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

THIS AGREEMENT entered into this ~~30th~~2nd day of ~~October, 2009~~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).

W I T N E S S E T H:

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 ~~(SOW)~~ 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 ~~the~~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, ~~2012~~2013;

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

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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CONTENTS

EXHIBIT A

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<u>REFERENCED CONTRACT PROVISIONS</u>

Term: ~~October 30, 2009~~May 2, 2012 through June 30, ~~2012~~2013

~~"Period One" means the period October 30, 2009 through June 30, 2010~~

~~"Period Two" means the period July1, 2010 through June 30, 2011~~

~~"Period Three" means the period July 1, 2011 through June 30, 2012~~

Maximum Obligation:

~~Period One:~~ ~~$132,236.00~~

~~Period Two:~~ ~~$831,894.00~~

~~Period Three:~~ ~~$885,600.00~~

~~Total~~ ~~Maximum~~ ~~Obligation:~~

~~$1,849,730~~$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

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I. ALTERATION OF TERMS

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preliminary understandings, and other communications relative to this Agreement, oral or written, shall be considered superseded, and any such terms, conditions or provisions are effective only to the extent that they have been negotiated as part of this Agreement.

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

II. ATTORNEYS' FEESCOMPLIANCE

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

III. BUSINESS ASSOCIATE TERMS AND CONDITIONS

A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

6. COUNTY and CONTRACTOR intend to protect the privacy and provide for the security of PHI disclosed to the CONTRACTOR pursuant to this Agreement, in compliance with HIPAA and the

regulations promulgated thereunder by the U.S. Department of Health and Human Services as they may now exist or be hereafter amended.

B. DEFINITIONS

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

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

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

c. Breach excludes:

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

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

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

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

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

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

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

6. "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103, as applied to the information created or received by Business Associate from or on behalf of Covered Entity.

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

8. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

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

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

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

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

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

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

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

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

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

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

9. CONTRACTOR agrees to document any disclosures of PHI and to make information related to such disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

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

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

D. SECURITY RULE

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

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

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

E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

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

5. CONTRACTOR's notification may be written or oral, but, if oral, shall be followed by written notification confirming the oral notification within twenty-four (24) hours of said notification. Thereafter, CONTRACTOR shall provide written notification containing the contents stated below

within five (5) business days. CONTRACTOR shall be required to provide any other information relevant to the Breach in writing as soon as the information is available.

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

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

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

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

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

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

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

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

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

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

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

11. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of fifteen (15) calendar days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to COUNTY, when such request

is made by COUNTY.

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

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

a. The disclosure is required by law; or

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

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

G. OBLIGATIONS OF COUNTY

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

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

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

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

H. BUSINESS ASSOCIATE TERMINATION

1. In addition to the rights and remedies provided in Paragraph XXVII of this Agreement,

upon COUNTY's knowledge of a material breach by CONTRACTOR of the requirements of this Paragraph, COUNTY shall either:

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

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

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

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

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

      b.   CONTRACTOR shall retain no copies of the PHI.

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

IV. <u>CHOICE OF LAW AND FORUM</u>

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

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

    C.   COUNTY and CONTRACTOR agree that, in the event of a dispute notwithstanding, they will

continue without delay to carry out all their responsibilities under this Agreement, which are not affected by the dispute.

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

V. COMPLIANCE(HCA)

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

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

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

B. CONTRACTOR has the option to adhere to HCA'sADMINISTRATOR's Compliance Program or establish its own.

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

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

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

4. If CONTRACTOR elects to use its own Compliance Program, failure of CONTRACTOR

to submit its Compliance Program, Code of Conduct, and relevant policies and procedures shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of such notice from ADMINSTRATOR shall constitute grounds for termination of this Agreement as to the non-complying party.

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

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

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

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

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

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

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

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

3. CONTRACTOR shall screen all current Covered Individuals within ~~the timeframe set forth in the Provision~~sixty (60) days of ~~Maintenance and Software Support Services~~execution of this Agreement ~~currently in effect between the parties and as it may be amended or renewed by the parties.~~to ensure that they have not become Ineligible Persons.

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

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

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

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

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

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

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

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

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

~~III~~VI. CONFLICT OF INTEREST

A. ~~A.~~ The Orange County Board of Supervisors' policy prohibits its public employees from engaging in activities involving conflict of interest. CONTRACTOR shall exercise reasonable care and

diligence to prevent any actions or conditions that could result in a conflict with the best interest of COUNTY. This obligation shall apply to CONTRACTOR, CONTRACTOR's officers, employees and agents, relatives, sub-tier contractors, and third parties associated with accomplishing Services hereunder as outlined in the California Political Reform Act of 1974 and Government Code 87103.

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

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<h2 style="text-align:center">IV.VII. CONFIDENTIALITY</h2>

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

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

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

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

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

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

E. Both parties do hereby agree that CONTRACTOR's client list is considered proprietary, and as

such CONTRACTOR shall only be obligated to supply to COUNTY, upon request, such information to which CONTRACTOR has received permission from the client to do so.

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VI. CONTRACTOR LIMITATION OF LIABILITY

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

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

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

IX. DELEGATION~~,~~ ASSIGNMENT, AND ~~subcontracts~~SUBCONTRACTS

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

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

~~B.~~ C. COUNTY may assign this Agreement to any successor governmental agency or authority

upon written notice to CONTRACTOR, but no such assignment shall be construed to expand the permitted scope of use hereunder.

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

~~D.~~ //

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

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

~~VI.~~X. EMPLOYEE ELIGIBILITY VERIFICATION

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

~~VII~~XI. FACILITIES, PAYMENTS AND SERVICES

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

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

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

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

VIII//

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XII. INDEMNIFICATION AND INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

2. If an injunction is obtained against COUNTY's use of any item of Licensed Software by

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

3. CONTRACTOR shall not have any obligation to COUNTY under any provision of this Paragraph H if the infringement claim is based upon the use of any item of Licensed Software in combination with any software program or equipment, or any part thereof, not furnished or recommended in writing by CONTRACTOR, or the use of Licensed Software in a manner or environment to which it is not operating in as of the Effective Date.

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

IX.XIII. INFORMATION MANAGEMENT TOOLS

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

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

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

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

XIV. INSPECTIONS AND AUDITS

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall have

access to any books, documents, and records of CONTRACTOR that are directly pertinent to this Agreement, as necessary to audit and verify CONTRACTOR's charges to COUNTY hereunder. Such persons may at all reasonable times inspect the records.

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

C. AUDIT RESPONSE:

If the audit reveals that money is payable from one party to the other, that is, reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

X.XV. LICENSES AND LAW

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

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

applicable laws, rules and/or regulations and requiring such change.

C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:

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

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

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

c. A certification that CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees;

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

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

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

XI

XVI. LITERATURE AND ADVERTISEMENTS

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

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

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

~~XII~~XVII. MAXIMUM OBLIGATION

~~The separate Maximum Obligations for Period One through Period Three are as specified on Page 5 of this Agreement and shall apply to all Services provided in accordance with Exhibit B. to this Agreement. The Parties agree that all extra services are by mutual consent of all parties as further identified in Section V.J. of Exhibit A. to this Agreement and may be subject to the approval of the Orange County Board of Supervisors.~~

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

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

1. CONTRACTOR shall ensure that applicants are employed, and that employees are treated during employment, without regard to their ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age (40 and over), sexual preference, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. There shall be posted in conspicuous places, available to employees and applicants for employment, notices from CONTRACTOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of Equal Opportunity clause.

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

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

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

may now exist or be hereafter amended or changed.

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

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

XIX.XIV. NOTICES

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

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified on Page 5in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by electronic mail; or

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

B. Termination Notices shall be addressed as specified on Page 5in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service.

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

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

XV.XX. PROTECTIVE EQUIPMENT

COUNTY shall supply to CONTRACTOR representatives who work at or visit the COUNTY site the same protective equipment and clothing that COUNTY employees use and wear when operating in

the same or comparable environments owned or controlled by the COUNTY.

XXI. RECORDS MANAGEMENT AND MAINTENANCE

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

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

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

D. CONTRACTOR may be required to pay any costs associated with a breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification, to the extent such breach is due to CONTRACTOR's sole fault.

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

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

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

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

~~XVI.~~XXII. SEVERABILITY

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

~~XVII~~XXIII. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be

wholly responsible for the manner in which it performs the Services required of it by the terms of this Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the Services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY employees and shall not be considered in any manner to be COUNTY employees.

XVIII.XXIV. TERM

The term of this Agreement shall commence and terminate as specified on Page 5in the Referenced Contract Provisions of this Agreement, unless otherwise sooner terminated as provided in this Agreement; provided, however, each party shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

XXV.XIX. TERMINATION

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

1. Contingent Funding;

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

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

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

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

2. Breach of Agreement;

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

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

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

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

b. In the event of a material breach by CONTRACTOR, in addition to the above and other remedies, COUNTY reserves the right to terminate this Agreement in accordance with this Section ~~XIX.~~XXV. all of the foregoing subject to Section ~~XX~~VI.B. hereof. COUNTY may continue to discontinue payments pending a decision of the Arbitrator as provided in Section ~~XX~~VI.C. hereof.

3. Insolvency;

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

b. CONTRACTOR liquidates, dissolves or ceases doing business;

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

1. Breach of Agreement;

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

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

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

2. Insolvency ;

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

3. In the event that this contract is terminated due to an uncured default of the COUNTY's hereunder, CONTRACTOR may declare all contract payments to the end of the COUNTY's then current fiscal year to be due, including any delinquent contract payments from prior budget years. In no

event shall CONTRACTOR be entitled to the remedy of acceleration of the total contract payments due over the term of this Agreement. The parties acknowledge and agree that the limitations set forth above are required by Article 16, section l8 of the California Constitution. Notwithstanding the foregoing, CONTRACTOR may have other rights or civil remedies to seek relief due to the COUNTY's default under this Agreement. Such rights or remedies may include a right to continue the COUNTY's responsibility to perform under this Agreement and sue for payments as they become due.

C. RIGHTS UPON TERMINATION BY COUNTY FOR CAUSE;

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

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

2. Within thirty (30) days after receiving notice from COUNTY that the Licensed Software, and any other products provided by CONTRACTOR that COUNTY has not paid for, are available in a secure location at COUNTY's site for pick-up by CONTRACTOR, CONTRACTOR shall within thirty (30) days refund to COUNTY payments made for the Licensed Software hereunder (depreciated over a five-year straight line basis). COUNTY shall then within thirty (30) days release to CONTRACTOR the materials described above. CONTRACTOR shall be responsible for the costs of removal of such items.

D. ORDERLY TERMINATION;

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

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

E. LIQUIDATED DAMAGES:

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

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

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

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

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

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

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

~~XX. CHOICE OF LAW AND FORUM~~

~~C.~~ The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, provided that no article of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such article, and this Agreement shall be construed as if jointly prepared by the parties. No lawsuit pertaining to any matter arising under or growing out of this Agreement shall be instituted in any state other than California. ~~Unless subject to the paragraph below, any legal proceeding with respect to this Agreement shall be filed in the~~

~~appropriate court of the State of California in Orange County, California.~~

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

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

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

~~XXI.~~

XXVI. WAIVER OF DEFAULT OR BREACH

–   Waiver of any default shall not be considered a waiver of any subsequent default. Waiver of any breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver of any default or any breach shall not be considered a modification of the terms of this Agreement.

~~XXII~~XXVII. WARRANTIES

A. EQUIPMENT, SOFTWARE AND SYSTEM:

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

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

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

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

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

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<center>~~**XXIII. CONTRACTOR LIMITATION OF LIABILITY**~~
~~**EXCEPT AS PROVIDED IN SECTION VIII.H. ABOVE**~~
XXVIII. WORK PRODUCT</center>

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

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

~~D. Except as provided in Section VIII.H. above, notwithstanding any other provision herein, CONTRACTOR's maximum liability for all claims whatsoever arising under this Agreement shall be limited to the amount paid by COUNTY to CONTRACTOR for Services under this Agreement during the previous thirty-six (36) month period.~~

~~XXIV.~~ WORK PRODUCT

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

~~XXV. ATTORNEYS' FEES~~

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

~~XXVI.~~ INFORMATION MANAGEMENT TOOLS

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

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

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

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

~~XXVII.~~ **PROTECTIVE EQUIPMENT**

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

~~XXVIII. NO HIRE~~

~~CONTRACTOR and COUNTY agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other parties' associates or employees until one year after this Agreement is terminated, provided the foregoing provision will not prohibit a general non-targeted solicitation of employment in the ordinary course of business or prevent either party from employing any employee who contacts such party at his or her own initiative without any direct or indirect solicitation by or encouragement from such party.~~

XXIX. **PURCHASE ORDERS**

If COUNTY submits its own form of purchase order to request Licensed Software, Sublicensed Software, Equipment and/or professional services specifically relating to this Agreement and including but not limited to the Services, any and all terms and conditions (except with respect to the payment provisions of such purchase order) which may appear on such purchase order are of no force or effect and shall be superseded by the terms and conditions of this Agreement.

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XXX. **F.O.B. PRICES**

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

XXXI. HEADINGS NOT CONTROLLING

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

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IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange, State

of California.

CERNER CORPORATION

BY: _____   DATED:_____

TITLE: _____

BY: _____   DATED:_____

TITLE: _____

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

COUNTY OF ORANGE

BY: _____   DATED:_____
     HEALTH CARE AGENCY

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

BY: _____   DATED:_____
     DEPUTY
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EXHIBIT A
TO THE AGREEMENT FOR PROVISION OF ~~IRIS~~
IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
BETWEEN
COUNTY OF ORANGE
AND
CERNER CORPORATION
~~OCTOBER 30, 2009~~MAY 2, 2012 THROUGH JUNE 30, ~~2012~~2013

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

to, or retrieved by CONTRACTOR for storage.

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

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

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

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

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

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

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

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

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

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

R. **New Release** shall mean the distinctly identified (e.g. Release HNAM.~~2007~~2010.XX for CONTRACTOR products), comprehensive collection and packaging of an upgrade or modification to the Licensed Software and supporting documentation components at a distinct point in time within a product's life cycle that CONTRACTOR makes generally commercially available.

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

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

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

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

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

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

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

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

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

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

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

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

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

II. PATENT/COPYRIGHT MATERIALS

Unless otherwise expressly provided in this Agreement, CONTRACTOR shall be solely responsible

for clearing or securing the right to use any patented or copyrighted materials included in the Licensed Software supplied by or through CONTRACTOR in the performance of this Agreement.
//

III. TITLE TO DATA

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

IV. CALIFORNIA PUBLIC RECORDS ACT

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

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

V. PAYMENTS

A. BASIS FOR REIMBURSEMENT - As compensation to CONTRACTOR for the Services described in Exhibit B. to the Agreement, which amount shall be inclusive ofis not subject to sales tax, and in accordance with the quotes submitted by CONTRACTOR, COUNTY shall pay a fixed fee of one million seven hundred twenty ninefifty two thousand seven one hundred and thirtyforty-four dollars ($1,729,730752,144.00) for the Services and payment for CONTRACTOR reimbursable expenses not to

exceed ~~one hundred~~ twenty thousand ~~($120~~dollars ($20,000). This amount shall be deemed payment in full for all Services, Equipment, Sublicensed Software and Licensed Software purchased through CONTRACTOR specific to the SOW as outlined in Exhibit B. of this Agreement and in First Productive Use through the termination date as ~~identified on Page 5~~specified in the Referenced Contract Provisions of this Agreement. Said amount shall be exclusive of any Maintenance/Licensed Software Support which shall be covered through the separate agreement for "Maintenance and Support Services".

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

~~a.~~1.	Professional Services: 	~~$1,502,187~~$ 606,645.00
~~b.~~2.	~~Licensed and~~ Sublicensed Software: 	~~$ 161,600~~$ 42,000.00
	~~c.	Taxes and Other Fees: 	$ 65,943.00~~
3.	Licensed Software :	$ 20,000.00
4.	Content Fee:	$ 44,499.00
5.	Fee For Service Hours	$ 39,000.00

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

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

E. PAYMENT SCHEDULE
1. Initial Payment.
Twenty-five percent (25%) of the total Licensed Software, Sublicensed Software and professional services fees in the amount of one hundred sixty-seven thousand one hundred sixty-one dollars and twenty-five cents ($167,161.25) shall be invoiced and payable upon submission of final Project Plan. This initial payment shall be applied toward the Licensed Software and Sublicensed Software amounts outlined in the Financial Overview and the remaining payment applied toward the professional services fees (Fixed Fee).
2. Second Payment.
Twenty percent (20%) of the total Licensed Software, Sublicensed Software and professional services fees in the amount of one hundred thirty-three thousand seven hundred twenty-nine dollars ($133,729) shall be invoiced and payable upon HP/UX Hardware upgrade into the production domain.
3. Third Payment.
Twenty percent (20%) of the total Licensed Software, Sublicensed Software and professional

services fees in the amount of one hundred thirty-three thousand seven hundred twenty-nine dollars ($133,729) shall be invoiced and payable upon 11g/ASM/CBO upgrade and migration into the production domain.

  4. <u>Fourth Payment.</u>

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. <u>Upgrade Center Content Fees.</u>

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.

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  6. <u>Fee For Service Hours.</u>

CONTRACTOR shall separately bill COUNTY, on a monthly basis, the actual costs incurred for up to eighty (80) hours for a System Engineer at $195 an hour and up to one hundred twenty (120) hours for a Solution Architect at $195 an hour that are directly related all Service activities under this Agreement in the manner and under the terms identified in the agreement for "Maintenance and Software Support Services".

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

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

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

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

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

 J.K. The parties agree that if additional work, beyond that specified in this Agreement is needed, COUNTY, at its discretion, may purchase additional hours from CONTRACTOR, at the then negotiated rate agreed upon by both parties (which for COUNTY's 2009 – 20102011 – 2012 fiscal year is one hundred ninety five dollars ($195) per hour) and CONTRACTOR hereby acknowledges and agrees that

COUNTY may pay for such amounts from the Hours Pool established by COUNTY, and as identified in the agreement for "Maintenance and Software Support Services", for unforeseen changes in the scope of this Agreement, to the extent that the amounts in the Hours Pool are sufficient.

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

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

VI. REPORTS AND MEETINGS

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

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

VII. RESPONSIBILITY OF CONTRACTOR

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

B. CONTRACTOR shall provide Services and other relevant documents necessary to complete the

Services and fulfill the requirements as set forth within this Agreement.

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

VIII. SERVICES

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

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B. ADDITIONAL SERVICES; CONTRACTOR shall charge COUNTY for any such additional services or assistance as specified in Section V.~~J~~K. of this Exhibit A. to the Agreement. If COUNTY requests such additional services, CONTRACTOR shall inform COUNTY that the services requested constitute additional services. Upon approval by COUNTY, CONTRACTOR shall provide the requested service as mutually agreed upon.

C. SOFTWARE LICENSE:

1. License Grant: Subject to the terms and conditions of this Agreement, CONTRACTOR grants to COUNTY a non-exclusive, non-transferable, fully paid, irrevocable and perpetual license to use the Licensed Software solely as specified in this Agreement. This license shall include all New Releases to the Licensed Software ~~provided pursuant to the terms of this Section VIII. of this Exhibit A. to the Agreement and Section XIX.F. of the Agreement hereby and~~and hereby shall apply to the COUNTY, and all agencies thereof, and all Permitted Users and Users of the COUNTY or any agencies thereof.

2. Scope of Use:

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

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

c. The Licensed Software shall reside at the Designated Facility, or, upon written notice to

CONTRACTOR, COUNTY's designated data processing location which shall become a Designated Facility upon such notice. COUNTY may, upon advance written notice to CONTRACTOR, permanently move the Licensed Software to a different data processing location under the control of COUNTY. COUNTY shall not outsource its operation of the Licensed Software to any third party without CONTRACTOR's prior written consent.

3. Sublicense Grant: Subject to the terms and conditions of this Agreement, CONTRACTOR grants to COUNTY a non-exclusive, non-transferable sublicense to use the Sublicensed Software on the terms and conditions which are set forth for end-users in the underlying license granted to CONTRACTOR by the Sublicensed Software supplier. If execution by COUNTY of a separate sublicense agreement is required by a Sublicensed Software supplier, CONTRACTOR shall so inform COUNTY. In such case, COUNTY shall either execute same or be denied access to that portion of the Sublicensed Software. If COUNTY declines to execute the supplier's sublicense agreement, CONTRACTOR shall assist COUNTY in negotiating changes to the standard terms. CONTRACTOR shall have no responsibility for any impairment to Equipment, Sublicensed Software or Licensed Software functionality, reliability or performance occasioned by the absence of such item of Sublicensed Software until such sublicense has been obtained and, if necessary, executed by COUNTY. CONTRACTOR has recommended the use of such Equipment and Sublicensed Software in connection with the System and represents that the Equipment and Sublicensed Software will operate properly within (i.e., be integrated to work with) the System. CONTRACTOR does not make any warranties or guarantees regarding functionality, reliability or performance of the Equipment and/or Sublicensed Software. In the event of any warranty, claim or support relating to any Equipment or Sublicensed Software, CONTRACTOR shall interface with the manufacturer of the Equipment or licensor of such Sublicensed Software to obtain all necessary support or remedies available pursuant to applicable warranties from the manufacturer or licensor or CONTRACTOR's support obligations hereunder.

D. SOFTWARE OWNERSHIP:

1. Intellectual Property Rights;

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

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

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

b.   In connection therewith, COUNTY agrees that:

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

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

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

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

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

2.   Possession and Use of Source Code: If Source Code is obtained by COUNTY as authorized by CONTRACTOR such Source Code shall remain subject to every license restriction, proprietary rights protection, and other COUNTY obligations specified in this Agreement. COUNTY may use Source Code for the sole purpose of supporting its use of the Licensed Software as expressly permitted under this Agreement, and for no other purpose whatsoever. When Source Code resides in a central processing unit, COUNTY shall limit access to its authorized employees who have a need to know in

order to support the Licensed Software. COUNTY shall at all times implement strict access security measures in order to prevent unauthorized disclosure, use, or removal of Source Code. COUNTY also agrees that all persons with access to the Source Code shall execute confidentiality agreements consistent with the obligations of COUNTY hereunder.

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3. <u>Software Ownership</u>**:**

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

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

c. This Agreement does not transfer to COUNTY title to any intellectual property contained in any Licensed Software, documentation or proprietary information. Documentation licensed hereunder does not include any materials designed for or used in the Maintenance of Equipment. The COUNTY shall take all reasonable precautions to safeguard the Licensed Software, manuals, documents, and media and to use its commercially reasonable best efforts not to make available the Licensed Software in any form to any third party, except for COUNTY employees, consultants, independent contractors, providers or other third parties under contract with COUNTY directly concerned with COUNTY's licensed use of the System, subject to the conditions set forth in ~~Section IX.G~~Subparagraph VIII.C.1. above.

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

E. <u>EQUIPMENT AND SUBLICENSED SOFTWARE MAINTENANCE:</u> The parties understand and agree that Maintenance on Equipment, Equipment Operating System Sublicensed Software and Sublicensed Software will be provided pursuant to the terms and conditions as set forth in the agreement for "Maintenance and Support Services".

IX. <u>STANDARDS OF SYSTEM PERFORMANCE AND ACCEPTANCE TESTING</u>

A. The System must perform at COUNTY acceptable performance levels. During the period between First Productive Use and until the time COUNTY is on Support under the separate agreement for "Maintenance and Software Support Services", the System shall perform in a manner that will not impede the performance of routine and normal System-related operational tasks, perform critical

processes that are executed at the server level; and will function in a consistent and dependable manner, recognizing that the COUNTY operates in a demanding twenty four (24) hours a day, seven (7) days a week production environment and that high-availability is critical. The parties agree that System performance is a joint responsibility of COUNTY and CONTRACTOR to the extent under control by each party; CONTRACTOR's responsibilities for System performance also include providing Support and Maintenance services for the System (including the Licensed Software) as specifically set forth under the agreement for "Maintenance and Support Services".

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

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

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

E. PROJECT SCHEDULE;

a. Site Preparation. COUNTY will have its Designated Facility(s) prepared for the Installation and Implementation of Licensed Software and the installation of Equipment and Sublicensed Software by the date of execution of this Agreement. In the event the site(s) is/are not prepared by such date, COUNTY acknowledges that the project schedule may be delayed and that, if applicable, CONTRACTOR may make a change order application to COUNTY.

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

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

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

the Project Schedule are included in the total Agreement maximum obligation amount.

G. PURCHASE OF EQUIPMENT

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

H. PRE-PRODUCTION ACCEPTANCE PERIOD

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

I. PRODUCTION ACCEPTANCE PERIOD

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

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

i.The System or the applicable module of Licensed Software performs in accordance with

the Product Descriptions, without error and for a period of thirty (30) continuous days, the functions with respect to the defects listed in the Notice of Noncompliance, or

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

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

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

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

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EXHIBIT B
TO THE AGREEMENT FOR PROVISION OF
IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES
BETWEEN
COUNTY OF ORANGE
AND
CERNER CORPORATION
~~OCTOBER 30, 2009~~MAY 2, 2012 THROUGH JUNE 30, ~~2012~~2013
SCOPE OF WORK

CONTRACTOR and COUNTY agree that ~~COUNTY shall pay for the eleven (11) projects, and conversion of the current billing methodology from Net Billing to Gross Billing and develop a process to perform and manage billing claim Void and Replace functionality, as required under the California Department of Mental Health Short Doyle Medi-Cal Phase II program as outlined below and incorporated herein. This Scope of Work covers only the items identified. A new agreement will be required if additional tasks beyond those outlined in this Scope of Work are requested. The commitment for the completion of the compliance with the California Short-Doyle MediCal Phase II billing requirements shall be no later than Feb 1, 2010, and~~ the target date for the ~~completion of the technology upgrade, including the migration of the current Cerner~~ Millennium ~~2004.1 application release to either release 2007.19 or 2010.1 (version dependant on final product release and testing results), shall be April 1, 2010. The target date for the technology and Cerner Millennium upgrade only~~upgrade set forth herein has been determined by the parties assuming a project start date of ~~November 1, 2009~~May 2, 2012 and is to be considered a ~~five (5~~six (6) month implementation process; ~~Cerner~~CONTRACTOR shall not be liable for any project delay(s) unless such delay(s) is (are) due to ~~Cerner's~~CONTRACTOR's sole fault.

I.   ~~CLIENT~~ COUNTY OBLIGATIONS AND PREREQUISITES:

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

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

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

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

d.   Designate a representative to be the project manager for the applicable service. He/she

will be the focal point for the ~~Cerner~~CONTRACTOR associate performing or managing the delivery of the service and will have the authority to act in matters regarding a project.

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

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

      g.   Provide installation instructions and validation of non-~~Cerner~~CONTRACTOR applications on given platforms.

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

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

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

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

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

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

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

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

      p.   Is responsible for creating the appropriate test scripts.

      q.   Is responsible for and will supervise any testing.

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

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

      t.   Will authorize ~~Cerner~~ CONTRACTOR to move the code to production when authorized ~~Client~~COUNTY staff has validated it if necessary.

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

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

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

      x.   Is responsible for creating one or more valid backups of the entire ~~Cerner~~CONTRACTOR Millennium environment shortly AFTER the cut-over to the target environment.

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

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

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

//

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-EBSOVRS)**

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
      - Review fibre channel switch compatibility with current or proposed SAN, host and data protection environment
   d. Data protection solution
      - Review data protection solution compatibility with current or proposed SAN and host environment
3. Provide CONTRACTOR-related specifications required for implementation of solution(s)
   a. Storage array and storage virtualization solution
      - Storage requirements (e.g. # of LUNs, LUN sizes, …)
   b. Host system solution
      - Host system resource requirements (e.g. RAM, CPUs, …)
      - Host connectivity requirements (e.g. # of HBA-ports, zoning, …)
   c. Fibre channel switches solution
      - Fabric design
   d. Data protection solution
      - Data protection best practices (e.g. backup frequency, backup type, …)

C. Services Not Included In Project Scope

This service does NOT include the following items/tasks:

   a. Hardware
      - Hardware
      - Installation or upgrade of any hardware
   b. Software
      - Software licenses
      - Custom scripting

- Installation or upgrade of any software
- Configuration of any software/firmware components

D. Deliverables

1. Project status updates
2. CONTRACTOR-related specifications/requirements for purchased solution(s)

E. COUNTY Obligations and Prerequisites

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

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

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

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

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

5. Provide the performing CONTRACTOR Associate "high privilege" access to the systems 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.

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

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

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

V.   HARDWARE MIGRATION (CTS-HWMIG)

A. Solution Description

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

B. Service Overview

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

C. Definition of Project Scope

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

1. Pre-travel Checklist Discussion (Remote)
   a. Provide Pre-travel Checklist document to COUNTY
   b. Schedule and conduct Pre-travel review discussion with the COUNTY
   c. Create migration project plan with COUNTY

2. Hardware and Application Server Verification
   a. Verification of server hardware
   b. Verification of all required licenses and software necessary are present
   c. Assistance in making the hardware available on Intellinet for remote support from CONTRACTOR
   d. Participate in planning discussion around carving up and allocating storage to new target node(s)
   e. Carve and present required storage to new target node(s) (COUNTY Responsibility)
   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
   h. Install corresponding Oracle version matching production on target server in a Non-RAC mode.

3. Mock Phase
   a. Create or designate mock environment for use during project (COUNTY Responsibility)
   b. Setup Disaster Recovery Toolkit for Mock environment to target application server(s)
   c. Replicate IRIS Mock environment from source to target server(s)
   d. Create new target database on target server using the standby database
   e. Perform Mock failover to target servers utilizing the DR Toolkit
   f. Support COUNTY Functional testing
   g. Installation of HA and RAC (see Oracle RAC SOW below)
   h. Test Backup solutions in new configuration (COUNTY responsibility with CONTRACTOR's assistance in configuration and troubleshooting)
   i. Migrate and/or re-install other necessary operating software tools installed on production servers. Examples include RMAN, Olympus, LightsOn, etc.
   j. Document any issues from test and add to downtime planning document

4. Production Phase
   a. Setup Disaster Recovery Toolkit for Production environment to target application server(s)
   b. Replicate IRIS Production environment from source to target node(s)
   c. Create new target database on target server by using the standby database

      d.   Shutdown existing Production Domain

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

      f.   Update FAT COUNTYs and any tnsnames.ora entries as necessary (COUNTY Responsibility)

      g.   Restart IRIS environment on new server(s)

      h.   Support COUNTY Functional testing

5.   Remote Technical Support

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

D. Deliverables

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

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

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

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

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
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

VI. HPUX OS UPGRADE (CTS-OSHPUXUPG)

A. Solution Description

Professional Services to upgrade HPUX operating system

B. Service Overview

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

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.

C. Definition of Project Scope

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

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 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
Security Analyst	Yes	Analyst	Review, Approve
System Engineer	Yes	Expert	Perform Work
Technology Architect	Yes	Expert	Contributor, Approve
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 system upgrade.

G. Estimated Work Effort and Duration

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

H. Frequency

Only one onsite trip should be required for the actual upgrade of the HPUX operating system.

VII. ORACLE 11G RAC (CTS-ORACLERAC)

A. Solution Description

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

B. Service Overview

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

1. The following work activities will be performed:
    a. Plan Oracle RAC implementation or upgrade
        - Validate Oracle software availability and licensing requirements
        - Validate Serviceguard (for HP-UX) is properly configured and currently running in the cluster
        - Validate network setup
        - If installing a new Oracle RAC kernel, validate that:
        - If installation Oracle RAC on currently existing Oracle kernel, discuss installation options and effects on the existing database(s) using the same Oracle kernel and evaluate and validate that:
2. Oracle RAC installation

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.

C. Definition of Project Scope

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

1. The following work activities will be performed:
    a. Plan Oracle RAC implementation or upgrade
        - Validate Oracle software availability and licensing requirements
        - Validate Serviceguard (for HP-UX) is properly configured and currently running in the cluster
        - Validate network setup
        - Primary public network (needed only if same cluster is used for application) – configured for IP address takeover
            - Secondary public network - not configured for IP address takeover
            - Private network - connected via a switch
            - Create OCR (Oracle Cluster Register) concurrent VG & CRS (Cluster Ready Services) Voting Disk

- If installing a new Oracle RAC kernel, validate that:
  - All basic Oracle installation pre-requisites have been met
  - Additional Oracle RAC requirements on all nodes in the cluster have been met
  - Additional Oracle RAC space requirements on all nodes in the cluster have been met
  - Inter-node network setup and connectivity in the cluster is appropriately setup and configured
- If installation Oracle RAC on currently existing Oracle kernel, discuss installation options and effects on the existing database(s) using the same Oracle kernel and evaluate and validate that:
  - Additional Oracle RAC requirements on all nodes in the cluster have been met
  - Additional Oracle RAC space requirements on all nodes in the cluster have been met
  - Inter-node network setup and connectivity in the cluster is appropriately setup and configured

b. Oracle RAC installation

- Review Serviceguard (for HP-UX) configuration and running state
- Review space requirements and inter-node cluster communication and connectivity
- Review Oracle and Oracle RAC pre-requisites and requirements
- Discuss and review installation or upgrade process including potential downtimes
- Install Cluster Ready Services (CRS)
- Install Oracle RAC on all nodes in the cluster
- Perform post-installation steps

2. The following limitations apply:

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 HPUX 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.

~~a.~~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

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

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

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

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

4. Designate a representative to be the project manager for the applicable service. He/she

will be the focal point for the CONTRACTOR associate performing or managing the delivery of the service and will have the authority to act in matters regarding a project.

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

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

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

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

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

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

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

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

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

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

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

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

17. Is responsible for and will supervise any testing.

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

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

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

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

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

It is the position of CernerCONTRACTOR that ClientCOUNTY must determine, based on site-specific standard operating procedures, governing regulatory bodies, patient population, employees and tools, how best to validate all aspects of their system. In addition, the clientCOUNTY assumes all risk for software testing. CernerCONTRACTOR accepts no responsibility or liability for any costs, expenses,

claims or damages incurred by the ~~client~~COUNTY or any third party as a result of the failure of the System, or any component thereof, or any other system of the ~~client's~~COUNTY's to function properly and/or without interruption due to improper testing.

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

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

~~IV.~~VIII.   DELIVERABLES:

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

~~V.~~IX. COMPLETION CRITERIA:

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.

I. Completion Criteria

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

X.   ORACLE 11G ASM CONVERSION (CTS-ASMCONV)

A. Solution Description

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

B. Service Overview

CONTRACTOR Technical Associates will implement Oracle ASM (Automated Storage Manager) Kernels on a four-node HP-UX (Serviceguard) cluster. Certain tasks are dependent on the availability of

your technical personnel for verification and testing. We will identify those tasks at the beginning of the engagement to facilitate scheduling and coordination.

C. Definition of Project Scope

1. Oracle ASM Planning & Kernels Installation

    a. Planning Oracle ASM Kernel Installation

- 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

XI. 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 conversion.

B. Service Overview

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

C. Implementation Recommended Prerequisites (Not included in Scope)

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

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

D. Definition Of Project Scope

1. CBO Environment Assessment

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

2. Gathering Stats in Prod

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

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

4. 30 hours of script optimization during Mock

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

5. Go Live support

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

VI.   Knowledge Transfer**DATABASE PLATFORM MIGRATION (CTS-GGDBPLTMIG-MED)**

SOLUTION DESCRIPTION

6.   Cerner

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.

XII.   GOLDEN GATE REBUILD (CTS-GGDBRBLD)

A. Solution Description

Rebuilding and upgrading CONTRACTOR HNAM ~~environments and its associated~~(IRIS) databases ~~typically reside on two or more nodes and one or more storage arrays (*source DB*, *source node*, *source OS* and *source array*). Moving the databases to a new platform (*target DB*, *target node*, *target OS* and *target array*) requires several different~~with minimum downtime requires specialized skill sets. ~~Cerner~~CONTRACTOR provides the expertise required ~~to migrate Cerner HNAM databases to a new operating system (OS) platform~~for rebuilding/upgrading the database to the latest supported version.

~~SERVICE OVERVIEW~~

B. ~~Cerner~~**Service Overview**

CONTRACTOR proposes to provide technical consultation services ~~for migrating~~to rebuild one (1) Cerner HNAM (IRIS) production database, one (1) Cerner HNAM ~~production database from an OpenVMS environment (source environment) to a Unix-based (HP-UX) environment (target environment).~~(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 ~~Cerner~~CONTRACTOR database migration/rebuild toolkit (CTP-MIG-TOOLKIT~~),~~)

b. Upgrade of the Oracle kernel to the latest Cerner/GoldenGate supported Oracle version

~~b.~~c. Conversion of Dictionary Managed Tablespaces ~~(source DB)~~ to Locally Managed Tablespaces ~~(target DB),~~

~~c. Rebuild of entire database (target DB),~~

~~d. Upgrade of the Oracle kernel (target DB),~~

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-GGDBRBLD-LRG).

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

~~i. OpenVMS,~~

- HP-UX

~~ii.~~• Oracle ~~9,~~10

~~iii. TCP/IP (Multinet is NOT supported).~~

~~b.~~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~~);~~):

~~i.~~• ~~HP~~ HP-UX~~,~~

~~ii. HP UX 11,~~

~~iii.~~• Oracle ~~10.~~11

~~DEFINITION OF PROJECT SCOPE~~

C. Definition Of Project Scope

Certain tasks are dependent on the availability of ~~Client~~COUNTY technical personnel for

verification, testing, and knowledge transfer. ~~Cerner~~CONTRACTOR will identify those ~~Client~~COUNTY tasks at the beginning of the engagement to facilitate scheduling and coordination. The following work activities will be performed by ~~Cerner~~CONTRACTOR, unless otherwise noted:

~~a.~~1. Pre-travel Checklist Discussion~~;~~ (Remote)

~~i.~~a. Provide pre-travel checklist document to ~~client,~~COUNTY

~~ii.~~b. Schedule and conduct pre-travel review discussion with the ~~client,~~COUNTY

~~iii.~~c. Create ~~migration~~database rebuild project plan with ~~client.~~COUNTY

~~b.~~2. Hardware and Application Server Verification~~;~~

~~i.~~a. Verification of server hardware~~,~~

~~ii.~~b. Verification of all required licenses and software necessary are present~~,~~

~~iii.~~ ~~Assistance in making the hardware available on Intellinet for remote support from Cerner,~~

~~iv.~~c. Participate in planning discussion around carving up and allocating storage to ~~new~~ target node(s~~),~~)

~~v.~~d. Carve ~~up~~out and present required storage to ~~new~~ target node(s) (~~Client~~COUNTY Responsibility~~),~~)

~~vi.~~ ~~Review target systems OS versions and patch levels.~~ ~~Review Initial System Settings on new target servers and make recommendations to client on settings to be modified,~~

~~vii.~~ ~~Install~~ ~~Linux Server for use with~~ latest Cerner/GoldenGate ~~(if GoldenGate is needed, Cerner will provide this hardware),~~

~~viii.~~e. ~~Install~~ supported Oracle ~~10~~ software on target database server in a Non-RAC mode~~,~~

~~ix.~~ ~~Install Oracle 9 (client only) on target server in a Non-RAC mode,~~

~~x.~~f. ~~Install GoldenGate~~Install Goldengate Capture software on ~~Linux~~source database server ~~(if GoldenGate is needed),~~

~~xi.~~g. Install ~~GoldenGate~~Goldengate Delivery software on target database server ~~(if GoldenGate is needed),~~

~~xii.~~h. Verify/Install Cerner Millennium service packages to support new Oracle ~~10,~~version (COUNTY Responsibility)

~~xiii.~~i. Verify/Install Cerner Millennium latest installation tools~~.~~ (COUNTY Responsibility)

~~c.~~3.Mock Phase~~;~~

~~i.~~a. Create or designate mock environment for use during project~~,~~ (COUNTY Responsibility)

~~ii.~~b. Create new target database on target server ~~on Oracle 10~~through the use of ~~Cerner's~~CONTRACTOR's data management tools~~,~~

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

iv.d. Perform Mock failover to target servers,

v.e. Support ~~client functional~~COUNTY Functional testing,

f. Installation of HACMP and RAC

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

vi.h. Document any issues from test and add to downtime planning document.

d.4. Production Phase;

i.a. Create new target database on target new ~~target database on target server on Oracle 10~~storage through the use of ~~Cerner's~~CONTRACTOR's data management tools,

ii.b. Replicate source database to target database using bulk data move process,

iii.c. Shutdown existing Production Domain,

iv.d. Synchronize final transactions to target database,

~~v. Synchronize final application code to target server(s),~~

~~vi. Update tnsnames.ora on production application nodes to see new target database,~~

~~vii. Update FAT clients and any tnsnames.ora entries as necessary,~~

viii.e. Restart Cerner ~~HNAM~~Millennium environment, on new database

ix.f. Support ~~client functional~~COUNTY Functional testing.

e.5.Remote Technical Support;

Remote technical support is provided for ~~three (~~3~~)~~ days after engagement completion. After that time, support should go through the standard support channels.

~~DELIVERABLES:~~

After that time, support should go through the standard support channels.

D. Deliverables

~~a.~~1.One (1) Cerner HNAM production, one (1) Cerner HNAM admin and up to four (4) Cerner HNAM non-production databases upgraded to latest Cerner/GoldenGate supported Oracle ~~10,~~version

~~b.~~2. One (1) Cerner HNAM (IRIS) production ~~database has been~~, one (1) Cerner HNAM (IRIS) admin and up to four (4) Cerner HNAM (IRIS) non-production databases re-organized and converted ~~to~~Locally Managed Tablespaces (LMTs~~,~~)

~~c.~~3.Knowledge transfer for installation, configuration and operational procedures for new configuration,

~~d. Hardware Strategy Document for new servers,~~

~~e. Recommended database layout (Production),~~

~~f. Network diagram for new servers,~~

~~g. Backup and restore strategy document for new servers.~~

~~CLIENT SKILL AND PARTICIPATION LEVEL REQUIREMENTS:~~

~~CLIENT ROLE~~	~~REQUIRED~~	~~SKILL LEVELS~~	~~LEVEL OF PARTICIPATION~~

~~HP-UX / ServiceGuard Analyst (if target = HP-UX)~~	~~Yes~~	~~Expert~~	~~Contributor, Approve~~
~~Citrix Analyst~~	~~No~~	~~Expert~~	~~Contributor, Approve~~

E. Assumptions

Application Analyst	Yes	Analyst	Contributor
~~Database Administrator~~	~~Yes~~	~~Expert~~	~~Contributor, Approve~~
Disaster Recovery Analyst	Yes	Analyst	Review, Contributor
Project Manager	No	Analyst	Review, Approve
Security Analyst	Yes	Analyst	Review, Approve
~~Server Analyst~~	~~Yes~~	~~Analyst~~	~~Contributor, Approve~~
~~Storage Analyst~~	~~Yes~~	~~Expert~~	~~Contributor, Approve~~
~~System Engineer~~	~~Yes~~	~~Expert~~	~~Contributor, Approve~~
~~System Engineer – MDI~~	~~Yes~~	~~Expert~~	~~Contributor, Approve~~
~~System Operations Analyst~~	~~Yes~~	~~Basic~~	~~Contributor, Approve~~
Technology Architect	Yes	Expert	Contributor, Approve
~~Telecommunications & Data Network Analyst~~	~~Yes~~	~~Analyst~~	~~Contributor, Approve~~
Technical Engagement Leader	Yes	Analyst	Approve

ASSUMPTIONS:

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

~~c.~~3.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.

2. ~~If GoldenGate is needed, Cerner will provide this hardware, sufficient~~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.

~~d.~~3.   Sufficient storage is available for a second copy of the production database. This will be the new target database. It is recommended that sufficient storage be available to be utilized as a staging database, bringing the total copies besides the existing production database to ~~three (3).~~. This copy is not required, but it is encouraged.

~~e. Should the downtime exceed HCA's established threshold, Cerner will utilize the GoldenGate software solution to complete the migration. This software will be billed to HCA upon shipment.~~

ESTIMATED DURATION:

F. Estimated Work Effort and Duration

Estimated project duration is ~~three (3)~~ to ~~five (5)~~4 months, depending on ~~client~~COUNTY

availability. ~~Assuming the project begins November 1st, this project is planned to be completed by April 1st, 2010.~~

~~FREQUENCY:~~

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 ~~the client and the Cerner team.~~

~~VII. ORACLE RAC IMPLEMENTATION (CTS-ORACLERAC)~~

~~SOLUTION DESCRIPTION:~~

~~Oracle Real Application Cluster (RAC) is an Oracle database option that adds clustering~~ COUNTY and ~~high availability features to an Oracle database. Cerner provides the expertise required to install or upgrade Oracle RAC on a two-node HP-UX (Serviceguard) cluster. This includes both Production and Non-Production clusters~~ CONTRACTOR.

~~SERVICE OVERVIEW:~~

~~Cerner proposes to provide technical consultation services to implement or upgrade Oracle RAC on two-node HP-UX ServiceGuard cluster.~~

3. The following work activities will be performed:

~~a.~~ Plan Oracle RAC implementation or upgrade~~;~~

~~i.~~ Validate Oracle software availability and licensing requirements~~,~~

~~ii.~~ Validate Serviceguard (for HP-UX) is properly configured and currently running in the cluster~~,~~

~~iii.~~ Validate network setup~~,~~

~~iv.~~ If installing a new Oracle RAC kernel, validate that,

~~v.~~ If installation Oracle RAC on currently existing Oracle kernel, discuss installation options and effects on the existing database(s) using the same Oracle kernel and evaluate and validate that.

~~b. Oracle RAC installation;~~

~~DEFINITION OF PROJECT SCOPE:~~

~~Cerner proposes to provide technical consultation services to implement or upgrade Oracle RAC on two-node HP-UX ServiceGuard cluster.~~

~~The following work activities will be performed;~~

~~a. Plan Oracle RAC implementation or upgrade;~~

~~i.~~ Validate Oracle software availability and licensing requirements~~,~~

~~ii.~~ Validate Serviceguard (for HP-UX) is properly configured and currently running in the cluster~~,~~

~~iii.~~ Validate network setup ~~(Client will provide the necessary hardware ie: switches);~~

~~(a)~~ Primary public network (needed only if same cluster is used for

application) – configured for IP address takeover,

(b) Secondary public network - not configured for IP address takeover,

(c) Private network - connected via a switch,

(d) Create OCR (Oracle Cluster Register) concurrent VG & CRS (Cluster Ready Services) Voting Disk.

iv. If installing a new Oracle RAC kernel, validate that;

(a) All basic Oracle installation pre-requisites have been met,

(b) Additional Oracle RAC requirements on all nodes in the cluster have been met,

(c) Additional Oracle RAC space requirements on all nodes in the cluster have been met,

(d) Inter-node network setup and connectivity in the cluster is appropriately setup and configured.

v. If installation Oracle RAC on currently existing Oracle kernel, discuss installation options and effects on the existing database(s) using the same Oracle kernel and evaluate and validate that;

(a) Additional Oracle RAC requirements on all nodes in the cluster have been met,

(b) Additional Oracle RAC space requirements on all nodes in the cluster have been met,

(c) Inter-node network setup and connectivity in the cluster is appropriately setup and configured.

b. Oracle RAC installation;

i. Review Serviceguard (for HP-UX) configuration and running state,

ii. Review space requirements and inter-node cluster communication and connectivity,

iii. Review Oracle and Oracle RAC pre-requisites and requirements,

iv. Discuss and review installation or upgrade process including potential downtimes,

v. Install Cluster Ready Services (CRS),

vi. Install Oracle RAC on all nodes in the cluster,

vii. Perform post-installation steps.

4. The following limitations apply:

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

b. The implementation or upgrade of Serviceguard (for HP-UX) is not included in this scope. High availability implementation or upgrade services can be provided through a separate agreement,

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 agreement.~~

~~DELIVERABLES:~~

~~Oracle RAC fully implemented or upgraded on two-node HP-UX ServiceGuard cluster.~~

~~CLIENT ROLE~~	~~REQUIRED~~	~~SKILL LEVELS~~	~~LEVEL OF PARTICIPATION~~
~~HP-UX / Serviceguard Analyst (if target = HP-UX)~~	~~Cerner~~	~~Expert~~	~~Contributor Approve~~
~~Citrix Analyst~~	~~No~~	~~-~~	~~-~~
~~Application Analyst~~	~~No~~	~~-~~	~~-~~
~~Database Administrator~~	~~Cerner~~	~~Expert~~	~~Contributor, Approve~~
~~Disaster Recovery Analyst~~	~~No~~	~~-~~	~~-~~
~~Project Manager~~	~~No~~	~~-~~	~~-~~
~~Security Analyst~~	~~No~~	~~-~~	~~-~~
~~Server Analyst~~	~~Cerner~~	~~Analyst~~	~~Contributor, Approve~~
~~Storage Analyst~~	~~Cerner~~	~~Expert~~	~~Contributor, Approve~~
~~System Engineer~~	~~Cerner~~	~~Expert~~	~~Contributor, Approve~~

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
System Engineer – MDI/BMDI	No	-	-
System Operations Analyst	No	-	-
~~Technology Architect~~	~~Cerner~~	~~Expert~~	~~Contributor,~~

			~~Approve~~
Telecommunications & Data Network Analyst	Yes	Analyst	Contributor, Perform Work
Technical Engagement Leader	Yes	Analyst	Approve

~~ASSUMPTIONS:~~

~~a. For proper knowledge transfer we strongly recommend that the client be familiar with the core technologies used in this solution,~~

~~b.~~ 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~~. Onsite may possibly include the MOCK of the migration,~~

~~c. For any tasks needing to be performed onsite, this travel will be billed to the client accordingly outside of the dollars represented on this proposal.~~

~~ESTIMATED DURATION:~~

~~Estimated project duration is up to four weeks, depending on client availability. Assuming the project begins November 1st, this project is planned to be completed by April 1st, 2010.~~

~~FREQUENCY:~~

~~Multiple onsite trips will be performed. One onsite trip will consist of installing or upgrading the Oracle kernel and setting it up for RAC/CRS. Second for the mock, and the final for the conversion.~~

~~VIII. HA IMPLEMENTATION (CTS-HAHPUX)~~

~~DEFINITION OF PROJECT SCOPE AND DELIVERABLES:~~

~~Cerner Technical Associates and a qualified ServiceGuard Implementation Expert will review and enhance ServiceGuard and High Availability on a two-node Cluster. Cerner Technical Associates will also implement Oracle Real Application Cluster on a two-node Cluster. Certain tasks are dependent on the availability of your technical personnel for verification and testing. We will identify those tasks at the beginning of the engagement to facilitate scheduling and coordination.~~

3. The following work activities will be performed:

~~Cluster Configuration for High Availability~~

~~a. Planning;~~

~~i. Understanding your configuration and failover expectations,~~

~~ii. Discussion of configuration scenario's,~~

~~iii. Discuss configuration design,~~

~~iv. Verify required hardware is installed and configured correctly,~~

~~v. Verify required network addresses are correct,~~

~~vi. Discuss system backup requirements,~~

~~vii. Discuss installation and configuration process.~~

~~b. Base cluster configuration;~~

i. Cluster configuration design review,

ii. Cluster software installation, configuration, verification and testing,

iii. Cluster H/W configuration review,

iv. Custom failover scripts,

v. Testing of HA environment and failover process,

vi. Knowledge transfer (2 hours) – formal walkthrough of how HA/Serviceguard works in Millennium environment.

c. Oracle Real Application Cluster;

i. Implement Oracle Real Application Cluster (additional services will need to be purchased for Oracle 10g RAC/CRS install),

ii. Client Knowledge transfer.

d. Cerner Transparent Application Failover (CCLReconnect):

Implement CCLReconnect functionality for seamless application failover. Cerner will provide one or more Technical Services Associates to perform:

i. Cluster configuration documentation,

ii. Custom failover scripts (as required),

iii. Knowledge transfer.

CLIENT OBLIGATIONS AND PREREQUISITES:

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

b. Ensure hardware, software, and network components required for the proposed services or installations are available and operational,

c. Designate a representative to be the project manager. He/she will be the focal point for the Cerner Associate relative to this project and will have the authority to act on your behalf in matters regarding this project,

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

e. Provide documentation and support phone numbers for all hardware and software providers,

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

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

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

i. Provide the performing Cerner Associate appropriate access to applicable systems. This includes physical access to spaces (typically during business hours), user ids, and passwords,

j. Provide suitable workspace for the Cerner Associate with phone access,

k.23. Ensure that the service keys to any systems are made available.

Cerner will bypass the verification processes, if connections cannot be verified due to incompatible architecture, incompatible network layout, hardware connectivity incompatibilities, wrong software levels, etc. (i.e. unsupported or bad cabling, 3rd party unreliable equipment, unsupported network interface cards).

~~Cerner will make a recommendation concerning necessary changes to correct any discrepancies to the prerequisites described above.~~

~~Upon Client approval, Cerner will, to the extent possible, complete all other Cerner responsibilities and charge the customer for the fees required to do so.~~

~~IX. RMAN IMPLEMENTATION (CTS-RMAN)~~

~~SOLUTION DESCRIPTION:~~

~~RMAN implementation services have been developed by Cerner Technologies to provide a robust Oracle 9i database backup and restore solution to the Cerner HNA Millennium community. In order to better serve you, the client, Cerner Technologies has developed a service(s) in which we work with the client to determine business rules and best practices in the database backup & restore arena.~~

~~SERVICE OVERVIEW:~~

~~Cerner is pleased to offer this arrangement to implement (installation, testing, training) Cerner's RMAN backup, restore and recovery solution for the HNA Millennium Oracle databases.~~

~~DEFINITION OF PROJECT SCOPE:~~

~~The following work activities will be performed;~~

~~a. Review configuration and make recommendations for RMAN configuration,~~
~~b. Implement Cerner's RMAN solution (including the RMAN catalog),~~
~~c. Perform Oracle backups on each assigned database,~~
~~d. Demonstrate database restore and recoverability,~~
~~e. Implementation of RMAN cloning,~~
~~f. Up to 8 Hours Client~~ Knowledge Transfer~~,~~
~~g. Annual support and maintenance for Cerner RMAN scripts.~~

~~Successful execution of this agreement entitles Client to perpetual usage and support for Cerner's RMAN solution as documented herein and the RMAN User Guide.~~

~~DELIVERABLES:~~

~~a. A successful full online or offline backup of Oracle instances defined in this section,~~
~~b. A successful incremental online or offline database backup,~~
~~c. A successful full database restore,~~
~~d. A successful tablespace restore,~~
~~e. A successful datafile restore,~~
~~f. A successful archive log backup from those databases in archive log mode,~~
~~g. A successful archive log restore,~~
~~h. Up to 8 hours of knowledge transfer provided to your personnel,~~
~~i. Cerner's Oracle backup and restore solution (scripts),~~
~~j. Creation of a RMAN recovery catalog,~~

k. Cerner's recommended backup and tape rotation strategy,

l. Cerner's RMAN User's Guide.

CLIENT OBLIGATIONS:

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

a. Designate a representative to be the project manager. He/she will be the focal point for the Cerner Associate relative to this,

b. Project and will have the authority to act on your behalf in matters regarding this project,

c. Ensure hardware and software required for the proposed services or installation is available and operational and provide access to Cerner,

d. Provide documentation of requested configurations on an as-needed basis,

e. Provide documentation and support phone numbers for all hardware and software providers,

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

g. Provide the performing Cerner Associate appropriate access to applicable systems. This includes physical access to spaces (typically during business hours), user ids and passwords,

h. Provide suitable workspace for the Cerner Associate(s) with phone access during project,

i. Provide access to the system during normal business hours,

j. Is responsible for creating their own appropriate test scripts,

k. Is responsible for and will supervise any testing,

l. Must approve the content and completion of the testing,

m. Will authorize Cerner to move the code to production when authorized Client staff has validated it.

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

ESTIMATED DURATION:

The project is estimated to last 4 weeks. Assuming the project begins November 1st, this project is planned to be completed by April 1st, 2010.

X. ORACLE NON-PRODUCTION RAC DATABASE NODE REPLICATION

~~(CTS-10GMGRANODE)~~

~~DEFINITION OF PROJECT SCOPE AND DELIVERABLES:~~

~~Cerner's technical database consultants will assist in the replication of up to three non-production databases through an export/import process. The databases will be closed utilizing Cerner's RMAN Toolkit. These databases will remain on the HP VMS platform hardware.~~

~~RESOURCES:~~

~~Cerner will provide one or more Technical Services Associates to perform the items found in this Agreement including;~~

~~a. Database node replication process,~~

~~b. Project technical planning and consulting for the process,~~

~~c. Knowledge transfer (as required).~~

~~CLIENT OBLIGATIONS AND PREREQUISITES:~~

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

~~a. Ensure hardware, software, and network components required for the proposed services or installations are available and operational,~~

~~b. Ensure that all documented, discussed and, or required system setup, software, applications (including all 3rd party layered software and custom configurations) and environment pre-requisites have been successfully completed,~~

~~c. Designate a representative to be the project manager. He/she will be the focal point for the Cerner Associate relative to this project and will have the authority to act on your behalf in matters regarding this project,~~

~~d.~~a. Provide documentation of requested configurations on an as needed basis,

~~e. Provide documentation and support phone numbers for all hardware and software providers,~~

~~f. Ensure host definitions have been generated and are available for connection,~~

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

~~h. Provide operator guides for any requested equipment that will be used in the configuration and connection process,~~

~~i. Provide the performing Cerner Associate appropriate access to applicable systems. This includes physical access to spaces (typically during business hours), user ids, and passwords,~~

~~j. Provide suitable workspace for the Cerner Associate with phone access,~~

~~k. Ensure that the service keys to any systems are made available,~~

~~l. Ensure all defined and required software and related Licensing has been ordered and available upon Cerner associate on-site arrival.~~

~~Cerner will bypass the verification processes, if connections cannot be verified due to~~

incompatible architecture, hardware connectivity incompatibilities, wrong software levels, etc. (i.e. unsupported or bad cabling, 3rd party unreliable equipment, unsupported network interface cards etc).

Cerner will make a recommendation concerning necessary changes to correct any discrepancies to the prerequisites described above.

Upon Client approval, Cerner will, to the extent possible, complete all other Cerner responsibilities and charge the customer for the fees required to do so.

XI. OPERATING SYSTEM MIGRATION TECHNOLOGY SERVICES (CTS-APPMIG)

DESCRIPTION OF SERVICE:

Cerner is pleased to propose this arrangement letter with technical services required for application migration to new operating system.

DEFINITION OF PROJECT SCOPE:

a. Storage and Tape Connectivity Oversight;

In UNIX the storage is presented in a different format than open VMS thus it's critical to understand Cerner requirements and present the storage appropriately.

The scope of this task entails:

i. Validate the storage configuration is per Cerner standards,

ii. Design of the new file system for application nodes,

iii. Present the storage to the host,

iv. Validate that Cerner recommended firmware and drivers are installed,

v. Review the hardware for storage backup system is appropriate,

vi. Configure storage backup/tape system.

b. Operating System Install;

Cerner Millennium Systems are validated on certain operating systems, versions and it is critical to install the correct Operating System down to patches, firmware and microcode levels.

The scope of this task entails:

i. Validating correct, compatible version of Operating system is installed on hosts,

ii. Upgrading / downgrading the OS to desired version (If Required),

iii. Validating correct, compatible version of patches are installed on hosts,

iv. Install the necessary patches (If Required).

c. Logical Partitioning;

Cerner supports hard partitioning for production systems and dynamic partitioning for non production systems. Similarly there are limitations around use of virtual IO thus it is critical for clients to comply with Cerner recommendations.

The scope of this task entails:

        i.   Assessing that requirements are met for partitioning,

        ii.   Configuring the console for server access,

        iii.   Establishing communication with the host and network,

        iv.   Creating the needed partition(s).

    d. Millennium System Settings on Each Application Production Host;

Cerner has developed a compilation of settings that provides optimal system performance and availability. This engagement will entail a system check and tuning. Cerner HNAM system setting standards and lights on compatibility will be visited in this section.

    The scope of this task entails:

        i.   Operating System Tuning,

        ii.   Oracle System Settings,

        iii.   Millennium System Settings.

    e. Oracle Client Installation and Configuration;

Cerner validates Oracle releases and patches based on Millennium functionality and requirements thus not all Oracle released patches are validated. It is critical for Client to be in compliance with this requirement.

    The scope of this task entails:

        i.   Identify the appropriate release level and patches,

        ii.   Install and configure Oracle client(s) on production application node(s),

        iii.   Validate installation.

    f. MQ Series Install;

IBM MQ Series is the backbone of the Cerner Millennium domain. Proper installation and configuration is necessary to provide maximal functionality. It is critical for this component to be installed and configured correctly. Failure to adhere to Cerner standard can potentially cause performance instability.

    The scope of this task entails:

        i.   Install MQSeries, including any patches necessary,

        ii.   Configure MQSeries to meet Cerner Millennium Standards.

    g. Install Print Drivers and Configure Two Sample Printers;

Printing is an important and challenging component of Millennium. It is critical that all printers are defined, created and tested before go live. Additional printer work will be managed under Section 20 of this section.

    The scope of this task entails:

        i.   Assessing the required printer models,

        ii.   Install the necessary print drivers for Laser and Label Printing,

        iii.   Configure and test (1) label and (1) laser printer for application usage, this will

provide the examples of proper configuration so that remaining printer work can be performed by client.

       h.   Knowledge Transfer to Client;

Cerner is pleased to provide a service offering in which knowledge transfer is provided to familiarize the support organization with a UNIX based operating system.

The scope of this task entails demonstrating the following via knowledge transfer session:

       i.   Install UNIX software bundles, including Maintenance Levels and individual OS patches,

       ii.   Startup and Shutdown the UNIX system,

       iii.   Manage physical volumes, volume groups, logical volumes and file systems,

       iv.   Create and manage system print queues,

       v.   Manage UNIX users and groups,

       vi.   Perform system backups,

       vii.   Manage UNIX processes,

       viii.   Monitor UNIX system for issues,

       ix.   Perform problem analysis.

       i.   Setup Intellinet Access;

Cerner recommends having the means available for Cerner resources to access all necessary systems. This ensures that problems can be investigated quickly and easily without unnecessary delays in response.

The scope of this task entails:

Going through the necessary process to create the links and work with the client network administrators to verify passwords and logins are created appropriately.

       j.   Installation of Lights on Network;

Lights On Network (LON) is Cerner's proprietary solution to allow benchmarking and validation that Cerner's standards are being met across the client system. Cerner highly recommends all clients utilize the benefits of Lights On in order to share in the lessons and experiences of other Cerner clients.

The scope of this task entails:

       i.   Review required packages;

       (a) DM Stats,

       (b) Response Time Measurement System (RTMS),

       (c) Millennium Support Assistant (MSA).

       ii.   Integrate with Cerner's Service Sentry Solution,

       iii.   Install and configure the KaRT tool.

       k.   Technical Architect Time for Oversight;

Application migration projects are inherently complex and with the vast number of components it's critical to engage a technology architect to oversee the above defined tasks.

The scope of this task entails:

i. a. Ensuring the above tasks and dependencies are implemented consistently,

ii. b. Provide expertise to troubleshoot anomalies.

l. Technical Engagement Leader for Project Planning Responsibility;

Cerner provides project management expertise for overseeing the above defined technology tasks during the application migration. Due to the complex nature of these migrations, it is imperative to have experienced technical leadership throughout the duration of the project. Project management responsibility is limited to the above defined technical tasks.

The scope of this task entails:

Provides thorough guidance and oversight to confirm tasks are completed in a timely and efficient manner.

m. High Availability Install, Configuration and Testing;

Cerner Technical Associates and a qualified HACMP Implementation Expert will review and enhance HACMP and High Availability on a two node IBM Cluster. Certain tasks are dependent on the availability of your technical personnel for verification and testing. Cerner will identify the tasks at the beginning of the engagement to facilitate scheduling and coordination.

The scope of this task entails:

i. Cluster Configuration for High Availability Planning;

(a) Review existing network setup for high availability and provide recommendation for appropriate changes if any,

(b) Verify required network, and network addresses are correct,

(c) Understanding your configuration and failover expectations,

(d) Discussion of configuration scenario's,

(e) Discuss configuration design,

(f) Verify required hardware is installed and configured correctly,

(g) Verify required network addresses are correct,

(h) Discuss system backup requirements,

(i) Discuss installation and configuration process.

ii. Base Cluster Configuration;

(a) Cluster configuration design review,

(b) Cluster software installation/review, configuration, verification and testing,

(c) Cluster H/W configuration review,

(d) Custom failover scripts,

(e) Knowledge transfer,

(f) ~~Testing of failover process.~~

iii. ~~Cerner Transparent Application Failover (CCLReconnet);~~

~~Implement CCLReconnect functionality for seamless application failover.~~

iv. ~~High Availability Documentation;~~

(a) ~~Cluster configuration documentation.~~

(b) ~~Custom failover scripts (as required).~~

n. ~~Application Node Backup Design, Install, Configuration and Testing;~~

~~Millennium application components are critical to the overall functionality of the application and as such, backup of this data is critical from a recoverability standpoint. Cerner Technical Associates will work with the client to design, install, configure and test an optimum application backup solution.~~ Certain tasks are dependent on the availability of your technical personnel for verification and testing. ~~Cerner will identify the tasks at the beginning of the engagement to facilitate scheduling and coordination.~~

~~The scope of this task entails:~~

i. ~~Evaluate and Design of application backup solution;~~

(a) ~~Review existing application backup strategy,~~

(b) ~~Develop Backup and Restore initiatives – Recovery Time Objective / Recovery Point Objective requirements,~~

(c) ~~Establish application backup frequency.~~

ii. ~~Install;~~

(a) ~~Assist with the connectivity, configuration and operation of the backup storage device and software,~~

(b) ~~Identify appropriate backup and restore operations, including development of scripting if appropriate.~~

iii. ~~Configure;~~

(a) ~~Identify application backup sources,~~

(b) ~~Enable backup operation for all viable application sources.~~

iv. ~~Test;~~

(a) ~~Validate application backup operation(s),~~

(b) ~~Assist the client with conducting an initial / preliminary restore exercise.~~

o. ~~Support Mock Event & Application Testing (Technical Task) (On site);~~

~~Cerner recommends mocking the entire migration procedure at least once and during the first mock extended support will be required to troubleshoot issues encountered.~~

~~The scope of this task entails:~~

~~A senior technology architect will be made available remotely to review and investigate technical issues that will arise from testing (Limited to issues pertaining above tasks performed)~~

p. Support Prod Cutover Event & Post-Migration Support/Issue Resolution;

For the final cut over and post migration support Cerner recommends extended onsite presence for prompt issue resolution.

The scope of this task entails:

Onsite senior technology architect and technical consultant for the duration of (1) week (2 application nodes spread over frames/racks in production)

q. Non Prod Infrastructure Build (When Non Prod Domain is on Separate Host than Prod);

Cerner recommends creating and maintaining a non-production environment which is similar to production in architecture and software versions so that changes in production can be first validated in this non production environment. Typically clients build and maintain a non production environment on separate non production hardware thus the build of non production hardware has to be similar to production. This task is limited to build of (3) production like architectures. One additional non production domain (CERT) will be built by Cerner's Upgrade Center (referenced later in the scope of this proposal).

The scope of this task entails;

i. Storage and Tape Connectivity,

ii. OS Install,

iii. Logical Partitioning,

iv. Minimum Cerner Millennium System Settings,

v. Oracle Client Installs,

vi. MQ Series Install,

vii. Setup Intellinet access,

viii. Installation of LON.

r. Tailored Migration Documentation;

Cerner holds a project kickoff and detailed design and strategy planning for the migration to the new operating system. The outcomes of the design sessions are project documents containing design decisions and high level operation procedures. A project charter will be created as a reference of the current and future states of the system with high level procedures on migrating to the new operating system.

The engagement covers migration strategy and planning in the following areas:

i. Project overview,

ii. Backend architecture design,

iii. DNS considerations,

iv. Storage,

v. Backup and recovery,

vi. High Availability and CCL Reconnect,

vii.   Printer migration,

viii.   Interface migration,

ix.   CCL script migration,

x.   Domain strategy,

xi.   Front-end deployment.

s.   Technical Engagement Leader Full Time;

Cerner provides project management expertise for overseeing the entire application migration project. Due to the complex nature of these migrations, it is imperative to have experienced technical leadership throughout the duration of the project.

The scope of this task entails:

i.   Executing necessary project management responsibilities,

ii.   Define and execute communication strategy with technical and application team,

iii.   Define and execute communication strategy with leadership,

iv.   Provide timely status reports and debriefs,

v.   Provides thorough guidance, oversight to confirm tasks are completed in a timely and efficient manner.

XII. TIME AND MATERIAL BASED APPLICATION MIGRATION SERVICES (CTS-RL-APMIG-TC)

DESCRIPTION OF SERVICE:

The services below are intended to be owned by the client. Cerner will engage on an as needed basis to offer assistance with the following tasks should this assistance be requested. It will be client responsibility to engage Cerner as work will not be performed without client's consent.

DEFINITION OF PROJECT SCOPE:

a.   Setup Existing Printers on New Platform & Assist with Troubleshooting (Time & Material) Printing is an important and challenging component of Millennium. It is critical that all printers are defined, created and tested before go live.

The scope of this task entails;

i.   Assessing the required printer models,

ii.   Install all the necessary print drivers for ALL printers,

iii.   Configure and test all label and all laser printer for application usage.

b.   Custom CCL Script Identification, Evaluation, Modification and Support (Time & Material).

As part of application migration project, client specific (or) custom CCL scripts will have to be modified to work on the new operating system.

The scope of this task entails;

i. Custom Script Identification: Client's existing CCL library will be reviewed to identify custom CCL scripts. Client must approve list of custom CCL scripts before proceeding,

ii. Custom Script Evaluation: Each custom CCL script will be reviewed to determine impact due to operating system migration. The list of custom CCL scripts will be managed and updated to reflect impact,

iii. Custom Script Modification: Each custom CCL script identified as being impacted by the operating system migration will be modified to accommodate the selected platform (HPUX or AIX),

iv. Custom Script Support Hours to modify and test custom ops jobs proposed in the ProFit consulting contract. Validate with client whether there are many custom ops jobs outside of ProFit.

c. Review and Guide Operations Job for Custom OS Scripting (Time & Material);

Millennium Operations jobs facilitate scheduled execution of various tasks. There are provisions within the Operations Scheduler that allow for customized task execution which can perform many system executed operations which are mission critical to the successful operation of Millennium. Cerner will provide Technical Architect to review appropriate operations jobs, evaluate applicability and assist with implementation of such operations tasks. Cerner will implement Cerner defined standard operational tasks.

The scope of this task entails;

i. Review current Custom OS operations jobs,

ii. Develop implementation strategy for such operations jobs,

iii. Assist with the implementation of such operations jobs and implement standard operations tasks.

XIII. EVA IMPLEMENTATION (CTS-EVA)

SOLUTION DESCRIPTION:

Cerner proposes to provide technical implementation services for the HP StorageWorks EVA with use of Cerner Applications. This implementation will provide the necessary services to install and configure the HP StorageWorks EVA and associated Fibre Channel Switches as well as configuration for Host Attachment. Advanced configuration of the EVA is not provided as part of this engagement.

DEFINITION OF PROJECT SCOPE AND DELIVERABLES:

CTS-EVA Installation of one (1) HP EVA, up to two (2) FC switches, up to four (4) Cerner Nodes

The implementation of an HP StorageWorks EVA is limited to the following environments:

a. One (1) HP EVA,

~~b.   Attachment of up to four (4) Host Systems,~~

~~c.   Up to two (2) Fibre Channel switches,~~

~~d.   Configuration of one (1) EVA Command View Software.~~

~~The following tasks are performed (all onsite tasks must be performed during a single onsite engagement):~~

~~a.   Implementation of an HP StorageWorks EVA;~~

~~i.   Planning (remote)~~

~~(a)   Schedule Kick off Call, Follow-up Project Call with Client,~~

~~(b)   Review of~~ **Assumptions**~~/Pre-Travel Checklist with Client,~~

~~(c)   Create Logical Storage Design,~~

~~(d)   Create SAN Connectivity Design.~~

~~ii.   Installation of EVA (onsite)~~

~~(a)   Rack/Cable/Power~~ Hardware~~,~~

~~(b)   Configure Network/SAN Connectivity,~~

~~(c)   Upgrade EVA Firmware if not at current levels,~~

~~(d)   Install and Configure Storage Manager Software,~~

~~(e)   Configure Email Notification for Command View EVA,~~

~~(f)   Configure Arrays,~~

~~(g)   Configure Logical Volumes,~~

~~(h)   Configure Hosts,~~

~~(i)   Configure Host-LUN mappings.~~

~~iii.   Installation of fibre channels switches (onsite)~~

~~(a)   Rack/Cable/Power~~ Hardware~~,~~

~~(b)   Configure Network/SAN Connectivity,~~

~~(c)   Configure Zoning.~~

~~iv.   Configuration of Host Systems (onsite)~~

~~(a)   Verify if Operating System is at supported level,~~

~~(b)   Verify if Host Bust Adapters are at supported level,~~

~~(c)   Install/upgrade HBA drivers if necessary,~~

~~(d)   Verify if supported multi-pathing software is installed,~~

~~(e)   Install/upgrade multi-pathing software if necessary.~~

~~v.   Knowledge Transfer (onsite)~~

~~Knowledge Transfer for up to four (4) hours.~~

~~vi.   Remote Support~~

~~(a)   Provide support for up to two weeks after implementation,~~

~~(b)   After two weeks support is provided through appropriate channels.~~

SERVICES NOT INCLUDED IN PROJECT SCOPE:

These services are NOT include the following tasks:

    a. Software or Software Licenses;

      i. Installation of any software not related to EVA,

      ii. Providing of any software licenses.

    b. Host Systems;

      i. OS installation/upgrades,

      ii. Installation of server hardware,

      iii. Installation/upgrade of any other applications running on Host Systems,

      iv. Configuration of network connectivity,

      v. Installation of power cables,

      vi. Installation of host bus adapters (or any other hardware).

    c. Fibre Channel Switches;

      i. Configuration of ISL Trunking,

      ii. Configuration of switch software applications.

    d. IBM System Storage EVA;

      Configuration of any Advanced Features (Copy Services, Remote Mirroring).

DELIVERABLES:

    a. Logical Storage Design,

    b. SAN Connectivity Design,

    c. SAN Zoning Configuration,

    d. HP Command View EVA Documentation.

CLIENT OBLIGATIONS AND PREREQUISITES:

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

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

    c. If required ensure all hardware and software products are available for this project,

    d. Provide necessary printouts of the requested configurations on an as needed basis,

    e. Provide documentation and support phone numbers for all hardware and software providers,

    f. Provide the performing Cerner Associate "high privilege" access to the systems being serviced as needed,

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

    h. 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.,

    i. Provide operator guides for any requested equipment that will be used in the

configuration and connection process,

j. 10. Provide access to the system during normal business hours and off-hours as required.

XIV. MILLENNIUM EVA HEALTH CHECK (CTS-EVAHCM)

SOLUTION DESCRIPTION:

Cerner proposes to provide a technical Health Check for the HP Storageworks EVA with use of Cerner Applications. This Health Check will provide validation or upgrade of the current storage environment, associated Fibre Channel Switches, and Host Systems.

Advanced configuration of the EVA is not provided as part of this engagement..

DEFINITION OF PROJECT SCOPE AND DELIVERABLES:

CTS-EVAHCM Health Check for one (1) HP StorageWorks EVA

The Health Check of an HP StorageWorks EVA is limited to the following environments:

    a. One (1) HP EVA,

    b. Four (4) Host Systems,

    c. Up to two (2) Fibre Channel switches,

    d. One instance of the (1) Command View EVA.

Provisioning for one (1) EVA upgrade service per year

  One or more of the following tasks are performed during each upgrade service (all onsite tasks must be performed:

during a single onsite engagement);

    a. Planning (remote)

      i. Schedule Kick off Call and Follow-up Project Call with Client,

XIII. Review of **2012.01 UPGRADE (HCA_CA_EXHIBIT A_UC_CHO_UPGRADE_SCOPE_1-2IB9W1X_12.19.11)**

      ii. **Assumptions**/Pre-Travel Checklist with Client,

      iii. Review/Update Logical Storage Design,

      iv. Review/Update SAN Connectivity Design.

    b. Health Check of one (1) EVA (onsite)

      i. Review of current EVA Firmware;

Provide one (1) upgrade of one (1) EVA per year (Upgrade to be performed by HP Technical Services).

        (a) Upgrade services provided to fix HP identified support issues with current firmware levels,

        (b) Upgrade services provided to bring current firmware levels into compliance

with current HP supported levels,

    (c) Upgrade services are NOT provided as part of expansion/addition of new storage (a separate Arrangement Letter is required for upgrade services related to storage expansion).

   ii. Review of current EVA Logical Configuration;

    (a) Determine if Logical Configuration Design meets performance standards for current environment,

    (b) Advise on recommended Logical Configuration Design changes to accommodate future growth of storage or addition of new host systems/applications.

   iii. Upgrade of Command View EVA software to current HP supported Levels,

   iv. Configure/Update of Email Notification for Command View EVA,

   v. Provide Logical Array, Volume, and Host Attachment configuration for existing non-allocated EVA storage (a separate Arrangement Letter is required for upgrade services related to storage expansion).

  c. Health Check of up to two (2) fibre channels switches (onsite);

   i. Review/Update of Zoning Configuration for best practice design,

   ii. Provide upgrade of Fabric OS to current HP support levels (if necessary),

   iii. Provide update of Zoning configuration changes for new host attachments.

  d. Health Check of up to four (4) Host Systems (onsite);

   i. Verify if Operating System is at supported level,

   ii. Verify if Host Bus Adapters are at supported level,

   iii. Update Host Bus Adapter levels (downtime required, dependent on Host OS levels),

   iv. Verify if supported multi-pathing software is installed,

   v. Install/upgrade multi-pathing software if necessary (downtime required, dependent on Host OS levels).

  SERVICES NOT INCLUDED IN PROJECT SCOPE:

  This service does NOT include the following tasks:

  a. Software or Software Licenses;

   i. Installation of any software except Command View EVA,

   ii. Providing of any software licenses.

  b. Host Systems;

   i. OS installation/upgrades,

   ii. Installation of server hardware,

   iii. Installation/upgrade of any other applications running on Host Systems,

   iv. Configuration of network connectivity,

   v. Installation of power cables,

   vi. Installation of host bus adapters (or any other hardware).

c. Fibre Channel Switches;

    i. Configuration of ISL Trunking,

    ii. Configuration of switch software applications.

d. HP StorageWorks EVA;

    i. Configuration of any Advanced Features (Copy Services, Remote Mirroring),

    ii. Configuration of any HP Remote Support Features,

    iii. Install any new hardware.

DELIVERABLES:

a. Updated Logical Storage Design,

b. Updated SAN Connectivity Design.

CLIENT OBLIGATIONS AND PREREQUISITES:

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

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

b. If required ensure all hardware and software products are available for this project,

c. Provide necessary printouts of the requested configurations on an as needed basis,

d. Provide documentation and support phone numbers for all hardware and software providers,

e. Provide the performing Cerner Associate "high privilege" access to the systems being serviced as needed,

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

g. 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.,

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

i. Provide access to the system during normal business hours and off-hours as required.

XV. OLYMPUS ENTERPRISE TECHNICAL IMPLEMENTATION (CTP-OLYMPUS)

SOLUTION DESCRIPTION:

Cerner's Olympus solution provides a single console to manage and monitor your Cerner Millennium® environment. Olympus allows you to manage systems across all architectural platforms from one location, and it generates alerts when monitored system thresholds are exceeded. With the implementation of Olympus Smart Modules, it will extend the management and monitoring capabilities outside of Cerner Millennium into core technologies that are used to support or enhance the Millennium experience. Cerner provides the expertise required for installing and configuring Olympus on supported

application server technologies.

SERVICE OVERVIEW:

Cerner proposes to provide technical consultation services to implement the Olympus enterprise solution in one of the client domains. Installation and configuration of Olympus will be conducted by Cerner. Training regarding installation and configuration will be provided after initial setup. Additional domain configurations will be performed by the client with Cerner's assistance as part of the training.

Cerner will provide a knowledge transfer to the client related to how to use Olympus Enterprise solution. This will include reviewing Olympus's key management services, defining and setting alerting thresholds, and configuring Smart Modules.

To promote the use of Olympus and to provide continued education, 1 year (4 quarterly) of Olympus Health Checks are provided with the implementation services at no charge. After the initial year of Health Checks included in this scope, the client can choose to purchase/renew their Olympus Health Check agreement or cancel the service. The Olympus Health Check service does not autorenew.

SOLUTION LICENSE:

The Olympus license is a perpetual license. Annual maintenance is required for the continued use of this license. This scope of license is for a tier 1 client.

OLYMPUS ENTERPRISE IMPLEMENTATION PLAN:

    a.   Project Kickoff Meeting;
       i.   Review Agenda,
      ii.   Olympus Overview,
     iii.   Gather System names and Logon Information.
    b.   Installation;
       i.   Install ADAM Instance,
      ii.   Install Olympus Schema,
     iii.   Install Olympus Console,
     iv.   Install Sentinel on Backend System(s),
      v.   Install Sentinel on Frontend System(s),
     vi.   Install MySQL for Guardian, if applicable,
    vii.   Identify Alerting server,
   viii.   Import Alerting and Thresholding schema,
     ix.   Import Baseline Parameters,
      x.   Import Baseline Thresholds,
     xi.   Identify Server(s) on which each Smart Module will run,
    xii.   Import Olympus Smart Module Schema File(s).
    c.   Configuration;

~~i.~~ ~~Configure Enterprises and Profiles,~~

~~ii.~~ ~~Configure Guardian,~~

~~iii.~~ ~~Configure Olympus Users,~~

~~iv.~~ ~~Configure Olympus Security and Roles,~~

~~v.~~ ~~Create Guardian Profile to start Monitoring Service,~~

~~vi.~~ ~~Set Baseline Guardian Collection Intervals,~~

~~vii.~~ ~~Define Email Addresses and Distribution Lists for Notifications,~~

~~viii.~~ ~~Configure Rule Instances,~~

~~ix.~~ ~~Configure Auditing for Monitoring Service, if desired,~~

~~x.~~ ~~Create new Server Profile (or modification of current Profile),~~

~~xi.~~ ~~Configure Olympus Security for each Smart Module,~~

~~xii.~~ ~~Configure Olympus User and Role Security for each Smart Module,~~

~~xiii.~~ ~~Configure Guardian to collect each Smart Module category,~~

~~xiv.~~ ~~Configure Alerting for each Smart Module, if applicable.~~

~~d.~~ ~~Tuning;~~

~~i.~~ ~~Tune Thresholds,~~

~~ii.~~ ~~Tune Guardian Collection Intervals,~~

~~iii.~~ ~~Tune Rule Instances - Targets and Notification Recipients.~~

~~e.~~ ~~Knowledge Transfer;~~

~~i.~~ ~~Olympus Console Access and Navigation,~~

~~ii.~~ ~~Olympus Services and Usage,~~

~~iii.~~ ~~Olympus Security Model,~~

~~iv.~~ ~~Olympus Architecture,~~

~~v.~~ ~~Sentinel Installation Process,~~

~~vi.~~ ~~Olympus Upgrades,~~

~~vii.~~ ~~Alerting and Thresholding Service Navigation,~~

~~viii.~~ ~~Olympus Alerting Event Viewer,~~

~~ix.~~ ~~Alerting and Thresholding Installation and Configuration,~~

~~x.~~ ~~Alerting and Thresholding Tuning,~~

~~xi.~~ ~~Alerting and Thresholding Upgrades,~~

~~xii.~~ ~~Smart Module Access and Navigation,~~

~~xiii.~~ ~~Smart Module Usage,~~

~~xiv.~~ ~~Breakout Sessions with identified Notification Recipients.~~

~~f.~~ ~~Project Wrap-up;~~

~~i.~~ ~~Deliver customized documentation,~~

~~ii.~~ ~~Support process,~~

        iii. ~~Project sign off and EAR.~~

~~OLYMPUS HEALTH CHECK SERVICE PLAN:~~

    a. ~~Core Olympus Health Check Items;~~

        i. ~~Verification of Olympus environment,~~

        ii. ~~Check primaryserver.log of all sentinel servers,~~

        iii. ~~Check Guardian collection times and disk space usage,~~

        iv. ~~Check if Olympus updates have been released and if they contain any applicable fixes/additional functionality,~~

        v. ~~Check Profile, Auditing, and Security configurations,~~

        vi. ~~Check Guardian MSA reporting,~~

        vii. ~~Rollout of Sentinel to new/additional servers,~~

        viii. ~~Create/modify security roles, if necessary,~~

        ix. ~~Translation of workflows with "older" toolset into workflows performed in Olympus.~~

    b. ~~Olympus Alerting Health Check Items;~~

        i. ~~Check current thresholds vs. any newly-released baseline,~~

        ii. ~~Tweak thresholds if too many/few alerts are being generated,~~

        iii. ~~Identify any gaps in monitoring.~~

    c. ~~Olympus Smart Module Health Check Items;~~

        i. ~~Configure/Reconfigure currently-installed Smart Modules,~~

        ii. ~~Install updates of already-installed smart modules, if applicable,~~

        iii. ~~Configure Auditing for Monitoring Service, if desired.~~

    d. ~~Miscellaneous Items;~~

    ~~Any additional KT, if necessary.~~

~~DEFINITION OF PROJECT SCOPE:~~

~~Certain tasks are dependent on the availability of Client technical personnel for verification, testing, and knowledge transfer. Cerner will identify those Client tasks at the beginning of the engagement to facilitate scheduling and coordination.~~

    ~~The following work activities will be performed by Cerner:~~

    a. ~~Pre-travel Checklist Discussion (Remote);~~

        i. ~~Provide Pre-travel Checklist document to client,~~

        ii. ~~Schedule and conduct Pre-travel review discussion with the client.~~

    ~~b.~~ Hardware and Application Server Verification~~;~~

        i. ~~Verification of server hardware,~~

        ii. ~~Assistance in making the hardware available on Intellinet for remote support from Cerner.~~

DELIVERABLES:

a.**A.** Olympus solution installed and configured as outlined in the **Definition of Project Scope, and Deliverables:**

 b. Knowledge transfer for installation, configuration and operational procedures,

 c. Documentation for installation, configuration and operational procedures.

CLIENT SKILL AND PARTICIPATION LEVEL REQUIREMENTS:

CLIENT ROLE	REQUIRED	SKILL LEVELS	LEVEL OF PARTICIPATION
AIX / HACMP Analyst	Yes	Analyst	Contributor Review
Citrix Analyst	Yes	Analyst	Contributor Review
Connectivity Engineer	Yes	Analyst	Perform Work
Database Administrator	Yes	Analyst	Contributor Review
Security Analyst	No	Analyst	Review
Server Analyst	No	Basic	Review
System Engineer	Yes	Expert	Perform Work
System Operations Analyst	Yes	Analyst	Perform Work Approval
Technical Engagement Leader	No	Analyst	Review

ASSUMPTIONS:

 a. For proper knowledge transfer we strongly recommend that the client be familiar with the core technologies used in this solution,

 b. All work will be performed at the client's location unless otherwise noted or agreed upon.

ESTIMATED WORK DURATION:

The number of servers to be set up will determine the exact requirements and time needed for the project.

XVI.   **MILLENNIUM PLATFORM MOVE AND UPGRADE**

DEFINITION OF PROJECT SCOPE AND DELIVERABLES:

The Millennium Service Release Upgrade Project (Release Upgrade) is intended to upgrade the Client'sCOUNTY's current application functionality on a like-for-like basis from the code level 2004.01

~~to the~~ 2010.1 to the latest monthly service packages available for code level ~~available and acceptable to the County (currently planned to be either 2007.19 or 2010.1 - version depending on availability and completion of successful testing) at the time the Upgrade begins.~~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~~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 ~~Client~~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 ~~client~~COUNTY input gathered from solution assessments and ~~client~~COUNTY provided test scripts.

B. ~~WORK EFFORT~~**Work Effort:**

The Release Upgrade project is primarily composed of Technical and Testing Events. ~~Cerner~~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, ~~the Client~~COUNTY will be required to engage in certain events or tasks that are specific to the ~~Client's~~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 ~~120~~ninety (90) days, which begins with code installation in the first domain and ends with the ~~upgrade of client's~~Release Upgrade installation in COUNTY's production domain.

PROJECT MANAGEMENT WORK EFFORT (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~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 ~~Client~~COUNTY and ~~Cerner~~CONTRACTOR teams. Produce weekly project status reports.	P	
4. Create and maintain Upgrade project plan.	P	
5. Work with ~~Client~~COUNTY to ensure that ~~Cerner~~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 ~~Letter will be required estimating~~setting forth the ~~additional~~hours and ~~specifying~~new rates must per executed by the ~~rate per hour.~~parties.	P	A
6. Establish scope and domain strategy based on current recommended practice.	P	R
7. Identify and secure resources	P	A

PROJECT MANAGEMENT WORK EFFORT (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
8. Determine and document initial package requirements> Identify and resolve potential stray code that the ~~client~~COUNTY has currently installed.	P	
9. Collaboratively work with ~~client~~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 ~~Client~~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 ~~Client~~COUNTY and ~~Cerner~~CONTRACTOR resources are scheduled for ~~upgrade~~Release Upgrade and post ~~upgrade~~Release Upgrade support.	P	A
16. Upgrade to new ~~release~~service packages and manage post ~~upgrade~~Release Upgrade issues	P	A

APPLICATION WORK EFFORT The following solutions are included: Clinical Reporting/RRD, Document Management, , Enterprise Master Person Index, General Laboratory~~,,~~, Microbiology, Outreach ~~Service~~Services, PowerChart~~, PowerChart Office,~~ Ambulatory, Patient Accounting (ProFit~~,~~), Registration Management, Scheduling Management~~.~~ (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
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,		P

APPLICATION WORK EFFORT The following solutions are included: Clinical Reporting/RRD, Document Management, , Enterprise Master Person Index, General Laboratory,,, Microbiology, Outreach ~~Service~~Services, PowerChart, ~~PowerChart Office,~~ Ambulatory, Patient Accounting (ProFit~~,~~), Registration Management, Scheduling Management~~.~~ (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
requisitions, labels, reports, and operations jobs.		
4. Incorporate ~~client~~COUNTY specific testing requirements from ~~client~~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 ~~Cerner. Client~~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 ~~Cerner.~~CONTRACTOR.		P
9. Provide education updates to ~~Client~~COUNTY trainers.		P
10. Manage solutions issue list. Work with ~~Client~~COUNTY and ~~Cerner~~CONTRACTOR to achieve issue resolution until code moved to Production.	P	
11. Support production ~~upgrade~~Release Upgrade to new release.	P	A
12. ~~Clients~~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 appropriate test scripts for each enhancement, and will resolve issues identified with the enhancement functionality.	P	R

TECHNICAL WORK EFFORT – ~~Cerner~~CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
1. Review Technical Readiness Scorecard with ~~client~~COUNTY and discuss hardware and software requirements. This includes all of the technical minimums and requirements for all 3rd party software and hardware. Review system capacity for both	P	R

TECHNICAL WORK EFFORT – ~~Cerner~~CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
production and non-production environments.		
2. ~~Cerner~~CONTRACTOR Technical Engagement Leader and ~~Client~~COUNTY create the technical project plan and determine domain strategy in conjunction with ~~Cerner~~CONTRACTOR and ~~Client~~COUNTY project manager and architect.	P	R
3. Manage other technical activities and escalation activities if needed.	P	
4. Prepare environment for release. Run Millennium Support Assistant and submit updates, Review ~~Client~~COUNTY Custom Warehouse, Scripts, and Indexes.	P	
5. ~~Create non production Application Tier for the Migration database and start database that will be attached to it initially, per the domain strategy and project plan: Cerner Upgrade Center SE will be responsible for all backend steps to creating the non-prod domain.~~ COUNTY is responsible for ensuring that all 3rd party layered products are upgraded (including software and hardware), to meet the technical minimums and/or requirements prior to the Release Upgrade commencing in the non-production domain. COUNTY is responsible for creating a plan for the upgrade path of all 3rd party layered products in the production domain (per Technical Readiness Scorecard review) for the Millennium Release Upgrade project.	~~P~~	~~A~~P
6. ~~The client will be responsible for setting up and configuring the front end devices for the Migration domain, including, but not limited to: Citrix servers, Chart servers, RRD servers, Multum servers and any other ancillary device that is in the production domain that will need to be tested in the non-prod domain.~~Add any additional hardware requirements to support the Release Upgrade (CPU, memory, disk, devices, etc) prior to the Release Upgrade commencing (per Technical Readiness Scorecard review).	~~A~~	P
~~7. The Upgrade Center will work with Client to ensure that Cerner written custom CCL scripts are identified, modified, and repackaged as necessary. Modifications are limited to 100 hours. If additional hours are required an Agreement Letter will be required estimating the additional hours and specifying the rate per hour. Refer to line item # 5 Project management section.~~	~~P~~	~~A~~
8.7.~~The upgrade Center will assist the client in moving all printers over from the VMS node to the new Application tier node and assist them in the troubleshooting of printer issues during the project.~~Create non-production domain per domain strategy and	P	A

TECHNICAL WORK EFFORT – ~~Cerner~~CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
project plan. 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 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 the non-production domain.		
~~9. The client or ATG will be responsible for hardware configuration and system set up for the new hardware.~~		~~P~~
~~10. The client will be responsible for setting up/configuring all FSI and MDI interfaces.~~	~~A~~	~~P~~
~~11.~~8. ~~The Upgrade Center will be responsible for creating the MOCK domain that will be used in the upgrade/application tier migration project. This would include creating the application tier Mock domain on the VMS Operating system and an application tier and the creation of the database tier on the new Operating System node. The client or ATG will need to assist with database steps for the full copy of PROD for the MOCK domain.~~Install and configure Lights On in production and non-production domains per domain strategy and project plan (if applicable).	P	A
~~12.~~9. The ~~Cerner~~CONTRACTOR Upgrade Center ~~SE~~System Engineer will be responsible for ~~upgrading~~updating the non--production domain per domain strategy and project plan. This includes the ~~backend~~back-end steps as well as loading front end code warehouse. The ~~Cerner~~CONTRACTOR Upgrade Center ~~SE~~System Engineer will run the Uptime steps and Downtime Steps and capturing the timings for each of these processes.	P	A
~~13.~~10. ~~Client~~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~~COUNTY or network installed device that needs to be tested.	A	P
~~14.~~11. Assist with technical issue troubleshooting and issue resolution if needed.	P	A
~~15.~~12. ~~Validate that Lights On is installed and working on new nodes.~~Configure interfaces for non-production domains per domain strategy and project plan.	~~P~~	~~A~~P

TECHNICAL WORK EFFORT – ~~Cerner~~CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
~~16.~~13. ~~Upgrade~~Update the training domain or any other non-production domain.		P
~~17.~~14. ~~Refresh client's Certification Domain - The Cerner Upgrade Center SE will be responsible refreshing/creating the CERT on the new node from the Production domain 1 - 2 weeks prior to the starting of the running of the Uptime Steps in PROD before the Upgrade will be started in the PROD domain. The Client will be responsible for the Front-end code dissemination in the CERT domain.~~ 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
~~18.~~15. ~~Upgrade the production domain. The Cerner Upgrade Center SE will be responsible for upgrading the production domain. This includes the backend steps as well as loading front end code warehouse. The Cerner Upgrade Center SE will run the Uptime steps and Downtime Steps and capturing the timings for each of these processes.~~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 COUNTY or network installed device that needs to be tested. COUNTY will be responsible for creating Citrix rollout plan for their production Citrix servers.	~~P~~A	~~A~~P
~~19.~~16. ~~The Client will be responsible for all front-end code dissemination for production domain and any individual set up to front-end devises this includes, but is not limited to: setting up Citrix servers, creating a Citrix rollout plan, Charting server, RRD server, Multum server and any other fat client or network installed device that needs to be tested. Client will be responsible for creating Citrix rollout plan for their production Citrix servers.~~ Support production Release Upgrade to new service packages.	~~A~~P	~~P~~A
~~20.~~17. ~~Support production upgrade to new release.~~Provide 48 hrs of on-site post Release Upgrade support.	P	A

TECHNICAL WORK EFFORT – ~~Cerner~~CONTRACTOR Technical Services (P = Primary/Owner, R = Review, A = Assist)	~~Cerner~~CONTRACTOR Resource	~~Client~~COUNTY Resource
~~21.~~18. ~~Provide 48 hrs of on site post upgrade support~~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

~~KNOWLEDGE TRANSFER:~~

C. ~~Cerner~~**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 ~~through out~~throughout this project. This knowledge is supplemented by documentation found at ~~www.cerner.com~~www.cerner.com or uCern Wiki;

~~a.~~ Cerner Millennium Support Guides (CMSG~~),~~) now available as Reference Pages in the uCern Wiki,

   ~~b.~~1.   Upgrade Guides,
   ~~c.~~2.Package Reports,
   ~~d.~~3.   Release Details,
   ~~e.~~4.Illuminations sessions.

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

~~CLIENT OBLIGATIONS:~~

E. ~~Cerner~~**COUNTY Obligations:**
        2. CONTRACTOR shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services; however, ~~Client~~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. ~~Client~~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. ~~Cerner~~CONTRACTOR accepts no responsibility or liability for any claims, actions, losses, or damages incurred by ~~Client~~COUNTY or any third party arising from or out of ~~Client~~COUNTY failure to adequately test and/or validate the changes requested hereunder. Further, ~~Client~~COUNTY agrees to:

            a. Comply with ~~Cerner~~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. ~~Client~~COUNTY is required to remain actively engaged in the release upgrade until completion,

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

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

 3. ~~Client~~COUNTY Project Management Obligations:

~~Client~~ COUNTY agrees to;

  a. Provide liaison to work with ~~Cerner~~CONTRACTOR release upgrade manager. Typically the ~~Client's~~COUNTY's application manager or equivalent,

  b. Collaboratively work with ~~Cerner~~CONTRACTOR while reviewing, editing and approving appropriate test scripts,

  c. Approve the content and completion of the testing,

  d. Authorize ~~Cerner~~CONTRACTOR to move the code to production,

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

  f. Schedule downtime with the users,

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

 4. ~~Client~~COUNTY Application Obligations

~~Client~~ COUNTY agrees to;

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

  b. Review, edit and approve appropriate test scripts,

  c. Provide ~~upgrade~~Release Upgrade support coverage for all departmental areas affected,

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

  e. Define printer routings,

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

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

   5. ~~Client~~COUNTY Technical Obligations

~~Client~~   COUNTY agrees to;

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

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

    c.   Ensure hardware and software required for the release upgrade or installation is available and operational - this includes;

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

~~ii.~~• Ensure sufficient disk space to make a copy of the entire production database including front-end and back-end servers~~. It is recommended to have enough disk space for two full copies of production database and code warehouse~~ for the "MOCK" domain and the additional space required to load the new software as well as new schema to the database,

~~iii.~~•   Ensure that hardware is available to test ~~client~~COUNTY servers (Multum, RRD, Charting, CPDI, PACS, BMDI etc),

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

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

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

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

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

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

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

    i.   Provide suitable workspace for the ~~Cerner Corporation~~CONTRACTOR Associate with phone access,

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

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

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

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

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

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

p.   Verify desktop rollout/Citrix rollout. ~~Client~~COUNTY is responsible for all front-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,

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

~~POINTS OF PRESENCE:~~

F.   ~~Cerner~~Points Of Presence:

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

~~A.   PROFESSIONAL SERVICES~~

~~1.   CERNER MILLENNIUM 2007.19 and or 2010.01 PROFIT UPGRADE:~~

~~Cerner services shown below are for all required tasks that are relevant to the HCA conversion of the current billing methodology from Net Billing to Gross Billing, as required under the California Short Doyle Medi-Cal Phase II program.   Services include review, modification and development of all system/application related configurations to comply with the required mandates and include both current and future upgraded application/hardware platforms.   These tasks are being accomplished via a combination of billable and prepaid and non-billable services.~~

~~Cerner Billable Services:~~	
~~1. HCA Rule Creation~~	~~245 Hours~~
~~2. FSI Hours~~	~~255 Hours~~
~~3. Upgrade Assistance/Custom Scripts~~	~~1,122 Hours~~
~~4. Compliance with California SDMC Phase II requirements that includes development and support of HCA's conversion from Net Billing to Gross Billing on current/upgraded platform.~~	~~77 Hours~~
~~5. Compliance with California SDMC Phase II requirements for performing Void and Replace of billing claims, solution to~~	~~269 Hours~~

be in the form of development of workaround/mitigation on current/upgraded platform.	
Total Billable Hours	**1968 Hours**
Cerner Prepaid and Non-Billable Services:	
1. Bob Hansen team / Cerner Engineering Commitment	As Required

2. Compliance with California SDMC Phase II requirements that includes continued development and support of HCA's conversion from Net Billing to Gross Billing on current/upgraded platform:
    ▪ HCA Rule Creation
    ▪ FSI Hours
    ▪ Gross Billing
	50 Hours
	70 Hours
	99 Hours

3. Compliance with California SDMC Phase II requirements that includes development and support of HCA's conversion from Net Billing to Gross Billing on current/upgraded Platform.	224 Hours
Total Prepaid and Non-Billable Hours	**443 Hours**
Overall Project Hours Total:	**2,411 Hours**

Cerner Billable Services

1. **HCA Rule Creation Detail**

Claim Rules Hours, CMS 1500 Upgrade	
A. Standard Claims Rules - 9 Rules	10 hours
B. Custom Rules - 5 hours per rule (2 hours per translation, 3 hours for recreating the rule), 41 Rules	155 hours
C. CMS 1500 Upgrade	40 hours
D. Additional PCM Rules to replace FSI Custom Code	40 hours
Total	**245 Hours**

2. **FSI Hours Detail**

FSI Hours	-
A. Interfaces - 835 and 997	60 Hours *
i.) 835 Regression test only and leave current set up as is: 40 Hours ii.) 835 Medi-Cal changes for gross billing: The estimate is under the assumption that the new Medi-Cal	

835 interface will follow the standard Gross Billing Coordination of Benefits 835 Specs: 50 Hours. iii.) 997- Regression test only for Medi-Cal: 40 Hours. Medicare customization from flat file report to 997 *(If the Medi-Cal 835 for gross billing is not standard, Cerner reserves the right to add additional hours to accommodate the project)	
B. VMS upgrade to HP to be performed by the Upgrade Center.	Upgrade Center
C. CMS 1500 Upgrade (paper and electronic) includes the 1500 upgrade along with FSI working in conjunction with ProFit to remove the FSI scripting and have rules written instead where able. Estimate 80 Hours.	80 hours
D. Gross Billing - FSI scripting only	115 hours
Total	**255 hours**

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3. Upgrade Assistance/Custom Scripts Detail

Upgrade Assistance/Custom Scripts (see detail description below)	
A. Upgrade Assistance	680 Hours
B. Assistance with Workflow	Incl. in Upgrade Assistance
C. Assistance with custom ops job - HCA written	160 Hours
D. Assistance with custom reports - HCA written	282 Hours
Total	**1,122 Hours**

A. Upgrade Assistance:

(i) Solution Architect and Engagement Leader EL Jonas Ash: 200 Hours. These hours are needed for project management, meetings, attending conference calls, managing issues, issues escalation, and working with engineering.

(ii) Integration Architect Jeremy Moore: 400 Hours. The integration architect will be responsible for leading the analysis of the workflow processes and is the lead for the testing of the integration across applications. Questions and issues regarding registration, scheduling, PCO, PowerForms, and PathNet are fielded first to the Integration Architect. Testing of the complete process

with registration rules executing, encounters passing charges to Charge Services and then correctly passing on to ProFit fall under the Integration Architects responsibilities.

(iii) Regression Scripts — Regression Test Scripts, 120 hours to develop, 60 hours to execute = 180 Total Hours (These hours will not be included in this estimate, and are included as part of the separate Upgrade Center Agreement).

(iv) Integration Test Scripts — Integration Test Scripts Development, Step one will be to compare standard ProFit Upgrade Center scripts to HCA processes and make modifications or develop new scripts as needed. Typically 10-12 scripts needed for testing, Hours Estimate 120 hours to develop, 80 hours to execute = 200 Total Hours (These hours will not be included in this estimate, and are included as part of the separate Upgrade Center Agreement).

(v) Training and Maintenance - Estimate of Hours for RCA Knowledge Transfer and Maintenance = 80 Hours.

B. Assistance with Workflow:

Assistance in helping HCA create new workflow processes based on Gross Billing and the RCA Application = 220 Hours (These hours will not be included in the total; they will be accounted for in the Solution Architect and Integration Architect hours identified in section above).

C. Custom Ops Jobs:

Cerner has identified 9 ProFit Custom Scripts running in ops. These were broken down into those using the PFT Balance table, and those that are not. The 5 scripts that are using the PFT Balance table will need extensive modifications. Estimates for work completion are = 160 hours

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D. Custom Reports Based on the PFT Balance table that will need to be modified:

HCA has determined that there are 54 custom reports that use the PFT Balance table and will need to be modified to work with the new schema = Estimate 282 Hours

4. Compliance with California SDMC Phase II requirements that includes development and support of HCA's conversion from Net Billing to Gross Billing on current/upgraded platform.

Included will be the conversion of the billing methodology from Net Billing to Gross Billing, in compliance with the SDMC Phase II requirements, to be performed on the current Cerner Millennium 2004.01 platform, as well as ensure workability on 2007.19 or 2010.01 Millennium upgraded platform. Total = 77 Hours.

5. Compliance with California SDMC Phase II requirements for performing Void and Replace of billing claims, solution to be in the form of development of workaround/mitigation on

current/upgraded platform.

Included will be the development of a mitigation/workaround to perform Void and Replacement of a billing claim that is deployable in the current 2004.1 platform as well as ensure continued workability of provided solution on the new upgraded HP systems on the 2007.19 or 2010.01 platform. It is acknowledged that specifications for Void and Replace functionality as published by the California Department of Mental Health and California Department of Alcohol and Drug Programs as well as county-developed documentation have been provided to Cerner, however it is also acknowledged that certain specifications for Void and Replace have not been completely finalized and will be done so based on the final setup of the Gross Billing functionality agreed upon by both parties; the hours estimate for this portion of the project could not be completely finalized before execution of this Agreement. There are currently 269 hours allocated for the Void and Replace workaround/mitigation. If after specifications for gross billing are completed it is determined that the number of hours for Void and Replace will exceed 269, then additional hours may be required for completion. Total = 269 Hours.

Cerner Prepaid and Non-Billable Hours
1. Compliance with California SDMC Phase II requirements that includes continued development and support of HCA's conversion from Net Billing to Gross Billing current/upgraded platform:

This includes continued development and testing activity and includes rules, FSI, and gross billing conversion efforts in compliance with the SDMC Phase II requirements. Total = 219 Hours.
2. Compliance with California SDMC Phase II requirements that includes development and support of HCA's conversion from Net Billing to Gross Billing on current/upgraded Platform.

This includes the collaborative effort to perform the software review, development and conversion to comply with the California Short Doyle Medi Cal Phase II requirements on the current HP Alpha Servers/ OpenVMS 8.3/ Oracle 9i/ Millennium 2004.01 environment, with the goal of migrating the functionality to the leased ES47 RCA M2007.19 domain for the purpose of further testing, validation and training, with the eventual goal of establishing this functionality on the new HP / UX / Oracle10g / Millennium 2007.19 or 2010.1 infrastructure. The implementation of the new technical infrastructure, and application and database migration are included in separate sections of this Agreement. This task includes all requirements that are part of the SDMC Phase II project that include the conversion of Net Billing to Gross Billing methodology. Total = 224 Hours.

B.   The Parties agree that time is of the essence for Services performed under this Agreement and

agree that:

1. The implementation of the California Department of Mental Health Short Doyle Medi-Cal Phase II billing requirements (which includes Net to Gross Billing and an acceptable process for the Claim Void and Replace functionality) within the current Cerner Millennium 2004.01 application on the current hardware platform will occur by February 1, 2010.

2. The conversion from Cerner Millennium 2004.01 version to the Cerner Millennium 2007.19 or 2010.01 version on the new hardware platform will be targeted for completion by April 1, 2010. The assumption for this targeted completion date is the start of the project by November 1, 2009. To the extent that the start date gets re-scheduled, the completion date will be adjusted to the same extent.

With this understanding, the parties have agreed to target the following timeframes for completion of required tasks:

1. HCA Rule Creation;
    a. Target completion by February 28, 2010
    b. Target completion of testing by March 31, 2010
    c. Target full implementation of project with "Go-Live" April 1, 2010.
2. FSI Hours;
    a. Target completion by February 28, 2010
    b. Target completion of testing by March 31, 2010
    c. Target of implementation of project with "Go-Live" April 1, 2010.
3. Upgrade Assistance / Custom Scripting;
    a. Target completion by February 28, 2010
    b. Target completion of testing by March 31, 2010
    c. Target full implementation of project with "Go-Live" April 1, 2010.
4. Development and support of HCA's conversion from Net Billing to Gross Billing and Void and Replace workaround/mitigation in compliance with SDMC Phase II requirements on current platform;
    a. Target completion of all SDMC Phase II development activity by November 30, 2009, commitment of full completion no later than December 31, 2009.
    b. Target completion of testing by December 31, 2009, commitment of full completion no later than January 31, 2009.
    c. Target supported "go-live" for ADP and DMH January 4, 2010, commitment of "go-live" support no later than February 1, 2010

G. Special Notes

Several pieces of functionality are being deprecated with the Millennium 2012.01 release update and

are identified in the latest version of Priority Review Flash PR11-0110. Some of the deprecations are minor and will require minimal database changes or training. Others (listed below) may require more planning and action. COUNTY will need to have replacement solutions/functionality live in Production at the time of the Upgrade Center's domain-copy (at the start of the Upgrade Center's upgrade project), or project delays or additional fees may apply.

Affected Functionality:
- *PowerChart* (non-Enhanced View)
- *EasyScript* (CPSEasyScript.dll)
- Superbill Orders (CPSUIOrder.dll)
- Medication Profile (CPSMedProfile.dll)
- Pediatric Growth Chart (CPSPGChart.ocx)
- Encounter Summary (CPSEncounter.ocx)
- *PowerChart Office* (PCOffice.exe)
- Inbox (CPSUIInbox.dll and CPSUIMessage.dll)
- *PowerChart* Local Access
- Problem List (CPSUIProblem.dll) located in the Patient Information tab
- Procedure History (PVProcedures.dll
- ePathLink
- Handheld Collector (Handheld Collector.exe)
- Device Viewer

H. CONTRACTOR shall not be liable for delays not due to CONTRACTOR's sole fault.

~~C. As of the execution of this Agreement two thousand four hundred eleven (2,411) hours from the Hours Pool shall be allocated for Services related to this Agreement as outlined in Section E. of this Exhibit B. Four hundred forty three (443) of these hours are considered Pre-paid hours and shall be specifically used for the compliance efforts with the SDMC Phase II requirements that includes conversion of Net Billing to Gross Billing and Void and Replacement functionality tasks identified in Sections E. and F. of this Exhibit B. above. Both parties acknowledge two hundred twenty four (224) hours from the pre-existing Prepaid Hours Pool of three hundred sixty nine (369) hours will be used for this project, and the remainder of the hours totaling one hundred forty five (145) shall not be consumed by this project and will be held for future use. Both Parties agree that all hours will be tracked, monitored and accounted for by way of receipt of substantiated deliverables during project execution and that all allocated, unused hours remaining after final acceptance by COUNTY shall be returned to the Hours Pool for future use by COUNTY as specifically set forth under the agreement for "Maintenance and Support Services".~~

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EXHIBIT C

TO AGREEMENT FOR PROVISION OF

IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES

BETWEEN

COUNTY OF ORANGE

AND

CERNER CORPORATION

~~OCTOBER 30, 2009~~MAY 2, 2012 THROUGH JUNE 30, ~~2012~~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.

~~E.~~D. Licensed Software:

Solution Code	Solution Description
Advanced Technology Solutions Licensed Software	
CTP-MIG-TOOLKIT	Migration Scripts
~~CTP-RMANSCR~~	~~RMAN Scripts~~
~~CTP-OLY-ALERT-LIC1~~	~~Olympus Enterprise License for Level 1 clients~~
~~CTP-HAHPUXSCR~~	~~HA Scripts for HP UX (per CPU)~~

~~* Support will be provided for the above items of Licensed Software, from the date of installation through June 30, 2010; COUNTY shall pay thirty seven thousand four hundred dollars ($37,400) for such Support provided under this Agreement, under its annual renewal of the Provision of Maintenance and Software Support Services Agreement effective July 1, 2010, or, if COUNTY and CONTRACTOR do not renew such Provision of Maintenance and Software Support Services Agreement by July 1, 2010, COUNTY shall pay CONTRACTOR thirty seven thousand four hundred dollars ($37,400) for such Support on July 1, 2010.~~

~~F.~~ E. Sub-Licensed Software

Solution Code	Solution Description
Sublicensed Software	
~~G200VHP3MT1CM~~CCDBMIGRIS	~~GG Capture OVMS Delivery HPUX 1-15 CPU 3mo term Migr w/sup~~GG Licenses for Database Migration 1-15c
~~QC-ORRAC-U9~~	~~Oracle Processor License, Full Use AS US:RAC Addon~~
~~D55V1LL~~	~~IBM MQ Value Unit License + SW Maintenance 12M Multiple~~

~~* Maintenance will be provided for the above items of Sublicensed Software, from the date of installation through June 30, 2010; COUNTY shall pay twenty thousand two hundred forty dollars ($20,240) for such Maintenance provided under this Agreement, under its annual renewal of the Provision of Maintenance and Software Support Services Agreement effective July 1, 2010, or, if COUNTY and CONTRACTOR do not renew such Provision of Maintenance and~~ Software ~~Support Services Agreement by July 1, 2010, COUNTY shall pay CONTRACTOR twenty thousand two hundred forty dollars ($20,240) for such Maintenance on July 1, 2010.~~

~~G.~~F.   Equipment:

All identified items listed in Attachment B of PO 042-~~1001115812015508~~ (HP Servers and Storage Equipment for IRIS Upgrade).

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EXHIBIT D

TO AGREEMENT FOR PROVISION OF

IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES

BETWEEN

COUNTY OF ORANGE

AND

CERNER CORPORATION

~~OCTOBER 30, 2009~~MAY 2, 2012 THROUGH JUNE 30, ~~2012~~2013

CERNER.COM RESTRICTED ACCESS AGREEMENT

1.   Client agrees to protect and to keep in the strictest confidence all information and materials to which Client is granted access through Cerner.com "Client-only" access (the "Confidential Information"), except for information which is clearly sales, marketing, or other information available without restriction to the general public. Client will use the Confidential Information only for the purpose of supporting or otherwise facilitating its permitted use of the Licensed Software and System(s) identified in the Cerner Business Agreement, and for no other purpose whatsoever.

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

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

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 other

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

5.   Client will not be liable to Cerner for disclosure of Confidential Information if: (a) the Confidential Information is or becomes public without the fault of Client, or (b) the Confidential Information was in Client's possession or was known by Client prior to Client's receipt of the Confidential Information from Cerner, or (c) the Confidential Information is or becomes available to Client from a source already in legitimate possession of said Confidential Information, said source being other than Cerner, or (d) the Confidential Information is developed independently by Client, or (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.

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

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

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

9.   Due to the nature of Cerner's business and the value of Cerner's proprietary information, Client agrees that a breach of any of the provisions hereof may inflict serious harm on Cerner, and that termination of Client's license, if reasonable under the circumstances, and money damages may be inadequate relief. Accordingly, Cerner will be entitled to injunctive relief to prevent or prohibit any 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.

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EXHIBIT E

TO AGREEMENT FOR PROVISION OF

IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES

BETWEEN

COUNTY OF ORANGE

AND

CERNER CORPORATION

~~OCTOBER 30, 2009~~MAY 2, 2012 THROUGH JUNE 30, ~~2012~~2013

PASS THROUGH PROVISIONS

A. ~~GOLDENGATE~~:

~~3500_GOL~~

~~GOLDENGATE~~

~~END USER LICENSE AGREEMENT~~

~~3. DEFINITIONS~~

~~1.1 "Agreement" means the terms and conditions of the Reseller Agreement entered into between Cerner and GoldenGate.~~

~~"CPU" means a single central processing unit of a computer system.~~

~~"Customer" means Cerner.~~

~~"Designated System" means a computer system(s) that is: (i) owned or leased by Customer; (ii) within the possession and control of Customer; and (iii) identified in the relevant Product Exhibit as the designated system class and serial number on which the item of Software in such Product Exhibit is licensed to operate.~~

~~"Documentation" means the standard end-user technical documentation (whether in printed or machine-readable form) provided with the Software by GoldenGate to its licensees including any corrections or updates thereto provided by GoldenGate from time to time. Advertising and marketing materials are not Documentation.~~

~~"Error" means a reproducible failure of the Software to perform in substantial conformity with its Documentation.~~

~~"GoldenGate" means GoldenGate Software, Inc.~~

~~"Product Exhibit" means EXHIBITS A 2 and A 3 and any future exhibits to the Agreement executed by the parties under which Customer may purchase licenses for use in its Hosted Environment or for its internal use.~~

~~"Product Use Environment" means the environment, including without limitation the Designated System and number of CPUs identified in a Product Exhibit for which~~

GoldenGate grants the right to Customer to Use the Software pursuant to the terms and conditions of this Agreement.

"*Software*" means the software that GoldenGate provides to Customer (in object code format only) as identified on a Product Exhibit, and any Releases (as defined in the Support Policy) thereto. "Software" does not include Third Party Software. Unless otherwise noted, the Software and Documentation are referred to collectively herein as "Software".

4. GRANT AND SCOPE OF LICENSE

Software License. End User shall have a non-exclusive, non-transferable, revocable license to install and execute the Software.

License Restrictions. End User shall not, and shall not allow any third party to: (a) reproduce, modify, adapt, alter, translate, or create derivative works from the Software; (b) merge the Software with other software; (c) distribute or sublicense, lease, rent, loan, or otherwise transfer the Software to any third party; or (d) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software. Notwithstanding clause (d) of the foregoing sentence, decompiling the Software by End User will be permitted to the extent applicable law gives End User the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that End User must first request such information from GoldenGate and GoldenGate may, in its discretion, either provide such information to End User or impose reasonable conditions, on such use of the Source Code for the Software to ensure that GoldenGate's proprietary rights in the Source Code for the Software are protected.

1.1 Third Party Software. To the extent 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. The license restrictions contained in this End User Agreement or the Agreement do not apply to Third Party Software to the extent they are inconsistent with such Third Party Software terms.

5. PROPRIETARY RIGHTS. End User acknowledges and agrees that the Software, including its structure, organization and source code constitute valuable trade secrets of GoldenGate. The Software is licensed and not sold to End User, and no title or ownership to such Software or the trade secrets embodied therein passes as a result of this Agreement or any act pursuant to this Agreement. The Software and all trade secrets therein are the exclusive property of GoldenGate, and all rights in and to the Software not expressly granted to End User in this Agreement are reserved.

6. LIMITED WARRANTY

Software Warranty. The Software, as delivered and properly installed and operated within the Product Use Environment and used as permitted under this End User Agreement and in accordance with the Documentation, will perform substantially in accordance with the Documentation for thirty (30) days from the date of Delivery. End User's exclusive remedy and GoldenGate's sole liability for breach of this

warranty is for GoldenGate, at its own expense and option, to replace the Software with a corrected version of the Software, or use commercially reasonable efforts to correct those Errors that End User reports to GoldenGate during such warranty period. If GoldenGate determines that it is unable to correct the Error or provide a replacement with the reported Error corrected, then End User may, at its option, return of the Software, whereupon GoldenGate will refund the applicable license fees actually paid to GoldenGate by End User, and the applicable license will immediately terminate. Any Error correction provided will not extend the original warranty period.

Exclusions. GoldenGate will have no obligation to correct, and GoldenGate makes no warranty with respect to, Errors related to: (a) improper installation of the applicable Software; (b) changes to the applicable Software that have not been approved by GoldenGate in the Documentation; (c) use of the applicable Software in a manner inconsistent with the Documentation and this End User Agreement; (d) combination of the applicable Software with third party hardware or software not conforming to the operating environment specified in the Documentation; or (e) malfunction, modification, or relocation of End User's servers.

Disclaimer. EXCEPT AS PROVIDED HEREIN, GOLDENGATE AND ITS SUPPLIERS HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, INSTALLATION SERVICES, SUPPORT SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED TO **END USER** UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY AND SECURITY.

7. **LIMITATION OF LIABILITY.** IN NO EVENT GOLDENGATE BE LIABLE TO END USER OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, LOSS OF THE USE OR PERFORMANCE OF ANY PRODUCTS, LOSS OF REVENUES, LOSS OF PROFITS, OR BUSINESS INTERRUPTION, EVEN IF THE PARTY KNOWS OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL GOLDENGATE'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED FROM END USER. THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY OF END USER UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE.

2. **THIRD PARTY BENEFICIARY.** GOLDENGATE SHALL BE AN INTENDED THIRD PARTY BENEFICIARY, WITH THE RIGHT TO ENFORCE THE TERMS OF THIS END USER AGREEMENT DIRECTLY AGAINST END USER.

B. **ORACLE**:

6001 ORA

Oracle End User License Agreement

For purposes of this attachment, Program shall mean the Oracle software and databases, and Application Program shall mean the Cerner Licensed Software.

Upon license of Programs from Cerner, Client has been granted a sublicense to use the Program. Client shall with respect to Oracle Corporation products and services, including the Program, acquired from Cerner:

a. restrict use of the Program to the scope of the Application Program and to the Client's internal business operations;

b. not assign, give, or transfer the Program and/or any services ordered or an interest in them to another individual or entity (and if Client grants a security interest in the Programs and/or any services, the secured party has no right to use or transfer the Programs and/or any services);

c. prohibit timesharing, subscription service, or rental use of the Programs;

d. prohibit title to the programs from passing to Client or any other party;

e. not reverse engineer (unless required by law for interoperability), disassemble or decompile the Programs and not duplicate the Programs except for a sufficient number of copies of each Program for Client's licensed use and one copy of each Program media;

h. at the termination of the sublicense, discontinue use and destroy or return to Cerner all copies of the Program and documentation;

i. prohibit publication of any results of benchmark tests run on the Programs;

j. comply with any and all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Programs nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws; and

k. permit Cerner to audit Client's use of the Programs and report such use to Oracle or to assign Cerner's right to audit Client's use of the Programs to Oracle.

Client understands and agrees that some Programs may include source code that Oracle may provide as part of its standard shipment of such Programs, which source code shall be governed by the terms of the this pass through attachment. The provisions of the Uniform Computer Information Transactions Act shall not apply to this sublicense.

Client may permit its agents or contractors to use the Programs on Client's behalf for the purposes set forth herein, subject to the terms of this pass through attachment, provided that Client remains responsible for such agents' and contractors' compliance with this pass through attachment in such use.

To the extent permitted by applicable law, Oracle shall not be liable for for any damages, whether direct, indirect, incidental or consequential arising from Client's use of the Programs. Additionally, Oracle shall be a third party beneficiary of the provisions of this pass through attachment.

The Programs, including documentation, delivered to U.S. Government end users are "commercial computer software" pursuant to the applicable Federal Acquisition Regulation ("FAR") and agency specific supplemental regulations. As such, use, duplication, disclosure, modification, and adaptation of the programs, including documentation, shall be subject to the license and license restrictions set forth in this agreement, and, to the extent applicable, the additional rights set forth in FAR 52.227-19, Commerical Computer Software - Restricted Rights (June 1987). For purposes of this attachment, Program shall mean the Oracle software and databases, and Application Program shall mean the Cerner Licensed Software.

Upon license of Programs from Cerner, Client has been granted a sublicense to use the Program. Client shall with respect to Oracle Corporation products and services, including the Program, acquired from Cerner:

a. restrict use of the Program to the scope of the Application Program and to the Client's internal business operations;

b. not assign, give, or transfer the Program and/or any services ordered or an interest in them to another individual or entity (and if Client grants a security interest in the Programs and/or any services, the secured party has no right to use or transfer the Programs and/or any services);

c. prohibit timesharing, subscription service, or rental use of the Programs;

d. prohibit title to the programs from passing to Client or any other party;

e. not reverse engineer (unless required by law for interoperability), disassemble or decompile the

Programs and not duplicate the Programs except for a sufficient number of copies of each Program for Client's licensed use and one copy of each Program media;

h.   at the termination of the sublicense, discontinue use and destroy or return to Cerner all copies of the Program and documentation;

i.   prohibit publication of any results of benchmark tests run on the Programs;

l.   comply with any and all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Programs nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws; and

m. permit Cerner to audit Client's use of the Programs and report such use to Oracle or to assign Cerner's right to audit Client's use of the Programs to Oracle.

Client understands and agrees that some Programs may include source code that Oracle may provide as part of its standard shipment of such Programs, which source code shall be governed by the terms of the this pass through attachment. The provisions of the Uniform Computer Information Transactions Act shall not apply to this sublicense.

Client may permit its agents or contractors to use the Programs on Client's behalf for the purposes set forth herein, subject to the terms of this pass through attachment, provided that Client remains responsible for such agents' and contractors' compliance with this pass through attachment in such use.

To the extent permitted by applicable law, Oracle shall not be liable for for any damages, whether direct, indirect, incidental or consequential arising from Client's use of the Programs. Additionally, Oracle shall be a third party beneficiary of the provisions of this pass through attachment.

The Programs, including documentation, delivered to U.S. Government end users are "commercial computer software" pursuant to the applicable Federal Acquisition Regulation ("FAR") and agency specific supplemental regulations. As such, use, duplication, disclosure, modification, and adaptation of the programs, including documentation, shall be subject to the license and license restrictions set forth in this agreement, and, to the extent applicable, the additional rights set forth in FAR 52.227-19, Commerical Computer Software – Restricted Rights (June 1987).

C.   IBM END USER:

4200_IBM

IBM End User License Agreement

Thank you for doing business with us through an IBM authorized remarketer. We are committed to providing you with the highest quality Products and Services. If, at any time, you have any questions or problems, or are not completely satisfied, please let the remarketer or us know.

We have signed agreements with IBM authorized remarketers to promote, market, and support some of our Programs. We have chosen these remarketers because of their skills and experience in a particular field. When you acquire our Programs from these remarketers, we confirm that we license the Programs to you under the terms of this Agreement. We are not responsible for 1) the actions of these remarketers, 2) any additional obligations they may have to you, or 3) any products or services that they (and not us) may supply to you.

This IBM Customer Agreement - License (called the "Agreement") covers the business transactions between us relating to the licensing of Programs listed in a Supplement and the provision of related Services. Some Programs you may acquire are used on certain specified machines (called "Specific Machines"), which use IBM Licensed Internal Code; therefore, this Agreement also covers Licensed Internal Code. Each Specific Machine will be identified in writing.

This Agreement and its applicable Attachments and Supplements are the complete agreement regarding these transactions. and replace any prior oral or written communications between us. By signing below, each of us agrees to the terms of this Agreement. Once signed 1) any reproduction of this Agreement. an Attachment, or Supplement made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Products and Services you receive under this Agreement are subject to it.

Agreed to: (Customer name)   *Agreed to:*

International Business Machines Corporation

By _____   By _____

Authorized signature   Authorized signature

Name (type or print):   Name (type or print):

IBM Authorized Remarketer Use

The remarketer must ensure that 1) the above customer information, IBM office address, and the following

information are filled in and 2) the IBM Office shown above receives a copy of this Agreement, signed by the customer.

IBM Authorized Remarketer name: IBM Authorized Remarketer address:
CERNER CORPORATION   2800 Rockcreek Parkway, Kansas City, MO 64117

1. Definitions

Designated Machine is the machine, that you identify to us by type/model and serial (or plant order) number, on which you intend to use a Program for processing. When we specify that you do not have to provide this identification to us, the term "Designated Machine" means the single machine on which you may use the Program at any one time.

Product is a Program or Licensed Internal Code.

Program is the following, including features and any whole or partial copies:

1. machine-readable instructions;

2. a collection of machine-readable data, such as a data base; and

3. related licensed materials, including documentation and listings, in any form.

The term "Program" means an IBM Program and any non-IBM Program that we authorize the remarketer to market, and that it provides to you. The term does not include Licensed Internal Code.

Service is assistance, such as Program support.

Specifications is a document that provides information specific to a Program. We call the document "Licensed Program Specifications" or "License Information."

Specified Operating Environment is the machines and Programs with which a Program is

designed to operate, as described in the Program's Specifications.

2. Agreement Structure

Some Programs and Services have terms in addition to those we specify in this Agreement. We provide the additional terms in documents called "Attachments," which are also part of this Agreement. The applicable Attachment (if any) will be provided to you.

For each order you place for Programs, you will be provided with a "Supplement" to this Agreement, which confirms the specific details of your order.

If there is a conflict among the terms of the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Supplement prevail over those of both these documents.

You accept the additional terms in an Attachment or Supplement by 1) using the Program or Service, or allowing others to do so, 2) making any payment for the Program or Service, or 3) signing it, if applicable.

3. Charges for Programs

Charges for Programs may be one-time, recurring, or a combination of both. Charges for Programs are payable to the remarketer (and not to us).

4. License of Programs

An individual Program becomes subject to this Agreement when you receive it or we authorize you to make an Additional License Copy. When this occurs, we grant you a license for the Program. Programs are copyrighted and licensed (not sold). We do not transfer title to Programs to you.

License Details

Under each license, we authorize you to:

use the Program's machine-readable portion on only the Designated Machine, If you change the Designated Machine, you agree to notify us of the change and its date;

1. store the Program's machine readable portion in, transmit it through, and display it on, machines associated with the Designated Machine;

2. ~~do the following to support your authorized use as described above —~~

    a) ~~modify the Program's machine-readable instructions or data, or merge them into another Program, and~~

    b) ~~make copies of the Program, provided you reproduce the copyright notice and any other legend of ownership on each copy or partial copy; and~~

3. ~~use any portion of the Program we mark restricted (for example, "Restricted Materials of IBM") only to a) resolve problems related to the use of the Program and b) modify the Program so that it will work with other products.~~

~~You agree to comply with any additional terms (for example, a usage restriction) that a Program's Specifications may contain. Specifications are provided to you with the Program. For an "AS IS" Program, any additional terms are contained in a document called "Notice of Availability."~~

~~You agree not to do any of the following:~~

1. ~~sublicense, assign, or transfer the license for any Program;~~

2. ~~distribute any Program to any third party; or~~

3. ~~reverse assemble, reverse compile, or otherwise translate any Program.~~

~~Conversion~~

~~You may, at any time, convert a license we grant you under this Agreement to a license under the IBM Customer Agreement. We will invoice you the applicable charges.~~

~~Distributed Features~~

~~Some Programs have features (called "Distributed Features") that are designed to work with those Programs (called "Associated Programs"). If a Distributed Feature is specified in the Supplement, we authorize you to:~~

1. ~~make a copy of the Distributed Feature and its documentation; and~~

2. ~~distribute the copy to, and use it on, a machine other than the Designated Machine of the Associated Program. You may use the copy on only one machine at a time. Persons using a machine outside of your business enterprise may use the copy only to access the Associated Program.~~

Additional License Copies

If you prefer, for each license we grant, rather than requiring you to obtain another copy of the Program, we will authorize you to make an additional copy (called an "Additional License Copy"). Such authorization is granted when an additional copy (called an "Additional License Copy"). Such authorization is granted when an Additional License Copy is specified in the Supplement.

Program Packages

We provide certain Programs together with their own license agreements. These Programs (called "Program Packages") are licensed under the terms of the agreements provided with them. This Agreement's patent and copyright terms apply to IBM Program Packages.

For a Program Package, we may specify that Additional License Copies apply. If so, 1) these copies are subject to the terms of the Program Package's agreement, except that you may not transfer them, and 2) you may copy all of the Program Package's printed documentation.

If a Program Package has Distributed Features, this Agreement's terms regarding Distributed Features apply.

If a Program Package is preloaded onto a machine for you, the Program in its standard package is your backup copy. You agree that you are bound by the terms of that Program Package's license agreement.

Program Protection

For each Program, you agree to 1) ensure that anyone who uses it (accessed either locally or remotely) does so only for your authorized use and complies with our terms regarding Programs, 2) maintain a record of all copies, and 3) if it is a licensed data base, allow access to the information contained in it only to your employees, agents, or subcontractors, and only in support of their work for you.

Recurring-Charge Programs

The license for a Program with a recurring charge terminates if the relationship between us and the remarketer ends, unless you keep the Program. If you do so, you must pay us the applicable charges.

Variable-Charge Programs

We may place a machine in a machine group. The charges for some Program licenses depend on the group of the Designated Machine. We call these Programs "Variable-Charge" Programs. Variable charges include graduated charges and processor-based charges. We will specify the

group for a machine and will inform the remarketer of any changes.

For these licenses, the following apply:

1. if you change (including upgrade or downgrade) a Designated Machine to a machine in another group, you may incur a group upgrade charge or a changed recurring charge. You agree to promptly notify us or the remarketer of the date of such a change; and

2. if a change or reassignment results in a lower charge, we do not give credits or refunds for one-time charges already due or paid.

License Termination

You may terminate the license for a Program on one month's written notice. For some Programs, if you terminate the license and replace that Program with another we specify, we only require payment of an upgrade charge. We may terminate any Program license we grant in this Agreement if you do not meet your obligations regarding Programs.

You agree to destroy all copies of the Program within three months after license termination.

However, you may keep a copy in your archives.

5. Warranty for IBM Programs

For each warranted IBM Program, we warrant that 1) we have the right to license it and 2) it conforms to its Specifications. The warranty period for a Program expires when its Program Services are no longer available.

Misuse, accident, modification, operation in other than the Specified Operating Environment, or

failure caused by a product for which we are not responsible may void the warranty.

THIS WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Items Not Covered By Warranty

We do not warrant uninterrupted or error free operation of a Product. We will identify IBM Programs that we do not warrant. We provide non-IBM Programs on an "AS IS" basis.

~~6. Patents and Copyrights~~

~~If a third party claims that an IBM Product provided to you under this Agreement infringes that party's patent or copyright, we will defend you against that claim at our expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you 1) promptly notify us in writing of the claim and 2) allow us to control, and cooperate with us in, the defense and any related settlement negotiations.~~

~~If such a claim is made or appears likely to be made, you agree to permit us to enable you to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If we determine that none of these alternatives is reasonably available, you agree to return the Product to us on our written request. We will give you a credit equal to your net book value for the Product, provided you have followed generally accepted accounting principles.~~
~~This is our entire obligation to you regarding any claim of infringement.~~

~~Claims for Which We are Not Responsible~~

~~We have no obligation regarding any claim based on any of the following:~~

~~1. your modification of a Product, or a Program's use in other than its Specified Operating Environment; or~~

~~2. the combination, operation, or use of a Product with any product, data, or apparatus that we did not provide.~~

~~7. Limitation of Liability~~

~~Circumstances may arise where, because of a default on our part or other liability, you are entitled to recover damages from us. In each such instance, regardless of the basis on which you are entitled to claim damages from us, we are liable only for:~~

~~1. payments referred to in our patent and copyright terms described above;~~

~~2. bodily injury (including death), and damage to real property and tangible personal property; and~~

~~3. the amount of any other actual loss or damage up to the greater of $100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim.~~

This limit also applies to any of our remarketers, subcontractors, and Program developers. It is the maximum for which we are collectively responsible.

Items for Which We are Not Liable
Under no circumstances are we, our remarketers, subcontractors, or Program developers liable for any of the following:

1. third-party claims against you for losses or damages (other than those under the first two items listed above);

2. loss of, or damage to, your records or data; or

3. economic consequential damages (including lost profits or savings) or incidental damages, even if we are informed of their possibility.

8. Changes to the Agreement Terms

In order to maintain flexibility in our Products and Services, we may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply as of the effective date we specify in the notice.

Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any order or written communication from you are void.

9. Agreement Termination

You may terminate this Agreement on written notice to us following the expiration or termination of all your obligations. Either of us may terminate this Agreement if the other does not comply with any of its terms.

Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

10. General

Each of us 1) is free to enter into similar agreements with others, 2) will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations, and 3) may communicate with the other by electronic means. Each of us agrees that when electronic communications are used, they are the equivalent of written and signed documents.

Neither of us 1) grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication and 2) will bring a legal action under this Agreement more than two years after the cause of action arose.

You agree 1) not to assign, or otherwise transfer, this Agreement or your rights under it or delegate your obligations, without prior written consent; any attempt to do so is void, and 2) that you are responsible for the results obtained from the Products.

You may have additional rights under certain laws (such as consumer laws), which do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If these laws apply, our exclusions or limitations may not apply to you.

All your rights, all our obligations, and all licenses (except for Licensed Internal Code) are valid only in the United States and Puerto Rico. The laws of the State of New York govern this Agreement.

11. Licensed Internal Code

Certain machines we specify (called "Specific Machines") use Licensed Internal Code (called "Code"). We own copyrights in Code. We own all copies of Code, including all copies made from them. Each Specific Machine will be identified in writing. If you are the rightful possessor of a Specific Machine, we grant you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial number, for which the Code is provided. We license the Code to only one rightful possessor at a time.

Under each license, we authorize you to do only the following:

1. execute the Code to enable the Specific Machine to function according to our Official Published Specifications;

2. make a backup or archival copy of the Code (unless we make one available for your use), provided you reproduce the copyright notice and any other legend of ownership on the copy. You may use the copy only to replace the original, when necessary; and

3. execute and display the Code as necessary to maintain the Specific Machine.

You agree to acquire any replacement for, or additional copy of, Code directly from us in accordance with our standard policies and practices. You also agree to use that Code under these

terms.

You may transfer possession of the Code to another party only with the transfer of the Specific Machine. If you do so, you must 1) destroy all your copies of the Code that were not provided by us, 2) either give the other party all your IBM-provided copies of the Code or destroy them, and 3) give the other party a copy of this page with the Specific Machine's identification information filled in below. We license the other party when it accepts these terms by initial use of the Code. These terms apply to all Code you acquire from any source.

Your license terminates when you no longer rightfully possess the Specific Machine.

Actions You May Not Take

You agree to use the Code only as authorized above. You may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as we may authorize in the Specific Machine's Official Published Specifications or in writing to you;

2. reverse assemble, reverse compile, or otherwise translate the Code;

3. sublicense or assign the license for the Code; or

4. lease the Code or any copy of it.

INFORMATION FOR SUBSEQUENT LICENSEE OF LICENSED INTERNAL CODE

This page is copied from the IBM Customer Agreement - License and is provided to the subsequent licensee when Code is transferred.

The Specific Machine being transferred is identified as:

Type/Model_____ Serial Number_____

The following definitions are provided for the subsequent licensee of the Code:

1. "We" means International Business Machines Corporation (IBM);

2. The above Type/Model and Serial Number identify the Specific Machine to you; and

3. "You" means the subsequent licensee of the Code.

International Business Machines Corporation   *Armonk, New York 10504*

Statement of Limited Warranty

The warranties provided by IBM in this Statement of Limited Warranty apply only to Machines you originally purchase for your use, and not for resale, from IBM or an IBM authorized reseller. The term "Machine" means an IBM machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. Machines are subject to these terms only if purchased in the United States or Puerto Rico, or Canada, and located in the country of purchase. If you have any questions, contact IBM or your reseller.

Machine   Refer to the applicable Cerner System Schedule

Warranty Period*   Refer to the applicable Cerner System Schedule

*Elements and accessories are warranted for three months. Contact your place of purchase for warranty service information.

Production Status

Each Machine is manufactured from new parts, or new and serviceable used parts (which perform like new parts). In some cases, the Machine may not be new and may have been previously installed. Regardless of the Machine's production status, IBM's warranty terms apply.

The IBM Warranty

IBM warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to IBM's Official Published Specifications. IBM calculates the expiration of the warranty period from the Machine's Date of Installation. The date on your receipt is the Date of Installation, unless IBM or your reseller informs you otherwise.

During the warranty period, IBM or your reseller will provide warranty service under the type of service designated for the Machine and will manage and install engineering changes that apply to the Machine. IBM or your reseller will specify the type of service.

For a feature, conversion or upgrade, IBM or your reseller may require that the Machine on which it is installed be 1) the designated, serial-numbered Machine an 2) at an engineering change level compatible with the feature, conversion, or upgrade. Some of these transactions (called "Net-Priced" transactions) may include additional parts and associated replacement parts that are provided on an exchange basis. All removed parts become the property of IBM and must be returned to IBM.

Replacement parts assume the remaining warranty of the parts they replace.

If a Machine does not function as warranted during the warranty period. IBM or your reseller will repair or replace it without charge. If IBM or your reseller is unable to do so, you may return it to your place of purchase and your money will be refunded.

If you transfer a Machine to another user, warranty service is available to that user for the remainder of the warranty period. You should give your proof of purchase and this Statement to that user.

Warranty Service

To obtain warranty service for the Machine, you should contact your reseller or call IBM. In the United States, call IBM at 1-800-IBM-SERV (426-7378). In Canada, call IBM at 1-800-465-6666. You may be required to present proof of purchase.

Depending on the Machine, the service may be 1) a "Repair" service at your location (called "On-site") or at one of IBM's or a reseller's service locations (called "Carry-in") or 2) an "Exchange" service, either On-site or Carry-in.

When type of service involved the exchange of a Machine or part, the item IBM or your reseller replaces becomes its property and the replacement becomes yours. The replacement may not be new, but will be in good working order.

If it is your responsibility to:

1. obtain authorization from the owner (for example, your lessor) to have IBM to your reseller service a Machine that you do not own.

2.   where applicable, before service is provided ─

a.   follow the problem determination, problem analysis, and service request procedures that IBM or your reseller provide.

b.   secure all programs, data, and funds contained in a Machine.

c.   inform IBM or your reseller of changes in a Machine's location, and

d.   for a Machine with exchange service, remove all features, parts, options, alterations, and attachments not under warranty service. Also, the Machine must be free of any legal obligations or restrictions that prevent its exchange and

3. be responsible for loss of, or damage to, a Machine in transit when you are responsible for the transportation charges.

Extent of Warranty

IBM does not warrant uninterrupted or error-free operation of a Machine.

Misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible may void the warranties.

THESE WARRANTIES REPLACE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HOWEVER, SOME LAWS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IF THESE LAWS APPLY, THEN ALL EXPRESS AND IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.

In Canada, warranties include both warranties and conditions.

Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

Limitation of Liability

Circumstances may arise where, because of a default on IBM's part (including fundamental breach) or other liability (including negligence and misrepresentation), you are entitled to recover damages from

IBM. In each such instance, regardless of the basis on which you are entitled to claim damages, IBM is liable only for:

1.   bodily injury (including death), and damage to real property and tangible personal property; and

2.   the amount of any other actual loss or damage, up to the greater of $100,000 or the charge for the Machine that is the subject of the claim.

Under no circumstances is IBM liable for any of the following:

1.   third-party claims against you for losses or damages (other than those under the first item listed above);

2.   loss of, or damage to, your records or data; or

3.   economic consequential damages (including lost profits or savings) or incidental damages, even if IBM is informed of their possibility.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

This warranty gives you specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction.

D.A.   HEWLETT PACKARD:

HP
PASS THROUGH PROVISIONS

1.   HP TERMS AND CONDITIONS OF SALE AND SERVICE

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

A.   DEFINITIONS

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

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

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

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

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

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

7.   "Specifications" means specific technical information about HP Products which is published in HP Product manuals and technical data sheets in effect on the date HP ships Customer's order.

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

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

B.   PRICES

1.   Prices are valid for the period quoted by HP or for the applicable purchase agreement ordering period, whichever expires first. Product prices for an order remain valid for ninety (90) days from the original order date unless otherwise quoted by HP. Change orders that extend Delivery beyond those validity periods become new orders at prices in effect when HP receives the change orders.

Support prices, except for Custom and prepaid Support, may be changed by HP upon sixty (60) days written notice.

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

C.   ORDERS

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

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

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

D.   DELIVERY

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

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

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

F. INSTALLATION

Product installation information is available with Products, on quotations or upon request. Installation by HP is complete when the Product passes HP's standard installation and test procedures. If 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 warrants.

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

H. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

12. The warranties provided herein will apply only to those Products and Support which are branded by HP with an HP trademark ("HP Branded"). HP does not warrant any third party Products or 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.

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

J. LICENSES

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

a. the terms set forth herein; and

b. Use restrictions and authorizations for the Software specified by HP in its quotation, invoice or terms that accompany the Software; and

c. HP's third party suppliers' terms that accompany the Software.

d. In the event of a conflict, the third party suppliers' terms that accompany the Software will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth herein, and the Use restrictions and authorizations specified by HP will take precedence over the terms set forth herein.

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

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

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

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

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

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

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

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

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

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

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

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

K. INTELLECTUAL PROPERTY RIGHTS

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

    a. promptly notifies HP in writing; and

    b. cooperates with HP in, and grants HP sole control of the defense or settlement.

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

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

    a. HP's compliance with Customer's designs, specifications or instructions;

    b. HP's use of technical information or technology provided by Customer;

    c. Product modifications by Customer or a third party;

    d. Product use prohibited by Specifications or related application notes; or

      e.   Product use with products that are not HP Branded.

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

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

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

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

M.   GENERAL

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

      a. business records originated and maintained in documentary form;

      b. a "writing" or "in writing";

      c. "signed"; and

      d. an "original" when printed from electronic files or records established and maintained in the normal course of business.

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

any unauthorized use of the sites or issuance of messages caused by the failure of its security measures.

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

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

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

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

6. Disputes arising in connection with these HP Terms and Conditions of Sale and Service will be governed by the laws of the country and locality in which HP accepts the order.

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

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

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

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

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

A. **HP BASE TERMS**

1. DEFINITIONS

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

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

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

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

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

f. *Product* means the HP Branded version of Hardware and Software available and listed in HP's standard price list at the time of HP Business Partner's acceptance of the Customer order and including products that are modified, altered, or customized, by HP, to meet Customer requirements ("Custom Products").

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

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

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

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

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

l. *Version* means a release of Software that contains new features, enhancements, and/or

maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by HP to its customers (also called a "Release").

2. WARRANTY PROVISIONS

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

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

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

d. <u>Exclusions</u>. HP is not obligated to provide warranty services or Support for any claims resulting from:

1. improper site preparation, or site or environmental conditions that do not conform to HP's site specifications;

2. Customer's non-compliance with Specifications or Transaction Documents;

3. improper or inadequate maintenance or calibration;

4. Customer or third-party media, software, interfacing, supplies, or other products;

5. modifications not performed or authorized by HP;

6. virus, infection, worm or similar malicious code not introduced by HP; or

7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control.

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

f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THESE TERMS ARE EXCLUSIVE. NO OTHER

WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3. INTELLECTUAL PROPERTY INFRINGEMENT

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

1. promptly notifies HP of the claim in writing;

2. cooperates with HP in the defense of the claim; and

3. grants HP sole control of the defense or settlement of the claim.

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

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

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

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

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

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

2. modifications made by Customer or a third party;

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

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

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

4. INTELLECTUAL PROPERTY RIGHTS

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

5. RESTRICTED USE

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

6. LIMITATION OF LIABILITY AND REMEDIES

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

1. the Product; or

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

b. Disclaimer of Consequential Damages. EXCEPT FOR CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION.

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

7. GENERAL

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

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

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

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

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

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

g. Entire Agreement. These Terms represent the entire agreement between HP and Customer regarding Customer's purchase of Products and Support, and supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.

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

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

1. Transaction Documents consisting of license terms or limited warranty statements delivered or otherwise made available to Customer with Products;

2. the sections of these Terms;

3. all other Transaction Documents.

j. Independent Contractor. HP is an independent contractor in the performance under these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.

B. **HP HARDWARE TERMS**

1. RISK OF LOSS

When HP delivers to Customer directly, risk of loss or damage, and title to Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to by HP, upon delivery to Customer's carrier or designee.

2. INSTALLATION

If HP provides installation services, Customer will make available facilities that meet HP published site guidelines that will be provided to Customer upon request. Upon delivery, Customer will place each item of Hardware in its designated location. Installation is billed at HP's published installation charges unless quoted as part of the Hardware purchase price. Installation by HP is complete when the Hardware passes HP's standard installation and test procedures.

3. HARDWARE LIMITED WARRANTY

HP warrants HP Branded Hardware against defects in materials and workmanship under normal use during the warranty period and that it will materially conform to its Specifications for the time specified in the applicable Transaction Documents. HP Branded Hardware may contain used parts that are equivalent to new in performance and reliability and are warranted as new.

4. OPERATION

HP does not warrant that the operation of Hardware will be uninterrupted or error free, or that Hardware will operate in Hardware and Software combinations other than as expressly required by HP in the Product Specifications or that Hardware will meet requirements specified by Customer. Customer may only use firmware embedded in the Hardware to enable the Hardware to function in accordance with its Specifications.

5. EXCLUSIVE REMEDIES

Upon notice of a valid warranty claim during the warranty period and if provided reasonable access to the HP Branded Hardware, HP will, at its option, repair a defect in the HP Branded Hardware, or correct a material non-conformance to Specifications, or replace such Hardware with Hardware of equal or better functional performance. If HP is unable, within a reasonable time, to complete the repair or correction, or replace such HP Branded Hardware, Customer will be entitled to a refund of the purchase

price paid upon prompt return of such Hardware to HP. Subject to the terms in Customer's specific Product warranty statement Customer will pay expenses for return of such Hardware to HP. HP will pay expenses for shipment of repaired or replacement Hardware to Customer. This sub-section states HP's entire liability for Hardware warranty claims.

C. HP SOFTWARE LICENSE TERMS

1. LICENSE GRANT

HP grants Customer a non-exclusive, non-transferable license to "Use", in object code form, the Version or Release of the HP Branded Software delivered from an HP accepted order. For purposes of these Terms, unless otherwise specified in the Transaction Documents, "Use" means to install, store, load, execute, and display one copy of the Software on one device at a time for Customer's internal business purposes. Customer's Use of such Software is subject to these license terms and the Use restrictions and authorizations for the Software specified by HP in Transaction Documents that accompany or are otherwise made available to Customer with the Software (the "Software License"). In the event of any conflict among such terms, the order of precedence will be the accompanying Transaction Documents then the terms of this section.

2. THIRD-PARTY SOFTWARE

For non-HP Branded Software, the third party supplier's license terms and use restrictions found in the Transaction Documents that may accompany that Software will solely govern its Use.

3. OWNERSHIP

This Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers are intended beneficiaries under these Terms and independently may protect their rights in the Software in the event of any infringement. All rights not expressly granted to Customer are reserved solely to HP or its suppliers.

4. ACCEPTANCE

Customer accepts Software upon delivery.

5. UPGRADES

Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. HP reserves the right to require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a new Software Version, Customer's Software License for the earlier Version shall terminate. Software Versions are subject to the license terms in effect on the date that HP delivers or makes the Version available to Customer.

6. LICENSE RESTRICTIONS

a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software may require license keys or contain other technical protection measures. Customer acknowledges that HP may monitor Customer's compliance with Use restrictions and authorizations remotely, or otherwise. If HP makes a license management program available which records and reports license usage information, Customer agrees to appropriately install, configure and execute such license management program beginning no later than one hundred and eighty (180) days from the date it is made available to Customer and continuing for the period that the software is used.

b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may not operate such backup installation of the Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. Customer may not copy the Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over Customer's intranet require restricted access by authorized users only.

c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on the Software (including documentation) on all permitted copies or adaptations. Copies of documentation are limited to internal use.

d. Designated System. Notwithstanding anything to the contrary herein, the Software License for certain Software, as identified in Transaction Documents, is non-transferable and for use only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may be further identified by HP by the combination of a unique number and a specific system type ("Designated System") and such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of Customer.

e. OS Software. Operating system Software may only be used when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an authorized HP business partner.

f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile, or make derivative works of the Software. Where Customer has other rights mandated under statute, Customer will provide HP with reasonably detailed information regarding any intended modifications,

reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.

g. Use for Service Provision Extending the Use of Software to any person or entity other than Customer as a function of providing services, (i.e.; making the Software available through a commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and may require additional licenses and fees.

7. LICENSE TERM AND TERMINATION

Unless otherwise specified in a Transaction Document, the Software License granted Customer will be perpetual, provided however that HP may terminate the Software License upon notice for failure to comply with these Terms. Immediately upon termination of the Software License or upon expiration of any individual limited term license, Customer will destroy the Software and all copies of the Software subject to the termination or expiration or return them to HP. Customer shall remove and destroy or return to HP any copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's database. Customer may retain one copy of the Software subsequent to termination solely for archival purposes only. At HP's request, Customer will certify in writing to HP that Customer has complied with these requirements.

8. LICENSE TRANSFER

Customer may not sublicense, assign, transfer, rent, or lease the Software or the Software License to any other party except as permitted in this section. Except as provided in sub-section C.6.d above, HP Branded Software licenses are transferable subject to HP's prior written authorization and payment to HP of any applicable fees or compliance with applicable third party terms. Upon transfer of the Software License, Customer's rights under the License will terminate and Customer will immediately deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of the Software License, and, upon such agreement, the transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer firmware only upon transfer of the associated Hardware.

9. U.S. FEDERAL GOVERNMENT USE

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

10. COMPLIANCE

Customer agrees that HP may audit Customer's compliance with the Software License terms. Any such audit would be at HP's expense, require reasonable notice, and would be performed during normal

business hours. If an audit reveals underpayments then Customer will immediately pay HP such underpayments together with the costs reasonably incurred by HP in connection with the audit and seeking compliance with this sub-section.

11. WARRANTY

HP Branded Software will materially conform to its Specifications. If a warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) days from the delivery date.

12. VIRUS WARRANTY

HP warrants that any physical media containing HP Branded Software will be shipped free of viruses.

13. WARRANTY LIMITATION

HP does not warrant that the operation of Software will be uninterrupted or error free, or that Software will operate in Hardware and Software combinations other than as expressly required by HP in the Product Specifications or that Software will meet requirements specified by Customer.

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14. EXCLUSIVE REMEDIES

If notified of a valid warranty claim during the warranty period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such Software. If HP is unable, within a reasonable time, to complete the correction, or replace such Software, Customer will be entitled to a refund of the purchase price paid upon prompt return of such Software to HP. Customer will pay expenses for return of such Software to HP. HP will pay expenses for shipment of repaired or replacement Software to Customer. This sub-section C.14 states HP's entire liability for warranty claims.

15. IMPLIED LICENSE

There are no implied licenses.

16. FREEWARE AND OPEN SOURCE

Notwithstanding other statements in these Terms, Software licensed without fee or charge also referred to as Freeware and/or Open Source is provided "AS IS" without any warranties or indemnities of any kind. Software provided under any open source licensing model is governed solely by such open source licensing terms which will prevail over these Terms.

D. HP SUPPORT TERMS

1. SUPPORT SERVICES

a. Description of Support. HP will deliver Support according to the description of the

offering, eligibility requirements, service limitations, and Customer responsibilities described in the relevant Transaction Documents.

　　b.　Ordering Support. Customer may order Support:

　　　　1.　at the time of Product purchase, or prior to installation of Products for which Support is being purchased, for a fixed term (may be referred to as "HP Care Pack");

　　　　2.　after the time of Product purchase, for either a fixed term or an initial term that may be renewed (may be referred to as "HP Contractual Services");

　　　　3.　on a per-event basis; or

　　　　4.　at any time, when agreed non-standard Support has been offered by HP for the Customer according to a Statement of Work (also known as "Custom Support") or as otherwise offered by HP.

　　c.　If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the unused prepaid Support, less any early termination fees or subject to any restrictions set forth in a Transaction Document.

　　d.　Return to Support. If Customer allows Support to lapse, additional fees may be required to resume Support or Customer may be required to perform certain hardware or software upgrades. HP will review and assess whether such fees are required, and explain these to HP Business Partner and Customer at the time of the request to return to Support.

　　e.　Local Availability. Customer may order Support from HP's current Support offerings. Some offerings, features, and coverage (and related Products) may not be available in all countries or areas.

　　f.　Support Warranty. HP warrants that it will perform Support using generally recognized commercial practices and standards.

　　g.　Exclusive Remedies. HP will re-perform Support not performed in accordance with the warranty herein. This sub-section D.1.g states HP's entire liability for Support warranty claims.

　　2.　PRICING, SERVICES, AVAILABILITY, AND INVOICING

　　a.　Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document, HP may change Support prices upon sixty (60) days written notice.

　　b.　Additional Services. Additional services performed by HP at Customer's request that are not included in Customer's purchased Support will be chargeable at the applicable published service rates for the country where the service is performed. Such additional services include but are not limited to:

1. Customer requests for Support after HP's local standard business hours (unless Customer has specifically purchased after-hours coverage for the requested Support);

2. Customer requests for repair for damage or failure attributable to the causes specified in sub-section A.2.d of the HP Base Terms ("Warranty Exclusions"); and

3. Customer requests for Support where Customer does not, in HP's reasonable determination, meet the applicable prerequisites and eligibility requirements for Support.

c. Local Availability. Support outside of the applicable HP coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.

d. Invoicing. Invoices for Support will be issued in advance of the Support period. HP Support invoices and related documentation will be produced in accordance with HP system standards. Additional levels of detail requested by Customer may be chargeable.

3. SITE AND PRODUCT ACCESS

Customer shall provide HP access to the Products covered under Support; adequate working space and facilities within a reasonable distance of the Products; access to and use of information, customer resources, and facilities as reasonably determined necessary by HP to service the Products; and other access requirements described in the relevant Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates. Customer is responsible for removing any Products ineligible for Support to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge Customer for the extra work at HP's published service rates.

4. STANDARD SUPPORT PRODUCT ELIGIBILITY

a. Minimum Configuration for Support. Customer must purchase the same level of Support and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.

b. Eligibility. For initial and on-going Support eligibility Customer must maintain all Products and associated hardware and software at the latest HP-specified configuration and revision levels and in HP's reasonable opinion, in good operating condition.

c. Modifications. Customer will allow HP, at HP's request and at no additional charge, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.

d. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for

loaner units if provided at HP's discretion as part of Support or warranty services and such units will be returned to HP without lien or encumbrance at the end of the loaner period.

e. Relocation. Customer is responsible for moving Products. If Customer moves the Products to a new location, HP may charge additional Support fees and modify the response times, and Customer may be required to execute amended or new Transaction Documents. If Customer moves Products to another country, Support shall be subject to availability in the destination country. Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.

f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such Products within the maximum usage limit.

g. Multi-Vendor Support. HP provides Support for certain non-HP Branded Products. The relevant Transaction Document will specify availability and coverage levels, and govern delivery of multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide support for such Products.

5. PROPRIETARY SERVICE TOOLS

HP will require Customer's use of certain system and network diagnostic and maintenance programs ("Proprietary Service Tools") for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to: remote fault management software, network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist HP in running them;

b. install Proprietary Service Tools, including installation of any required updates and patches;

c. use the electronic data transfer capability to inform HP of events identified by the software;

d. if required, purchase HP-specified remote connection hardware for systems with remote

diagnosis service; and

e. provide remote connectivity through an HP approved communications line.

6. CUSTOMER RESPONSIBILITIES

a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.

b. Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.

c. Hazardous Environment. Customer will notify HP if Customer uses Products in an environment that 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 Customer remedies such hazards.

d. Authorized Representative. Customer will have a representative present when HP provides Support at Customer's site.

e. Product List. Customer will create and maintain a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels. Customer shall keep the list updated during the applicable Support period.

f. Documentation. If Customer purchases a Support offering that includes documentation updates, Customer may copy such updates only for systems under such coverage. Copies must include appropriate HP Trademark and copyright notices.

7. SUPPORTED SOFTWARE

Customer may purchase available Support for HP Branded Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the current Version and the immediately preceding Version of HP Branded Software, and then only when HP Branded Software is used with Hardware or Software included in HP-specified configurations at the specified Version level.

8. ACCESSORIES AND PARTS AND MISCELLANEOUS

a. Compatible Cables and Connectors. Customer will connect Products covered under Support with cables or connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.

b.   Support for Accessories. HP may provide Support for cables, connectors, interfaces, and other accessories if Customer purchases Support for such accessories at the same Hardware service level purchased for the Products with which they are used.

c.   Consumables. Support does not include the delivery, return, replacement, or installation of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media, print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.

d.   Replacement Parts. Parts provided under Support may be whole unit replacements or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable charges.

e.   Service Providers. HP reserves the right and Customer agrees to HP's use of HP-authorized service providers to assist in the provision of Support.

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9.   ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

a.   Designated Callers. Customer will identify a reasonable number of callers, as determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers ("Solution Centers").

b.   Qualifications. Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HP may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, the Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.

c.   HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section D.9.b above.

d.   Telecommunication Charges. Customer will pay for all telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service Tools.

EXHIBIT F

TO THE AGREEMENT FOR PROVISION OF

IRIS SYSTEM ENHANCEMENT AND UPGRADE SERVICES

BETWEEN

COUNTY OF ORANGE

AND

CERNER CORPORATION

OCTOBER 30, 2009 THROUGH JUNE 30, 2012

BUSINESS ASSOCIATE//

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PASS-THROUGH PROVISIONS
ORACLE CORPORATION

END USER TERMS ~~AND CONDITIONS~~FOR THE GOLDEN GATE PRODUCT

Article 1. GENERAL PROVISIONS

1.1. The parties agree that the terms used, but not otherwise defined, in this Exhibit F. to the Agreement shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

1.2 The "Privacy Rule" shall mean the privacy regulations promulgated under HIPAA and published in the Code of Federal Regulations (C.F.R.) at Title 45, Sections 160 and 164, as it may exist now or be hereafter amended.

1.3 The "Security Rule" shall mean the security regulations promulgated under HIPAA and

~~published in the C.F.R. at Title 45, Sections 160, 162, and 164.~~

~~1.4. It is agreed by both parties that CONTRACTOR is a Business Associate of COUNTY for the purposes of this Agreement.~~

~~1.5. It is understood by both parties that CONTRACTOR is not a Covered Entity, as defined by HIPAA, and is not responsible for complying with said regulations for purposes of safeguarding any Protected Health Information (PHI) generated by CONTRACTOR for its own purposes.~~

~~1.6. It is understood by both parties that the Privacy Rule does not pre-empt any State and/or Federal laws, rules or regulations that impose more stringent requirements with respect to confidentiality of PHI.~~

~~ARTICLE 2~~. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

~~2.~~1. CONTRACTOR agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.

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

~~2.~~3. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement.

~~2.~~4. CONTRACTOR agrees to report to COUNTY within ten (10) business days any use or disclosure of PHI not provided for by this Agreement of which CONTRACTOR becomes aware.

~~2.5. CONTRACTOR agrees to ensure that any agent or subcontractor to whom it provides PHI received from COUNTY, or PHI created or received by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such PHI.~~

~~2.6. CONTRACTOR agrees to make available, within fifteen (15) days of receipt of a written request by COUNTY, to PHI in a Designated Record Set, to COUNTY or, as directed by COUNTY, to an individual in order to meet the requirements under 45 CFR Section 164.524.~~

~~2.7. CONTRACTOR agrees to make available PHI for amendment and incorporate any amendment(s) to PHI in a Designated Record Set that COUNTY directs or agrees to pursuant to 45 CFR Section 164.526 at the request of COUNTY or an individual, within thirty (30) days of receipt of said request by COUNTY.~~

~~2.8. CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to the Secretary of the Department of Health and~~

Human Services, in a time and manner as designated by the Secretary, for purposes of the Secretary determining COUNTY's compliance with the Privacy Rule.

~~2.9.~~ CONTRACTOR agrees to document any disclosures of PHI and to make information related to such disclosures available as would be required for COUNTY to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

ARTICLE 3. SECURITY RULE

~~3.1.~~ Security.   CONTRACTOR shall establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI. CONTRACTOR shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of PHI.

~~3.~~2. Agents and Subcontractors. CONTRACTOR shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect the PHI.

~~3.3.~~ Security Incidents. CONTRACTOR shall report any security incident of which it becomes aware to COUNTY. For purposes of this agreement, a "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

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ARTICLE 4. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

4.1 Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose PHI to perform functions, activities, or services for, or on behalf of, COUNTY as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by COUNTY or the Minimum Necessary policies and procedures of COUNTY.

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

4.3 CONTRACTOR is permitted to disclose PHI received from COUNTY for the proper management and administration of CONTRACTOR or to carry out legal responsibilities of CONTRACTOR, provided: (i) the disclosure is required by law; or (ii) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent unauthorized use or disclosure of the

~~PHI, and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the Information has been breached.~~ (ref. 45 C.F.R. 164.504(e)(4)(ii)).

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

~~ARTICLE 5. OBLIGATIONS OF COUNTY~~

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

~~5.2.   COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect CONTRACTOR use or disclosure of PHI.~~

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

5. 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.

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

ARTICLE 6. BUSINESS ASSOCIATE TERMINATION

6.1. In addition to the rights and remedies provided in the Termination paragraph of this Agreement, upon COUNTY's knowledge of a material breach by CONTRACTOR of the requirements of this Exhibit F. to the Agreement, COUNTY shall:

6.1.1. Provide an opportunity for CONTRACTOR to cure the breach or end the violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the violation within thirty (30) days; or

6.1.2. Immediately terminate this Agreement if CONTRACTOR has breached a material term of this Exhibit F. to the Agreement and cure is not possible; or

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

6.2. Upon termination of this Agreement, all PHI provided by COUNTY to CONTRACTOR, or created or received by CONTRACTOR on behalf of COUNTY, shall either be destroyed or returned to COUNTY as provided in the Termination paragraph of this Agreement, and in conformity with the Privacy Rule. This provision shall apply to PHI that is in the possession of subcontractors or agents of CONTRACTOR. If it is infeasible to return or destroy PHI, CONTRACTOR shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such PHI."

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