA.


19
20 COUNTY OF ORANGE

21
22 BY: _____

DATED: _____

23 HEALTH CARE AGENCY

24
25 APPROVED AS TO FORM
26 OFFICE OF THE COUNTY COUNSEL
27 ORANGE COUNTY, CALIFORNIA

28
29 BY: 

DATED: 3/22/12

30 DEPUTY

31 //
32 //
33 //
34 //
35 //
36 //
37 //

1 EXHIBIT A
2 TO THE AGREEMENT FOR PROVISION OF
3 IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 MAY 2, 2012 THROUGH JUNE 30, 2013
9

10 **I. DEFINITIONS**

11 For purposes of this Agreement, the following specific definitions shall apply:

12 A. **Agreement** shall mean this Agreement, the signature page, any amendments, Exhibits and
13 Attachments.

14 B. **Attachment** shall mean any document so designated and affixed to and made part of this
15 Agreement or any Exhibit to this Agreement.

16 C. **CONTRACTOR** shall mean Cerner Corporation, a Delaware corporation, and its permitted
17 successors and assigns.

18 D. **Confidential Information** shall mean all technical, business, financial and other information
19 that is disclosed by either party to the other, whether orally or in writing, all individually-identifiable
20 patient information, information relating to the status of installation or Implementation of the System,
21 any disputes or disagreements between the parties, and all the terms and conditions of this Agreement,
22 all CONTRACTOR pricing information, the System, Work Product and all non-publicly available
23 information related to CONTRACTOR products, services and/or methodologies. "Confidential
24 Information" will not include any information:

25 1. That is publicly available through no breach of this Agreement by COUNTY or
26 CONTRACTOR,

27 2. That is independently developed or was previously known by COUNTY or CONTRACTOR,

28 3. That is rightfully acquired by COUNTY or CONTRACTOR from a third party who is not in
29 breach of an agreement to keep such information confidential, or

30 4. That is subject to disclosure pursuant to Section IV. of this Exhibit A.

31 E. **Content** means the methodologies, knowledge-based healthcare assessments and clinical
32 pathways, medical vocabularies, rules, alerts and insights provided by Cerner under this Agreement.

33 F. **COUNTY** shall mean the County of Orange, a political subdivision of the State of California.

34 G. **Data** means all (a) data that is collected, stored, or generated through the use of the Licensed
35 Software and (b) CONTRACTOR-requested data that is not collected, stored, nor generated through the
36 use of any Licensed Software, in each case requested by CONTRACTOR and subsequently transmitted
37 to, or retrieved by CONTRACTOR for storage.

1 H. **Designated Facility** shall mean the COUNTY location that will house the host data center and
2 the host Licensed Software identified in Exhibit B. of the Agreement.

3 I. **Documentation** shall mean the printed and on-line materials that assist COUNTY in using the
4 System. CONTRACTOR and its suppliers reserve the right to modify Documentation to reflect changes
5 in Equipment, Sublicensed Software and Licensed Software during the life of the Agreement, none of
6 which shall adversely affect the operation or specifications for the System.

7 J. **Effective Date** shall mean the date on which this Agreement becomes effective and is set forth
8 on the Signature Page.

9 K. **Equipment Operating System Sublicensed Software** shall mean the operating system
10 software.

11 L. **First Productive Use** shall mean with respect to a module of Licensed Software or the entire
12 System, COUNTY's first use of such module or the System, as the case may be, to send patient, health
13 plan or materials information for clinical, financial or operational use, excluding beta, testing or other
14 non-operational use.

15 M. **Implementation** shall mean the process by which the Licensed Software and System are
16 optimized for use in COUNTY's clinical, financial and administrative environment.

17 N. **Installation** shall mean the installation services for System set forth in Exhibit B. to the
18 Agreement.

19 O. **Licensed Software** shall mean the machine readable forms of specific computer software
20 programs developed by CONTRACTOR and all items of documentation supplied by CONTRACTOR
21 with respect to the computer software program portion of the Licensed Software. It also includes any
22 New Releases to which COUNTY is entitled under this Agreement, as well as any Content and
23 Computer-Based Training (CBT) computer software developed by CONTRACTOR. Except as
24 otherwise provided, "Licensed Software" shall not include source code of any kind, nor shall it include
25 Sublicensed Software or any program licensed to COUNTY by any third party.

26 P. **Maintenance** shall mean the services provided to COUNTY for Equipment and Sublicensed
27 Software as specifically set forth in the separate agreement for "Maintenance and Support Services".

28 Q. **Material Error** shall mean either an error that adversely affects operation of the entire System
29 or that creates a serious loss of functionality important in the daily operation of a single module (e.g.,
30 Blood Bank) and for which a work around is not available.

31 R. **New Release** shall mean the distinctly identified (e.g. Release HNAM.2010.XX for
32 CONTRACTOR products), comprehensive collection and packaging of an upgrade or modification to
33 the Licensed Software and supporting documentation components at a distinct point in time within a
34 product's life cycle that CONTRACTOR makes generally commercially available.

35 S. **Permitted Facility** shall mean an entity identified as such in Exhibit C. to the Agreement.

36 T. **Permitted User** shall mean authorized employees of COUNTY and its authorized third party
37 contractors and providers which have access to the System and who will have a unique password and

1 sign-on ID.

2 U. **Product Descriptions** shall mean the Software Product Descriptions (SPD's) for the System.

3 V. **Production Acceptance Period** shall mean the period of time beginning on First Productive
4 Use and continuing thereafter until the conditions set forth in Section IX.H. of this Exhibit A. are met.

5 W. **Project** shall mean the mutually agreed upon activities, timelines, responsibilities and
6 deliverables relating to an Implementation Project and detailed in Exhibit B. to this Agreement.

7 X. **Services** shall mean those services provided by CONTRACTOR to COUNTY as specifically
8 set forth in Exhibit B. to this Agreement or which may be provided under Section XXIX. of this
9 Agreement.

10 Y. **Scope of Use** shall mean the limitations on COUNTY's use of the System.

11 Z. **Sublicensed Software** shall mean all Equipment Operating System Sublicensed Software and
12 Third Party Application Sublicensed Software and/or third party content.

13 AA. **Support** shall mean CONTRACTOR's ongoing effort, as specifically set forth in the separate
14 agreement for "Maintenance and Support Services", to keep the Licensed Software in working order in
15 compliance with the Product Descriptions or to sustain the useful life of the System, including technical
16 services which require contact with COUNTY or its Permitted Users of the System in person, via
17 electronic mail or telephone, in order to help the COUNTY or its Permitted Users resolve a problem that
18 such COUNTY has reported.

19 BB. **System** shall mean the Equipment, Sublicensed Software and Licensed Software which
20 collectively constitute a discrete integrated health information system that has the functionality and
21 conforms to the needs of the COUNTY.

22 CC. **Third Party Application Sublicensed Software** shall mean any application software and
23 databases not proprietary to CONTRACTOR.

24 DD. **User** shall mean an individual person with a unique password and sign-on ID for access to the
25 System.

26 EE. **Work Product** shall mean any customized or custom computer software programs,
27 documentation, techniques, methodologies, inventions, analysis, frameworks, software, or procedures
28 developed, conceived or introduced by CONTRACTOR in the course of or as the result of
29 CONTRACTOR performing Services, professional services, Installation services, Implementation
30 services, issue resolution or other Support services, whether acting alone or in conjunction with
31 COUNTY or its employees, affiliates or others.

32
33 **II. PATENT/COPYRIGHT MATERIALS**

34 Unless otherwise expressly provided in this Agreement, CONTRACTOR shall be solely responsible
35 for clearing or securing the right to use any patented or copyrighted materials included in the Licensed
36 Software supplied by or through CONTRACTOR in the performance of this Agreement.

37 //

III. TITLE TO DATA

1 All materials, documents, data, source code for data structures, or information obtained from
2 COUNTY data files or any COUNTY medium furnished to CONTRACTOR in the performance of this
3 Agreement will at all times remain the property of COUNTY. Such data or information may not be
4 used or copied for direct or indirect use by CONTRACTOR after completion or termination of this
5 Agreement. All materials, documents, data, or information, including copies, must be returned to
6 COUNTY at the end of this Agreement.
7

IV. CALIFORNIA PUBLIC RECORDS ACT

8
9 A. Notwithstanding Section VII. of the Agreement, agreements and their derivative materials may
10 be subject to public disclosure pursuant to the California Public Records Act. Specifically, since
11 agreements and their contents become the exclusive property of COUNTY, they may be considered a
12 matter of public record and may be regarded as public records. Certain exceptions may be those
13 elements of each agreement, which are denoted trade secrets as that term is defined in California
14 Government Code Section 6254.7 and which are so marked as "Trade Secret," "Confidential" or
15 "Proprietary." If it is necessary to include proprietary/trade secret information in any of
16 CONTRACTOR's documents, COUNTY recommends that CONTRACTOR clearly and prominently
17 mark the information it believes falls into this category. COUNTY is not the owner of the trade secret,
18 nor the agent or employee of CONTRACTOR, and therefore cannot refuse to disclose the information
19 requested under a Public Record Act request. In the event of a request for such records, COUNTY shall
20 notify CONTRACTOR within forty eight (48) hours if disclosure is requested of the designated
21 property/trade secret information, in order to permit CONTRACTOR to seek a court order, or other
22 relief it deems necessary to prevent disclosure.
23

24 B. CONTRACTOR shall notify ADMINISTRATOR of any Public Record Act request no later than
25 five (5) business days. CONTRACTOR shall provide ADMINISTRATOR all information that is
26 requested by the Public Record Act request.
27

V. PAYMENTS

28 A. BASIS FOR REIMBURSEMENT - As compensation to CONTRACTOR for the Services
29 described in Exhibit B. to the Agreement, which amount is not subject to sales tax, and in accordance
30 with the quotes submitted by CONTRACTOR, COUNTY shall pay a fixed fee of seven hundred fifty
31 two thousand one hundred and forty-four dollars (\$752,144.00) for the Services and payment for
32 CONTRACTOR reimbursable expenses not to exceed twenty thousand dollars (\$20,000). This amount
33 shall be deemed payment in full for all Services, Equipment, Sublicensed Software and Licensed
34 Software purchased through CONTRACTOR specific to the SOW as outlined in Exhibit B. of this
35 Agreement and in First Productive Use through the termination date as specified in the Referenced
36 Contract Provisions of this Agreement. Said amount shall be exclusive of any Maintenance/Licensed
37

1 Software Support which shall be covered through the separate agreement for “Maintenance and Support
2 Services”.

3 B. COUNTY shall pay CONTRACTOR as set forth below, which in no event will exceed the
4 maximum monetary limit that COUNTY is obligated to pay as specified in Section XVII. of this
5 Agreement. The sum shall include; professional services, testing, and implementation of the upgrade to
6 IRIS as specified in Exhibit B. to the Agreement and County shall pay Contractor as follow:

- | | | | |
|----|----|------------------------|---------------|
| 7 | 1. | Professional Services: | \$ 606,645.00 |
| 8 | 2. | Sublicensed Software: | \$ 42,000.00 |
| 9 | 3. | Licensed Software : | \$ 20,000.00 |
| 10 | 4. | Content Fee: | \$ 44,499.00 |
| 11 | 5. | Fee For Service Hours | \$ 39,000.00 |

12 C. PAYMENT METHOD – COUNTY shall pay CONTRACTOR, within thirty (30) days of receipt
13 of a properly completed invoice. Billings are due sixty (60) calendar days after the month for which
14 billing is made. CONTRACTOR’S billings shall be on a form approved or provided by
15 ADMINISTRATOR and provide such information as is required by ADMINISTRATOR.

16 D. All billings to COUNTY shall be supported, at CONTRACTOR’S facility, by source
17 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statement,
18 canceled checks, receipts, receiving records, and records of service provided.

19 E. PAYMENT SCHEDULE

20 1. Initial Payment.

21 Twenty-five percent (25%) of the total Licensed Software, Sublicensed Software and
22 professional services fees in the amount of one hundred sixty-seven thousand one hundred sixty-one
23 dollars and twenty-five cents (\$167,161.25) shall be invoiced and payable upon submission of final
24 Project Plan. This initial payment shall be applied toward the Licensed Software and Sublicensed
25 Software amounts outlined in the Financial Overview and the remaining payment applied toward the
26 professional services fees (Fixed Fee).

27 2. Second Payment.

28 Twenty percent (20%) of the total Licensed Software, Sublicensed Software and professional
29 services fees in the amount of one hundred thirty-three thousand seven hundred twenty-nine dollars
30 (\$133,729) shall be invoiced and payable upon HP/UX Hardware upgrade into the production domain.

31 3. Third Payment.

32 Twenty percent (20%) of the total Licensed Software, Sublicensed Software and professional
33 services fees in the amount of one hundred thirty-three thousand seven hundred twenty-nine dollars
34 (\$133,729) shall be invoiced and payable upon 11g/ASM/CBO upgrade and migration into the
35 production domain.

36 4. Fourth Payment.

37 Thirty-five percent (35%) of the total Licensed Software, Sublicensed Software and professional
service fees in the amount of two hundred thirty-four thousand twenty-five dollars and seventy-five
cents (\$234,025.75) shall be invoiced and payable upon First Productive Use of the 2012.01 code.

5. Upgrade Center Content Fees.

One hundred percent (100%) of the total Upgrade Center Content fees in the amount of forty-
four thousand four hundred ninety-nine dollars (\$44,499) shall be paid upon delivery of Content.

6. Fee For Service Hours.

CONTRACTOR shall separately bill COUNTY, on a monthly basis, the actual costs incurred

1 for up to eighty (80) hours for a System Engineer at \$195 an hour and up to one hundred twenty (120)
2 hours for a Solution Architect at \$195 an hour that are directly related all Service activities under this
3 Agreement in the manner and under the terms identified in the agreement for “Maintenance and
4 Software Support Services”.

5 F. ADMINISTRATOR may withhold or delay any payment due CONTRACTOR, if
6 CONTRACTOR fails to materially comply with any provision of this Agreement; provided, however,
7 CONTRACTOR has been given written notice of the alleged breach and has failed to cure the alleged
8 breach within thirty (30) calendar days.

9 G. CONTRACTOR shall not claim reimbursement for services provided beyond the expiration
10 and/or termination of the Agreement, except as may otherwise be provided under this Agreement.

11 H. CONTRACTOR shall separately bill COUNTY, on a monthly basis, the actual costs incurred
12 for travel expenses directly related all Service activities under this Agreement in the manner and under
13 the terms identified in the agreement for “Maintenance and Software Support Services”.

14 I. CONTRACTOR shall be responsible for providing acceptable invoices to ADMINISTRATOR
15 for payment and obtaining prior approvals as required herein. Incomplete or incorrect invoices shall be
16 returned to CONTRACTOR for correction. Documentation, including but not limited to copies of
17 receipts, shall be required by administrator along with the supporting invoices.

18 J. ADMINISTRATOR shall have the right to withhold payment to CONTRACTOR for any
19 amounts attributable to the Services performed relating to this Agreement if there are any delays in the
20 timeline or meeting of target milestones, which are solely the result of CONTRACTOR’s action or
21 inaction. Payments to CONTRACTOR (less any Withhold to the extent applicable) shall resume when
22 CONTRACTOR is in compliance with this Agreement’s terms.

23 K. The parties agree that if additional work, beyond that specified in this Agreement is needed,
24 COUNTY, at its discretion, may purchase additional hours from CONTRACTOR, at the then negotiated
25 rate agreed upon by both parties (which for COUNTY’s 2011 – 2012 fiscal year is one hundred ninety
26 five dollars (\$195) per hour) and CONTRACTOR hereby acknowledges and agrees that COUNTY may
27 pay for such amounts from the Hours Pool established by COUNTY, and as identified in the agreement
28 for “Maintenance and Software Support Services”, for unforeseen changes in the scope of this
29 Agreement, to the extent that the amounts in the Hours Pool are sufficient.

30 L. The parties agree that after CONTRACTOR submits its final invoice to COUNTY for Services
31 relating to this Agreement, any remaining fee for service hours shall be credited to the COUNTY, but in
32 no event shall hours related to fixed fee Services be credited to COUNTY. Said hours shall be credited
33 to COUNTY via the Hours Pool as identified in the agreement for “Maintenance and Software Support
34 Services” either via amendment, or at the time of the agreement’s annual renewal period, and shall be
35 identified as” pre-paid” hours. The Parties further agree that all or a portion of said hours may be
36 credited against future period(s) costs associated with this Agreement upon mutual agreement of the
37 parties.

1 M. COUNTY acknowledges and agrees that CONTRACTOR may assign its interest in or otherwise
2 grant a security interest in payments due pursuant to this Agreement in whole or in part to an assignee.
3 COUNTY shall acknowledge every such assignment or granting of a security interest as shall be
4 designated by written notice given by CONTRACTOR to COUNTY. CONTRACTOR will continue to
5 perform its obligations under this Agreement to COUNTY following such assignment or granting of a
6 security interest.

7
8 **VI. REPORTS AND MEETINGS**

9 A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR, financial
10 and/or programmatic reports as requested by ADMINISTRATOR concerning CONTRACTOR's
11 activities as they relate to this Agreement. ADMINISTRATOR will be specific as to the nature of the
12 information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

13 B. In order to implement the requirement above, COUNTY's Project Director and
14 CONTRACTOR's Project Director will meet periodically at COUNTY's offices on reasonable notice to
15 discuss each party's performance and progress under this Agreement. If requested, CONTRACTOR's
16 Project Director and other project personnel shall attend all such meetings. Each party shall provide
17 such information that is requested by the other party for the purpose of monitoring progress under this
18 Agreement.

19
20 **VII. RESPONSIBILITY OF CONTRACTOR**

21 A. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely
22 completion, coordination of all Services furnished by CONTRACTOR under this Agreement.
23 CONTRACTOR shall perform such Services as may be necessary to accomplish the work required to be
24 performed under this Agreement and in accordance with this Agreement.

25 B. CONTRACTOR shall provide Services and other relevant documents necessary to complete the
26 Services and fulfill the requirements as set forth within this Agreement.

27 C. CONTRACTOR and COUNTY will make commercially reasonable efforts to make sure that all
28 persons employed by either party have satisfactory past records indicating their ability to accept the kind
29 of responsibility anticipated in the type of work and Services set forth hereunder.

30
31 **VIII. SERVICES**

32 A. CONTRACTOR shall provide Services as described in Exhibit B. to the Agreement and
33 COUNTY shall reimburse CONTRACTOR for said Services as outlined in Section V. of this Exhibit A.
34 to the Agreement.

35 B. **ADDITIONAL SERVICES**; CONTRACTOR shall charge COUNTY for any such additional
36 services or assistance as specified in Section V.K. of this Exhibit A. to the Agreement. If COUNTY
37 requests such additional services, CONTRACTOR shall inform COUNTY that the services requested

1 constitute additional services. Upon approval by COUNTY, CONTRACTOR shall provide the
2 requested service as mutually agreed upon.

3 C. SOFTWARE LICENSE:

4 1. License Grant: Subject to the terms and conditions of this Agreement, CONTRACTOR
5 grants to COUNTY a non-exclusive, non-transferable, fully paid, irrevocable and perpetual license to
6 use the Licensed Software solely as specified in this Agreement. This license shall include all New
7 Releases to the Licensed Software and hereby shall apply to the COUNTY, and all agencies thereof, and
8 all Permitted Users and Users of the COUNTY or any agencies thereof.

9 2. Scope of Use:

10 a. Permitted Users and Users may use the Licensed Software solely in accordance with the
11 "Scope of Use" specifications defined in Exhibit C. to the Agreement. COUNTY may subsequently
12 expand its scope of use and number of Permitted Users by paying CONTRACTOR's appropriate scope
13 of use expansion fee.

14 b. CONTRACTOR shall provide COUNTY with a copy of the Licensed Software.
15 COUNTY shall have the right to make sufficient back-up and archival copies to support its permitted
16 use of the Licensed Software, provided that the intellectual property contained in such copies shall
17 remain the property of CONTRACTOR. No right to use, print, copy, modify, create derivative works
18 of, adapt, translate, distribute, disclose, decompile or reverse engineer the Licensed Software is granted,
19 except as expressly set forth in this Agreement. CONTRACTOR hereby reserves all rights not
20 expressly granted hereunder.

21 c. The Licensed Software shall reside at the Designated Facility, or, upon written notice to
22 CONTRACTOR, COUNTY's designated data processing location which shall become a Designated
23 Facility upon such notice. COUNTY may, upon advance written notice to CONTRACTOR,
24 permanently move the Licensed Software to a different data processing location under the control of
25 COUNTY. COUNTY shall not outsource its operation of the Licensed Software to any third party
26 without CONTRACTOR's prior written consent.

27 3. Sublicense Grant: Subject to the terms and conditions of this Agreement, CONTRACTOR
28 grants to COUNTY a non-exclusive, non-transferable sublicense to use the Sublicensed Software on the
29 terms and conditions which are set forth for end-users in the underlying license granted to
30 CONTRACTOR by the Sublicensed Software supplier. If execution by COUNTY of a separate
31 sublicense agreement is required by a Sublicensed Software supplier, CONTRACTOR shall so inform
32 COUNTY. In such case, COUNTY shall either execute same or be denied access to that portion of the
33 Sublicensed Software. If COUNTY declines to execute the supplier's sublicense agreement,
34 CONTRACTOR shall assist COUNTY in negotiating changes to the standard terms. CONTRACTOR
35 shall have no responsibility for any impairment to Equipment, Sublicensed Software or Licensed
36 Software functionality, reliability or performance occasioned by the absence of such item of Sublicensed
37 Software until such sublicense has been obtained and, if necessary, executed by COUNTY.

1 CONTRACTOR has recommended the use of such Equipment and Sublicensed Software in connection
2 with the System and represents that the Equipment and Sublicensed Software will operate properly
3 within (i.e., be integrated to work with) the System. CONTRACTOR does not make any warranties or
4 guarantees regarding functionality, reliability or performance of the Equipment and/or Sublicensed
5 Software. In the event of any warranty, claim or support relating to any Equipment or Sublicensed
6 Software, CONTRACTOR shall interface with the manufacturer of the Equipment or licensor of such
7 Sublicensed Software to obtain all necessary support or remedies available pursuant to applicable
8 warranties from the manufacturer or licensor or CONTRACTOR's support obligations hereunder.

9 D. SOFTWARE OWNERSHIP:

10 1. Intellectual Property Rights;

11 a. Notwithstanding Sections VII. of the Agreement and IV. of this Exhibit A., COUNTY
12 acknowledges that, the Licensed Software is Confidential Information of and proprietary to
13 CONTRACTOR, and all rights and patents, copyrights, trade secrets and, trademarks existing in respect
14 of the Licensed Software are retained by CONTRACTOR. In respect to the operation, maintenance and
15 enhancement if any to the System, COUNTY will take all reasonable steps to maintain
16 CONTRACTOR's rights in the Software, at least to the same extent COUNTY takes with respect to the
17 protection of its own Confidential Information and proprietary software, which steps shall consist of
18 those set forth below in this Section. COUNTY also agrees that it will not sell, transfer, publish,
19 display, dispose or make the Licensed Software (or any copies of the Licensed Software) available to
20 third parties, except that:

21 i. Nothing contained herein limits, conditions or constrains in any respect the right and
22 the ability of COUNTY to disseminate, publish, disclose, sell or otherwise make available to any party
23 the Data collected by the System or reports of such Data generated by COUNTY using the Licensed
24 Software, in whole or in part: and,

25 ii. COUNTY may disclose the Licensed Software to any consultant, independent
26 contractor, provider or other third party retained by the COUNTY in connection with the use or
27 operation of the Licensed Software provided, however, that in such event the COUNTY shall obtain the
28 written agreement of the consultant, independent contractor, provider or other third party to whom such
29 any such disclosure is made, not to disclose any such information to third parties, copy of any such
30 information, or use any such information for any commercial purpose other than the satisfaction of
31 contractual obligations of such parties to COUNTY, and the written agreement to take reasonable steps
32 to protect the proprietary interest of CONTRACTOR in Licensed Software, consistent with the
33 obligations of the COUNTY set forth herein. The obligations of COUNTY herein do not extend or
34 apply to any information or data comprising all or part of the Licensed Software which is in the public
35 domain, by reason of any acts, activities or failures to act which are not a direct result of action or
36 inaction by COUNTY.

37 b. In connection therewith, COUNTY agrees that:

1 i. Prior to complying, COUNTY shall notify CONTRACTOR to the extent reasonably
2 practicable if COUNTY determines that the law or an order of a court or other government agency
3 requires a non-permitted disclosure or use of the Licensed Software;

4 ii. COUNTY shall maintain written records of the number and location of all copies of
5 the Licensed Software;

6 iii. COUNTY shall reproduce (and refrain from removing or destroying) all copyright
7 and proprietary rights notices that are placed upon or within the Licensed Software;

8 iv. COUNTY shall erase or otherwise destroy, prior to disposing of media, all portions
9 of the Licensed Software contained on such media; and

10 v. COUNTY shall notify CONTRACTOR within five (5) business days in writing upon
11 learning of any unauthorized disclosure or use of the Licensed Software, and cooperate fully with
12 CONTRACTOR, within five (5) business days, to cure any unauthorized disclosure or use of the
13 Licensed Software.

14 2. Possession and Use of Source Code: If Source Code is obtained by COUNTY as authorized
15 by CONTRACTOR such Source Code shall remain subject to every license restriction, proprietary
16 rights protection, and other COUNTY obligations specified in this Agreement. COUNTY may use
17 Source Code for the sole purpose of supporting its use of the Licensed Software as expressly permitted
18 under this Agreement, and for no other purpose whatsoever. When Source Code resides in a central
19 processing unit, COUNTY shall limit access to its authorized employees who have a need to know in
20 order to support the Licensed Software. COUNTY shall at all times implement strict access security
21 measures in order to prevent unauthorized disclosure, use, or removal of Source Code. COUNTY also
22 agrees that all persons with access to the Source Code shall execute confidentiality agreements
23 consistent with the obligations of COUNTY hereunder.

24 3. Software Ownership:

25 a. COUNTY will not decompile or disassemble any Licensed Software provided under this
26 Agreement. COUNTY will make and maintain copies of the Licensed Software for archiving, disaster
27 recovery, backup, fault tolerance and parallel processing procedures of the Licensed Software and each
28 copy will contain all legends and notices and will be subject to the same conditions and restrictions as
29 the original.

30 b. If COUNTY's computers on which any item of Licensed Software is licensed become
31 temporarily unavailable, use and license of such software may be temporarily transferred to an
32 alternative COUNTY computer.

33 c. This Agreement does not transfer to COUNTY title to any intellectual property contained
34 in any Licensed Software, documentation or proprietary information. Documentation licensed
35 hereunder does not include any materials designed for or used in the Maintenance of Equipment. The
36 COUNTY shall take all reasonable precautions to safeguard the Licensed Software, manuals,
37 documents, and media and to use its commercially reasonable best efforts not to make available the

1 Licensed Software in any form to any third party, except for COUNTY employees, consultants,
 2 independent contractors, providers or other third parties under contract with COUNTY directly
 3 concerned with COUNTY's licensed use of the System, subject to the conditions set forth in
 4 Subparagraph VIII.C. above.

5 d. Source Code Escrow; CONTRACTOR hereby agrees to deposit, at its sole expense, the
 6 Licensed Software, in source code form (the "Source Code"), into escrow pursuant to the terms and
 7 conditions as set forth in the agreement for "Maintenance and Support Services".

8 E. EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE: The parties understand
 9 and agree that Maintenance on Equipment, Equipment Operating System Sublicensed Software and
 10 Sublicensed Software will be provided pursuant to the terms and conditions as set forth in the agreement
 11 for "Maintenance and Support Services".

12 **IX. STANDARDS OF SYSTEM PERFORMANCE AND ACCEPTANCE TESTING**

13 A. The System must perform at COUNTY acceptable performance levels. During the period
 14 between First Productive Use and until the time COUNTY is on Support under the separate agreement
 15 for "Maintenance and Software Support Services", the System shall perform in a manner that will not
 16 impede the performance of routine and normal System-related operational tasks, perform critical
 17 processes that are executed at the server level; and will function in a consistent and dependable manner,
 18 recognizing that the COUNTY operates in a demanding twenty four (24) hours a day, seven (7) days a
 19 week production environment and that high-availability is critical. The parties agree that System
 20 performance is a joint responsibility of COUNTY and CONTRACTOR to the extent under control by
 21 each party; CONTRACTOR's responsibilities for System performance also include providing Support
 22 and Maintenance services for the System (including the Licensed Software) as specifically set forth
 23 under the agreement for "Maintenance and Support Services".
 24

25 B. CONTRACTOR certifies that it will not knowingly commit to any new project in such a
 26 manner as it would materially interfere with the scheduling or delivery of the products or Services to
 27 COUNTY as detailed and set forth herein.

28 C. CONTRACTOR shall certify in writing to COUNTY when the System supplied by
 29 CONTRACTOR is ready for operational use. The System and each module of the Licensed Software
 30 shall not be accepted until the Standards of Acceptance are met and verified. These Standards are set
 31 forth in Exhibit B. to the Agreement.

32 D. As specifically set forth in Exhibit B. to the Agreement, CONTRACTOR shall ensure that its
 33 products for which COUNTY pays Maintenance/Licensed Software Support Fees through a separate
 34 agreement, are functioning appropriately in relationship to all other products required for the System
 35 upon completion of the Services pertaining to this Agreement.

36 E. **PROJECT SCHEDULE**;

37 a. Site Preparation. COUNTY will have its Designated Facility(s) prepared for the

1 Installation and Implementation of Licensed Software and the installation of Equipment and Sublicensed
2 Software by the date of execution of this Agreement. In the event the site(s) is/are not prepared by such
3 date, COUNTY acknowledges that the project schedule may be delayed and that, if applicable,
4 CONTRACTOR may make a change order application to COUNTY.

5 b. Installation Responsibilities. CONTRACTOR and COUNTY will each perform the
6 specific tasks identified in Exhibit B. to the Agreement for the Installation of Licensed Software and for
7 Project support. COUNTY will be responsible for installation and costs related to data communication
8 lines and cabling.

9 c. Project Team Environment. COUNTY must provide CONTRACTOR personnel a
10 designated work area, access to facilities, access to systems, and other items identified in the SOW, set
11 forth herein as Exhibit B. as items reasonably necessary for CONTRACTOR's personnel to provide the
12 Services set forth in this Agreement.

13 F. The Services performed under this Agreement shall be done in accordance with the approved
14 Project Schedule as outlined in Exhibit B. to the Agreement, which may be revised at the option of
15 COUNTY with CONTRACTOR's concurrence. Each party shall be responsible for schedule adherence
16 as outlined in the Project Schedule. All costs for the Project Schedule and all activities associated with
17 the Project Schedule are included in the total Agreement maximum obligation amount.

18 G. PURCHASE OF EQUIPMENT

19 COUNTY may, at COUNTY's sole discretion, purchase from CONTRACTOR the Equipment
20 set forth in Exhibit C. to the Agreement, for the purchase price set forth herein. COUNTY assumes all
21 responsibility for validation of purchased hardware, peripheral devices, and the use of device
22 configurations which are not included in the equipment purchased from CONTRACTOR as set forth
23 above and which are not otherwise recommended by CONTRACTOR. CONTRACTOR accepts no
24 responsibility or liability for any costs, expenses, claims or damages incurred by COUNTY or any third
25 party as a result of the failure of the System, or any component thereof, or any other system of
26 COUNTY to function properly and/or without interruption as a result of the use of the non-
27 recommended devices.

28 H. PRE-PRODUCTION ACCEPTANCE PERIOD

29 COUNTY agrees to use its commercially reasonable best efforts to identify for
30 CONTRACTOR in writing those issues arising during the Pre-Production Acceptance Period which, if
31 not resolved to COUNTY's satisfaction, could cause COUNTY to delay Acceptance in the Production
32 Acceptance Period. COUNTY and CONTRACTOR agree that First Productive Use with respect to any
33 module of the Licensed Software or the entire System, as the case may be, shall not occur until such pre-
34 production issues are either resolved to COUNTY's satisfaction or until COUNTY agrees in writing that
35 such issues will not be used as a basis for COUNTY to withhold Acceptance in the Production
36 Acceptance Period.

37 I. PRODUCTION ACCEPTANCE PERIOD

1 a. The Production Acceptance Period allows COUNTY to verify the functionality in a
2 production environment, and to identify issues occurring during or after First Productive Use which
3 could cause COUNTY to delay Acceptance. Should COUNTY become aware of any Material Errors or
4 issues related to non-compliance with the SOW, COUNTY shall promptly send CONTRACTOR a
5 Notice of Noncompliance which shall include a written, reasonably detailed description of each known
6 discrepancy or failure of the System. CONTRACTOR shall then have the remainder of the Production
7 Acceptance Period to resolve the discrepancies so identified and reported. COUNTY shall, upon
8 CONTRACTOR's request, test any modifications during this period.

9 b. The Production Acceptance Period for each module of the Licensed Software and for the
10 entire System shall begin upon First Productive Use and shall continue for a period of One Hundred
11 Twenty (120) days, at which time the parties shall deem the Licensed Software accepted unless
12 CONTRACTOR receives a written Notice of Noncompliance from COUNTY within five (5) business
13 days following the last day of the Production Acceptance Period. If CONTRACTOR receives a Notice
14 of Noncompliance from COUNTY, the test process shall be extended on a day-to-day basis, until the
15 earlier of the following:

16 i. The System or the applicable module of Licensed Software performs in accordance with
17 the Product Descriptions, without error and for a period of thirty (30) continuous days, the functions
18 with respect to the defects listed in the Notice of Noncompliance, or

19 ii. CONTRACTOR notifies COUNTY in writing that the maximum level of functionality (as
20 defined in the Product Descriptions) has been achieved; and that said level of functionality, in
21 CONTRACTOR's judgment, does not result in any material revision or limitation to CONTRACTOR's
22 commitments as specified in this Agreement, at which time COUNTY shall be deemed to have
23 automatically accepted the System as it exists at that time, unless COUNTY, as COUNTY's exclusive
24 remedy, terminates this Agreement upon written notice to CONTRACTOR, as set forth in Section XIX.
25 of the Agreement, in writing within fifteen (15) business days after receipt of CONTRACTOR's notice
26 of maximum functionality, or

27 iii. In the event the System has failed to perform without Material Error for a period of at least
28 sixty (60) days following the initial Notice of Noncompliance from COUNTY, COUNTY may
29 terminate this Agreement upon notice to CONTRACTOR as set forth in Section XXV. of the
30 Agreement.

31 c. COUNTY will be the sole judge of satisfactory compliance with the conditions stated in this
32 Section.

33 Upon final System acceptance by COUNTY, the warranty period shall begin.

34 //
35 //
36 //
37 //

1 EXHIBIT B
2 TO THE AGREEMENT FOR PROVISION OF
3 IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 MAY 2, 2012 THROUGH JUNE 30, 2013
9 SCOPE OF WORK

10
11 CONTRACTOR and COUNTY agree that the target date for the Millennium upgrade set forth
12 herein has been determined by the parties assuming a project start date of May 2, 2012 and is to be
13 considered a six (6) month implementation process; CONTRACTOR shall not be liable for any project
14 delay(s) unless such delay(s) is (are) due to CONTRACTOR's sole fault.

15
16 **I. COUNTY OBLIGATIONS AND PREREQUISITES:**

17 (Items below are deemed obligations only as applicable to COUNTY's environment and the service
18 being performed)

19 a. Ensure hardware, software, and network components required for the services detailed
20 by CONTRACTOR in a pre-service checklist are available and operational.

21 b. Ensure the base operating system is installed on the hardware with the required OS fix
22 packs or service packs.

23 c. Ensure the domain is at the required CPP/CSP level and any additional service packages
24 are installed.

25 d. Designate a representative to be the project manager for the applicable service. He/she
26 will be the focal point for the CONTRACTOR associate performing or managing the delivery of the
27 service and will have the authority to act in matters regarding a project.

28 e. Provide documentation of requested configurations on an as needed basis.

29 f. Provide documentation and support phone numbers for applicable third party hardware
30 and third party software providers.

31 g. Provide installation instructions and validation of non-CONTRACTOR applications on
32 given platforms.

33 h. Provide the performing CONTRACTOR Associate "root" access to the systems being
34 serviced as needed.

35 i. Ensure host definitions have been generated and are available for connection if such
36 definitions are required for the delivery of the service.

37 j. Provide host interface information, including, but not limited to destination address,

1 local adapter address, exchange ID, and remote and local LU names, etc.

2 k. Provide operator guides, if available, for any requested equipment that will be used.

3 l. Provide the performing CONTRACTOR associate appropriate access to applicable
4 systems. This includes physical access to spaces (typically during business hours), user ids, passwords,
5 and phone access.

6 m. Provide suitable workspace for the CONTRACTOR Associate(s) with phone access
7 during project.

8 n. Ensure that the service keys to any systems are made available.

9 o. Provide access to the system during normal business hours.

10 p. Is responsible for creating the appropriate test scripts.

11 q. Is responsible for and will supervise any testing.

12 r. Must approve the content and completion of the testing.

13 s. Sufficient storage is available to target nodes for new production environment and
14 database.

15 t. Will authorize CONTRACTOR to move the code to production when authorized
16 COUNTY staff has validated it if necessary.

17 u. Is responsible for creating one or more valid backups of the entire CONTRACTOR
18 HNAM environment shortly BEFORE the cutover to the target environment.

19 v. Is responsible for installing and configuring (if applicable) a backup/restore solution for
20 the target environment.

21 w. Is responsible for creating one or more valid backups of the entire CONTRACTOR
22 Millennium environment shortly AFTER the cut-over to the target environment.

23 It is the position of CONTRACTOR that COUNTY must determine, based on site-specific
24 standard operating procedures, governing regulatory bodies, patient population, employees and tools,
25 how best to validate all aspects of their system. In addition, the COUNTY assumes all risk for software
26 testing. CONTRACTOR accepts no responsibility or liability for any costs, expenses, claims or damages
27 incurred by the COUNTY or any third party as a result of the failure of the System, or any component
28 thereof, or any other system of the COUNTY's to function properly and/or without interruption due to
29 improper testing.

30 COUNTY is required to remain actively engaged in these projects weekly until completion. If
31 projects are inactive beyond a two-week period, the CONTRACTOR interface resource may be subject
32 to reassignment to other projects thereby delaying COUNTY project until a future CONTRACTOR
33 interface resource can be re-engaged.

34 This agreement covers only the items identified. A new agreement will be required if
35 additional tasks beyond those outlined in this Agreement are requested or as further specified in Exhibit
36 A. to the Agreement.

37 //

II. DELIVERABLES:

Unless otherwise noted for a specific service, CONTRACTOR shall perform the services described in each section on this Exhibit B. including, as applicable, training and documentation. CONTRACTOR will use commercially reasonable efforts to deliver, as applicable, the documentation, drawings, and environmental specifications in a format or containing content reasonably conforming to COUNTY's documentation standards for like documents. When there are multiple occurrences of the same service, CONTRACTOR's work effort and deliverables shall be adjusted to take into account the then current technical environment including updated maintenance and management checklists.

III. COMPLETION CRITERIA:

Each service shall be considered complete when CONTRACTOR has rendered the applicable services, delivered the technology solution, provided the knowledge transfer, delivered the documentation, and COUNTY has reviewed the deliverables and agrees in writing by signing an Event Activity Report (EAR) that such service is complete.

IV. STORAGE OVERSIGHT (CTS-EBSOVR)

A. Solution Description

The Cerner Enterprise Backup and Storage Project Oversight service provides advice for COUNTYs concerned about implementing or managing SAN, storage or data protection solutions. This service includes providing project management/coordination of all parties involved to maintain a proper schedule for implementation of new solutions. This service is provided in increments of one (1) week and will be priced according to the number of weeks required to perform service.

B. Definition of Project Scope

One or More of the following tasks will be performed (dependent on solution purchased):

1. Planning (remote or onsite as needed/requested)
 - a. Schedule kick off call and follow-up project calls with COUNTY
 - b. Review of project management roles on vendor and CONTRACTOR level
 - Discuss specific responsibilities for key tasks/subprojects
 - c. Review of purchased hardware, software, and services
 - d. Review of pre-requisites
 - e. Review of documentation provided by vendor and/or COUNTY data gathering
2. Review of one or more purchased solution(s)
 - a. Storage array and storage virtualization solution
 - Review storage array compatibility with current or proposed SAN and host environment
 - b. Host system solution
 - Review host systems for compatibility with current or proposed SAN and data protection environment
 - c. Fibre channel switches solution

1 • Review fibre channel switch compatibility with current or proposed SAN,
2 host and data protection environment

3 d. Data protection solution

4 • Review data protection solution compatibility with current or proposed
5 SAN and host environment

6 3. Provide CONTRACTOR-related specifications required for implementation of solution(s)

7 a. Storage array and storage virtualization solution

- 8 • Storage requirements (e.g. # of LUNs, LUN sizes, ...)

9 b. Host system solution

- 10 • Host system resource requirements (e.g. RAM, CPUs, ...)

- 11 • Host connectivity requirements (e.g. # of HBA-ports, zoning, ...)

12 c. Fibre channel switches solution

- 13 • Fabric design

14 d. Data protection solution

- 15 • Data protection best practices (e.g. backup frequency, backup type, ...)

16 **C. Services Not Included In Project Scope**

17 This service does NOT include the following items/tasks:

18 a. Hardware

- 19 • Hardware
20 • Installation or upgrade of any hardware

21 b. Software

- 22 • Software licenses
23 • Custom scripting
24 • Installation or upgrade of any software
25 • Configuration of any software/firmware components

26 **D. Deliverables**

27 1. Project status updates

28 2. CONTRACTOR-related specifications/requirements for purchased solution(s)

29 **E. COUNTY Obligations and Prerequisites**

30 (Items below are deemed obligations only as applicable to your environment)

31 1. Designate a representative to be the key focal point relative to this project and this person
32 will have the authority to act on your behalf in matters regarding this project.

33 2. If required ensure all hardware and software products are available for this project.

34 3. Provide necessary printouts of the requested configurations on an as needed basis.

35 4. Provide documentation and support phone numbers for all hardware and software providers.

36 5. Provide the performing CONTRACTOR Associate “high privilege” access to the systems
37 being serviced as needed.

 6. Ensure all host definitions have been generated and are available for connection.

 7. Provide all necessary host interface information, including, but not limited to destination
 address, local adapter address, exchange ID, and remote and local LU names, etc.

1 8. Provide operator guides for any requested equipment that will be used in the configuration
2 and connection process.

3 9. Provide access to the system during normal business hours and off-hours as required.
4

5 This Agreement covers only the items identified. A new Agreement will be required if additional
6 tasks beyond those outlined in this Agreement are requested.
7

8 **V. HARDWARE MIGRATION (CTS-HWMIG)**

9 **A. Solution Description**

10 A Cerner Millennium environment and associated database typically resides on two or more
11 servers. Moving the application and database to a new platform requires several different skill sets.
12 CONTRACTOR provides the expertise required for migrating the Cerner Millennium application and
13 rebuilding/upgrading the database to the new platform.

14 **B. Service Overview**

15 CONTRACTOR proposes to provide technical consultation services to migrate the Cerner
16 Millennium application and/or database to a new storage system. Also, CONTRACTOR will provide
17 technical consultation services to move the non-production domains to the new non-production storage
18 system. NOTE - The non-prod domains will be moved with the environment down.

19 **C. Definition of Project Scope**

20 Certain tasks are dependent on the availability of COUNTY technical personnel for verification,
21 testing, and knowledge transfer. CONTRACTOR will identify those COUNTY tasks at the beginning of
22 the engagement to facilitate scheduling and coordination. The following work activities will be
23 performed by CONTRACTOR:

- 24 1. Pre-travel Checklist Discussion (Remote)
 - 25 a. Provide Pre-travel Checklist document to COUNTY
 - 26 b. Schedule and conduct Pre-travel review discussion with the COUNTY
 - 27 c. Create migration project plan with COUNTY
- 28 2. Hardware and Application Server Verification
 - 29 a. Verification of server hardware
 - 30 b. Verification of all required licenses and software necessary are present
 - 31 c. Assistance in making the hardware available on Intellinet for remote support
32 from CONTRACTOR
 - 33 d. Participate in planning discussion around carving up and allocating storage to
34 new target node(s)
 - 35 e. Carve and present required storage to new target node(s) (COUNTY
36 Responsibility)
 - 37 f. Review target systems OS versions and patch levels. Review Initial System
Settings on new target servers and make recommendations to COUNTY on settings to be modified.
 - g. Install Disaster Recovery Toolkit on new servers and configure between
existing servers and new servers

1 h. Install corresponding Oracle version matching production on target server in
2 a Non-RAC mode.

3 3. Mock Phase

4 a. Create or designate mock environment for use during project (COUNTY
5 Responsibility)

6 b. Setup Disaster Recovery Toolkit for Mock environment to target application
7 server(s)

8 c. Replicate IRIS Mock environment from source to target server(s)

9 d. Create new target database on target server using the standby database

10 e. Perform Mock failover to target servers utilizing the DR Toolkit

11 f. Support COUNTY Functional testing

12 g. Installation of HA and RAC (see Oracle RAC SOW below)

13 h. Test Backup solutions in new configuration (COUNTY responsibility with
14 CONTRACTOR's assistance in configuration and troubleshooting)

15 i. Migrate and/or re-install other necessary operating software tools installed on
16 production servers. Examples include RMAN, Olympus, LightsOn, etc.

17 j. Document any issues from test and add to downtime planning document

18 4. Production Phase

19 a. Setup Disaster Recovery Toolkit for Production environment to target
20 application server(s)

21 b. Replicate IRIS Production environment from source to target node(s)

22 c. Create new target database on target server by using the standby database

23 d. Shutdown existing Production Domain

24 e. Update DNS entries to point production domain to new server(s) (COUNTY
25 responsibility)

26 f. Update FAT clients and any tnsnames.ora entries as necessary (COUNTY
27 Responsibility)

28 g. Restart IRIS environment on new server(s)

29 h. Support COUNTY Functional testing

30 5. Remote Technical Support

31 Remote technical support is provided for 3 days after engagement completion. After that
32 time, support should go through the standard support channels.

33 **D. Deliverables**

34 1. IRIS production application environment has been migrated to new server(s)/storage.

35 2. Knowledge transfer for installation, configuration and operational procedures for new
36 configuration.

37 **E. Assumptions**

1. For proper knowledge transfer we strongly recommend that the COUNTY be familiar with
the core technologies used in this solution.

2. Work will be performed remotely unless otherwise noted or agreed upon. Typically, the
onsite work will consist of the project kickoff and the production conversion

3. Sufficient storage is available for a second copy of the production database. This will be the
new target database.

F. Estimated Work Effort and Duration

1 Estimated project duration is 6-10 weeks, depending on COUNTY availability.

2 **G. Frequency**

3 The first visit will be for initial project kickoff and planning activities. The second visit will be for
4 the production cutover, unless agreed to by both COUNTY and CONTRACTOR.

5 **H. COUNTY Obligations and Prerequisites**

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
HP-UX HA Analyst	Yes	Expert	Contributor Perform Work
Citrix Analyst	No	Expert	Contributor, Perform Work
Application Analyst	Yes	Analyst	Contributor
Database Administrator	Yes	Expert	Contributor, Perform Work
Disaster Recovery Analyst	Yes	Analyst	Review, Contributor
Project Manager	No	Analyst	Review, Approve
Security Analyst	Yes	Analyst	Review, Approve
Server Analyst	Yes	Analyst	Perform Work
Storage Analyst	Yes	Expert	Perform Work
System Engineer	Yes	Expert	Perform Work
System Engineer – MDI/BMDI	Yes	Expert	Perform Work
System Operations Analyst	Yes	Basic	Perform Work
Technology Architect	Yes	Expert	Contributor, Approve
Telecommunications & Data Network Analyst	Yes	Analyst	Contributor, Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

25 **VI. HPUX OS UPGRADE (CTS-OSHPUXUPG)**

26 **A. Solution Description**

27 Professional Services to upgrade HPUX operating system

28 **B. Service Overview**

29 The HPUX server is upgraded to a new operating system in downtime.

30 This project includes only the items set forth in this Exhibit B. A new arrangement Letter or Quotation
31 must be executed by the parties if COUNTY requests additional tasks beyond those set forth herein.

32 **C. Definition of Project Scope**

33 Certain tasks are dependent on the availability of COUNTY technical personnel for verification,
34 testing, and knowledge transfer. CONTRACTOR will identify those COUNTY tasks at the beginning of
35 the engagement to facilitate scheduling and coordination. The following work activities will be
36 performed by CONTRACTOR:

37 1. Planning Steps

- a. Verify firmware/micro-code required for upgrade
 - HP server hardware
 - Storage hardware
 - SAN switch hardware
- b. Verify hardware is compatible with upgraded OS version
 - Server hardware model
 - Internal controllers
 - Storage Array
- c. Software compatibility
 - HP installed products
 - Third party software versions
- d. Disk space requirements
- e. Upgrade method
- f. Update method
- g. Cold install method
- h. Onsite installation of HPUX 11.31 OS Upgrade Software on two (2) RX8640's and (2) RX6600 and eight (8) logical nodes, additional services will need to be quoted for additional nodes.
- i. Verification of system operation upon OS upgrade completion, this includes but not limited to;
 - Users, group and passwords remain intact
 - Volume groups, logical volumes and file systems remain intact
 - Non-HP software/hardware products remain installed
 - Configuration files are saved or preserved
 - Network configurations and connectivity remains intact

2. Onsite Work

- a. CONTRACTOR will provide a Technology Architect to perform those items found in the project set forth in this Exhibit A including:
 - Verify HP Hardware platform for any necessary firmware/micro-code upgrade
 - Onsite installation of HPUX 11.31 OS Upgrade Software on Onsite installation of HPUX 11.31 OS Upgrade Software on two (2) RX8640's and (2) RX6600 and eight (8) logical nodes
 - Verification of system operation upon OS upgrade completion.

D. Deliverables

Node(s) are upgraded to new version.

E. COUNTY Skill and Participation Level Requirements

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
Citrix Analyst	No	Expert	Contributor, Perform Work
Application Analyst	Yes	Analyst	Contributor
Database Administrator	Yes	Expert	Contributor, Perform Work
Disaster Recovery Analyst	Yes	Analyst	Review, Contributor
Project Manager	No	Analyst	Review, Approve

1	Security Analyst	Yes	Analyst	Review, Approve
2	System Engineer	Yes	Expert	Perform Work
3	Technology Architect	Yes	Expert	Contributor, Approve
4	Technical Engagement Leader	Yes	Analyst	Approve

5 **F. Assumptions**

6 1. For proper knowledge transfer we strongly recommend that the COUNTY be familiar with
7 the core technologies used in this solution.

8 2. Work will be performed remotely unless otherwise noted or agreed upon. Typically, the
9 onsite work will consist of the project kickoff and the production system upgrade.

10 **G. Estimated Work Effort and Duration**

11 This is a fixed fee service. Estimated project duration is two to four (2-4) weeks, depending on
12 COUNTY availability.

13 **H. Frequency**

14 Only one onsite trip should be required for the actual upgrade of the HP-UX operating system.

16 **VII. ORACLE 11G RAC (CTS-ORACLERAC)**

17 **A. Solution Description**

18 Oracle Real Application Cluster (RAC) is an Oracle database option that adds clustering and high
19 availability features to an Oracle database. CONTRACTOR provides the expertise required to install or
20 upgrade Oracle RAC on a four-node HP-UX (Serviceguard) cluster.

21 **B. Service Overview**

22 CONTRACTOR proposes to provide technical consultation services to implement or upgrade Oracle
23 RAC on a four-node HP-UX ServiceGuard cluster.

24 1. The following work activities will be performed:

25 a. Plan Oracle RAC implementation or upgrade

- 26 • Validate Oracle software availability and licensing requirements
- 27 • Validate Serviceguard (for HP-UX) is properly configured and currently
28 running in the cluster
- 29 • Validate network setup
- 30 • If installing a new Oracle RAC kernel, validate that:
- 31 • If installation Oracle RAC on currently existing Oracle kernel, discuss
32 installation options and effects on the existing database(s) using the same Oracle kernel and evaluate
33 and validate that:

34 2. Oracle RAC installation

35 This project includes only the items set forth in this Exhibit B. A new arrangement Letter or
36 Quotation must be executed by the parties if COUNTY requests additional tasks beyond those set forth
37 herein.

37 **C. Definition of Project Scope**

1 CONTRACTOR proposes to provide technical consultation services to implement or upgrade Oracle
 2 RAC on a four-node HP-UX ServiceGuard cluster.

3 1. The following work activities will be performed:

4 a. Plan Oracle RAC implementation or upgrade

5 • Validate Oracle software availability and licensing requirements
 6 • Validate Serviceguard (for HP-UX) is properly configured and currently
 7 running in the cluster
 8 • Validate network setup
 9 ▪ Primary public network (needed only if same cluster is used for
 application) – configured for IP address takeover

10 ▪ Secondary public network - not configured for IP address takeover
 11 ▪ Private network - connected via a switch
 12 ▪ Create OCR (Oracle Cluster Register) concurrent VG & CRS
 (Cluster Ready Services) Voting Disk

13 • If installing a new Oracle RAC kernel, validate that:
 14 ▪ All basic Oracle installation pre-requisites have been met
 15 ▪ Additional Oracle RAC requirements on all nodes in the cluster
 16 have been met
 17 ▪ Additional Oracle RAC space requirements on all nodes in the
 18 cluster have been met
 19 ▪ Inter-node network setup and connectivity in the cluster is
 appropriately setup and configured

20 • If installation Oracle RAC on currently existing Oracle kernel, discuss
 21 installation options and effects on the existing database(s) using the same Oracle kernel and evaluate and
 validate that:

22 ▪ Additional Oracle RAC requirements on all nodes in the cluster
 23 have been met
 24 ▪ Additional Oracle RAC space requirements on all nodes in the
 25 cluster have been met
 26 ▪ Inter-node network setup and connectivity in the cluster is
 appropriately setup and configured

27 b. Oracle RAC installation

28 • Review Serviceguard (for HP-UX) configuration and running state
 29 • Review space requirements and inter-node cluster communication and
 30 connectivity

31 • Review Oracle and Oracle RAC pre-requisites and requirements
 32 • Discuss and review installation or upgrade process including potential
 downtimes

- 33 • Install Cluster Ready Services (CRS)
- 34 • Install Oracle RAC on all nodes in the cluster
- 35 • Perform post-installation steps

36 2. The following limitations apply:

37 a. The implementation or upgrade of Oracle RAC is limited to a four-node
 Serviceguard (for HP-UX) cluster

b. The implementation or upgrade of Serviceguard (for HP-UX) is not included in this scope. See SOW for HP-UX OS Upgrade.

c. The installation or upgrade of HP-UX is not included in this scope. Operating system implementation or upgrade services can be provided through a separate project.

This project includes only the items set forth in this Exhibit B. A new arrangement Letter or Quotation must be executed by the parties if COUNTY requests additional tasks beyond those set forth herein.

D. Deliverables

Oracle RAC implemented or upgraded on a four-node HP-UX ServiceGuard cluster.

E. COUNTY Skill and Participation Level Requirements

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
HP-UX / Serviceguard Analyst (if target = HP-UX)	Yes	Expert	Contributor Perform Work
Citrix Analyst	No	-	-
Application Analyst	No	-	-
Database Administrator	Yes	Expert	Contributor, Perform Work
Disaster Recovery Analyst	No	-	-
Project Manager	No	-	-
Security Analyst	No	-	-
Server Analyst	Yes	Analyst	Perform Work
Storage Analyst	Yes	Expert	Perform Work
System Engineer	Yes	Expert	Perform Work
System Engineer – MDI/BMDI	No	-	-
System Operations Analyst	No	-	-
Technology Architect	Yes	Expert	Contributor, Approve
Telecommunications & Data Network Analyst	Yes	Analyst	Contributor, Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

F. Assumptions

1. For proper knowledge transfer we strongly recommend that the COUNTY be familiar with the core technologies used in this solution.

2. Work will be performed remotely unless otherwise noted or agreed upon. Typically, the onsite work will consist of the project kickoff and the production conversion.

G. Estimated work effort and Duration

Estimated project duration is up to four (4) weeks, depending on COUNTY availability. One onsite trip will be performed. This onsite trip will consist of installing or upgrading the Oracle kernel and setting it up for RAC/CRS.

H. COUNTY Obligations and Prerequisites

1 (Items below are deemed obligations only as applicable to COUNTY's environment and the service
2 being performed)

3 1. Ensure hardware, software, and network components required for the services detailed by
4 CONTRACTOR in a pre-service checklist are available and operational.

5 2. Ensure the base operating system is installed on the hardware with the required OS fix
6 packs or service packs

7 3. Ensure the domain is at the required CPP level and any additional service packages are
8 installed. If any CPPs are to be loaded, these will be performed by following the COUNTY operating
9 procedure for validation.

10 4. Designate a representative to be the project manager for the applicable service. He/she
11 will be the focal point for the CONTRACTOR associate performing or managing the delivery of the
12 service and will have the authority to act in matters regarding a project.

13 5. Provide documentation of requested configurations on an as needed basis.

14 6. Provide documentation and support phone numbers for applicable third party hardware
15 and third party software providers.

16 7. Provide installation instructions and validation of non-Cerner applications on given
17 platforms.

18 8. Provide the performing CONTRACTOR Associate appropriate access to the systems
19 being serviced as needed.

20 9. Ensure host definitions have been generated and are available for connection if such
21 definitions are required for the delivery of the service.

22 10. Provide host interface information, including, but not limited to destination address, local
23 adapter address, exchange ID, and remote and local LU names, etc.

24 11. Provide operator guides, if available, for any requested equipment that will be used.

25 12. Provide the performing CONTRACTOR associate appropriate access to applicable
26 systems. This includes physical access to spaces (typically during business hours), user ids, passwords,
27 and phone access.

28 13. Provide suitable workspace for the CONTRACTOR Associate(s) with phone access
29 during project.

30 14. Ensure that the service keys to any systems are made available.

31 15. Provide access to the system during normal business hours.

32 16. Is responsible for creating the appropriate Oracle test scripts, with CONTRACTOR
33 providing guidance and oversight of the test scripts

34 17. Is responsible for and will supervise any testing.

35 18. Must approve the content and completion of the testing.

36 19. Sufficient storage is available to target nodes for new production environment and
37 database.

1 20. Will authorize CONTRACTOR to move the code to production when authorized
2 COUNTY staff has validated it if necessary

3 21. Is responsible for creating one or more valid backups of the entire CONTRACTOR
4 HNAM environment shortly BEFORE the implementation or upgrade of Oracle RAC.

5 22. Is responsible for creating one or more valid backups of the entire CONTRACTOR
6 Millennium environment shortly AFTER the implementation or upgrade of Oracle RAC.

7 It is the position of CONTRACTOR that COUNTY must determine, based on site-specific standard
8 operating procedures, governing regulatory bodies, patient population, employees and tools, how best to
9 validate all aspects of their system. In addition, the COUNTY assumes all risk for software testing.
10 CONTRACTOR accepts no responsibility or liability for any costs, expenses, claims or damages
11 incurred by the COUNTY or any third party as a result of the failure of the System, or any component
12 thereof, or any other system of the COUNTY's to function properly and/or without interruption due to
13 improper testing.

14 COUNTY is required to remain actively engaged in this project weekly until completion. If project is
15 inactive beyond a two-week period, the CONTRACTOR interface resource may be subject to
16 reassignment to other projects thereby delaying COUNTY project until a future CONTRACTOR
17 interface resource can be re-engaged.

18 This project includes only the items set forth in this Exhibit B. A new arrangement Letter or
19 Quotation must be executed by the parties if COUNTY requests additional tasks beyond those set forth
20 herein.

21 **I. Completion Criteria**

22 Each service shall be considered complete when CONTRACTOR has rendered the applicable
23 services, delivered the technology solution, provided the knowledge transfer, delivered the
24 documentation, and COUNTY has reviewed the deliverables and agrees in writing by signing an Event
25 Activity Report (EAR) that such service is complete.

26 **VIII. ORACLE 11G ASM CONVERSION (CTS-ASMCONV)**

27 **A. Solution Description**

28 Install and configure Oracle ASM Kernels on a four-node HP-UX (Serviceguard) cluster.

29 **B. Service Overview**

30 CONTRACTOR Technical Associates will implement Oracle ASM (Automated Storage Manager)
31 Kernels on a four-node HP-UX (Serviceguard) cluster. Certain tasks are dependent on the availability of
32 your technical personnel for verification and testing. We will identify those tasks at the beginning of
33 the engagement to facilitate scheduling and coordination.

34 **C. Definition of Project Scope**

35 1. Oracle ASM Planning & Kernels Installation

36 a. Planning Oracle ASM Kernel Installation

- 37 • Validate Oracle software availability and Licensing requirements
- Validate proper staging of Oracle Software

b. Oracle ASM Kernel Installation

- Review Space requirements and inter-node cluster communication & connectivity
- Review Oracle 11G and ASM Kernel pre-requisites and requirements
- Discuss and Review Installation Process including potential downtimes
- Install ASM kernel in the defined Node
- Perform Post-Installation Steps

D. Deliverables

CONTRACTOR will provide one or more Technical Services Associates to perform the items found in this Agreement including:

1. Oracle ASM Installation and configuration
2. Knowledge transfer (as required)

E. Assumptions

1. COUNTY has obtained all necessary media necessary for migration.
2. All necessary pre-requisites have been met as defined in the Oracle 11G configuration and Migration Guide.
3. This scope does not cover any database upgrade
4. All work will be performed remotely unless otherwise noted or agreed upon. On site work may extend project duration and cost.

F. Estimated Duration

Estimated project duration is up to 12 weeks, depending on COUNTY availability

G. COUNTY Skill and Participation Level Requirements

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
HPUX / HA Analyst	Yes	Expert	Contributor Perform Work
Database Administrator	Yes	Expert	Contributor, Perform Work
Server Analyst	Yes	Analyst	Perform Work
Storage Analyst	Yes	Analyst	Contributor
System Engineer	Yes	Expert	Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

IX. ORACLE 11G CBO CONVERSION (CTS-CBOCONV)

A. Solution Description

Cost Based Optimization (CBO) and Rules Based Optimization (RBO) refer to the method in which Oracle chooses a path to query the database when a script is executed. Traditionally CONTRACTOR has configured Oracle and Millennium to run in Rules Based Optimization (RBO), with the release of Oracle 11g, supported on Cerner Millennium code 2007.18 and higher, CONTRACTOR recommends the implementation of Cost Based Optimization (CBO). CONTRACTOR technology consultants will perform the following scope of services to assist a COUNTY on Oracle 11g/RBO with a CBO

1 conversion.

2 **B. Service Overview**

3 Certain tasks are dependent on the availability of your technical personnel for verification and
4 testing. Those tasks will be identified at the beginning of the engagement to facilitate scheduling and
5 coordination.

6 **C. Implementation Recommended Prerequisites (Not included in Scope)**

7 These items are highly recommended to help ensure an efficient process for troubleshooting scripts
8 during a migration from Rules Based Optimization to Cost Based Optimization to ensure quick
9 resolution to issues encountered.

- 10 1. Licensing for Diag and Tuning pack from Oracle
- 11 2. OEM as a Service in lieu of Diag and Tuning Pack
- 12 3. 60 day of AWR Data Retention
- 13 4. Lights on/KaRT configured for Prod and Mock domains

13 **D. Definition Of Project Scope**

- 14 1. CBO Environment Assessment

15 During this phase CONTRACTOR will review the existing database environment
16 configuration to determine if tunable parameters, Oracle patches, and Millennium pre-requisites are in
17 place to support CBO.

- 18 2. Gathering Stats in Prod

19 Collecting statistics requires designing a strategy to meet the COUNTY specific timeline
20 and other COUNTY project considerations. CONTRACTOR will consult with the COUNTY to advise
21 on best practices to collect initial statistics and implement them into the production environment.

22 3. Following the initial collection of statistics, the database must be configured for ongoing
23 statistics collection and maintenance. CONTRACTOR will perform this implementation and knowledge
24 transfer with the COUNTY.

- 25 4. 30 hours of script optimization during Mock

26 Script tuning and adjustment are expected during the Mock and production phases of the project.
27 CONTRACTOR will consult on methods to identify scripts that can be tuned through examining
28 technical performance data. Problematic scripts should also be identified through application testing.
29 When scripts are identified CONTRACTOR will assist with mitigation strategies leveraging tunable
30 methods supported by CBO.

- 31 5. Go Live support

32 CONTRACTOR will support the go-live event in which statistics are activated and the
33 production environment is configured for CBO. As with the mock process, it is expected that some
34 scripts will require tuning following the go-live. CONTRACTOR will provide up to 30 hours of script
35 tuning within the week following the go-live event.

- 36 6. Knowledge Transfer

37 CONTRACTOR will provide up to 16 hours of knowledge transfer on statistics
collection, troubleshooting and resolving CBO related script performance. This will include training the
COUNTY on available CONTRACTOR resources such as documentation and support channels.
Knowledge transfer will be delivered through a combination of shadowing technical activities and
structured review sessions.

E. COUNTY Skill and Participation Level Requirements

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
HPUX / HA Analyst	Yes	Expert	Contributor Perform Work
Database Administrator	Yes	Expert	Contributor, Perform Work
Server Analyst	Yes	Analyst	Perform Work
Storage Analyst	Yes	Analyst	Contributor
System Engineer	Yes	Expert	Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

F. COUNTY Responsibilities

1. Creation of Mock domain
2. Installation of any required CONTRACTOR packages and recommended parameter changes

G. Assumptions

1. CONTRACTOR will be performing Oracle 11g migration which is a prerequisite for CBO including all necessary Oracle patches.
2. Required Hardware available to complete project
 - a. CBO requires Stats to be gathered on Production which will require some additional CPU utilization
 - b. The project also requires a full copy of the Production database for the mock

H. Estimated Work Effort And Duration

This is a fixed fee service. Estimated project duration is up to 6 weeks, depending on COUNTY availability.

X. GOLDEN GATE REBUILD (CTS-GGDBRBLD)**A. Solution Description**

Rebuilding and upgrading CONTRACTOR HNAM (IRIS) databases with minimum downtime requires specialized skill sets. CONTRACTOR provides the expertise required for rebuilding/upgrading the database to the latest supported version.

B. Service Overview

CONTRACTOR proposes to provide technical consultation services to rebuild one (1) Cerner HNAM (IRIS) production database, one (1) Cerner HNAM (IRIS) admin database and up to four (4) CONTRACTOR HNAM non-prod database.

1. The following tasks are performed for each of the above-mentioned databases:
 - a. Installation and configuration of the CONTRACTOR database migration/rebuild toolkit (CTP-MIG-TOOLKIT)
 - b. Upgrade of the Oracle kernel to the latest Cerner/GoldenGate supported Oracle version
 - c. Conversion of Dictionary Managed Tablespaces to Locally Managed Tablespaces
2. The following limitations apply to each of the above-mentioned databases:
 - a. Database sizes of up to 1TB are covered. Database rebuild services for databases exceeding 1TB can be provided through a separate agreement (CTS-GGDBRBLD-MED or CTS-

1 GGDBRBLD-LRG).

2 b. Source-node(s) must run the following operating system and applications
(additional and more detailed requirements can be found on Cerner.com):

- 3 • HP-UX
- 4 • Oracle 10

5 c. Target-node(s) must run one of the following operating systems and applications
(additional and more detailed requirements can be found on Cerner.com):

- 6 • HP-UX
- 7 • Oracle 11

8

9 **C. Definition Of Project Scope**

10 Certain tasks are dependent on the availability of COUNTY technical personnel for verification,
11 testing, and knowledge transfer. CONTRACTOR will identify those COUNTY tasks at the beginning of
12 the engagement to facilitate scheduling and coordination. The following work activities will be
13 performed by CONTRACTOR, unless otherwise noted:

14 1. Pre-travel Checklist Discussion (Remote)

- 15 a. Provide pre-travel checklist document to COUNTY
- 16 b. Schedule and conduct pre-travel review discussion with the COUNTY
- 17 c. Create database rebuild project plan with COUNTY

18 2. Hardware and Application Server Verification

- 19 a. Verification of server hardware
- 20 b. Verification of all required licenses and software necessary are present
- 21 c. Participate in planning discussion around carving up and allocating storage to

22 target node(s)

- 23 d. Carve out and present required storage to target node(s) (COUNTY

24 Responsibility)

- 25 e. Install latest Cerner/GoldenGate supported Oracle software on target
26 database server in a Non-RAC mode

27 f. Install Goldengate Capture software on source database server

28 g. Install Goldengate Delivery software on target database server

29 h. Verify/Install Cerner Millennium service packages to support new Oracle

30 version (COUNTY Responsibility)

31 i. Verify/Install Cerner Millennium latest installation tools (COUNTY

32 Responsibility)

33 3. Mock Phase

34 a. Create or designate mock environment for use during project (COUNTY

35 Responsibility)

36 b. Create new target database on target server through the use of

37 CONTRACTOR's data management tools

c. Replicate source database to target database using bulk data move process

- 1 d. Perform Mock failover to target servers
 2 e. Support COUNTY Functional testing
 3 f. Installation of HACMP and RAC
 4 g. Test Backup solutions in new configuration (COUNTY responsibility with
 5 CONTRACTOR's assistance in configuration and troubleshooting)
 6 h. Document any issues from test and add to downtime planning document

7 4. Production Phase

- 8 a. Create new target database on target new storage through the use of
 9 CONTRACTOR's data management tools
 10 b. Replicate source database to target database using bulk data move process
 11 c. Shutdown existing Production Domain
 12 d. Synchronize final transactions to target database
 13 e. Restart Cerner Millennium environment on new database
 14 f. Support COUNTY Functional testing

15 5. Remote Technical Support

16 Remote technical support is provided for 3 days after engagement completion. After that time,
 17 support should go through the standard support channels.

18 **D. Deliverables**

- 19 1. One (1) Cerner HNAM production, one (1) Cerner HNAM admin and up to four (4)
 20 Cerner HNAM non-production databases upgraded to latest Cerner/GoldenGate supported Oracle version
 21 2. One (1) Cerner HNAM (IRIS) production, one (1) Cerner HNAM (IRIS) admin and up to
 22 four (4) Cerner HNAM (IRIS) non-production databases re-organized and converted Locally Managed
 23 Tablespace (LMTs)
 24 3. Knowledge transfer for installation, configuration and operational procedures for new
 25 configuration

26 **E. Assumptions**

- 27 1. For proper knowledge transfer we strongly recommend that the COUNTY be familiar
 28 with the core technologies used in this solution.
 29 2. Work will be performed remotely unless otherwise noted or agreed upon. Typically, the
 30 onsite work will consist of the project kickoff and the production conversion.
 31 3. Sufficient storage is available for a second copy of the production database. This will be
 32 the new target database. It is recommended that sufficient storage be available to be utilized as a staging
 33 database, bringing the total copies besides the existing production database to 3. This copy is not
 34 required, but it is encouraged.

35 **F. Estimated Work Effort and Duration**

36 Estimated project duration is 3 to 4 months, depending on COUNTY availability.

37 **G. Frequency**

The first visit will be for initial project kickoff and planning activities. The second visit will be for
 the production cutover, unless agreed to by both COUNTY and CONTRACTOR.

//

//

H. COUNTY Obligations and Prerequisites

COUNTY ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
HPUX Analyst	Yes	Expert	Contributor Perform Work
Citrix Analyst	No	Expert	Contributor, Perform Work
Application Analyst	Yes	Analyst	Contributor
Database Administrator	Yes	Expert	Contributor, Perform Work
Disaster Recovery Analyst	No	Analyst	Review, Contributor
Project Manager	No	Analyst	Review, Approve
Security Analyst	Yes	Analyst	Review, Approve
Server Analyst	Yes	Analyst	Perform Work
Storage Analyst	Yes	Expert	Perform Work
System Engineer	Yes	Expert	Perform Work
System Engineer – MDI/BMDI	Yes	Expert	Perform Work
System Operations Analyst	Yes	Basic	Perform Work
Technology Architect	Yes	Expert	Contributor, Approve
Telecommunications & Data Network Analyst	Yes	Analyst	Contributor, Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

**XI. MILLENNIUM 2012.01 UPGRADE (HCA CA EXHIBIT
A UC CHO UPGRADE SCOPE 1-2IB9W1X 12.19.11)**

A. Definition of Project Scope and Deliverables:

The Millennium Service Release Upgrade Project (Release Upgrade) is intended to upgrade the COUNTY's current application functionality on a like-for-like basis from the code level 2010.1 to the latest monthly service packages available for code level 2012.01 at the time the project begins. It is not within the scope of this project to modify or build new application functionality, with the exception of the selected Upgrade Center QuickWin enhancements.

The Release Upgrade project will focus on testing the majority of functionality; however it will not test every user and every build tool.

Testing will consist of two major end user positions identified by the COUNTY for each solution. Testing will be based on a set of detailed test script developed by the Upgrade Center based upon recommended approach and COUNTY input gathered from solution assessments and COUNTY provided test scripts.

B. Work Effort:

The Release Upgrade project is primarily composed of Technical and Testing Events. CONTRACTOR will complete the majority of the activities as defined in the detailed work effort below and the detailed project plan that will be defined during project planning. However, COUNTY will be required to engage in certain events or tasks that are specific to the COUNTY's domain or environment. The grids below reflect tasks that will be included in the Release Upgrade and the responsible party for each. The estimated duration of this project is based on ninety (90) days, which begins with code

1 installation in the first domain and ends with the Release Upgrade installation in COUNTY's production
 2 domain.

PROJECT MANAGEMENT WORK EFFORT (P = Primary/Owner, R = Review, A = Assist)	CONTRACTOR Resource	COUNTY Resource
1. Manage the Release Upgrade project.	P	
2. Create and maintain the Application and Technical Assessments	P	
3. Review and update communications plan. Coordinate update calls with COUNTY and CONTRACTOR teams. Produce weekly project status reports.	P	
4. Create and maintain Upgrade project plan.	P	
5. Work with COUNTY to ensure that CONTRACTOR written custom CCL scripts are identified, modified, and repackaged as necessary. Modifications are limited to 100 hours. If additional hours are required an Agreement setting forth the hours and new rates must per executed by the parties.	P	A
6. Establish scope and domain strategy based on current recommended practice.	P	R
7. Identify and secure resources	P	A
8. Determine and document initial package requirements> Identify and resolve potential stray code that the COUNTY has currently installed.	P	
9. Collaboratively work with COUNTY to define database build and testing requirements.	P	R
10. Engage appropriate resources to complete the build and testing. Establish the testing strategy. Ensure appropriate testers are identified.	P	
11. Review training resources and strategies. Communicate strategy for relaying continuing education information to the appropriate education liaisons. Verify COUNTY has SOP's and supplies.		P
12. Identify and mitigate risks.	P	
13. Coordinate testing per project plan and domain strategy. Gain appropriate sign offs.	P	
14. Ensure end user training has been communicated or conducted prior to cut over to new release.		P
15. Prepare cut-over plan. Ensure appropriate COUNTY and CONTRACTOR resources are scheduled for Release Upgrade and	P	A

PROJECT MANAGEMENT WORK EFFORT (P = Primary/Owner, R = Review, A = Assist)	CONTRACTOR Resource	COUNTY Resource
post Release Upgrade support.		
16. Upgrade to new service packages and manage post Release Upgrade issues	P	A

APPLICATION WORK EFFORT	CONTRACTOR Resource	COUNTY Resource
The following solutions are included: Clinical Reporting/RRD, Document Management, , Enterprise Master Person Index, General Laboratory, Microbiology, Outreach Services, PowerChart Ambulatory, Patient Accounting (ProFit), Registration Management, Scheduling Management (P = Primary/Owner, R = Review, A = Assist)		
1. Evaluate solution changes and impact to production environment.	P	
2. Identify and execute database changes that are required to maintain current solution functionality.	P	R
3. Complete non production domain configuration(s) – to ensure printing occurs on non-production printer(s), i.e., charts, requisitions, labels, reports, and operations jobs.		P
4. Incorporate COUNTY specific testing requirements from COUNTY test scripts into baseline recommended test scripts.	P	R
5. Validate non production upgrade domain. This will ensure that the domain is a true copy of the production domain prior to performing upgrade activities. The majority of this activity will belong to CONTRACTOR. COUNTY resources will be needed to configure and test interfaces, medical devices, PACS, document imaging, and local devices.	P	A
6. Perform regression testing per project plan and domain strategy.	P	
7. Perform Integration testing per project plan and domain strategy.		P
8. Perform testing on systems interfaced to CONTRACTOR.		P
9. Provide education updates to COUNTY trainers.		P
10. Manage solutions issue list. Work with COUNTY and CONTRACTOR to achieve issue resolution until code moved to Production.	P	
11. Support production Release Upgrade to new release.	P	A
12. COUNTYs may pick up to twenty five (25) enhancements from a customized list of available enhancements provided by the Upgrade Center. The Upgrade Center will identify the appropriate build steps needed to implement each enhancement, create and execute	P	R

1	APPLICATION WORK EFFORT	CONTRACTOR	COUNTY
2	The following solutions are included: Clinical Reporting/RRD,	Resource	Resource
3	Document Management, , Enterprise Master Person Index, General		
4	Laboratory, Microbiology, Outreach Services, PowerChart Ambulatory,		
5	Patient Accounting (ProFit), Registration Management, Scheduling		
6	Management		
7	(P = Primary/Owner, R = Review, A = Assist)		
8	appropriate test scripts for each enhancement, and will resolve		
9	issues identified with the enhancement functionality.		

10	TECHNICAL WORK EFFORT – CONTRACTOR Technical	CONTRACTOR	COUNTY
11	Services	Resource	Resource
12	(P = Primary/Owner, R = Review, A = Assist)		
13	1. Review Technical Readiness Scorecard with COUNTY and discuss		
14	hardware and software requirements. This includes all of the		
15	technical minimums and requirements for all 3rd party software and	P	R
16	hardware. Review system capacity for both production and non-		
17	production environments.		
18	2. CONTRACTOR Technical Engagement Leader and COUNTY		
19	create the technical project plan and determine domain strategy in	P	R
20	conjunction with CONTRACTOR and COUNTY project manager		
21	and architect.		
22	3. Manage other technical activities and escalation activities if needed.	P	
23	4. Prepare environment for release. Run Millennium Support Assistant		
24	and submit updates, Review COUNTY Custom Warehouse, Scripts,	P	
25	and Indexes.		
26	5. COUNTY is responsible for ensuring that all 3rd party layered		
27	products are upgraded (including software and hardware), to meet		
28	the technical minimums and/or requirements prior to the Release		
29	Upgrade commencing in the non-production domain. COUNTY is		P
30	responsible for creating a plan for the upgrade path of all 3rd party		
31	layered products in the production domain (per Technical Readiness		
32	Scorecard review) for the Millennium Release Upgrade project.		
33	6. Add any additional hardware requirements to support the Release		
34	Upgrade (CPU, memory, disk, devices, etc) prior to the Release		
35	Upgrade commencing (per Technical Readiness Scorecard review).		P
36	7. Create non-production domain per domain strategy and project plan.		
37	CONTRACTOR Upgrade Center System Engineer will be		
	responsible for all back-end steps to creating the non-production		
	domain. COUNTY will need to assist with database steps as well as	P	A
	setting up interfaces, and all front-end devices and printers. This		
	would include Citrix servers, Chart server, RRD server, Multum		
	server, CPDI servers, PACS (if applicable) and any other ancillary		
	device that is in the production domain that will need to be tested in		

TECHNICAL WORK EFFORT – CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	CONTRACTOR Resource	COUNTY Resource
the non-production domain.		
8. Install and configure Lights On in production and non-production domains per domain strategy and project plan (if applicable).	P	A
9. The CONTRACTOR Upgrade Center System Engineer will be responsible for updating the non-production domain per domain strategy and project plan. This includes the back-end steps as well as loading front end code warehouse. The CONTRACTOR Upgrade Center System Engineer will run the Uptime steps and Downtime Steps and capturing the timings for each of these processes.	P	A
10. COUNTY will be responsible for all front-end code dissemination in the non-production domain. This includes the set up of any front-end devices, including, but is not limited to: Citrix servers, Charting server, RRD server, Multum server, CPDI and PACS (if applicable) and any other fat client or network installed device that needs to be tested.	A	P
11. Assist with technical issue troubleshooting and issue resolution if needed.	P	A
12. Configure interfaces for non-production domains per domain strategy and project plan.		P
13. Update the training domain or any other non-production domain.		P
14. Install the Release Upgrade in the production domain. The CONTRACTOR Upgrade Center System Engineer will be responsible for installing the Release Upgrade in the production domain. This includes the back-end steps as well as loading front-end code warehouse. The CONTRACTOR Upgrade Center System Engineer will run the Uptime steps and Downtime Steps and capturing the timings for each of these processes.	P	A
15. COUNTY will be responsible for all front-end code dissemination for production domain and any individual set up to front-end devices this includes, but is not limited to: setting up Citrix servers, creating a Citrix rollout plan, Charting server, RRD server, Multum server, CPDI and PACS (if applicable) any other fat client or network installed device that needs to be tested. COUNTY will be responsible for creating Citrix rollout plan for their production Citrix servers.	A	P
16. Support production Release Upgrade to new service packages.	P	A

TECHNICAL WORK EFFORT – CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	CONTRACTOR Resource	COUNTY Resource
17. Provide 48 hrs of on-site post Release Upgrade support.	P	
18. Refresh COUNTY’s Certification Domain - The CONTRACTOR Upgrade Center System Engineer will be responsible for refreshing the CERT domain from the production domain within two weeks after the Release Upgrade has been finalized. COUNTY will be responsible for the front-end code dissemination in the Certification domain. This needs to be completed within four (4) weeks of the Release Upgrade and should not extend beyond six (6) weeks post Release Upgrade go-live.	P	A

C. Project Completion:

The project described in this Exhibit B will be considered complete on the date the upgrade packages are moved to the production domain.

D. Knowledge Transfer:

CONTRACTOR will provide knowledge transfer as we progress throughout this project. This knowledge is supplemented by documentation found at www.cerner.com or uCern Wiki; Cerner Millennium Support Guides (CMSG) now available as Reference Pages in the uCern Wiki,

1. Upgrade Guides,
2. Package Reports,
3. Release Details,
4. Illuminations sessions.

Additional Education & Training information is available at www.cerner.com and may have additional cost.

E. COUNTY Obligations:

1. CONTRACTOR shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services; however, COUNTY must determine, based on its standard operating procedures, accrediting body standards, governing regulatory bodies, patient population, employees and tools, how best to validate all aspects of the system. COUNTY acknowledges and agrees that it will (i) provide the test plans, (ii) perform or supervise the testing activities, (iii) provide additional training and information to end users regarding the changes made, and (iv) approve the content and completion of the testing activities. CONTRACTOR accepts no responsibility or liability for any claims, actions, losses, or damages incurred by COUNTY or any third party arising from or out of COUNTY failure to adequately test and/or validate the changes requested hereunder. Further, COUNTY agrees to:

- a. Comply with CONTRACTOR Production Environment Change Authorization (PECA) process,
- b. Provide documentation and support phone numbers for all relevant hardware and software providers,
- c. Provide a Security Officer to define and monitor user access,
- d. COUNTY is required to remain actively engaged in the release upgrade until

1 completion,

2 e. Ensure change control is followed, and no updates are made to the
3 production environment during the release upgrade,

4 f. COUNTY must provide access to all domains that will be affected during the
5 release upgrade via a Citrix connection. The preferred method is a Citrix or similar connection
6 allowing multiple users access to the same environment at the same time via one connection.

7 2. COUNTY Project Management Obligations:

8 COUNTY agrees to;

9 a. Provide liaison to work with CONTRACTOR release upgrade manager.

10 Typically the COUNTY's application manager or equivalent,

11 b. Collaboratively work with CONTRACTOR while reviewing, editing and
12 approving appropriate test scripts,

13 c. Approve the content and completion of the testing,

14 d. Authorize CONTRACTOR to move the code to production,

15 e. Provide upgrade support coverage for all departmental areas affected,

16 f. Schedule downtime with the users,

17 g. Perform the responsibilities as designated in the project plan.

18 3. COUNTY Application Obligations

19 COUNTY agrees to;

20 a. Provide specified contacts to work with CONTRACTOR on application
21 specific testing and issue resolution. He/she will be the focal point for the CONTRACTOR
22 associates relative to the fulfillment of the request and will have the authority to act on the
23 COUNTY's behalf in matters regarding the requests,

24 b. Review, edit and approve appropriate test scripts,

25 c. Provide Release Upgrade support coverage for all departmental areas
26 affected,

27 d. Test all site-specific custom programs e.g. CCLs In-lab indicator on Flow
28 Sheet, Requisition Forms,

29 e. Define printer routings,

30 f. Testing of local devices such as, Interfaces, Printers, MDIs Scanners, etc.,

31 g. Perform the responsibilities as designated in the project plan.

32 4. COUNTY Technical Obligations

33 COUNTY agrees to;

34 a. Provide upgrade support coverage for all departmental areas affected,

35 b. Perform the responsibilities as designated in the project plan,

36 c. Ensure hardware and software required for the release upgrade or installation

37 is available and operational - this includes;

1 • Updating layered products (i.e., Back-end and Front-end Operating
2 Systems, Oracle, MQSeries, JRE (Java Runtime Environment), Multum, CPDI, any other 3rd party
3 solutions and IP stack. Etc) to meet the minimum requirements for the new release. These tasks (if
4 needed) should be documented in the Upgrade Project Plan for reference. If there is a requirement to
5 upgrade layered products, and the COUNTY would like CONTRACTOR assistance, additional services
6 will be required under a separate arrangement letter. This work is outside the scope of this Agreement,

7 • Ensure sufficient disk space to make a copy of the entire production
8 database including front-end and back-end servers for the “MOCK” domain and the additional space
9 required to load the new software as well as new schema to the database,

10 • Ensure that hardware is available to test COUNTY servers (Multum, RRD,
11 Charting, CPDI, PACS, BMDI etc),

12 • Ensure hardware (memory, CPU and storage space) will be sufficient to
13 handle any increases associate with utilization of the new release or usage of functionality,

14 d. Acknowledge that the MOCK upgrade, if performed on the same machine as
15 the Live Production environment will affect performance,

16 e. COUNTY is responsible for all testing that is not specifically indicated in the
17 Work Effort as a CONTRACTOR responsibility,

18 f. Provide documentation of requested configurations on an as needed basis,

19 g. Provide documentation and support phone numbers for all relevant contact
20 people including the COUNTY contacts for hardware and software vendors,

21 h. Provide the performing CONTRACTOR Associate appropriate access to
22 applicable systems. This includes physical access to spaces (typically during business hours). User
23 ids and passwords. This includes root or system like access accounts for the execution of the
24 Release Upgrade steps and troubleshooting. This would also include network admin accounts for
25 front-end,

26 i. Provide suitable workspace for the CONTRACTOR Associate with phone
27 access,

28 j. Ensure the service keys to any systems are made available,

29 k. Provide documentation of requested configurations on an as needed basis,

30 l. Ensure host definitions have been generated and are available for connection,

31 m. Provide host interface information, including, but not limited to destination
32 address, local adapter address, exchange ID, and remote and local LU names, etc.,

33 n. Provide operator guides for any requested equipment that will be used in the
34 configuration and connection process,

35 o. Verify/Define/Set Up of printers for non-production domains,

36 p. Verify desktop rollout/Citrix rollout. COUNTY is responsible for all front-
37 end code dissemination and any individual set up to front-end devises,

 q. Conduct High Availability (HA) script changes if applicable,

 r. Setup and/or install of Oracle RAC if required in the non-prod domains,

 s. Make table space changes and adjustment of maximum extents if needed,

1 t. Set up and configuration of interfaces into non-production domains used for
2 testing.

3 **F. Points Of Presence:**

4 CONTRACTOR Upgrade Center will perform all work remotely unless previously agreed upon by
5 both parties. When needed, as defined by the project plan, CONTRACTOR associates will work from
6 the COUNTY site.

7 **G. Special Notes**

8 Several pieces of functionality are being deprecated with the Millennium 2012.01 release update and
9 are identified in the latest version of Priority Review Flash PR11-0110. Some of the deprecations are
10 minor and will require minimal database changes or training. Others (listed below) may require more
11 planning and action. COUNTY will need to have replacement solutions/functionality live in Production
12 at the time of the Upgrade Center’s domain-copy (at the start of the Upgrade Center’s upgrade project),
13 or project delays or additional fees may apply.

14 Affected Functionality:

- 15 o *PowerChart* (non-Enhanced View)
- 16 o *EasyScript* (CPSEasyScript.dll)
- 17 o Superbill Orders (CPSUIOrder.dll)
- 18 o Medication Profile (CPSMedProfile.dll)
- 19 o Pediatric Growth Chart (CPSPGChart.ocx)
- 20 o Encounter Summary (CPSEncounter.ocx)
- 21 o *PowerChart Office* (PCOffice.exe)
- 22 o Inbox (CPSUIInbox.dll and CPSUIMessage.dll)
- 23 o *PowerChart* Local Access
- 24 o Problem List (CPSUIProblem.dll) located in the Patient Information tab
- 25 o Procedure History (PVProcedures.dll)
- 26 o ePathLink
- 27 o Handheld Collector (Handheld Collector.exe)
- 28 o Device Viewer

29 **H. CONTRACTOR shall not be liable for delays not due to CONTRACTOR’s sole fault.**

30 //
31 //
32 //
33 //
34 //
35 //
36 //
37 //

EXHIBIT C
 TO AGREEMENT FOR PROVISION OF
 IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 CERNER CORPORATION
 MAY 2, 2012 THROUGH JUNE 30, 2013
 LICENSED, SUB-LICENSED SOFTWARE AND EQUIPMENT INVENTORY

A. Designated Facility where the Licensed Software shall reside:

County of Orange Health Care Agency
 515 North Sycamore
 Santa Ana, California 92701

B. For use and access by the following Permitted Facilities:

Juvenile Custody, Behavioral Health and Public Health facilities only of COUNTY.

C. The Licensed Software shall be used solely for the purposes of processing data resulting from or related to procedures performed at Permitted Facilities.

D. Licensed Software:

Solution Code	Solution Description
Advanced Technology Solutions Licensed Software	
CTP-MIG-TOOLKIT	Migration Scripts

E. Sub-Licensed Software

Solution Code	Solution Description
Sublicensed Software	
CCDBMIGRIS	GG Licenses for Database Migration 1-15c

F. Equipment:

All identified items listed in Attachment B of PO 042-12012428 (HP Servers and Storage Equipment for IRIS Upgrade between the County of Orange Health Care Agency and Cerner Corporation).

1 EXHIBIT D
2 TO AGREEMENT FOR PROVISION OF
3 IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 MAY 2, 2012 THROUGH JUNE 30, 2013
9 CERNER.COM RESTRICTED ACCESS AGREEMENT

10
11 1. Client agrees to protect and to keep in the strictest confidence all information and materials
12 to which Client is granted access through Cerner.com "Client-only" access (the "Confidential
13 Information"), except for information which is clearly sales, marketing, or other information available
14 without restriction to the general public. Client will use the Confidential Information only for the
15 purpose of supporting or otherwise facilitating its permitted use of the Licensed Software and
16 System(s) identified in the applicable agreement(s) in effect between the parties, and for no other
17 purpose whatsoever.

18 2. Client will designate and identify to Cerner those employees, agents, or other such
19 representatives of Client, which Client desires to have access to the Confidential Information. Client
20 agrees to limit access to Confidential Information to such individuals as have a need to know or have
21 need to access the information in order to increase their understanding or efficient use of Cerner
22 products and services identified in the applicable agreement(s) in effect between the parties. All such
23 persons will be under a confidentiality agreement with Client that is sufficient to protect the proprietary
24 and confidentiality interests of Cerner, its vendors and its clients. No copies of the Confidential
25 Information will be made, except as necessary to facilitate Client's use of the Confidential Information
26 as described above.

27 3. Client agrees to have in place, or implement if needed, appropriate policies, procedures,
28 education, controls and internal audits necessary to assure Client's compliance with this agreement.
29 Client understands that all persons who are granted access to the Confidential Information will be
30 advised by Cerner of their obligation of confidentiality with respect to the Confidential Information.
31 Nonetheless, Client agrees that it will be responsible for any breach of this Confidentiality Agreement
32 by any person who is given access to the Confidential Information to facilitate Client's use of the
33 Licensed Software or System(s). Client further understands and agrees that its responsibility will not
34 be reduced or affected in any way by the advisement given to each person accessing such Confidential
35 Information. Cerner reserves the right to terminate Client's and/or any of its personnel's access to
36 Cerner.com at any time for any reason.

37 4. Client agrees to notify Cerner and Client's primary information services executive
immediately upon learning of any loss of control, improper disclosure, or other misuse of any
Confidential Information or other materials made available through Cerner.com, or of any password,
logon procedure, or other method limiting access to Cerner.com. Further, Client agrees to take
whatever steps are reasonably required to halt and otherwise remedy, if possible, any such breach of
security, and to take all appropriate steps to regain control of the Confidential Information or such

1 other information improperly disclosed or misused, and to prevent, as necessary, further disclosures or
2 misuses.

3 5. Client will not be liable to Cerner for disclosure of Confidential Information if: (a) the
4 Confidential Information is or becomes public without the fault of Client, or (b) the Confidential
5 Information was in Client's possession or was known by Client prior to Client's receipt of the
6 Confidential Information from Cerner, or (c) the Confidential Information is or becomes available to
7 Client from a source already in legitimate possession of said Confidential Information, said source
8 being other than Cerner, or (d) the Confidential Information is developed independently by Client, or
9 (e) the Confidential Information is disclosed for unrestricted release with the written approval of
Cerner to whom it relates, or (f) Client is obligated to disclose the Confidential Information by order or
regulation of any court or other governmental entity.

10 6. All personal passwords, logon procedures, or other methods having the effect to limit access
11 that Cerner discloses to Client are designed to be of limited scope and are highly confidential in nature.
12 Client agrees to exercise all necessary control over such information so as to avoid the possibility of its
13 disclosure or other misuse. Further, Client agrees that no such information will be shared with any
14 other individual or organization unless Client is otherwise authorized to do so, in writing, by Cerner.

15 7. Information accessed through Cerner.com will not be further transmitted, reproduced, or
16 otherwise copied, in whole or in part, through or under any medium, for the benefit or use of any
17 person, not otherwise permitted to receive or use such information, without first obtaining Cerner's
18 written consent.

19 8. Client may, however, disclose the information to any person within Client's organization if
20 necessary to facilitate Client's use of Licensed Software (or other Cerner products and services
21 provided under agreement) to which the information relates so long as the party disclosing the
22 information notifies the receiving party of the confidentiality of the information and of their obligation
23 to comply with these confidentiality terms.

24 9. Due to the nature of Cerner's business and the value of Cerner's proprietary information,
25 Client agrees that a breach of any of the provisions hereof may inflict serious harm on Cerner, and that
26 termination of Client's license, if reasonable under the circumstances, and money damages may be
27 inadequate relief. Accordingly, Cerner will be entitled to injunctive relief to prevent or prohibit any
28 threatened or continuing breach of any of the terms and provisions hereof and, in addition thereto, will
be entitled to any and all other remedies available at law or in equity.

29 //

30 //

31 //

32 //

33 //

34 //

35 //

36 //

37 //

1 EXHIBIT E
2 TO AGREEMENT FOR PROVISION OF
3 IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 MAY 2, 2012 THROUGH JUNE 30, 2013
9 PASS THROUGH PROVISIONS
10
11

12 A. HEWLETT PACKARD:

14 4000_HPP

16 **HP**
17 **PASS THROUGH PROVISIONS**

19 1. HP TERMS AND CONDITIONS OF SALE AND SERVICE

20 HP's sale of Products and Support and HP's license of Software are governed by these HP Terms
21 and Conditions of Sale and Service.

22 A. DEFINITIONS

23 1. "Delivery" means standard HP shipping to and arrival at the receiving area at the "Ship To"
24 address specified in Customer's order.

25 2. "License Fee" means the fee or fees designated by HP for Use of Software. Different License
26 Fees may apply to particular Software if more than one Software License is available for that Software.

27 3. "Product Exhibits," "Sections," and "Sub-Sections" attached to or incorporated by reference,
28 describe the Customer's relationship, Products, Support, or other business terms that apply to the sale or
license of Products or Support.

29 4. "Products" means hardware, Software, documentation, accessories, supplies, parts and
30 upgrades that are determined by HP to be available from HP upon receipt of Customer's order. "Custom
31 Products" means Products modified, designed or manufactured to meet Customer requirements.

32 5. "Software" means one or more programs capable of operating on a controller, processor or
33 other hardware Product ("Device") and related documentation. Software is either a separate Product,
34 included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal
operation ("Firmware").

35 6. "Software License" means the Software license grant and general license terms set forth
36 herein. Each Software License has a corresponding License Fee.

37 7. "Specifications" means specific technical information about HP Products which is published

1 in HP Product manuals and technical data sheets in effect on the date HP ships Customer's order.

2 8. "Support" means hardware maintenance and repair; Software updates and maintenance;
3 training; and other standard support services provided by HP. "Custom Support" means any agreed non-
4 standard Support, including consulting and custom project services.

5 9. "Use" means storing, loading, installing, executing or displaying Software on a Device.

6 **B. PRICES**

7 1. Prices are valid for the period quoted by HP or for the applicable purchase agreement
8 ordering period, whichever expires first. Product prices for an order remain valid for ninety (90) days
9 from the original order date unless otherwise quoted by HP. Change orders that extend Delivery beyond
10 those validity periods become new orders at prices in effect when HP receives the change orders.
11 Support prices, except for Custom and prepaid Support, may be changed by HP upon sixty (60) days
12 written notice.

13 2. Prices are exclusive of, and Customer will pay, applicable sales, use, consumption, goods
14 and service, value added or like taxes, unless Customer has provided HP with an appropriate exemption
15 certificate for the Delivery jurisdiction.

16 **C. ORDERS**

17 1. All orders are subject to acceptance by HP. Product orders must specify Delivery within
18 ninety (90) days from order date, unless otherwise agreed or quoted by HP.

19 2. Customer will specify Ship To addresses within the country where the order is placed, unless
20 otherwise agreed.

21 3. Customer may cancel orders for Products (except Custom Products) prior to shipment at no
22 charge.

23 **D. DELIVERY**

24 HP will make reasonable efforts to meet Customer's Delivery requirements. If HP is unable to meet
25 Customer's Delivery requirements, alternative arrangements may be agreed. In the absence of such
26 agreement, Customer's sole remedy is to cancel the order.

27 **E. SHIPMENT, RISK OF LOSS OR DAMAGE, AND TITLE**

28 HP will ship according to HP's standard commercial practice, and risk of loss or damage and title
29 will pass from HP to Customer at the Ship To address. Shipping and handling charges will be listed
30 separately on HP's invoice when not included in the Product's purchase price. If Customer requests
31 special shipping arrangements and HP agrees to them, charges will be billed separately to Customer, and
32 Customer accepts the Products, risk of loss or damage and title upon delivery to Customer's carrier or
33 designate.

34 **F. INSTALLATION**

35 Product installation information is available with Products, on quotations or upon request.
36 Installation by HP is complete when the Product passes HP's standard installation and test procedures. If
37 Customer schedules or delays installation by HP more than thirty (30) days after Delivery, Customer's
warranty period begins on the 31st day after Delivery.

G. PAYMENT

1. Payment terms are subject to HP credit approval. Payment is due thirty (30) days from HP's
invoice date. Invoices for contractual support services and maintenance will be issued in advance of the
Support period. HP may change credit or payment terms at any time when, in HP's opinion, Customer's
financial condition, previous payment record, or the nature of Customer's relationship with HP so

1 warrants.

2 2. HP may discontinue performance if Customer fails to pay any sum due, or fails to perform
3 under this or any other HP agreement if, after ten (10) days written notice, the failure has not been
4 cured.

4 H.WARRANTY

5 1. Product warranty period and additional information is available with Products, on quotations,
6 or upon request.

7 2. Products purchased from HP will receive the standard warranty in the country of purchase. If
8 Customer moves such Products to another country where HP has Support presence, then Customer will
9 receive the destination country standard warranty.

10 3. Customer may receive a different warranty when the Product is purchased as part of a
11 system. HP reserves the right to change the warranty. Such changes will affect only new orders.

12 4. The warranty period begins on the date of Delivery, or the date of installation if installed by
13 HP. If Customer schedules or delays installation by HP more than thirty (30) days after Delivery, the
14 warranty period begins on the 31st day after Delivery.

15 5. If Customer transfers a Product to another user, warranty service is available to that user for
16 the remainder of the warranty period.

17 6. HP warrants HP hardware Products against defects in materials and workmanship. HP
18 further warrants that HP hardware Products conform to Specifications.

19 7. HP warrants that Software will not fail to execute its programming instructions due to defects
20 in materials and workmanship when properly installed and used on the Device designated by HP. HP
21 further warrants that HP owned standard Software will substantially conform to Specifications. HP does
22 not warrant that Software will operate in hardware and software combinations selected by Customer, or
23 meet requirements specified by Customer.

24 8. HP does not warrant that the operation of Products will be uninterrupted or error free.

25 9. If HP receives notice of defects or non-conformance to hardware Specifications, or
26 substantial non-conformance to HP owned standard Software Specifications during the warranty period,
27 HP will, at its option, repair or replace the affected Products. If HP is unable, within a reasonable time,
28 to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted,
29 Customer will be entitled to a refund of the purchase price upon prompt return of the Product to HP.
30 Customer will pay expenses for return of such Products to HP. HP will pay expenses for shipment of
31 repaired or replacement Products.

32 10. HP warrants that HP Support will be provided in a professional and workmanlike manner.

33 11. Some newly manufactured HP Products may contain and HP Support may use
34 remanufactured parts which are equivalent to new in performance.

35 12. The warranties provided herein will apply only to those Products and Support which are
36 branded by HP with an HP trademark ("HP Branded"). HP does not warrant any third party Products or
37 Support even if included with other HP Branded Products or Support. Furthermore, HP provides all such
third party Products and Support AS IS. However, the original manufacturers or suppliers may provide
their own warranties as specified in the documentation accompanying such third party Products and
Support.

13. The above warranties do not apply to defects resulting from:

- a. improper or inadequate maintenance by Customer;

- b. Customer or third party supplied software, interfacing or supplies;
- c. unauthorized modification;
- d. improper use or operation outside of the Specifications for the Product;
- e. abuse, negligence, accident, loss or damage in transit;
- f. improper site preparation; or
- g. unauthorized maintenance or repair.

14. THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, HP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

I. SUPPORT

1. Customer may order Support from HP's then current Support offering. Some Support (and related Products) may not be available in all countries. Orders for Support are subject to the terms of the Support Section or Sub-Section or quotation in effect on the date of order.

2. To be eligible for Support, Products must be at current specified revision levels and, in HP's reasonable opinion, in good operating condition.

3. HP may, at no additional charge, modify Products to improve operation, supportability and reliability, or to meet legal requirements.

4. Relocation of Products is Customer's responsibility. Relocation may result in additional Support charges and modified service response times. Support of Products moved to another country is subject to availability.

5. HP will provide Support for products that are not HP Branded when approved by HP in writing. HP will provide Support for HP Products when Customer allows HP to perform modifications if requested by HP under Sub-Section 1.I.3 above. Customer is responsible for removing any products not eligible for Support to allow HP to perform Support services. If Support services are made more difficult because of such product(s), HP will charge Customer for the extra work at HP's standard rates.

6. Support does not cover any damage or failure caused by:

- a. use of non-HP media, supplies and other products; or
- b. site conditions that do not conform to HP's site specifications; or
- c. neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer, work or modification by people other than HP employees or subcontractors, or other causes beyond HP's control; or
- d. inability of any non-HP products in Customer's environment to correctly process, provide or receive date data (i.e., representations for month, day, and year), and to properly exchange date data with the Products supplied by HP.

7. Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when HP provides Support services at Customer's site. Customer will notify HP if Products are being used in an environment which poses a potential health or safety hazard to HP employees or subcontractors; HP may require Customer to maintain such Products under HP supervision and may postpone service until such hazard is remedied.

1 8. Customer may delete Products under Support or cancel Support orders upon thirty (30) days
2 written notice unless otherwise agreed in a Support agreement. HP may cancel Support orders or delete
3 Products no longer included in HP's Support offering upon sixty (60) days written notice unless
4 otherwise agreed in a Support agreement.

4 J. LICENSES

5 1. In return for the License Fee, HP grants Customer a non-exclusive license to Use the object
6 code version of the Software listed in Customer's order in conformance with:

- 7 a. the terms set forth herein; and
- 8 b. Use restrictions and authorizations for the Software specified by HP in its quotation,
9 invoice or terms that accompany the Software; and
- 10 c. HP's third party suppliers' terms that accompany the Software.
- 11 d. In the event of a conflict, the third party suppliers' terms that accompany the Software
12 will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth
13 herein, and the Use restrictions and authorizations specified by HP will take precedence over the terms
14 set forth herein.

15 2. Unless otherwise specified, in return for the applicable License Fee, HP grants Customer a
16 license to Use one copy of the Software on one Device at any one time.

17 3. Unless otherwise specified, all Software Licenses will be perpetual unless terminated or
18 transferred in accordance with Sub-Section 1.J.11.

19 4. If Customer is an HP authorized reseller, Customer may sublicense the Software to an end-
20 user for its Use or (if applicable) sublicense the Software to an HP authorized reseller for subsequent
21 distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Software
22 License in a written sublicense agreement, which will be made available to HP upon request. If
23 Customer is not an HP authorized reseller, Customer may not sublicense the Software unless otherwise
24 agreed to by HP in writing.

25 5. Software is owned and copyrighted by HP or by third party suppliers. Customer's Software
26 License confers no title or ownership and is not a sale of any rights in the Software. Third party
27 suppliers may protect their rights in the Software in the event of any infringement.

28 6. Unless otherwise permitted by HP, Customer may only make copies or adaptations of the
29 Software for archival purposes or when copying or adaptation is an essential step in the authorized Use
30 of the Software on a backup Device, provided that copies and adaptations are used in no other manner
31 and provided further that the Use on the backup Device is discontinued when the original or replacement
32 Device becomes operable.

33 7. Customer must reproduce all copyright notices in or on the original Software on all permitted
34 copies or adaptations. Customer may not copy the Software onto any public or distributed network.

35 8. Bundled Software or Firmware provided to Customer may only be used when operating the
36 associated Device in configurations as sold or subsequently upgraded by HP. Customer may transfer
37 Firmware only upon transfer of the associated Device.

38 9. Updates, upgrades or other enhancements are available under HP Support agreements. HP
39 reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.

40 10. Customer will not modify, disassemble or decompile the Software without HP's prior written
41 consent. Where Customer has other rights under statute, Customer will provide HP with reasonably
42 detailed information regarding any intended disassembly or decompilation. Customer will not decrypt
43 the Software unless necessary for legitimate use of the Software.

1 11. Customer's Software License is transferable subject to HP's prior written authorization and
 2 payment to HP of any applicable fee(s). Upon transfer of the Software License, Customer will
 3 immediately deliver all copies of the Software to the transferee. The transferee must agree in writing to
 4 the terms of Customer's Software License. All Software License terms will be binding on involuntary
 5 transferees, notice of which is hereby given. Customer's Software License will automatically terminate
 6 upon transfer.

7 12. HP may terminate Customer's or any transferee's or sublicensee's Software License upon
 8 notice for failure to comply with any applicable Software License terms. Immediately upon termination,
 9 the Software and all copies of the Software will be destroyed or returned to HP. Copies of the Software
 10 that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or
 11 sublicensee's database, will be removed and destroyed or returned to HP. With HP's written consent, one
 12 copy of the Software may be retained subsequent to termination for archival purposes.

13 13. If the Software is licensed for use in the performance of a U.S. government prime contract or
 14 subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer
 15 software, computer software documentation and technical data for commercial items are licensed under
 16 vendor's standard commercial license.

17 K. INTELLECTUAL PROPERTY RIGHTS

18 1. HP will defend or settle any claim against Customer, (or third parties to whom Customer is
 19 authorized by HP to resell or sublicense), that HP Branded Products or Support (excluding Custom
 20 Products and Custom Support), delivered under these HP Terms and Conditions of Sale and Service
 21 infringe a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the
 22 country where Products are used, sold or receive Support, provided Customer:

- 23 a. promptly notifies HP in writing; and
- 24 b. cooperates with HP in, and grants HP sole control of the defense or settlement.

25 2. HP will pay infringement claim defense costs, settlement amounts and court-awarded
 26 damages. If such a claim appears likely, HP may modify the Product, procure any necessary license, or
 27 replace it. If HP determines that none of these alternatives is reasonably available, HP will refund
 28 Customer's purchase price upon return of the Product if within one year of Delivery, or the Product's net
 29 book value thereafter.

30 3. HP has no obligation for any claim of infringement arising from:

- 31 a. HP's compliance with Customer's designs, specifications or instructions;
- 32 b. HP's use of technical information or technology provided by Customer;
- 33 c. Product modifications by Customer or a third party;
- 34 d. Product use prohibited by Specifications or related application notes; or
- 35 e. Product use with products that are not HP Branded.

36 4. These terms state HP's entire liability for claims of intellectual property infringement.

37 L. LIMITATION OF LIABILITY AND REMEDIES

1. Products are not specifically designed, manufactured or intended for sale as parts,
 components or assemblies for the planning, construction, maintenance, or direct operation of a nuclear
 facility. Customer is solely liable if Products or Support purchased by Customer are used for these
 applications. Customer will indemnify and hold HP harmless from all loss, damage, expense or liability
 in connection with such use.

2. To the extent HP is held legally liable to Customer, HP's total liability is limited to: payments

1 described in Sub-Sections 1.H.9 and 1.K.2 above; damages for bodily injury; direct damages to tangible
2 property up to a limit of U.S.\$1,000,000; other direct damages for any claim based on a material breach
3 of Support services, up to a maximum of twelve (12) months of the related Support charges paid by
4 Customer during the period of material breach; and other direct damages for any claim based on a
5 material breach of any other term of these HP Terms and Conditions of Sale and Service, up to a limit of
6 U.S.\$1,000,000 or the amount paid to HP for the associated Product, whichever is less.

7 3. Notwithstanding Sub-Section 1.K.2 above, in no event will HP or its affiliates,
8 subcontractors or suppliers be liable for any of the following: incidental, special or consequential
9 damages (including downtime costs or lost profits, but excluding payments described in Sub-Section
10 1.K above for damages for bodily injury); damages relating to Customer's procurement of substitute
11 products or services (i.e., "cost of cover"); or damages for loss of data, or software restoration.

12 4. THE REMEDIES IN THESE HP TERMS AND CONDITIONS OF SALE AND SERVICE
13 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

14 M. GENERAL

15 1. The parties hereby agree that they may do business electronically, including contract
16 formation, order placement and acceptance. Any orders placed by Customer and accepted by HP on any
17 HP.com website or HP/Customer extranet site will create fully enforceable obligations that will be
18 subject to the terms hereof. Such orders and acceptances will be deemed for all purposes to be:

- 19 a. business records originated and maintained in documentary form;
- 20 b. a "writing" or "in writing";
- 21 c. "signed"; and
- 22 d. an "original" when printed from electronic files or records established and maintained in
23 the normal course of business.

24 The parties further agree not to contest the validity or enforceability of such transactions under the
25 provisions of any applicable law relating to whether certain agreements are to be in writing or signed by
26 the parties to be bound thereby and will be admissible if introduced as evidence on paper in any judicial,
27 arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as
28 other business records originated and maintained in documentary form. In addition, the parties agree
29 that transactions may be conducted through electronic data interchange or other electronic methods, as
30 agreed by the parties. The parties will adopt commercially reasonable security measures to limit access
31 to passwords and to limit access to the sites to authorized persons. Each party will be responsible for
32 any unauthorized use of the sites or issuance of messages caused by the failure of its security measures.

33 2. HP will not be liable for performance delays or for non-performance, due to causes beyond
34 its reasonable control.

35 3. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is
36 the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party
37 may cancel any unfulfilled obligations.

38 4. Customer may not assign any rights or obligations hereunder without prior written consent
39 from HP.

40 5. Customer who exports, re-exports or imports Products, technology or technical data
41 purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and
42 for obtaining required export and import authorizations. HP may suspend performance if Customer is in
43 violation of any applicable laws or regulations.

44 6. Disputes arising in connection with these HP Terms and Conditions of Sale and Service will

1 be governed by the laws of the country and locality in which HP accepts the order.

2 7. Provisions herein which by their nature extend beyond the termination of any sale or license
3 of Products or Support will remain in effect until fulfilled.

4 8. If any term or provision herein is determined to be illegal or unenforceable, the validity or
5 enforceability of the remainder of the terms or provisions herein will remain in full force and effect.

6 9. Customer will not register or use any internet domain name which contains HP's trademarks
7 (e.g. "HP", "hp" or "Hewlett-Packard") in whole or in part or any other name which is confusingly
8 similar thereto.

9 10. These HP Terms and Conditions of Sale and Service and any additional Sections constitute
10 the entire agreement between HP and Customer, and supersede any previous communications,
11 representations or agreements between the parties, whether oral or written, regarding transactions
12 hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase
13 or license of Products and Support will constitute Customer's acceptance of these HP Terms and
14 Conditions of Sale and Service, which may not be changed except by an amendment signed by an
15 authorized representative of each party.

16 4001_HPP

17 HP's obligations with respect to HP Branded Products or services procured by an end-user
18 customer (hereinafter "Customer") from authorized HP Business Partners are limited to the terms
19 and conditions in these HP PASS THROUGH TERMS ("Terms") and the specific Software license
20 or warranty information included with the Products. HP is not responsible for the acts or omissions of
21 HP Business Partners, for any obligations undertaken or representations that they may make, or for
22 any other products or services that they supply to Customer.

23 A. HP BASE TERMS

24 1. DEFINITIONS

25 a. *Affiliate* of a party means an entity controlling by, or under common control with, that
26 party.

27 b. *Deliverable* means the tangible work product resulting from the performance of Support
28 excluding Products and Custom Products.

29 c. *Hardware* means computer and related devices and equipment, related documentation,
30 accessories, parts, and upgrades.

31 d. *HP Business Partner* means select companies authorized by HP to promote, market,
32 support, and deliver certain Products and services.

33 e. *HP Branded* means Products and Support bearing a trademark or service mark of
34 Hewlett-Packard Company or any Hewlett-Packard Company Affiliate, and embedded HP selected third
35 party Software that is not offered under a third party license agreement.

36 f. *Product* means the HP Branded version of Hardware and Software available and listed in
37

1 HP's standard price list at the time of HP Business Partner's acceptance of the Customer order and
2 including products that are modified, altered, or customized, by HP, to meet Customer requirements
3 ("Custom Products").

4 g. *Software* means machine-readable instructions and data (and copies thereof) including
5 middleware and firmware and related updates and upgrades, licensed materials, user documentation,
6 user manuals, and operating procedures.

7 h. *Specification* means technical information about Products published in HP Product
8 manuals, user documentation, and technical data sheets in effect on the date HP or HP Business Partner
9 delivers Products to Customer.

10 i. *Statement of Work* means an executed document so titled, that describes the Custom
11 Support to be performed by HP under the Support Terms section.

12 j. *Support* means Hardware maintenance and repair, Software maintenance, training,
13 installation and configuration, and other standard support services provided by HP and includes
14 "Custom Support" which is any agreed non-standard Support as described in a Statement of Work.

15 k. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed
16 terms) and in relation to that order valid HP quotations, license terms delivered or otherwise made
17 available to Customer with Software, HP published technical data sheets or service descriptions, HP
18 limited warranty statements delivered with or otherwise made available to Customer with Products, and
19 mutually executed Statement of Work, all as provided by HP Business Partner and supported by HP, or
20 other mutually executed documents that reference these HP PASS THROUGH TERMS.

21 l. *Version* means a release of Software that contains new features, enhancements, and/or
22 maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and,
23 as such, made available by HP to its customers (also called a "Release").

24 2. WARRANTY PROVISIONS

25 a. Warranty Statements. HP limited warranty statements for Hardware, Software and
26 Support, as applicable, are contained in their respective sections of these Terms. The limited warranties
27 in these Terms are subject to the terms, limitations, and exclusions contained in the limited warranty
28 statement provided for the Product in the country where that Product is located when the warranty claim
29 is made. A different limited warranty statement may apply and be quoted if the Product is purchased as
30 part of a system.

31 b. Transfer. Warranties are transferable to another party for the remainder of the warranty
32 period subject to HP license transfer policies and any assignment restrictions.

33 c. Delivery Date. Warranties begin on the date of delivery of the Product to Customer, or on
34 the date of installation if installed by HP. If Customer schedules or delays such installation by HP more
35 than thirty (30) days after delivery, Customer's warranty period will begin on the 31st day after delivery.
36
37

1 d. Exclusions. HP is not obligated to provide warranty services or Support for any claims
2 resulting from:

- 3 1. improper site preparation, or site or environmental conditions that do not conform to
4 HP's site specifications;
- 5 2. Customer's non-compliance with Specifications or Transaction Documents;
- 6 3. improper or inadequate maintenance or calibration;
- 7 4. Customer or third-party media, software, interfacing, supplies, or other products;
- 8 5. modifications not performed or authorized by HP;
- 9 6. virus, infection, worm or similar malicious code not introduced by HP; or
- 10 7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical
11 disturbances, transportation by Customer, or other causes beyond HP's control.

12
13 e. Non-HP Branded Products and Support. HP provides third-party products, software, and
14 services that are not HP Branded "AS IS" without warranties of any kind, although the original
15 manufacturers or third party suppliers of such products, software and services may provide their own
16 warranties.

17
18 f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES
19 EXPRESSED OR REFERENCED IN THESE TERMS ARE EXCLUSIVE. NO OTHER
20 WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE
21 INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT
22 ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS
23 INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A
24 PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

25 3. INTELLECTUAL PROPERTY INFRINGEMENT

26 a. Third-Party Claims. HP will defend or settle any claim against Customer alleging that HP
27 Branded Products or Support (excluding Custom Products and Custom Support) provided under these
28 Terms infringes intellectual property rights in the country where they were sold, if Customer:

- 29 1. promptly notifies HP of the claim in writing;
- 30 2. cooperates with HP in the defense of the claim; and
- 31 3. grants HP sole control of the defense or settlement of the claim.

32
33 HP will pay infringement claim defense costs, HP-negotiated settlement amounts, and
34 court-awarded damages.

35 b. Remedies. If such a claim appears likely, then HP may modify the HP Branded Products
36 or Support, procure any necessary license, or replace the affected item with one that is at least
37 functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP

1 will issue Customer a refund equal to:

2 1. the purchase price paid for the affected item if within one year of delivery, or the
3 Customer's net book value thereafter; or

4 2. if the claim relates to infringing Support, the lesser of twelve (12) months charges for
5 the claimed infringing Support or the amount paid by Customer for that Support.

6 c. Exclusions. HP has no obligation for any claim of infringement arising from:

7 1. HP's compliance with Customer or third party designs, specifications, instructions, or
8 technical information;

9 2. modifications made by Customer or a third party;

10 3. Customer's non-compliance with the Specifications or the Transaction Documents; or

11 4. Customer's use of the Product with products, software, or services that are not HP
12 Branded.

13 d. Sole and Exclusive. This sub-section A.3 states HP's entire liability for claims of
14 intellectual property infringement.

15 4. INTELLECTUAL PROPERTY RIGHTS

16 No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted
17 by either party to the other except as expressly provided under these Terms. Customer will not register
18 or use any mark or internet domain name that contains HP's trademarks (e.g., "HP", "hp", or "Hewlett-
19 Packard").

20 5. RESTRICTED USE

21 Products, Support, and Deliverables are not specifically designed, manufactured, or intended for use
22 as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a
23 nuclear facility. Customer is solely liable if Products, Support, or Deliverables purchased by Customer
24 are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense,
25 or liability in connection with such use.

26 6. LIMITATION OF LIABILITY AND REMEDIES

27 a. Limitation of Liability. Except for the amounts in sub-section A.3 above and damages for
28 bodily injury (including death) HP's total aggregate liability is limited to the amount paid by Customer
29 for:

30 1. the Product; or

31 2. Support during the period of a material breach up to a maximum of twelve (12)
32 months; that in each case is the subject of the claim.

33 b. Disclaimer of Consequential Damages. EXCEPT FOR CLAIMS BY A PARTY FOR
34
35
36
37

1 INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER
2 PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT,
3 SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING, WITHOUT
4 LIMITATION, DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO
5 REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR
6 SOFTWARE RESTORATION.

7 c. Legal Theory. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE
8 LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING
9 NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN
10 CONTRACT, TORT OR OTHERWISE.

11 7. GENERAL

12 a. Internal Use. Products and Support acquired by Customer under these Terms are solely
13 for Customer's own internal use and not for resale or sub-licensing.

14 b. Force Majeure. Neither party will be liable for performance delays nor for non-
15 performance due to causes beyond its reasonable control; however, this provision will not apply to
16 Customer's payment obligations.

17 c. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of its
18 rights or obligations under these Terms without prior written consent from HP. Any such attempted
19 assignment, delegation, or transfer will be null and void. Assignments of HP Software licenses are
20 subject to compliance with HP's Software license transfer policies.

21 d. Export and Import. Customers who export, re-export, or import Products, technology, or
22 technical data purchased hereunder, assume responsibility for complying with applicable laws and
23 regulations and for obtaining required export and import authorizations. HP may suspend performance if
24 Customer is in violation of any applicable laws or regulations.

25 e. Governing Law. Disputes arising from these Terms will be governed by the law of the
26 jurisdiction of the principal place of business of the HP Affiliate accepting the order to which the
27 dispute relates and the courts of that locale will have jurisdiction, except that HP may, at its option,
28 bring suit for collection in the country where the Customer Affiliate that placed the order is located.
29 Customer and HP agree that the United Nations Convention on Contracts for the International Sale of
30 Goods will not apply to these Terms. Claims arising or raised in the United States will be governed by
31 the laws of the State of California, excluding rules as to choice and conflict of law.

32 f. Notices. All notices that are required under these Terms will be in writing and will be
33 considered effective upon receipt.

34 g. Entire Agreement. These Terms represent the entire agreement between HP and
35 Customer regarding Customer's purchase of Products and Support, and supersedes and replaces any
36
37

1 previous communications, representations, or agreements, or Customer's additional or inconsistent
2 terms, whether oral or written. In the event any provision of these Terms is held invalid or
3 unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.

4 h. Waiver. Neither party's failure to exercise or delay in exercising any of its rights under
5 these Terms will constitute or be deemed a waiver or forfeiture of those rights.

6 i. Order of Precedence. Unless otherwise agreed or provided herein, documents will apply
7 in the following descending order of precedence:

8 1. Transaction Documents consisting of license terms or limited warranty statements
9 delivered or otherwise made available to Customer with Products;

10 2. the sections of these Terms;

11 3. all other Transaction Documents.

12 j. Independent Contractor. HP is an independent contractor in the performance under these
13 Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these
14 Terms will be construed as creating a joint venture, partnership or employment relationship between the
15 parties, nor will either party have the right, power or authority to create any obligation or duty, express
16 or implied, on behalf of the other.

17
18 **B. HP HARDWARE TERMS**

19 1. RISK OF LOSS

20 When HP delivers to Customer directly, risk of loss or damage, and title to Hardware, will pass to
21 Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping
22 arrangements are agreed to by HP, upon delivery to Customer's carrier or designee.

23 2. INSTALLATION

24 If HP provides installation services, Customer will make available facilities that meet HP published
25 site guidelines that will be provided to Customer upon request. Upon delivery, Customer will place each
26 item of Hardware in its designated location. Installation is billed at HP's published installation charges
27 unless quoted as part of the Hardware purchase price. Installation by HP is complete when the Hardware
28 passes HP's standard installation and test procedures.

29 3. HARDWARE LIMITED WARRANTY

30 HP warrants HP Branded Hardware against defects in materials and workmanship under normal use
31 during the warranty period and that it will materially conform to its Specifications for the time specified
32 in the applicable Transaction Documents. HP Branded Hardware may contain used parts that are
33 equivalent to new in performance and reliability and are warranted as new.

34 4. OPERATION

35 HP does not warrant that the operation of Hardware will be uninterrupted or error free, or that
36
37

1 Hardware will operate in Hardware and Software combinations other than as expressly required by HP
2 in the Product Specifications or that Hardware will meet requirements specified by Customer. Customer
3 may only use firmware embedded in the Hardware to enable the Hardware to function in accordance
4 with its Specifications.

5 5. EXCLUSIVE REMEDIES

6 Upon notice of a valid warranty claim during the warranty period and if provided reasonable access
7 to the HP Branded Hardware, HP will, at its option, repair a defect in the HP Branded Hardware, or
8 correct a material non-conformance to Specifications, or replace such Hardware with Hardware of equal
9 or better functional performance. If HP is unable, within a reasonable time, to complete the repair or
10 correction, or replace such HP Branded Hardware, Customer will be entitled to a refund of the purchase
11 price paid upon prompt return of such Hardware to HP. Subject to the terms in Customer's specific
12 Product warranty statement Customer will pay expenses for return of such Hardware to HP. HP will pay
13 expenses for shipment of repaired or replacement Hardware to Customer. This sub-section states HP's
14 entire liability for Hardware warranty claims.

15 C. HP SOFTWARE LICENSE TERMS

16 1. LICENSE GRANT

17 HP grants Customer a non-exclusive, non-transferable license to "Use", in object code form, the
18 Version or Release of the HP Branded Software delivered from an HP accepted order. For purposes of
19 these Terms, unless otherwise specified in the Transaction Documents, "Use" means to install, store,
20 load, execute, and display one copy of the Software on one device at a time for Customer's internal
21 business purposes. Customer's Use of such Software is subject to these license terms and the Use
22 restrictions and authorizations for the Software specified by HP in Transaction Documents that
23 accompany or are otherwise made available to Customer with the Software (the "Software License"). In
24 the event of any conflict among such terms, the order of precedence will be the accompanying
25 Transaction Documents then the terms of this section.

26 2. THIRD-PARTY SOFTWARE

27 For non-HP Branded Software, the third party supplier's license terms and use restrictions found in
28 the Transaction Documents that may accompany that Software will solely govern its Use.

29 3. OWNERSHIP

30 This Software License confers no title or ownership and is not a sale of any rights in the Software.
31 Third-party suppliers are intended beneficiaries under these Terms and independently may protect their
32 rights in the Software in the event of any infringement. All rights not expressly granted to Customer are
33 reserved solely to HP or its suppliers.

34 4. ACCEPTANCE

1 Customer accepts Software upon delivery.

2 5. UPGRADES

3 Software Versions or maintenance updates, if available, may be ordered separately or may be
4 available through Software Support. HP reserves the right to require additional licenses and fees for
5 Software Versions or separately purchased maintenance updates or for Use of the Software in
6 conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software
7 Version, Customer's Software License for the earlier Version shall terminate. Software Versions are
8 subject to the license terms in effect on the date that HP delivers or makes the Version available to
9 Customer.

10 6. LICENSE RESTRICTIONS

11 a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes,
12 seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software
13 may require license keys or contain other technical protection measures. Customer acknowledges that
14 HP may monitor Customer's compliance with Use restrictions and authorizations remotely, or otherwise.
15 If HP makes a license management program available which records and reports license usage
16 information, Customer agrees to appropriately install, configure and execute such license management
17 program beginning no later than one hundred and eighty (180) days from the date it is made available to
18 Customer and continuing for the period that the software is used.

19 b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make
20 copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential
21 step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs
22 such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may
23 not operate such backup installation of the Software without paying an additional license fee, except in
24 cases where the original device becomes inoperable. If a copy is activated on a backup device in
25 response to failure of the original device, the Use on the backup device must be discontinued when the
26 original or replacement device becomes operable. Customer may not copy the Software onto or
27 otherwise Use or make it available on, to, or through any public or external distributed network.
28 Licenses that allow Use over Customer's intranet require restricted access by authorized users only.

29 c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on the
30 Software (including documentation) on all permitted copies or adaptations. Copies of documentation are
31 limited to internal use.

32 d. Designated System. Notwithstanding anything to the contrary herein, the Software
33 License for certain Software, as identified in Transaction Documents, is non-transferable and for use
34 only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may
35 be further identified by HP by the combination of a unique number and a specific system type
36
37

1 (“Designated System”) and such license will terminate in the event of a change in either the system
2 number or system type, an unauthorized relocation, or if the Designated System ceases to be within the
3 possession or control of Customer.

4 e. OS Software. Operating system Software may only be used when operating the
5 associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an
6 authorized HP business partner.

7 f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile,
8 or make derivative works of the Software. Where Customer has other rights mandated under statute,
9 Customer will provide HP with reasonably detailed information regarding any intended modifications,
10 reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.

11 g. Use for Service Provision Extending the Use of Software to any person or entity other
12 than Customer as a function of providing services, (i.e.; making the Software available through a
13 commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and
14 may require additional licenses and fees.

15 7. LICENSE TERM AND TERMINATION

16 Unless otherwise specified in a Transaction Document, the Software License granted Customer will
17 be perpetual, provided however that HP may terminate the Software License upon notice for failure to
18 comply with these Terms. Immediately upon termination of the Software License or upon expiration of
19 any individual limited term license, Customer will destroy the Software and all copies of the Software
20 subject to the termination or expiration or return them to HP. Customer shall remove and destroy or
21 return to HP any copies of the Software that are merged into adaptations, except for individual pieces of
22 data in Customer's database. Customer may retain one copy of the Software subsequent to termination
23 solely for archival purposes only. At HP's request, Customer will certify in writing to HP that Customer
24 has complied with these requirements.

25 8. LICENSE TRANSFER

26 Customer may not sublicense, assign, transfer, rent, or lease the Software or the Software License to
27 any other party except as permitted in this section. Except as provided in sub-section C.6.d above, HP
28 Branded Software licenses are transferable subject to HP's prior written authorization and payment to
29 HP of any applicable fees or compliance with applicable third party terms. Upon transfer of the
30 Software License, Customer's rights under the License will terminate and Customer will immediately
31 deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of
32 the Software License, and, upon such agreement, the transferee will be considered the “Customer” for
33 purposes of the license terms. Customer may transfer firmware only upon transfer of the associated
34 Hardware.

35 9. U.S. FEDERAL GOVERNMENT USE

1 If the Software is licensed for use in the performance of a U.S. Government prime contract or
2 subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer
3 Software, computer Software documentation and technical data for commercial items are licensed under
4 HP's standard commercial license.

5 10. COMPLIANCE

6 Customer agrees that HP may audit Customer's compliance with the Software License terms. Any
7 such audit would be at HP's expense, require reasonable notice, and would be performed during normal
8 business hours. If an audit reveals underpayments then Customer will immediately pay HP such
9 underpayments together with the costs reasonably incurred by HP in connection with the audit and
10 seeking compliance with this sub-section.

11 11. WARRANTY

12 HP Branded Software will materially conform to its Specifications. If a warranty period is not
13 specified for HP Branded Software, the warranty period will be ninety (90) days from the delivery date.

14 12. VIRUS WARRANTY

15 HP warrants that any physical media containing HP Branded Software will be shipped free of
16 viruses.

17 13. WARRANTY LIMITATION

18 HP does not warrant that the operation of Software will be uninterrupted or error free, or that
19 Software will operate in Hardware and Software combinations other than as expressly required by HP in
20 the Product Specifications or that Software will meet requirements specified by Customer.

21 14. EXCLUSIVE REMEDIES

22 If notified of a valid warranty claim during the warranty period, HP will, at its option, correct the
23 warranty defect for HP Branded Software, or replace such Software. If HP is unable, within a reasonable
24 time, to complete the correction, or replace such Software, Customer will be entitled to a refund of the
25 purchase price paid upon prompt return of such Software to HP. Customer will pay expenses for return
26 of such Software to HP. HP will pay expenses for shipment of repaired or replacement Software to
27 Customer. This sub-section C.14 states HP's entire liability for warranty claims.

28 15. IMPLIED LICENSE

29 There are no implied licenses.

30 16. FREWARE AND OPEN SOURCE

31 Notwithstanding other statements in these Terms, Software licensed without fee or charge also
32 referred to as Freeware and/or Open Source is provided "AS IS" without any warranties or indemnities
33 of any kind. Software provided under any open source licensing model is governed solely by such open
34 source licensing terms which will prevail over these Terms.
35
36
37

1 D. HP SUPPORT TERMS

2 1. SUPPORT SERVICES

3 a. Description of Support. HP will deliver Support according to the description of the
4 offering, eligibility requirements, service limitations, and Customer responsibilities described in the
5 relevant Transaction Documents.

6 b. Ordering Support. Customer may order Support:

7 1. at the time of Product purchase, or prior to installation of Products for which Support
8 is being purchased, for a fixed term (may be referred to as “HP Care Pack”);

9 2. after the time of Product purchase, for either a fixed term or an initial term that may
10 be renewed (may be referred to as “HP Contractual Services”);

11 3. on a per-event basis; or

12 4. at any time, when agreed non-standard Support has been offered by HP for the
13 Customer according to a Statement of Work (also known as “Custom Support”) or as otherwise offered
14 by HP.

15 c. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the
16 unused prepaid Support, less any early termination fees or subject to any restrictions set forth in a
17 Transaction Document.

18 d. Return to Support. If Customer allows Support to lapse, additional fees may be required
19 to resume Support or Customer may be required to perform certain hardware or software upgrades. HP
20 will review and assess whether such fees are required, and explain these to HP Business Partner and
21 Customer at the time of the request to return to Support.

22 e. Local Availability. Customer may order Support from HP's current Support offerings.
23 Some offerings, features, and coverage (and related Products) may not be available in all countries or
24 areas.

25 f. Support Warranty. HP warrants that it will perform Support using generally recognized
26 commercial practices and standards.

27 g. Exclusive Remedies. HP will re-perform Support not performed in accordance with the
28 warranty herein. This sub-section D.1.g states HP's entire liability for Support warranty claims.

29 2. PRICING, SERVICES, AVAILABILITY, AND INVOICING

30 a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document,
31 HP may change Support prices upon sixty (60) days written notice.

32 b. Additional Services. Additional services performed by HP at Customer's request that are
33 not included in Customer's purchased Support will be chargeable at the applicable published service
34 rates for the country where the service is performed. Such additional services include but are not limited
35
36
37

1 to:

2 1. Customer requests for Support after HP's local standard business hours (unless
3 Customer has specifically purchased after-hours coverage for the requested Support);

4 2. Customer requests for repair for damage or failure attributable to the causes specified
5 in sub-section A.2.d of the HP Base Terms ("Warranty Exclusions"); and

6 3. Customer requests for Support where Customer does not, in HP's reasonable
7 determination, meet the applicable prerequisites and eligibility requirements for Support.

8
9 c. Local Availability. Support outside of the applicable HP coverage areas may be subject
10 to travel charges, longer response times, reduced restoration or repair commitments, and reduced
11 coverage hours.

12 d. Invoicing. Invoices for Support will be issued in advance of the Support period. HP
13 Support invoices and related documentation will be produced in accordance with HP system standards.
14 Additional levels of detail requested by Customer may be chargeable.

15 3. SITE AND PRODUCT ACCESS

16 Customer shall provide HP access to the Products covered under Support; adequate working space
17 and facilities within a reasonable distance of the Products; access to and use of information, customer
18 resources, and facilities as reasonably determined necessary by HP to service the Products; and other
19 access requirements described in the relevant Transaction Document. If Customer fails to provide such
20 access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the
21 Support call at HP's published service rates. Customer is responsible for removing any Products
22 ineligible for Support to allow HP to perform Support. If delivery of Support is made more difficult
23 because of ineligible Products, HP will charge Customer for the extra work at HP's published service
24 rates.

25 4. STANDARD SUPPORT PRODUCT ELIGIBILITY

26 a. Minimum Configuration for Support. Customer must purchase the same level of Support
27 and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all
28 components within a server, storage, or network device) to allow for proper execution of standalone and
29 operating system diagnostics for the configuration.

30 b. Eligibility. For initial and on-going Support eligibility Customer must maintain all
31 Products and associated hardware and software at the latest HP-specified configuration and revision
32 levels and in HP's reasonable opinion, in good operating condition.

33 c. Modifications. Customer will allow HP, at HP's request and at no additional charge, to
34 modify Products to improve operation, supportability, and reliability, or to meet legal requirements.

35 d. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for
36
37

1 | loaner units if provided at HP's discretion as part of Support or warranty services and such units will be
2 | returned to HP without lien or encumbrance at the end of the loaner period.

3 | e. Relocation. Customer is responsible for moving Products. If Customer moves the
4 | Products to a new location, HP may charge additional Support fees and modify the response times, and
5 | Customer may be required to execute amended or new Transaction Documents. If Customer moves
6 | Products to another country, Support shall be subject to availability in the destination country.
7 | Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.

8 | f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set
9 | forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such
10 | Products within the maximum usage limit.

11 | g. Multi-Vendor Support. HP provides Support for certain non-HP Branded Products. The
12 | relevant Transaction Document will specify availability and coverage levels, and govern delivery of
13 | multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may
14 | discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide
15 | support for such Products.

16 | 5. PROPRIETARY SERVICE TOOLS

17 | HP will require Customer's use of certain system and network diagnostic and maintenance programs
18 | (“Proprietary Service Tools”) for delivery of Support under certain coverage levels. Proprietary Service
19 | Tools are and remain the sole and exclusive property of HP, are provided “as is,” and include, but are
20 | not limited to: remote fault management software, network Support tools, Insight Manager, Instant
21 | Support, and Instant Support Enterprise Edition (known as “ISEE”). Proprietary Service Tools may
22 | reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during
23 | the applicable Support coverage period and only as allowed by HP. Customer may not sell, transfer,
24 | assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of
25 | Support, Customer will return the Proprietary Service Tools or allow HP to remove these Proprietary
26 | Service Tools. Customer will also be required to:

27 | a. allow HP to keep the Proprietary Service Tools resident on Customer’s systems or sites,
28 | and assist HP in running them;

29 | b. install Proprietary Service Tools, including installation of any required updates and
30 | patches;

31 | c. use the electronic data transfer capability to inform HP of events identified by the
32 | software;

33 | d. if required, purchase HP-specified remote connection hardware for systems with remote
34 | diagnosis service; and

35 | e. provide remote connectivity through an HP approved communications line.
36 |
37 |

1 6. CUSTOMER RESPONSIBILITIES

2 a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer
3 must maintain a separate backup system or procedure that is not dependent on the Products under
4 Support.

5 b. Temporary Workarounds. Customer will implement temporary procedures or
6 workarounds provided by HP while HP works on permanent solutions.

7 c. Hazardous Environment. Customer will notify HP if Customer uses Products in an
8 environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may
9 require Customer to maintain such Products under HP supervision and may postpone service until
10 Customer remedies such hazards.

11 d. Authorized Representative. Customer will have a representative present when HP
12 provides Support at Customer's site.

13 e. Product List. Customer will create and maintain a list of all Products under Support
14 including: the location of the Products, serial numbers, the HP-designated system identifiers, and
15 coverage levels. Customer shall keep the list updated during the applicable Support period.

16 f. Documentation. If Customer purchases a Support offering that includes documentation
17 updates, Customer may copy such updates only for systems under such coverage. Copies must include
18 appropriate HP Trademark and copyright notices.

19 7. SUPPORTED SOFTWARE

20 Customer may purchase available Support for HP Branded Software only if Customer can provide
21 evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no
22 obligation to provide Support due to any alterations or modifications to the Software not authorized by
23 HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless
24 otherwise agreed by HP, HP only provides Support for the current Version and the immediately
25 preceding Version of HP Branded Software, and then only when HP Branded Software is used with
26 Hardware or Software included in HP-specified configurations at the specified Version level.

27 8. ACCESSORIES AND PARTS AND MISCELLANEOUS

28 a. Compatible Cables and Connectors. Customer will connect Products covered under
29 Support with cables or connectors (including fiber optics if applicable) that are compatible with the
30 system, according to the manufacturer's operating manual.

31 b. Support for Accessories. HP may provide Support for cables, connectors, interfaces, and
32 other accessories if Customer purchases Support for such accessories at the same Hardware service level
33 purchased for the Products with which they are used.

34 c. Consumables. Support does not include the delivery, return, replacement, or installation
35
36
37

1 of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media,
2 print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.

3 d. Replacement Parts. Parts provided under Support may be whole unit replacements or be
4 new or functionally equivalent to new in performance and reliability and warranted as new. Replaced
5 parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable
6 charges.

7 e. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-
8 authorized service providers to assist in the provision of Support.

9
10 9. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

11 a. Designated Callers. Customer will identify a reasonable number of callers, as determined
12 by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers
13 ("Solution Centers").

14 b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate
15 technical aptitude in system administration, system management, and, if applicable, network
16 administration and management and diagnostic testing. HP may review and discuss with Customer any
17 Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution
18 Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general
19 experience and training, the Customer may be required to replace that Designated Caller. All Designated
20 Callers must have the proper system identifier as provided in the Transaction Documents or by HP when
21 Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.

22 c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for
23 certain types of Support. Customer may access specified areas of the HP IT Resource Center. File
24 Transfer Protocol access is required for some electronic services. Customer employees who submit HP
25 Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in
26 sub-section D.9.b above.

27 d. Telecommunication Charges. Customer will pay for all telecommunication charges
28 associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet
29 connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service
30 Tools.

31 //
32 //
33 //
34 //
35 //
36 //
37

**PASS-THROUGH PROVISIONS
ORACLE CORPORATION**

END USER TERMS FOR THE GOLDEN GATE PRODUCT

For the purposes of these end user terms, "Software" means the Oracle/GoldenGate licensed software.

A. Client is granted a non-exclusive, non-transferable, revocable license to install and execute the Software. Client may only use the Software to capture data from, or deliver data to, a Cerner product, through the standard interfaces exposed by Oracle Corporation ("Oracle") for such capture and delivery. To the extent Oracle/GoldenGate delivers with the Software the software of third parties ("Third Party Software"), such third Party Software is subject to separate terms and conditions included with, or contained in the setup installation segments of, such Third Party Software.

B. Client acknowledges that the Software and its structure, organization and source code constitute valuable trade secrets of Oracle. All Software, documentation and intellectual property rights therein are the exclusive property of Oracle.

C. Client agrees not to: (i) reproduce, modify, adapt, alter, translate, or create derivative works from the Software; (ii) merge the Software with other software; (iii) distribute or sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; or (iv) reverse engineer, decompile, disassemble, or otherwise attempt to drive the source code for the Software. Notwithstanding clause (iv) above, Client may decompile the Software to the extent applicable law gives Client the right to do so to obtain information necessary to render the Software interoperable with other software; provided however, that Client must first request such information from Oracle and Oracle may, in its discretion, either provide such information to Client or impose reasonable conditions on such use of the source code for the Software to ensure that Oracle's proprietary rights in the source code for the Software are protected.

D. Client may not export or re-export the Software without the appropriate United States or foreign government licenses.

E. Oracle and its suppliers disclaim all express and implied warranties regarding the Software.

F. Oracle disclaims all liability.

G. Oracle is named as an intended third party beneficiary of these End-User Terms, with the right to enforce its terms directly against Client.

H. Should Client install the Software itself, Client is required to purchase training and installation services.

//

//

//