

1 AGREEMENT FOR PROVISION OF
2 MAINTENANCE AND SUPPORT SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 CERNER CORPORATION
7 JULY 1, 2017 THROUGH JUNE 30, 2020
8

9 THIS AGREEMENT entered into this 1st day of July 2017 (effective date), is by and between the
10 COUNTY OF ORANGE, a political subdivision of State of California (COUNTY), and CERNER
11 CORPORATION, a Delaware For-Profit Corporation (CONTRACTOR). COUNTY and
12 CONTRACTOR may sometimes be referred to herein individually as "Party" or collectively as
13 "Parties". This Agreement shall be administered by the County of Orange Health Care Agency
14 (ADMINISTRATOR).
15

16 WITNESSETH:
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18 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Maintenance
19 and Support Services described herein;

20 WHEREAS, Maintenance and Support Services are set forth in detail in Exhibit A, B, C, D, E, F, G,
21 and H; and

22 WHEREAS, CONTRACTOR is agreeable to the rendering of aforesaid Maintenance and Support
23 Services on the terms and conditions hereinafter set forth:
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25 NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained
26 herein, COUNTY and CONTRACTOR do hereby agree as follows:
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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2017 through June 30, 2020

Period One means the period from July 1, 2017 through June 30, 2018

Period Two means the period from July 1, 2018 through June 30, 2019

Period Three means the period from July 1, 2019 through June 30, 2020

Maximum Obligation:

Period One Maximum Obligation: \$2,450,281

Period Two Maximum Obligation: 2,450,281

Period Three Maximum Obligation: 2,450,281

TOTAL MAXIMUM OBLIGATION: \$7,350,843

Basis for Reimbursement: Negotiated Amount

Payment Method: In Arrears

CONTRACTOR DUNS Number: 04-241-0688

CONTRACTOR TAX ID Number: 43-1196944

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: Marc Naughton, Executive Vice President and CFO
E-Mail: mnaughton@cerner.com

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I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

1		
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4	A. AA	Alcoholics Anonymous
5	B. AB 109	Assembly Bill 109, 2011 Public Safety Realignment
6	C. ABC	Allied Behavioral Care
7	D. ACH	Acute Care Hospital
8	E. ADAS	Alcohol and Drug Abuse Services
9	F. ADL	Activities of Daily Living
10	G. ADP	Alcohol and Drug Program
11	E. AES	Advanced Encryption Standard
12	F. AFLP	Adolescent Family Life Program
13	G. AIDS	Acquired Immune Deficiency Syndrome
14	H. AIM	Access for Infants and Mothers
15	I. AMHS	Adult Mental Health Services
16	J. ARRA	American Recovery and Reinvestment Act of 2009
17	K. ASAM PPC	American Society of Addiction Medicine Patient Placement Criteria
18	L. ASI	Addiction Severity Index
19	M. ASIST	Applied Suicide Intervention Skills Training
20	N. ASO	Administrative Services Organization
21	O. ASRS	Alcohol and Drug Programs Reporting System
22	P. BBS	Board of Behavioral Sciences
23	Q. BCP	Business Continuity Plan
24	R. BH	Base Hospital
25	S. BHS	Behavioral Health Services
26	T. CalOMS	California Outcomes Measurement System
27	U. CalWORKs	California Work Opportunity and Responsibility for Kids
28	V. CAP	Corrective Action Plan
29	W. CAT	Centralized Assessment Team
30	X. CCC	California Civil Code
31	Y. CCLD	(California) Community Care Licensing Division
32	Z. CCR	California Code of Regulations
33	AA. CDCR	California Department of Corrections and Rehabilitation
34	AB. CDSS	California Department of Social Services
35	AC. CERC	Children's Emergency Receiving Center
36	AD. CESI	Client Evaluation of Self at Intake
37	AE. CEST	Client Evaluation of Self and Treatment

1	AF.	CFDA	Catalog of Federal Domestic Assistance
2	AG.	CFR	Code of Federal Regulations
3	AH.	CHDP	Child Health and Disability Prevention
4	AI.	CHHS	California Health and Human Services Agency
5	AJ.	CHPP	COUNTY HIPAA Policies and Procedures
6	AK.	CHS	Correctional Health Services
7	AL.	CIPA	California Information Practices Act
8	AM.	CMPPA	Computer Matching and Privacy Protection Act
9	AN.	COI	Certificate of Insurance
10	AO.	CPA	Certified Public Accountant
11	AP.	CSI	Client and Services Information
12	AQ.	CSW	Clinical Social Worker
13	AR.	CYBHS	Children and Youth Behavioral Health Services
14	AS.	DATAR	Drug Abuse Treatment Access Report
15	AT.	DCR	Data Collection and Reporting
16	AU.	DD	Dually Diagnosed
17	AV.	DEA	Drug Enforcement Agency
18	AW.	DHCS	California Department of Health Care Services
19	AX.	D/MC	Drug/Medi-Cal
20	AY.	DMV	California Department of Motor Vehicles
21	AZ.	DoD	US Department of Defense
22	BA.	DPFS	Drug Program Fiscal Systems
23	BB.	DRC	Probation's Day Reporting Center
24	BC.	DRP	Disaster Recovery Plan
25	BD.	DRS	Designated Record Set
26	BE.	DSM	Diagnostic and Statistical Manual of Mental Disorders
27	BF.	DSM-IV	Diagnostic and Statistical Manual of Mental Disorders. 4th Edition
28	BG.	DSM-V	Diagnostic and Statistical Manual of Mental Disorders. 5th Edition
29	BH.	EBP	Evidence-Based Practice
30	BI.	EDN	Electronic Disease Notification System
31	BJ.	EEOC	Equal Employment Opportunity Commission
32	BK.	EHR	Electronic Health Records
33	BL.	ePHI	Electronic Protected Health Information
34	BM.	EPSDT	Early and Periodic Screening, Diagnosis, and Treatment
35	BN.	ERC	Emergency Receiving Center
36	BO.	FFS	Fee For service
37	BP.	FIPS	Federal Information Processing Standards

1	BQ. FQHC	Federally Qualified Health Center
2	BR. FSP	Full Service Partnership
3	BS. FTE	Full Time Equivalent
4	BT. GAAP	Generally Accepted Accounting Principles
5	BU. HAB	Federal HIV/AIDS Bureau
6	BV. HCA	County of Orange Health Care Agency
7	BW. HHS	Federal Health and Human Services Agency
8	BX. HIPAA	Health Insurance Portability and Accountability Act of 1996, Public
9		Law 104-191
10	BY. HITECH Act	The Health Information Technology for Economic and Clinical Health
11		Act, Public Law 111-005
12	BZ. HIV	Human Immunodeficiency Virus
13	CA. HRSA	Federal Health Resources and Services Administration
14	CB. HSC	California Health and Safety Code
15	CC. IBNR	Incurred But Not Reported
16	CD. ID	Identification
17	CE. IEA	Information Exchange Agreement
18	CF. IMD	Institute for Mental Disease
19	CG. IOM	Institute of Medicine
20	CH. IRIS	Integrated Records and Information System
21	CI. ISO	Insurance Services Office
22	CJ. ITC	Indigent Trauma Care
23	CK. LCSW	Licensed Clinical Social Worker
24	CL. LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
25	CM. LPS	Lanterman/Petris/Short (Act)
26	CO. LPT	Licensed Psychiatric Technician
27	CP. MAT	Medication Assisted Treatment
28	CQ. MEDS	Medi-Cal Eligibility Determination System
29	CR. MFT	Marriage and Family Therapist
30	CS. MH	Mental Health
31	CT. MHIS	Mental Health Inpatient Services
32	CU. MIHS	Medical and Institutional Health Services
33	CV. MHP	Mental Health Plan
34	CW. MHRC	Mental Health Rehabilitation Centers
35	CX. MHS	Mental Health Specialist
36	CY. MHSA	Mental Health Services Act
37	CZ. MORS	Milestones of Recovery Scale

1	DA. MS	Mandatory Supervision
2	DB. MSN	Medical Safety Net
3	DC. MTP	Master Treatment Plan
4	DD. NA	Narcotics Anonymous
5	DE. NIATx	Network Improvement of Addiction Treatment
6	DF. NIH	National Institutes of Health
7	DG. NIST	National Institute of Standards and Technology
8	DH. NOA	Notice of Action
9	DI. NP	Nurse Practitioner
10	DJ. NPDB	National Provider Data Bank
11	DK. NPI	National Provider Identifier
12	DL. NPP	Notice of Privacy Practices
13	DM. OCEMS	Orange County Emergency Medical Services
14	DN. OCJS	Orange County Jail System
15	DO. OC-MEDS	Orange County Medical Emergency Data System
16	DP. OCPD	Orange County Probation Department
17	DQ. OCR	Federal Office for Civil Rights
18	DR. OCSD	Orange County Sheriff's Department
19	DS. OIG	Federal Office of Inspector General
20	DT. OMB	Federal Office of Management and Budget
21	DU. OPM	Federal Office of Personnel Management
22	DV. ORR	Federal Office of Refugee Resettlement
23	DW. P&P	Policy and Procedure
24	DX. PA DSS	Payment Application Data Security Standard
25	DY. PAF	Partnership Assessment Form
26	DZ. PAR	Prior Authorization Request
27	EA. PBM	Pharmaceutical Benefits Management
28	EB. PC	California Penal Code
29	EC. PCI DSS	Payment Card Industry Data Security Standard
30	ED. PCP	Primary Care Provider
31	EE. PCS	Post-Release Community Supervision
32	EF. PHI	Protected Health Information
33	EG. PI	Personal Information
34	EH. PII	Personally Identifiable Information
35	EI. PRA	California Public Records Act
36	EJ. PSAI/ACT	Perinatal Substance Abuse Services Initiative/Assessment and
37		Coordination Team

1	EK. PSC	Professional Services Contract
2	EL. PTRC	Paramedic Trauma Receiving Center
3	EM. QI	Quality Improvement
4	EN. QIC	Quality Improvement Committee
5	EO. RHAP	Refugee Health Assessment Program
6	EP. RHEIS	Refugee Health Electronic Information System
7	EQ. RN	Registered Nurse
8	ER. RSA	Remote Site Access
9	ES. SAPTBG	Substance Abuse Prevention and Treatment Block Grant
10	ET. SD/MC	Short-Doyle Medi-Cal
11	EU. SIR	Self-Insured Retention
12	EV. SMA	Statewide Maximum Allowable (rate)
13	EW. SNF	Skilled Nursing Facility
14	EX. SR	Supervised Release
15	EY. SRP	Supervised Release Participant
16	EZ. SSA	County of Orange Social Services Agency
17	FA. SSI	Supplemental Security Income
18	FB. STP	Special Treatment Program
19	FC. SUD	Substance Use Disorder
20	FD. TAR	Treatment Authorization Request
21	FE. TAY	Transitional Age Youth
22	FF. TB	Tuberculosis
23	FG. TBS	Therapeutic Behavioral Services
24	FH. TRC	Therapeutic Residential Center
25	FI. TTY	Teletypewriter
26	FJ. TUPP	Tobacco Use Prevention Program
27	FK. UMDAP	Uniform Method of Determining Ability to Pay
28	FL. UOS	Units of Service
29	FM. USC	United States Code
30	FN. VOLAGs	Volunteer Agencies
31	FO. W&IC	California Welfare and Institutions Code
32	FP. WIC	Women, Infants and Children

II. ALTERATION OF TERMS

35 A. This Agreement, together with Exhibits A, B, C, D, E, F, G, and H, attached hereto and
 36 incorporated herein by this reference, fully expresses the complete understanding of COUNTY and
 37 CONTRACTOR with respect to the subject matter of and obligations under this Agreement. This

1 Agreement shall constitute the sole and entire binding Agreement between the parties as it relates to the
2 services and licenses provided herein. All other prior proposals, offers, discussions, preliminary
3 understandings, and other communications relative to this Agreement, oral or written, shall be
4 considered superseded, and any such terms, conditions or provisions are effective only to the extent that
5 they have been negotiated as part of this Agreement.

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

10 **III. CHOICE OF LAW AND FORUM**

11 A. The formation, interpretation, and performance of this Agreement shall be governed by the laws
12 of the State of California, provided that no article of this Agreement shall be interpreted for or against a
13 party because that party or its legal representative drafted such article, and this Agreement shall be
14 construed as if jointly prepared by the parties. Any legal proceeding with respect to this Agreement
15 shall be filed in the appropriate court of the State of California in Orange County, California. The
16 Parties agree to waive any rule of law or legal decision that would require interpretation of any
17 ambiguities in this Agreement against the Party that has drafted the Agreement.

18 B. In the event of a dispute between the Parties, CONTRACTOR and COUNTY agree to make a
19 good faith effort to dispose of their disputes within a reasonable period of time through the
20 CONTRACTOR's Project Manager and COUNTY's Project Director. However, if the
21 CONTRACTOR's Project Manager and COUNTY's Project Director do not reach a resolution to the
22 disputed matter, such matter shall be brought to the attention of the Health Care Agency's Agency
23 Director or his or her designee and the CONTRACTOR's management team to work cooperatively to
24 resolve the dispute amicably. In the event that a resolution at such management levels does not occur,
25 either Party may submit the dispute to binding arbitration in Orange County, California under the then-
26 prevailing rules of the American Arbitration Association, Inc., a New York corporation. Unless either
27 Party objects to arbitration as a means to resolve the disputed matter, the CONTRACTOR and
28 COUNTY agree that the arbitration shall be through a single arbitrator, who shall be experienced in
29 information technology matters. Judgment upon any award in such arbitration may be entered and
30 enforced in any court of competent jurisdiction. Notwithstanding any provision of this Agreement to the
31 contrary, each Party acknowledges that any breach of any of its obligations with respect to the other
32 party's proprietary rights will result in an irreparable injury for which money damages will not be an
33 adequate remedy and that, in such event, the non-breaching party shall be entitled to injunctive relief in
34 addition to any other relief a court may deem proper.

35 C. In the event the CONTRACTOR or COUNTY objects to arbitration, either Party reserves the
36 right to initiate any legal proceeding it deems appropriate in accordance with Subparagraph A. of this
37 Paragraph.

1 D. COUNTY and CONTRACTOR agree that, in the event of a dispute notwithstanding, they will
2 continue without delay to carry out all their responsibilities under this Agreement until such time the
3 matter is disposed of.

4 E. Notwithstanding the foregoing, COUNTY shall have the right to terminate this Agreement if
5 CONTRACTOR is in breach of any of its obligations stated in this Agreement and that breach remains
6 uncured following any applicable cure period specified in this Agreement.

7
8 **IV. COMPLIANCE**

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

12 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and
13 procedures relating to ADMINISTRATOR's Compliance Program, Code of Conduct and access to
14 General Compliance and Annual Provider Trainings.

15 2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own
16 Compliance Program, Code of Conduct and any Compliance related policies and procedures.
17 CONTRACTOR's Compliance Program, Code of Conduct and any related policies and procedures shall
18 be verified by ADMINISTRATOR's Compliance Department to ensure they include all required
19 elements by ADMINISTRATOR's Compliance Officer as described in this Paragraph IV
20 (COMPLIANCE). These elements include:

- 21 a. Designation of a Compliance Officer and/or compliance staff.
- 22 b. Written standards, policies and/or procedures.
- 23 c. Compliance related training and/or education program and proof of completion.
- 24 d. Communication methods for reporting concerns to the Compliance Officer.
- 25 e. Methodology for conducting internal monitoring and auditing.
- 26 f. Methodology for detecting and correcting offenses.
- 27 g. Methodology/Procedure for enforcing disciplinary standards.

28 3. If CONTRACTOR does not provide proof of its own Compliance program to
29 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's
30 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the
31 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed
32 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program
33 and Code of Conduct.

34 4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any
35 Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall
36 submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to
37 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.

1 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
2 reasonable time, which shall not exceed forty five (45) calendar days, and determine if
3 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to
4 the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
5 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
6 CONTRACTOR shall revise its compliance program and code of conduct to meet
7 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
8 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

9 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
10 CONTRACTOR's compliance program, code of conduct and any Compliance related policies and
11 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals
12 relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct,
13 related policies and procedures and contact information for the ADMINISTRATOR's Compliance
14 Program.

15 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
16 retained to provide services directly related to this Agreement semi-annually to ensure that they are not
17 designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against
18 the General Services Administration's Excluded Parties List System or System for Award Management,
19 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
20 the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as
21 identified by the ADMINISTRATOR.

22 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
23 employees, interns, volunteers, contractors, subcontractors, and agents of CONTRACTOR who perform
24 services directly related to this Agreement. Notwithstanding the above, this term does not include part-
25 time or per-diem employees, contractors, subcontractors, agents, and other persons who are not
26 reasonably expected to work more than one hundred sixty (160) hours per year; except that any such
27 individuals shall become Covered Individuals at the point when they work more than one hundred sixty
28 (160) hours during the calendar year. CONTRACTOR shall ensure that all Covered Individuals relative
29 to this Agreement are made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and
30 related policies and procedures (or CONTRACTOR's own compliance program, code of conduct and
31 related policies and procedures if CONTRACTOR has elected to use its own).

32 2. An Ineligible Person shall be any individual or entity who:
33 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
34 federal and state health care programs; or
35 b. has been convicted of a criminal offense related to the provision of health care items or
36 services and has not been reinstated in the federal and state health care programs after a period of
37 exclusion, suspension, debarment, or ineligibility.

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

4 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
5 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
6 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
7 State
8 of California health programs and have not been excluded or debarred from participation in any federal
9 or state health care programs, and to further represent to CONTRACTOR that they do not have any
10 Ineligible Person in their employ or under contract.

11 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
12 debarment, exclusion, or other event that makes the Covered Individual an Ineligible Person.
13 CONTRACTOR shall notify ADMINISTRATOR immediately upon CONTRACTOR becoming aware
14 if a Covered Individual providing services directly relative to this Agreement becomes debarred,
15 excluded, or otherwise becomes an Ineligible Person.

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

22 7. CONTRACTOR shall notify ADMINISTRATOR, and remove from participating in any
23 activity associated with this Agreement, immediately upon CONTRACTOR's becoming aware if a
24 Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after
25 being sanction screened. CONTRACTOR's failure to immediately remove an excluded, suspended or
26 debarred Covered Individual or entity, as stated herein, may result in appropriate repayment by, or
27 sanction(s) to, CONTRACTOR corresponding to the value of services provided by the ineligible
28 Covered Individual or entity. CONTRACTOR shall promptly make such payments within forty-five
29 (45) business days after notification thereof by ADMINISTRATOR.

30 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General
31 Compliance Training available to Covered Individuals.

32 1. If CONTRACTOR has acknowledged to comply with ADMINISTRATOR's Compliance
33 Program, it shall use its best efforts to encourage completion by all Covered Individuals of the General
34 Compliance Training when offered; provided, however, that at a minimum CONTRACTOR shall assign
35 at least one (1) designated representative to complete the General Compliance Training when offered.

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

1 3. Such training will be made available to each Covered Individual annually.
2 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide
3 copies of training certification upon request.

4 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
5 compliance training. ADMINISTRATOR shall provide instruction on group training completion while
6 CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,
7 CONTRACTOR shall provide copies of the certifications.

8 D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized
9 Provider Training, where appropriate, available to Covered Individuals and shall notify CONTRACTOR
10 of the Covered Individuals or categories of Covered Individuals for whom that training is appropriate.

11 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all of those
12 Covered Individuals relative to this Agreement.

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

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

16 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall
17 provide copies of the certifications upon request.

18 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
19 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a
20 group setting while CONTRACTOR shall retain the certifications. Upon written request by
21 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

22 E. Failure of CONTRACTOR to comply with the obligations stated in this Paragraph IV
23 (COMPLIANCE) shall constitute a breach of the Agreement on the part of CONTRACTOR and ground
24 for COUNTY to terminate the Agreement. Unless the circumstances require a sooner period of cure,
25 CONTRACTOR shall have thirty (30) calendar days from the date of the written notice of default to cure
26 any defaults grounded on this Paragraph IV (COMPLIANCE) prior to ADMINISTRATOR’s right to
27 terminate this Agreement on the basis of such default.

28
29 **V. CONFIDENTIALITY**

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

36 B. Except as expressly permitted by this Agreement, CONTRACTOR and COUNTY will not, nor
37 will they permit their respective employees, agents, attorneys or independent contractors to, disclose

1 other than as provided in this Agreement, use, copy, distribute, sell, license, publish, reproduce or
2 otherwise make available Confidential Information of the other party. CONTRACTOR and COUNTY
3 will each:

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

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

9 C. Notwithstanding the foregoing, either party may disclose the other party’s Confidential
10 Information to the extent required by applicable law or regulation or by order of a court or other
11 governmental entity, in which case such party will so notify the other party as soon as practicable and in
12 any event at least ten (10) business days prior to such party making such required disclosure.

13 D. Upon execution of this Agreement and subject to the terms and conditions set forth in
14 Exhibit C, CONTRACTOR agrees to grant to COUNTY licensed access to the restricted portions of
15 Cerner.com. Cerner.com contains certain copyrighted, proprietary, and confidential information.
16 Confidential Information obtained pursuant to the first sentence of this Subparagraph D. in the
17 performance of this Agreement shall be treated as strictly confidential and shall not be used by
18 COUNTY for any purpose other than the performance of this Agreement.

19 E. CONTRACTOR’s client list is considered proprietary, and as such CONTRACTOR shall only
20 be obligated to supply to COUNTY, upon request, such CONTRACTOR’s client list information to
21 which CONTRACTOR has received permission from the client to do so.

22
23 **VI. CONFLICT OF INTEREST**

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

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

34
35 **VII. CONTRACTOR LIMITATION OF LIABILITY**

36 A. Except as provided in Paragraph XIII, in no case shall CONTRACTOR be liable for any special,
37 incidental or consequential damages based upon breach of warranty, breach of contract, negligence, strict

1 | tort, or any other legal theory. Such excluded special, incidental, or consequential damages include, but
2 | are not limited to, loss of profits, loss of savings or revenue, loss of use of the Equipment, downtime, the
3 | claims of third parties, and injury to property.

4 | B. To the extent that CONTRACTOR'S Maintenance and Support Services contains third parties'
5 | equipment and sublicensed software, CONTRACTOR'S liability with respect to such third parties'
6 | equipment and sublicensed software shall be limited pursuant to such limitations as are passed through to
7 | COUNTY through the respective third parties' end-user terms and to the extent that CONTRACTOR is
8 | able to collect with good faith effort from such third parties under their promised end-user warranties.

9 | C. Notwithstanding Subparagraph B and except Subparagraphs A and X of Paragraph XIII,
10 | CONTRACTOR's maximum liability for all claims whatsoever arising under this Agreement shall be
11 | limited to the amount paid by COUNTY to CONTRACTOR for Support services under this Agreement
12 | during the previous twelve (12) month period.

13 |
14 | **VIII. DELEGATION ASSIGNMENT, AND SUBCONTRACTS**

15 | A. CONTRACTOR may not delegate or assign the obligations hereunder, either in whole or in
16 | part, without prior written consent of COUNTY; provided, however, obligations undertaken by
17 | CONTRACTOR pursuant to this Agreement may be carried out by means of subcontracts, upon
18 | approval by ADMINISTRATOR, which approval shall not be unreasonably withheld.

19 | B. Any change in CONTRACTOR's business structure, including but not limited to, the sale or
20 | transfer of more than fifty percent (50%) of the assets or stocks of CONTRACTOR, change to another
21 | corporate structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or
22 | more of CONTRACTOR's directors at one time shall be deemed an assignment pursuant to this
23 | Paragraph. Any attempted assignment or delegation in derogation of this Paragraph shall be void.

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

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

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

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

IX. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Agreement meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants 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, subcontractors, and consultants for the period prescribed by the law.

X. 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 Paragraph V. of Exhibit A attached hereto.

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.

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.

XI. FREIGHT ON BOARD PRICES

Equipment is priced Freight on Board (F.O.B.) from 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.

XII. HEADINGS NOT CONTROLLING

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

XIII. INDEMNIFICATION AND INSURANCE

A. CONTRACTOR agrees to indemnify and hold COUNTY, its elected and appointed officials, officers, directors, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, liabilities, obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) (together, "claims") which are asserted against COUNTY arising out of or resulting from CONTRACTOR's performance under this Agreement, where such claims are caused by the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, employees or agents, except that CONTRACTOR shall not be obligated to indemnify COUNTY or COUNTY INDEMNITEES to the extent that the claims arose from COUNTY's failure to use the CONTRACTOR'S system in accordance with the Documentation or applicable standards of good clinical practice. CONTRACTOR shall defend against and negotiate for settlement and compromise of the same only upon approval of counsel proposed by CONTRACTOR, which approval shall not unreasonably be withheld or delayed, and provided that any settlement or compromise shall provide for a full release of COUNTY. Notwithstanding the foregoing, CONTRACTOR'S obligation under Subparagraph X, below, shall apply to all third party intellectual property infringement claims, liabilities obligations, judgments, causes of actions, costs and expenses (include reasonable attorneys' fees) asserted against COUNTY arising out of or resulting from the use of the System by COUNTY regardless of CONTRACTOR'S, or its officers', employees' or agents', negligence or misconduct. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence, recklessness, or willful misconduct 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) (together "claims") which are asserted against CONTRACTOR arising out of the use of the System by COUNTY (except for claims that fall within the scope of Subparagraph X. below) or resulting from COUNTY's performance under this Agreement where such claims are caused by the negligence, recklessness, or willful misconduct of COUNTY, its officers, employees or agents, except that COUNTY shall not be obligated to indemnify CONTRACTOR, its officers, employees, agents, directors, members, shareholders and/or affiliates if COUNTY has used CONTRACTOR'S 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

1 negligence, recklessness, or willful misconduct of CONTRACTOR or its officers, employees, agents,
2 directors, members, shareholders and/or affiliates, COUNTY and CONTRACTOR agree that liability
3 will be apportioned as determined by the court. Neither party shall request a jury apportionment.

4 C. Except for Subparagraph X, below, each Party agrees to provide the indemnifying party with
5 written notification of any claim related to this Agreement within ten (10) business days of notice
6 thereof, and in the event the indemnifying party is subsequently named a party to such claim, each party
7 shall cooperate with the indemnifying party in its defense.

8 D. Prior to the provision of services under this Agreement, the CONTRACTOR agrees to purchase
9 all required insurance at CONTRACTOR's expense, including all endorsements required herein,
10 necessary to satisfy the COUNTY that the insurance provisions of this Agreement have been complied
11 with. CONTRACTOR agrees to keep such insurance coverage in effect during the entire term of this
12 Agreement, and provide Certificates of Insurance and endorsements annually upon renewal to COUNTY
13 during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of
14 CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and
15 conditions as set forth herein for CONTRACTOR.

16 E. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
17 CONTRACTOR pursuant to this agreement shall be covered under CONTRACTOR's insurance as an
18 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
19 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
20 than the level of coverage required by COUNTY from CONTRACTOR under this agreement. It is the
21 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and
22 to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance
23 must be maintained by CONTRACTOR through the entirety of this agreement for inspection by
24 COUNTY representative(s) at any reasonable time.

25 F. All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of
26 Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by
27 the appropriate line of coverage.

28 G. If CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of
29 this Agreement, the COUNTY may terminate this Agreement.

30 H. QUALIFIED INSURER

31 1. The policy or policies of insurance must be issued by an insurer with a minimum rating of
32 A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current
33 edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred,
34 but not mandatory, that the insurer be licensed to do business in the state of California (California
35 Admitted Carrier).

36 //

37 //

2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

3. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation Employers' Liability Insurance	Statutory \$1,000,000 per occurrence
Network Security & Privacy Liability	\$20,000,000 per claims made
Technology Errors & Omissions	\$1,000,000 per claims made \$1,000,000 aggregate

I. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

2. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

J. REQUIRED ENDORSEMENTS – The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.

2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

K. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1 1. An Additional Insured endorsement naming the County of Orange, its elected and appointed
2 officials, officers, employees, and agents as Additional Insureds for its vicarious liability.

3 2. A primary and non-contributing endorsement evidencing that the CONTRACTOR's
4 insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be
5 excess and non-contributing.

6 L. If CONTRACTOR's Technology Errors & Omissions and/or Network Security & Privacy
7 Liability are "Claims Made" policy(ies), CONTRACTOR shall agree to maintain coverage for two (2)
8 years following the term of this Agreement.

9 M. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
10 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
11 employees, and agents, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN**
12 **AGREEMENT**.

13 N. All insurance policies required by this Agreement shall waive all rights of subrogation against
14 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
15 within the scope of their appointment or employment.

16 O. CONTRACTOR shall notify COUNTY in writing within thirty (30) calendar days of any policy
17 cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice
18 to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of this
19 Agreement, upon which COUNTY may suspend or terminate this Agreement.

20 P. The Commercial General Liability policy shall contain a severability of interests clause also
21 known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

22 Q. Insurance certificates should be forwarded to the agency/department address listed on the
23 solicitation.

24 R. If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)
25 days of notification by CEO/Purchasing or the agency/department purchasing division, award may be
26 made to the next qualified vendor.

27 S. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
28 insurance of any of the above insurance types throughout the term of this Agreement, which increases
29 shall be mutually agreed upon. Any increase or decrease in insurance will be as deemed by County of
30 Orange Risk Manager as appropriate to adequately protect COUNTY.

31 T. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
32 CONTRACTOR does not deposit copies of acceptable Certificates of Insurance and endorsements with
33 COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this
34 Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled
35 to all legal remedies.

36 //

37 //

1 U. The procuring of such required policy or policies of insurance shall not be construed to limit
2 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
3 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

4 V. SUBMISSION OF INSURANCE DOCUMENTS

5 1. The COI and endorsements shall be provided to COUNTY as follows:
6 a. Prior to the start date of this Agreement.
7 b. Within ten (10) calendar days of expiration date for each policy.
8 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
9 changes to any of the insurance types as set forth in Subparagraph G. of this Paragraph.

10 2. The COI and endorsements shall be provided to the COUNTY at the address as referenced
11 in the Referenced Contract Provisions of this Agreement.

12 3. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
13 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COI's
14 and endorsements

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

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

23 1. In the event of any claim by any third party against the COUNTY with respect to the breach
24 of the foregoing, COUNTY shall within five (5) business days notify CONTRACTOR in writing.
25 Contingent upon such notification, CONTRACTOR agrees to indemnify and save harmless the
26 COUNTY at the expense of CONTRACTOR from and against any and all suits, judgments, costs,
27 damages, losses, claims, demands, actions, causes of actions, proceedings, expenses or liabilities of any
28 nature which were asserted or brought against or incurred by the COUNTY arising from or out of such
29 claim, whether or not such claim is successful. Contingent upon the notification stated herein and upon
30 COUNTY's approval of counsel proposed by CONTRACTOR, which approval shall not unreasonably
31 be withheld or delayed, CONTRACTOR shall defend against and negotiate for settlement or
32 compromise the same; provided, however, that any settlement or compromise shall provide for a full
33 release of COUNTY.

34 2. If an injunction is obtained against COUNTY's use of any item of Licensed Software by
35 reason of an infringement described above, or if in CONTRACTOR's reasonable opinion any item of
36 Licensed Software is likely to become the subject of a claim of such infringement, CONTRACTOR will
37 at its option and at its own expense procure the right for COUNTY to continue using the item of

1 Licensed Software which is the subject of the infringement claim, replace or modify such item so that it
2 becomes non-infringing while retaining the full functionality in all material respects or grant COUNTY a
3 refund of all fees paid by the COUNTY for the Licensed Software (depreciated over a five-year, straight
4 line basis) in exchange for termination of any related license and the return of such item of Licensed
5 Software.

6 3. CONTRACTOR shall not have any obligation to COUNTY under any provision of this
7 Paragraph if the infringement claim is based upon the use of any item of Licensed Software in
8 combination with any software program or equipment, or any part thereof, not furnished or
9 recommended in writing by CONTRACTOR, or the use of Licensed Software in an environment in
10 which its operation was not authorized by CONTRACTOR as of the Effective Date.

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

14
15 **XIV. INFORMATION MANAGEMENT TOOLS**

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

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

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

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

30
31 **XV. INSPECTIONS AND AUDITS**

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

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

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

11 **XVI. LICENSES AND LAWS**

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

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

35 C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:

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

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

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

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

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

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

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

19
20 **XVII. LITERATURE AND ADVERTISEMENTS**

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

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

30 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
31 available social media sites) in support of the services described within this Agreement,
32 CONTRACTOR shall develop social media policies and procedures and have them available to
33 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
34 forms of social media used to either directly or indirectly support the services described within this
35 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
36 they pertain to any social media developed in support of the services described within this Agreement.

37 //

1 CONTRACTOR shall also include any required funding statement information on such social media
2 when required by ADMINISTRATOR.

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

6
7 **XVIII. MAXIMUM OBLIGATION**

8 A. The Total Maximum Obligation of COUNTY for services provided in accordance with this
9 Agreement, and the separate Maximum Obligations for Period One, Period Two, and Period Three are
10 as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in
11 Subparagraph B. below.

12 B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR,
13 ADMINISTRATOR may increase or decrease the Period One, Period Two, and Period Three Maximum
14 Obligations, provided the total of these Maximum Obligations does not exceed or reduce the Total
15 Maximum Obligation of COUNTY, as specified in the Referenced Contract Provisions of this
16 Agreement.

17
18 **XIX. MINIMUM WAGE LAWS**

19 A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and
20 State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the
21 federal or California Minimum Wage to all its employees that directly or indirectly provide services
22 pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require that all its
23 contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR
24 also pay their employees no less than the greater of the federal or California Minimum Wage.

25 B. CONTRACTOR shall comply and require its contractors to comply with all other federal and
26 State of California laws for minimum wage, overtime pay, record keeping, and child labor standards
27 pursuant to providing services pursuant to this Agreement.

28 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
29 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
30 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
31 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

32
33 **XX. NO HIRE**

34 CONTRACTOR and COUNTY agree that, without the prior consent of the other party, neither will
35 offer employment to or discuss employment with any of the other Parties’ associates or employees until
36 one year after this Agreement is terminated, provided the foregoing provision will not prohibit a general
37 non-targeted solicitation of employment in the ordinary course of business or prevent either party from

1 | employing any employee who contacts such party at his or her own initiative without any direct or
2 | indirect solicitation by or encouragement from such party.

3 |
4 | **XXI. NONDISCRIMINATION**

5 | **A. EMPLOYMENT**

6 | 1. During the term of this Agreement, CONTRACTOR shall not unlawfully discriminate
7 | against any employee or applicant for employment because of his/her race, religious creed, color,
8 | national origin, ancestry, physical disability, mental disability, medical condition, genetic information,
9 | marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and
10 | veteran status. Additionally, during the term of this Agreement, CONTRACTOR shall require in its
11 | subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for
12 | employment because of his/her race, religious creed, color, national origin, ancestry, physical disability,
13 | mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
14 | gender expression, age, sexual orientation, or military and veteran status.

15 | 2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or
16 | applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or
17 | recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection
18 | for training, including apprenticeship.

19 | 3. CONTRACTOR shall not discriminate between employees with spouses and employees
20 | with domestic partners, or discriminate between same gender domestic partners and spouses of those
21 | employees, in the provision of benefits.

22 | 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
23 | employment, notices from CONTRACTOR and/or the United States Equal Employment Opportunity
24 | Commission setting forth the provisions of the Equal Opportunity clause.

25 | 5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR
26 | and/or subcontractor shall state that all qualified applicants will receive consideration for employment
27 | without regard to race, religious creed, color, national origin, ancestry, physical disability, mental
28 | disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
29 | expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed
30 | fulfilled by use of the term EOE/Disability/Vet or the phrase “an equal opportunity
31 | employer/Disability/Vet”.

32 | 6. CONTRACTOR shall give written notice of its commitments under this Nondiscrimination
33 | Paragraph to each labor union or representative of workers with which CONTRACTOR and/or
34 | subcontractor has a collective bargaining agreement or other contract or understanding.

35 | **B. SERVICES, BENEFITS AND FACILITIES –** CONTRACTOR and/or subcontractor shall not
36 | discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
37 | on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental

1 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
 2 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
 3 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
 4 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
 5 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
 6 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
 7 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
 8 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
 9 Nondiscrimination Paragraph, Discrimination includes, but is not limited to the following based on one
 10 or more of the factors identified above:

- 11 1. Denying a client or potential client any service, benefit, or accommodation.
- 12 2. Providing any service or benefit to a client which is different or is provided in a different
 13 manner or at a different time from that provided to other clients.
- 14 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
 15 others receiving any service or benefit.
- 16 4. Treating a client differently from others in satisfying any admission requirement or
 17 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
 18 any service or benefit.
- 19 5. Assignment of times or places for the provision of services.

20 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all clients
 21 through a written statement that CONTRACTOR’s and/or subcontractor’s clients may file all complaints
 22 alleging discrimination in the delivery of services with CONTRACTOR , subcontractor, and
 23 ADMINISTRATOR.

24 1. Whenever possible, problems shall be resolved informally and at the point of service.
 25 CONTRACTOR shall establish an internal informal problem resolution process for clients not able to
 26 resolve such problems at the point of service. Clients may initiate a grievance or complaint directly with
 27 CONTRACTOR either orally or in writing.

28 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as
 29 to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

30 D. PERSONS WITH DISABILITIES - CONTRACTOR and/or subcontractor agree to comply
 31 with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq.,
 32 as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended
 33 (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
 34 discrimination against qualified persons with disabilities in all programs or activities; and if applicable,
 35 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
 36 with succeeding legislation.

37 //

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

6 F. CONTRACTOR shall include the nondiscrimination and compliance provisions of this
7 Nondiscrimination Paragraph in all subcontracts for the direct performance of services under this
8 Agreement.

9
10 **XXII. NOTICES**

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

- 13 1. When written and deposited in the United States mail, first class postage prepaid and
14 addressed as specified on Page 4 of this Agreement or as otherwise directed by ADMINISTRATOR;
- 15 2. When faxed, transmission confirmed;
- 16 3. When sent by electronic mail; or
- 17 4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel
18 Service, or other expedited delivery service.

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

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

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

31 E. For purposes of this Agreement, any notice to be provided by COUNTY may be given by
32 ADMINISTRATOR.

33
34 **XXIII. PROTECTIVE EQUIPMENTS**

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

XXIV. 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 applicable to CONTRACTOR pertaining to the privacy and security of personally identifiable information (hereinafter "PII"). CONTRACTOR shall, immediately upon discovery of a Breach of privacy and/or security of PII by CONTRACTOR, notify ADMINISTRATOR of such breach by telephone, email, or facsimile.

D. CONTRACTOR may be required to pay any reasonable costs associated with a Breach of privacy and/or security of PII to the extent such Breach is due to CONTRACTOR's sole fault.

E. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the commencement of this Agreement, 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.

XXV. 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.

XXVI. SITE VISITS AND COUNTY CREDITS

COUNTY agrees that CONTRACTOR may bring its prospective Clients to COUNTY's site in order to observe the System in operation. CONTRACTOR will provide to COUNTY details on the site visit process and responsibilities thirty (30) days prior to conducting a site visit. COUNTY agrees to cooperate fully with CONTRACTOR in these site visits and to brief CONTRACTOR personnel in advance as to the substance of opinions and comments COUNTY intends to give with respect to

1 CONTRACTOR and the System. CONTRACTOR and COUNTY will work cooperatively to minimize
2 disruptions at COUNTY’s site and to showcase both COUNTY’s institution as well as CONTRACTOR
3 and the System in the best possible light. CONTRACTOR will schedule such visits in advance and only
4 at times mutually acceptable to both COUNTY and to CONTRACTOR. In no event shall
5 CONTRACTOR or any prospective client of CONTRACTOR have access to any Confidential
6 Information of COUNTY or any patient information or other private information. A single site visit
7 may include more than one representative from one or more prospective CONTRACTOR clients. For
8 each site visit hosted, COUNTY may receive credits which may be applied (within twenty-four (24)
9 months from the date of certificate issuance) toward a maximum of thirty percent (30%) of the total list
10 price of Licensed Software, or toward the tuition portion of any CONTRACTOR-sponsored education
11 course (to a maximum of fifty percent (50%) of the tuition for learning services) or to professional
12 services. Such credits are not convertible to cash and may only be used toward the license of Licensed
13 Software, to the payment of tuition for education classes, or to professional services as specified above.
14 The site credits may not be applied toward the acquisition of Equipment or Sublicensed Software, or to
15 defray the cost of Maintenance or Support.

16
17 **XXVII. STATUS OF CONTRACTOR**

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

29
30 **XXVIII. TERM**

31 The term of this Agreement shall commence as specified in the Referenced Contract Provisions of
32 this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified in
33 the Referenced Contract Provisions of this Agreement, unless otherwise sooner terminated as provided
34 in this Agreement; provided, however, each party shall be obligated to perform such duties as would
35 normally extend beyond this term, including but not limited to, obligations with respect to
36 confidentiality, indemnification, audits, reporting and accounting.

37 //

XXIX. 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:

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

2) 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 day 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 and shall constitute grounds for termination of this Agreement, provided that in such event of a material breach by CONTRACTOR, COUNTY's ADMINISTRATOR:

1) Shall notify CONTRACTOR in writing of the breach and afford CONTRACTOR:

a) ten (10) calendar days within which to cure the breach before COUNTY will exercise its right to terminate this Agreement, or

b) sixty (60) calendar days within which to cure the breach if such breach is related to an error in the Licensed Software.

b. In the event of a material breach, ADMINISTRATOR 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 CONTRACTOR shall continue to perform its other obligations hereunder) for and during the period in which CONTRACTOR is in breach.

c. In the event of a material breach, ADMINISTRATOR may offset against any monies billed by CONTRACTOR but yet unpaid by COUNTY those monies disallowed pursuant to Subparagraph b., above.

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) calendar days; and/or

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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: 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:

a. Shall afford COUNTY written notice of the breach and such reasonable time as may be necessary (not to exceed sixty (60) days absent CONTRACTOR's written approval) to cure the breach thereafter; and

b. 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.

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) calendar days.

3. In the event that this Agreement is terminated due to an uncured default of the COUNTY's hereunder, CONTRACTOR may declare all Agreement payments to the end of the COUNTY's then current fiscal year to be due, including any delinquent Agreement payments from prior budget years. In no event shall CONTRACTOR be entitled to the remedy of acceleration of the total Agreement payments due over the term of this Agreement. The parties acknowledge and agree that the limitations set forth above are required by Article 16, §18 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 DUE TO MATERIAL BREACH: If this Agreement terminates pursuant to Subparagraph XXIX.A.2., the following shall apply:

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

2. Within thirty (30) calendar 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) calendar 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) calendar 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 or a Notice of Termination by CONTRACTOR, CONTRACTOR shall submit to COUNTY a termination invoice. Such invoice

1 shall be submitted no later than thirty (30) calendar days from the effective date of termination, unless
 2 one or more extensions in writing are granted by COUNTY upon request of CONTRACTOR made in
 3 writing within such thirty (30) calendar day period or authorized extension thereof. Upon any such
 4 termination, COUNTY agrees to pay CONTRACTOR for all products and services delivered or
 5 performed prior to termination, which meet the requirements of this Agreement provided, however, that
 6 such compensation shall not exceed the total compensation set forth in this Agreement as the total
 7 compensation may be reduced by payments already otherwise made and as further reduced by work not
 8 terminated.

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

15 E. TERMINATION OF SUPPORT SERVICES: Without affecting COUNTY's termination rights
 16 in connection with an uncured material breach by CONTRACTOR, COUNTY may not terminate
 17 Support before the end of twelve (12) months after First Productive Use of the applicable Licensed
 18 Software, provided however, after such period, COUNTY may terminate Support for any module of
 19 Licensed Software currently in place through this Agreement upon ninety (90) calendar days prior written
 20 notice to CONTRACTOR. CONTRACTOR may terminate Support for any module of Licensed
 21 Software currently in place through this Agreement upon ninety (90) calendar days prior written notice if
 22 COUNTY:

23 1. Fails to install the most current New Release of an item of Licensed Software within twenty-
 24 four (24) months of the date CONTRACTOR makes such release generally available to its clients, or

25 2. Fails to pay invoices and fails to cure such failure within thirty (30) calendar days of written
 26 notice from CONTRACTOR, or

27 3. Fails to upgrade to a current Release if any third-party products which are material to the
 28 productive use by the Licensed Software are no longer supported by the third-party suppliers (i.e., if a
 29 third-party product upgrade is required by a third-party supplier, CONTRACTOR will extend this
 30 upgrade requirement to COUNTY). CONTRACTOR will have no obligation to provide assistance with
 31 problems caused by Equipment or Sublicensed Software failure where COUNTY is not on Maintenance
 32 with CONTRACTOR.

33 F. TERMINATION OF SUPPORT SERVICES FOR TERM LICENSED SOFTWARE FOR
 34 COUNTY CONVENIENCE: Without affecting COUNTY's termination rights in connection with an
 35 uncured material breach by CONTRACTOR, COUNTY may terminate Support for all of the items of
 36 Term Licensed Software under this Agreement, for COUNTY's convenience, any time after the initial
 37 twelve (12) months following the Effective Date. Upon such termination, COUNTY may continue to use

1 such Term Licensed Software for the remainder of the license term, but all updates, enhancements, and
2 other support of such Term Licensed Software shall cease as of the termination effective date.

3 G. TERMINATION OF MAINTENANCE SERVICES: Without affecting COUNTY’s termination
4 rights in connection with an uncured material breach by CONTRACTOR, either party may terminate
5 Maintenance upon sixty (60) calendar days prior written notice except as otherwise provided by the
6 supplier. CONTRACTOR shall, however, only terminate Maintenance services in the event that;

7 1. COUNTY fails to pay invoices for Maintenance and fails to cure such failure within thirty
8 (30) days of written notice thereof, or

9 2. CONTRACTOR’s Third Party Maintenance Suppliers refuse to provide Maintenance to
10 COUNTY due to COUNTY’s failure to maintain a specified environment. Such termination of
11 Maintenance shall be effective upon the renewal date. All unpaid charges under this Paragraph shall
12 become immediately due and payable upon such termination.

13 H. Upon earlier termination of this AGREEMENT, CONTRACTOR’s and COUNTY’s obligations
14 pursuant to the Payments Paragraph of Exhibit A to this Agreement shall be adjusted to reflect the early
15 termination. The termination or expiration of this Agreement shall not affect in any way the duties that
16 either party owes the other party, pertaining to services provided during the term of this Agreement
17 which would or could extend beyond the date this Agreement terminates or expires.

18 I. REMEDIES NOT EXCLUSIVE: Except as otherwise expressly provided herein, the right to
19 terminate this Agreement and the other remedies for breach set forth in this Agreement are cumulative
20 as to one another and as to any others provided by law, rather than exclusive; and, except as otherwise
21 expressly provided herein the expression of certain remedies in this Agreement does not preclude resort
22 by either party to any other remedies provided by law.

23 J. FORCE MAJEURE: Neither party shall be assessed with liquidated damages or held in breach
24 during any delay beyond the time named for the performance of this Agreement caused by an act of God,
25 war, civil disturbance, labor dispute, or other similar cause beyond its reasonable control, provided such
26 party gives the other party written notice of the cause of the delay within ten calendar days of the start of
27 the delay. Notice shall be given in accordance with Paragraph XXII. of this Agreement.

28
29 **XXX. WAIVER OF DEFAULT OR BREACH**

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

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1 **XXXI. WARRANTIES**

2 **A. EQUIPMENT, SOFTWARE, AND SYSTEM**

3 1. Pass-Through Provisions: CONTRACTOR shall assign and pass through to COUNTY any
4 Equipment and/or Sublicensed Software end-user warranties as set forth by the supplier of such
5 Equipment and/or Sublicensed Software in Exhibit E. CONTRACTOR shall interface directly with said
6 supplier of any Equipment and/or Sublicensed Software in the event of any breach of any such warranty
7 as COUNTY may notify CONTRACTOR.

8 2. CONTRACTOR's Warranty: CONTRACTOR warrants that, beginning upon the date of
9 First Productive Use and extending during such period as COUNTY is on Support, the Licensed
10 Software will perform in all material respects the functions described in the applicable Product
11 Descriptions or Documentation when operated in accordance with the Documentation and in the
12 environment for which CONTRACTOR designed the Licensed Software to operate.

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

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

25 3. CONTRACTOR Disclaimer of All Other Warranties: The CONTRACTOR warranties
26 contained in this Agreement and the Exhibits hereto extend to and are for the benefit of COUNTY and
27 its permitted successors and assigns only. Unless otherwise provided in this Agreement, including the
28 Exhibits thereto, CONTRACTOR makes no representations or warranties concerning either the
29 Equipment, the Sublicensed Software (or other programs supplied to COUNTY by CONTRACTOR and
30 which are directly licensed to COUNTY by a third party, or which are supplied by a third party to
31 COUNTY), the Licensed Software, the System, subscription services, Maintenance or Support, nor does
32 CONTRACTOR undertake any further obligations whatsoever. The foregoing warranties are in lieu of,
33 and CONTRACTOR hereby expressly disclaims, all other warranties, both express and implied,
34 including but not limited to the implied warranties of merchantability and of fitness for a particular
35 purpose and non- infringement with respect to any and all products or services (or portions thereof
36 provided hereunder.

37 //

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

5 **XXXII. WORK PRODUCT**

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

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

3
4 CERNER CORPORATION

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6
7 DocuSigned by:
8 BY: Marc G. Naughton DATED: 5/9/2017
9 857DFE2CF038488...

10 TITLE: Executive Vice President and CFO

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17 COUNTY OF ORANGE

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21 BY: _____ DATED: _____
22 HEALTH CARE AGENCY

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

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31 DocuSigned by:
32 BY: Massoud Shamel DATED: 5/9/2017
33 79055CA571A94F8...
DEFU I

34 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
35 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
36 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
37 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 ADMINISTRATOR.

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
MAINTENANCE AND SUPPORT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
CERNER CORPORATION
JULY 1, 2017 THROUGH JUNE 30, 2020

I. DEFINITIONS

A. The Parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement:

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

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

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

4. 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, 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:

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

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

c. 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

d. That is subject to disclosure pursuant to Paragraph IV. of this Exhibit A.

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

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

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1 7. Data means all (a) data that is collected, stored, or generated through the use of the Licensed
2 Software and (b) CONTRACTOR-requested data that is not collected, stored, nor generated through the
3 use of any Licensed Software, in each case requested by CONTRACTOR and subsequently transmitted
4 to, or retrieved by CONTRACTOR for storage.

5 8. Designated Facility shall mean the COUNTY location that will house the host data center
6 and the host Licensed Software identified in Exhibit F of the Agreement.

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

11 10. Effective Date shall mean the date on which this Agreement becomes effective and is set
12 forth on the Signature Page.

13 11. Equipment Operating System Sublicensed Software shall mean the operating system
14 software.

15 12. Escrow Agreement shall mean the escrow agreement set forth as Exhibit D.

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

20 14. Full Time Equivalents (FTE) shall mean the sum of all categories of full time personnel
21 working for the County of Orange, Health Care Agency. Full Time Equivalents are calculated on the
22 basis that two part-time persons equal one full-time person.

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

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

32 17. "Lights On" is a reference to a web-based CONTRACTOR module that is used to create
33 benchmarks for system performance across all CONTRACTOR clients and is used for comparative
34 purposes.

35 18. Limited Term Employee shall mean employees of HCA that are not classified as FTEs and
36 are hired for a specific time period and project and who are paid with grant money received by
37 COUNTY specific to the project.

1 19. Maintenance shall mean the services provided to COUNTY for Equipment and Sublicensed
2 Software set forth in Exhibit F to this Agreement. Relevant pass-through provisions regarding specific
3 services may be provided by a Maintenance supplier.

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

7 21. New Release shall mean the distinctly identified (e.g. Release HNAM.2000.XX for
8 CONTRACTOR products), comprehensive collection and packaging of an upgrade or modification to
9 the Licensed Software and supporting Documentation components at a distinct point in time within a
10 product's life cycle that CONTRACTOR makes generally commercially available.

11 22. Payers shall mean entities, including but not limited to, clearinghouses, print facilities and
12 insurance carriers that receive Transactions submitted by Clients through the Transaction Services as
13 identified from time to time by CONTRACTOR.

14 23. Permitted Facility shall mean an entity identified as such in Exhibit F.

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

18 25. Product Descriptions shall mean the Software Product Descriptions (SPD's) for the System.

19 26. Provider shall mean a member of a healthcare team whose services are billable to at least
20 one Payer or health plan.

21 27. Scope of Use shall mean the limitations on COUNTY's use of the System.

22 28. Sublicensed Software shall mean all Equipment Operating System Sublicensed Software
23 and Third Party Application Sublicensed Software and/or third party content.

24 29. Submitter ID shall mean a department or facility requiring independent invoices.

25 30. Support shall mean CONTRACTOR's ongoing effort to keep the Licensed Software set
26 forth in Exhibit B, in working order in compliance with the Product Descriptions or to sustain the useful
27 life of the System, including technical services which require contact with COUNTY or its Permitted
28 Users of the System in person, via electronic mail or telephone, in order to help the COUNTY or its
29 Permitted Users resolve a problem that such COUNTY has reported. Support in the Agreement shall also
30 encompass Managed Services, Shared Computing Services, Application Service Providers,
31 Subscriptions, Term Licensed Software and Transaction Services.

32 31. System shall mean the Equipment, Sublicensed Software and Licensed Software which
33 collectively constitute the discrete Integrated Health Management Information System that has the
34 functionality and conforms to the needs of the COUNTY.

35 32. Third Party Application Sublicensed Software shall mean any application software and
36 databases not proprietary to CONTRACTOR.

37 //

1 33. Transactions shall mean transactions submitted by Client for the Transaction Services,
2 whether or not a Payer accepts or favorably adjudicates such transactions

3 34. Work Product shall mean any customized or custom computer software programs,
4 Documentation, techniques, methodologies, inventions, analysis, frameworks, software, or procedures
5 developed, conceived or introduced by CONTRACTOR in the course of or as the result of
6 CONTRACTOR performing professional services, installation services, Implementation services, issue
7 resolution or other Support services, whether acting alone or in conjunction with COUNTY or its
8 employees, affiliates or others.

9 B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
10 Definitions Paragraph of this Exhibit A to the Agreement.

11
12 **II. PATENT / COPYRIGHT MATERIALS**

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

16
17 **III. TITLE OF DATA**

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

24
25 **IV. CALIFORNIA PUBLIC RECORDS ACT**

26 A. Agreements and their derivative materials may be subject to public disclosure pursuant to the
27 California Public Records Act. Specifically, since agreements and their contents become the exclusive
28 property of COUNTY, they may be considered a matter of public record and may be regarded as public
29 records. Certain exceptions may be those elements of each agreement, which are denoted trade secrets
30 as that term is defined in California Government Code Section 6254.7 and which are so marked as
31 "Trade Secret," "Confidential" or "Proprietary." If it is necessary to include proprietary/trade secret
32 information in any of CONTRACTOR's documents, COUNTY recommends that CONTRACTOR
33 clearly and prominently mark the information it believes falls into this category. COUNTY is not the
34 owner of the trade secret, nor the agent or employee of CONTRACTOR, and therefore cannot refuse to
35 disclose the information requested under a Public Record Act request.

36 //

37 //

1 B. In the event of a request for such records, COUNTY shall notify CONTRACTOR within forty
2 eight (48) hours if disclosure is requested of the designated property/trade secret information, in order to
3 permit CONTRACTOR to seek a court order, or other relief it deems necessary to prevent disclosure.
4

5 **V. PAYMENTS**

6 A. BASIS FOR REIMBURSEMENT – As compensation to CONTRACTOR for the Services
7 described in this Exhibit A, and in Exhibits B and F of this Agreement, which amount shall be inclusive
8 of applicable sales tax, COUNTY shall pay CONTRACTOR monthly in arrears; provided, however, that
9 the total of such payments shall not exceed the COUNTY’s Maximum Obligation per period. The actual
10 monthly amount paid to CONTRACTOR shall be determined by the Equipment, Licensed Software, and
11 Sublicensed Software inventories set forth in Exhibits B and F of this Agreement, which may be
12 amended, in writing, by mutual agreement of the Parties.

13 1. The Parties agree to pay CONTRACTOR as follows:

14 a. Period One

15 1) Licensed Software Support; \$1,274,390. Of this funding, \$146,245 is for any
16 unanticipated maintenance and support service related needs not necessarily identified as Licensed
17 Software Support items that may become necessary such as equipment, additional staff hours, and
18 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
19 the form of a letter of concurrence or amendment to this Agreement.

20 2) Equipment Maintenance; \$112,577. Of this funding, \$10,000 is for any
21 unanticipated maintenance and support service related needs not necessarily identified as Equipment
22 Maintenance items that may become necessary such as equipment, additional staff hours, and associated
23 travel and lodging, which may be enacted through written, mutual agreement of the Parties in the form of
24 a letter of concurrence or amendment to this Agreement.

25 3) Subscription Services; \$53,400

26 4) Application Services Provider (ASP) and Shared Computing Services; \$85,680

27 5) Managed Services; \$296,870

28 6) Transaction Services; \$35,560

29 7) Sublicensed Software Maintenance; \$524,387. Of this funding, \$28,600 is for any
30 unanticipated maintenance and support service related needs not necessarily identified as Sublicensed
31 Software Maintenance items that may become necessary such as equipment, additional staff hours, and
32 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
33 the form of a letter of concurrence or amendment to this Agreement.

34 8) Term Licensed Software; \$67,417

35 b. Period Two

36 1) Licensed Software Support; \$1,274,390. Of this funding, \$146,245 is for any
37 unanticipated maintenance and support service related needs not necessarily identified as Licensed

1 Software Support items that may become necessary such as equipment, additional staff hours, and
2 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
3 the form of a letter of concurrence or amendment to this Agreement.

4 2) Equipment Maintenance; \$112,577. Of this funding, \$10,000 is for any
5 unanticipated maintenance and support service related needs not necessarily identified as Equipment
6 Maintenance items that may become necessary such as equipment, additional staff hours, and associated
7 travel and lodging, which may be enacted through written, mutual agreement of the Parties in the form of
8 a letter of concurrence or amendment to this Agreement.

9 3) Subscription Services; \$53,400

10 4) Application Services Provider (ASP) and Shared Computing Services; \$85,680

11 5) Managed Services; \$296,870

12 6) Transaction Services; \$35,560

13 7) Sublicensed Software Maintenance; \$524,387. Of this funding, \$28,600 is for any
14 unanticipated maintenance and support service related needs not necessarily identified as Sublicensed
15 Software Maintenance items that may become necessary such as equipment, additional staff hours, and
16 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
17 the form of a letter of concurrence or amendment to this Agreement.

18 8) Term Licensed Software; \$67,417

19 c. Period Three

20 1) Licensed Software Support; \$1,274,390. Of this funding, \$146,245 is for any
21 unanticipated maintenance and support service related needs not necessarily identified as Licensed
22 Software Support items that may become necessary such as equipment, additional staff hours, and
23 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
24 the form of a letter of concurrence or amendment to this Agreement.

25 2) Equipment Maintenance; \$112,577. Of this funding, \$10,000 is for any
26 unanticipated maintenance and support service related needs not necessarily identified as Equipment
27 Maintenance items that may become necessary such as equipment, additional staff hours, and associated
28 travel and lodging, which may be enacted through written, mutual agreement of the Parties in the form of
29 a letter of concurrence or amendment to this Agreement.

30 3) Subscription Services; \$53,400

31 4) Application Services Provider (ASP) and Shared Computing Services; \$85,680

32 5) Managed Services; \$296,870

33 6) Transaction Services; \$35,560

34 7) Sublicensed Software Maintenance; \$524,387. Of this funding, \$28,600 is for any
35 unanticipated maintenance and support service related needs not necessarily identified as Sublicensed
36 Software Maintenance items that may become necessary such as equipment, additional staff hours, and
37 //

1 associated travel and lodging, which may be enacted through written, mutual agreement of the Parties in
2 the form of a letter of concurrence or amendment to this Agreement.

3 8) Term Licensed Software; \$67,417

4 2. The above listed amounts may be amended, in writing, by mutual agreement of the Parties as
5 necessary throughout the term of the Agreement based upon amendment, in writing, by mutual
6 agreement of the Parties, of the inventories set forth in Exhibits B and F of the Agreement.

7 3. The amounts referenced in Subparagraph V.A.1. above, shall be deemed payment in full for
8 Support Services and Maintenance fees for all Equipment, Sublicensed Software, Licensed Software,
9 Subscriptions, Term Licensed Software, Shared Computing Services, Managed Services, Application
10 Service Providers, and Transaction Services purchased through CONTRACTOR and in First Productive
11 Use as of the date of execution through the termination date, as such dates are identified in the
12 Referenced Contract Provisions Paragraph of the Agreement.

13 4. Both parties agree that should COUNTY receive any computer software purchased from
14 CONTRACTOR and/or CONTRACTOR's Subsidiaries electronically, these transactions are sales tax
15 exempt under California Code Regulation 1502 (f) (1) (D).

16 B. PAYMENT METHOD

17 1. CONTRACTOR shall submit a single invoice per month, in arrears, per category as follows:
18 Licensed Software Support, Equipment Maintenance, Subscription Services, Application Services
19 Provider (ASP) and Shared Computing Services, Managed Services, Transaction Services (with the
20 exception of any overage charges that may apply), Sublicensed Software Maintenance, and Term
21 Licensed Software.

22 2. COUNTY shall pay CONTRACTOR upon receipt of a properly completed invoice, in
23 arrears, within thirty (30) calendar days following the end of each coverage month. CONTRACTOR'S
24 billings shall be on a form approved or supplied by ADMINISTRATOR and provide such information as
25 is required by ADMINISTRATOR.

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

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

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

35 F. CONTRACTOR shall be responsible for providing acceptable invoices to ADMINISTRATOR
36 for payment and obtaining prior approvals as required herein. Incomplete or incorrect invoices shall be
37 //

1 returned to CONTRACTOR for correction. Documentation, including but not limited to copies of
2 receipts, shall be required by ADMINISTRATOR along with the supporting invoices.

3 G. COUNTY shall pay all Equipment, Licensed Software, Sublicensed Software and Support
4 Services monthly Maintenance and Support fees for each prospective year, beginning July 1 of each year,
5 in which the Agreement shall be in effect, after the parties review and mutually agree, in writing, on the
6 Equipment, Licensed Software, Sublicensed Software and Support Services inventory for which Support
7 and Maintenance will be provided in the next fiscal year, including the costs of said Support and
8 Maintenance, from July 1 and extending through June 30. The Parties agree that costs associated with
9 the purchase of additional equipment, licensed software, sublicensed and/or software Support Services,
10 and corresponding maintenance, may be included in the inventory to be authorized and expended at sole
11 discretion of ADMINISTRATOR, as referenced in Subparagraphs V.A.1.a.1., V.A.1.b.1., V.A.1.c.1., and
12 V.A.2.

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

19
20 **VI. REPORTS AND MEETINGS**

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

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

31
32 **VII. RESPONSIBILITY OF CONTRACTOR**

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

37 //

1 B. CONTRACTOR shall provide services and other relevant documents necessary to complete the
2 services and fulfill the requirements as set forth within this Agreement.

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

6
7 **VIII. SERVICES**

8 A. CONTRACTOR shall provide Maintenance and Support Services as described in this Exhibit A,
9 and Exhibits B and F to the Agreement, and COUNTY shall reimburse CONTRACTOR for said
10 Maintenance and Support Services as outlined in Paragraph V. of this Exhibit A to the Agreement.

11 B. Both parties agree that COUNTY shall no longer purchase maintenance on certain Hewlett
12 Packard ('HP') Equipment and Sublicensed Software supporting the System through CONTRACTOR
13 and that CONTRACTOR shall continue to support all other contracted Equipment, Licensed Software
14 and Sublicensed Software at levels specified in this Agreement. If COUNTY experiences issues with
15 any CONTRACTOR software after loading HP code releases or patches, CONTRACTOR agrees to
16 provide support to COUNTY; provided, however, that if the issue is found to be related to HP
17 Equipment or Sublicensed Software, COUNTY shall reimburse CONTRACTOR as mutually agreed
18 upon by both parties. If this issue is found to be related to CONTRACTOR's Licensed Software or
19 Sublicensed Software Supported or Maintained directly by CONTRACTOR, then there shall be no
20 additional charge to COUNTY for the Support or Maintenance. CONTRACTOR shall continue to test
21 and validate all software patches, releases, and updates released by HP related to CONTRACTOR
22 supported Licensed Software and Sublicensed Software and provide recommendations to COUNTY for
23 any necessary installations. COUNTY will not load any software patches and/or perform any HP
24 equipment upgrades or replacements without prior written concurrence and approval from
25 CONTRACTOR. HP may release software patches, releases and updates on an ongoing basis as part of
26 HP's normal product lifecycle management and provide recommendations to COUNTY regarding
27 installation of such patches, releases and updates in accordance with generally accepted industry
28 standards.

29 **C. LICENSED SOFTWARE SUPPORT:**

30 1. Support for the Licensed Software shall consist of preventative maintenance, remedial
31 maintenance and correction of defects with respect to the Licensed Software during the period for which
32 COUNTY pays for Support and shall continue until terminated as provided in the Agreement.
33 CONTRACTOR shall provide qualified trained service personnel for performing Support bug fixes and
34 software replacement services in the event of Licensed Software failure. CONTRACTOR shall respond
35 pursuant to the procedures regarding reported problems in Paragraph IX. of this Exhibit A to the
36 Agreement to prioritize and categorize System Maintenance and Support. CONTRACTOR shall
37 maintain and, upon request of COUNTY, furnish COUNTY with a written malfunction incident report as

1 provided for in Paragraph IX. of this Exhibit A to the Agreement. In the event of the occurrence of any
2 critical problem of the type described in Paragraph IX. of this Exhibit A to the Agreement, which is not
3 resolved within twenty four (24) hours, COUNTY may require that CONTRACTOR provide on-site
4 technical support personnel at no additional cost; provided, however, that CONTRACTOR shall not be
5 obligated to provide such on-site technical support if it can demonstrate to COUNTY, in COUNTY's
6 reasonable discretion, that such on-site technical support is not necessary or would not help to resolve
7 such critical problem.

8 2. Support Fees: In the event that COUNTY's Scope of Use count increases, based upon
9 mutual agreement of the Parties, during the term of the Agreement (notwithstanding the terms of
10 Paragraph G. of Exhibit B to the Agreement) in an amount that exceeds the current Scope of Use limits
11 outlined in Paragraph C. of Exhibit B to this Agreement, this count increase, in addition to any other
12 increased costs, shall become the new base line figures which may increase the total costs of Support
13 Fees, provided that COUNTY has paid CONTRACTOR the applicable Scope of Use expansion fees.

14 3. New Releases: CONTRACTOR shall furnish COUNTY with New Releases of the Licensed
15 Software so long as COUNTY remains on Support. The New Release shall be offered to the COUNTY
16 in written form (CD) or in electronic form through cerner.com not later than the first date the New
17 Release is available for sale or use by any other commercial customer of CONTRACTOR. Except as set
18 forth in Subparagraph XXIX.F. of the Agreement, COUNTY shall have no obligation to implement any
19 New Release. The obligation of CONTRACTOR under this Paragraph to provide notice to COUNTY of
20 the existence and availability of any New Release is not contingent or dependent upon COUNTY's
21 purchase of Support at any time during the New Release. All New Releases made by CONTRACTOR
22 during the Support period shall be developed so that the New Releases are fully compatible with the then
23 existing Licensed Software, as well as any previously installed New Releases. At the time it delivers and
24 commences the installation of any New Release, CONTRACTOR shall also deliver the revised
25 Documentation. The price of each New Release is included in the Support fee, but does not include
26 additional Equipment or CONTRACTOR Implementation services related thereto.

27 D. ADDITIONAL SERVICES: CONTRACTOR shall charge COUNTY for any such additional
28 services or assistance. If COUNTY requests such additional services, CONTRACTOR shall inform
29 COUNTY that the services requested constitute additional services. Upon written approval by COUNTY
30 in the form of an amendment to this Agreement, CONTRACTOR shall provide the requested service at
31 an amount mutually agreed upon by both Parties.

32 E. SOFTWARE LICENSE:

33 1. License Grant: Subject to the terms and conditions of this Agreement, CONTRACTOR
34 grants to COUNTY a non-exclusive, non-transferable, fully paid, irrevocable and perpetual license to use
35 the Licensed Software solely as specified in this Agreement. This license shall include all New Releases
36 to the Licensed Software provided pursuant to the terms of this Paragraph VIII.E.1. of this Exhibit A to
37 //

1 the Agreement and Subparagraph XXIX.F. of the Agreement hereby and shall apply to the Permitted
2 Facilities, and all Permitted Users of the Permitted Facilities.

3 2. Scope of Use:

4 a. Permitted Users may use the Licensed Software solely in accordance with the Scope of
5 Use specifications defined in Exhibit B. COUNTY may subsequently expand its Scope of Use and
6 number of Permitted Users by paying CONTRACTOR’s fee as set forth in Exhibit B for expansion of
7 COUNTY’s Scope of Use pursuant to the forms and procedures set forth in Exhibit B.

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

15 c. The Licensed Software shall reside at the Designated Facility, or, upon written notice to
16 CONTRACTOR, COUNTY’s designated data processing location which shall become a Designated
17 Facility upon such notice. COUNTY may, upon advance written notice to CONTRACTOR, permanently
18 move the Licensed Software to a different data processing location under the control of COUNTY.
19 COUNTY shall not outsource its operation of the Licensed Software to any third party without
20 CONTRACTOR’s prior written consent.

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

1 Sublicensed Software to obtain all necessary support or remedies available pursuant to applicable
2 warranties from the manufacturer or licensor or CONTRACTOR's support obligations hereunder.

3 F. SOFTWARE OWNERSHIP

4 1. Intellectual Property Rights:

5 a. COUNTY acknowledges that the Licensed Software is Confidential Information of and
6 proprietary to CONTRACTOR, and all rights and patents, copyrights, trade secrets, and trademarks
7 existing in respect of the Licensed Software are retained by CONTRACTOR. In respect to the
8 operation, maintenance and enhancement, if any, to the System, COUNTY will take all reasonable steps
9 to maintain CONTRACTOR's rights in the Software, at least to the same extent COUNTY takes with
10 respect to the protection of its own Confidential Information and proprietary software, which steps shall
11 consist of those set forth below in this Paragraph. COUNTY also agrees that it will not sell, transfer,
12 publish, display, dispose or make the Licensed Software (or any copies of the Licensed Software)
13 available to third parties, except that:

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

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

30 b. In connection with the statement above that COUNTY may disclose the Licensed
31 Software to certain consultant, independent contractor, provider, or other third parties under the
32 circumstances described in that statement, COUNTY agrees that:

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

36 2) COUNTY shall maintain written records of the number and location of all copies of
37 the Licensed Software;

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

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

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

9 2. Possession and Use of Source Code: If Source Code is obtained by COUNTY under the
10 provisions of Subparagraph VIII.F.4. below, such Source Code shall remain subject to every license
11 restriction, proprietary rights protection, and other COUNTY obligations specified in this Agreement.
12 COUNTY may use Source Code for the sole purpose of supporting its use of the Licensed Software as
13 expressly permitted under this Agreement, and for no other purpose whatsoever. When Source Code
14 resides in a central processing unit, COUNTY shall limit access to its authorized employees who have a
15 need to know in order to support the Licensed Software. COUNTY shall at all times implement strict
16 access security measures in order to prevent unauthorized disclosure, use, or removal of Source Code.
17 COUNTY also agrees that all persons with access to the Source Code shall execute confidentiality
18 agreements consistent with the obligations of COUNTY hereunder.

19 3. Software Ownership:

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

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

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

37 4. Source Code Escrow:

1 a. CONTRACTOR hereby agrees to deposit, at its sole expense, the Licensed Software, in
2 source code form (the "Source Code"), into escrow pursuant to the terms of that certain High
3 Technology Escrow Agreement (the "Source Code Escrow Agreement") dated January 1, 1996, between
4 CONTRACTOR and U.S. Bank (the "Escrow Agent") in the form attached hereto as Exhibit D. The
5 Escrow Agent shall be required pursuant to the terms of the Source Code Escrow Agreement and this
6 Paragraph, to deliver a copy of the Source Code to COUNTY in the event that any of the following
7 conditions ("Release Conditions") occur:

8 1) CONTRACTOR fails to meet any of its material Support obligations hereunder and
9 fails to cure such failure with thirty (30) calendar days of written notice thereof COUNTY;

10 2) CONTRACTOR fails to provide a New Release or version of any Licensed
11 Software module adding new functionality or significantly improving existing functionality within thirty
12 six (36) months of the previous New Release or version;

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

16 4) CONTRACTOR liquidates, dissolves or ceases to conduct business and has not
17 assigned its obligations hereunder to a permitted successor, in accordance with the terms of this
18 Agreement. Escrow Agent shall recognize the occurrence of any of the Release Conditions as
19 circumstances under which the Escrowed Property shall be delivered to COUNTY in accordance with
20 terms of Section 7 of the High Technology Escrow Agreement.

21 b. CONTRACTOR will deliver the Escrow Agent a new copy of all Source Code,
22 including the Source Code for any New Release, no less than once every year without COUNTY's
23 request to do so. In the event that a Release Condition occurs and, at such time, CONTRACTOR has
24 issued a New Release but has not deposited the Source Code for such New Release with the Escrow
25 Agent, CONTRACTOR shall, upon COUNTY's request, within five (5) business days deliver a copy of
26 the Source Code for such New Release to COUNTY. In the event the Source Code or any part of it is
27 destroyed or corrupted after entering into the possession of COUNTY, upon COUNTY's request,
28 CONTRACTOR shall provide a replacement copy of the Source Code within thirty (30) calendar days of
29 receipt of COUNTY's written request.

30 G. EQUIPMENT AND SUBLICENSSED SOFTWARE MAINTENANCE:

31 1. CONTRACTOR Maintenance: So long as COUNTY has purchased the Equipment from a
32 CONTRACTOR certified hardware vendor, CONTRACTOR shall provide Maintenance to COUNTY
33 for such Equipment and Equipment Operating System Sublicensed Software. Such Maintenance shall be
34 at the option of COUNTY and shall become effective immediately upon the later of;

35 a. The expiration of any applicable warranty, or

36 b. The earlier of;

37 1) Installation, or

1 2) Thirty (30) days after shipment
2 unless COUNTY notifies CONTRACTOR in writing prior to the installation of the Equipment or
3 Sublicensed Software that COUNTY does not wish to acquire Maintenance service from
4 CONTRACTOR. CONTRACTOR may subcontract all or part of its performance under this paragraph
5 to a third party maintenance vendor.

- 6 2. Maintenance Services are:
7 a. Detection of defects in the Equipment;
8 b. Testing to determine whether the Licensed Software will operate on the Equipment and
9 with the Equipment Operating System Sublicensed Software in accordance with the warranties specified
10 in this Agreement;
11 c. Delivery of all new versions of Equipment Operating System Sublicensed Software that
12 CONTRACTOR is entitled to make available to its clients;
13 d. COUNTY’s right to receive revisions, patches, modifications, updates, or other fixes of
14 the Equipment Operating System Sublicensed Software;
15 e. Remedial Maintenance of the Equipment; and
16 f. Field change orders; and
17 g. Such other Maintenance as is specifically required in this Agreement.

18 3. Maintenance does not include any services other than those services identified above.
19 Unless otherwise provided, COUNTY shall receive Maintenance services from CONTRACTOR by
20 contacting the same Immediate Response Center and service center through which COUNTY receives
21 Support for the Licensed Software. COUNTY understands that Maintenance does not include any
22 services for Equipment or Equipment Operating System Sublicensed Software that are not specifically
23 identified in this Paragraph.

24 4. COUNTY understands that with respect to the Equipment and Equipment Operating System
25 Sublicensed Software, CONTRACTOR shall be responsible for detecting defects, identifying the source
26 of a defect and verifying that the Licensed Software is not the source of the defect. CONTRACTOR and
27 its suppliers shall be further responsible for correcting any problems which can be cured through the
28 above-specified Maintenance services. With respect to the Equipment and Sublicensed Software,
29 additional maintenance services are (unless otherwise covered as “Support” or “Maintenance” services
30 which COUNTY is entitled to receive):

- 31 a. Developing a solution, workaround or managing activities related to system issues
32 where problem determination has concluded that the issue does not reside within the Licensed Software;
33 b. Resolving a system issue which resides in the Sublicensed Software or Equipment
34 which is not resolved through the above specified Maintenance; and
35 c. Those problems which require skills other than those necessary to provide Licensed
36 Software Support services to resolve the problem (e.g., managing COUNTY’s disk space, extending
37 COUNTY’s Oracle database, recovering files caused by a disk drive failure, clearing Oracle archive

1 files, or correcting general system problems caused by an equipment or sublicensed software outage). If
2 COUNTY has not purchased the requisite additional maintenance services (to the extent not otherwise
3 covered as "Support" or "Maintenance" services which COUNTY is entitled to receive), then
4 CONTRACTOR shall have the right to bill COUNTY, at CONTRACTOR's then current rates, for the
5 services performed with respect to such additional maintenance services.

6 5. COUNTY may, at its option, elect to purchase additional maintenance services for the
7 Equipment or Sublicensed Software not included above. The services and fees for such additional
8 Equipment and Sublicensed Software additional maintenance services may be set forth in a separate
9 contract.

10 6. To facilitate the provision of Maintenance and additional maintenance services for
11 Equipment and Sublicensed Software, it is recommended that COUNTY have a twenty four (24) hours a
12 day, seven (7) days a week infrastructure to address internal System additional maintenance
13 requirements.

14 7. Maintenance Fees: CONTRACTOR may increase Maintenance fees concurrent with
15 increases assessed by the manufacturers or suppliers of any Maintenance services in an amount equal to
16 the percentage increases in Maintenance services affected by the manufacturers or suppliers. Should a
17 manufacturer or supplier decrease the price of Maintenance, CONTRACTOR shall decrease the fees
18 charged to COUNTY by an equal percentage. CONTRACTOR shall notify COUNTY in advance and in
19 writing of such changes, increases or decreases, which may be enacted through written, mutual
20 agreement of the Parties in the form of a letter of concurrence or amendment to this Agreement. as
21 referenced in Subparagraphs V.A.1.a.1., V.A.1.b.1., V.A.1.c.1., and V.A.2.

22 8. Maintenance Period and Renewals: COUNTY shall purchase Maintenance services on an
23 annual basis. Maintenance shall be renewable annually on the supplier's normal renewal date, or as
24 otherwise specified by the supplier. CONTRACTOR shall provide notice of Maintenance renewal to
25 COUNTY, and Maintenance shall be renewed accordingly unless COUNTY notifies CONTRACTOR to
26 the contrary in writing.

27 H. BH and PH EHR - CONTRACTOR and COUNTY agree to provide applicable Management
28 Services, Maintenance, and Support related to the terms and conditions of the BH and PH EHR as
29 outlined:

30 1. Patient Portal/HealthLife - The Application Services include a non-exclusive, non-
31 transferable license to the software component PY-27580-PKG CONTRACTOR Patient Portal.

32 a. Project Scope - CONTRACTOR's Application Services include the following:

- 33 1) Secure hosting in CONTRACTOR's N+1 Technology Center
- 34 2) Hardware and maintenance
- 35 3) Data Center operations (24 x 7 x 365)
- 36 4) Technical (IT) support
- 37 5) Network connectivity to COUNTY site

- 6) Offsite tape backup
- 7) Implementation services

b. CONTRACTOR Technology Center (CTC) - The CTC is an N+1, dual-fed, redundant data operation intended to provide uninterrupted power and service for CONTRACTOR clients. The CTC is designed to significantly reduce COUNTY downtime. It operates under supervision twenty-four (24) hours per day, seven (7) days per week, three hundred and sixty-five (365) days of the year (24 x 7 x 365).

No.	Responsibility Description
1.1	CTC Facility Engineering, Management and Monitoring
1.1.1	Provide the facility to house all computing and network equipment with highly redundant power sources and environmental controls
1.1.2	Includes CTC facility equipment design and engineering, with monitoring and management of operating environments; includes multiple uninterruptible power supplies (UPS) and backup generators, computer room chillers and air conditioning systems
1.2	Physical Equipment and Environment
1.2.1	Provide all CTC computing hardware, hardware maintenance and inventory management in support of the software provided by CONTRACTOR
1.3	CTC Physical Security
1.3.1	1.3.1 Includes Physical security with recorded camera monitors throughout key internal and all external access points
1.3.2	1.3.2 All primary doors are secured and controlled by card access, with biometric readers in high-security areas. Multiple secured access points must be crossed to access the data center floor. Secured doors are electronic fails-secure strikes and backed by emergency power sources.

c. Network operations - The following paragraphs in this section describe the network infrastructures that must work in unison to provide seamless hosted application delivery to end-users. CONTRACTOR provides and manages the CTC network and communications within the CTC and connecting to the public internet. COUNTY and its clients are responsible for installation, support and management of non-CONTRACTOR provisioned networks, including local network and connection to the public internet.

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1) CTC Network Operations - The CTC Network Operations encompass all network equipment, consoles and management necessary to support connectivity to the hosted equipment at the CTC. CMS will install, support, manage and maintain this equipment and software in a manner consistent with vendor recommendations and CONTRACTOR best practices.

2) COUNTY Provided Local Area Network/Wide Area Network - COUNTY and its client's and User's Local Area Network and Wide Area Network will consist of any communications circuits, WAN termination equipment and Local Area Network equipment needed to connect the end-users to the CONTRACTOR system, including access to the public Internet. These circuits and equipment will be managed and maintained by COUNTY, its clients or Users, including supporting connectivity across the Internet to CONTRACTOR's network. CONTRACTOR will assist COUNTY in troubleshooting issues that may involve COUNTY's network; however, CONTRACTOR reserves the right to charge for the time, materials and travel expenses involved in resolution of problems that are determined to originate within COUNTY's or its client's or User's network.

No	Responsibility Description
2.1	CTC Network Operations
2.1.1	Includes all required network equipment within the CTC, such as routers, switches, load balancers, equipment consoles, and the 24 x 7 x 365 days per year management of same.
2.1.2	Provide connectivity between the CTC and the public Internet.

d. CONTRACTOR Millennium Systems Management - CONTRACTOR's Systems Management Services will provide for the management, security and performance of the computing systems required to operate the CONTRACTOR Millennium application(s). The "computing system" includes host nodes running the CONTRACTOR Millennium database as well as the CONTRACTOR Millennium bus, communication clients, and interface engine. This aspect of the computing system is commonly referred to as the "backend" systems, and also includes the storage technology and media. The back-end systems also include the required operating systems (OS) and layered-products necessary for the Millennium environment to operate. The computing system also includes the Microsoft-based application server resources necessary to provide access to the CONTRACTOR Millennium environment and execute the Millennium applications and server requirements to facilitate printing (excluding COUNTY print servers required for and on the COUNTY LAN). In the context of CONTRACTOR's Application Services, this aspect of the computing system is referred to as the "front-end" systems. The front-end systems also include the required operating systems (OS) and layered-product licenses necessary for the Millennium environment to operate. Lastly, the computing system

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1 e. includes management and monitoring systems and software to monitor and report on
2 system health, security, capacity and availability.

3 f. Database Administration - CONTRACTOR will provide the ability to implement and
4 maintain database access, performance and availability in a consistent and efficient manner across all
5 Application Service CONTRACTOR Millennium database environments for COUNTY. COUNTY's
6 responsibility is to maintain the content and integrity of the database. CONTRACTOR will:

7 1) Install and maintain Database Management System (DBMS) software for the
8 Application Services as defined within this document.

9 2) Provide the appropriate database management methodologies, resources and tools to
10 manage, troubleshoot, back up and recover the database environments.

11 3) Monitor and report on database performance and capacity.

12 4) Provide DBMS storage management.

13 5) Monitor and manage database security

14 g. Applications Management - Applications management is defined as the support required
15 to manage the software application level of the CONTRACTOR Millennium system. In the Application
16 Services model, CONTRACTOR's primary function with applications management is in the areas of
17 Service Package management, application server management, and to monitor and report on application
18 processes.

19 h. Interface Management - CONTRACTOR to maintain interface.

20 i. Administration and Problem Management - Problem Management is hereby defined as
21 the identification, assessment of impact, reporting, tracking, escalation, notification, and resolution of
22 problems that occur in the CTC services. COUNTY is responsible for maintaining a staffed help desk
23 that will provide the first line of support for its clients and users and data coordination calls. This line of
24 support must be able to distinguish application issues versus connectivity or infrastructure issues.

25 j. Data Integration

26 1) Connectivity

27 a) All data sent inbound to IQHealth (Patient Portal) from an external network will
28 pass through the CONTRACTOR secure datacenter. Connectivity will use the existing VPN connection
29 from COUNTY's network to the CONTRACTOR datacenter.

30 b) Other VPN solutions or network connections to the datacenter will be evaluated
31 on a case by case basis.

32 c) COUNTYs will need to provide technical resources whenever possible to assist
33 with the support of the VPN.

34 d) Additional hardware and software will be necessary in order to establish
35 connectivity to the COUNTY's EMR and the CONTRACTOR hosted IQHealth (Patient Portal) solution.
36 These costs will be incurred by the COUNTY.

37 2) Support and Training

1 a) CONTRACTOR shall provide the following with respect to support and training
2 for the COUNTY:

3 b) Consumer and clinician telephone support available 8a – 5p Monday – Friday
4 CST.

5 2. Disaster Recovery

6 a. Services Overview

7 1) CONTRACTOR Corporation will employ its healthcare IT expertise, systems
8 knowledge and technical resources to deliver a Disaster Recovery (DR) solution for HNA Millennium
9 applications. The service will provide COUNTY the necessary resources to establish and maintain a
10 reliable disaster recovery solution without the high cost of maintaining and securing additional IT
11 facilities and infrastructure. Under this model, COUNTY will subscribe to CONTRACTOR's DR
12 services provided at the CTC.

13 2) The CTC is a secure facility that provides a highly available HNA Millennium
14 computing and network operating environment. This facility houses the hardware, IT expertise, security
15 and connectivity necessary to provide COUNTY with a DR solution. CONTRACTOR's DR solution
16 will ensure the availability of mission critical systems with the highest level of security and performance.
17 The application processing and data storage are hosted at the CTC and are maintained by a group of
18 CONTRACTOR system experts. CONTRACTOR will manage and staff for system maintenance,
19 backups, upgrades, and provides customer assistance. In the event of a disaster declaration,
20 CONTRACTOR will monitor the system to ensure high performance and to identify potential issues
21 before they arise.

22 3) CONTRACTOR's DR model is based on a monthly support subscription fee. For
23 this fee, CONTRACTOR will house and maintain a copy of COUNTY's production HNA Millennium
24 database and code warehouse as well as manage connectivity from the CTC to the specified COUNTY
25 location. Connectivity includes all networking equipment supplied by CONTRACTOR and located at
26 COUNTY site. Upon disaster declaration, CONTRACTOR will make available the appropriate
27 computer equipment required to run the production domain, as described in fee assumptions (see Section
28 4). At that point, CONTRACTOR will manage the hardware, software domain, and Millennium
29 environment.

30 b. Definitions - As used in this CONTRACTOR System Schedule, the following terms
31 have the meanings set forth below. Terms not otherwise defined herein have the meanings set forth in
32 the Agreement.

33 1) Disaster – A significant event making the COUNTY hosted production hardware
34 inoperable.

35 2) Disaster Declaration - A point in time in which COUNTY has communicated in a
36 live telephone conversation that a Disaster has occurred and Recovery processes will be invoked.

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1 3) Recovered - The point in time when users have the ability to access the activated
 2 Disaster Recovery (DR) production system (N configuration, not N+1 nor H/A):

3 a) The functionality available to COUNTY prior to the Disaster event is available
 4 for use by COUNTY and is operating with the exception of the solutions listed in Excluded Solution
 5 Paragraph of Exhibit B section L.3.a.

6 b) Available historical data has been recovered for COUNTY's use with the
 7 exception of: data created within the COUNTY's Recovery Point Objective (RPO), and data inherently
 8 lost as a result of database corruption.

9 4) Recovery Point Objective (RPO) - The point in time (prior to the outage) to which
 10 data will be restored.

11 c. Definition of Ongoing Project Scope

12 1) CONTRACTOR will propose to provide technical consultation services to manage
 13 the automated disaster recovery solution for COUNTY's UX based Millennium system using Oracle
 14 11G (or applicable more current version) Standby Database hosted from the CTC. This scope of services
 15 section defines the scope and responsibility of each party in providing the ongoing solution. The
 16 management scope will provide the following components:

- 17 a) Maintain WAN connectivity between the CTC and COUNTY's facility
- 18 b) Receiving and applying online redo logs
- 19 c) Manage DR Citrix farm at CTC with COUNTY configuration
- 20 d) Provide Print Services environment for Millennium printing
- 21 e) Maintain operational DR procedures for PROD environment (including fail-
 22 over/fail-back)
- 23 f) Provide documented Service Level Arrangements including necessary Change
 24 Control procedures required to maintain the DR environment
- 25 g) Manage and maintain DR configuration at the CTC
- 26 h) Create regularly scheduled backup copy of standby database.

27 d. DR Services Capacity Scope Limits - DR Services Fees are based on the Capacity
 28 Scope Limits defined in Table 1 below:

29 TABLE 1: Capacity Scope Limits

Metric	Limit
Production Domains	(1)
Backend Hardware (Note – CPU's are Processor Cores for scope purposes.)	(16) UX CPU's
Disk Space (Prod Database)	(2.0) Terabytes
Concurrent Logons (Peak)	(300) Concurrent Logons

Metric	Limit
Chart Servers (Single CPU)	(1) Chart Server
Telco Connections	(1) 12 Mbps Connections

e. Capacity Metric Descriptions:

1) Production Domains: Number of Production Domains Supported by DR Solution

2) Backend Hardware: Upon disaster declaration, CONTRACTOR will activate the contracted amount of backend hardware capacity. The actual backend hardware capacity activated will meet or exceed the performance of what has been contracted for. (Note – Backend hardware capacity provided may not be the identical model, configuration, processor type and speed, etc., but will be comparable hardware that will meet or exceed performance of contracted capacity.) (While in standby mode, a small node will be allocated for receiving redo logs.)

3) Disk Space: Amount of disk space required for production database.

4) Concurrent Logons: Front-end “peak” concurrent logons (e.g. Citrix). In the event of a disaster, CONTRACTOR will activate an appropriate number of Front End servers to support contracted number of “peak” concurrent logons.

5) Chart Servers: Upon disaster declaration, CONTRACTOR will activate the contracted number of chart servers.

6) Telco Connections: Number and Capacity of Telco Connections from CTC to COUNTY. Connections are typically Frame Relay or ATM. (Bandwidth sizing is an estimate, based on estimated “peak” redo log sizes and concurrent logon assumptions documented within this CONTRACTOR System Schedule. Actual bandwidth requirements may vary depending on variables such as; size and frequency of redo logs, interface traffic, or level of circuit redundancy required. If bandwidth requirement/configuration is increased, monthly fee will be increased accordingly).

7) There will be an opportunity to review capacity scope assumptions on a periodic basis (no less than once per year) and, if necessary, increase the Hot Site Standby fees and Hot Site Production fees to reflect additional capacity and/or changed configurations.

8) This CONTRACTOR System Schedule covers only the items identified herein. This scope is limited to the CONTRACTOR Millennium application residing/processing on VMS, UX, or AIX Backend nodes and specifically does not include add-on solutions such as PowerInsight, Millennium Objects, CAMM, MMF, Patient Keeper, CareMobile, CONTRACTOR Classic, etc. Please see full list in Included Solutions and Excluded Solutions paragraphs of this section.

f. COUNTY Obligations

1) Ensure hardware required for the services are available and operational and provide access to CONTRACTOR.

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1 2) Designate a representative to be the project manager. This individual will be the
2 focal point for CONTRACTOR relative to this project and will have the authority to act on COUNTY's
3 behalf in matters regarding this project

4 3) Provide the performing CONTRACTOR Associate "root" access to the systems
5 being serviced as needed for application and database level DR toolset configuration and operation

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

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

9 6) Provide appropriate operator guidelines for any requested equipment that will be
10 used in the configuration and connection process.

11 7) Approve the content and completion of the testing

12 8) Authorize CONTRACTOR to install the DR related code on to production servers
13 when authorized COUNTY staff has validated appropriate work plans

14 9) Provide space and power for all required network equipment

15 10) Upgrade to required prerequisite of Oracle 11g or higher

16 11) Ensure HP-UX 11.23 (or higher) operating system release is in production

17 12) Fully maintain Citrix as the thin COUNTY desktop solution

18 13) Ensure network infrastructure is in place to facilitate remote connectivity

19 14) Manage firewall between COUNTY site and CTC

20 15) Ensure demonstrable Change Control process is in place for COUNTY Prod

21 Environment

22 g. Disaster Recovery Solution Operational Modes - There will be two (2) primary modes
23 of operation once the Disaster Recovery Service has been implemented.

24 1) Steady State (i.e. Hot Site Standby Mode) operations are all services required to
25 keep the standby environment synchronized and ready to serve as COUNTY's production environment.

26 2) Disaster Mode (i.e. Hot Site Production Mode) is the activation of the standby
27 environment as COUNTY's production environment. During this time, the COUNTY's production
28 system will be running at CTC. Upon completion of recovery back to COUNTY site (i.e. production
29 running at COUNTY data center), the Disaster Recovery Solution returns to Standby Mode.

30 a) Recovery will involve the effort (i.e. professional services) required to switch
31 COUNTY's production environment back to COUNTY's data center. Certain tasks, as documented
32 below, will be CONTRACTOR tasks during recovery and are covered by the base disaster fees. Any
33 requested Services outside those define in this document are billed on a time and materials basis.

34 h. Steady State Mode (I.E. Hot Site Standby Mode) - Once the Initial Implementation is
35 complete and tested, the DR solution will move to the Steady State Phase. The primary activity of this

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1 phase will be the ongoing synchronization of the standby system located at the CTC with the production
 2 environment at COUNTY site. (See Section 6. DR Operational Modes - Responsibility Matrix for
 3 addition detail).

4 i. Millennium Upgrades - WAN Circuits for CONTRACTOR DR solution are designed
 5 for average peak volumes on normal business days. Millennium upgrades can produce archive log
 6 volumes many times that of a normal business day in a short period of time. Still, the archive logs can
 7 only be moved as fast as the circuit will allow. During an upgrade, it is the COUNTY's responsibility to
 8 increase the archive log destination to hold the logs until all logs can be transferred to the DR system in
 9 the CONTRACTOR data center. The RPO objective of 15-30 minutes will not apply during the upgrade
 10 period.

11 j. System Management and Monitoring - In addition to the automated synchronization and
 12 manual change control, CernerWorks (CONTRACTOR's managed services division, which provides
 13 Remote Hosting services to COUNTY) will provide the following system management and monitoring
 14 services of the standby system:

- 15 1) Monitoring of system hardware
- 16 2) Daily confirmation of all automated updates to the standby environment
- 17 3) Electronic notification of archive log failure
- 18 4) Disk space monitoring
- 19 5) Network monitoring
- 20 6) Periodic backup on standby database

21 k. DR System Validation Options - Validation testing will be performed to insure the
 22 readiness and soundness of the standby environment. The monthly recurring fees will include the
 23 number and type of activation tests per year, as defined in the Monthly Recurring Fees section of this
 24 CONTRACTOR System Schedule. If additional Level 1 or 2 Activation Tests are required, there will be
 25 an additional fee.

26 1) DR Solution Graceful switch over Activation - This test will use a graceful
 27 switchover from COUNTY production environment to the DR system at the CTC and can be used to
 28 validate the core components of the DR solution and the activation process. The graceful switchover
 29 test offers a validation of retrieving all data from the source production domain through the point in time
 30 when the database is shutdown. Performing a graceful shutdown of the production database allows all
 31 data to be completely written to the database. The environment at the CTC is activated, made available
 32 to COUNTY, and tested. In this scenario, both databases are identical and no data is lost. To ensure
 33 continued availability of the DR solution, a separate copy of the DR database will be created at CTC and
 34 used for the test activation. End users will not be moved over to the DR environment for this test. When
 35 all data has been transferred to CTC and the database can be opened, the source production environment
 36 can be brought back up for end user access.

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1 2) DR solution Activation - This test will be performed to validate the core components
2 of the DR solution and the activation process. These core components are the database and the code
3 warehouse for the back-end as well as the front-end systems. To ensure continued availability of the DR
4 solution, a separate copy of the DR database will be created at CTC and used for the test activation. This
5 level of activation testing does not require a down-time for the source production environment and will
6 not affect end users in any way. In the event COUNTY and CONTRACTOR identify issues during the
7 test activation that warrant a re-test, COUNTY and CONTRACTOR will work together to reschedule an
8 additional test activation. If the cause of the testing failure is the fault of CONTRACTOR, the
9 subsequent retesting event will be performed at no additional fees. If the cause of the testing failure is
10 not due to the fault of CONTRACTOR, COUNTY can request a subsequent retesting event for \$3,000.

11 1. Disaster Mode (I. E. Hot Site Production Mode) - In the event COUNTY can no longer
12 access their on-site production environment, the CONTRACTOR DR solution will be activated. This is
13 known as Disaster Mode. In this mode, COUNTY's production environment will be located at the CTC
14 and CONTRACTOR will act as COUNTY's data center and IT support staff. (Reference DR
15 Operational Modes - Responsibility Matrix below for addition detail).

16 1) Disaster Declaration - The Disaster Mode is initiated by a disaster declaration from
17 COUNTY. COUNTY may break the disaster declaration into two phases. The phases are described in
18 the following table:

19 a) Phase 1 - The Pre-Disaster Alert (optional): This phase puts CTC on alert that
20 COUNTY is addressing an issue that could result in a Disaster Declaration. The notification insures that
21 all necessary CTC personnel are readily available to support COUNTY in the event of a disaster
22 declaration.

23 b) Phase 2 - This phase involves the activation of the standby database as
24 COUNTY's production environment.

25 2) Maintaining Disaster Mode - Once COUNTY is running in Disaster Mode, the
26 responsibility for management of COUNTY's production environment will shift to CONTRACTOR.
27 Ongoing communication will be essential to successful disaster mode operations. A minimum of one
28 conference call per day will be required during the first week of the disaster operation. COUNTY will be
29 responsible for these telecommunication charges. After the first week of operations, COUNTY and
30 CONTRACTOR will determine the future communication schedule. This schedule is dependent upon:

- 31 a) Number of unresolved issues
- 32 b) Estimated length of time in Disaster mode
- 33 c) Availability of COUNTY resources

34 3) Code Freeze - A code freeze of a minimum of thirty (30) days will be in effect. The
35 code freeze will begin day one (1) of Disaster Mode operations. This code freeze is intended to allow
36 system operation to stabilize. Exceptions will be made if they meet one or more of the following
37 criteria:

- a) it is determined that patient care is compromised
- b) COUNTY is impacted financially
- c) system stability is in question
- d) The termination of the code freeze at the end of the thirty (30) days will be a mutual decision between CONTRACTOR and COUNTY site. Once the code freeze has been lifted, COUNTY will abide by CernerWorks change management procedures. In addition, a domain strategy will be formulated at that time.

m. DR Operational Modes - Responsibility Matrix

No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.1	CTC Facility Environment				
17.1.1	Provide the Technology Center facility required to house the computing and network environment	X	X	X	
17.1.2	Provide the Technology Center hardware	X	X	X	
17.1.3	Manage, monitor and control the CTC	X	X	X	
17.1.4	Provide UPS/temperature-controlled environment for CONTRACTOR equipment at COUNTY site (e.g. network equipment, RRD servers, etc.)	X	X		X
17.1.5	Provide appropriate rack space for CONTRACTOR equipment at COUNTY site	X	X		X
17.2	CTC Facility Management and Monitoring				
17.2.1	CTC power monitoring for generator	X	X	X	
17.2.2	Monitoring of Chiller system for pressure, temp, alarm and standby	X	X	X	
17.2.3	Monitoring of electrical room for moisture, UPS availability	X	X	X	
17.2.4	Monitoring of CTC computer room air-conditioning units, including air conditioning, power, moisture, humidity and temperature	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.2.5	Monitoring of CTC Auto Transfer Switches. Monitors and activates UPS/generator system as incoming power dictates.	X	X	X	
17.2.6	Monitoring and control of the Technology Center	X	X	X	
17.2.7	Facility operation and maintenance	X	X	X	
17.3	CTC Physical Security				
17.3.1	Camera monitoring is provided throughout the data center and exterior entries. Multiple cameras provide views of the data center and all access points, which are visible at all times to the on-site operators. All cameras continuously record to tape for future viewing and investigation.	X	X	X	
17.3.2	All primary doors are controlled by card access, with biometric readers in high-security areas. Multiple access points must be crossed to access the data center floor.	X	X	X	
17.3.3	All secured doors are electronic fail-secure strikes. All door hardware and monitoring are backed by emergency power.	X	X	X	
17.3.4	Access to host facility is site-restricted via a badge-activated access system which is controlled by CONTRACTOR's security personnel	X	X	X	
17.3.5	Entry/exit points of service center are monitored via closed-circuit TV	X	X	X	
17.4	CTC Network Operations				
17.4.1	All required network equipment within the CTC, such as routers, switches, load balancers	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	and consoles				
17.4.2	Network management of hardware and software, including routers, switches, load balancers and firewalls	X	X	X	
17.4.3	Redundant power circuits and power distribution	X	X	X	
17.4.4	24 x 7 x 365 on-site network support with level 2 and 3 backup available by pager	X	X	X	
17.4.5	Monitoring CONTRACTOR-provided applications response time, including round trip latency	X	X	X	
17.4.6	Network management, support, installation, and configuration of CONTRACTOR-provided WAN circuits and WAN equipment	X	X	X	
17.5	CONTRACTOR-Provided Wide Area Network (WAN) Communications Network Operations				
17.5.1	Hardware to terminate the CONTRACTOR-provided WAN and provide secure connection at the CTC and COUNTY location. This will include routers, switches, out-of-band management.	X	X	X	
17.5.2	Network management including monitoring systems, device management and polling systems.	X	X	X	
17.5.3	Monitoring of CONTRACTOR-provided network routers, including utilization, memory, exception reporting, syslog, configuration management, ACL hits/denies	X	X	X	
17.5.4	Monitoring of CONTRACTOR-provided	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	WAN links ups/downs, error thresholds, bandwidth, CIR packet flow/loss				
17.5.5	Cost of communications circuit(s) from the CTC to COUNTY location.	X	X		X
17.5.6	UPS protection for CONTRACTOR-provided circuits and equipment. Two separate power circuits are required.	X	X		X
17.5.7	Analog (POTS) line for out-of-band management	X	X		X
17.5.8	Internal Local Area Network switches, routers or firewalls required to attach to the CONTRACTOR-provided equipment to facilitate communications to end users, printers, foreign systems, medical devices or other COUNTY- owned equipment	X	X		X
17.5.9	Rack space for WAN termination equipment	X	X		X
17.5.10	Monitoring of COUNTY Gateway ups/downs, router, switch, power	X	X		X
17.6	COUNTY Local Area/Wide Area Network Operations				
17.6.1	Network management, support, installation, and configuration of COUNTY-provided WAN circuits and WAN equipment	X	X		X
17.6.2	Network management, support, installation, and configuration of COUNTY LAN infrastructure	X	X		X
17.6.3	Management of network printers, terminal servers, PCs, terminals or other COUNTY-side equipment	X	X		X
17.7	Hardware and Software Acquisition and				

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	Provisioning				
17.7.1	Provide “back-end” computing systems consisting of CPU, memory and data storage required to operate the Millennium production environment.	X	X	X	
17.7.2	Disk space to house COUNTY production database, plus one-year’s growth at rate determined at project kick-off.	X	X	X	
17.7.3	Provide Operating System and layered-product software licenses for back-end systems required to operate the Millennium production environment.	X	X	X	
17.7.4	Provide “front-end” computing systems necessary to facilitate COUNTY access to the Millennium production environment.	X	X	X	
17.7.5	Provide Operating System and layered-product software licenses for front-end systems required to operate the Millennium production environment (excluding Citrix licenses).	X	X	X	
17.7.6	Provide systems and software necessary for CernerWorks to manage and monitor back-end and front-end systems.	X	X	X	
17.7.7	Provide servers required for charting and front-end Millennium printing.		X	X	
17.7.8	Provide servers, modems, digi-boards, and phone lines required for Remote Report Distribution.	X	X		X
17.7.9	Provide systems required for COUNTY access to COUNTY’s Local Area Network	X	X		X

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	(e.g. local authentication, primary/backup domain controllers) and other non-Millennium functionality.				
17.7.10	Provide systems required for COUNTY local printing from non-Millennium applications.	X	X		X
17.8	Management and Monitoring				
17.8.1	Apply OS and layered-product service packs to front-end and back-end systems as required to maintain system health, security, availability and capacity.	X	X	X	
17.8.2	Monitor the computing systems (24 x 7) to report and alert on compromised system health, security, availability and capacity.	X	X	X	
17.8.3	Reboot back-end and front-end computing systems on a recurring schedule to optimize performance of the computing environment	X	X	X	
17.8.4	Monitor charting application services (Charting and Remote Report Distribution) for successful completion.	X	X		X
17.8.5	Resubmit and/or reroute any failed print jobs.	X	X		X
17.8.6	Monitor Remote Report Distribution (RRD) environment (POTS connectivity, modem status and power)	X	X		X
17.9	Security Administration				
17.9.1	Provide system software and hardware security controls.		X	X	
17.9.2	Monitor system security errors, exceptions and attempted violations as dictated by standard procedures.		X	X	
17.9.3	Host facility physical security measures and	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	controls				
17.9.4	Secure backup media with check-in and checkout procedures		X	X	
17.9.5	Store COUNTY's backup media in a manner that will protect the confidentiality of the data stored on them and ensure that the data remain COUNTY's property		X	X	
17.9.6	Run and monitor continuous intrusion detection software on both host and network-based systems		X	X	
17.9.7	Provide secure environment for on-site and off-site storage for backups		X	X	
17.9.8	Virus detection and correction as required		X	X	
17.9.9	Provide corporate IT Security Manager to monitor and enforce security procedures and resolve exception report issues.		X	X	
17.9.10	Provide logical security using lockdown procedures post production		X	X	
17.9.11	Assign and manage accounts for COUNTY users to access systems	X	X		X
17.9.12	Designate assigned security representative to ensure personnel have appropriate access and be responsible for review of access controls, etc.	X	X		X
17.10	Third-Party Software				
17.10.1	Purchase of database software and ongoing software maintenance fees.	X	X	X	
17.10.2	Provide DR licenses for Citrix	X	X		X
17.11	Software Installation and Upgrade				
17.11.1	Installation, management, and upgrading of	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	database software necessary to support Millennium on systems located at CTC in conjunction with COUNTY production system.				
17.11.2	Certification of environment after database or other software upgrade.	X	X		X
17.11.3	Perform refreshes to standby database as needed	X		X	
17.12	Performance Management and Monitoring				
17.12.1	Monitor database alert logs.		X	X	
17.12.2	Monitor database number of extents remaining.		X	X	
17.12.3	Monitor database free space.		X	X	
17.12.4	Monitor database free space deficit.		X	X	
17.12.5	Monitor database instance status.		X	X	
17.12.6	Monitor database lock conflicts.		X	X	
17.12.7	Monitor database rollback segment for extents left.		X	X	
17.12.8	Monitor database percent of space available in rollback segment.		X	X	
17.12.9	Monitor percent of space available in table space.		X	X	
17.12.10	Monitor status of TNS and BEQ listeners.		X	X	
17.12.11	Reorg/defragment Database objects/table space		X	X	
17.12.12	Analysis and tuning of RDBMS processes		X	X	
17.12.13	Monitor basic database performance characteristics such as SGA and I/O		X	X	
17.12.14	RDBMS resource monitoring		X	X	
17.12.15	Monitor and manage file and table space		X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.12.16	Purge and archiving	X	X		X
17.12.17	Operations jobs required to maintain database relationships	X	X		X
17.13	Backup, Restore and Recovery on DR systems at the CTC				
17.13.1	Perform system backups nightly, weekly, and monthly as specified in standard backup procedure	X	X	X	
17.13.2	Tape rotation	X	X	X	
17.13.3	Verify backup logs	X	X	X	
17.13.4	Maintain and document backup requirements	X	X	X	
17.13.5	Coordinate offsite storage functions, including logging, tracking, labeling, ordering, receiving and sending tapes	X	X	X	
17.13.6	Restore system data as required	X	X	X	
17.13.7	Define system-wide recovery and backup requirements	X	X	X	
17.13.8	Schedule and test routine recovery procedures	X	X	X	
17.13.9	Perform the required frequency of replacement for all tape disks in storage		X	X	
17.13.10	Backup of COUNTY-based PCs and servers located at the CTC	X	X	X	
17.13.11	Verification of restored environment.	X	X		X
17.14	Service/Distribution Package Management				
17.14.1	Provide Certification domain as required		X	X	
17.14.2	Perform back-end special instructions for Service/Distribution Package loads	X	X		X
17.14.3	Perform front-end special instructions for Service/Distribution Package loads	X	X		X
17.14.4	Monitor software notifications (i.e. flashes,	X	X		X

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	advisories, CKN, etc.) for issues related to patient care, financial burden, or performance				
17.14.5	Request Service/Distribution Packages as needed to keep system at a supportable level (as defined above)	X	X		X
17.14.6	Perform application special instructions for Service/Distribution Package loads as needed	X	X		X
17.14.7	Perform Service/Distribution Package certification guidelines as needed	X	X		X
17.14.8	Test Service/Distribution Packages/application enhancements, fixes, and upgrades and ensure the integrity of the resulting data.	X	X		X
17.14.9	Perform and manage the process for local installations of the Millennium application on COUNTY PC's		X		X
17.15	Monitoring tasks				
17.15.1	Monitor application servers for appropriate number/ups/downs		X	X	
17.15.2	Monitor orphaned journal transactions		X	X	
17.15.3	Monitor chart request maintenance	X	X		X
17.15.4	Verify chart status	X	X		X
17.16	Audit reports and logs				
17.16.1	Review/monitor audit reports and logs	X	X		X
17.16.2	Perform COUNTY audits/reports/tools	X	X		X
17.17	User accounts				
17.17.1	Establish ongoing setup and maintenance of user accounts for Millennium products	X	X		X
17.18	Maintenance Activities				
17.18.1	Cycle application servers as needed		X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.18.2	Maintain Windows Terminal Server (WTS) locations database	X	X		X
17.18.3	Maintenance of fax stations	X	X		X
17.18.4	Perform event code/event set changes as required	X	X		X
17.18.5	Provide and maintain application-specific security such as task access, positions, and role setup	X	X		X
17.18.6	Train end users on application	X	X		X
17.18.7	Maintain information as necessary in Device Viewer	X	X		X
17.19	Millennium Software Operations (Opsview Monitor, Opsview Scheduler)				
17.19.1	Perform Daylight Savings Time management activities on equipment located at CTC.	X	X	X	
17.19.2	Notify COUNTY help desk of issues found that affect service		X	X	
17.19.3	Set up and review purges and operations jobs.	X	X		X
17.19.4	Run/review Millennium operations.	X	X		X
17.19.5	Add/remove operations jobs.	X	X		X
17.19.6	Monitor operations for successful completion.	X	X		X
17.19.7	Restart production jobs as required.	X	X		X
17.20	Interface Monitoring				
17.20.1	Monitor CONTRACTOR inbound/outbound interface queue counts and over-threshold alarms		X	X	
17.20.2	Monitor CONTRACTOR inbound/outbound cycle times		X	X	
17.20.3	Monitor FSI connectivity		X	X	X
17.20.4	Monitor MDI connectivity	X	X		X

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.21	Interface Management				
17.21.1	Notify COUNTY help desk of issues found that affect service.		X	X	
17.21.2	Notify CernerWorks when cycling interface or of known ups/downs		X		X
17.21.3	Cycle MDI interface as necessary		X	X	X
17.21.4	Review posting logs	X	X		X
17.21.5	Review error logs	X	X		X
17.21.6	Notify CernerWorks help desk of issues found that affect service		X		X
17.21.7	Operation and maintenance of FSI	X	X		X
17.21.8	Operation and maintenance of MDI	X	X		X
17.22	Change Management				
17.22.1	Provide and maintain an automated change management system for the centralized reporting and tracking of manual changes made by CONTRACTOR personnel.	X	X	X	
17.22.2	Conduct scheduled change management meetings.	X	X	X	X
17.22.3	Attend scheduled change management meetings.	X	X	X	X
17.22.4	Provide a weekly maintenance window.	X	X		X
17.22.5	Allow for a weekly global maintenance window.	X	X		X
17.22.6	Notify CernerWorks of planned outages on COUNTY side.	X	X		X
17.22.7	Designate at least two individuals responsible for signing PECA forms.	X	X		X
17.22.8	Notify CernerWorks of changes to COUNTY production environment	X	X		X

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
17.22.9	Certify all changes prior to moving them to production.	X	X		X
17.22.10	Test application enhancements, fixes, and upgrades and assure the integrity of the resulting data.	X	X		X
17.22.11	Provide and maintain authorization list for disaster declaration.	X	X		X
17.22.12	Provide a single point of contact for change management activities.	X	X	X	X
17.23	Problem Management				
17.23.1	Provide and maintain a method for proper escalation of problems within CernerWorks management	X	X	X	
17.23.2	Log all incidents and problems in accordance with documented processes.	X	X	X	
17.23.3	Maintain ownership of all problems related to DR services through closure or until mutual agreement that the problem is not within DR's scope of responsibility.	X	X	X	
17.23.4	Provide appropriate contact numbers or other information necessary to communicate with key Technology Center support staff.	X	X	X	
17.23.5	Perform post-mortem reviews on problems that affect DR availability, including root cause analysis if possible.	X	X	X	
17.23.6	Notify COUNTY of issues found that affect DR service.	X	X	X	
17.23.7	Staff operations 24 x 7.	X	X	X	
17.23.8	Provide on-call technical staff 24 x 7.	X	X	X	
17.23.9	Ensure proper notification and escalation in	X	X	X	

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No	Responsibility Description	MODE		OWNER	
		Steady State	DR Mode	CONTRACTOR	COUNTY
	accordance with standard operating procedures				
17.23.10	Assign IT Coordinator for primary contact by CONTRACTOR Technology group as per CONTRACTOR standard escalation procedures.	X	X		X
17.23.11	Provide and maintain a method for proper escalation of problems within COUNTY's management	X	X		X
17.23.12	Maintain COUNTY Help Desk to provide first line of support for users	X	X		X
17.24	Service Management				
17.24.1	Create Incident Reports for outages.	X	X	X	
17.24.2	Maintain inventory of installed products.	X	X	X	
17.24.3	Provide COUNTY with detailed reporting and statistics on reported problems.		X	X	

n. Recovery Back to County Data Center – Responsibility Matrix - The following shows major project tasks and the responsible party associated with a recovery project. In addition, COUNTY is responsible for all additional tasks associated with recovery and operation of production processing at COUNTY data center.

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No	Responsibility Description	OWNER	
		CONTRACTOR	COUNTY
18.1	Provide backup of back-end CONTRACTOR code warehouse.	X	
18.2	Provide backup of front-end CONTRACTOR code warehouse.	X	
18.3	Provide RMAN backup of production database.	X	
18.4	Send remaining production redo logs from production database at CTC to system located at COUNTY site.	X	
18.5	Configure COUNTY production running at CTC to send Database archive logs to system located at COUNTY site.	X	
18.6	Perform cold backup of COUNTY production database located at CTC.	X	
18.7	Perform backup of COUNTY production back-end CONTRACTOR code warehouse located at CTC.	X	
18.8	Perform backup of COUNTY production front-end code warehouse located at CTC.	X	
18.9	Apply redo logs to COUNTY site production database.	X	
18.10	Place production database located at COUNTY site in production mode.	X	
18.11	Perform graceful shutdown of production system located at CTC and logs at designated time	X	
18.12	Install and configure operating system on COUNTY site backend system(s).		X
18.13	Restore back-end CONTRACTOR code warehouse on COUNTY site back-end system(s).		X

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No	Responsibility Description	OWNER	
		CONTRACTOR	COUNTY
18.14	Install and configure operating system on COUNTY site front-end system(s).		X
18.15	Restore front-end CONTRACTOR code warehouse on COUNTY site file share and system(s).		X
18.16	Create COUNTY site production and non-production domain(s).		X
18.17	Restore RMAN backup to COUNTY site production database.		X
18.18	Apply archive logs to COUNTY site production database.		X
18.10	Startup of CONTRACTOR environment and release to user community.		X
18.20	Verification of restored environment.		X

o. Disaster Mode Estimated Activation Time

1) CONTRACTOR will develop and maintain a disaster recovery process and configure the alternate data center, hardware, network and related components to successfully activate the Production Domain within six (6) hours, excluding COUNTY Responsibilities (i.e. if there is a dependency on COUNTY to perform a COUNTY Responsibility before CONTRACTOR can proceed to the next step in the disaster recovery process, the time COUNTY uses to perform their COUNTY Responsibilities shall be subtracted from the overall calculation of activation time). Please see COUNTY Responsibilities outlined in section 20 ‘DR Activation – COUNTY Responsibilities’. The time required to activate the DR system and make it available for COUNTY use may vary due to several factors (e.g., some tasks are executed by the COUNTY; others depend on the size of the database, etc.). CONTRACTOR will use commercially reasonable efforts to restore production systems to full capacity.

2) For purposes of tracking Disaster Activation Time, the Disaster start time will begin at the time of Disaster Declaration. The Disaster mode Activation end time will be the point in time

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1 when users have the ability to access the activated DR production system. All available information will
2 be recovered. The estimated RPO for Hot Site DR services is 15-30 minutes of data loss.

3 3) The following list shows sequence of events, details which events will occur in
4 parallel, and the estimated time these tasks are expected to require within the 6 hour RTO:

5 a) Window of time for situation assessment and disaster declaration

6 (1) Add node capacity (60 minutes)

7 (2) Configure and activate systems

8 (a) Configure Citrix farm (60 minutes per server, all servers done in
9 parallel)

10 (b) Configure Chart Servers (60 minutes per server, all servers done in
11 parallel)

12 (c) Apply archive logs to standby database (Time depends on size of
13 archive logs and standby database lag interval [approximately 40-50 seconds per archive log]. This is
14 done in parallel with Citrix and Chart Server configuration)

15 (3) Activate and backup database (backup time depends on size of database,
16 approximately 1GB per minute). This step has been factored into the 6 hour RTO.

17 (4) Allow users on the system

18 b) COUNTY specific estimated activation time will be developed during the initial
19 implementation phase. The estimated activation time will be derived, based on COUNTY specific
20 factors and details finalized during the implementation phase.

21 p. DR Activation-County Obligations - COUNTY responsibilities after a disaster has been
22 declared and the decision to activate the DR domain is made:

23 1) Networking – alter any DNS settings to allow end users to connect to a different
24 location (this will be discussed and planned during the project phase)

25 2) Fat COUNTY device updates – these devices connect directly to the BE system so
26 they will need configuration updates to reach a new IP address.

27 3) Start communicating to end users that the DR environment will be accessed along
28 with any needed instructions for access and function limitations (bolt-ons).

29 4) Testing of DR domain once activated – super users to perform a level of testing that
30 they are comfortable with to ensure all functionalities are operating as expected. This usually includes a
31 high level application test of major functions (not full integration testing), spot check of print devices, all
32 end user access methods (CTX, web-based solutions, fat COUNTY's, hand-helds, etc.)

33 5) Tell CONTRACTOR when they want to turn on interfaces to catch up. Usually
34 done at some point during the testing.

35 6) Tell CONTRACTOR when they want us to start Operations Jobs. Usually done at
36 some point during the testing.

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1 7) Tell CONTRACTOR when they are ready to let end users back on the system. We
2 will then open access for all users.

3 q. Recovery - The Recovery to COUNTY site is the process of replicating the production
4 environment from the CTC back to COUNTY data center. (See Section 18 Recovery Back to COUNTY
5 Data Center – Responsibility Matrix below for additional detail specific to recovery).

6 1) Recovery to COUNTY Site Time Frame - The Recovery to COUNTY Site time
7 frame will be determined by a project plan jointly developed by CONTRACTOR and COUNTY. Each
8 DR situation is unique and will be handled on a case by case basis.

9 2) Recovery to COUNTY Site Responsibilities - During Recovery to COUNTY site, it
10 is COUNTY's responsibility to restore COUNTY site production environment to a production ready
11 status. CONTRACTOR will provide COUNTY with production tape/CD backups of COUNTY
12 production database, and the front-end and backend CONTRACTOR Millennium code. Once it is
13 determined that COUNTY is ready to resume control of the production environment, CONTRACTOR
14 will complete the following tasks with COUNTY support:

15 a) Configure vendor and internally developed tools to synchronize stand by
16 environment located at COUNTY site with production environment located at CTC.

17 b) Gracefully switch the database back to COUNTY.

18 c) Bring up the database at COUNTY site as a production database

19 d) Return the CTC to Steady State mode.

20 e) Once the production environment is returned to COUNTY, COUNTY will
21 release CONTRACTOR to reconfigure the CTC environment to standby status. The activation and
22 ongoing support of the production environment at COUNTY site, after the return of the database will be
23 COUNTY's responsibility. At this point, COUNTY will return to Steady State Mode.

24 r. "Disaster Mode" Uptime Goal - This section describes the Disaster Mode production
25 environment system uptime goal and calculation for Equipment, OS, layered products, and network
26 connectivity for which CTC operations have support responsibility. The system uptime goal is ninety-
27 nine percent (99%), while in Disaster Mode. CONTRACTOR and COUNTY will work together to
28 manage the many variables that could potentially impact system availability during a disaster event, and
29 will strive to maintain optimal system uptime.

30 1) Formula - System Availability will be calculated for the duration of each disaster
31 event using the following formula (and will be rounded up to the next one tenth of a percentage point):

32 a) System Availability = [(Base Time – Unscheduled Downtime) / (Base Time)] x
33 one-hundred (100)

34 b) "Base Time" equals the product of the number of days in the applicable disaster
35 event multiplied by twenty-four (24) hours multiplied by sixty (60) minutes.

36 c) "Unscheduled Downtime" equals the time (in minutes) during which the
37 Production System is not operational (excluding "Scheduled Downtime" and time where the failure is

1 caused by COUNTY’s improper action, omission or failure with regard to an area for which COUNTY
 2 is responsible, such as database or other configuration or the Local Area Network) from the router
 3 connection at COUNTY’s site to and through the CTC based on the measuring methodology
 4 documented below. Declaration of Unscheduled Downtime will be a mutual decision between COUNTY
 5 and CONTRACTOR.

6 d) “Scheduled Downtime” equals the aggregate total of all minutes of planned and
 7 scheduled maintenance performed during the disaster event to perform any necessary hardware, OS,
 8 network, database, application software maintenance, repair, upgrades, and updates. CONTRACTOR
 9 will work with COUNTY to determine and use commercially reasonable efforts to schedule downtime
 10 after regular business hours, during times that minimize the disruption to operations. The amount of
 11 scheduled downtime will be discussed and mutually agreed upon.

12 2) Measuring System Availability - Equipment, network routers, switches, circuits, OS
 13 and layered products provided by CONTRACTOR will be monitored using automated Monitoring tools.
 14 In addition, call center logs will be checked that show a resolution relating to System Availability issues.
 15 For purposes of tracking downtime duration, the Unscheduled Downtime will begin at the time at which
 16 the impact is clearly identified by COUNTY and communicated to CernerWorks via a live telephone
 17 conversation, and the conclusion time will be when COUNTY’s users are able to use the System.

18 s. Additional Provisions

19 1) If COUNTY experiences a disaster event and declares a disaster, all fees outlined in
 20 section t.” Disaster Event Periodic Service Fees” will apply.

21 2) If at any time, after COUNTY has declared a disaster per this Disaster During
 22 Implementation Provision, it is determined that recovery of COUNTY’s Production Domain is not
 23 possible in the CTC the fees outlined in section t. “Disaster Event Periodic Service Fees” will be
 24 prorated up to that point in time.

25 t. Disaster Event Periodic Service Fees - COUNTY agrees to pay the following DR
 26 Services fees, as applicable, in the event of a disaster declaration.

Service (See Additional Description Below)	Fees
Disaster Declaration Fee (per Instance)	\$35,000 per Instance
Hot Site Production Fees (Weekly): (Fee is in addition to the Monthly DR Service Fee) (Minimum of one weeks fees per Disaster Declaration.)	\$35,000 per week
Fail-back Services Fee (Base Support Services)	No charge (The scope of the services provided by CONTRACTOR for the graceful fail-back is as described in Section

Service (See Additional Description Below)	Fees
	18.) (COUNTY is responsible for installing, configuring, and having an operational system at COUNTY site to fail-back to.)
Fail-back Services Fees (Additional Support Services)	\$TBD based on scope of additional work (If COUNTY requests assistance rebuilding or preparing COUNTY system for a graceful fail-back, CONTRACTOR will charge professional service fees based on COUNTY's documented rate or CONTRACTOR's default rate for the appropriate resources.)

1) Disaster Declaration Fee (per Instance): Disaster Declaration fee will be billed at the time a disaster has been declared by COUNTY and COUNTY has requested that CONTRACTOR begin work towards recovering the COUNTY production system. Upon disaster declaration hardware capacity and configuration, as described in scope section, will be provided for the Production environment.

2) Hot Site Production Fees (Weekly): The weekly Hot Site Production Fee will apply for the duration of time that COUNTY workload is hosted at the CTC. For the duration of the disaster, CONTRACTOR will provide hardware capacity as set forth in Table 1 Capacity Scope Limits of this CONTRACTOR System Schedule. The Hot Site Production weekly fee is for a production domain only. If the Hot Site Production service is activated for such an extended period of time that COUNTY requires non-production domains (i.e. cert, build, train, etc.), additional fees will apply. Non-production domains will be priced on a case by case basis dependent on type of domain and how long it's required. There would be a one-time fee and weekly fee for non-production domains.

3) Note – In the event of a disaster, COUNTY will pursue reactivation of the Millennium system in COUNTYs data center in a reasonable amount of time, or will work in good faith on long-term RHO hosting agreement with CONTRACTOR.

3. P2Sentinel Enterprise Solution as a Service for Disaster Recovery

a. Solution Description - P2Sentinel Enterprise Solution as a Services (P2 SaaS) model for use in the CONTRACTOR hosted Disaster Recovery environment (Powered by SenSage) is a comprehensive, enterprise-level audit logging solution for tracking end user access to confidential patient data -- enabling a capability to audit how patient information is accessed throughout an

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1 enterprise. Under HIPAA, provider organizations must implement a system of accountability with
2 regards to how patient information is accessed, used and disclosed.

3 b. Service Overview - CONTRACTOR proposes to provide technical consultation services
4 to implement the P2Sentinel Enterprise solution in a Solution as a Service (SaaS) model for use in the
5 CONTRACTOR hosted Disaster Recovery environment. Advanced configuration of the application is
6 not provided as part of this engagement.

7 1) Disaster Recovery - The solution is installed on the DR system for use in the
8 disaster recovery environment. Data has been pulled from the production environment running in a
9 disaster recovery state hosted by CONTRACTOR.

- 10 a) Maintain P2Sentinel Software and Linux OS (if required)
- 11 b) Review and adjust Millennium auditing events
- 12 c) Maintain COUNTY specific standards and processes
- 13 d) Maintain log adapters for infrastructure application audit logs.
- 14 e) Systems management activities including backup procedures

15 2) Activation - In the event a disaster is declared by the COUNTY, COUNTY will
16 notify CONTRACTOR of desire for activation of the P2 SaaS solution. CONTRACTOR will promptly
17 respond and begin work to activate the system. The P2 SaaS solution will be active within twelve (12)
18 hours of notification from the COUNTY.

19 3) Monthly Fees - Upon activation of the P2 SaaS solution, monthly fees will be
20 required. These monthly fees based upon present scope of the COUNTY Disaster Recovery
21 environment will be fifteen thousand (\$15,000) per month the solution is active. Expansion or
22 modification to the disaster recovery environment may deem additional P2 SaaS monthly fees as
23 necessary. CONTRACTOR will discuss in good faith impacts to environment and will work with the
24 COUNTY on amending the scope associated with the P2 SaaS solution.

25 4) Test Activations (CTS-P2-HCM)

26 a) Test activations represented on the part # CTS-P2-HCM within this contract can
27 be performed with appropriate notice from COUNTY. CONTRACTOR requests a minimum of four (4)
28 weeks' notice prior to test activation. Test activations are recommended to be performed in conjunction
29 with CernerWorks test activations of COUNTY's Disaster Recovery environment.

30 b) CernerWorks conducts 1 (one) test activation of the Disaster Recovery
31 environment per year for 4 year term; Should P2 SaaS test activations be desired during the term of this
32 Agreement, these may be purchased on a separate agreement for the price of \$4,000 per test activation.

33 5) Migration Services - In the event a disaster is declared and the COUNTY's Disaster
34 Recovery environment and P2 SaaS solution activated, additional services will be required for the
35 migration of the P2 SaaS data into the COUNTY's restored COUNTY Hosted P2 environment. These
36 services will vary based upon the amount of audit data needing to be migrated as a result of the time
37 period the Disaster Recovery environment has been in productive use.

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

3 c. Scope of Services - CONTRACTOR’s Application Services include the following:

- 4 1) Secure hosting in CTC designed to provide uninterrupted services.
- 5 2) Hardware, Third Party Layered Software is included.
- 6 3) Network connectivity to COUNTY site for CONTRACTOR hosted systems, or
7 Internet Connectivity for COUNTY hosted systems.
- 8 4) Backup of critical systems data Audit Logs and Customized Reports.
- 9 5) Ongoing technology and software upgrade services for the Application Services

10 d. Responsibilities

11 1) CONTRACTOR’s Responsibilities

12 a) Provide the hardware, Third Party Layered Software, storage, backups, and
13 secured connectivity presence to the Internet and management services necessary to provide the hosted
14 Application Services.

15 b) Routine system maintenance requiring downtime (as needed) will occur Sundays
16 between 2:00 a.m. and 10:00 a.m. (Central Time); this required downtime may affect the availability of
17 the CONTRACTOR hosted Disaster Recovery environment.

18 c) “Web Based Training” defined as a training session delivered via the web for
19 COUNTY identified users of the Application Services. One (1) Web Based Training session will be
20 provided by CONTRACTOR.

21 2) COUNTY Responsibilities

22 a) Procure, install, maintain, manage, and provide internet connectivity to all
23 pertinent COUNTY site devices which meet CONTRACTOR minimum system requirements (e.g. user
24 workstations, audit source systems and audit system listener)

25 b) Identify and authorize users for using the reporting of the Application Services.

26 c) Define and maintain audit configuration in the source system, monitor and
27 manage the process used to send data to CONTRACTOR.

28 d) Identify primary COUNTY contact to work with CONTRACTOR.

29 4. ePrescribe

30 a. Solution Description - CONTRACTOR supports up to One Hundred (100)
31 Physicians/Providers. EPrescribing solutions use third party companies to supply the electronic
32 prescribing network, also known as the ‘gateway’ for electronic data transmission. CONTRACTOR’s
33 approach to connecting to the transmission network is the CONTRACTOR Hub, which connects to the
34 ePrescribing network. Regulatory requirements recently changed to allow for ePrescribing for controlled
35 substances (Classes I – VI), however these requirements are broad-reaching and encompass much more
36 than the CONTRACTOR ePrescribe solution. Additional solutions and technology may be needed to
37 support DEA defined advanced authentication protocols as well as ensuring the proper policies and

1 | procedures are in place. This will also be dependent upon the receiving pharmacy organization and
2 | systems meeting such regulatory requirements. Based on these variables, the ePrescribing of controlled
3 | substances is not included in the scope of the implementation.

4 | b. Solution Capabilities

5 | 1) CONTRACTOR ePrescribing allows prescribers to electronically transmit new
6 | prescriptions directly to a pharmacy through a secure, HIPAA compliant communication link.

7 | 2) Prescribers have the ability to receive and respond to electronic refill requests sent
8 | from Pharmacies.

9 | 3) The system performs Rx benefit eligibility checking automatically for qualified
10 | users and encounters.

11 | 4) The system displays formulary information with a visual indicator when an active
12 | pharmacy benefit available, and there is a eligible formulary item for that benefit.

13 | 5) The system will query for and display external Rx history information for patients
14 | when available.

15 | c. Contractor HUB (connection and pharmacy directory and routing information)

16 | 1) COUNTYs will use CONTRACTOR Hub, which establishes connectivity to
17 | SureScripts. COUNTY can leverage existing VPN with CONTRACTOR assuming capacity is
18 | sufficient.

19 | 2) Separate Licenses are required for the following services within the
20 | CONTRACTOR Hub:

21 | 3) Interoperability

22 | 4) CONTRACTOR-Hub allows systems to communicate in a seamless manner

23 | 5) Built on a Sonic Software ESB using an SOA that ensures it is an enterprise class
24 | system

25 | 6) Built to allow CONTRACTOR Millennium domains to interact with third party
26 | service provider, SureScripts using web services

27 | 7) HNAM systems interface to the CONTRACTOR Hub through IBM's WebSphere
28 | MQ peer-to-peer messaging system

29 | 8) Pharmacy directory is housed centrally

30 | 9) Contains > ninety-five (95)% of the pharmacies in the US (primarily retail)

31 | 10) Of these Pharmacies greater than sixty (60%) of these pharmacies are electronically
32 | enabled (EDI pharmacies)

33 | 11) If a recipient pharmacy is not electronically enabled (EDI), then the prescription will
34 | be converted to a fax. Faxing will occur via one (1) of the options below:

35 | 12) SureScripts faxing service will send the fax to a non-EDI Pharmacy (using
36 | SureScripts formats) using a COUNTY's local RRD infrastructure and Millennium requisitions

37 | d. ePrescriber Registration

1 1) Prescribers must be registered with the CONTRACTOR Hub and SureScripts in
2 order for a prescriber to be capable of sending and/or receiving prescriptions electronically. Initially this
3 was done by contacting the CONTRACTOR Hub team and providing the required demographic data for
4 the prescriber (name, phone and fax contact numbers, NPI#). The CONTRACTOR Hub team then
5 provided COUNTY a personnel alias for the prescriber that was built in HNA-user

6 2) All Providers in the Organization/Facility that can prescribe Prescriptions should be
7 registered

8 3) SPI alias (including phone, fax, address)

9 e. Connectivity

10 1) CONTRACTOR Hub team maintains interface connectivity for one (1) non-
11 production domains and one (1) production domain

12 f. Deliverables

13 1) Enhanced patient safety through the prevention of prescribing errors due to illegible
14 handwriting and/or lack of knowledge about duplicate/contraindicated medications prescribe by another
15 provider (obtained via medical history).

16 2) Improves physician and pharmacy efficiencies by reducing or eliminating phone
17 calls and call-backs for questions or clarifications.

18 3) Increases patient compliance through prescribe access to patient specific formulary
19 data, as well as expediting the filling of the prescription at the pharmacy.

20 4) Improves patient satisfaction and convenience by reducing waiting times at the
21 pharmacy.

22 5. Health Sentry

23 a. Data Connections

24 1) COUNTY domain to HealthSentry data center using a secure transmit to deliver
25 reportable data daily

26 2) HealthSentry domain to the Department of Health domain using a secure transmit to
27 deliver reportable data daily

28 b. Rules and Mapping

29 1) Patented Jurisdictional Logic will be used to determine the data which is reportable
30 and in the specific format in which it is to be sent to the Department of Health

31 2) Standardized Mapping provided for COUNTY using Health Sentry's common
32 nomenclature as well as LOINC and SNOMED codes

33 c. Results Storing and Viewing

34 1) After results are sent to the state, results in Business Objects are stored for ninety
35 (90) days. After the 90 day period the results

36 2) will be permanently stored outside of Business Objects for COUNTY

37 3) After the results are sent to the state, results in the HL7 have long term storage

1 d. Produce Reports - CONTRACTOR will send an HL7 daily to the required Department
 2 of Health as contracted by COUNTY (State, County, and/or City). CONTRACTOR will provide
 3 COUNTY with a copy of the daily HL7 file as well as COUNTY specific reports in Business Objects.

4 e. Deliverables

- 5 1) Automates reporting to public health organizations
- 6 2) Provides faster turnaround time and more complete data
- 7 3) Improves community security with early detection

8 6. Cerner Direct

9 a. Integration

- 10 1) Provide capability of sending and receiving of encrypted messages with recipients
 11 using any trusted Direct Project-compatible system
- 12 2) CONTRACTOR will work with COUNTY to maintain secure messaging within
 13 Millennium through Message Center and Remote Report Distribution (RRD)

14 b. Foreign System Interface (FSI)

- 15 1) Maintain Interface to CONTRACTOR Hub (VPN connection to the
 16 CONTRACTOR Hub)

17 7. Transaction Services

18 a. Scope of Use Limits

Solution Description	Scope of Use Metric	Scope of Use Limit	Scope of Use Metric Description
Cerner Address Validation	Eligibility Requests	12,000	Monthly volume of inquiries regarding patient insurance and benefit coverage verification
Cerner Eligibility and Benefits Verification	Eligibility and Spend Down Req	12,000	Monthly volume of inquiries regarding patient insurance and benefit coverage verification

31 b. Scope of Use Expansion - In the event any scope of use limit set forth herein is
 32 exceeded, COUNTY agrees to expand scope of use at CONTRACTOR'S then-existing rates.
 33 COUNTY'S scope of use will be measured periodically by CONTRACOR'S system tools, or, for
 34 metrics that cannot be measured within the System, COUNTY will provide the relevant information to
 35 CONTRACTOR at least one (1) time(s) per year.

36 c. Subscription

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1 1) Minimum Monthly Fees. COUNTY agrees to pay to CONTRACTOR a minimum
2 monthly fee for the Transaction Services based upon an expected monthly transaction volume as
3 mutually agreed upon by COUNTY and CONTRACTOR, and as set forth in Section III of this
4 Attachment. The minimum monthly fee(s) shall be invoiced each month in advance, beginning upon
5 First Productive Use.

6 2) Transaction Overage Fees. In the event COUNTY'S transaction volume in any
7 given month exceeds the scope of use limit(s) for the Transaction Services as set forth above, the
8 additional transaction overage fee(s) will apply

9 3) Contractor Transaction Services has partnerships and connections in place with
10 TeleVox, SearchAmerica, United States Postal Service, Relay Health, Emdeon, Ingenix, Practice Insight,
11 Megas, Unicor Medical and MedAssets

12 d. Address Verification

13 1) Cerner Address Validation works with the United States Postal Service (USPS) and
14 is a supporting service that adds address checking functionality to existing Cerner solutions. Cerner's
15 Transaction Services hosts a centralized database containing all valid residential addresses and utilizes
16 the Address Matching System and Delivery Point Validation Tools from the United States Postal Service

17 2) Service will notify end user if the address is not a valid residential address or the
18 address does not exist

19 3) Service will auto-fill City and State when end user enters 5-digit ZIP Code

20 4) Service will provide a list of valid ZIP codes when end user enters City and State

21 5) Service will notify end user if an address is not a valid residential mail destination or
22 does not exist

23 6) Service will return formatted addresses to United States Postal Service standards
24 when end user completes an address entry

25 7) Appends, updates or corrects ZIP + 4 codes

26 8) Corrects spelling errors and adds missing address elements

27 9) Formats addresses to United States Postal Service standards

28 10) Formats addresses to United States Postal Service standards is required to leverage
29 other services and to qualify for postage discounts offered by United States Postal Service

30 11) Registration Management is a pre-requisite for Address Validation

31 e. Eligibility and Benefits Verification

32 1) Includes enrollment for 20 payers, Millennium integration, & non-integrated web
33 portal

34 2) Connectivity using HTTPs

35 3) Real-time X12 270/271 transaction set

36 4) Includes design, build, test, train, and go-live following MethodM

37 5) CONTRACTOR Registration Management is required

- 6) Includes enrollment for 20 Payers, Millennium integration, & non-integrated web portal
- 7) Connectivity using HTTPs, or TCP/IP
- 8) Real-time X12 270/271 4010A1 transaction set

IX. SYSTEM SUPPORT REQUIREMENTS

A. The CONTRACTOR acknowledges that COUNTY operates certain facilities that provide services twenty four (24) hours a day seven (7) days a week. And as such CONTRACTOR agrees to provide Support twenty four (24) hours a day, seven (7) days a week, with the exception of IQ Health/Patient Portal Consumer and Clinician Support which shall be provided Monday through Friday, 8:00 am to 5:00 central standard/daylight time.

B. CONTRACTOR shall provide an avenue for submission of Support requests at a minimum in the following methods:

- 1. Web Site access; and
- 2. Via Telephone

C. Type and Severity of Events: All events reported to CONTRACTOR shall have undergone an initial assessment and evaluation by the COUNTY Information Technology team to determine to the best of its knowledge, the likely root cause of the event and if the event is related to local internal issues, which includes training and non-CONTRACTOR network related equipment and environment Request for Support includes the following types of events:

- 1. Critical System Events shall include the following:
 - a. Situation where system stability, integrity, performance and/or availability are compromised.
 - b. Issues resulting in a greatly reduced availability of system/application and/or those have an immediate and adverse effect on operations.
 - c. Planned and unplanned downtimes of system, including actual or anticipated system crashes or sudden failures.
- 2. Critical Application Events shall include the following;
 - a. Sudden application failures.
 - b. Licensed Software defects that impact system/application availability, operation, workflows, and quality and accuracy, and present associated risks.
- 3. Critical Functional Events shall include Licensed Software changes required due to any local, state, and/or federal regulatory requirements.
- 4. Non-Critical Events shall include the following;
 - a. Software events that have an adverse impact on operations, workflow, accuracy, or quality, and may have acceptable and reasonable temporary workarounds.

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1 b. Normal operational production support and incidents arising in the normal course of
2 business and/or during the installation of any required Licensed Software.

3 D. CONTRACTOR Response Methodology:

4 1. For all Critical Events, acknowledgement and action shall be taken as indicated below.

5 a. CONTRACTOR’s goal for resolution of all Critical System Events shall be resolution
6 within twenty four (24) hours. CONTRACTOR shall stay actively engaged and will remain actively
7 engaged until such issue is no longer classified as critical. CONTRACTOR acknowledges that special
8 efforts and/or arrangements may have to be made with the objective of returning the system to at least a
9 stable pre-event state.

10 b. All Critical Application Events shall be acknowledged by the CONTRACTOR
11 promptly, and CONTRACTOR shall stay actively engaged in resolving the issue and providing any
12 necessary solutions until such issue is no longer classified as critical.

13 c. CONTRACTOR will make good faith efforts to resolve Critical Functional Events to
14 comply with requirements within the required timelines as set forth in the requirements.
15 CONTRACTOR may charge Client for work performed as a result of a Critical Functional Event, in
16 addition to Client’s Support fees.

17 d. All Critical Events must be addressed and resolved to the satisfaction of the COUNTY.
18 For all Non-Critical Events, standard operating policy shall include reporting the issue to the
19 CONTRACTOR via any of the methods indicated in Subparagraph B. above.

20 2. Based on the nature of the event, including but not limited to Licensed Software functional
21 compliance with regulatory changes, CONTRACTOR may charge COUNTY at an agreed upon rate.

22 3. Response by CONTRACTOR shall be based on the following Support execution
23 methodology and shall include at least the following items:

24 a. CONTRACTOR shall make reasonable efforts to provide an acknowledgment of
25 COUNTY stated event within twenty four (24) hours from the time reported.

26 b. CONTRACTOR’s goal is to validate reported event and, if necessary, re-state and re-
27 classify actual event based on CONTRACTOR subject matter expertise and Licensed Software
28 knowledge, in collaboration with COUNTY, within forty eight (48) hours.

29 c. CONTRACTOR shall provide web based tracking system to document and report
30 progress on all events.

31 d. CONTRACTOR shall provide periodic feedback and updates on CONTRACTOR’s
32 tracking website as progress occurs.

33 e. CONTRACTOR shall provide contact information on assigned CONTRACTOR
34 support person and alternate contact information, actions being taken, and expected resolution date/time.

35 f. CONTRACTOR shall use good faith efforts to provide a status of the troubleshooting
36 and analysis of open issues within fifteen (15) days after the COUNTY has reported them.

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1 g. CONTRACTOR shall make available the assigned CONTRACTOR support individual
2 via telephone for additional follow-up.

3 h. CONTRACTOR shall provide short-term or alternate workarounds if available, and/or
4 Licensed Software modifications when necessary.

5 i. Provided that COUNTY remain on the most current version of Licensed Software,
6 CONTRACTOR shall provide only fully tested and proven software solutions. Until COUNTY upgrades
7 to the most current version of Licensed Software, for CRITICAL issues, CONTRACTOR and COUNTY
8 will mutually agree on a process to test the issue resolution in a COUNTY non-production domain.

9 j. CONTRACTOR shall provide support during installation of Licensed Software patches
10 and fixes, to assist COUNTY with questions or clarifications of issues that might arise.

11 k. CONTRACTOR shall maintain all historical Support documentation for at least two
12 years in an easily accessible method and format for COUNTY personnel to review.

13 l. CONTRACTOR shall ensure that all support requests, except for Question priority
14 support requests, are accepted and closed by COUNTY and not by CONTRACTOR.

15 m. COUNTY shall ensure that appropriate remote access is granted to CONTRACTOR
16 personnel. Access to COUNTY information shall be controlled and protected by COUNTY and
17 provided to CONTRACTOR authorized personnel only.

18 n. CONTRACTOR support personnel that have access to the system and related resources,
19 in all events, shall obtain prior permission from COUNTY before performing any changes remotely.
20 Proper documentation shall be maintained and appropriate communication shall be made regarding all
21 activities. Appropriate change management principles shall be followed.

22 o. CONTRACTOR shall provide an effective protocol for event escalation and follow-up.

23 p. CONTRACTOR shall provide Support remotely. If CONTRACTOR and COUNTY
24 agree, CONTRACTOR may provide Support on-site for an additional fee.

25 q. CONTRACTOR shall ensure that appropriate knowledge transfer occurs when changes
26 or escalations in assigned CONTRACTOR support personnel occur.

27 E. CONTRACTOR shall provide all necessary Documentation for the Licensed Software that are
28 currently Supported by CONTRACTOR. All Documentation shall be made readily available and shall
29 include sufficient details to understand and use the included functionality.

30 F. CONTRACTOR shall distribute any Licensed Software upgrades or version replacements to
31 which COUNTY is entitled to under the terms of this Agreement, along with changes to Documentation.
32 CONTRACTOR may provide assistance in the loading and installation of such upgrades and
33 replacements for an additional fee.

34 G. CONTRACTOR shall maintain comprehensive change management and release/version control
35 procedures to control Licensed Software updates.

36 H. CONTRACTOR shall provide all routine Licensed Software updates and communicate such
37 events in a timely manner, with supporting Documentation of the changes, implementation procedures,

1 | expected impact analysis on the production environment, and any known or expected impact to other
2 | processes and functionalities.

3 | I. CONTRACTOR shall proactively make available a knowledge base of all past and currently
4 | developing known Licensed Software defects, with all necessary relevant information in terms of
5 | identification, impact, and solution if any. Licensed Software error notices must be proactively published
6 | and/or emailed to designated COUNTY personnel. CONTRACTOR shall make proactive steps in
7 | communicating news of upcoming Licensed Software changes, planned product obsolescence events,
8 | advance information on upcoming product enhancements and/or packages, and provide support in the
9 | appropriate discussion and planning.

10 |
11 | **X. STANDARDS OF SYSTEM PERFORMANCE**

12 | The system must perform at COUNTY acceptable performance levels. The system shall perform in
13 | a manner that will not impede or significantly impact the performance of routine and normal system-
14 | related operational tasks, as well as efficiently perform certain critical processes that are executed at the
15 | server level; and will function in a consistent and dependable manner, recognizing that the County
16 | operates in a demanding twenty four (24) hours a day, seven (7) days a week production environment
17 | and that high-availability is critical. The parties agree that system performance is a joint responsibility
18 | of COUNTY and CONTRACTOR; CONTRACTOR’s responsibilities for system performance are to
19 | provide Support and Maintenance services for the system (including the Licensed Software) as
20 | specifically set forth herein. It is the intent of the COUNTY and CONTRACTOR during the upcoming
21 | term of this Agreement that specific and meaningful benchmarks will be determined and agreed upon for
22 | monitoring application response times and other performance-related quantitative measurements, and
23 | will be used to continually assess and evaluate the effectiveness and quality of the configuration and the
24 | application in place. CONTRACTOR agrees to provide Support, as set forth in this Agreement, to assist
25 | COUNTY’s achievement of these goals.

26 |
27 | **XI. CPT/CMT SUBSCRIPTIONS**

28 | CPT/CMT Subscription - COUNTY agrees that it requires both a subscription through the American
29 | Medical Association (AMA) for access to regular updates to the Current Procedural Terminology (CPT)
30 | and a corresponding CONTRACTOR subscription for Controlled Medical Terminology (CMT),
31 | collectively referred to as the CPT/CMT Subscription. COUNTY and CONTRACTOR hereby agree to
32 | following certain ‘Pass Through Provisions’ terms which are more clearly set forth in Subparagraphs
33 | VII.B. and XXXI.A.1. of the Agreement. Reimbursement as indicated in Paragraph V. of this Exhibit A
34 | to the Agreement shall allow COUNTY to use the CPT/CMT subscriptions as specified in that document
35 | for up to six hundred (600) users.

36 | //
37 | //

EXHIBIT B
 TO AGREEMENT FOR PROVISION OF
 MAINTENANCE AND SUPPORT SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 CERNER CORPORATION
 JULY 1, 2017 THROUGH JUNE 30, 2020

I. SCOPE OF USE EXPANSIONS

- A. Designated Facility where the Licensed Software shall reside:
 County of Orange Data Center
 1400 South Grand Avenue
 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. Scope of Use Expansion Limit:

Family Solution	Part #	Product	Metric	Limit	Scope Expansion	Additional License Fees	Additional Monthly Support
Capstone	CP-20735	Reg. Management	FTE	2,775	135	\$6,431.45	\$83.07
	CP-20740	Scheduled Management	FTE	2,775	135	\$5,411.55	\$69.90
	CP-20745	Enterprise Master	FTE	2,775	135	\$2,889.82	\$37.33
		Person Index					
	CP-26105	Discern Expert	FTE	2,775	135	\$1,376.17	\$17.78
	CP-26140	Discern Explorer	FTE	2,775	135	\$688.08	\$8.89
CareNet	PS-22720	Ent. Care Doc	FTE	2,775	135	\$3,051.80	\$39.42
Open	OE-20850	Open Engine	FTE	2,775	135	\$769.40	\$9.94

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Family Solution	Part #	Product	Metric	Limit	Scope Expansion	Additional License Fees	Additional Monthly Support
Engine	OE-22850	TCP/IP Comm Srv	FTE	2,775	135	\$261.19	\$3.37
PathNet	PA-20070	General Lab	FTE	2,775	135	\$1,569.70	\$190.91
	PA-20075	Microbiology	FTE	2,775	135	\$1,177.27	\$143.18
	PA-22205	Outreach Srv	FTE	2,775	135	\$549.39	\$66.82
	PA-26105	Discern Expert	FTE	2,775	135	\$941.82	\$114.55
	PA-26140	Discern Explorer	FTE	2,775	135	\$549.39	\$66.82
Power Chart	PS-20570	Clinical	FTE	2,775	135	\$11,385.12	\$147.06
		Data Repository					
	PS-22090	Cerner	FTE	2,775	135	\$1,357.00	\$17.53
		Knowledge Index					
	PS-26105	Discern Expert	FTE	2,775	135	\$2,518.94	\$32.54
PS-26140	Discern Explorer	FTE	2,775	135	\$1,357.07	\$17.53	
Power Chart Office	PV-20229	Clinical Office	FTE	2,775	135	\$70,500.00	\$910.63
	PV-20235	Ambulatory	FTE	2,775	135	\$10,000.00	\$129.17
		Business Office					
PV-20240	Ambulatory Support Office	FTE	2,775	135	\$35,500.00	\$458.54	
	PV-26105	Discern Expert	FTE	2,775	135	\$8,230.00	\$106.30

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Family Solution	Part #	Product	Metric	Limit	Scope Expansion	Additional License Fees	Additional Monthly Support
	PV-26140	Discern Explorer	FTE	2,775	135	\$2,940.00	\$37.98
ProFit	PF-20450	Billing & A.R.	FTE	2,775	135	\$7,690.09	\$99.33
	PF-26105	Discern Expert	FTE	2,775	135	\$641.84	\$8.29
	PF-26140	Discern Explorer	FTE	2,775	135	\$320.92	\$4.15
	PF-99999	Contract Exception	FTE	2,775	135	\$320.92	\$4.15
CareAware Multimedia	MM-22260	CareAware Multimedia - Digital Objects	Gigabytes	500	50	\$6,003	\$85
CareAware Multimedia	MM-22260	CareAware Multimedia -Digital Objects	Gigabytes	500	50	\$6,003	\$85
Foreign System Interfaces-FSI	IF-29020	Orders Incoming with Statuses	FTEs	2775			
Health Info Mgmt	MR-20400	Cerner Health Information Management	FTEs	850	85	\$14,686	\$208
Patient Portal	PY-28010	Connect to Cerner Health: Send to Cerner Health Mpage	Prod Domain	1	1	\$0	\$0

Family Solution	Part #	Product	Metric	Limit	Scope Expansion	Additional License Fees	Additional Monthly Support
Disaster Recovery	CTP-DRTOOLKIT	DR Millennium Toolkit	Domain	1	1	\$101,500	\$1,692
P2Sentinel	CTP-P2SENT-3	P2Sentinel Enterprise 12 Cores	Core	12	2	\$10,417	\$156
Power Insight	PI-20611	Power Insight Explorer	Prod Domain	1	1	\$193,193	\$2,505
Mpages	PS-22700	Mpages Development Toolkit	Outpatient Visits	188,000	18,800	\$14,880	\$248

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

E. CONTRACTOR agrees that COUNTY has the right to expand, delete, or substitute Permitted Facilities set forth in Paragraph B. above (upon written notification to CONTRACTOR and subsequent amendment of this Exhibit) provided the metric identified does not exceed the “Scope of Use Limit” set forth above. These rights to expand, delete, or substitute Permitted Facilities do not apply with respect to any interface software fees or services, and do not include any installation, custom programming, Implementation or Support services from CONTRACTOR.

F. In the event the Scope of Use limits are exceeded, CONTRACTOR and COUNTY also agree that COUNTY may purchase licenses to extend the use of the Licensed Software for the expansion fees and the additional monthly support fees indicated above or as agreed upon by both parties.

G. COUNTY’s Scope of Use Limits shall be measured annually by COUNTY by the end of the third quarter of each contract period, and such measurement shall be reported to CONTRACTOR.

1. COUNTY’s Scope of Use limits for FTEs shall be based on COUNTY’s peak FTE count during the then current term. In the event COUNTY exceeds its Scope of Use limit(s), COUNTY shall also report the dates on which COUNTY first exceeded the applicable Scope of Use limit(s).

2. CONTRACTOR may conduct (at its cost), and COUNTY will provide all reasonable information and access necessary for, any audit or investigation into COUNTY’s Scope of Use upon

1 thirty (30) days prior written notice to COUNTY, provided that any such request for audit shall not be
 2 made any more frequently than once every twelve (12) months unless any audit reveals noncompliance
 3 by COUNTY in which case CONTRACTOR may audit COUNTY more frequently, at
 4 CONTRACTOR's reasonable discretion, until COUNTY is no longer noncompliant.

5 H. COUNTY agrees that if an event occurs that will affect COUNTY's Scope of Use, COUNTY
 6 will notify CONTRACTOR of such an event so that COUNTY's Scope of Use can be reviewed.
 7 CONTRACTOR understands that COUNTY's FTE count may increase as a result of COUNTY's
 8 receipt of certain grant funding. CONTRACTOR agrees not to include personnel hired by COUNTY in
 9 the FTE count, provided that such personnel (a) are being paid for by COUNTY solely from the
 10 applicable grant funds, (b) are performing work solely as it relates to the applicable grant, and (c) are
 11 Limited Term Employees or consultants.

12 I. Provided that COUNTY stays within its Scope of Use limits, any additional fees due under this
 13 Paragraph shall be mutually agreed upon by the Parties and said amount shall be added to the base line
 14 amount for Licensed Software Support in the subsequent fiscal year agreement as stated in
 15 Subparagraph VIII.D.2. of Exhibit A to the Agreement.

16 J. Single Software and Hardware Environment: - COUNTY may expand its Scope of Use (for
 17 Licensed Software identified in this Exhibit B) by paying the applicable additional license and support
 18 fees set forth in Paragraph C above, so long as any third party facility, new facility or new volumes are
 19 processed and operated out of COUNTY's single software application environment and single data
 20 center environment identified as the Designated Facility above. COUNTY may avail itself of the
 21 distributed client server capabilities built into the HNA Millennium architecture and distribute the
 22 servers from a single data center to multiple data center(s) assuming COUNTY notifies
 23 CONTRACTOR of its intentions and supporting reasons in advance and protects CONTRACTOR's
 24 proprietary rights in the same manner as provided in the Agreement. However, if the third party facility,
 25 new facility or volumes are not processed from the same physical application or hardware environment,
 26 it will be considered a new installation and a new client to CONTRACTOR. The fees associated for
 27 such new client will be based on CONTRACTOR's then-current pricing methodology. New
 28 functionality, product installation and project management fees will be purchased under a new
 29 agreement.

30 K. COUNTY agrees to provide a minimum of one, and not more than two, points of contact per
 31 product and a minimum of one, and not more than two, points of contact in COUNTY's data centers for
 32 Support requests to CONTRACTOR, which contact persons may be changed upon notice to
 33 CONTRACTOR. In the event the contact person is unavailable during an emergency, CONTRACTOR
 34 will honor Support requests from another authorized representative of COUNTY.

35 L. Disaster Recovery Scope of Use Expansion

36 1. In the event COUNTY needs to expand the capacity Scope of Use of the Disaster Recovery
 37 system, the Agreement will be amended to reflect the new Scope of Use and any associated costs.

2. Growth in System Requirements
 a. COUNTY may expand its Capacity Scope of Use Limit (for Disaster Recovery Services in this Agreement) by paying the applicable additional Disaster Recovery Service fees as set forth below:

Metric Description	Extending Scope of Use Limit by	One-Time DR Services Fees	Additional Monthly DR Services Fees
Processor (Processor Type as defined in Capacity Scope of Use Section above)	(1) Processor	\$1,200	\$600
Disk Space	(100) Gigabytes	\$480	\$240
Concurrent Logons	(100) Concurrent Logons	\$600	\$400
Chart Server (Single CPU)	(1) Server	\$300	\$150
Telco Mbps per Circuit Expansion or additional new circuits will be priced on case by case basis	TBD	\$TBD	\$TBD

b. In addition, if Scope Expansion pricing is applicable, the Disaster Declaration Fee and Weekly Hot Site production fees will be increased by the same proportion (%) increase as the percent (%) increase in the Hot Site Standby Monthly Fee.

3. Solutions: The solutions CONTRACTOR plans to recover in the event of a disaster are noted in the section entitled “In-Scope Solutions” below. CONTRACTOR’s ability to recover these solutions is based upon the information and metrics provided in sizing the Disaster Recovery system. Should changes occur to the production system without also notifying CONTRACTOR as noted above for Scope of Use Expansion, CONTRACTOR’s ability to recover the COUNTY’s production system will be limited.

- a. Included Solutions:
- 1) Access Management
 - 2) CapStone (Access Management)
 - 3) CareNet (Clinical Documentation)
 - 4) CONTRACTOR Ambulatory
 - 5) Open Engine

- 1 6) Open Port Interfaces
- 2 7) PathNet
- 3 8) Patient Accounting
- 4 9) PowerChart
- 5 10) Charting XR
- 6 11) HIM
- 7 12) MPages
- 8 b. Excluded Solutions:
- 9 1) Database Migrations
- 10 2) High Availability Solutions
- 11 3) Knowledge Solutions
- 12 4) Learning Services
- 13 5) Olympus Alerting
- 14 6) Recovery Manager
- 15 7) WTS Location Toolkit
- 16 8) CAMM
- 17 9) P2 – P2 SaaS is included separately
- 18 10) CPDI
- 19 11) Dragon
- 20 12) ePrescribe
- 21 13) Enterprise Appliance servers
- 22 14) PI Explorer
- 23 15) Health Sentry
- 24 16) Patient Portal
- 25 17) CONTRACTOR Hub

26 M. Scope of Use Expansion Services as described in this Exhibit B are deemed as optional services
 27 by COUNTY. If COUNTY elects to obtain such optional services, COUNTY and CONTRACTOR
 28 shall mutually agree in writing via an amendment or a letter of agreement and/or concurrence to this
 29 Agreement, the services to be provided and the applicable cost for those services, up to the applicable
 30 aggregate dollar amount(s) shown in the applicable table above.

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1 EXHIBIT C
2 TO AGREEMENT FOR PROVISION OF
3 MAINTENANCE AND SUPPORT SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JULY 1, 2017 THROUGH JUNE 30, 2020
9

10 **I. CERNER.COM RESTRICTED ACCESS AGREEMENT**

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

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

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

35 3. Client agrees to notify Cerner and Client's primary information services executive
36 immediately upon learning of any loss of control, improper disclosure, or other misuse of any
37 Confidential Information or other materials made available through Cerner.com, or of any password,

1 | logon procedure, or other method limiting access to Cerner.com. Further, Client agrees to take whatever
2 | steps are reasonably required to halt and otherwise remedy, if possible, any such breach of security, and
3 | to take all appropriate steps to regain control of the Confidential Information or such other information
4 | improperly disclosed or misused, and to prevent, as necessary, further disclosures or misuses.

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

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

20 | 6. Information accessed through Cerner.com will not be further transmitted, reproduced, or
21 | otherwise copied, in whole or in part, through or under any medium, for the benefit or use of any person,
22 | not otherwise permitted to receive or use such information, without first obtaining Cerner’s written
23 | consent.

24 | 7. Client may, however, disclose the information to any person within Client’s organization if
25 | necessary to facilitate Client’s use of Licensed Software (or other Cerner products and services provided
26 | under agreement) to which the information relates so long as the party disclosing the information
27 | notifies the receiving party of the confidentiality of the information and of their obligation to comply
28 | with these confidentiality terms.

29 | 8. Due to the nature of Cerner's business and the value of Cerner’s proprietary information,
30 | Client agrees that a breach of any of the provisions hereof may inflict serious harm on Cerner, and that
31 | termination of Client’s license, if reasonable under the circumstances, and money damages may be
32 | inadequate relief. Accordingly, Cerner will be entitled to injunctive relief to prevent or prohibit any
33 | threatened or continuing breach of any of the terms and provisions hereof and, in addition thereto, will
34 | be entitled to any and all other remedies available at law or in equity.

35 | //
36 | //
37 | //

1 EXHIBIT D
2 TO AGREEMENT FOR PROVISION OF
3 MAINTENANCE AND SUPPORT SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JULY 1, 2017 THROUGH JUNE 30, 2020
9

10 **I. HIGH TECHNOLOGY ESCROW AGREEMENT**

11 This Software Escrow Agreement ("Escrow Agreement") is entered into to be effective as of the
12 1st day of January 2011, by and among Cerner Corporation, a Delaware corporation, the owner of
13 certain software ("Cerner"), and U.S. Bank National Association, a national banking association
14 ("Escrow Agent").
15

16 **RECITALS:**

17 A. Cerner and certain licensees of the aforementioned software (each a "Licensee") have entered
18 into and may enter into in the future a software license agreement (the "License Agreement") whereby
19 Cerner granted or may grant to such Licensee a limited license to use Cerner's computer programs
20 identified therein (the "Software").

21 B. The uninterrupted availability of the Software is critical to each Licensee in the conduct of its
22 business.

23 C. As a consequence of the foregoing, Cerner has agreed to enter into this Escrow Agreement to
24 provide for the availability of the Software's source code, as well as any corrections, changes,
25 modifications and enhancements to such source code, in accordance with the terms and conditions
26 hereinafter set forth.
27

28 **AGREEMENT:**

29 Based upon the recitals set forth above and in consideration of the mutual obligations contained
30 herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby
31 acknowledged, the parties agree as follows:
32

33 **ARTICLE 1 – DEPOSITS**

34 1.1 Obligation to Make Deposit(s). Within 10 days of execution of this Escrow Agreement, Cerner
35 shall deliver to Escrow Agent the source code for the Software in its current (and, at Cerner's option,
36 certain prior) versions, including relevant documentation (the "Escrow Material"). Cerner shall update
37 the Escrow Material within 60 days of each release of a new version of the Software in accordance with

1 the terms of this Escrow Agreement. All references in this Escrow Agreement to the Escrow Material
2 shall include the initial Escrow Material and any updates.

3 1.2 Identification of Tangible Media. Prior to the delivery of the Escrow Material to Escrow Agent,
4 Cerner shall conspicuously label for identification each document, magnetic tape, CD, disk, or other
5 tangible media upon which the Escrow Material are written or stored. Additionally, Cerner shall deliver
6 to Escrow Agent with the Escrow Material a list identifying each such tangible media by the item label
7 description, the type of media and the quantity, which shall be substantially in the format set forth in
8 Exhibit B (the "Escrow List"). The Escrow List must be signed by Cerner and delivered to Escrow
9 Agent with the Escrow Material.

10 1.3 Deposit Inspection. When Escrow Agent receives the Escrow Material and the Escrow List,
11 Escrow Agent will conduct a deposit inspection by visually matching the labeling of the tangible media
12 containing the Escrow Material to the item descriptions and quantity Listed on the Escrow List. Escrow
13 Agent shall have no duty or obligation to inspect or inquire into the contents or substance of the Escrow
14 Material, and Escrow Agent's obligation shall be strictly limited to matching the aforementioned
15 labeling
16 to the Escrow List.

17 1.4 Acceptance of Deposit. At the completion of the deposit inspection, if Escrow Agent determines
18 that the labeling of the tangible media matches the item descriptions and quantity on the Escrow List,
19 then Escrow Agent will date and sign the Escrow List and deliver a copy thereof to Cerner, which shall
20 occur no later than ten (10) business days after Escrow Agent's receipt of the Escrow Material. If Escrow
21 Agent determines that the labeling does not match the item descriptions or quantity on the Escrow List,
22 Escrow Agent will: (a) note the discrepancies in writing on the Escrow List; (b) date and sign the
23 Escrow List with the exceptions noted; and (c) provide a copy of the Escrow List to Cerner. Escrow
24 Agent's acceptance of the deposit occurs upon the signing of the Escrow List by Escrow Agent. Cerner
25 may, at its discretion, provide a copy of the signed Escrow List to a Licensee as an indication that the
26 Escrow Material have been received and accepted by Escrow Agent. Upon Escrow Agent's acceptance
27 of any updated Escrow Material, the Escrow Agent shall return to Cerner, within ten (10) business days
28 after the issuance of the written notice of acceptance to Cerner, all previous versions of the Escrow
29 Material.

30 1.5 Cerner's Representations. Cerner represents to Escrow Agent that:
31 a. Cerner lawfully possesses all of the Escrow Material deposited with Escrow Agent;
32 b. With respect to all of the Escrow Material, Cerner has the right and authority to grant to
33 Escrow Agent the rights as provided in this Escrow Agreement;
34 c. The Escrow Material are not subject to any lien or other encumbrance;
35 d. The Escrow Material consists of Software identified in the License Agreements; and
36 e. The Escrow Material are readable and useable in their current form or, if the Escrow
37 Material are encrypted, the decryption *tools* and decryption keys have also been deposited, which

1 deposit may be separate from the Escrow Material deposit; provided, however, that Escrow Agent shall
2 have no duty to enforce such representations for the benefit of any third party, including without
3 limitation a Licensee.

4
5 **ARTICLE 2 – CONFIDENTIALITY AND RECORD KEEPING**

6 2.1 Confidentiality. Escrow Agent shall maintain the Escrow Material in a secure, locked facility
7 which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the
8 obligation to reasonably protect the confidentiality of the Escrow Material. Except as provided in this
9 Escrow Agreement, Escrow Agent shall not disclose, transfer, make available, or use the Escrow
10 Material. If Escrow Agent receives a subpoena or other order of a court or other judicial tribunal
11 pertaining to the disclosure or release of the Escrow Material, Escrow Agent will promptly notify
12 Cerner.

13 It shall be the responsibility of Cerner to challenge any such order; provided, however, that Escrow
14 Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will
15 not be required to disobey any court or other judicial tribunal order.

16 2.2 Audit Rights. During the term of this Escrow Agreement, Cerner shall have the right to inspect
17 the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held
18 during normal business hours and following reasonable prior notice, and shall be conducted at the
19 Cerner's sole expense.

20
21 **ARTICLE 3 – RELEASE OF DEPOSIT**

22 3.1 Right to Make Copies. Escrow Agent shall have the right to make copies of the Escrow Material
23 as reasonably necessary to perform with respect to rights and duties under this Escrow Agreement.
24 Escrow Agent will copy all copyright, nondisclosure, and other proprietary notices and titles contained
25 on the Escrow Material onto any copies made by Escrow Agent.

26 3.2 Right to Transfer Upon Release. Cerner hereby grants to Escrow Agent the right to transfer a
27 copy of the Escrow Material to a Licensee upon the occurrence of a Release Condition as defined in
28 Section 3.3 below. Except upon such a release or as otherwise provided in this Escrow Agreement,
29 Escrow Agent shall not otherwise transfer the Escrow Material.

30 3.3 Release Conditions. As used in this Escrow Agreement, "Release Conditions" shall mean the
31 following:

- 32 a. Cessation of business by Cerner without a successor; or
- 33 b. Cerner's cessation of the Support supplied for the Software pursuant to the License
34 Agreement without making a provision for continued support by a qualified third party on substantially
35 the same terms, conditions and pricing; or

36 //
37 //

1 c. in the case of Cerner and Licensee having entered into a Licensee Agreement specifically
2 providing other circumstances under which such Licensee may be entitled to a copy of the Escrow
3 Material.

4 3.4 Filing For Release. If a Release Condition has occurred, then Cerner shall provide written
5 notice of the occurrence of the Release Condition and a request for the release of a copy of the Escrow
6 Material to Licensee(s).

7 3.5 Licensee Request. In the event a Licensee requests release of the Escrow Material, Licensee
8 shall notify Escrow Agent and Cerner of a Release Condition in accordance with the notice provisions
9 of this Escrow Agreement. Cerner will promptly work with Escrow Agent to approve the release in
10 accordance with the Release Conditions or to address the request directly with the Licensee.

11
12 **ARTICLE 4 -- OWNERSHIP AND USE OF ESCROW MATERIAL**

13 4.1 Ownership/Confidentiality of Escrow Material. In all events, Cerner or its successors or assigns,
14 shall remain the owner of the Escrow Material. Licensee's right to and interest in the Escrow Material
15 shall be as a licensee only.

16 4.2 Right to Use Following Release. Upon release of the Escrow Material in accordance with
17 Article 3, Licensee shall have the right to use the Escrow Material for the sole purpose of continuing the
18 benefits afforded to Licensee by the License Agreement. Licensee shall be obligated to maintain the
19 confidentiality of the released Escrow Material as provided in the License Agreement. Without limiting
20 any other terms of this Escrow Agreement, Escrow Agent shall have no duties or obligations with
21 respect to enforcing this Section 4.2 or any terms of a License Agreement.

22
23 **ARTICLE 5 – COMPENSATION OF ESCROW AGENT**

24 5.1 Escrow Agent Fee. Cerner shall make payment to Escrow Agent for escrow service in
25 accordance with Escrow Agent's fee schedule as outlined on Exhibit A attached hereto, and shall be
26 invoiced upon execution of this Escrow Agreement.

27 5.2 Non-payment. In the event of non-payment of Escrow fee, Escrow Agent shall give Cerner
28 sixty (60) day notice thereof. If the sixty (60) day notice period elapses without Escrow Agent having
29 received payment from Cerner, Escrow Agent shall then have the option, upon delivery of written notice
30 to Cerner, to terminate this Escrow Agreement and to return to Cerner all Escrow Material.

31
32 **ARTICLE 6 – TERM**

33 6.1 Term and Termination. The initial term of this Escrow Agreement shall commence as of the
34 effective date set forth on the first page hereof and continue for a period of ten years (the "Initial
35 Term").

36 a. Thereafter, this Escrow Agreement shall automatically renew from year-to-year (each a
37 "Renewal Term") unless either party provides not less than 180 day notice to the other of its intention to

1 terminate the Escrow Agreement at the end of the then current term. This Escrow Agreement may be
 2 terminated prior to the expiration of the Initial Term or any Renewal Term in any of the following ways:
 3 (a) Cerner instructs Escrow Agent in writing that the Escrow Agreement is terminated; (b) the Escrow
 4 Agreement is terminated by Escrow Agent for nonpayment in accordance with Section 5.2. of this
 5 Exhibit D to the Agreement.

6 6.2 Disposition of Escrow Materials on Termination. Escrow Agent shall return the Escrow
 7 Materials to Cerner upon the termination of this Escrow Agreement.

8 6.3 Survival of Terms Following Termination. Upon termination of this Escrow Agreement, the
 9 following provisions of this Escrow Agreement shall survive: Section 1.5 - Cerner's Representations,
 10 Section 2.1 - Confidentiality Obligations of Escrow Agent, Article 4 - Ownership and Use of the Escrow
 11 Material, any payment obligations to Escrow Agent, this Section 6.3, Section 7.2 - Indemnification of
 12 Escrow Agent, Section 7.4- Liability of Cerner, and Article 8 - General Provisions.

13 **ARTICLE 7 – LIABILITY AND INDEMNIFICATION OF ESCROW AGENT**

14 7.1 Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction,
 15 instrument, or signature from Cerner reasonably believed by Escrow Agent to be genuine. Neither party
 16 shall be responsible for failure to act as a result of causes beyond the reasonable control of such party.
 17

18 7.2 Indemnification. Cerner shall defend, indemnify and hold harmless Escrow Agent from any and
 19 all liability, damages, costs, or expenses including reasonable attorneys' fees, which may be sustained or
 20 incurred by the Escrow Agent as a result of taking action under this Escrow Agreement, except in the
 21 case of the negligence or willful misconduct of Escrow Agent. The obligations of Cerner under this
 22 section shall survive any termination of this Escrow Agreement and the resignation or removal of
 23 Escrow Agent. Escrow Agent shall promptly notify Cerner in writing of any such action or allegation
 24 and Cerner shall have had sole control of the defense of any such action and all negotiations for its
 25 settlement or compromise.

26 7.3 Liability of Escrow Agent. Escrow Agent shall not, by reason of its execution of this Escrow
 27 Agreement, assume any responsibility or liability for any transactions between Cerner and Licensee.
 28 Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties
 29 shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the
 30 provisions of any agreement other than this Escrow Agreement, including without limitation any other
 31 agreement between the Cerner and a Licensee or any other persons even though reference thereto may
 32 be made herein. The Escrow Agent shall not be liable directly to any third party, including without
 33 limitation any Licensee. The Escrow Agent shall not be liable for any action taken or omitted by it in
 34 good faith except to the extent of the Escrow Agent's negligence or willful misconduct. Escrow Agent's
 35 sole responsibility shall be for the safekeeping of the Escrow Material in accordance with the terms of
 36 this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or
 37 circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction,

1 request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the
2 truth and accuracy of any information contained therein, which Escrow Agent shall believe to be
3 genuine and to have been signed or presented by the person or parties purporting to sign the same. In no
4 event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages
5 (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood
6 of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take
7 any legal action or commence any proceeding in connection with the Escrow Materials, this Escrow
8 Agreement or any License Agreement, or to appear in, prosecute or defend any such legal action or
9 proceeding.

10 The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process
11 entered by any court with respect to the Escrow Material, without determination by the Escrow Agent of
12 such court's jurisdiction in the matter. If any portion of the Escrow Material is at any time attached,
13 garnished or levied upon under any court order, or in case the payment, assignment, transfer,
14 conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case
15 any order, judgment or decree shall be made or entered by any court affecting such property or any part
16 thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon
17 and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected
18 by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies
19 with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any
20 other person or entity by reason of such compliance even though such order, writ, judgment or decree
21 may be subsequently reversed, modified, annulled, set aside or vacated.

22 7.4 Liability of Cerner. IN NO CASE SHALL CERNER BE LIABLE FOR ANY SPECIAL,
23 INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY,
24 BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY.

25
26 **ARTICLE 8 – GENERAL PROVISIONS**

27 8.1 Notices. All notices, approvals, consents, requests, and other communications hereunder shall be
28 in writing and shall be delivered by hand, overnight delivery service, electronic mail or facsimile
29 transmitter (with confirmed receipt) to the following physical address, electronic address or facsimile
30 number set forth in this section, or to such other address as each party may designate for itself by like
31 notice, and shall be deemed to have been given on the date received:

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

1 Cerner Corporation:
2 Cerner Corporation
3 2800 Rockcreek Parkway
4 North Kansas City, MO 64117
5 Attn: General Counsel
6 Phone: 816-221-1024
7 Fax: 816-474-1742

8
9 Escrow Agent:
10 U.S. Bank National Association
11 EP-MN-WS3C
12 60 Livingston Avenue
13 St. Paul, MN 55107
14 Attn: Georgette Kleinbaum
15 Phone: 651 495-3922
16 Fax: 651 495-8096
17 E-mail: georgette.kleinbaum @usbank.com

18
19 In the event that any party should change its address for notice purposes, it shall provide the other
20 parties with written notice of such new address in accordance with the pursuant to the terms of this
21 Section 8.1, but any such change shall not be effective until actually received.

22 8.2 Assignment/Binding Nature. Except as set forth below, neither party shall have the right to
23 assign its rights and obligations under this Escrow Agreement. Cerner may, however, assign and
24 delegate in conjunction with a reorganization or merger, or in conjunction with the sale of substantially
25 all its assets to which this Agreement pertains. This Escrow Agreement shall be binding upon the
26 parties' successors and assigns. Any assignment of this Agreement, by Escrow Agent or Cerner, must be
27 made in its entirety, including all rights and obligations.

28 8.3 Entire Agreement. This Escrow Agreement contains the entire contract between the parties as to
29 the subject matter hereof and supersedes any prior or contemporaneous written or oral agreements
30 between the parties with respect to the subject matter hereof.

31 8.4 Modifications and Waivers. No purported amendment, modification or waiver of any provision
32 of this Escrow Agreement shall be binding unless set forth in a written document signed by all parties
33 (in the case of amendments and modifications) or by the party to be charged thereby (in the case of
34 waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written
35 waiver document and shall not be deemed a waiver of any other term or provision of this Escrow
36 Agreement or of the same circumstance or event upon any recurrence thereof.

37 //

1 8.5 Controlling Law. This Escrow Agreement shall be governed by and interpreted in accordance
2 with the laws of the State of Missouri, without application of its conflict of law provisions.

3 8.6 Patriot Act. The Parties acknowledge that to help the government fight the funding of terrorism
4 and money laundering activities, Federal law requires all financial institutions to obtain, verify and
5 record information that identifies each person who opens an account, and that for a non-individual
6 person such as a business entity, a charity, a Trust or other legal entity, the Escrow Agent will ask for
7 documentation to verify its formation and existence as a legal entity. The Parties further acknowledge
8 that the Escrow Agent may also ask to see financial statements, licenses, identification and authorization
9 documents or other relevant documentation from individuals claiming authority to represent the entity.

10
11 The parties have executed this Escrow Agreement, in the manner appropriate to each, to be effective as
12 of the date on the first page hereof.

13
14 **OWNER:**

15
16 **CERNER CORPORATION**

17
18 _____ /s/

19 Signature: Marc E. Elkins

20 Title: Asst. Secretary

21 Date: 12-30-10

22
23
24 **U.S. BANK NATIONAL ASSOCIATION,**

25 as Escrow Agent

26
27 _____ /s/

28 Signature: Georgette Kleinbaum

29 Title: Assistant Vice President

30 Date: 12-30-10

31 //

32 //

33 //

34 //

35 //

36 //

37 //

1 EXHIBIT E
2 TO AGREEMENT FOR PROVISION OF
3 MAINTENANCE AND SUPPORT SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JULY 1, 2017 THROUGH JUNE 30, 2020
9

10 **I. PASS-THROUGH PROVISIONS**

11 A. The following provisions apply with respect to the software and content ("CPT") provided to
12 the Client by the American Medical Association ("AMA"):

13 1. Client acknowledges that an updated version of CPT in the System is dependent upon
14 continuing contractual relations with the AMA;

15 2. This license is non-transferable, nonexclusive, and for the sole purpose of internal use by
16 Client in the territory in English. The territory is defined as: the United States and its territories and
17 Argentina, Australia, Belgium, Canada, Chile, Colombia, Israel, Italy, Jamaica, Japan, Mexico, New
18 Zealand, Norway, Panama, Portugal, South Africa, Spain, Sweden, Turkey, United Kingdom,
19 Venezuela, and the Cayman Islands;

20 3. Client acknowledges that a license fee or other consideration has been given to create a
21 binding contract;

22 4. Client is prohibited from using CPT or information contained therein in any public
23 electronic bulletin board or public computer-based information system (including the Internet and World
24 Wide Web unless subject to the provisions of the Cerner Business Agreement);

25 5. Client is prohibited from publishing, distributing via the internet or other public computer
26 based information system, translating, or transferring possession of the CPT contained in the System or
27 a copy or portion of it;

28 6. Client is prohibited from creating derivative works (including translation) based on CPT,
29 selling, leasing, licensing the CPT or otherwise making the System or any portion thereof available to
30 any unauthorized party;

31 7. Client is prohibited from making copies of the CPT in the System except for the purposes
32 of back up or archival purposes. CPT is copyrighted by the AMA and all notices of proprietary rights,
33 including trademark and copyright in CPT must appear on all permitted back up or archival copies made
34 by the Client;

35 8. Client shall ensure that anyone who is authorized access to the CPT contained in the
36 System complies with the provisions of this agreement;

37 //

1 9. The CPT licensed from the AMA and contained in THE System is provided "as is," and in
2 no case shall AMA be liable for any special or consequential damages, lost profits for sequence,
3 accuracy or completeness of data, failure to meet Client's requirements, or other legal theory. Client's
4 sole remedy with regard to the System is against Cerner and is set forth in the Cerner business
5 agreement between Cerner and Client. Cerner agrees to correct defects in the System as set forth in the
6 Cerner business agreement. AMA further disclaims all liability for any consequences due to use, misuse
7 or interpretation of information contained in or not contained in CPT;

8 10. Client's license is subject to termination in the event of default;

9 11. In the event that a provision is determined to violate any law or is unenforceable, the
10 remainder of this agreement shall remain in full force;

11 12. Client is subject to the following U.S. Government rights: U.S. Government Rights. This
12 product includes CPT which is commercial technical data and/or commercial computer software and/or
13 commercial computer software documentation, as applicable which were developed exclusively at
14 private expense by the American Medical Association, 515 North State Street, Chicago, Illinois 60610.
15 U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical
16 data and/or commercial computer software and/or commercial computer software documentation are
17 subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the
18 restrictions of DFARS 252.227-7202-1(a) (June 1995) and DFARS 252.227-7202-3(a) (June 1995), as
19 applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR
20 52.227-14 (June 1987) and or subject to the restricted rights provisions of FAR 52.227-14 (June 1987)
21 and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-
22 Department of Defense Federal procurements.

23 13. CPT is copyrighted to the AMA and CPT is a registered trademark of the AMA.

24 B. Where pass-through provisions are applicable to third party products and services, these
25 provisions are referenced by a pass-through code, and that code can be entered at
26 <https://passthroughprovisions.cerner.com/> to view the pass-through provisions. The current version of
27 the pass through provisions is referenced below.

28
29 **BUSINESS OBJECTS AMERICAS PASS-THROUGH PROVISIONS**

30
31 **GRANT OF RIGHTS:** Subject to Licensee's payment as invoiced and compliance with the terms of this
32 Agreement, Business Objects Americas ("BOA") grants Licensee a non-exclusive and non-transferable
33 license to use the Software on BOA supported operating environments for its internal purposes only.

34
35 **RESTRICTIONS:** Licensee may not distribute the Software, including by electronic transfer from one
36 computer to another over a network or otherwise, except as necessary for use of the Authorized Copies
37 by the Authorized Users. Licensee may not decompile, reverse engineer, disassemble, or otherwise

1 reduce the Software to a human perceivable form. Licensee may not modify, adapt, translate, rent, lease,
2 loan, resell, distribute, or create derivative works based upon the Software. Licensee may permit access
3 to the Software only to the Authorized Users, and Licensee may make only Authorized Copies of the
4 Software. Licensee may add additional users and make additional copies only upon payment of an
5 additional license fee. Licensee may not release the results of any benchmark of the Software to any
6 third party without the prior written approval of BOA for each such release. Licensee shall comply with
7 all laws that are applicable to the Software including, without limitation, export laws.

8
9 **LIMITED WARRANTY:** The Software is licensed and otherwise provided “AS IS”. If any materials
10 or media in this package are defective, return them within ninety (90) days of the original date of invoice,
11 and BOA will replace them at no charge. THESE WARRANTIES ARE IN LIEU OF ANY OTHER
12 WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED
13 WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ERROR-
14 FREE OPERATION. This warranty gives you specific legal rights, and you may have other legal rights,
15 which vary from state to state.

16
17 **LIMITATION OF LIABILITY:** IN NO EVENT SHALL BOA OR ITS LICENSORS BE LIABLE TO
18 LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOSS OF REVENUE,
19 LOSS OF DATA OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES
20 ARISING OUT OF LICENSEE’S USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF
21 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOA OR ITS LICENSORS’ LIABILITY
22 TO LICENSEE FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE
23 FORM OF THE ACTION, SHALL BE LIMITED TO LICENSEE’S ACTUAL DAMAGES, BUT IN
24 NO EVENT SHALL SUCH DAMAGES EXCEED THE AMOUNT PAID BY LICENSEE FOR THE
25 SOFTWARE. Some jurisdictions do not allow excluding or limiting implied warranties or limiting
26 liability for incidental or consequential damages, and some jurisdictions have special statutory consumer
27 protection provisions, which may supersede these limitations. As a result, this limitation of liability may
28 not apply to Licensee if prohibited by law.

29
30 **GENERAL:** This Agreement shall be governed by the laws of California, excluding choice of law
31 principles. The United Nations Convention on Contracts for the Sale of Goods shall not apply to this
32 Agreement. Any modification to the Agreement terms shall be subject to BOA’s prior written approval.

33
34 **GOVERNMENT USE:** The Software and accompanying documentation are deemed to be “commercial
35 computer software” and “commercial computer software documentation,” respectively, pursuant to
36 DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction
37 release, performance, display or disclosure of the Software and accompanying documentation by the U.S.

1 Government shall be governed solely by this Agreement and shall be prohibited except to the extent
2 expressly permitted by the terms of this Agreement.

3
4 **QUESTIONS:** If Licensee has any questions concerning the terms or conditions of this
5 Agreement, contact: Business Objects Americas, 2870 Zanker Road, San Jose, California 95134 or call
6 (408) 953-6000. Business Objects logo is a trademark of Business Objects SA. Worldwide rights
7 reserved.

8
9
10 **Oracle Corporation Pass**
11 **Through Attachment Public Sector Entities**
12 **Full Use Distribution Agreement**

13 A. Sublicense Use Restrictions: For purposes of this pass through attachment, Program shall mean
14 the Oracle software and databases. Upon license of Programs from Cerner, Client has been granted a
15 sublicense to use the Program. Oracle Corporation (“Oracle”) or its licensor retains all ownership and
16 intellectual property rights to the Programs. Client shall with respect to Oracle (or its licensor’s)
17 products and services, including the Program, acquired from Cerner:

18 1. limit use of the Programs to the Client’s legal entity only;
19 2. restrict use of the Programs to Client’s internal business operations, subject to the terms of
20 the license agreement, including this pass through attachment, the license definitions and rules set forth
21 in the program documentation and the Oracle Partner Ordering Policy;

22 3. not (i) use the Programs for rental, timesharing, subscription service, hosting, or
23 outsourcing; (ii) remove or modify any Program markings or any notice of Oracle’s or its licensors’
24 proprietary rights; (iii) make the Programs available in any manner to any third party for use in the third
25 party’s business operations (unless such access is expressly permitted for the specified program license);
26 and (iv) pass title to the Programs to Client or any other party;

27 4. not reverse engineer (unless required by law for interoperability), disassemble or decompile
28 the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar
29 material produced by programs) and duplicate the Programs except for a sufficient number of copies of
30 each program for Client’s licensed use and one copy of each program media;

31 5. restrict use of any additional programs that Oracle may include with the Programs ordered
32 for trial, non- production purposes only. Client may not use such additional programs included with an
33 order to provide training or attend training provided by Cerner or a third party on the content and/or
34 functionality of the Programs. Client has thirty (30) days from the delivery date to evaluate the
35 additional programs, subject to the terms of the license agreement. If Client decides to use any
36 additional programs after the thirty day trial period, Client must obtain a license for such programs. If
37 Client decides not to obtain a license for the additional programs after the thirty day trial period, Client

1 will cease using and will delete any such programs from Client’s computer systems. Additional
2 programs included with an order are provided “as is” and neither Cerner nor Oracle provides technical
3 support or offers any warranties for these programs;

4 6. prohibit publication of any results of benchmark tests run on the Programs;

5 7. comply with any and all relevant export laws and regulations of the United States and other
6 applicable export and import laws to assure that neither the Programs nor any direct product thereof, are
7 exported, directly or indirectly, in violation of applicable laws;

8 8. permit Cerner to audit Client’s use of the Programs, provide reasonable assistance
9 and access to information in the course of such audit, and permit report of the audit results to Oracle or
10 otherwise permit Cerner to assign Cerner’s right to audit Client’s use of the Programs to Oracle. Oracle
11 shall not be responsible for any costs incurred during the audit; and

12 9. at the termination of the sublicense, discontinue use and destroy or return to Cerner all
13 copies of the Program and documentation.

14 B. Ancillary Programs, Third Party Technology and Source Code. Ancillary programs shall be
15 those third party materials specified in the program documentation which programs may only be used
16 for the purposes of installing or operating the programs with which the ancillary programs are delivered.
17 In addition, third party technology that may be appropriate or necessary for use with some Oracle
18 Programs is specified in the program documentation and such third party technology is licensed to
19 Client under the terms of the third party technology license agreement specified in the program
20 documentation and not under the terms of this license agreement, including this pass through
21 attachment.

22 1. Some Programs may include source code that Oracle may provide as part of its
23 standard shipment of such Programs, which source code shall be governed by the terms of the license
24 agreement, including this pass through attachment.

25 2. The provisions of the Uniform Computer Information Transactions Act shall not apply to
26 this sublicense.

27 C. Use by Third Parties. Client may permit its agents or contractors (including, without limitation,
28 outsourcers) to use the Programs on Client’s behalf for the purposes set forth herein, subject to the terms
29 of the license agreement, including this pass through attachment, provided that Client remains
30 responsible for such agent’s, contractor’s and outsourcer’s compliance with this pass through attachment
31 in such use.

32 D. Assignment. Client may not assign, give or transfer the Program and/or any services ordered or
33 an interest in them to another individual or entity (in the event Client grants a security interest in the
34 Programs and/or any services, the secured party has no right to use or transfer the Programs and/or any
35 services). If Client decides to finance its acquisition of the Programs and/or any services, Client must
36 follow Oracle’s policies regarding financing which are available at <http://oracle.com/contracts>.

37 //

1 E. Technical Support. Technical support, if ordered from Oracle, is provided under Oracle's
 2 technical support policies in effect at the time the services are provided; Oracle's technical support
 3 policies can be accessed at <http://oracle.com/contracts>. Client acknowledges that Oracle's technical
 4 support policies are incorporated into this pass through attachment by reference. Should Client decide
 5 not to purchase technical support at the time of the license, then Client will be required to pay
 6 reinstatement fees to Oracle in accordance with Oracle's current technical support policies if Client
 7 decides to purchase support at a later date. Any third party firms retained by Client to provide
 8 computer consulting services are independent of Oracle and are not Oracle's agents; Oracle is not liable
 9 for nor bound by any acts of any such third party firm.

10 F. Future Availability. Client agrees that Client has not relied on the future availability of any
 11 programs or updates in entering into the license agreement; however (a) if Client orders technical
 12 support from Oracle for the programs, the preceding sentence does not relieve Oracle of its obligation to
 13 provide updates under such order, if-and-when available, in accordance with Oracle's then current
 14 technical support policies, and (b) the preceding sentence does not change the rights granted to Client
 15 for any program licensed under the license agreement, per the terms of such agreement.

16 G. Limitation of Liability and Third Party Beneficiary. To the extent permitted by applicable law,
 17 Oracle shall not be liable for (a) any damages, whether direct, indirect, special, incidental, punitive or
 18 consequential, or (b) any loss of profits, revenue, data or data use, arising from Client's use of the
 19 Programs. With respect to the Oracle products and services, Oracle shall be a third party beneficiary of
 20 the provisions of the license agreement, including this pass through attachment.

21
 22 **Aware, Inc.**

23 **End-User License Agreement**

24 A. **Use**. For each copy of the Licensed Software you have purchased, you are granted a
 25 nontransferable nonexclusive license to install and use one copy of the Licensed Software as integrated
 26 with Cerner products as provided by Cerner on a single personal computer or workstation, or on a single
 27 server, as applicable. You may also make one copy of the Licensed Software for archival purposes.

28 B. **Restrictions**. Except as expressly authorized by this License Agreement, you may not copy,
 29 modify, translate, reverse engineer, decompile or disassemble (except as applicable law expressly
 30 prohibits this restriction) the Licensed Software. You may not sell, license, reproduce or redistribute the
 31 Licensed Software to others. You may not use the Licensed Software for any purpose other than
 32 internal business use. You may, however, transfer the Licensed Software on a permanent basis provided
 33 you transfer the Licensed Software, this License Agreement and all documentation and media and you
 34 do not retain any copies.

35 C. **Intellectual Property Rights**. The Licensed Software and accompanying documentation are
 36 protected by both copyright law and international treaties. Aware and its licensors own all intellectual
 37 property rights in the Licensed Software and accompanying documentation, and the structure,

1 organization and code contain valuable trade secrets of Aware and its licensors. Aware retains all rights
2 not expressly granted hereunder.

3 **D. Termination.** This License is effective until terminated. This License will terminate
4 immediately without notice and without judicial action if you fail to comply with any provision of this
5 License. Upon such termination you must destroy the Licensed Software, all accompanying written
6 materials and all copies thereof.

7 **E. Export Law Assurance.** You agree that neither the Licensed Software nor any direct product
8 thereof is being or will be exported, shipped, transferred or re-exported, directly or indirectly, into any
9 country without complying with the export laws of the United States.

10 **F. Limitation of Aware's Liability.** IN NO EVENT SHALL AWARE OR ANY OF ITS
11 LICENSORS BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT
12 DAMAGES (INCLUDING, BUT NOT LIMITED TO, COSTS OF PROCURING SUBSTITUTE
13 PRODUCTS OR SERVICES, DAMAGES FOR LOSS OF PROFITS OR REVENUE, BUSINESS
14 INTERRUPTION, LOSS OF INFORMATION OR OTHER PECUNIARY LOSS) ARISING OUT OF
15 THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, HOWEVER CAUSED AND
16 UNDER ANY THEORY OF LIABILITY, EVEN IF AWARE HAS BEEN ADVISED OF THE
17 POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL AWARE'S LIABILITY FOR MONEY
18 DAMAGES EXCEED THE AMOUNT PAID BY YOU FOR THE LICENSED SOFTWARE
19 PRODUCT FROM WHICH THE CLAIM AROSE.

20 **G. General.** This License will be construed under the laws of the Commonwealth of
21 Massachusetts, except for the body of law dealing with conflicts of law. If any provision of this License
22 shall be held by a court of competent jurisdiction to be contrary to law; that provision will be enforced
23 to the maximum extent permissible and the remaining provisions of this License will remain in full force
24 and effect. If you are a U.S. Government user then the Licensed Software is "Commercial Computer
25 Software" as defined in the "Rights in Noncommercial Computer Software and Noncommercial
26 Computer Software Documentation" clause at DFARS 252 227-7014 and is provided with only these
27 rights set forth in this agreement. Manufacturer: Aware, Inc., 40 Middlesex Turnpike, Bedford,
28 Massachusetts 01730.

30 HP PASS THROUGH TERMS

31
32 HP's obligations with respect to HP Branded Products or services procured by an end-user customer
33 (hereinafter "Customer") from authorized HP Business Partners are limited to the terms and conditions
34 in these HP PASS THROUGH TERMS ("Terms") and the specific Software license or warranty
35 information included with the Products. HP is not responsible for the acts or omissions of HP Business
36 Partners, for any obligations undertaken or representations that they may make, or for any other products
37 or services that they supply to Customer.

1 A. HP BASE TERMS

2 1. DEFINITIONS

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

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

7 c. *Hardware* means computer and related devices and equipment, related documentation,
8 accessories, parts, and upgrades.

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

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

14 f. *Product* means the HP Branded version of Hardware and Software available and listed
15 in HP’s standard price list at the time of HP Business Partner’s acceptance of the Customer order and
16 including products that are modified, altered, or customized, by HP, to meet Customer requirements
17 (“Custom Products”).

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

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

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

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

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

36 //

37 //

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

4 2. **WARRANTY PROVISIONS**

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

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

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

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

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

28 e. Non-HP Branded Products and Support. HP provides third-party products, software,
29 and services that are not HP Branded “AS IS” without warranties of any kind, although the original
30 manufacturers or third party suppliers of such products, software and services may provide their own
31 warranties.

32 f. Disclaimer. **THE WARRANTIES AND ANY ASSOCIATED REMEDIES**
33 **EXPRESSED OR REFERENCED IN THESE TERMS ARE EXCLUSIVE. NO OTHER**
34 **WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE**
35 **INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT**
36 **ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS**

37 //

1 INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A
2 PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3 3. INTELLECTUAL PROPERTY INFRINGEMENT

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

- 7 1) promptly notifies HP of the claim in writing;
- 8 2) cooperates with HP in the defense of the claim; and
- 9 3) grants HP sole control of the defense or settlement of the claim.
- 10 4) HP will pay infringement claim defense costs, HP-negotiated settlement amounts,

11 and court-awarded damages.

12 b. Remedies. If such a claim appears likely, then HP may modify the HP Branded
13 Products or Support, procure any necessary license, or replace the affected item with one that is at least
14 functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP
15 will issue Customer a refund equal to:

- 16 1) the purchase price paid for the affected item if within one year of delivery, or the
17 Customer's net book value thereafter; or
- 18 2) if the claim relates to infringing Support, the lesser of twelve (12) months charges
19 for the claimed infringing Support or the amount paid by Customer for that Support.

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

- 21 1) HP's compliance with Customer or third party designs, specifications, instructions,
22 or technical information;
- 23 2) modifications made by Customer or a third party;
- 24 3) Customer's non-compliance with the Specifications or the Transaction Documents;

25 or

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

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

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

34 5. RESTRICTED USE - Products, Support, and Deliverables are not specifically designed,
35 manufactured, or intended for use as parts, components, or assemblies for the planning, construction,
36 maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products, Support, or

37 //

1 Deliverables purchased by Customer are used for these applications and will indemnify and hold HP
2 harmless from all loss, damage, expense, or liability in connection with such use.

3 6. LIMITATION OF LIABILITY AND REMEDIES

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

7 1) the Product; or

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

10 b. Disclaimer of Consequential Damages. EXCEPT FOR CLAIMS BY A PARTY FOR
11 INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER
12 PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT,
13 SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING, WITHOUT
14 LIMITATION, DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO
15 REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR
16 SOFTWARE RESTORATION.

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

21 7. GENERAL

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

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

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

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

35 e. Governing Law. Disputes arising from these Terms will be governed by the law of the
36 jurisdiction of the principal place of business of the HP Affiliate accepting the order to which the
37 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.

1 HP Branded Hardware may contain used parts that are equivalent to new in performance and reliability
2 and are warranted as new.

3 4. OPERATION - HP does not warrant that the operation of Hardware will be uninterrupted
4 or error free, or that Hardware will operate in Hardware and Software combinations other than as
5 expressly required by HP in the Product Specifications or that Hardware will meet requirements
6 specified by Customer. Customer may only use firmware embedded in the Hardware to enable the
7 Hardware to function in accordance with its Specifications.

8 5. EXCLUSIVE REMEDIES - Upon notice of a valid warranty claim during the warranty
9 period and if provided reasonable access to the HP Branded Hardware, HP will, at its option, repair a
10 defect in the HP Branded Hardware, or correct a material non-conformance to Specifications, or replace
11 such Hardware with Hardware of equal or better functional performance. If HP is unable, within a
12 reasonable time, to complete the repair or correction, or replace such HP Branded Hardware, Customer
13 will be entitled to a refund of the purchase price paid upon prompt return of such Hardware to HP.
14 Subject to the terms in Customer's specific Product warranty statement Customer will pay expenses for
15 return of such Hardware to HP. HP will pay expenses for shipment of repaired or replacement Hardware
16 to Customer. This sub-section states HP's entire liability for Hardware warranty claims.

17 C. HP SOFTWARE LICENSE TERMS

18 1. LICENSE GRANT - HP grants Customer a non-exclusive, non-transferable license to
19 "Use", in object code form, the Version or Release of the HP Branded Software delivered from an HP
20 accepted order. For purposes of these Terms, unless otherwise specified in the Transaction Documents,
21 "Use" means to install, store, load, execute, and display one copy of the Software on one device at a
22 time for Customer's internal business purposes. Customer's Use of such Software is subject to these
23 license terms and the Use restrictions and authorizations for the Software specified by HP in Transaction
24 Documents that accompany or are otherwise made available to Customer with the Software (the
25 "Software License"). In the event of any conflict among such terms, the order of precedence will be the
26 accompanying Transaction Documents then the terms of this section.

27 2. THIRD-PARTY SOFTWARE - For non-HP Branded Software, the third party supplier's
28 license terms and use restrictions found in the Transaction Documents that may accompany that
29 Software will solely govern its Use.

30 3. OWNERSHIP - This Software License confers no title or ownership and is not a sale of any
31 rights in the Software. Third-party suppliers are intended beneficiaries under these Terms and
32 independently may protect their rights in the Software in the event of any infringement. All rights not
33 expressly granted to Customer are reserved solely to HP or its suppliers.

34 4. ACCEPTANCE - Customer accepts Software upon delivery.

35 5. UPGRADES - Software Versions or maintenance updates, if available, may be ordered
36 separately or may be available through Software Support. HP reserves the right to require additional
37 licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the

1 Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a
2 new Software Version, Customer's Software License for the earlier Version shall terminate. Software
3 Versions are subject to the license terms in effect on the date that HP delivers or makes the Version
4 available to Customer.

5 6. LICENSE RESTRICTIONS

6 a. Use Restrictions. Customer may not exceed the number of licenses, agents, tiers, nodes,
7 seats, or other Use restrictions or authorizations agreed to and paid for by Customer. Some Software
8 may require license keys or contain other technical protection measures. Customer acknowledges that
9 HP may monitor Customer's compliance with Use restrictions and authorizations remotely, or otherwise.
10 If HP makes a license management program available which records and reports license usage
11 information, Customer agrees to appropriately install, configure and execute such license management
12 program beginning no later than one hundred and eighty (180) days from the date it is made available to
13 Customer and continuing for the period that the software is used.

14 b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make
15 copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential
16 step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs
17 such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may
18 not operate such backup installation of the Software without paying an additional license fee, except in
19 cases where the original device becomes inoperable. If a copy is activated on a backup device in
20 response to failure of the original device, the Use on the backup device must be discontinued when the
21 original or replacement device becomes operable. Customer may not copy the Software onto or
22 otherwise Use or make it available on, to, or through any public or external distributed network.
23 Licenses that allow Use over Customer's intranet require restricted access by authorized users only.

24 c. Copyright Notice. Customer must reproduce all copyright notices that appear in or on
25 the Software (including documentation) on all permitted copies or adaptations. Copies of documentation
26 are limited to internal use.

27 d. Designated System. Notwithstanding anything to the contrary herein, the Software
28 License for certain Software, as identified in Transaction Documents, is non-transferable and for use
29 only on a computer system owned, controlled, or operated by or solely on behalf of Customer and may
30 be further identified by HP by the combination of a unique number and a specific system type
31 ("Designated System") and such license will terminate in the event of a change in either the system
32 number or system type, an unauthorized relocation, or if the Designated System ceases to be within the
33 possession or control of Customer.

34 e. OS Software. Operating system Software may only be used when operating the
35 associated Hardware in configurations as approved, sold, or subsequently upgraded by HP or an
36 authorized HP business partner.

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1 f. Changes. Customer will not modify, reverse engineer, disassemble, decrypt, decompile,
2 or make derivative works of the Software. Where Customer has other rights mandated under statute,
3 Customer will provide HP with reasonably detailed information regarding any intended modifications,
4 reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.

5 g. Use for Service Provision Extending the Use of Software to any person or entity other
6 than Customer as a function of providing services, (i.e.; making the Software available through a
7 commercial timesharing or service bureau) must be authorized in writing by HP prior to such use and
8 may require additional licenses and fees.

9 7. LICENSE TERM AND TERMINATION - Unless otherwise specified in a Transaction
10 Document, the Software License granted Customer will be perpetual, provided however that HP may
11 terminate the Software License upon notice for failure to comply with these Terms. Immediately upon
12 termination of the Software License or upon expiration of any individual limited term license, Customer
13 will destroy the Software and all copies of the Software subject to the termination or expiration or return
14 them to HP. Customer shall remove and destroy or return to HP any copies of the Software that are
15 merged into adaptations, except for individual pieces of data in Customer's database. Customer may
16 retain one copy of the Software subsequent to termination solely for archival purposes only. At HP's
17 request, Customer will certify in writing to HP that Customer has complied with these requirements.

18 8. LICENSE TRANSFER - Customer may not sublicense, assign, transfer, rent, or lease the
19 Software or the Software License to any other party except as permitted in this section. Except as
20 provided in sub-section C.6.d above, HP Branded Software licenses are transferable subject to HP's
21 prior written authorization and payment to HP of any applicable fees or compliance with applicable
22 third party terms. Upon transfer of the Software License, Customer's rights under the License will
23 terminate and Customer will immediately deliver the Software and all copies to the transferee. The
24 transferee must agree in writing to the terms of the Software License, and, upon such agreement, the
25 transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer
26 firmware only upon transfer of the associated Hardware.

27 9. U.S. FEDERAL GOVERNMENT USE - If the Software is licensed for use in the
28 performance of a U.S. Government prime contract or subcontract, Customer agrees that, consistent with
29 FAR 12.211 and 12.212, commercial computer Software, computer Software documentation and
30 technical data for commercial items are licensed under HP's standard commercial license.

31 10. COMPLIANCE - Customer agrees that HP may audit Customer's compliance with the
32 Software License terms. Any such audit would be at HP's expense, require reasonable notice, and would
33 be performed during normal business hours. If an audit reveals underpayments then Customer will
34 immediately pay HP such underpayments together with the costs reasonably incurred by HP in
35 connection with the audit and seeking compliance with this sub-section.

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37 //

1 11. WARRANTY - HP Branded Software will materially conform to its Specifications. If a
2 warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) days
3 from the delivery date.

4 12. VIRUS WARRANTY - HP warrants that any physical media containing HP Branded
5 Software will be shipped free of viruses.

6 13. WARRANTY LIMITATION - HP does not warrant that the operation of Software will be
7 uninterrupted or error free, or that Software will operate in Hardware and Software combinations other
8 than as expressly required by HP in the Product Specifications or that Software will meet requirements
9 specified by Customer.

10 14. EXCLUSIVE REMEDIES - If notified of a valid warranty claim during the warranty
11 period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such
12 Software. If HP is unable, within a reasonable time, to complete the correction, or replace such
13 Software, Customer will be entitled to a refund of the purchase price paid upon prompt return of such
14 Software to HP. Customer will pay expenses for return of such Software to HP. HP will pay expenses
15 for shipment of repaired or replacement Software to Customer. This sub-section C.14 states HP's entire
16 liability for warranty claims.

17 15. IMPLIED LICENSE - There are no implied licenses.

18 16. FREWARE AND OPEN SOURCE - Notwithstanding other statements in these Terms,
19 Software licensed without fee or charge also referred to as Freeware and/or Open Source is provided
20 "AS IS" without any warranties or indemnities of any kind. Software provided under any open source
21 licensing model is governed solely by such open source licensing terms which will prevail over these
22 Terms.

23 D. HP SUPPORT TERMS

24 1. SUPPORT SERVICES

25 a. Description of Support. HP will deliver Support according to the description of the
26 offering, eligibility requirements, service limitations, and Customer responsibilities described in the
27 relevant Transaction Documents.

28 b. Ordering Support. Customer may order Support:

29 1) at the time of Product purchase, or prior to installation of Products for which
30 Support is being purchased, for a fixed term (may be referred to as "HP Care Pack");

31 2) after the time of Product purchase, for either a fixed term or an initial term that may
32 be renewed (may be referred to as "HP Contractual Services");

33 3) on a per-event basis; or

34 4) at any time, when agreed non-standard Support has been offered by HP for the
35 Customer according to a Statement of Work (also known as "Custom Support") or as otherwise offered
36 by HP.

37 //

1 c. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for
 2 the unused prepaid Support, less any early termination fees or subject to any restrictions set forth in a
 3 Transaction Document.

4 d. Return to Support. If Customer allows Support to lapse, additional fees may be required
 5 to resume Support or Customer may be required to perform certain hardware or software upgrades. HP
 6 will review and assess whether such fees are required, and explain these to HP Business Partner and
 7 Customer at the time of the request to return to Support.

8 e. Local Availability. Customer may order Support from HP's current Support offerings.
 9 Some offerings, features, and coverage (and related Products) may not be available in all countries or
 10 areas.

11 f. Support Warranty. HP warrants that it will perform Support using generally recognized
 12 commercial practices and standards.

13 g. Exclusive Remedies. HP will re-perform Support not performed in accordance with the
 14 warranty herein. This sub-section D.1.g states HP's entire liability for Support warranty claims.

15 2. PRICING, SERVICES, AVAILABILITY, AND INVOICING

16 a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document,
 17 HP may change Support prices upon sixty (60) day written notice.

18 b. Additional Services. Additional services performed by HP at Customer's request that
 19 are not included in Customer's purchased Support will be chargeable at the applicable published service
 20 rates for the country where the service is performed. Such additional services include but are not limited
 21 to:

22 1) Customer requests for Support after HP's local standard business hours (unless
 23 Customer has specifically purchased after-hours coverage for the requested Support);

24 2) Customer requests for repair for damage or failure attributable to the causes
 25 specified in sub-section A.2.d of the HP Base Terms ("Warranty Exclusions"); and

26 3) Customer requests for Support where Customer does not, in HP's reasonable
 27 determination, meet the applicable prerequisites and eligibility requirements for Support.

28 c. Local Availability. Support outside of the applicable HP coverage areas may be subject
 29 to travel charges, longer response times, reduced restoration or repair commitments, and reduced
 30 coverage hours.

31 d. Invoicing. Invoices for Support will be issued in advance of the Support period. HP
 32 Support invoices and related documentation will be produced in accordance with HP system standards.
 33 Additional levels of detail requested by Customer may be chargeable.

34 3. SITE AND PRODUCT ACCESS - Customer shall provide HP access to the Products
 35 covered under Support; adequate working space and facilities within a reasonable distance of the
 36 Products; access to and use of information, customer resources, and facilities as reasonably determined
 37 necessary by HP to service the Products; and other access requirements described in the relevant

1 Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide
2 Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates.
3 Customer is responsible for removing any Products ineligible for Support to allow HP to perform
4 Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge
5 Customer for the extra work at HP's published service rates.

6 4. STANDARD SUPPORT PRODUCT ELIGIBILITY

7 a. Minimum Configuration for Support. Customer must purchase the same level of
8 Support and for the same coverage period for: all Products within a minimum supportable system unit
9 (i.e. all components within a server, storage, or network device) to allow for proper execution of
10 standalone and operating system diagnostics for the configuration.

11 b. Eligibility. For initial and on-going Support eligibility Customer must maintain all
12 Products and associated hardware and software at the latest HP-specified configuration and revision
13 levels and in HP's reasonable opinion, in good operating condition.

14 c. Modifications. Customer will allow HP, at HP's request and at no additional charge, to
15 modify Products to improve operation, supportability, and reliability, or to meet legal requirements.

16 d. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for
17 loaner units if provided at HP's discretion as part of Support or warranty services and such units will be
18 returned to HP without lien or encumbrance at the end of the loaner period.

19 e. Relocation. Customer is responsible for moving Products. If Customer moves the
20 Products to a new location, HP may charge additional Support fees and modify the response times, and
21 Customer may be required to execute amended or new Transaction Documents. If Customer moves
22 Products to another country, Support shall be subject to availability in the destination country.
23 Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.

24 f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set
25 forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such
26 Products within the maximum usage limit.

27 g. Multi-Vendor Support. HP provides Support for certain non-HP Branded Products. The
28 relevant Transaction Document will specify availability and coverage levels, and govern delivery of
29 multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may
30 discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide
31 support for such Products.

32 5. PROPRIETARY SERVICE TOOLS - HP will require Customer's use of certain system and
33 network diagnostic and maintenance programs ("Proprietary Service Tools") for delivery of Support
34 under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property
35 of HP, are provided "as is," and include, but are not limited to: remote fault management software,
36 network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known
37 as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may

1 only use the Proprietary Service Tools during the applicable Support coverage period and only as
 2 allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the
 3 Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service
 4 Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

5 a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites,
 6 and assist HP in running them;

7 b. install Proprietary Service Tools, including installation of any required updates and
 8 patches;

9 c. use the electronic data transfer capability to inform HP of events identified by the
 10 software;

11 d. if required, purchase HP-specified remote connection hardware for systems with
 12 remote diagnosis service; and

13 e. provide remote connectivity through an HP approved communications line.

14 6. CUSTOMER RESPONSIBILITIES

15 a. Data Backup. To reconstruct lost or altered Customer files, data, or programs,
 16 Customer must maintain a separate backup system or procedure that is not dependent on the Products
 17 under Support.

18 b. Temporary Workarounds. Customer will implement temporary procedures or
 19 workarounds provided by HP while HP works on permanent solutions.

20 c. Hazardous Environment. Customer will notify HP if Customer uses Products in an
 21 environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may
 22 require Customer to maintain such Products under HP supervision and may postpone service until
 23 Customer remedies such hazards.

24 d. Authorized Representative. Customer will have a representative present when HP
 25 provides Support at Customer's site.

26 e. Product List. Customer will create and maintain a list of all Products under Support
 27 including: the location of the Products, serial numbers, the HP-designated system identifiers, and
 28 coverage levels. Customer shall keep the list updated during the applicable Support period.

29 f. Documentation. If Customer purchases a Support offering that includes documentation
 30 updates, Customer may copy such updates only for systems under such coverage. Copies must include
 31 appropriate HP Trademark and copyright notices.

32 7. SUPPORTED SOFTWARE - Customer may purchase available Support for HP Branded
 33 Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for
 34 such Software. HP will be under no obligation to provide Support due to any alterations or
 35 modifications to the Software not authorized by HP or for Software for which Customer cannot provide
 36 a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the
 37 current Version and the immediately preceding Version of HP Branded Software, and then only when

1 HP Branded Software is used with Hardware or Software included in HP-specified configurations at the
2 specified Version level.

3 8. ACCESSORIES AND PARTS AND MISCELLANEOUS

4 a. Compatible Cables and Connectors. Customer will connect Products covered under
5 Support with cables or connectors (including fiber optics if applicable) that are compatible with the
6 system, according to the manufacturer's operating manual.

7 b. Support for Accessories. HP may provide Support for cables, connectors, interfaces,
8 and other accessories if Customer purchases
9 Support for such accessories at the same Hardware service level purchased for the Products with which
10 they are used.

11 c. Consumables. Support does not include the delivery, return, replacement, or installation
12 of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media,
13 print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.

14 d. Replacement Parts. Parts provided under Support may be whole unit replacements or be
15 new or functionally equivalent to new in performance and reliability and warranted as new. Replaced
16 parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable
17 charges.

18 e. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-
19 authorized service providers to assist in the provision of Support.

20 9. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

21 a. Designated Callers. Customer will identify a reasonable number of callers, as
22 determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call
23 centers ("Solution Centers").

24 b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate
25 technical aptitude in system administration, system management, and, if applicable, network
26 administration and management and diagnostic testing. HP may review and discuss with Customer any
27 Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution
28 Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general
29 experience and training, the Customer may be required to replace that Designated Caller. All Designated
30 Callers must have the proper system identifier as provided in the Transaction Documents or by HP when
31 Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.

32 c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for
33 certain types of Support. Customer may access specified areas of the HP IT Resource Center. File
34 Transfer Protocol access is required for some electronic services. Customer employees who submit HP
35 Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in
36 sub-section D.9.b above.

37 //

1 d. Telecommunication Charges. Customer will pay for all telecommunication charges
 2 associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet
 3 connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service
 4 Tools.

5
 6 **LICENSE AGREEMENT AND LIMITED PRODUCT WARRANTY**
 7 **RED HAT® ENTERPRISE LINUX® AND RED HAT® APPLICATIONS**

8 A. This agreement governs the use of the Software and any updates to the Software, regardless of
 9 the delivery mechanism. The Software is a collective work under U.S. Copyright Law. Subject to the
 10 following terms, Red Hat, Inc. (“Red Hat”) grants to the user (“Customer”) a license to this collective
 11 work pursuant to the GNU General Public License.

12 1. **The Software.** Red Hat Enterprise Linux and Red Hat Applications (the “Software”) are
 13 either a modular operating system or application consisting of hundreds of software components. The
 14 end user license agreement for each component is located in the component's source code. With the
 15 exception of certain image files identified in Section 2 below, the license terms for the components
 16 permit Customer to copy, modify, and redistribute the component, in both source code and binary code
 17 forms. This agreement does not limit Customer's rights under, or grant Customer rights that supersede,
 18 the license terms of any particular component.

19 2. **Intellectual Property Rights.** The Software and each of its components, including the
 20 source code, documentation, appearance, structure and organization are owned by Red Hat and others
 21 and are protected under copyright and other laws. Title to the Software and any component, or to any
 22 copy, modification, or merged portion shall remain with the aforementioned, subject to the applicable
 23 license. The “Red Hat” trademark and the “Shadowman” logo are registered trademarks of Red Hat in
 24 the U.S. and other countries. This agreement does not permit Customer to distribute the Software using
 25 Red Hat's trademarks. Customer should read the information found at
 26 <http://www.redhat.com/about/corporate/trademark/> before distributing a copy of the Software,
 27 regardless of whether it has been modified. If Customer makes a commercial redistribution of the
 28 Software, unless a separate agreement with Red Hat is executed or other permission granted, then
 29 Customer must modify any files identified as “REDHAT-LOGOS” and “anaconda- images” to remove
 30 all images containing the “Red Hat” trademark or the “Shadowman” logo. Merely deleting these files
 31 may corrupt the Software.

32 3. **Limited Warranty.** Except as specifically stated in this agreement or a license for a
 33 particular component, to the maximum extent permitted under applicable law, the Software and the
 34 components are provided and licensed “as is” without warranty of any kind, expressed or implied,
 35 including the implied warranties of merchantability, non-infringement or fitness for a particular purpose.
 36 Red Hat warrants that the media on which the Software is furnished will be free from defects in
 37 materials and manufacture under normal use for a period of 30 days from the date of delivery to

1 Customer. Red Hat does not warrant that the functions contained in the Software will meet Customer's
2 requirements or that the operation of the Software will be entirely error free or appear precisely as
3 described in the accompanying documentation. This warranty extends only to the party that purchases
4 the Software from Red Hat or a Red Hat authorized distributor.

5 **4. Limitation of Remedies and Liability.** To the maximum extent permitted by applicable
6 law, the remedies described below are accepted by Customer as its only remedies. Red Hat's entire
7 liability, and Customer's exclusive remedies, shall be: If the Software media is defective, Customer may
8 return it within 30 days of delivery along with a copy of Customer's payment receipt and Red Hat, at its
9 option, will replace it or refund the money paid by Customer for the Software. To the maximum extent
10 permitted by applicable law, Red Hat or any Red Hat authorized dealer will not be liable to Customer
11 for any incidental or consequential damages, including lost profits or lost savings arising out of the use
12 or inability to use the Software, even if Red Hat or such dealer has been advised of the possibility of
13 such damages. In no event shall Red Hat's liability under this agreement exceed the amount that
14 Customer paid to Red Hat under this agreement during the twelve months **preceding the action**.

15 **5. Export Control.** As required by U.S. law, Customer represents and warrants that it: (a)
16 understands that the Software is subject to export controls under the U.S. Commerce Department's
17 Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under
18 the EAR or U.S. sanctions regulations (currently Cuba, Iran, Iraq, Libya, North Korea, Sudan and
19 Syria); (c) will not export, re-export, or transfer the Software to any prohibited destination, entity, or
20 individual without the necessary export license(s) or authorizations(s) from the U.S. Government; (d)
21 will not use or transfer the Software for use in any sensitive nuclear, chemical or biological weapons, or
22 missile technology end-uses unless authorized by the U.S. Government by regulation or specific license;
23 (e) understands and agrees that if it is in the United States and exports or transfers the Software to
24 eligible end users, it will, as required by EAR Section 740.17(e), submit semi-annual reports to the
25 Commerce Department's Bureau of Industry & Security (BIS), which include the name and address
26 (including country) of each transferee; and (f) understands that countries other than the United States
27 may restrict the import, use, or export of encryption products and that it shall be solely responsible for
28 compliance with any such import, use, or export restrictions.

29 **6. Third Party Programs.** Red Hat may distribute third party software programs with the
30 Software that are not part of the Software. These third party programs are subject to their own license
31 terms. The license terms either accompany the programs or can be viewed at
32 <http://www.redhat.com/licenses/>. If Customer does not agree to abide by the applicable license terms
33 for such programs, then Customer may not install them. If Customer wishes to install the programs on
34 more than one system or transfer the programs to another party, then Customer must contact the licensor
35 of the programs.

36 **7. General.** If any provision of this agreement is held to be unenforceable, that shall not
37 affect the enforceability of the remaining provisions. This agreement shall be governed by the laws of

1 the State of North Carolina and of the United States, without regard to any conflict of law provisions,
2 except that the United Nations Convention on the International Sale of Goods shall not apply.

3
4 **PASS-THROUGH PROVISIONS IBM**
5 **INTERNATIONAL PROGRAM LICENSE AGREEMENT**

6
7 International Program License Agreement

8
9 **Part 1 – General Terms**

10 BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN
11 "ACCEPT" BUTTON, OR OTHERWISE USING THE PROGRAM, LICENSEE AGREES TO THE
12 TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF
13 LICENSEE, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO
14 BIND LICENSEE TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS,

15 DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR
16 USE THE PROGRAM; AND

17 PROMPTLY RETURN THE UNUSED MEDIA, DOCUMENTATION, AND PROOF OF
18 ENTITLEMENT TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE
19 AMOUNT PAID. IF THE PROGRAM WAS DOWNLOADED, DESTROY ALL COPIES OF THE
20 PROGRAM.

21 **A. Definitions**

22 1. **"Authorized Use"** - the specified level at which Licensee is authorized to execute or run
23 the Program. That level may be measured by number of users, millions of service units ("MSUs"),
24 Processor Value Units ("PVUs"), or other level of use specified by IBM.

25 2. **"IBM"** – International Business Machines Corporation or one of its subsidiaries.

26 3. **"License Information" ("LI")** – a document that provides information and any additional
27 terms specific to a Program. The Program's LI is available at www.ibm.com/software/sla/. The LI can
28 also be found in the Program's directory, by the use of a system command, or as a booklet included with
29 the Program.

30 4. **"Program"** – the following, including the original and all whole or partial copies: 1)
31 machine-readable instructions and data, 2) components, files, and modules, 3) audio-visual content
32 (such as images, text, recordings, or pictures), and 4) related licensed materials (such as keys and
33 documentation).

34 5. **"Proof of Entitlement" ("PoE")** – evidence of Licensee's Authorized Use. The PoE is
35 also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or
36 promotional opportunities. If IBM does not provide Licensee with a PoE, then IBM may accept as the
37 PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from

1 | whom Licensee obtained the Program, provided that it specifies the Program name and Authorized Use
2 | obtained.

3 | 6. **"Warranty Period"** – one year, starting on the date the original Licensee is granted the
4 | license.

5 | **B. Agreement Structure**

6 | 1. This Agreement includes **Part 1 – General Terms, Part 2 – Country-unique Terms** (if
7 | any), the LI, and the PoE and is the complete agreement between Licensee and IBM regarding the use of
8 | the Program. It replaces any prior oral or written communications between Licensee and IBM
9 | concerning Licensee’s use of the Program. The terms of Part 2 may replace or modify those of Part 1.
10 | To the extent of any conflict, the LI prevails over both Parts.

11 | **C. License Grant**

12 | 1. The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not
13 | sold.

14 | 2. IBM grants Licensee a nonexclusive license to 1) use the Program up to the Authorized Use
15 | specified in the PoE, 2) make and install copies to support such Authorized Use, and 3) make a backup
16 | copy, all provided that

17 | a. Licensee has lawfully obtained the Program and complies with the terms of this
18 | Agreement;

19 | b. the backup copy does not execute unless the backed-up Program cannot execute;

20 | c. Licensee reproduces all copyright notices and other legends of ownership on each copy,
21 | or partial copy, of the Program;

22 | d. Licensee ensures that anyone who uses the Program (accessed either locally or
23 | remotely) 1) does so only on Licensee’s behalf and 2) complies with the terms of this Agreement;

24 | e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly
25 | permitted in this Agreement; 2) reverse assemble, reverse compile, otherwise translate, or reverse
26 | engineer the Program, except as expressly permitted by law without the possibility of contractual
27 | waiver; 3) use any of the Program’s components, files, modules, audio-visual content, or related
28 | licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and

29 | f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program
30 | only to support the Principal Program and subject to any limitations in the license to the Principal
31 | Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting
32 | Programs only to support this Program, and subject to any limitations in this Agreement. For purposes
33 | of this Item "f," a "Supporting Program" is a Program that is part of another IBM Program ("Principal
34 | Program") and identified as a Supporting Program in the Principal Program’s LI. (To obtain a separate
35 | license to a Supporting Program without these restrictions, Licensee should contact the party from
36 | whom Licensee obtained the Supporting Program.)

37 | //

- 1 g. This license applies to each copy of the Program that Licensee makes.
- 2 3. Trade-ups, Updates, Fixes, and Patches
- 3 a. Trade-ups
- 4 1) If the Program is replaced by a trade-up Program, the replaced Program's license is
- 5 promptly terminated.
- 6 b. 3.1.2 Updates, Fixes, and Patches
- 7 1) When Licensee receives an update, fix, or patch to a Program, Licensee accepts any
- 8 additional or different terms that are applicable to such update, fix, or patch that are specified in its LI.
- 9 If no additional or different terms are provided, then the update, fix, or patch is subject solely to this
- 10 Agreement. If the Program is replaced by an update, Licensee agrees to promptly discontinue use of the
- 11 replaced Program.
- 12 c. 3.2 Fixed Term Licenses
- 13 1) If IBM licenses the Program for a fixed term, Licensee's license is terminated at
- 14 the end of the fixed term, unless Licensee and IBM agree to renew it.
- 15 d. 3.3 Term and Termination
- 16 1) This Agreement is effective until terminated.
- 17 2) IBM may terminate Licensee's license if Licensee fails to comply with the terms of
- 18 this Agreement.
- 19 3) If the license is terminated for any reason by either party, Licensee agrees to
- 20 promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this
- 21 Agreement that by their nature extend beyond termination of this Agreement remain in effect until
- 22 fulfilled, and apply to both parties' respective successors and assignees.

23 **D. Charges**

- 24 1. Charges are based on Authorized Use obtained, which is specified in the PoE. IBM does
- 25 not give credits or refunds for charges already due or paid, except as specified elsewhere in this
- 26 Agreement.
- 27 2. If Licensee wishes to increase its Authorized Use, Licensee must notify IBM or an
- 28 authorized IBM reseller in advance and pay any applicable charges.

29 **E. Taxes**

- 30 1. If any authority imposes on the Program a duty, tax, levy, or fee, excluding those based on
- 31 IBM's net income, then Licensee agrees to pay that amount, as specified in an invoice, or supply
- 32 exemption documentation. Licensee is responsible for any personal property taxes for the Program from
- 33 the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import
- 34 into or the export, transfer, access, or use of the Program outside the country in which the original
- 35 Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any
- 36 amount imposed.

37 //

1 **F. Money-back Guarantee**

2 1. If Licensee is dissatisfied with the Program for any reason and is the original Licensee,
3 Licensee may terminate the license and obtain a refund of the amount Licensee paid for the Program,
4 provided that Licensee returns the Program and PoE to the party from whom Licensee obtained it within
5 30 days of the date the PoE was issued to Licensee. If the license is for a fixed term that is subject to
6 renewal, then Licensee may obtain a refund only if the Program and its PoE are returned within the first
7 30 days of the initial term. If Licensee downloaded the Program, Licensee should contact the party from
8 whom Licensee obtained it for instructions on how to obtain the refund.

9 **G. Program Transfer**

10 1. Licensee may transfer the Program and all of Licensee’s license rights and obligations to
11 another party only if that party agrees to the terms of this Agreement. If the license is terminated for any
12 reason by either party, Licensee is prohibited from transferring the Program to another party. Licensee
13 may not transfer a portion of 1) the Program or 2) the Program’s Authorized Use. When Licensee
14 transfers the Program, Licensee must also transfer a hard copy of this Agreement, including the LI and
15 PoE. Immediately after the transfer, Licensee’s license terminates.

16 **H. Warranty and Exclusions**

17 1. Limited Warranty

18 a. IBM warrants that the Program, when used in its specified operating environment, will
19 conform to its specifications. The Program’s specifications, and specified operating environment
20 information, can be found in documentation accompanying the Program (such as a read-me file) or other
21 information published by IBM (such as an announcement letter). Licensee agrees that such
22 documentation and other Program content may be supplied only in the English language, unless
23 otherwise required by local law without the possibility of contractual waiver or limitation.

24 b. The warranty applies only to the unmodified portion of the Program. IBM does not
25 warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program
26 defects. Licensee is responsible for the results obtained from the use of the Program.

27 c. During the Warranty Period, IBM provides Licensee with access to IBM databases
28 containing information on known Program defects, defect corrections, restrictions, and bypasses at no
29 additional charge. Consult the IBM Software Support Handbook for further information at
30 www.ibm.com/software/support/.

31 d. If the Program does not function as warranted during the Warranty Period and the
32 problem cannot be resolved with information available in the IBM databases, Licensee may return the
33 Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive
34 a refund of the amount Licensee paid. After returning the Program, Licensee’s license terminates. If
35 Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it
36 for instructions on how to obtain the refund.

37 //

2. Exclusions

a. THESE WARRANTIES ARE LICENSEE’S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

b. THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

c. THE WARRANTIES IN THIS SECTION 8 (WARRANTY AND EXCLUSIONS) ARE PROVIDED SOLELY BY IBM. THE DISCLAIMERS IN THIS SUBSECTION 8.2 (EXCLUSIONS), HOWEVER, ALSO APPLY TO IBM’S SUPPLIERS OF THIRD PARTY CODE. THOSE SUPPLIERS PROVIDE SUCH CODE WITHOUT WARRANTIES OR CONDITION OF ANY KIND. THIS PARAGRAPH DOES NOT NULLIFY IBM’S WARRANTY OBLIGATIONS UNDER THIS AGREEMENT.

I. Licensee Data and Databases

1. To assist Licensee in isolating the cause of a problem with the Program, IBM may request that Licensee 1) allow IBM to remotely access Licensee’s system or 2) send Licensee information or system data to IBM. However, IBM is not obligated to provide such assistance unless IBM and Licensee enter a separate written agreement under which IBM agrees to provide to Licensee that type of technical support, which is beyond IBM’s warranty obligations in this Agreement. In any event, IBM uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, IBM may use IBM entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes IBM to do so. Licensee remains responsible for 1) any data and the content of any database Licensee makes available to IBM, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide IBM access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that IBM may incur relating to any

//

1 such information mistakenly provided to IBM or the loss or disclosure of such information by IBM,
2 including those arising out of any third party claims.

3 **J. Limitation of Liability**

4 1. The limitations and exclusions in this Section 10 (Limitation of Liability) apply to the full
5 extent they are not prohibited by applicable law without the possibility of contractual waiver.

6 2. Items for Which IBM May Be Liable

7 a. Circumstances may arise where, because of a default on IBM’s part or other liability,
8 Licensee is entitled to recover damages from IBM. Regardless of the basis on which Licensee is entitled
9 to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other
10 contract or tort claim), IBM’s entire liability for all claims in the aggregate arising from or related to
11 each Program or otherwise arising under this Agreement will not exceed the amount of any 1) damages
12 for bodily injury (including death) and damage to real property and tangible personal property and 2)
13 other actual direct damages up to the charges (if the Program is subject to fixed term charges, up to
14 twelve months’ charges) Licensee paid for the Program that is the subject of the claim.

15 b. This limit also applies to any of IBM’s Program developers and suppliers. It is the
16 maximum for which IBM and its Program developers and suppliers are collectively responsible.

17 3. Items for Which IBM Is Not Liable

18 a. UNDER NO CIRCUMSTANCES IS IBM, ITS PROGRAM DEVELOPERS OR
19 SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR
20 POSSIBILITY:

- 21 1) LOSS OF, OR DAMAGE TO, DATA;
- 22 2) SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR
23 ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- 24 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED
25 SAVINGS.

26 **K. Compliance Verification**

27 1. For purposes of this Section 11 (Compliance Verification), "IPLA Program Terms" means
28 1) this Agreement and applicable amendments and transaction documents provided by IBM, and 2) IBM
29 software policies that may be found at the IBM Software Policy website
30 (www.ibm.com/softwarepolicies/), including but not limited to those policies concerning backup, sub-
31 capacity pricing, and migration.

32 2. The rights and obligations set forth in this Section 11 remain in effect during the period the
33 Program is licensed to Licensee, and for two years thereafter.

34 3. Verification Process

35 a. Licensee agrees to create, retain, and provide to IBM and its auditors accurate written
36 records, system tool outputs, and other system information sufficient to provide auditable verification
37 that Licensee’s use of all Programs is in compliance with the IPLA Program Terms, including, without

1 limitation, all of IBM's applicable licensing and pricing qualification terms. Licensee is responsible for
2 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with IPLA
3 Program Terms.

4 b. Upon reasonable notice, IBM may verify Licensee's compliance with IPLA Program
5 Terms at all sites and for all environments in which Licensee uses (for any purpose) Programs subject to
6 IPLA Program Terms. Such verification will be conducted in a manner that minimizes disruption to
7 Licensee's business, and may be conducted on Licensee's premises, during normal business hours. IBM
8 may use an independent auditor to assist with such verification, provided IBM has a written
9 confidentiality agreement in place with such auditor.

10 4. Resolution

11 a. IBM will notify Licensee in writing if any such verification indicates that Licensee has
12 used any Program in excess of its Authorized Use or is otherwise not in compliance with the IPLA
13 Program Terms. Licensee agrees to promptly pay directly to IBM the charges that IBM specifies in an
14 invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such
15 excess use or two years, and 3) any additional charges and other liabilities determined as a result of such
16 verification.

17 L. Third Party Notices

18 The Program may include third party code that IBM, not the third party, licenses to Licensee under this
19 Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Licensee's
20 information only. These notices can be found in the Program's NOTICES file(s). Information on how to
21 obtain source code for certain third party code can be found in the Third Party Notices. If in the Third
22 Party Notices IBM identifies third party code as "Modifiable Third Party Code," IBM authorizes
23 Licensee to 1) modify the Modifiable Third Party Code and 2) reverse engineer the Program modules
24 that directly interface with the Modifiable Third Party Code provided that it is only for the purpose of
25 debugging Licensee's modifications to such third party code. IBM's service and support obligations, if
26 any, apply only to the unmodified Program.

27 M. General

28 1. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived
29 or limited by contract.

30 2. For Programs IBM provides to Licensee in tangible form, IBM fulfills its shipping and
31 delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise
32 agreed to in writing by Licensee and IBM.

33 3. If any provision of this Agreement is held to be invalid or unenforceable, the remaining
34 provisions of this Agreement remain in full force and effect.

35 4. Licensee agrees to comply with all applicable export and import laws and regulations,
36 including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to
37 certain users.

1 5. Licensee authorizes International Business Machines Corporation and its subsidiaries (and
2 their successors and assigns, contractors and IBM Business Partners) to store and use Licensee’s
3 business contact information wherever they do business, in connection with IBM products and services,
4 or in furtherance of IBM’s business relationship with Licensee.

5 6. Each party will allow the other reasonable opportunity to comply before it claims that the
6 other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve
7 all disputes, disagreements, or claims between the parties relating to this Agreement.

8 7. Unless otherwise required by applicable law without the possibility of contractual waiver or
9 limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or
10 related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration
11 of such time limit, any such claim and all respective rights related to the claim lapse.

12 8. Neither Licensee nor IBM is responsible for failure to fulfill any obligations due to causes
13 beyond its control.

14 9. No right or cause of action for any third party is created by this Agreement, nor is IBM
15 responsible for any third party claims against Licensee, except as permitted in Subsection 10.1 (Items
16 for Which IBM May Be Liable) above for bodily injury (including death) or damage to real or tangible
17 personal property for which IBM is legally liable to that third party.

18 10. In entering into this Agreement, neither party is relying on any representation not specified
19 in this Agreement, including but not limited to any representation concerning: 1) the performance or
20 function of the Program, other than as expressly warranted in Section 8 (Warranty and Exclusions)
21 above; 2) the experiences or recommendations of other parties; or 3) any results or savings that Licensee
22 may achieve.

23 11. IBM has signed agreements with certain organizations (called "IBM Business Partners") to
24 promote, market, and support certain Programs. IBM Business Partners remain independent and
25 separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or
26 obligations they have to Licensee. The license and intellectual property indemnification terms of
27 Licensee’s other agreements with IBM (such as the IBM Customer Agreement) do not apply to Program
28 licenses granted under this Agreement.

29 **N. Geographic Scope and Governing Law**

30 1. Governing Law

31 a. Both parties agree to the application of the laws of the country in which Licensee
32 obtained the Program license to govern, interpret, and enforce all of Licensee’s and IBM’s respective
33 rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this
34 Agreement, without regard to conflict of law principles.

35 b. The United Nations Convention on Contracts for the International Sale of Goods does
36 not apply.

37 //

2. Jurisdiction

a. All rights, duties, and obligations are subject to the courts of the country in which Licensee obtained the Program license.

Part 2 – Country-unique Terms

A. For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1. All terms in Part 1 that are not changed by these amendments remain unchanged and in effect. This Part 2 is organized as follows:

- 1. Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction);
- 2. Americas country amendments to other Agreement terms;
- 3. Asia Pacific country amendments to other Agreement terms; and
- 4. Europe, Middle East, and Africa country amendments to other Agreement terms.

B. Multiple country amendments to Part 1, Section 14 (Governing Law and Jurisdiction)

1. 14.1 Governing Law

a. The phrase "the laws of the country in which Licensee obtained the Program license" in the first paragraph of 14.1 Governing Law is replaced by the following phrases in the countries below:

AMERICAS

- (1) in Canada: the laws in the Province of Ontario;
- (2) in Mexico: the federal laws of the Republic of Mexico;
- (3) in the United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of New York, United States;
- (4) in Venezuela: the laws of the Bolivarian Republic of Venezuela; ASIA PACIFIC
- (5) in Cambodia and Laos: the laws of the State of New York, United States;
- (6) in Australia: the laws of the State or Territory in which the transaction is performed;
- (7) in Hong Kong SAR and Macau SAR: the laws of Hong Kong Special Administrative Region ("SAR");
- (8) in Taiwan: the laws of Taiwan

EUROPE, MIDDLE EAST, AND AFRICA

- (9) in Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: the laws of Austria;
- (10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial

1 Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast,
 2 Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger,
 3 Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the laws of France;

4 (11) in Estonia, Latvia, and Lithuania: the laws of Finland;

5 (12) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya,
 6 Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome
 7 and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the
 8 United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the laws of England; and

9 (13) in South Africa, Namibia, Lesotho, and Swaziland: the laws of the Republic of South
 10 Africa.

11 2. 14.2 Jurisdiction

12 a. The following paragraph pertains to jurisdiction and replaces Subsection 14.2
 13 (Jurisdiction) as it applies for those countries identified in bold below:

14 b. All rights, duties, and obligations are subject to the courts of the country in which
 15 Licensee obtained the Program license except that in the countries identified below all disputes arising
 16 out of or related to this Agreement, including summary proceedings, will be brought before and subject
 17 to the exclusive jurisdiction of the following courts of competent jurisdiction:

18 AMERICAS

19 (1) in Argentina: the Ordinary Commercial Court of the city of Buenos Aires;

20 (2) in Brazil: the court of Rio de Janeiro, RJ;

21 (3) in Chile: the Civil Courts of Justice of Santiago;

22 (4) in Ecuador: the civil judges of Quito for executory or summary proceedings (as applicable);

23 (5) in Mexico: the courts located in Mexico City, Federal District;

24 (6) in Peru: the judges and tribunals of the judicial district of Lima, Cercado;

25 (7) in Uruguay: the courts of the city of Montevideo;

26 (8) in Venezuela: the courts of the metropolitan area of the city of Caracas;

27 EUROPE, MIDDLE EAST, AND AFRICA

28 (9) in Austria: the court of law in Vienna, Austria (Inner-City);

29 (10) in Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic,
 30 Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France,
 31 French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon,
 32 Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion,
 33 Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the Commercial Court of Paris;

34 (11) in Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya,
 35 Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome
 36
 37

1 and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the
 2 United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the English courts;
 3 (12)in South Africa, Namibia, Lesotho, and Swaziland: the High Court in Johannesburg;
 4 (13)in Greece: the competent court of Athens;
 5 (14)in Israel: the courts of Tel Aviv-Jaffa;
 6 (15)in Italy: the courts of Milan;
 7 (16)in Portugal: the courts of Lisbon;
 8 (17)in Spain: the courts of Madrid; and
 9 (18)in Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of
 10 Turkey.

11 3. Arbitration

12 a. The following paragraph is added as a new Subsection 14.3 (Arbitration) as it applies
 13 for those countries identified in bold below. The provisions of this Subsection 14.3 prevail over those of
 14 Subsection 14.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of
 15 procedure:

16
17 ASIA PACIFIC

18 (1) In Cambodia, India, Indonesia, Laos, Philippines, and Vietnam: Disputes arising out of or in
 19 connection with this Agreement will be finally settled by arbitration which will be held in Singapore in
 20 accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules")
 21 then in effect. The arbitration award will be final and binding for the parties without appeal and will be
 22 in writing and set forth the findings of fact and the conclusions of law.

23 The number of arbitrators will be three, with each side to the dispute being entitled to appoint
 24 one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will
 25 act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president
 26 of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will
 27 continue from the stage they were at when the vacancy occurred.

28 If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date
 29 the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the
 30 arbitrator was validly and properly appointed. All proceedings will be conducted, including all
 31 documents presented in such proceedings, in the English language. The English language version of this
 32 Agreement prevails over any other language version.

33 (2) In the People's Republic of China:

34 In case no settlement can be reached, the disputes will be submitted to China International
 35 Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the
 36 said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese.
 37 The arbitration award will be final and binding on both parties. During the course of arbitration, this

1 | agreement will continue to be performed except for the part which the parties are disputing and which is
2 | undergoing arbitration.

3 |
4 | EUROPE, MIDDLE EAST, AND AFRICA

5 | (3) In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former
6 | Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro,
7 | Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

8 | All disputes arising out of this Agreement or related to its violation, termination or nullity will
9 | be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of
10 | the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance
11 | with these rules. The arbitration will be held in Vienna, Austria, and the official language of the
12 | proceedings will be English. The decision of the arbitrators will be final and binding upon both parties.
13 | Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly
14 | waive the application of paragraph 595 (1) figure 7 of the Code. IBM may, however, institute
15 | proceedings in a competent court in the country of installation.

16 | (4) In Estonia, Latvia, and Lithuania:

17 | All disputes arising in connection with this Agreement will be finally settled in arbitration that will be
18 | held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party
19 | will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot
20 | agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

21 |
22 | AMERICAS COUNTRY AMENDMENTS CANADA

23 | 10.1 Items for Which IBM May be Liable

24 | The following replaces Item 1 in the first paragraph of this Subsection 10.1 (Items for Which IBM May
25 | be Liable):

26 | 1) damages for bodily injury (including death) and physical harm to real property and tangible
27 | personal property caused by IBM's negligence; and

28 | 13. General

29 | The following replaces Item 13.d:

30 | d. Licensee agrees to comply with all applicable export and import laws and regulations, including
31 | those of that apply to goods of United States origin and that prohibit or limit export for certain uses or
32 | to certain users.

33 | The following replaces Item 13.i:

34 | i. No right or cause of action for any third party is created by this Agreement or any transaction
35 | under it, nor is IBM responsible for any third party claims against Licensee except as permitted by the
36 | Limitation of Liability section above for bodily injury (including death) or physical harm to real or
37 | tangible personal property caused by IBM's negligence for which IBM is legally liable to that third party.

1 The following is added as Item 13.m:

2 m. For purposes of this Item 13.m, "Personal Data" refers to information relating to an identified or
3 identifiable individual made available by one of the parties, its personnel or any other individual to the
4 other in connection with this Agreement. The following provisions apply in the event that one party
5 makes Personal Data available to the other:

6 (1) General

7 (a) Each party is responsible for complying with any obligations applying to it under applicable
8 Canadian data privacy laws and regulations ("Laws").

9 (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for
10 which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will
11 agree in advance as to the type of Personal Data that is required to be made available.

12 (2) Security Safeguards

13 (a) Each party acknowledges that it is solely responsible for determining and communicating to
14 the other the appropriate technological, physical and organizational security measures required to protect
15 Personal Data.

16 (b) Each party will ensure that Personal Data is protected in accordance with the security
17 safeguards communicated and agreed to by the other.

18 (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by
19 the applicable terms of this section.

20 (d) Additional or different services required to comply with the Laws will be deemed a request
21 for new services.

22 (3) Use - Each party agrees that Personal Data will only be used, accessed, managed, transferred,
23 disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

24 (4) Access Requests

25 (a) Each party agrees to reasonably cooperate with the other in connection with requests to access
26 or amend Personal Data.

27 (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing
28 each other assistance.

29 (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the
30 other party or its personnel.

31 (5) Retention - Each party will promptly return to the other or destroy all Personal Data that is no
32 longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by
33 the other or its personnel or required by law.

34 (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation For Customers who are
35 public bodies subject to public sector privacy legislation, this Item 13.m applies only to Personal Data
36 made available to Customer in connection with this Agreement, and the obligations in this section apply

37 //

1 only to Customer, except that: 1) section (2)(a) applies only to IBM; 2) sections (1)(a) and (4)(a) apply to
2 both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

3
4 PERU

5 10. Limitation of Liability

6 The following is added to the end of this Section 10 (Limitation of Liability):

7
8 Except as expressly required by law without the possibility of contractual waiver, Licensee and IBM
9 intend that the limitation of liability in this Limitation of Liability section applies to damages caused by
10 all types of claims and causes of action. If any limitation on or exclusion from liability in this section is
11 held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause
12 of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law
13 to all other claims and causes of action.

14
15 10.1 Items for Which IBM May be Liable

16 The following is added at the end of this Subsection 10.1:

17
18 In accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in
19 this section will not apply to damages caused by IBM's willful misconduct ("dolo") or gross negligence
20 ("culpa inexcusable").

21
22 UNITED STATES OF AMERICA:

23
24 5. Taxes

25 The following is added at the end of this Section 5 (Taxes) For Programs delivered electronically in the
26 United States for which Licensee claims a state sales and use tax exemption, Licensee agrees not to
27 receive any tangible personal property (e.g., media and publications) associated with the electronic
28 program.

29
30 Licensee agrees to be responsible for any sales and use tax liabilities that may arise as a result of
31 Licensee's subsequent redistribution of Programs after delivery by IBM.

32 13. General

33 The following is added to Section 13 as Item 13.m:

34
35 U.S. Government Users Restricted Rights – Use, duplication or disclosure is restricted by the GSA IT
36 Schedule 70 Contract with the IBM Corporation.

37 //

1 The following is added to Item 13.f:
2 Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

3
4 ASIA PACIFIC COUNTRY AMENDMENTS

5 AUSTRALIA:

6
7 5. Taxes

8 The following sentences replace the first two sentences of Section 5 (Taxes):

9 If any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this
10 Agreement or on the Program itself, that is not otherwise provided for in the amount payable, Licensee
11 agrees to pay it when IBM invoices Licensee. If the rate of GST changes, IBM may adjust the charge or
12 other amount payable to take into account that change from the date the change becomes effective.

13
14 8.1 Limited Warranty

15 The following is added to Subsection 8.1 (Limited Warranty):

16
17 The warranties specified this Section are in addition to any rights Licensee may have under the Trade
18 Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable
19 legislation.

20
21 10.1 Items for Which IBM May be Liable

22 The following is added to Subsection 10.1 (Items for Which IBM Maybe Liable):

23
24 Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's
25 liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where
26 that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind
27 ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations
28 in this paragraph apply.

29
30 HONG KONG SAR, MACAU SAR, AND TAIWAN

31
32 As applies to licenses obtained in Taiwan and the special administrative regions, phrases throughout this
33 Agreement containing the word "country" (for example, "the country in which the original Licensee was
34 granted the license" and "the country in which Licensee obtained the Program license") are replaced with
35 the following:

- 36 (1) In Hong Kong SAR: "Hong Kong SAR"
- 37 (2) In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 14.1) (3) In

1 Taiwan: "Taiwan."

2

3 INDIA

4

5 10.1 Items for Which IBM May be Liable

6 The following replaces the terms of Items 1 and 2 of the first paragraph:

7

8 1) liability for bodily injury (including death) or damage to real property and tangible personal
9 property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising
10 in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of
11 this Agreement, IBM's liability will be limited to the charge paid by Licensee for the individual Program
12 that is the subject of the claim.

13

14 13. General

15 The following replaces the terms of Item 13.g:

16

17 If no suit or other legal action is brought, within three years after the cause of action arose, in respect of
18 any claim that either party may have against the other, the rights of the concerned party in respect of such
19 claim will be forfeited and the other party will stand released from its obligations in respect of such
20 claim.

21

22 INDONESIA

23

24 3.3 Term and Termination

25 The following is added to the last paragraph:

26

27 Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article
28 provision requires such court decree for the termination of an agreement creating mutual obligations.

29

30 JAPAN

31

32 13. General

33 The following is inserted after Item 13.f:

34

35 Any doubts concerning this Agreement will be initially resolved between us in good faith and in
36 accordance with the principle of mutual trust

37 //

1 MALAYSIA

2

3 10.2 Items for Which IBM Is not Liable

4 The word "SPECIAL" in Item 10.2b is deleted. NEW ZEALAND

5

6 8.1 Limited Warranty

7 The following is added:

8

9 The warranties specified in this Section are in addition to any rights Licensee may have under the
10 Consumer Guarantees Act1993 or other legislation which cannot be excluded or limited. The Consumer
11 Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if Licensee requires the
12 goods for the purposes of a business as defined in that Act.

13

14 10. Limitation of Liability

15 The following is added:

16

17 Where Programs are not obtained for the purposes of a business as defined in the Consumer Guarantees
18 Act 1993, the limitations in this Section are subject to the limitations in that Act.

19

20 PEOPLE'S REPUBLIC OF CHINA

21

22 4. Charges

23 The following is added:

24

25 All banking charges incurred in the People's Republic of China will be borne by Licensee and those
26 incurred outside the
27 People's Republic of China will be borne by IBM.

28

29 PHILIPPINES

30

31 10.2 Items for Which IBM Is not Liable

32 The following replaces the terms of Item 10.2b:

33

34 b. special (including nominal and exemplary damages), moral, incidental, or indirect damages or for
35 any economic consequential damages; or

36 //

37 //

1 SINGAPORE

2

3 10.2 Items for Which IBM Is not Liable

4 The words "SPECIAL" and "ECONOMIC" are deleted from Item 10.2b.

5

6 13. General

7 The following replaces the terms of Item 13.i:

8

9 Subject to the rights provided to IBM's suppliers and Program developers as provided in Section 10
10 above (Limitation of Liability), a person who is not a party to this Agreement will have no right under the
11 Contracts (Right of Third Parties) Act to enforce any of its terms.

12

13 TAIWAN

14

15 8.1 Limited Warranty

16 The last paragraph is deleted.

17

18 10.1 Items for Which IBM May Be Liable

19 The following sentences are deleted:

20

21 This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for
22 which IBM and its subcontractors and Program developers are collectively responsible.

23 EUROPE, MIDDLE EAST, AFRICA (EMEA) COUNTRY AMENDMENTS EUROPEAN UNION
24 MEMBER STATES

25

26 8. Warranty and Exclusions

27 The following is added to Section 8 (Warranty and Exclusion):

28 In the European Union ("EU"), consumers have legal rights under applicable national legislation
29 governing the sale of consumer goods. Such rights are not affected by the provisions set out in this
30 Section 8 Warranty and Exclusions. The territorial scope of the Limited Warranty is worldwide.

31

32 EU MEMBER STATES AND THE COUNTRIES IDENTIFIED BELOW

33

34 Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted
35 local data privacy or protection legislation similar to the EU model.

36 //

37 //

1 13. General

2 The following replaces Item 13.e:

3

4 (1) Definitions – For the purposes of this Item 13.e, the following additional definitions apply:

5 (a) Business Contact Information – business-related contact information disclosed by Licensee to
6 IBM, including names, job titles, business addresses, telephone numbers and email addresses of
7 Licensee’s employees and contractors. For Austria, Italy and Switzerland, Business Contact Information
8 also includes information about Customer and its contractors as legal entities (for example, Customer’s
9 revenue data and other transactional information)

10 (b) Business Contact Personnel – Licensee employees and contractors to whom the Business
11 Contact Information relates.

12 (c) Data Protection Authority – the authority established by the Data Protection and Electronic
13 Communications Legislation in the applicable country or, for non-EU countries, the authority responsible
14 for supervising the protection of personal data in that country, or (for any of the foregoing) any duly
15 appointed successor entity thereto.

16 (d) Data Protection & Electronic Communications Legislation – (i) the applicable local legislation
17 and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of
18 individuals with regard to the processing of personal data and on the free movement of such data) and of
19 EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the
20 electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed
21 in the applicable country relating to the protection of personal data and the regulation of electronic
22 communications involving personal data, including (for any of the foregoing) any statutory replacement
23 or modification thereof.

24 (e) IBM Group – International Business Machines Corporation of Armonk, New York, USA, its
25 subsidiaries, and their respective Business Partners and subcontractors.

26 (2) Licensee authorizes IBM:

27 (a) to process and use Business Contact Information within IBM Group in support of Licensee
28 including the provision of support services, and for the purpose of furthering the business relationship
29 between Licensee and IBM Group, including, without limitation, contacting Business Contact Personnel
30 (by email or otherwise) and marketing IBM Group products and services (the "Specified Purpose"); and

31 (b) to disclose Business Contact Information to other members of IBM Group in pursuit of the
32 Specified Purpose only.

33 (3) Use - IBM agrees that all Business Contact Information will be processed in accordance with the
34 Data Protection & Electronic Communications Legislation and will be used only for the Specified
35 Purpose.

36 (4) Access Requests - To the extent required by the Data Protection & Electronic Communications
37 Legislation, Licensee represents that (a) it has obtained (or will obtain) any consents from (and has issued

1 (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable IBM
2 Group to process and use the Business Contact Information for the Specified Purpose.

3 (5) Retention - Licensee authorizes IBM to transfer Business Contact Information outside the
4 European Economic Area, provided that the transfer is made on contractual terms approved by the Data
5 Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic
6 Communications Legislation.

7
8 AUSTRIA

9
10 8.2 Exclusions

11 The following is deleted from the first paragraph: MERCHANTABILITY, SATISFACTORY QUALITY

12
13 10. Limitation of Liability

14 The following is added:

15
16 The following limitations and exclusions of IBM's liability do not apply for damages caused by gross
17 negligence or willful misconduct.

18
19 10.1 Items for Which IBM May Be Liable

20 The following replaces the first sentence in the first paragraph:

21
22 Circumstances may arise where, because of a default by IBM in the performance of its obligations under
23 this Agreement or other liability, Licensee is entitled to recover damages from IBM.

24
25 In the second sentence of the first paragraph, delete entirely the parenthetical phrase:

26
27 "(including fundamental breach, negligence, misrepresentation, or other contract or tort claim)".

28
29 10.2 Items for Which IBM Is Not Liable

30 The following replaces Item 10.2b:

- 31
32 b. indirect damages or consequential damages; or

33
34 BELGIUM, FRANCE, ITALY, and LUXEMBOURG

35 //

36 //

37 //

1 10. Limitation of Liability

2 The following replaces the terms of Section 10 (Limitation of Liability) in its entirety: Except as
3 otherwise provided by mandatory law:

4

5 10.1 Items for Which IBM May Be Liable

6 IBM's entire liability for all claims in the aggregate for any damages and losses that may arise as a
7 consequence of the fulfillment of its obligations under or in connection with this Agreement or due to any
8 other cause related to this Agreement is limited to the compensation of only those damages and losses
9 proved and actually arising as an immediate and direct consequence of the non-fulfillment of such
10 obligations (if IBM is at fault) or of such cause, for a maximum amount equal to the charges (if the
11 Program is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Program
12 that has caused the damages.

13

14 The above limitation will not apply to damages for bodily injuries (including death) and damages to real
15 property and tangible personal property for which IBM is legally liable.

16

17 10.2 Items for Which IBM Is Not Liable

18 UNDER NO CIRCUMSTANCES IS IBM OR ANY OF ITS PROGRAM DEVELOPERS LIABLE FOR
19 ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR
20 DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY
21 ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS,
22 REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN
23 IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.

24

25 10.3 Suppliers and Program Developers

26 The limitation and exclusion of liability herein agreed applies not only to the activities performed by
27 IBM but also to the activities performed by its suppliers and Program developers, and represents the
28 maximum amount for which IBM as well as its suppliers and Program developers are collectively
29 responsible.

30

31 GERMANY

32

33 8.1 Limited Warranty

34 The following is inserted at the beginning of Section 8.1:

35

36 The Warranty Period is twelve months from the date of delivery of the Program to the original Licensee.

37 //

1 8.2 Exclusions

2 Section 8.2 is deleted in its entirety and replaced with the following:

3
4 Section 8.1 defines IBM’s entire warranty obligations to Licensee except as otherwise required by
5 applicable statutory law.

6
7 10. Limitation of Liability

8 The following replaces the Limitation of Liability section in its entirety:

9
10 a. IBM will be liable without limit for 1) loss or damage caused by a breach of an express guarantee;
11 2) damages or losses resulting in bodily injury (including death); and 3) damages caused intentionally or
12 by gross negligence.

13 b. In the event of loss, damage and frustrated expenditures caused by slight negligence or in breach
14 of essential contractual obligations, IBM will be liable, regardless of the basis on which Licensee is
15 entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or
16 other contract or tort claim), per claim only up to the greater of 500,000 euro or the charges (if the
17 Program is subject to fixed term charges, up to 12 months’ charges) Licensee paid for the Program that
18 caused the loss or damage. A number of defaults which together result in, or contribute to, substantially
19 the same loss or damage will be treated as one default. In the event of loss, damage and frustrated
20 expenditures caused by slight negligence, IBM will not be liable for indirect or consequential damages,
21 even if IBM was informed about the possibility of such loss or damage.

22 c. In case of delay on IBM’s part: 1) IBM will pay to Licensee an amount not exceeding the loss or
23 damage caused by IBM’s delay and 2) IBM will be liable only in respect of the resulting damages that
24 Licensee suffers, subject to the provisions of Items a and b above.

25
26 13. General

27 The following replaces the provisions of 13.g:

28
29 Any claims resulting from this Agreement are subject to a limitation period of three years, except as
30 stated in Section 8.1 (Limited Warranty) of this Agreement.

31
32 The following replaces the provisions of 13.i:

33 No right or cause of action for any third party is created by this Agreement, nor is IBM responsible for
34 any third party claims against Licensee, except (to the extent permitted in Section 10 (Limitation of
35 Liability)) for: i) bodily injury (including death); or ii) damage to real or tangible personal property for
36 which (in either case) IBM is legally liable to that third party.

37 //

1 IRELAND

2

3 8.2 Exclusions

4 The following paragraph is added:

5

6 Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893
7 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or
8 warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation,
9 any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the
10 avoidance of doubt, Section 39 of the 1980 Act).

11

12 IRELAND AND UNITED KINGDOM

13

14 2. Agreement Structure

15 The following sentence is added:

16

17 Nothing in this paragraph shall have the effect of excluding or limiting liability for fraud.

18

19 10.1 Items for Which IBM May Be Liable

20 The following replaces the first paragraph of the Subsection:

21 For the purposes of this section, a "Default" means any act, statement, omission or negligence on the
22 part of IBM in connection with, or in relation to, the subject matter of an Agreement in respect of which
23 IBM is legally liable to Licensee, whether in contract or in tort. A number of Defaults which together
24 result in, or contribute to, substantially the same loss or damage will be treated as one Default.

25

26 Circumstances may arise where, because of a Default by IBM in the performance of its obligations under
27 this Agreement or other liability, Licensee is entitled to recover damages from IBM. Regardless of the
28 basis on which Licensee is entitled to claim damages from IBM and except as expressly required by law
29 without the possibility of contractual waiver, IBM's entire liability for any one Default will not exceed
30 the amount of any direct damages, to the extent actually suffered by Licensee as an immediate and direct
31 consequence of the default, up to the greater of (1) 500,000 euro (or the equivalent in local currency) or
32 (2) 125% of the charges (if the Program is subject to fixed term charges, up to 12 months' charges) for
33 the Program that is the subject of the claim. Notwithstanding the foregoing, the amount of any damages
34 for bodily injury (including death) and damage to real property and tangible personal property for which
35 IBM is legally liable is not subject to such limitation.

36 //

37 //

1 10.2 Items for Which IBM is Not Liable

2

3 The following replaces Items 10.2b and 10.2c:

- 4 b. special, incidental, exemplary, or indirect damages or consequential damages; or
- 5 c. wasted management time or lost profits, business, revenue, goodwill, or anticipated savings.

6

7

CITRIX[®] LICENSE AGREEMENT

8

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A. This is a legal agreement (“AGREEMENT”) between you, the Licensed User, and Citrix Systems, Inc.; Citrix Systems International GmbH; or Citrix Systems Asia Pacific Pty Ltd. Your location of receipt of this product or feature release (both hereinafter “PRODUCT”) or technical support (hereinafter “SUPPORT”) determines the providing entity hereunder (the applicable entity is hereinafter referred to as “CITRIX”). Citrix Systems, Inc., a Delaware corporation, licenses this PRODUCT in the Americas and Japan and provides SUPPORT in the Americas. Citrix Systems International, a Swiss company wholly owned by Citrix Systems, Inc., licenses this PRODUCT and provides SUPPORT in Europe, the Middle East, and Africa, and licenses the PRODUCT in Asia, and the Pacific (excluding Japan). Citrix Systems Asia Pacific Pty Ltd. provides SUPPORT in Asia and the Pacific (excluding Japan). BY INSTALLING AND/OR USING THE PRODUCT, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL AND/OR USE THE PRODUCT.

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1. GRANT OF LICENSE. This PRODUCT contains software that provides services on a computer called a server (“Server Software”) and contains software that allows a computer to access or utilize the services provided by The Server Software (“Client Software”). This PRODUCT is licensed under a concurrent user model. Server Software is activated by User Licenses that allow use of the Server Software in increments defined by the license model (“User Licenses”). Client Software is not activated by User Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. User Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use. For this PRODUCT, CITRIX grants to you the following worldwide, nonexclusive rights (except as subject to termination as set forth below and as to Evaluation PRODUCTS) to the Server and Client Software and accompanying documentation (collectively called the “SOFTWARE”):

32

33

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35

36

37

a. Server Software. You may install and use the Server Software on one or more computers (“Server(s)”). Each User License may be installed and used on a single license server within your production environment and a single license server within your disaster recovery environment. The Server Software may be used only to support up to the allowable number of ICA, RDP, or other managed connections within each environment based on your total purchase of User Licenses. You may

//

1 use the Server Software to provide application services to third parties (“Hosting”). Each User License
2 that is installed in both a production

3 1) And disaster recovery environment may be used in only one of the environments at
4 any one time, except for duplicate use during routine testing of the disaster recovery environment. If you
5 purchased the Enterprise or Platinum Edition of this PRODUCT, each User License may be used only to
6 support use of any one or more of the edition features for the same concurrent user. If multiple User
7 Licenses are delivered for the various features of the edition, they should be treated as a single User
8 License. Add-on User Licenses must be purchased to support additional users for any particular feature.
9 If you received this PRODUCT as a component of XenDesktop Enterprise or Platinum Edition, the
10 Server Software may be used only to service physical or virtual machines running in the XenDesktop
11 environment and may not be used to publish desktops or applications directly to client devices.

12 b. Client Software. The Client Software may be installed and used on an unlimited
13 number of client devices. You may use such Client Software only to access the Server Software up to
14 the allowable number of connections based on your total purchase of User Licenses. As a part of
15 Hosting, you may copy and distribute the Client Software, with its electronic, click-to-accept license, to
16 such third parties.

17 c. Perpetual License. If the SOFTWARE is “Perpetual License SOFTWARE,” the
18 SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage
19 (as defined in Section 2 below).

20 d. Expiring Retail License. If the SOFTWARE is “Expiring Retail License SOFTWARE,”
21 your license is for the term purchased and includes the right to receive Updates for that period
22 (but not Subscription Advantage as defined in Section 2 below). For the purposes of this
23 AGREEMENT, an Update shall mean a generally available release of the same SOFTWARE. Any
24 Updates so delivered to you shall be considered SOFTWARE under the terms of this AGREEMENT,
25 except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted
26 by applicable law. To extend the License, you must purchase and install an additional License prior to
27 the expiration of the current License. Note that if a new License is not purchased and installed, Expiring
28 Retail License SOFTWARE disables itself upon the expiration of the License period.

29 e. Not for Resale. If this SOFTWARE is “Not For Resale SOFTWARE,”
30 notwithstanding any term to the contrary in this AGREEMENT, your License permits use only if you
31 are a current CITRIX authorized distributor or reseller and then only for demonstration, test, or
32 evaluation purposes in support of your customers. Note that Not for Resale SOFTWARE disables itself
33 on the “time-out” date identified in the SOFTWARE readme or documentation.

34 f. Evaluation. If this SOFTWARE is “Evaluation SOFTWARE,” notwithstanding any
35 term to the contrary in this AGREEMENT, your License permits use only for your internal
36 demonstration, test, or evaluation purposes. Note that Evaluation SOFTWARE disables itself on the
37 “time-out” date contained in the license File and displayed in the License Management Console.

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2 notwithstanding any term to the contrary in this AGREEMENT, your License permits use only for
3 your internal development of product(s) to operate in conjunction with the SOFTWARE. You
4 receive no License hereunder to incorporate the SOFTWARE or any portion thereof in your own
5 product(s). Note that Developer Edition SOFTWARE disables itself on the “time-out” date contained in
6 the license file and displayed in the License Management Console.

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9 are a current CITRIX authorized distributor or reseller and then only for your own internal business
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13 form solely for backup purposes, provided that you reproduce all proprietary notices on the copy.

14 j. Microsoft License. If you access Terminal Server functionality provided by Microsoft
15 operating system products, you need to purchase additional licenses for such use. Consult the license
16 agreements for the Microsoft operating system products you are using to determine which licenses you
17 must acquire.

18 2. SUBSCRIPTION RIGHTS. Your subscription for Perpetual License SOFTWARE
19 (“Subscription”) shall begin on the date the User Licenses are delivered to you by email. Should User
20 Licenses be delivered to you on a tangible license card, Subscription shall instead begin on the date you
21 request that the User Licenses be allocated to you through mycitrix.com. Subscription shall continue
22 for a one (1) year term subject to your purchase of annual renewals (the “Subscription Term”). During
23 the initial or a renewal Subscription Term, CITRIX may, from time to time, generally make Updates
24 available for licensing to the public. Upon general availability of updates during the Subscription Term,
25 CITRIX shall provide you with Updates for covered Licenses. Subscription Advantage may be
26 purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT
27 Support Lifecycle Policy posted at www.citrix.com.

28 You acknowledge that CITRIX may develop and market new or different computer programs or
29 editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the
30 functions performed by the SOFTWARE. Nothing contained in this AGREEMENT shall give you any
31 rights with respect to such new or different computer programs or editions. You also acknowledge that
32 CITRIX is not obligated under this AGREEMENT to make any Updates available to the public. Any
33 deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

34 3. SUPPORT. You may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the
35 date of SUPPORT activation by CITRIX and shall run for a one (1) year term subject to your purchase
36 of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts,
37 coverage hours, geographic coverage areas, technical relationship management coverage, and

1 infrastructure assessment options. An "Incident" is defined as a single SUPPORT issue and reasonable
2 effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to
3 achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE.
4 Unused Incidents expire at the end of each annual term. SUPPORT may be purchased for the
5 SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle
6 Policy posted at www.citrix.com. SUPPORT will be provided remotely from CITRIX to your
7 locations. Where on-site visits are mutually agreed upon, you will be billed for reasonable travel and
8 living expenses in accordance with your travel policy. CITRIX' performance is predicated upon the
9 following responsibilities being fulfilled by you: (i) you will designate a Customer Support Manager
10 ("CSM") who will be the primary administrative contact; (ii) you will designate Named Contacts
11 (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM)
12 will be supplied with an individual service ID number for contacting SUPPORT; (iii) you
13 agree to perform reasonable problem determination activities and to perform reasonable problem
14 resolution activities as suggested by CITRIX. You agree to cooperate with such requests; (IV) you are
15 responsible for implementing procedures necessary to safeguard the integrity and security of
16 SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting
17 from catastrophic failures; (v) you are responsible for procuring, installing, and maintaining all
18 equipment, telephone lines, communications interfaces, and other hardware at your site and providing
19 CITRIX with access to your facilities as required to operate the SOFTWARE and permitting CITRIX to
20 perform the service called for by this AGREEMENT; and (vi) you are required to implement all
21 currently available and applicable hotfixes, hotfix rollup packs, and service packs or their equivalent to
22 the SOFTWARE in a timely manner. CITRIX is not required to provide any SUPPORT relating to
23 problems arising out of: (i) your customization to the operating system or environment that adversely
24 affects the SOFTWARE; (ii) any alterations of or additions to the SOFTWARE performed by parties
25 other than CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor
26 and peripherals for which such SOFTWARE was designed and licensed for use on; or (iv) SOFTWARE
27 that has reached End-of-Life. In situations where CITRIX cannot provide a satisfactory resolution to
28 your critical problem through normal SUPPORT methods, CITRIX may engage its product
29 development team to create a private fix. Private fixes are designed to address your specific situation
30 and may not be distributed by you outside your organization without written consent from CITRIX.
31 CITRIX retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are
32 not SOFTWARE under the terms of this AGREEMENT and they are not covered by the Limited
33 Warranty or Infringement Indemnification applicable to SOFTWARE, to the extent permitted by
34 applicable law. With respect to infrastructure assessments or other consulting services, all intellectual
35 property rights in all reports, preexisting works and derivative works of such preexisting works, as well
36 as installation scripts and other deliverables and developments made, conceived, created, discovered,
37 //

1 | invented, or reduced to practice in the performance of the assessment are and shall remain the sole and
2 | absolute property of CITRIX, subject to a worldwide, nonexclusive License to you for internal use.

3 | 4. DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS. Unless
4 | expressly permitted by applicable law, you may not transfer, rent, timeshare, or lease the SOFTWARE.
5 | If you purchased Licenses for the SOFTWARE to replace other CITRIX Licenses for other CITRIX
6 | SOFTWARE and such replacement is a condition of the transaction, you agree to destroy those other
7 | CITRIX Licenses and retain no copies after installation of the new Licenses and SOFTWARE. You
8 | shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to
9 | the reseller, and upon request, directly to CITRIX for license tracking purposes. Except as specifically
10 | licensed herein, you may not modify, translate, reverse engineer, decompile, disassemble, create
11 | derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to
12 | the extent such foregoing restriction is expressly prohibited by applicable law. You may not remove
13 | any proprietary notices, labels, or marks on any SOFTWARE. To the extent permitted by applicable
14 | law, you agree to allow CITRIX to audit your compliance with the terms of this AGREEMENT
15 | upon prior written notice during normal business hours. Notwithstanding the foregoing, this
16 | AGREEMENT shall not prevent or restrict you from exercising additional or different rights to any free,
17 | open source code, documentation, and materials contained in or provided with the SOFTWARE in
18 | accordance with the applicable free, open source license for such code, documentation, and materials.

19 | a. YOU MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR
20 | ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR
21 | ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS
22 | AGREEMENT. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CITRIX OR
23 | ITS SUPPLIERS.

24 | b. You hereby agree, that to the extent that any applicable mandatory laws (such as, for
25 | example, national laws implementing EC Directive 91/250 on the Legal Protection of Computer
26 | Programs) give you the right to perform any of the aforementioned activities without the consent of
27 | CITRIX to gain certain information about the SOFTWARE, before you exercise any such rights, you
28 | shall first request such information from CITRIX in writing detailing the purpose for which you need
29 | the information. Only if and after CITRIX, at its sole discretion, partly or completely denies your
30 | request, shall you exercise your statutory rights.

31 | 5. INFRINGEMENT INDEMNIFICATION. CITRIX shall indemnify and defend, or at its
32 | option, settle any claim, suit, or proceeding brought against you based on an allegation that the
33 | SOFTWARE infringes upon any patent or copyright of any third party ("Infringement Claim"),
34 | provided you promptly notify CITRIX in writing of your notification or discovery of an Infringement
35 | Claim such that CITRIX is not prejudiced by any delay in such notification. CITRIX will have sole
36 | control over the defense or settlement of any Infringement Claim and you will provide reasonable
37 | assistance in the defense of the same. Following notice of an Infringement Claim or if CITRIX believes

1 such a claim is likely, CITRIX may at its sole expense and option: (i) procure for you the right to
2 continue to use the alleged infringing SOFTWARE; (ii) replace or modify the SOFTWARE to make it
3 no infringing; or (iii) accept return of the SOFTWARE and provide you with a refund as appropriate.
4 CITRIX assumes no liability for any Infringement Claims or allegations of infringement based on: (i)
5 your use of the SOFTWARE after notice that you should cease use of the same due to an Infringement
6 Claim; (ii) any modification of the SOFTWARE by you or at your direction; or (iii) your combination of
7 the SOFTWARE with other programs, data, hardware, or other materials, if such Infringement Claim
8 would have been avoided by the use of the SOFTWARE alone. THE FOREGOING STATES
9 YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM.

10 6. LIMITED WARRANTY AND DISCLAIMER. CITRIX warrants that for a period of
11 ninety (90) days from the date of delivery of the SOFTWARE to you, the SOFTWARE will perform
12 substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and
13 included with the PRODUCT. CITRIX and its suppliers' entire liability and your exclusive remedy
14 under this warranty (which is subject to you returning the SOFTWARE to CITRIX or an authorized
15 reseller) will be, at the sole option of CITRIX and subject to applicable law, to replace the media
16 and/or SOFTWARE or to refund the purchase price and terminate this AGREEMENT. CITRIX will
17 provide the SUPPORT requested by you in a professional and workmanlike manner, but CITRIX cannot
18 guarantee that every question or problem raised by you will be resolved or resolved in a certain amount
19 of time.

20 a. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE
21 ABOVE LIMITED WARRANTY FOR SOFTWARE, CITRIX AND ITS SUPPLIERS MAKE AND
22 YOU RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR
23 OTHERWISE; AND CITRIX AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT
24 TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY
25 CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES,
26 BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT
27 LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION,
28 MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.
29 THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR
30 DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY
31 TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.
32 YOU ASSUME THE RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND
33 HARDWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF,
34 USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE AND HARDWARE.

35 7. PROPRIETARY RIGHTS. No title to or ownership of the SOFTWARE is transferred to
36 you. CITRIX and/or its licensors own and retain all title and ownership of all intellectual property rights
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2 use the SOFTWARE.

3 8. EXPORT RESTRICTION. You agree that you will not export, report, or import the
4 SOFTWARE in any form without the appropriate government licenses. You understand that under no
5 circumstances may the SOFTWARE be exported to any country subject to U.S. embargo or to U.S.-
6 designated denied persons or prohibited entities or U.S. specially designated nationals.

7 a. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE
8 LAW, YOU AGREE THAT NEITHER CITRIX NOR ITS AFFILIATES, SUPPLIERS, OR
9 AUTHORIZED DISTRIBUTORS SHALL BE LIABLE FOR ANY LOSS OF DATA OR PRIVACY,
10 LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY, LOSS
11 ARISING FROM YOUR USE OF THE SOFTWARE OR SUPPORT, OR DAMAGE ARISING FROM
12 YOUR USE OF THIRD PARTY SOFTWARE OR HARDWARE OR ANYOTHER SPECIAL,
13 INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN
14 CONNECTION WITH THIS AGREEMENT; OR THE USE OF THE SOFTWARE OR SUPPORT,
15 REFERENCE MATERIALS, OR ACCOMPANYING DOCUMENTATION; OR YOUR
16 EXPORTATION, REEXPORTATION, OR IMPORTATION OF THE SOFTWARE, HOWEVER
17 CAUSED AND ON ANY THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF
18 CITRIX, ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS HAVE BEEN
19 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY
20 APPLICABLE LAW, IN NO EVENT SHALL THE LIABILITY OF CITRIX, ITS AFFILIATES,
21 SUPPLIERS, OR AUTHORIZED DISTRIBUTORS EXCEED THE AMOUNT PAID FOR THE
22 SOFTWARE OR SUPPORT AT ISSUE. YOU ACKNOWLEDGE THAT THE LICENSE OR
23 SUPPORT FEE REFLECTS THIS ALLOCATION OF RISK.

24 b. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION
25 OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE
26 LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. For purposes of this AGREEMENT,
27 the term "CITRIX AFFILIATE" shall mean any legal entity fifty percent (50%) or more of the voting
28 interests in which are owned directly or indirectly by Citrix Systems, Inc. Affiliates, suppliers, and
29 authorized distributors are intended to be third party beneficiaries of this AGREEMENT.

30 9. TERMINATION. This AGREEMENT is effective until terminated. You may terminate this
31 AGREEMENT at any time by removing the SOFTWARE from your computers and destroying all
32 copies and providing written notice to CITRIX with the serial numbers of the terminated licenses.
33 CITRIX may terminate this AGREEMENT at any time for your breach of this AGREEMENT.
34 Unauthorized copying of the SOFTWARE or the accompanying documentation or otherwise failing to
35 comply with the license grant of this AGREEMENT will result in automatic termination of this
36 AGREEMENT and will make available to CITRIX all other legal remedies. You agree and
37 acknowledge that your material breach of this AGREEMENT shall cause CITRIX irreparable harm for

1 | which monetary damages alone would be inadequate and that, to the extent permitted by applicable law,
2 | CITRIX shall be entitled to injunctive or equitable relief without the need for posting a bond. Upon
3 | termination of this AGREEMENT, the License granted herein will terminate and you must immediately
4 | destroy the SOFTWARE and accompanying documentation, and all backup copies thereof.

5 | 10. U.S. GOVERNMENT END-USERS. If you are a U.S. Government agency, in accordance
6 | with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and
7 | Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48
8 | CFR 227.7202-1, 227.7202-3 (June 1995)), you hereby acknowledge that the SOFTWARE constitutes
9 | "Commercial Computer Software" and that the use, duplication, and disclosure of the SOFTWARE by
10 | the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions,
11 | restrictions, and limitations set forth in this standard commercial license AGREEMENT. In the event
12 | that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, you hereby
13 | acknowledge that the Government's right to use, duplicate, or disclose the SOFTWARE are "Restricted
14 | Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-
15 | 7014(a)(14) (June 1995), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek
16 | Road, Fort Lauderdale, Florida, 33309.

17 | 11. AUTHORIZED DISTRIBUTORS AND RESELLERS. CITRIX authorized distributors
18 | and resellers do not have the right to make modifications to this AGREEMENT or to make any
19 | additional representations, commitments, or warranties binding on CITRIX.

20 | 12. CHOICE OF LAW AND VENUE. If provider is Citrix Systems, Inc., this AGREEMENT
21 | will be governed by the laws of the State of Florida without reference to conflict of laws principles and
22 | excluding the United Nations Convention on Contracts for the International Sale of Goods, and in any
23 | dispute arising out of this AGREEMENT, you consent to the exclusive personal jurisdiction and venue
24 | in the State and Federal courts within Broward County, Florida. If provider is Citrix Systems
25 | International GmbH, this AGREEMENT will be governed by the laws of Switzerland without reference
26 | to the conflict of laws principles, and excluding the United Nations Convention on Contracts for the
27 | International Sale of Goods, and in any dispute arising out of this AGREEMENT, you consent to the
28 | exclusive personal jurisdiction and venue of the competent courts in the Canton of Zurich. If provider is
29 | Citrix Systems Asia Pacific Pty Ltd, this AGREEMENT will be governed by the laws of the State of
30 | New South Wales, Australia and excluding the United Nations Convention on Contracts for the
31 | International Sale of Goods, and in any dispute arising out of this AGREEMENT, you consent to the
32 | exclusive personal jurisdiction and venue of the competent courts sitting in the State of New South
33 | Wales. If any provision of this AGREEMENT is invalid or unenforceable under applicable law, it shall
34 | be to that extent deemed omitted and the remaining provisions will continue in full force and effect. To
35 | the extent a provision is deemed omitted, the parties agree to comply with the remaining terms of this
36 | AGREEMENT in a manner consistent with the original intent of the AGREEMENT.

37 | //

1 13. HOW TO CONTACT CITRIX. Should you have any questions concerning this
2 AGREEMENT or want to contact CITRIX for any reason, write to CITRIX at the following address:
3 Citrix Systems, Inc., Customer Service, 851 West Cypress Creek Road, Ft. Lauderdale, Florida 33309;
4 Citrix Systems International GmbH, Rheinweg 9, CH-8200 Schaffhausen, Switzerland; or Citrix
5 Systems Asia Pacific Pty Ltd., Level 3, 1 Julius Ave., Riverside Corporate Park, North Ryde NSW
6 2113, Sydney, Australia.

7 14. TRADEMARKS. Citrix, XenApp, XenServer, and XenDesktop are trademarks and/or
8 registered trademarks of Citrix Systems, Inc. in the U.S. and other countries. Microsoft is a registered
9 trademark of Microsoft Corporation in the U.S. and other countries.

10
11 CTX_code: DE_P_A55429

12
13 **SENSAGE, INC.**

14
15 **PASS-THROUGH PROVISIONS**

16 **1. Definitions.**

17 SenSage: means SenSage, Inc.

18 Agreement: means this End User License Agreement which consists of this Agreement, any
19 attachments and any and all Order Forms executed by SenSage and Licensee which reference this
20 Agreement.

21 Documentation: means any technical specification documentation generally made available by
22 SenSage to its customers with regard to the Software.

23 Licensee: means the customer and end user of the Software identified in the applicable Order
24 Form.

25 Order Form: means the SenSage purchase agreement under which the Software licenses and related
26 services were purchased by Licensee.

27 Software: means the SenSage software products in object code form specified in an Order Form.
28 "Software" shall also include any Updates and/or Upgrades to the same Software product provided to or
29 purchased by Licensee under this Agreement. Unless otherwise noted, the Software and Documentation
30 are referred to collectively herein as "Software".

31 **2. License.**

32 2.1 Grant of License. Subject to all of the terms and conditions of this Agreement, SenSage grants
33 Licensee a non-transferable, non-sublicensable, non-exclusive license to use the Software, but only in
34 accordance with (i) the Documentation, (ii) this Agreement and (iii) any term, user, central processing
35 unit ("cpu"), computer, field of use or other restrictions set forth in the applicable Order Form.

36 2.2 Installation and Copies: Licensee may copy and install on Licensee's computers for use only by
37 Licensee's employees as many copies of the Software as is designated in the applicable Order Form.

1 Licensee may also make a reasonable number of copies of the Software for non-production development
2 purposes, back-up, disaster recovery and archival purposes.

3 2.3 License Restrictions. Licensee shall not (and shall not allow any third party to):

4 (a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to
5 reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming
6 interfaces of the Software by any means whatsoever (except and only to the extent that applicable law
7 prohibits or restricts reverse engineering restrictions);

8 (b) distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time
9 sharing, hosting, service provider or like purposes;

10 (c) remove any product identification, proprietary, copyright or other notices contained in the
11 Software;

12 (d) modify any part of the Software, create a derivative work of any part of the Software, or
13 incorporate the Software into or with other software, except to the extent expressly authorized in writing
14 by SenSage; or

15 (e) publicly disseminate performance information or analysis (including, without limitation,
16 benchmarks) from any source relating to the Software.

17 **3. Ownership.** Notwithstanding anything to the contrary contained herein (except for the limited
18 license rights expressly provided herein), SenSage and its suppliers have and will retain all rights, title
19 and interest in and to the Software (including, without limitation, all patent rights, copyrights,
20 trademarks, service marks, related goodwill, and confidential and proprietary information) and all
21 modifications to, and derivative works based upon, the Software.

22 **4. Payment.** All payments shall be made in U.S. dollars within thirty (30) days of Licensee's receipt
23 of the applicable invoice, unless otherwise specified in writing by SenSage. Licensee shall be
24 responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on
25 the net income of SenSage). Any late payments shall be subject to a service charge equal to 1.5% per
26 month of the amount due or the maximum amount allowed by law, whichever is less.

27 **5. Term of Agreement.**

28 5.1 Term. This Agreement is effective as of the Effective Date and expires on the day that the term
29 of license for all Software licensed hereunder has expired (the "Term").

30 5.2 Termination. Either party may terminate this Agreement (including all related Order
31 Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days
32 after written notice of such breach; (b) ceases operation without a successor; (c) or seeks protection
33 under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable
34 proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60)
35 days)). Termination is not an exclusive remedy and the exercise by either party of any remedy under this
36 Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or
37 otherwise.

1 5.2 Survival. Upon any expiration or termination of this Agreement, Licensee shall cease any and
2 all use of the Software and destroy all copies thereof and so certify to SenSage in writing. Sections 2.4
3 (License Restrictions), 3 (Ownership), 4 (Payment), 5 (Term of Agreement), 6.3 (Disclaimer of
4 Warranties), 9 (Limitation of Remedies and Damages), 11 (Confidential Information) and 12 (General)
5 shall survive any termination or expiration of this Agreement.

6 **6. Limited Warranty and Disclaimer.**

7 6.1 Limited Warranty. SenSage warrants to Licensee that for a period of ninety (90) days from the
8 Effective Date (the "Warranty Period"), the Software shall operate in substantial conformity with the
9 Documentation. SenSage does not warrant that Licensee's use of the Software will be uninterrupted or
10 error-free. SenSage's sole liability (and Licensee's exclusive remedy) for any breach of this warranty
11 shall be, in SenSage's sole discretion, to use commercially reasonable efforts to provide Licensee with an
12 error-correction or work-around which corrects the reported non-conformity, or if SenSage determines
13 such remedies to be impracticable within a reasonable period of time, to refund the license fee paid for
14 the Software. SenSage shall have no obligation with respect to a warranty claim unless notified of such
15 claim within the Warranty Period.

16 6.2 Exclusions. The above warranty shall not apply: (i) if the Software is used with hardware or
17 software not specified in the Documentation; (ii) if any modifications are made to the Software by
18 Licensee or any third party; (iii) to defects in the Software due to accident, abuse or improper use by
19 Licensee; or (iv) to any third-party code provided with the Software or code provided on a no charge or
20 evaluation basis.

21 6.3 Disclaimer. THIS SECTION 6 IS A LIMITED WARRANTY, AND SETS FORTH THE
22 ONLY WARRANTIES MADE BY SENSAGE. NEITHER SENSAGE NOR ITS SUPPLIERS MAKES
23 ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE,
24 INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A
25 PARTICULAR PURPOSE OR NONINFRINGEMENT. LICENSEE MAY HAVE OTHER
26 STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE
27 DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO
28 THE LIMITED WARRANTY PERIOD.

29 **7. Support & Maintenance.** Licensee shall be entitled to the level of Support & Maintenances
30 specified and paid for by Licensee in the applicable Order Form. Support shall be provided subject to the
31 Support & Maintenance Terms attached hereto and incorporated into this Agreement by this reference.

32 **8. Professional Services.** SenSage shall provide the number of person-days of professional
33 consulting services ("Professional Services") purchased in the applicable Order Form. The parties
34 acknowledge that the scope of the Professional Services provided hereunder consists solely of: (i)
35 assistance with Software installation, deployment, and usage; and/or (ii) development and/or delivery of
36 additional related SenSage copyrighted software or code. Licensee shall have a license right to use
37 anything delivered as part of the Professional Services subject to the terms of its license to use the

1 Software, but SenSage shall retain all right, title and interest in and to any such work product, code or
2 Software and any derivative, enhancement or modification thereof created by SenSage (or its agents).

3 **9. Limitation of Remedies and Damages.**

4 9.1 NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA,
5 INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR
6 CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF
7 THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE),
8 STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH
9 DAMAGES IN ADVANCE. THIS SECTION 9.1 SHALL NOT APPLY TO LICENSEE WITH
10 RESPECT TO ANY CLAIM ARISING UNDER THE SECTIONS TITLED "LICENSE
11 RESTRICTIONS" OR "CONFIDENTIAL INFORMATION".

12 9.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SENSAGE'S
13 ENTIRE LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED THE
14 AMOUNT ACTUALLY PAID BY LICENSEE TO SENSAGE UNDER THIS AGREEMENT.

15 9.3 The parties agree that the limitations specified in this Section 9 will survive and apply even if
16 any limited remedy specified in this Agreement is found to have failed of its essential purpose.

17 **10. Indemnification.** SenSage shall indemnify and hold harmless Licensee from and against any claim
18 of infringement of a United States, Canadian, European Union, Japanese or Australian ("Covered
19 Country") patent, Covered Country copyright, or Covered Country trademark or Covered Country trade
20 secret asserted against Licensee by a third party based upon Licensee's authorized use of the Software,
21 provided that SenSage shall have received from Licensee: (i) prompt notice of such claim (but in any
22 event notice in sufficient time for SenSage to respond without prejudice); (ii) the exclusive right to
23 control and direct the investigation, defense, and/or settlement of such claim; and (iii) all reasonable
24 necessary cooperation of Licensee. If Licensee's use of any of the Software is, or in SenSage's opinion is
25 likely to be, enjoined due to the type of infringement specified above, or if required by settlement,
26 SenSage may, in its sole discretion: (a) substitute for the Software substantially functionally similar
27 programs and documentation; (b) procure for Licensee the right to continue using the Software; or if (a)
28 and (b) are commercially impracticable, (c) terminate the Agreement and refund the license fee paid by
29 Licensee as reduced to reflect a five (5) year straight-line depreciation from the applicable license
30 purchase date. The foregoing indemnification obligation of SenSage shall not apply: (1) if the Software
31 is modified by any party other than SenSage, but solely to the extent the alleged infringement is caused
32 by such modification; (2) the Software is combined with other non-SenSage products or process not
33 authorized by SenSage, but solely to the extent the alleged infringement is caused by such
34 combination; (3) to any unauthorized use of the Software; or (4) to any third-party code contained
35 within the Software. THIS SECTION 10 SETS FORTH SENSAGE'S SOLE LIABILITY AND
36 LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF
37 INTELLECTUAL PROPERTY INFRINGEMENT.

1 **11. Confidential Information.** Each party agrees that all code, inventions, know-how, business,
 2 technical and financial information it obtains (“Receiving Party”) from the disclosing party (“Disclosing
 3 Party”) constitute the confidential property of the Disclosing Party (“Confidential Information”),
 4 provided that it is identified as confidential at the time of disclosure or should be reasonably known by
 5 the Receiving Party to be Confidential Information due to the nature of the information disclosed and the
 6 circumstances surrounding the disclosure. Any software, documentation or technical information
 7 provided by SenSage (or its agents) shall be deemed Confidential Information of SenSage without any
 8 marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in
 9 confidence and not use or disclose any Confidential Information. The Receiving Party’s nondisclosure
 10 obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its
 11 possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public
 12 knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party
 13 from a third party without breach of any confidentiality obligation; (iv) is independently developed by
 14 employees of the Receiving Party who had no access to such information; or (v) is required to be
 15 disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply
 16 with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party
 17 acknowledges that disclosure of Confidential Information would cause substantial harm to the Disclosing
 18 Party that could not be remedied by the payment of damages alone and therefore that upon any such
 19 disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in
 20 addition to whatever remedies it might have at law.

21 **12. General.**

22 12.1 Assignment. This Agreement will bind and inure to the benefit of each party’s permitted
 23 successors and assigns. SenSage may assign this Agreement to any affiliate or to any assignee of all or
 24 substantially all of SenSage’s assets (whether pursuant to a merger, change of control or otherwise).
 25 Licensee may not assign or transfer this Agreement, in whole or in part, without SenSage’s written
 26 consent. Any attempt to transfer or assign this Agreement without such written consent will be null and
 27 void.

28 12.2 Severability. If any provision of this Agreement shall be adjudged by any court of
 29 competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum
 30 extent necessary so that this Agreement shall otherwise remain in effect.

31 12.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the
 32 State of California and the United States without regard to conflicts of laws provisions thereof, and
 33 without regard to the United Nations Convention on the International Sale of Goods. Unless waived by
 34 SenSage in its sole discretion, the jurisdiction and venue for actions related to the subject matter hereof
 35 shall be the California state and United States federal courts located in San Francisco, California, and
 36 both parties hereby submit to the personal jurisdiction of such courts.

37 //

1 12.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be
2 entitled to recover its attorneys' fees and costs in connection with such action.

3 12.5 Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set
4 forth above and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by
5 certified or registered U.S. mail (return receipt requested); or (iii) one day after it is sent if by next day
6 delivery by a major commercial delivery service.

7 12.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall
8 be binding, unless executed in writing by a duly authorized representative of each party to this
9 Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this
10 Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized
11 representative on behalf of the party claimed to have waived. No provision of any purchase order or other
12 business form employed by Licensee will supersede the terms and conditions of this Agreement, and any
13 such document relating to this Agreement shall be for administrative purposes only and shall have no
14 legal effect.

15 12.7 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual
16 understanding of the parties and supersedes and cancels all previous written and oral agreements and
17 communications relating to the subject matter of this Agreement.

18 12.8 Audit Rights. Upon SenSage's written request, Licensee shall furnish SenSage with a signed
19 certification certifying that the Software is being used pursuant to the terms of this Agreement including
20 any copy and user limitations. With prior reasonable notice, SenSage may audit the copies of the
21 Software in use by Licensee provided such audit is during regular business hours; Licensee is responsible
22 for such audit costs only in the event the audit reveals a discrepancy, of five percent (5%) or greater, on
23 the part of Licensee.

24 12.9 Independent Contractors. The parties to this Agreement are independent contractors. There is
25 no relationship of partnership, joint venture, employment, franchise or agency created hereby between the
26 parties. Neither party will have the power to bind the other or incur obligations on the other party's
27 behalf without the other party's prior written consent.

28 12.10 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any
29 obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to
30 unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable
31 control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license
32 by the government or other governmental agencies, in so far as such an event prevents or delays the
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18
19 **SURESCRIPTS**

20 **A. Aggregator Customer Terms and Conditions of Use of the Surescripts network**

21 1. Terms and Conditions. By accessing the Surescripts network through software licensed
22 from Cerner Corporation (“Cerner”), the entity accessing or providing access to the Surescripts network
23 (“Cerner Customer”) agrees to the following terms and conditions of use of the Surescripts network and
24 Surescripts Services (these “Terms”). At the direction of Surescripts, or as may be necessitated by
25 Cerner’s agreement with Surescripts, Cerner may modify or supplement these Terms from time to time
26 and such modified or supplemented Terms shall become effective at the time set forth in such
27 modification or supplement.

28 2. Definitions:

29 a. “Applicable Law” means any and all applicable federal, state, local, common law,
30 rules, regulations, directives, and guidelines, including but not limited to the applicable provisions of the
31 following: the Health Insurance Portability and Accountability Act (“HIPAA”) and related regulations;
32 the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and related
33 regulations; the Anti-Kickback provisions of the Social Security Act and related regulations; and; state
34 and federal pharmacy laws and regulations.

35 b. “Confidential Information” means all confidential and/or proprietary information
36 disclosed to Cerner Customer by Surescripts, including products, software, materials, processes, ideas,
37 and techniques (whether or not reduced to writing): (i) which are not generally known in the relevant

1 industry or trade; (ii) which afford possessors of the information a commercial advantage over others
2 who do not have such information; (iii) which are considered trade secrets under Applicable Law;
3 and/or (iv) which, if utilized or disclosed by Cerner Customer, would place Surescripts at a competitive
4 or business disadvantage; these Terms; employee, customer and patient information and PHI;
5 accounting data; statistical data; development and marketing plans; strategies; forecasts; any and all
6 information and documentation deemed confidential or a trade secret under any federal, state, or local
7 statute or regulation; and the like, whether or not tangibly embodied in a document, model, specimen,
8 computer storage device, or other physical object; and any information obtained or accessed by Cerner
9 Customer, if not otherwise described above, is of a nature that a reasonable person would believe it to be
10 confidential.

11 c. "Data Source" means a (1) pharmacy, pharmacy chain, or entity that aggregates
12 information on behalf of pharmacies, or other similar entity which has entered into a written agreement
13 with Surescripts to allow access through the Surescripts network to information in its possession, or (2)
14 a pharmacy benefit manager, health benefit payor or administrator, or other similar entity which has
15 entered into a written agreement with Surescripts to allow access through the Surescripts network to
16 information in its possession.

17 d. "Participants" means all aggregators, value-added resellers, Data Sources, prescribers,
18 health care providers, and facilities, technology vendors, and other entities and individuals that have
19 entered into written agreements with Surescripts, either directly or indirectly, in order to access, provide,
20 or communicate through the Surescripts network.

21 e. "Prescriber End User" means an individual, located in the United States or a United
22 States territory, that: (1) is employed by, is an active member of the medical staff of, or is otherwise
23 performing healthcare services as a legally authorized representative of an Cerner Customer.; and (2) if
24 required by Applicable Law to be licensed, registered, or otherwise authorized by a Governmental
25 authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate
26 Governmental authority to perform the applicable healthcare services.

27 f. "Prescribing Decision" means a prescriber's decision to prescribe a certain
28 pharmaceutical or direct a patient to a certain pharmacy.

29 g. "Point of Care" means the place and time that a prescriber or his/her agent is in the act
30 of prescribing a pharmaceutical for a patient.

31 h. "Surescripts network" means the Surescripts proprietary technology for a secure,
32 nationwide, interoperable health information infrastructure, interfaces, functionality, and transaction
33 maps made available by Surescripts to Cerner Customer, through Cerner's software, pursuant to this
34 Agreement, as they may be further modified or developed by Surescripts from time to time.

35 3. Access to and Use of the Surescripts network. Cerner Customer shall designate each
36 Prescriber End User as such only after confirming that such individual or entity meets the definition of a
37 Prescriber End User set forth in Section 2.D above. Customer shall, at a minimum, employ NIST Level

1 of Assurance 2 identity-proofing and authentication processes before allowing any individual access to
2 the Surescripts network for electronic prescription of non-controlled substances (understanding that for
3 controlled substances a more rigorous level for identity proofing and authentication is established and
4 must be met pursuant to Applicable Law). Cerner Customer shall, and shall ensure that its Prescriber
5 End Users shall, access and utilize the Surescripts network only in accordance with these Terms. Cerner
6 Customer shall be responsible for ensuring that all messages transmitted via the Surescripts network
7 originate from Prescriber End Users who are licensed to use the application for the service(s) for which
8 Surescripts has certified Cerner Customer's licensed application, and who are registered with Cerner
9 Customer.

10 4. Confidentiality. Cerner Customer shall, and shall ensure that its Prescriber End Users shall,
11 keep confidential all Confidential Information.

12 5. Adherence to Applicable Law. Cerner Customer shall, and shall ensure that Prescriber End
13 Users shall, comply with Applicable Law, including ensuring that all necessary patient consents and
14 authorizations have been obtained.

15 6. Commercial Messaging Rules. Cerner Customer shall comply with the Surescripts
16 Commercial Messaging Rules, as follows:

17 a. General Limitation. Cerner Customer shall not, and shall ensure that Prescriber End
18 Users do not, use any means, program, or device, and shall not permit any person or entity to use any
19 means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads,
20 to influence or attempt to influence, through economic incentives or otherwise, the Prescribing Decision
21 of a prescriber at the Point of Care if: (i) such means, program, or device (as described above) is
22 triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or
23 his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (ii) that
24 prescription shall be delivered via the Surescripts network.

25 b. Exceptions to General Limitation. Notwithstanding the above Section III(d)(1)(A),
26 Cerner Customer and Prescriber End Users may: (A) show information regarding a payer's formulary
27 and benefit plan design, including patient lowest cost options, on/off tier, prior authorization, step
28 therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to Prescriber End
29 Users clinical alerts that are sourced from payers and/or are attributed to generally recognized and
30 reputable sources providing clinical information to the prescriber, even if, in the event of either (A) or
31 (B), such information influences the patient or prescriber's choice of pharmacy or other prescribing
32 decisions. In addition, in the event of either (A) or (B) above, Cerner Customer shall: (i) allow its
33 Prescriber End Users to access all pharmaceuticals known through generally available sources used in
34 the industry, and all pharmacies, including all retail and mail service pharmacy options available; and
35 (ii) not be designed to preclude a physician or patient from selecting any particular pharmacy or
36 pharmaceutical. Any custom lists created and maintained by Prescriber End Users within Cerner
37 Customer's licensed software, including but not limited to: (i) an individual Prescriber End User's most

1 often prescribed medication list; (ii) an individual Prescriber End User’s most often used pharmacy list;
2 and/or (iii) an individual Prescriber End User’s most often used SIGs (i.e., instructions for the use of
3 medications), would not be considered a violation of the Commercial Messaging Rules.

4 7. Surescripts Disclaimers.

5 a. Cerner Customer acknowledges and agrees, and shall ensure that Prescriber End Users
6 acknowledge and agree, that the prescription benefit and medication history information provided by
7 Surescripts may not be complete or accurate;

8 b. Cerner Customer releases and holds harmless, on its own behalf and on behalf of its
9 Prescriber End Users, Surescripts and its Data Sources against any claims relating to the accuracy or
10 completeness of prescription benefit and medication history information provided by Surescripts.

11 c. Cerner Customer acknowledges, on its own behalf and on behalf of its Prescriber End
12 Users, that it is the Prescriber End User’s sole responsibility to confirm the accuracy of the prescription
13 benefit and medication history information with his/her/its patient prior to providing any medical
14 services based thereon; and

15 d. Cerner Customer acknowledges and agrees, on its own behalf and on behalf of its
16 Prescriber End Users, that: (i) the Surescripts network is not intended to serve as a replacement for: (a) a
17 written prescription where not approved as such by the appropriate governmental authorities or where
18 such written prescription is required for record keeping purposes; or (b) applicable prescription
19 documentation; (ii) use of the Surescripts network is not a substitute for a health care provider’s
20 standard practice or professional judgment; and (iii) any decision with regard to the appropriateness of
21 treatment, or the validity or reliability of information, is the sole responsibility of a patient’s health care
22 provider.

23 8. Surescripts Data Sources. Cerner Customer acknowledges and agrees that any Data Source,
24 in its sole discretion, may elect not to receive prescriptions and other messages from Cerner Customer
25 and/or any Prescriber End User and that Data Sources or other Participants in the Surescripts network
26 may be added to or deleted from the Surescripts network or may limit access to their data without prior
27 notice.

28 9. Compliance. No more than once per year without cause (or more often only upon a showing
29 of reasonable cause), upon reasonable prior written notice and request from Surescripts, Cerner
30 Customer shall provide Surescripts with data and records relating to the use of the Surescripts network
31 and/or Surescripts Services by Cerner Customer for purposes of determining Cerner Customer’s
32 compliance with these Terms.

33 10. No Modification or Reconfiguration. Cerner Customer shall not, and shall ensure that
34 Prescriber End Users do not, modify or reconfigure Cerner Customer’s licensed software in a way that
35 will bring it out of compliance with these Terms or the Surescripts documentation.

36 11. Prescriber Directory Information. Cerner Customer agrees that Surescripts has unlimited
37 non-exclusive rights in perpetuity to use all directory and directory-related information on Prescriber

1 End Users that shall come to reside within the Surescripts network database through Prescriber End
2 Users' use of the Surescripts network, including all root, identity, and location-related information. Such
3 uses may include creating and disclosing aggregated, de-identified statistics relating to the adoption and
4 use of e-prescribing by Prescriber End Users and use of directory information to operate and expand the
5 Surescripts network, subject at all times to compliance with applicable law. Notwithstanding the
6 foregoing, Surescripts will not: (i) make available for public consumption information that identifies
7 Prescriber End Users except pursuant to Applicable Law or judicial or administrative order or to provide
8 information regarding Prescriber End Users' use of the Surescripts network to healthcare payers; (ii)
9 sell, disclose, or transfer to any third party information that identifies Prescriber End Users for the
10 purpose of allowing such third party to send to such Prescriber End Users commercial solicitations for
11 the purchase of goods or services; or (iv) engage in sending commercial solicitations to Prescriber End
12 Users. The rights granted to Surescripts in this Section 11 shall specifically exclude any rights in PHI,
13 Cerner Customer confidential information and intellectual property.

14 12. Termination for Breach. Cerner Customer's access to the Surescripts network may be
15 suspended or terminated in the event of a breach of these Terms that is not cured within the time period
16 set forth in the breach notice delivered to Cerner Customer by Cerner or Surescripts.

17 13. Emergency Suspension. Notwithstanding anything to the contrary herein, Surescripts
18 retains the right to immediately suspend access (with no notice or cure period) to the Surescripts
19 network by Cerner Customer or any Prescriber End User in the event that Surescripts perceives (in its
20 reasonable discretion) there to be a patient safety concern, violation of Applicable Law, or unauthorized
21 use of the Surescripts network.

22 14. Cerner Customer Indemnity. Cerner Customer shall defend, indemnify, and save harmless
23 Surescripts from and against any and all loss, damage, or expense arising out of claims asserted against
24 Surescripts by third parties to the extent arising out of any breach of these Terms, any use (or misuse) by
25 Cerner Customers or Prescriber End Users of data or information received through the Surescripts
26 network, or any transmission of data or information through the Surescripts network by Aggregator
27 Customers or Prescriber End Users. The foregoing indemnity shall not apply to the extent of
28 Surescripts' indemnification obligations under Section 15.

29 15. Surescripts Indemnity.

30 a. Subject to the exclusions set forth below, Surescripts will indemnify, defend, and hold
31 harmless Cerner Customer, its officers, employees and agents from and against all loss damage or
32 expense arising out of any claim brought by a third party that the Surescripts network or Surescripts
33 services (collectively referred to as the "Surescripts Products") as lawfully used in full compliance with
34 these Terms infringe(s) any patent, trademark, copyright or other intellectual property right or
35 misappropriates any trade secret. If Cerner Customer's right to use any of the Products is enjoined,
36 Surescripts will (a) procure for Cerner Customer, as applicable, the right to use the Product, (b) replace
37 the Product with a functionally equivalent, non-infringing product, or (c) modify the Product so it

1 becomes non-infringing and functionally equivalent. If (a), (b) or (c) is not commercially reasonable,
2 Surescripts will refund a pro rata portion of all fees paid for the particular Surescripts Product(s) at issue
3 in exchange for return of the Product(s).

4 b. Exclusions. Surescripts has no indemnification or defense obligation regarding any
5 claim arising directly from any of the following to the extent such claim would not have arisen but for
6 the described:

7 1) Surescripts' inclusion in Surescripts Products any custom designs, specifications,
8 software, or interfaces, instructions as provided or requested by Cerner, Cerner Customer, or by a third
9 party on Cerner Customer's behalf;

10 2) Modification of the Surescripts Products by Cerner or Cerner Customer, excluding
11 modifications performed, required or approved by Surescripts; or

12 3) Use of any non-Surescripts product, apparatus, business method or service not
13 provided by Surescripts in combination with Surescripts Product(s) (the "Combination"), provided that
14 this exclusion shall not apply if:

15 a) the Combination is expressly required by Surescripts;

16 b) Cerner Customer notifies Surescripts of the Combination in writing and such
17 Combination is authorized by Surescripts in writing; or

18 c) the Combination is expressly specified in the Surescripts documentation.

19 4) Notwithstanding the foregoing, the exclusion set forth in this subsection (3) will
20 not limit Surescripts' intellectual property indemnification obligations under this Section 15 if, upon
21 final judgment, a Surescripts Product is specifically found to be an infringement of the rights identified
22 in this Section and the Combination is specifically found not to have contributed to the infringement.

23 16. Indemnification Procedures. Upon becoming aware of any matter which is subject to the
24 provisions of Sections 14 and 15, the party seeking indemnification (the "Indemnified Party") must give
25 prompt written notice of such claim to the other party (the "Indemnifying Party"), accompanied by
26 copies of any written documentation regarding the claim received by the Indemnified Party. The
27 Indemnifying Party shall have the sole right to defend, at its own expense and with its own counsel, any
28 such claim, and control any negotiation for its settlement or compromise. The Indemnified Party shall
29 cooperate with the Indemnifying Party in defending the claim, and will have the right, at its option, to
30 participate in the settlement or defense of any such claim with its own counsel and at its own expense;
31 provided, however, that the Indemnifying Party will have the right to control such settlement or defense.
32 Notwithstanding the foregoing, the Indemnifying Party will not enter into any settlement that
33 specifically apportions fault to, or imposes any monetary liability or obligation on the Indemnified Party
34 without the Indemnified Party's prior written consent. The parties will use commercially reasonable
35 efforts to cooperate in any such settlement or defense and give each other full access to all relevant
36 information, at the Indemnifying Party's expense.

37 //

1 17. Third Party Beneficiary. Surescripts shall be a third party beneficiary of these Terms, and
2 the Data Sources shall be third party beneficiaries of Section 7.B above.

3
4 **EMC**

5 A. The Following Terms Are Applicable To Sublicensing Of EMC Documentum Software. The
6 EMC Software licensed hereunder is subject to the Cerner business agreement between End User and
7 Cerner, subject to the specific different terms set forth below:

8 1. The EMC Software license is a nonexclusive, perpetual and non-transferable license (with
9 no right to sublicense) to use the EMC Software solely in conjunction with Cerner Licensed Software.

10 2. The (i) EMC Software is licensed only, and no title to, or ownership of, the EMC Software
11 is transferred to End User; (ii) End User may not remove EMC’s or its Cerner copyright and other
12 proprietary notices on and in any copies of the EMC Software; and (iii) End User shall not cause or
13 permit any other to create derivative works from, reverse assemble, reverse engineer, reverse compile or
14 otherwise reduce the EMC Software to human readable form.

15 3. Product Warranty. The EMC Software will, for a period of ninety (90) days from the date
16 of shipment or the date of electronic availability, as applicable, substantially conform to the applicable
17 documentation for such EMC Software. Cerner does not warrant that the operation of the EMC Software
18 shall be uninterrupted or error free, or that all defects can be corrected. Cerner’s entire liability and
19 Customer’s exclusive remedies under the warranties described in this Section shall be for Cerner, at its
20 option, to use reasonable efforts to remedy such defects, or have the manufacturer remedy such defects
21 or performance failure or to replace the affected EMC Software. If Cerner is unable to make the affected
22 EMC Software operate as warranted within a reasonable time, then Cerner shall refund the amount
23 received by Cerner for the affected EMC Software upon return of the specific EMC Software to Cerner.

24 4. Warranty Exclusions. Except as expressly otherwise stated in this Agreement, and to the
25 maximum extent permitted by law, Cerner (including its suppliers) provide EMC Software “AS IS” and
26 makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE
27 SPECIFACALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED
28 WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE
29 AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF
30 LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

31 5. End User shall upon Cerner’s request, promptly provide Cerner with a written statement
32 certifying the extent of End User’s usage of EMC Software identified by Cerner and/or allow Cerner or
33 its designee to conduct a reasonable audit of the applicable End User facilities and records to determine
34 whether or not End User’s usage of such EMC Software is in conformance with its paid for license
35 usage;

36 //
37 //

1 6. The EMC Software is confidential and contains EMC trade secrets and must be held in
2 confidence with at least the same degree of care with which the End User protects its own similar
3 confidential information.

4
5 **Mpages Limited Use Runtime License**

6 A. Client acknowledges and agrees that Cerner grants Client a limited runtime only license to
7 Mpages for the sole purpose of executing Mpage Applications that have been Cerner Developed and/or
8 Cerner Certified. Mpage Applications are not included with this runtime license and must be purchased
9 separately. Client is not licensed or authorized to create or execute Mpage Applications beyond those
10 that have been Cerner Developed and/or Cerner Certified. Furthermore, Client is not authorized to
11 modify the source code of any Mpage Applications without upgrading to the Mpages Full Use license.
12 Cerner has the right to periodically conduct audits of Client’s System to ensure Client has not used
13 Mpages in a manner that violates the terms set forth herein. If Client is found in breach, Client shall pay
14 to Cerner fees for the Mpages Full Use license at Cerner’s then-current list price.

15 B. Definition of Terms

- 16 1. “Mpage Application” means a CCL/web technology based program that leverages the
17 Mpages code set for execution.
18 2. “Cerner Developed” means an Mpage Application that was purchased from Cerner or
19 developed by Cerner professional services.
20 3. “Cerner Certified means” an Mpage Application that has been certified by Cerner.

21
22 **NUANCE DMENE**

23 **Healthcare Master Agreement**

24 A. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE EXECUTING THE ORDER.
25 This Healthcare Master Agreement, including all applicable Schedules indicated below (together, the
26 “Nuance Agreement”), is between Nuance Communications, Inc. (“Nuance”) and you (“Customer”), the
27 party to the Order with Cerner Corporation (the “Authorized Reseller”). Nuance and Customer are each
28 a “Party” and are collectively referred to as the “Parties”. By executing the Order, Customer agrees to
29 be bound by the terms and conditions of the Nuance Agreement. Both Customer and Nuance agree that
30 Nuance must comply with the terms of Section 14.9 (Business Associate). Customer agrees that the
31 Nuance Agreement is like any written negotiated agreement signed by Customer. If Customer does not
32 agree to the terms and conditions of the Nuance Agreement, do not execute the Order.

33 B. Customer is obtaining the software, equipment and services indicated in the order from the
34 authorized reseller. This Nuance agreement applies to CUSTOMER’S use and entitlement of such
35 software, equipment and services, up to the full extent and quantities (e.g., license model, number of
36 licenses, etc.) obtained by the authorized reseller from Nuance for resale to customer.

37 //

SCHEDULES	INCLUDED
Schedule for Nuance Management Server for Dragon Medical Enterprise Network Edition	Yes
Schedule for NMS for Dragon Medical Enterprise Network Edition – Administrator License	No
Schedule for Dragon Medical Enterprise Network Edition – Physician/Non-Physician Client License	Yes
Schedule for Dragon Medical Enterprise Network Edition – Physician Location Site License	No
Schedule for Dragon Medical Enterprise Network Edition – Non-Physician Location Site License	No
Schedule for Dragon Medical Enterprise Network Edition – Provider-Plus Location Site License	No
Schedule for Dragon Medical Enterprise Network Edition – In-Patient Location Site License	No
Schedule for Dragon Medical Enterprise Network Edition – Health System Site License	No
Schedule for Dragon Medical Enterprise Network Edition – Provider-Plus Enterprise Site License	No

C. Nuance and Customer hereby agree as follows:

General Terms and Conditions

1. Definitions. Capitalized terms in the Agreement have the meanings set forth below, in Exhibit A, or in the Schedules.

2. Intentionally Omitted

3. Products and Services.

3.1. Software

3.1.1. License Grant. Subject to the terms and conditions of this Agreement, Nuance hereby grants Customer, and Customer accepts, a limited, non-exclusive, non-transferable, non-sublicensable license to use the Software specified on an Order in a manner commensurate with its intended use (as prescribed by this Agreement and the Documentation) and solely for Customer’s internal business purposes.

3.1.2. License Restrictions and Notice

(a) Restrictions. Customer agrees that it shall not, and shall not permit the Authorized Users or any third party to (i) duplicate the Software for any purpose, except that Customer may duplicate the Software for archival and disaster recovery purposes only; (ii) reverse engineer, disassemble, decompile

1 or translate the Software; (iii) change, modify or otherwise alter the Software, (iv) assign, transfer,
2 pledge, rent, share or sublicense any of the Software without Nuance's prior written consent; (v) grant
3 any third party access to or use of the Software on a service bureau, timesharing or application service
4 provider basis or otherwise; or (vi) defeat or circumvent any controls or limitations the Software places
5 on its use.

6 (b) Notice of Unauthorized Use. Customer shall immediately notify Nuance upon learning of any third
7 party's unauthorized possession or use of any Software supplied under this Agreement.

8 3.1.3. Government Customer Rights. This section applies to all acquisitions of Software
9 (collectively or individually for the purposes of this section, the "Government Acquired Products") by
10 or for the government of the United States of America (the "Federal Government"), or by any prime
11 contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other
12 activity with the Federal Government. By accepting delivery of the Government Acquired Products, the
13 Federal Government hereby agrees that this software qualifies as "commercial" computer software
14 within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and
15 conditions of this Agreement shall pertain to the Federal Government's use and disclosure of the
16 Government Acquired Products, and shall supersede any conflicting contractual terms or conditions. If
17 this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with
18 United States law, the Federal Government agrees to return the Government Acquired Products unused.
19 The following additional statement applies only to acquisitions by the Federal Government that are
20 governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights – Use, duplication and
21 disclosure by the Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights
22 in Technical Data – Noncommercial Items clause at DFARS 252.227-7013 (1995)."

23 3.2. Equipment. Subject to the terms and conditions of this Agreement, Customer shall
24 purchase from Nuance the Equipment specified in an Order, in the quantity and at the price set forth in
25 such Order. Notwithstanding the forgoing, the Third Party Equipment shall be governed in all other
26 respects by terms and conditions specified by the applicable third party vendor of such Third Party
27 Equipment.

28 3.3. Services.

29 3.3.1. Maintenance Services.

30 (a) Scope. If purchased, as indicated in the Order, for an initial term of one (1) year ending
31 June 30, 2016 (the "Initial Service Term"), Nuance shall provide the Maintenance Services selected by
32 Customer in the applicable Order. After the initial annual Maintenance Services term, Authorized
33 Reseller or Nuance will issue an invoice in accordance with Nuance's renewal policy for subsequent
34 one-year terms of Maintenance Services, at least thirty (30) days prior to the end of the then-current
35 Maintenance Service term, if Maintenance Services for the applicable Software and/or Equipment is
36 made available by Nuance. Customer shall, if it wishes to renew annual Maintenance Services for the
37 applicable Software and/or Equipment, pay the invoice for renewal Maintenance Services, in full, within

1 thirty (30) days of the date of such invoice. Customer acknowledges that failure to pay such invoice
2 within such 30 day period will result in Maintenance Services expiring with respect to such Software
3 and/or Equipment unless Maintenance Services for the applicable Software and/or Equipment are timely
4 continued or renewed under a different agreement. Unless expressly stated otherwise in the applicable
5 Schedule or Order, Maintenance Services provided hereunder will commence on the date of initial
6 delivery of the applicable Software and/or Equipment (or anniversary thereof if Customer is purchasing
7 renewal Maintenance Services). To purchase Maintenance Services with respect to any Equipment,
8 Customer is required to purchase Maintenance Services for all units of such Equipment respectively.
9 Unless otherwise agreed, Maintenance Services with respect to any Software shall apply to all copies of
10 such Software licensed to Customer. All Maintenance Services shall be provided subject to Nuance's
11 Hardware and Software Maintenance Options, Terms and Conditions in effect as of the provision of
12 such Maintenance Service.

13 (b) Exclusions. Unless otherwise agreed, Nuance shall not be obligated to provide
14 Maintenance Services for, or required to provide as a result of (i) any Nuance Product modified by
15 anyone other than Nuance; (ii) any Nuance Product used for other than its intended purpose; (iii) any
16 Nuance Product used with any third party equipment not specified as compatible with the Nuance
17 Product in its Documentation; (iv) any Nuance Product being used with Third Party Software not
18 supplied by Nuance in conjunction with the Nuance Product, or specified by Nuance in the applicable
19 Documentation as compatible with the Nuance Product ; (v) any Nuance Product (including any
20 associated equipment, software or firmware) which Customer failed to properly install or maintain; (vi)
21 any willful or negligent action or omission of Customer, (vii) any computer malfunction not attributable
22 to the Nuance Products; or (viii) damage to Nuance Products from any external source, including
23 computer viruses unattributable to Nuance, computer hackers, or force majeure events.

24 3.3.2. Training Services.

25 (a) Scope. Subject to the terms and conditions set forth in this Agreement, Nuance will
26 provide the Training Services specified in the applicable Order (if any).

27 (b) Location. Unless otherwise agreed to by the parties hereto, all Training Services will be
28 held at a designated Nuance location during Nuance's standard business hours, excluding Nuance
29 recognized holidays. If the parties agree to hold any Training Services at Customer's site, all such
30 Training Services (including associated travel time) will be conducted between the hours of 8:00 a.m. to
31 5:00 p.m. local Customer site time, Monday through Friday, excluding Nuance recognized holidays.

32 (c) Attendees. Customer shall ensure that all Training Services attendees: (i) are Authorized
33 Users, and (ii) have the skills and experience to participate in the training sessions. Nuance may require
34 that a Training Services attendee reschedule their Training Services if, in Nuance's reasonable
35 judgment, such attendee does not have the requisite skills and experience (i.e., a working knowledge of
36 Windows).

37 //

3.3.3. Professional Services.

(a) Scope. Subject to the terms and conditions set forth in this Agreement, Nuance will provide the Professional Services specified in the applicable Order (if any).

(b) Nuance shall perform Professional Services related to installation of the Software and Equipment pursuant to its project delivery methodology set forth at ftp://ftp.scansoft.com/nuance/79ictaphone/whitepapers/wp_prof_ServicesMethodology.pdf.

3.3.4 Rescheduling. Customer agrees to reimburse Nuance \$300 USD per scheduled trainer/consultant per Training/Professional Services day, as scheduled (up to 5 business days), and for any actual incurred travel arrangement costs (e.g., airline ticket deposits, etc.) due to rescheduling or cancellation of Training Services and/or Professional Services less than ten (10) business days prior to the scheduled start of such Training Services and/or Professional Services, provided the cancellation is not due to a breach by Nuance.

3.3.5. On-Location. If an Order indicates that Nuance will perform Services at a location other than a Nuance facility, Customer shall provide the necessary equipment, information, and facilities required by Nuance to perform such Services.

3.3.6. Suspension. Nuance reserves the right to suspend Services to Customer under any and all Orders during any period in which Customer's account under any one or more Orders is more than thirty (30) days past due.

4. Customer Obligations.

4.1. Data Preservation. As between Nuance and Customer, it is Customer's responsibility to create and preserve reasonable backup copies of its data and other business information and records, and take such other precautions as may reasonably be required to detect and guard against possible malfunctions, loss of data, or unauthorized access to Customer's computer systems.

4.2. Speech Recognition. CUSTOMER ACKNOWLEDGES THAT SPEECH RECOGNITION IS A STATISTICAL PROCESS, ERRORS ARE INHERENT IN SUCH PROCESS, AND APPLICATIONS EMPLOYING SUCH PROCESS ARE DESIGNED TO ALLOW FOR SUCH ERRORS. CUSTOMER ACKNOWLEDGES THAT SUCH ERRORS ARE INEVITABLE AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF CUSTOMER TO IDENTIFY AND CORRECT ANY SUCH ERRORS BEFORE USING AND/OR RELYING ON THE RESULTS OF THE USE OF ANY SPEECH RECOGNITION SOFTWARE PROGRAM LICENSED HEREUNDER. CUSTOMER ACKNOWLEDGES AND AGREES THAT NUANCE DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND THAT CUSTOMER'S USE OF THE SOFTWARE DOES NOT ABSOLVE CUSTOMER OF ITS OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. CUSTOMER ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICE LIES SOLELY WITH CUSTOMER. CUSTOMER AGREES THAT ANY RELIANCE

1 UPON THE SOFTWARE SHALL NOT DIMINISH CUSTOMER’S RESPONSIBILITY FOR
2 PATIENT CARE.

3 4.3. Customer Data. The Software has a feature by which Customer may enable Nuance to
4 collect Speech Data. By turning on the feature to provide Nuance with Speech Data, Customer
5 acknowledges, consents and agrees that Nuance may collect and use the Speech Data as provided
6 hereunder. The Parties agree that Speech Data shall only be used by Nuance or third parties acting under
7 the direction of Nuance, pursuant to confidentiality provisions, to tune, enhance and improve the speech
8 recognition and other components of the Software, and other Nuance services and products. Nuance will
9 not use the information elements in any Speech Data for any purpose except as set forth above.

10 5. Payments.

11 5.1. Payments to Authorized Reseller (Cerner). Customer will pay Authorized Reseller
12 according to the terms of its agreement with Authorized Reseller for all amounts due on Orders placed
13 by Customer with Authorized Reseller for the Software, Equipment and Services covered by this
14 Agreement.

15 5.2. If Customer elects to purchase any products or services directly from Nuance by placing an
16 purchase order with Nuance that indicates that the terms of this Agreement are intended to apply, then
17 Nuance’s standard payment terms shall apply unless the Customer and Nuance first negotiate different
18 payment terms.

19 5.3 Audit. Nuance, or a third party appointed by Nuance, shall have the right, not more than
20 once a year and upon reasonable notice, to conduct an audit of Customer’s records to confirm
21 compliance with the license grant and other terms of this Nuance Agreement. Any audit shall be
22 performed after reasonable advance notice during Customer’s normal business hours.

23 6. Delivery. With respect to Orders fulfilled by Nuance, the following terms of this Section 6
24 shall apply:

25 6.1. Shipping Terms. For Orders with Software and Equipment requiring delivery within the
26 United States, such Software and Equipment will be shipped “FOB Shipping Point”. For Orders with
27 Software and Equipment requiring delivery outside the United States, Software and Equipment will be
28 shipped “FCA Shipping Point”. Subject to Section 14.15 below, Customer shall bear all shipping,
29 freight and transportation charges from Nuance’s warehouse facility.

30 6.2. Risk of Loss. Risk of loss or damage to the Software and Equipment shall pass to
31 Customer upon delivery to the common carrier at Nuance’s warehouse facility. If Customer fails to pay
32 for any Equipment, Nuance reserves the right to repossess such Equipment.

33 7. Term; Termination.

34 7.1. Term. This Agreement shall become effective as of the Effective Date and unless
35 terminated early for cause by either party pursuant to Section 7.2, shall continue indefinitely with
36 respect to the perpetual licenses granted hereunder or until the expiration of licenses for a fixed term, as
37 indicated in an Order. (“Agreement Term”).

1 7.2. Termination for Cause. Either Party may terminate the Agreement or any Order by written
2 notice if the other Party: (i) commits a material breach of this Agreement and fails to cure such breach
3 within thirty (30) days after receiving written notice of such breach, or (ii) materially breaches the
4 Agreement in a manner that cannot be remedied; or (iii) becomes insolvent, commences dissolution
5 proceedings or ceases to operate in the ordinary course of business.

6 7.3. Effect of Expiration or Termination. Upon the expiration or termination of any Order, by
7 either party, all licenses granted to Customer, and all Services obtained by Customer, under such Order
8 shall terminate and Customer shall cease using the applicable Software and shall return same to Nuance.
9 Neither the expiration nor termination of this Agreement, any individual Orders, or any license shall
10 affect the parties' rights and obligations under Sections 3.1.3, 4, and 6 – 14 herein. If Customer elects to
11 purchase any products or services directly from Nuance pursuant to Section 5.2, termination of this
12 Agreement for cause shall not terminate Customer's obligation to make payments that accrued before or
13 on account of termination of the Agreement

14 8. Ownership and Proprietary Rights. Except for the limited licenses granted pursuant to this
15 Agreement, the terms of the Agreement do not convey any ownership or other rights of any kind to
16 Customer in or to the Software. Nuance, as between Nuance and Customer, shall own all right, title and
17 interest in and to all Software (including, without limitation, all Updates, Upgrades, improvements,
18 enhancements, and/or custom features and functions) and all patents, copyrights and other intellectual
19 property rights therein. Effective on delivery of each Update or Upgrade to Customer, Nuance shall be
20 deemed to have granted Customer a license to use such Update or Upgrade in conjunction with the
21 Software to which such Update or Upgrade relates, subject to the terms of this Agreement.

22 9. Confidentiality.

23 9.1. Use and Disclosure. The Receiving Party agrees (1) to hold the Disclosing Party's
24 Confidential Information in strict confidence, and to use at least the same standard of care that the
25 Receiving Party uses to in protect its own Confidential Information, (2) not to disclose the Disclosing
26 Party's Confidential Information to any third party, and (3) not to use any Confidential Information of
27 the Disclosing Party without first obtaining the Disclosing Party's written consent, except as reasonably
28 required to exercise its rights or perform its obligations under this Agreement. The Receiving Party
29 agrees to limit disclosure of the Disclosing Party's Confidential Information to those employees who
30 need to know the same to accomplish the purposes of this Agreement, and who have executed a written
31 agreement with terms substantially similar to those contained herein.

32 9.2. Exclusions. The obligations to preserve the confidential nature of any of the Confidential
33 Information described herein shall not apply to information that (i) was previously known to the
34 Receiving Party free of any obligation to keep it confidential; (ii) is or becomes generally known to the
35 public or is obtainable from public sources other than as a result of an act or omission of the Receiving
36 Party; (iii) is independently developed by or on behalf of the Receiving Party without use of or
37 reference to the Disclosing Party's confidential information; or (iv) the Receiving Party is compelled

1 to disclose the Confidential Information by a governmental agency or a court of law having proper
2 jurisdiction. If disclosure is compelled pursuant to subsection (iv) of this section, the Receiving Party
3 shall give the Disclosing Party reasonable notice to enable the Disclosing Party to try to protect the
4 confidentiality of the Confidential Information.

5 10. Limited Warranties.

6 10.1. Nuance Products Warranty. Nuance warrants that upon initial delivery, and for a
7 period of ninety (90) days thereafter, the Nuance Software and Nuance Equipment will operate in all
8 material respects in conformity with the functional specifications set forth in the applicable
9 Documentation. Customer must notify Nuance of any breach of such warranty within the warranty
10 period. Customer's sole and exclusive remedy and Nuance's entire liability for any breach of the
11 warranties set forth in this Section 10.1 will be for Nuance, at Nuance's option, to (a) correct the defect
12 that is causing the breach of the warranty, (b) replace such defective Nuance Product in lieu of
13 correcting the defect, or (c) refund to Customer the fees paid by Customer for the nonconforming
14 Nuance Software or Nuance Equipment (and any unused, prepaid Maintenance Services Fees Customer
15 has paid for such Nuance Software and/or Nuance Equipment, as applicable) and terminate the license
16 to any such Nuance Software.

17 10.2. Services Warranty. Nuance warrants that the Services provided by Nuance pursuant to
18 this Agreement shall be performed in a professional manner by trained and skilled personnel. Customer
19 must notify Nuance of any breach of such warranty within ninety (90) days from performance of the
20 defective Services giving rise to the breach of warranty claim. Customer's sole and exclusive remedy
21 and Nuance's entire liability for any breach of the warranty set forth in this Section 10.2 will be for
22 Nuance to re-perform such non-conforming Services.

23 10.3. Limitation of Warranties. The warranties set forth in this Section 10 shall not apply,
24 and Nuance shall have no warranty obligation or liability with respect to (a) any Nuance Product that (i)
25 is damaged through no fault of Nuance; (ii) is modified by anyone other than Nuance; (iii) is used for
26 any purpose other than its intended purpose (as specified in the Documentation); (iv) is used with
27 equipment not specified as compatible with the Nuance Product in such Nuance Product's
28 Documentation; (v) is used with software not specified as compatible with said Nuance Product in the
29 Nuance Product's Documentation; (vi) Customer fails to properly install or maintain; (b) any computer
30 malfunction not attributable to the Nuance Products or Nuance; (c) any incorrect use of the Nuance
31 Products; or (d) any willful misconduct or negligent action or omission of Customer.

32 10.4. Disclaimer. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE
33 WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 10 ARE EXCLUSIVE AND THERE
34 ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND NUANCE HEREBY
35 EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS
36 FOR ANY PARTICULAR PURPOSE, AND/OR NON- INFRINGEMENT AND TITLE. NUANCE
37 DOES NOT WARRANT THAT THE SOFTWARE, EQUIPMENT OR SERVICES WILL YIELD

1 ANY PARTICULAR BUSINESS OR FINANCIAL RESULT, OR THAT THE SERVICES WILL BE
2 PERFORMED WITHOUT ERROR OR INTERRUPTION. NUANCE MAKES NO
3 REPRESENTATION OR WARRANTY WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR
4 ANY THIRD PARTY EQUIPMENT. NUANCE'S SOLE OBLIGATION WITH RESPECT TO ANY
5 THIRD PARTY SOFTWARE AND/OR THIRD PARTY EQUIPMENT SHALL BE TO MAKE
6 COMMERCIALY REASONABLE EFFORTS TO ASSIST CUSTOMER TO ENFORCE THE
7 WARRANTIES EXTENDED BY THE MANUFACTURER OF THE APPLICABLE THIRD
8 PARTY SOFTWARE AND/OR THIRD PARTY EQUIPMENT, IF ANY.

9 11. Limitation of Liability.

10 11.1. Disclaimer. EXCEPT FOR CUSTOMER'S BREACH OF SECTION 3.1 [Software]
11 (3.1.1 - 3.1.3), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL,
12 INCIDENTAL, INDIRECT, CONSEQUENTIAL, COLLATERAL, EXEMPLARY OR PUNITIVE
13 DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF PROFITS,
14 LOSS OF DATA, BUSINESS INTERRUPTION, COST OF COVER, COST OF DELAY, OR
15 DAMAGES TO BUSINESS REPUTATION), HOWEVER CAUSED, REGARDLESS OF THE
16 BASIS OR LEGAL THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), OR
17 WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH
18 DAMAGES.

19 11.2. Maximum Liability. NUANCE'S MAXIMUM CUMULATIVE LIABILITY
20 UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT (INCLUDING ANY
21 ORDER), REGARDLESS OF THE BASIS OR LEGAL THEORY OF LIABILITY (CONTRACT,
22 TORT OR OTHERWISE), SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL
23 FEES ACTUALLY RECEIVED BY NUANCE WITH RESPECT TO THE ORDER (LESS ANY
24 REFUNDS OR CREDITS), FOR THE APPLICABLE SOFTWARE, EQUIPMENT OR SERVICES
25 GIVING RISE TO THE CLAIM, IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY
26 PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THE EXISTENCE OF MORE
27 THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THE LIMIT ON LIABILITY.
28 HOWEVER, THE LIMITATIONS STATED IN THIS SECTION SHALL NOT APPLY TO 12 (12.1 -
29 12.4).

30 11.3. Third Party Suppliers. UNDER NO CIRCUMSTANCES SHALL NUANCE'S
31 THIRD PARTY SUPPLIERS OF ANY COMPONENT OR PORTION OF THE SOFTWARE OR
32 NUANCE EQUIPMENT BE RESPONSIBLE OR LIABLE TO CUSTOMER OR ANY THIRD
33 PARTY FOR ANY DAMAGES, DIRECT OR OTHERWISE. SUCH THIRD PARTY SUPPLIERS
34 ARE THIRD PARTY BENEFICIARIES OF THIS SECTION 11.3.

35 11.4. Essential Basis. THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF
36 LIABILITY SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE
37 BARGAIN BETWEEN THE PARTIES, AND, ABSENT ANY OF SUCH DISCLAIMERS,

1 EXCLUSIONS OR LIMITATIONS OF LIABILITY, THE PROVISIONS OF THIS AGREEMENT
2 DISCLAIMERS set forth in this Section 11 SHALL APPLY TO THE MAXIMUM EXTENT
3 PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL
4 PURPOSE.

5 12. Intellectual Property Infringement.

6 12.1 Duty to Defend. Customer shall notify Nuance within five (5) business days of any
7 claim made or suit brought against Customer by an unaffiliated third party alleging that Customer's use
8 of the Software as authorized by this Agreement infringes such third party's United States patent,
9 trademark or copyright (each, a "Claim"). If Customer promptly authorizes Nuance in writing to
10 assume the defense of such a Claim, which authorization shall not be unreasonably withheld or unduly
11 delayed, Nuance will at its own expense conduct and control the defense of the claim or at its option
12 settle the Claim, and will indemnify Customer from any resulting judgment of the Claim finally awarded
13 against Customer by a court of competent jurisdiction, provided, however, that any settlement or
14 compromise shall provide for a full release of Customer. Nuance will not be liable for costs and
15 expenses Customer incurs in defending a Claim before authorizing Nuance to defend the Claim and will
16 not defend or indemnify a Claim unless Customer provides Nuance with timely authorization to the
17 defend the Claim and reasonable cooperation and assistance.

18 12.2. Remedies. If a court of competent jurisdiction makes a determination that any
19 Software infringes, or if Nuance, in its reasonable opinion, determines that the Software likely infringes,
20 Nuance, at its option and expense, shall: (i) modify the infringing portion of the Software so as to make
21 it non- infringing; (ii) replace the infringing Software with a non- infringing program having
22 substantially similar functionality; (iii) obtain the right to continue using the infringing portion of the
23 Software; or (iv) terminate Customer's rights with respect to the infringing Software and refund
24 Customer the Fees paid for the affected Software prorated over a five-year period from the delivery
25 date.

26 12.3. Exclusions. Nuance's obligations under this Section 12 shall not apply to the extent of
27 any Claim or infringement resulting from (i) Customer's continued use of the infringing Software after
28 receipt of notice from Nuance of a claim or after receipt of the remedy required of Nuance under this
29 Section 12; (ii) modifications to the Software by any party other than Nuance; (iii) modifications to the
30 Software made pursuant to Customer's express instructions; (iv) combination or use of the Software
31 with other products, processes or materials if the Software itself does not infringe; or (v) Customer's use
32 of the Software other than in accordance with the terms of this Agreement. Customer shall indemnify,
33 defend and hold Nuance harmless (including all costs and attorneys' fees) against any claims concerning
34 infringement brought against Nuance allegedly arising from any of the foregoing.

35 12.4. Exclusive Remedy. Nuance's obligations set forth in this Section 12 shall constitute the
36 sole liability of Nuance, and the sole and exclusive remedy of Customer, with regard to any claims,
37 actions, suits or proceedings concerning intellectual property rights.

1 13. Governing Law. This Agreement will be governed by the laws of the Commonwealth of
2 Massachusetts, without regard to principles of conflict of laws. The Parties agree to submit all disputes
3 related to this Agreement to the courts in the Commonwealth of Massachusetts, to which, each Party
4 consents to the jurisdiction of such courts and waives any objection it may have with respect to venue.

5 14. Miscellaneous.

6 14.1. Injunctive Relief. The Parties agree that remedies at law may be inadequate to protect
7 against a breach of Sections 3.1 (3.1.1 – 3.1.3), 8, 9 and 14.9 hereof and both Parties hereby agree to
8 grant injunctive relief in favor of the other Party without proof of actual damages for any breach of those
9 sections.

10 14.2. Export. Where applicable, each Party agrees to comply with all export laws and
11 restrictions and regulations that the Department of Commerce or other United States or foreign agency
12 or authority issues, and not to knowingly export, or allow the export or re-export in violation of any such
13 restrictions, laws or regulations, or without all required licenses and authorizations.

14 14.3. Independent Status of Parties. Nothing contained in this Agreement, nor in the
15 relationship created thereby, shall be interpreted to evidence a joint venture, partnership or principal-
16 agent relationship between Nuance and Customer. Neither Party shall have any right or authority to act
17 on behalf of, or incur any obligation for, the other Party.

18 14.4. Publicity. Nuance may, with Customer’s written consent, include Customer’s name in
19 Nuance’s Customer list, and may identify Customer as its Customer in its sales presentations, marketing
20 materials, advertising, promotion and similar public disclosures.

21 14.5. Order of Precedence. The Schedules, General Terms and Conditions, Business
22 Associate Agreement, Hardware and Software Maintenance Options Terms and Conditions, and each
23 Order, as applicable and to the extent reasonably possible, shall be construed so as to be consistent with
24 each other. If the aforementioned documents cannot reasonably be construed as consistent with each
25 other, then each document shall prevail over all documents listed subsequently in the preceding
26 sentence.

27 14.6. No Third Party Beneficiaries. Nothing in this Agreement is intended to create any
28 rights in, or confer any benefits upon, any person or entity other than the parties to this Agreement.

29 14.7. Assignment. Customer may not assign its rights or obligations hereunder or subcontract
30 any portion of its performance hereunder without Nuance’s prior written consent.

31 14.8. Force Majeure. Neither Party shall be responsible for delays or failure in performance
32 resulting from acts beyond the control of such Party, including without limitation, acts of God, strikes,
33 lockouts, riots, acts of war, acts of terrorism, epidemics, fire, communication line failures, power surges
34 or failures, earthquakes or other disasters. Nuance shall not be liable for delays or for failure to
35 manufacture and/or deliver due to causes beyond its reasonable control.

36 14.9. Business Associate. Customer and Nuance agree that Nuance is a subcontractor to the
37 Authorized Reseller with respect to the Nuance Products that Nuance provides to Customer pursuant to

1 Orders. Therefore, Nuance agrees to comply with the terms and conditions of the Business Associate
2 Agreement between Authorized Reseller (“Cerner”) and Customer when it creates, maintains, or
3 receives on behalf, or from, Customer in the performance of this Agreement, a copy of which is attached
4 as Exhibit B. Nuance also acknowledges that Nuance is currently a party to an existing Business
5 Associate Agreement between Nuance and Authorized Reseller (“Cerner”).

6 14.10. Notice. All notices hereunder shall be sent to the parties at their respective addresses
7 first set forth above, or at such other addresses as they may designate by written notice. Customer shall
8 also send a copy of all notices it sends to Nuance to Nuance’s General Counsel at 1 Wayside Road,
9 Burlington, MA 01803. All notices shall be deemed to have been given when (i) delivered personally,
10 (ii) sent via certified mail (return receipt requested), (iii) sent fax (all with confirmation of receipt), or
11 (iv) sent via recognized air courier service.

12 14.11. Amendments. This Agreement may not be modified or amended except by a written
13 document signed by the authorized representatives of both Parties.

14 14.12. Waiver. Any failure to insist on the exact performance of any provision of this
15 Agreement shall not constitute a waiver of any rights by either Party, all of which are hereby expressly
16 reserved.

17 14.13. Severability. If any of the provisions of this Agreement shall be or become invalid or
18 unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the
19 remaining provisions of this Agreement.

20 14.14. Construction of Agreement. This Agreement will not be presumptively construed for
21 or against either Party. The section headings used herein are for reference and convenience only, and
22 shall not enter into the interpretation hereof. This Agreement may be executed in multiple counterparts
23 and delivered by facsimile transmission, each of which shall be deemed an original but all of which shall
24 constitute one and the same instrument.

25 14.15. Authorized Reseller. Nuance has signed agreements with certain organizations to
26 promote, market and resell certain software licenses, equipment, and services (each, an “Authorized
27 Reseller”). Each such Authorized Reseller remains independent and separate from Nuance. Nuance is
28 not responsible for the actions, statements or recommendations of Authorized Reseller or any
29 obligations such Authorized Reseller has to Customer. In the event Customer purchases Software
30 licenses, and associated Equipment and Services, from an Authorized Reseller pursuant to an Order
31 under this Agreement, the terms of this Agreement will be modified with respect to each such Order as
32 follows:

- 33 • Customer shall be invoiced by, and shall pay to, such Authorized Reseller the
34 Software license fees, Equipment fees, Profession Services fees, Training Services fees, and first-year
35 Maintenance Services fees related to each such Order, as indicated in said Order, and shall reimburse
36 such Authorized Reseller for all applicable taxes and assessments related thereto.

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1 14.16. Entire Agreement. This Agreement constitutes the sole and complete agreement
2 between the parties with regard to its subject matter. Neither Party shall be subject to any provisions of
3 any pre-printed purchase order, or any Customer policies, regulations, rules, or the like, including those
4 set forth in any Customer sponsored registration system, regardless if such requires affirmative
5 acknowledgement from a Nuance representative. In the event that Customer's use of the Software
6 requires Customer to agree to a click-through agreement, Nuance agrees that the terms of this
7 Agreement supersede and govern Customer's use of the Software.

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EXHIBIT F
 TO AGREEMENT FOR PROVISION OF
 MAINTENANCE AND SUPPORT SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 CERNER CORPORATION
 JULY 1, 2017 THROUGH JUNE 30, 2020

I. MAINTENANCE AND SUPPORT INVENTORY

A. Licensed Software Support Fee Schedule

Licensed Software Support Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
HA Scripts for HP UX (per CPU)	0055908	1 CPU	\$19,935.36	\$19,935.36	\$19,935.36	\$59,806.08
Olympus Enterprise License for Level 1 clients	000969141	1	\$15,262.92	\$15,262.92	\$15,262.92	\$45,788.76
Monthly Supt for RMAN Scripts	00037326	1	\$3,638.16	\$3,638.16	\$3,638.16	\$10,914.48
Discern Expert	PS-26105S	2775 FTE	\$60,623.28	\$60,623.28	\$60,623.28	\$181,869.84
Discern Explorer	PS-26140S	2775 FTE	\$34,045.92	\$34,045.92	\$34,045.92	\$102,137.76
Enterprise Care Documentation	PS-22720S	2775 FTE	\$74,852.40	\$74,852.40	\$74,852.40	\$224,557.20
Open Engine	OE-20850S	2775 FTE	\$13,928.04	\$13,928.04	\$13,928.04	\$41,784.12
TCP/IP Communication Services	OE-22850S	2775 FTE	\$4,619.64	\$4,619.64	\$4,619.64	\$13,858.92
ATDs/Demographics Incoming	IF-29010S	2775 FTE	\$2,602.80	\$2,602.80	\$2,602.80	\$7,808.40
Billing Incoming (Quantity = 1) - QUANTITY = 4 Charges Incoming	IF-29070S	2775 FTE	\$3,276.96	\$3,276.96	\$3,276.96	\$9,830.88
Billing Incoming (Quantity = 1) QUANTITY = 4 (add'l 3)	IF-29070S	2775 FTE	\$2,431.08	\$2,431.08	\$2,431.08	\$7,293.24
Healthcare Eligibility Incoming Benefit Enrollment and	IF-29115S	2775 FTE	\$430.80	\$430.80	\$430.80	\$1,292.40

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Licensed Software Support Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Maintenance						
ATDs/Demographics Outgoing	IF-29220S	2775 FTE	\$1,568.76	\$1,568.76	\$1,568.76	\$4,706.28
Results Outgoing (Discrete Data Elements)	IF-29260S	2775 FTE	\$1,723.80	\$1,723.80	\$1,723.80	\$5,171.40
Unidirectional Device Interface (Qty = 4 devices)	IF-29650S	2775 FTE	\$3,655.20	\$3,655.20	\$3,655.20	\$10,965.60
Unidirectional Device Interface						
Electronic Claims In	IF-29650S	2775 FTE	\$2,978.88	\$2,978.88	\$2,978.88	\$8,936.64
Electronic Claims Out	IF-29650S	2775 FTE	\$2,978.88	\$2,978.88	\$2,978.88	\$8,936.64
Bidirectional Device Interface (Qty = 2 devices)	IF-29655S	2775 FTE	\$3,413.28	\$3,413.28	\$3,413.28	\$10,239.84
Bidirectional Device Interface						
ProFit Enterprise Financials Cerner Patient Accounting Enterprise Billing & Accounting	PF-20450S	2775 FTE	\$37,502.40	\$37,502.40	\$37,502.40	\$112,507.20
Discern Expert	PF-26105S	2775 FTE	\$5,676.00	\$5,676.00	\$5,676.00	\$17,028.00
Discern Explorer	PF-26140S	2775 FTE	\$2,838.00	\$2,838.00	\$2,838.00	\$8,514.00
Enterprise Clinical Data Repository	PS-20570S	2775 FTE	\$150,405.00	\$150,405.00	\$150,405.00	\$451,215.00
Unanticipated maintenance and support service related needs (reference Exhibit A, V.1.a.1), V.1.b.1), and V.1.c.1)).			\$146,244.96	\$146,244.96	\$146,244.96	\$438,734.88
Multimedia Foundation Base Services- Imaging	PV-22196S	Each	\$17,096.04	\$17,096.04	\$17,096.04	\$51,288.12
Clinical Office	PV-20229S	2775 FTE	\$220,496.64	\$220,496.64	\$220,496.64	\$661,489.92
Discern Expert	PV-26105S	2775 FTE	\$14,294.88	\$14,294.88	\$14,294.88	\$42,884.64
Discern Explorer	PV-26140S	2775 FTE	\$5,106.48	\$5,106.48	\$5,106.48	\$15,319.44
General Laboratory	PA-20070S	2775 FTE	\$13,652.16	\$13,652.16	\$13,652.16	\$40,956.48

Licensed Software Support Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Microbiology	PA-20075S	2775 FTE	\$10,239.12	\$10,239.12	\$10,239.12	\$30,717.36
Cerner Knowledge Index (HNA Millennium) (Qty = 1 production environment)	PA-20090S	2775 FTE	\$2,327.04	\$2,327.04	\$2,327.04	\$6,981.12
Outreach Service	PA-22205S	2775 FTE	\$4,757.52	\$4,757.52	\$4,757.52	\$14,272.56
Laboratory Management (HNA Millennium)	PA-24110S	2775 FTE	\$10,239.12	\$10,239.12	\$10,239.12	\$30,717.36
Advanced Pricing	PA-25100S	2775 FTE	\$2,740.80	\$2,740.80	\$2,740.80	\$8,222.40
Departmental Billing	PA-25110S	2775 FTE	\$6,826.08	\$6,826.08	\$6,826.08	\$20,478.24
Departmental Materials Management	PA-25200S	2775 FTE	\$3,413.04	\$3,413.04	\$3,413.04	\$10,239.12
Discern Expert	PA-26105S	2775 FTE	\$8,170.56	\$8,170.56	\$8,170.56	\$24,511.68
Discern Explorer	PA-26140S	2775 FTE	\$4,757.52	\$4,757.52	\$4,757.52	\$14,272.56
Siemens Advia Centaur (Bi-dir)	MD-BY76S	2775 FTE	\$1,271.76	\$1,271.76	\$1,271.76	\$3,815.28
Abbott Architect i1000 (BiDir)	MD-AB64	2775 FTE	\$1,346.64	\$1,346.64	\$1,346.64	\$4,039.92
Roche AmpliLink 3.0.1 (M)	MD-RO83S	2775 FTE	\$2,509.08	\$2,509.08	\$2,509.08	\$7,527.24
GenProbe Panther System Bi-dir w/ barcodes	MD-GP20S_A MT	2775 FTE	\$4,662.00	\$4,662.00	\$4,662.00	\$13,986.00
Enterprise Registration Management Cerner Registration Management	CP-20735S	2775 FTE	\$46,331.88	\$46,331.88	\$46,331.88	\$138,995.64
Enterprise Scheduling Management Cerner Scheduling Management	CP-20740S	2775 FTE	\$30,177.48	\$30,177.48	\$30,177.48	\$90,532.44
Enterprise Master Person Index	CP-20745S	2775 FTE	\$26,740.44	\$26,740.44	\$26,740.44	\$80,221.32
Discern Expert	CP-26105S	2775 FTE	\$13,352.88	\$13,352.88	\$13,352.88	\$40,058.64
Discern Explorer	CP-26140S	2775 FTE	\$6,736.92	\$6,736.92	\$6,736.92	\$20,210.76
Clinical Documents Medical Document Management	IF-29083S_A MT	300 FTE	\$84.00	\$84.00	\$84.00	\$252.00

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Licensed Software Support Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Orders Outgoing (with statuses)	IF-29230S	300 FTE	\$84.00	\$84.00	\$84.00	\$252.00
Orders Outgoing (with statuses)	IF-29230S	300 FTE	\$588.00	\$588.00	\$588.00	\$1,764.00
Enterprise Eligibility M	CP-20750S	2775 FTE				
Doctor Update Incoming	IF-29040S	2775 FTE				
Results Incoming (Discrete)	IF-29050S	2775 FTE	\$2,988.00	\$2,988.00	\$2,988.00	\$8,964.00
Healthcare Eligibility/B	IF-29405S	2775 FTE				
PowerVision	OM-20600S	1	\$19,500.00	\$19,500.00	\$19,500.00	\$58,500.00
Enterprise Order Management	PS-20575S	2775 FTE	\$4,771.86	\$4,771.86	\$4,771.86	\$14,315.58
Cerner Knowledge Index	PS-22090S	1 PROD domain	\$1,620.00	\$1,620.00	\$1,620.00	\$4,860.00
CareAware MultiMedia - Digital Objects	MM-22260S	500 GB	\$10,200.00	\$10,200.00	\$10,200.00	\$30,600.00
CareAware MultiMedia - Digital Objects	MM-22260S_A MT	500 GB	\$10,629.96	\$10,629.96	\$10,629.96	\$31,889.88
Cerner Health Information Management	MR-20400S_A MT	850 Users	\$26,004.84	\$26,004.84	\$26,004.84	\$78,014.52
Connect to Cerner Health: Send to Cerner Health M Page	PY-28010	1				
DR Millenium Toolkit	CTP-DRTOOLKIT_AMT	1 PROD domain	\$21,145.32	\$21,145.32	\$21,145.32	\$63,435.96
P2Sentinel Enterprise 12 Cores	CTM-P2S-ENT-1_AMT	12 cores	\$11,724.72	\$11,724.72	\$11,724.72	\$35,174.16
PowerInsight Explorer	PI-20611S_A MT	1 PROD domain	\$31,308.72	\$31,308.72	\$31,308.72	\$93,926.16
SAP Business Objects Runtime License for PowerInsight	PI-20701S_A MT	1	\$11,724.72	\$11,724.72	\$11,724.72	\$35,174.16
Mpages Development ToolKit	PS-22700S_A MT	188,000 OP visits	\$29,760.00	\$29,760.00	\$29,760.00	\$89,280.00

Licensed Software Support Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Cerner Health Information Management	MR-20400S_A MT	595 FTE	\$7,488.00	\$7,488.00	\$7,488.00	\$22,464.00
Cerner Health Information Management	MR-20400S_A MT		\$9,984.00	\$9,984.00	\$9,984.00	\$29,952.00
PowerChart Ambulatory	PV-20230S_A MT	15 Providers	\$5,196.00	\$5,196.00	\$5,196.00	\$15,588.00
Mpages Development Toolkit	PS-22700S_A MT	62,000 OP Visits	\$11,904.00	\$11,904.00	\$11,904.00	\$35,712.00
Licensed Software Grand Total			\$1,274,390.34	\$1,274,390.34	\$1,274,390.34	\$3,823,171.02

B. Equipment Maintenance Fee Schedule

Equipment Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
HP Integrity rx8640 8-core	AB443A	2	\$40,584.00	\$40,584.00	\$40,584.00	\$121,752.00
HP Integrity rx6600 Rack 4-way - 4 x Itanium 2 - SA MNT: HP Integrity rx6600 - Rac	AD134A	2	\$26,479.80	\$26,479.80	\$26,479.80	\$79,439.40
HP M6412-A Fibre Channel Drive Enclosure MNT: HP M6412-A Fibre Channel	AG638B	8	\$3,744.00	\$3,744.00	\$3,744.00	\$11,232.00
HP EVA M6412A 300GB 15K FC Drive MNT: HP EVA M6412A 300GB 15K F	AG690B	24	\$2,016.00	\$2,016.00	\$2,016.00	\$6,048.00
HP MSL6030 1 LTO-4 Ultrium 1840 FC Lib MNT: HP MSL6030 1 LTO-4 Ultrium	AJ030A	1	\$2,676.00	\$2,676.00	\$2,676.00	\$8,028.00
HP 8/40 Base 24 ports Enabled SAN Switch	AM869A	2	\$7,581.60	\$7,581.60	\$7,581.60	\$22,744.80
HP StorageWorks DAT 160 Array Module	Q1575A	6	\$1,440.00	\$1,440.00	\$1,440.00	\$4,320.00
DL380 G5 Base Storage Server MNT: DL380 G5 Base Storage Ser	AG815B	1	\$1,056.00	\$1,056.00	\$1,056.00	\$3,168.00
MNT: HP BLc7000 CTO 3 IN LCD R	507019-B21	2	\$1,440.00	\$1,440.00	\$1,440.00	\$4,320.00

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Equipment Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
MNT: Special Order-BL460C G6 C	507864-B21	22	\$3,330.84	\$3,330.84	\$3,330.84	\$9,992.52
HP B-Series 8/40 SAN Switch Su	HA110A5 9LK	2	\$1,296.00	\$1,296.00	\$1,296.00	\$3,888.00
P6500 EVA Dual Controller Arra	HA110A5 Q24	1	\$504.00	\$504.00	\$504.00	\$1,512.00
P6300/P6500 Drive Enclosure 5	HA110A5 Q25	20	\$2,400.00	\$2,400.00	\$2,400.00	\$7,200.00
P6300/P6500 HDD Support 5yr HW	HA110A5 Q26	96	\$3,456.00	\$3,456.00	\$3,456.00	\$10,368.00
MNT: HP - Rack stabilizer opti	AF062A	1				
MNT: HP 10K G2 600W Hvy Dty V2	AF065A	1				
MNT: HP EVA6400 Dual Controlle	AJ757A	1	\$2,100.00	\$2,100.00	\$2,100.00	\$6,300.00
MNT: HP Low Power kit - Memory	461828-B21	1				
MNT: PCI-X 2.0 1Port 4Gb Fibre	AB378B	1				
MNT: Processor upgrade - 1 x I	458575-B21	1				
MNT: Compaq - Power distributi	252663-D72	2				
MNT: HP - Rack side panel - me	AF054A	2				
MNT: HP FC1142SR - HBA - PCI E	AE311A	2				
MNT: HP Integrity DVD-ROM Driv	AD142A	2				
MNT: HP Integrity Redundant Po	AD052A	2				
MNT: HP Integrity Upgraded Cor	AD044A	2				
MNT: HP Integrity rx6600 FIO I	AD296A	2				
MNT: HP Integrity rx7640/rx864	AB313A	2				
MNT: HP rx36xx/66xx Internal S	AB036B	2				
MNT: HP rx6600 48-DIMM Memory	AD127A	2				
MNT: HotSwap Power Supply for	A6099A	2				
MNT: PDU 60A, 200-240V N. Am F	E7683AZ	2				
MNT: HP - SCSI external cable	C2362B	3				
MNT: HP - SCSI external termin	C2364A	3				

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Equipment Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
MNT: HP Rack 10642 G2 Shock Pa	AF002A	3				
MNT: 16A High Voltage mPDU WW	252663-B24	4				
MNT: HP - Hard drive - 146 GB	AD333A	4				
MNT: HP rp74/84, rx76/86 DVD+R	AB351B	4				
MNT: HP rx76/86 iCAP 1.6G 18MB	AD366A	8				
MNT: HP rx76/86, rp74/84 146GB	AD210A	8				
MNT: HP COMBO PCI-x 2p 4Gb FC	AD194A	12				
MNT: HP PCI-X 2p 1000BT, 2p U3	XAB290A	12				
MNT: HP - Memory - 8 GB (4 x	AB565A	16				
MNT: HP Servers 8GB DDR2 Memor	AB455A	24				
MNT: HP - Fibre Channel cable	221692-B23	38				
MNT: HP Tape Array 5300 Factor	C7508BZ	2				
MNT: HP 8/40 Base 24-ports Ena	AM869A	1				
MNT: HP BLc7000 1 PH FIO Power	413379-B21	2				
MNT: HP BLc7000 DDR2 Encl Mgmt	456204-B21	2				
MNT: Cisco Catalyst 3120G Blad	451438-B21	4				
MNT: HP Active Cool Fan - Fan	412140-B21	12				
MNT: HP X5560 BL460c G6 FIO Ki	507792-L21	22				
MNT: Processor upgrade - 1 x I	507792-B21	22				
MNT: HP SFF ENT - 3G - 146GB -	504062-B21	44				
MNT: HP - Memory - 1x2GB - 2Rx	500656-B21	88				
HP 5y Support Plus 24 SVC	HA110A5	1				
HP 5y Support Plus 24 SVC	HA110A5	1				
HP 5y Support Plus 24 SVC	HA110A5	1				

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Equipment Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
MNT: PowerMic II Non-Scanner M	0POWM2 N-D04	15	\$1,327.56	\$1,327.56	\$1,327.56	\$3,982.68
PowerMic II Non-Scanner Microp	0POWM2 N-A04	15	\$1,144.80	\$1,144.80	\$1,144.80	\$3,434.40
Additional unanticipated Equipment Maintenance or other maintenance and support service related needs, (reference Exhibit A, V.1.a.2), V.1.b.2), and V.1.c.2)).			\$10,000.00	\$10,000.00	\$10,000.00	\$30,000.00
Equipment Maintenance Grand Total			\$112,576.60	\$112,576.60	\$112,576.60	\$337,729.80

C. Subscription Services Fee Schedule

Subscription Services Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Visit Manager for Enterprise (powered by IMH)	AQ-60123	301 Users	\$14,399.88	\$14,399.88	\$14,399.88	\$43,199.64
HealthSentry Data Services	KS-26748	3 Data Feeds	\$39,000.00	\$39,000.00	\$39,000.00	\$117,000.00
Subscription Services Grand Total			\$53,399.88	\$53,399.88	\$53,399.88	\$160,199.64

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D. Application Services Provider (ASP) and Shared Computing Services Fee Schedule

Application Services Provider (ASP) and Shared Computing Services Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Cerner ePrescribe Package	PS-20080-ASP	60 Providers	\$15,000.00	\$15,000.00	\$15,000.00	\$45,000.00
Cerner Patient Portal-HealthLife	PY-27580-PKG	301 Users	\$30,000.00	\$30,000.00	\$30,000.00	\$90,000.00
Connect to Cerner Health Trusted Contributor		1				
Cerner Direct HISP-Ambulatory	PY-70126C	41 Facilities	\$22,140.00	\$22,140.00	\$22,140.00	\$66,420.00
Cerner Direct HISP-Ambulatory	PY-70126C	1 Facility	\$540.00	\$540.00	\$540.00	\$1,620.00
HealthLife	PY-27800C	1 client	\$13,500.00	\$13,500.00	\$13,500.00	\$40,500.00
Cerner ePrescribe Package	PS-20080-ASP	15 Providers	\$4,500.00	\$4,500.00	\$4,500.00	\$13,500.00
Application Services Provider (ASP) and Shared Computing Services Grand Total			\$85,680.00	\$85,680.00	\$85,680.00	\$257,040.00

E. Managed Services Fee Schedule

Managed Services Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Disaster Recovery Recurring Fees (CONTRACTOR Hosted)	CTS-CRRECUR	300 CCU	\$296,870.28	\$296,870.28	\$296,870.28	\$890,610.84
DR Millennium Toolkit	CTP-DRTOOL KIT	1				
Managed Services Grand Total			\$296,870.28	\$296,870.28	\$296,870.28	\$890,610.84

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F. Transaction Services Fee Schedule

Transaction Services Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Transaction Services	RC-20325-MIN	12,000 Eligibility requests monthly	\$34,560.00	\$34,560.00	\$34,560.00	\$24,560.00
Overage Charge at 25 cents each - Set aside funds for overage (4,000 additional requests per year)	TSEDI-ELIG-BILL	25 cents a transaction over 12,000 transactions monthly	\$1,000.00	\$1,000.00	\$1,000.00	\$3,000.00
Cerner Address Validation	RC-20331					
Cerner Eligibility and Benefits Verification Transaction	RC-20325-TRANS					
Cerner Eligibility and Benefits Submitter Setup Fee	RC-20325-STUP	14 Submitter ID's				
Cerner Eligibility and Benefits Verification Setup Fee	RC-20326	20 Payers				
Transaction Services Grand Total			\$35,560.00	\$35,560.00	\$35,560.00	\$106,680.00

G. Sublicensed Software Maintenance Fee Schedule

Sublicensed Software Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
1 Pack Scan 25K per Month MNT: 1PK ASCENT CAPTURE V5.5-SCAN 25K PER MO	AC-1500-1300	3	\$3,132.00	\$3,132.00	\$3,132.00	\$9,396.00
1 Pack Scan 75K per Month MNT: 1PK ASCENT CAPTURE V5.5-SCAN 75K PER MO	AC-1500-1500	2	\$3,432.00	\$3,432.00	\$3,432.00	\$10,296.00
1 Pack Workstation MNT: 1PK ASCENT CAPTURE V5.5-WS	AC-1500-1200	1	\$1,056.00	\$1,056.00	\$1,056.00	\$3,168.00
MNT: 1 Pack Internet Server 75k per Month	AC-1500-3500	1	\$2,244.00	\$2,244.00	\$2,244.00	\$6,732.00

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Sublicensed Software Maintenance Fee Schedule Table						
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Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
MNT: APPLICATIONXTENDER IMAGE CAPTURE SERVER	452-100-425	1	\$144.00	\$144.00	\$144.00	\$432.00
MNT: APPLICATIONXTENDER PROINDEX FULL TEXT CLIENT - 1 CC USE	456-100-428	1	\$72.00	\$72.00	\$72.00	\$216.00
MNT: APPLICATIONXTENDER REPORTS MANAGEMENT SERVER	456-100-439	1	\$1,524.00	\$1,524.00	\$1,524.00	\$4,572.00
MNT: APPLICATIONXTENDER SERVER - 50 CC USER	450-100-468	1	\$2,940.00	\$2,940.00	\$2,940.00	\$8,820.00
MNT: APPLICATIONXTENDER PROINDEX FULLTEXT SERVER	450-100-497	1	\$624.00	\$624.00	\$624.00	\$1,872.00
MNT: DISKXTENDER FOR WINDOWS 5	456-004-568	1	\$655.80	\$655.80	\$655.80	\$1,967.40
MNT: DISKXTENDER FOR WINDOWS FILE SYSTEM MGR SERVER	456-004-587	1	\$1,176.00	\$1,176.00	\$1,176.00	\$3,528.00
Oracle Processor License US:EE	QC-ORCEE-U8	8	\$42,336.00	\$42,336.00	\$42,336.00	\$127,008.00
Oracle Processor License: Full Use Appl Spec. Management Packs (Diag,Tune,CM)	QC-ORCMP-U9	8	\$7,808.64	\$7,808.64	\$7,808.64	\$23,425.92
MNT: Oracle Database ASFU US:E	QC-ORCEE-U8	150	\$10,584.00	\$10,584.00	\$10,584.00	\$31,752.00
MNT: Oracle Processor License, Full Use AS US: RAC Addon	QC-ORRAC-U9	8	\$20,239.92	\$20,239.92	\$20,239.92	\$60,719.76
MNT: Oracle ASFU Processor License, US:EE without RAC	QC-ORCEE-U8	8	\$2,707.20	\$2,707.20	\$2,707.20	\$8,121.60
IBM WebSphere MQ Value Unit License + SW Maintenance Renewal	E0256LL aka. D55VILL	400	\$2,798.40	\$2,798.40	\$2,798.40	\$8,395.20
IBM WebSphere Application Server Network Deployment VA	E025SLL	560	\$4,368.00	\$4,368.00	\$4,368.00	\$13,104.00

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Sublicensed Software Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
IBM Restricted use WebSphere MQ Value Unit OpenVMS Value Unit Annual SWM	E0287LL (formerly E01EPLL)	1200	\$9,316.80	\$9,316.80	\$9,316.80	\$27,950.40
VERITAS Storage Ent Cluster 6.	UFSQFZZ 0-EIIRA	68	\$1,601.04	\$1,601.04	\$1,601.04	\$4,803.12
Oracle Named User, Full Use Ap Sp. US:Std. Ed. One	QC- ORS1U-U9	20	\$792.00	\$792.00	\$792.00	\$2,376.00
Red Hat Enterprise Linux AS	RHLINUX -AS	4	\$3,999.84	\$3,999.84	\$3,999.84	\$11,999.52
Red Hat AS Linux License	RHLINUX -AS	1	\$3,968.04	\$3,968.04	\$3,968.04	\$11,904.12
Restricted Use - IBM WAS Network Deployment Value Unit	D55WJLL	560	\$16,464.00	\$16,464.00	\$16,464.00	\$49,392.00
Production SNS for Ent for 1 processor - 3yr	137594	2	\$1,464.00	\$1,464.00	\$1,464.00	\$4,392.00
Sensage Clinical Enterprise 12 core - 1 collector	SEN-CE- 12	1	\$26,619.96	\$26,619.96	\$26,619.96	\$79,859.88
Red Hat Enterprise Linux ES	SLSW_RE DHAT_EN T_E	5	\$1,752.00	\$1,752.00	\$1,752.00	\$5,256.00
Red Hat Enterprise Linux ES	RHLINUX -ESB	5	\$1,733.04	\$1,733.04	\$1,733.04	\$5,199.12
APPLICATIONXTENDER WEB SERVICES	456-100- 402	1	\$1,944.00	\$1,944.00	\$1,944.00	\$5,832.00
APPLICATIONXTENDER SERVER - 50 CC USER	456-100- 468	1	\$32,400.00	\$32,400.00	\$32,400.00	\$97,200.00
EMC AX to CAMM License 200+ Users	456-100- 645_201+	1	\$2,400.00	\$2,400.00	\$2,400.00	\$7,200.00
APPLICATIONXTENDER WEB SERVICES	456-100- 402	1	\$1,944.00	\$1,944.00	\$1,944.00	\$5,832.00
AX to CAMM 1-25	456-100- 645_1-25	1	\$979.20	\$979.20	\$979.20	\$2,937.60
APPLICATIONXTENDER WEB SERVICES	111631	1	\$1,944.00	\$1,944.00	\$1,944.00	\$5,832.00
APPLICATIONXTENDER SERVER - 250 CC USER	117353	1	\$42,184.80	\$42,184.80	\$42,184.80	\$126,554.40
APPLICATIONXTENDER SERVER - 10 CC USER	117348	1	\$7,200.00	\$7,200.00	\$7,200.00	\$21,600.00
Cerner eSignature Facility License	CTESIG- FAC	3	\$3,240.00	\$3,240.00	\$3,240.00	\$9,720.00
Cerner eSignature Facility License	CTESIG- FAC	1	\$40,800.00	\$40,800.00	\$40,800.00	\$122,400.00
Lexmark Document Distributor Server	124204	1	\$2,035.20	\$2,035.20	\$2,035.20	\$6,105.60

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Sublicensed Software Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
License						
Restricted Use - IBM MQ Value Unit License + SW Maintenance	D55V1LL	400	\$4,704.00	\$4,704.00	\$4,704.00	\$14,112.00
HP-UX 11i HAOE Integ 4Skt/4Core PSA 5yr Supp	HA110A5 1X2	8	\$17,360.52	\$17,360.52	\$17,360.52	\$52,081.56
HP-UX 11i v2 Serviceguard RAC PCL LTU MNT: HP-UX 11i v2 Serviceguard	T1907BA-UD	4	\$1,440.00	\$1,440.00	\$1,440.00	\$4,320.00
HP-UX 11i v3 Data Center OE LTU MNT: HP-UX 11i v3 Data Center	BA931AC-UD	6	\$5,184.00	\$5,184.00	\$5,184.00	\$15,552.00
HP-UX 11i v2 Serviceguard RAC PCL LTU MNT: HP-UX 11i v2 Serviceguard	T1907BA-PS	4	\$2,016.00	\$2,016.00	\$2,016.00	\$6,048.00
HP-UX 11i v3 Data Center OE LTU MNT: HP-UX 11i v3 Data Center	BA931AC-PS	6	\$6,840.00	\$6,840.00	\$6,840.00	\$20,520.00
Command View P6500 EVA Unlimit	HA110A5 Q1Y	1	\$1,266.96	\$1,266.96	\$1,266.96	\$3,800.88
MNT: HP-UX 11i v3 Data Center	BA931AC-PS	2	\$1,896.00	\$1,896.00	\$1,896.00	\$5,688.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-PS	4	\$1,440.00	\$1,440.00	\$1,440.00	\$4,320.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-UD	4	\$1,440.00	\$1,440.00	\$1,440.00	\$4,320.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-PS	8	\$2,880.00	\$2,880.00	\$2,880.00	\$8,640.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-PS	8	\$2,880.00	\$2,880.00	\$2,880.00	\$8,640.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-UD	8	\$2,880.00	\$2,880.00	\$2,880.00	\$8,640.00
MNT: HP-UX 11i v2 Serviceguard	T1907BA-UD	8	\$2,880.00	\$2,880.00	\$2,880.00	\$8,640.00
MNT: HP-UX 11i v3 Data Center	BA931AC-PS	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00
MNT: HP-UX 11i v3 Data Center	BA931AC-PS	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00
MNT: HP-UX 11i v3 Data Center	BA931AC-PS	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00
MNT: HP-UX 11i v3 Data Center	BA931AC-UD	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00
MNT: HP-UX 11i v3 Data Center	BA931AC-UD	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00
MNT: HP-UX 11i v3 Data Center	BA931AC-	8	\$7,584.00	\$7,584.00	\$7,584.00	\$22,752.00

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Sublicensed Software Maintenance Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Data Center	UD					
MNT: HP Command View EVA6400 U	TA646A-PS	1	\$2,340.00	\$2,340.00	\$2,340.00	\$7,020.00
MNT: HP Command View EVA6400 U	TA646A-UD	1	\$3,516.00	\$3,516.00	\$3,516.00	\$10,548.00
MNT: Oracle Named User, Full U	QC-ORRAA-U9	200	\$4,200.00	\$4,200.00	\$4,200.00	\$12,600
DM360 Ntwk Ed, Perp, Phys Clie	DMNEP-CLT-0250	15	\$6,597.00	\$6,597.00	\$6,597.00	\$19,791.00
MNT: DM360 Ntwk Ed, Perp, Phys	DMNEP-CLT-0250	25	\$9,895.56	\$9,895.56	\$9,895.56	\$29,686.68
DISKXTENDER 2000 TSM 500GB CP	456-004-507	1	\$1,820.52	\$1,820.52	\$1,820.52	\$5,461.56
DISKXTENDER 2000 TSM 500GB CP	456-004-507	1	\$1,820.52	\$1,820.52	\$1,820.52	\$5,461.56
MNT: 1 concurrent station (sta	AE#T024-001U-CER	3	\$1,728.00	\$1,728.00	\$1,728.00	\$5,184.00
MNT: 1 concurrent station (sta	AE#T024-001U-CER	3	\$1,728.00	\$1,728.00	\$1,728.00	\$5,184.00
APPLICATIONXTENDER PACKAGE - 2	457-100-246	1	\$11,700.00	\$11,700.00	\$11,700.00	\$35,100.00
MNT: Oracle Database ASFU US:E	QC-ORNEE-U8	50	\$1,950.00	\$1,950.00	\$1,950.00	\$5,850.00
MNT: Image vol 600K/yr(standar	AE#Y024-600K-CER	1	\$1,263.96	\$1,263.96	\$1,263.96	\$3,791.88
MNT: Image vol 600K/yr(standar	AE#Y024-600K-CER	1	\$1,263.96	\$1,263.96	\$1,263.96	\$3,791.88
MNT: Oracle Proc. Lic, Fil Use	QC-ORS1P-U9	1	\$1,275.96	\$1,275.96	\$1,275.96	\$3,827.88
APPLICATIONXTENDER PACKAGE - 5	457-100-245	3	\$7,020.00	\$7,020.00	\$7,020.00	\$21,060.00
MNT: Restricted Use - IBM MQ V	D55VILL	3,200	\$22,272.00	\$22,272.00	\$22,272.00	\$66,816.00
MNT: Nuance Management Server	DMNE-NMS-F20	1	\$2,160.00	\$2,160.00	\$2,160.00	\$6,480.00
Additional unanticipated Sublicensed Software Maintenance or other maintenance and support service related needs, (reference Exhibit A, V.1.a.7), V.1.b.7), and V.1.c.7)).			\$28,600.00	\$28,600.00	\$28,600.00	\$85,00.00
Sublicensed Software Maintenance Grand Total			\$524,386.84	\$524,386.84	\$524,386.84	\$1,573,160.52

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H. Term Licensed Software Fee Schedule

Term Licensed Software Fee Schedule Table						
Solution Name	Cerner Product Code	Inventory Quantity	Period One	Period Two	Period Three	Total
Cerner CMT (Enterprisewide) CMT Subscription Renewal	KS-22091L	1 Enterprise	\$15,000.00	\$15,000.00	\$15,000.00	\$45,000.00
Current Procedure Terminology (CPT)	KS-22092L	600 CPT users	\$9,300.00	\$9,300.00	\$9,300.00	\$27,900.00
Ambulatory Content Package	KS-26982L	15 Providers	\$6,480.00	\$6,480.00	\$6,480.00	\$19,440.00
MediSource Foundation for Ambulatory	KS-26965L	15 Providers	\$5,856.00	\$5,856.00	\$5,856.00	\$17,568.00
Provider-Friendly Terminology (PFT) - Ambulatory	KS-26995L	60 Providers	\$2,917.20	\$2,917.20	\$2,917.20	\$8,751.60
DSM-5 for Millennium	KS-70000L	400 Licensed BH Professionals	\$15,984.00	\$15,984.00	\$15,984.00	\$47,952.00
Eligible Provider Quality Reporting	PV-22115L	32 Physicians	\$11,880.00	\$11,880.00	\$11,880.00	\$35,640.00
Termed Licensed Software Grand Total			\$67,417.20	\$67,417.20	\$67,417.20	\$202,251.60

I. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to add or remove items from the above listed Equipment, Licensed Software, Term Licensed Software. Sub-licensed Software, Subscriptions, Managed Services, Shared Computing Services, Application Service Providers and Transaction Services Inventory during the term of the Agreement as necessary.

1. Should any additions cause an increase in cost to COUNTY that would exceed the Maximum Obligation of the Agreement; the Parties acknowledge that such an increase will only be effect upon approval of the Orange County Board of Supervisors for said increase in funding through an Amendment to the Agreement.

2. Should any removal of items, with the exception of any sublicensed software, third party equipment or transaction services, create a balance owed to COUNTY by CONTRACTOR, CONTRACTOR agrees to retain such amount, only for the duration of any single period under the Agreement, as a credit to COUNTY that may be used to offset any increase in costs due to the addition of an item or items during each individual period. Both Parties agree that any costs, credits, overpayments, underpayments during any single period shall be settled by, mutual agreement of the Parties, within one hundred and twenty (120) calendar days from the end of any single period. Both Parties further agree that any credit balance owed COUNTY upon the termination of the Agreement must be returned to COUNTY by CONTRACTOR and may not be used towards any similar costs of any future agreement.

1 EXHIBIT G
2 TO AGREEMENT FOR PROVISION OF
3 MAINTENANCE AND SUPPORT SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JULY 1, 2017 THROUGH JUNE 30, 2020
9

10 **I. BUSINESS ASSOCIATE CONTRACT**

11 A. GENERAL PROVISIONS AND RECITALS

12 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
13 Definitions Paragraph of Exhibit A to the Agreement or in Subparagraph B below, shall have the same
14 meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at
15 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

16 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and
17 the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
18 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
19 COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of
20 “Business Associate” in 45 CFR § 160.103.

21 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
22 terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10, to
23 be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the
24 Agreement.

25 4. The parties intend to protect the privacy and provide for the security of PHI that may be
26 created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance
27 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
28 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

29 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
30 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
31 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

32 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
33 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the
34 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
35 terms of this Business Associate Contract and the applicable standards, implementation specifications,
36 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,
37 //

1 with respect to PHI and ePHI created, received, maintained, transmitted, used, or disclosed pursuant to
2 the Agreement.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and P&Ps, to manage the selection,
5 development, implementation, and maintenance of security measures to protect ePHI and to manage the
6 conduct of CONTRACTOR's workforce in relation to the protection of that information.

7 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
8 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

9 a. Breach excludes:

10 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
11 person acting under the authority of CONTRACTOR or COUNTY , if such acquisition, access, or use
12 was made in good faith and within the scope of authority and does not result in further use or disclosure
13 in a manner not permitted under the Privacy Rule.

14 2) Any inadvertent disclosure by a person who is authorized to access PHI at
15 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
16 care arrangement in which COUNTY participates, and the information received as a result of such
17 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

18 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
19 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
20 retain such information.

21 b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or
22 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
23 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
24 based on a risk assessment of at least the following factors:

25 1) The nature and extent of the PHI involved, including the types of identifiers and the
26 likelihood of re-identification;

27 2) The unauthorized person who used the PHI or to whom the disclosure was made;

28 3) Whether the PHI was actually acquired or viewed; and

29 4) The extent to which the risk to the PHI has been mitigated.

30 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
31 Rule in 45 CFR § 164.501.

32 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in
33 45 CFR § 164.501.

34 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in
35 45 CFR § 160.103.

36 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA
37 Privacy Rule in 45 CFR § 164.501.

1 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in
2 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
3 with 45 CFR § 164.502(g).

4 8. "Physical Safeguards" are physical measures, policies, and procedures to protect
5 CONTRACTOR's electronic information systems and related buildings and equipment, from natural and
6 environmental hazards, and unauthorized intrusion.

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

9 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
10 160.103.

11 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy
12 Rule in 45 CFR § 164.103.

13 12. "Secretary" shall mean the Secretary of the Department of HHS or his or her designee.

14 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure,
15 modification, or destruction of information or interference with system operations in an information
16 system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans,
17 "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by
18 CONTRACTOR.

19 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of ePHI at
20 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

21 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in
22 45 CFR § 160.103.

23 16. "Technical safeguards" means the technology and the P&Ps for its use that protect ePHI and
24 control access to it.

25 17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable,
26 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
27 methodology specified by the Secretary of HHS in the guidance issued on the HHS Web site.

28 18. "Use" shall have the meaning given to such term under the HIPAA regulations in
29 45 CFR § 160.103.

30 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

31 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
32 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
33 by law.

34 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
35 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
36 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
37 other than as provided for by this Business Associate Contract.

1 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
2 Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates,
3 receives, maintains, or transmits on behalf of COUNTY.

4 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
5 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
6 requirements of this Business Associate Contract.

7 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
8 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
9 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E below and
10 as required by 45 CFR § 164.410.

11 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
12 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply under
13 HIPAA to CONTRACTOR with respect to such information.

14 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
15 written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an
16 Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an
17 EHR with PHI, and an individual requests a copy of such information in an electronic format,
18 CONTRACTOR shall provide such information in an electronic format.

19 8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs
20 or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30)
21 calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in
22 writing no later than ten (10) calendar days after said amendment is completed.

23 9. CONTRACTOR agrees to make internal practices, books, and records relating to the use
24 and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY
25 available to COUNTY and the Secretary in a time and manner as designated by the Secretary for
26 purposes of the Secretary determining COUNTY's compliance with the HIPAA Privacy Rule or in a
27 time and manner that is reasonably acceptable to both COUNTY and CONTRACTOR as requested by
28 COUNTY.

29 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
30 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
31 and to make information related to such Disclosures available as would be required for COUNTY to
32 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with
33 45 CFR § 164.528.

34 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
35 a time and manner to be determined by COUNTY, that information collected in accordance with the
36 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
37 Disclosures of PHI in accordance with 45 CFR § 164.528.

1 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
2 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
3 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

4 13. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a
5 criminal proceeding for a violation of HIPAA related to this Agreement. COUNTY may terminate the
6 Agreement, if CONTRACTOR is found guilty of a criminal violation in connection with HIPAA under
7 this Agreement. COUNTY may terminate the Agreement, if a finding or stipulation that
8 CONTRACTOR has violated any standard or requirement of the privacy or security provisions of
9 HIPAA, or other security or privacy laws are made in any administrative or civil proceeding related to
10 this Agreement in which CONTRACTOR is a party or has been joined. COUNTY will consider the
11 nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

12 14. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
13 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at no
14 cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
15 proceedings being commenced against COUNTY, its directors, officers or employees based upon
16 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
17 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
18 subcontractor, employee, or agent is a named adverse party.

19 15. The Parties acknowledge that federal and state laws relating to electronic data security and
20 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
21 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
22 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
23 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
24 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
25 concerning an amendment to this Business Associate Contract embodying written assurances consistent
26 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
27 applicable laws. CONTRACTOR's failure to enter into aforesaid negotiations in good faith may result
28 in termination of this Agreement in accordance with Paragraph XXIX.A.2. (TERMINATION).

29 16. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
30 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
31 B.2.a above.

32 D. SECURITY RULE

33 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and
34 maintain appropriate Administrative, Physical and Technical Safeguards in accordance with
35 45 CFR § 164.308, § 164.310, and § 164.312, with respect to ePHI COUNTY discloses to
36 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
37 CONTRACTOR shall develop and maintain a written information privacy and security program that

1 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
2 CONTRACTOR's operations and the nature and scope of its activities.

3 2. CONTRACTOR shall implement reasonable and appropriate P&Ps to comply with the
4 standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in
5 compliance with 45 CFR § 164.316. CONTRACTOR will share with COUNTY its current and updated
6 policies in a controlled CONTRACTOR environment.

7 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
8 containing ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
9 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
10 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
11 or transmits on behalf of COUNTY. These steps shall include, at a minimum:

12 a. Complying with the agreed upon sections of the data system security precautions listed
13 under Subparagraph E., below;

14 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
15 conducting operations on behalf of COUNTY;

16 c. CONTRACTOR Security Program is based on the NIST Cybersecurity Framework and
17 reflects the requirements of ISO 27001-27002 as far as reasonably practicable and applicable to this
18 Agreement.

19 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
20 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
21 restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.

22 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
23 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
24 Subparagraph E below and as required by 45 CFR § 164.410.

25 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
26 shall be responsible for carrying out the requirements of this paragraph. CONTRACTOR Client
27 Accountable Executive or Disaster Recovery Production Owner will communicate on security matters
28 with the COUNTY.

29 E. DATA SECURITY REQUIREMENTS

30 1. Personal Controls

31 a. Employee Training. All workforce members who assist in the performance of functions
32 or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI COUNTY
33 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
34 COUNTY, must complete information privacy and security training, at least annually, at
35 CONTRACTOR's expense. Each workforce member who receives information privacy and security
36 training must - have record of completion, indicating the member's name and the date on which the
37 //

1 training was completed. These records of completion must be retained for a period of six (6) years
2 following the termination of Agreement.

3 b. Employee Discipline. Appropriate sanctions must be applied against workforce
4 members who fail to comply with any provisions of CONTRACTOR’s privacy P&Ps, including
5 termination of employment where appropriate.

6 c. Confidentiality Record. In compliance with pertinent provisions of HIPAA and its
7 implementing regulations, CONTRACTOR shall do the following:

8 1) All persons that will be working with PHI COUNTY discloses to CONTRACTOR
9 or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be under an
10 obligation of confidentiality that includes, at a minimum, General Use, Security and Privacy Safeguards,
11 Unacceptable Use, and Enforcement Policies.

12 2) This must be retained by the workforce member in their learning record prior to
13 access to such PHI.

14 3) The confidentiality obligation must be renewed annually.

15 4) The CONTRACTOR shall retain each person’s record of completion for COUNTY
16 inspection for a period of six (6) years following the termination of the Agreement.

17 d. Background Check. Before a member of the workforce may access PHI COUNTY
18 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
19 COUNTY, a background screening of that worker must be conducted. The screening should be
20 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
21 screening being done for those employees who are authorized to bypass significant technical and
22 operational security controls. CONTRACTOR shall retain each workforce member’s background check
23 documentation for a period of three (3) years.

24 2. Technical Security Controls

25 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
26 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
27 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which
28 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
29 COUNTY.

30 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
31 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
32 must have sufficient administrative, physical, and technical controls in place to protect that data, based
33 upon a risk assessment/system security review.

34 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses
35 to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
36 required to perform necessary business functions may be copied, downloaded, or exported.

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1 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
3 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
4 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm
5 which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the premises”
6 if it is only being transported from one of CONTRACTOR’s locations to another of CONTRACTOR’s
7 locations.

8 e. Antivirus software. All workstations, laptops and other systems that process and/or
9 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
10 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
11 solution with automatic updates scheduled at least daily.

12 f. Patch Management. All workstations, laptops and other systems that process and/or
13 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
14 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
15 necessary. There must be a documented patch management process which determines installation
16 timeframe based on risk assessment and vendor recommendations. At a maximum, all critical patches
17 must be installed within thirty (30) days of vendor release. Applications and systems that cannot be
18 patched due to operational reasons must have compensatory controls implemented to minimize risk,
19 where possible.

20 g. User IDs and Password Controls. All users must be issued a unique user name for
21 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
22 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
23 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
24 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
25 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
26 computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.
27 Passwords must be changed if revealed or compromised. Passwords must be composed of characters
28 from at least three (3) of the following four (4) groups from the standard keyboard:

- 29 1) Upper case letters (A-Z)
- 30 2) Lower case letters (a-z)
- 31 3) Arabic numerals (0-9)
- 32 4) Non-alphanumeric characters (punctuation symbols)

33 h. Data Destruction. When no longer needed, all PHI COUNTY discloses to
34 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
35 must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media
36 may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods
37 require prior written permission by COUNTY.

1 i. System Timeout. The hosted Disaster Recovery system providing access to PHI
2 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
3 behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session
4 after no more than twenty (20) minutes of inactivity.

5 j. Warning Banners. All systems providing access to PHI COUNTY discloses to
6 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
7 must display a warning banner stating that data is confidential, systems are logged, and system use is for
8 business purposes only by authorized users. User must be directed to log off the system if they do not
9 agree with these requirements.

10 k. System Logging. The system must maintain an automated audit trail which can identify
11 the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or
12 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such
13 PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must
14 be read only, and must be restricted to authorized users. If such PHI is stored in a database, database
15 logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after
16 occurrence.

17 l. Access Controls. The system providing access to PHI COUNTY discloses to
18 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
19 must use role based access controls for all user authentications, enforcing the principle of least privilege.

20 m. Transmission encryption. All data transmissions of PHI COUNTY discloses to
21 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
22 outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is
23 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files
24 containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as
25 website access, file transfer, and E-Mail.

26 n. Intrusion Detection. All systems involved in accessing, holding, transporting, and
27 protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
28 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
29 comprehensive intrusion detection and prevention solution.

30 3. Audit Controls

31 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that
32 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY
33 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
34 COUNTY must have at least an annual system risk assessment/security review which provides assurance
35 that administrative, physical, and technical controls are functioning effectively and providing adequate
36 levels of protection. Reviews should include vulnerability scanning tools.

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1 b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
3 must have a routine procedure in place to review system logs for unauthorized access.

4 c. Change Control. All systems processing and/or storing PHI COUNTY discloses to
5 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
6 must have a documented change control procedure that ensures separation of duties and protects the
7 confidentiality, integrity and availability of data.

8 4. Business Continuity/Disaster Recovery Control

9 a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan
10 to enable continuation of critical business processes and protection of the security of PHI COUNTY
11 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
12 COUNTY kept in an electronic format in the event of an emergency. Emergency means any
13 circumstance or situation that causes normal computer operations to become unavailable for use in
14 performing the work required under this Agreement for more than twenty four (24) hours.

15 b. Data Backup Plan. For the hosted Disaster Recovery system, if a Disaster is declared,
16 CONTRACTOR must have established documented procedures to backup such PHI to maintain
17 retrievable exact copies of the PHI. The plan must include a regular schedule for making backups,
18 storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to
19 restore COUNTY PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup
20 and monthly offsite storage of COUNTY data.

21 5. Paper Document Controls

22 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
23 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
24 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
25 that information is not being observed by an employee authorized to access the information. Such PHI
26 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
27 baggage on commercial airplanes.

28 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR
29 or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall
30 be escorted and such PHI shall be kept out of sight while visitors are in the area.

31 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
32 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
33 through confidential means, such as cross cut shredding and pulverizing.

34 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
35 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
36 of the CONTRACTOR except with express written permission of COUNTY.

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1 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
2 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
3 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
4 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
5 intended recipient before sending the fax.

6 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
7 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
8 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
9 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to
10 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in
11 a single package shall be sent using a tracked mailing method which includes verification of delivery and
12 receipt, unless the prior written permission of COUNTY to use another method is obtained.

13 F. BREACH DISCOVERY AND NOTIFICATION

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

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

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

23 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
24 Privacy Officer. CONTRACTOR’s notification may be written or oral, but if it is oral, CONTRACTOR
25 shall follow by a written notification within twenty four (24) hours of the oral notification. Thereafter,
26 CONTRACTOR shall provide written notification containing the contents stated below within five (5)
27 calendar days. CONTRACTOR shall be required to provide any other information relevant to the Breach
28 in writing as soon as the information is available.

29 3. CONTRACTOR’s notification shall include, to the extent possible:

30 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
31 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

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

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

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

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

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

8 5) Contact procedures for COUNTY to ask questions or learn additional information,
9 which shall include a telephone number, an E-Mail address, or postal address.

10 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45
11 CFR § 164.404, if it is reasonable to do so under the circumstances.

12 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
13 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
14 CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F and as required
15 by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or
16 disclosure of PHI did not constitute a Breach.

17 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
18 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

19 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
20 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
21 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
22 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
23 the Breach to COUNTY pursuant to Subparagraph F.2 above.

24 8. CONTRACTOR shall continue to provide all additional pertinent information about the
25 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
26 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests
27 for further information, or follow-up information after report to COUNTY, when such request is made
28 by COUNTY.

29 9. If the Breach is due to the negligence or willful misconduct of CONTRACTOR,
30 CONTRACTOR shall bear all reasonable expense or other reasonable costs associated with the Breach
31 that COUNTY incurs in addressing the Breach and consequences thereof, including costs of
32 investigation, notification, remediation, documentation or other costs associated with addressing the
33 Breach. However, nothing stated herein shall relieve the CONTRACTOR from its obligation to address
34 and be responsible for all costs related to any Breach which obligation the CONTRACTOR
35 independently bears under HIPAA, the HITECH Act, and/or the HIPAA regulations. Regardless of
36 whether the Breach is due to the negligence or willful misconduct of the CONTRACTOR,
37 //

1 CONTRACTOR shall provide and/or pay for the cost of up to one year of credit monitoring of the
2 Breaches of the Disaster Recovery System that CONTRACTOR hosts on its server

3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

4 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
5 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
6 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
7 by COUNTY except for the specific Uses and Disclosures set forth below.

8 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for
9 the proper management and administration of CONTRACTOR.

10 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
11 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
12 CONTRACTOR, if:

13 1) The Disclosure is required by law; or

14 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is
15 disclosed that it will be held confidentially and used or further disclosed only as required by law or for
16 the purposes for which it was disclosed to the person and the person immediately notifies
17 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
18 been breached.

19 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
20 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
21 CONTRACTOR.

22 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
23 carry out legal responsibilities of CONTRACTOR.

24 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
25 consistent with the minimum necessary requirements of HIPAA.

26 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
27 required by law.

28 H. PROHIBITED USES AND DISCLOSURES

29 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or
30 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to
31 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care
32 item or service for which the health care provider involved has been paid out of pocket in full and the
33 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

34 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
35 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
36 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by
37 42 USC § 17935(d)(2).

1 I. OBLIGATIONS OF COUNTY

2 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
3 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
4 CONTRACTOR's Use or Disclosure of PHI.

5 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
6 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
7 CONTRACTOR's Use or Disclosure of PHI.

8 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
9 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
10 may affect CONTRACTOR's Use or Disclosure of PHI.

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

13 J. BUSINESS ASSOCIATE TERMINATION

14 1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the
15 requirements of this Business Associate Contract, COUNTY shall:

16 a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the
17 violation within thirty (30) business days; or

18 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure
19 the material Breach or end the violation within thirty (30) days, provided termination of the Agreement
20 is feasible.

21 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
22 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or
23 received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

24 a. This provision shall apply to all PHI that is in the possession of Subcontractors or
25 agents of CONTRACTOR.

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

27 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
28 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
29 destruction infeasible. Upon joint determination by COUNTY and CONTRACTOR that return or
30 destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate
31 Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the
32 return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.

33 3. The obligations of this Business Associate Contract shall survive the termination of the
34 Agreement.

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County of Orange
Health Care
Agency

**Security
Requirements and
Guidelines for
Application
Vendors and
Application Service
Providers**

02/2017

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4 **Overview**

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8 **Security Requirements and Guidelines for Application Vendors and**
9 **Application Service Providers**

10 This document provides a high-level overview of application security related guidelines and requirements set
11 forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-
12 implemented applications and application service providers who provide hosted services.

13
14 These requirements and guidelines are consistent with regulatory privacy and security requirements and
15 guidelines as well as supportive of OCHCA’s position and practices on risk management in terms of
16 appropriately safeguarding OCHCA’s information assets.

17
18 The sections below are comprehensive and may apply in whole or in part based on specific implementation and
19 scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This
20 information will be reviewed, validated and documented by OCHCA Security prior to any contract being
21 finalized.

22
23
24 Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA’s
25 systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance
26 Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security
27 Standards (if applicable), and Sarbanes-Oxley (SOX). Vendors must also commit to ensuring compliance with
28 all future local, state and federal laws and regulations related to privacy and security as they pertain to the
29 application or service.

General Security Requirements

- The application/system must meet the general security standards based upon ISO 27001,27002:2013 information security framework
- The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.
- For applications hosted by OCHCA, OCHCA will routinely apply patches to both the operating system and subsystems as updated releases are available from the operating system vendor and or any third party vendors. The vendors must keep their software current and compatible with such updated releases in order for the application to operate in this environment.
- Vendors must provide timely updates to address any applicable security vulnerabilities found in the application.
- OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and manage the health and performance of the application server, network connectivity, power etc. The application must function appropriately while the monitoring tools are actively running.
- All application services must run as a true service and not require a user to be logged into the application for these services to continue to be active. OCHCA will provide an account with the appropriate security level to logon as a service, and an account with the appropriate administrative rights to administer the application. The account password must periodically expire, as per Vendor's policies and procedures.
- In order for the application to run on OCHCA server and network resources, the application must not require the end users to have administrative rights on the server or subsystems.

Encryption

- Application/system must use encryption to protect sensitive data at rest wherever technically possible (e.g. SQL TDE Encryption).
- All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level. This requirement pertains to any regulated data in motion such as website access and file transfers.

- All electronic files, where applicable, that contain OCHCA data must be encrypted when stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes). The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- All encryption methods used for data storage and transmission must be disclosed by the vendors.

Network Application Documentation

For the hosted Disaster Recovery system, Vendor will share documentation related to the configuration of the application including methods of secure implementation and port requirements on a limited basis and only as it applies to COUNTY.

Access Management

- Application/system must control access to and within the system at multiple levels (e.g. per user, per user role, per area, per section of the chart) through a consistent mechanism of identification and authentication of all users in accordance with the ‘Role Based Access Control’ (RBAC) standard.
- Application/system must support measures to define, attach, modify and remove access rights for all classes of users.
- Application/system must support measures to enable and restrict access to the whole and/or sections of the technology solution in accordance with prevailing consent and access rules.
- Application must have the ability to create unique user accounts.
- Hosted Disaster Recovery Application must support session timeouts or automatic logoff after 20 minutes of inactivity
- The hosted Disaster Recovery application must provide functionality to automatically disable or lock accounts after 90 days of inactivity.

Password Management

- Application must support password management measures including but not limited to password expiration, account lockout and complex passwords.
- Passwords expiration must be set to 90 days and the system must prevent the use of the previous 4 passwords.

- Accounts must be locked after five unsuccessful login attempts.
- The password must be at least 8 characters in length and a combination of letters, numbers, and special characters with at least 3 of the four following categories.
 - ◆ Uppercase letters (A through Z)
 - ◆ Lowercase letters (a through z)
 - ◆ Numeric digits (0 through 9)
 - ◆ Special Characters (! @ # \$ % ^ & etc.)

Audit Capabilities

Auditing and logging capabilities will permit HCA to identify user activity.

- Application must support the identification of the nature of each access and/or modification through the use of logging.
- Application must employ audit capabilities to sufficiently track details that can establish accountability for each step or task taken in a clinical or operational process.
- All audit logs must be protected from human alteration.
- Access to logs must be limited to authorized users.
- The application must employ basic query tools and reports to easily search logs.
- OCHCA record retention policies must be followed. Currently OCHCA requires that this period be at least six years from the time the record was initiated.
- Logging and auditing functionality must include the following:
 - ◆ Record of who did what to which object, when and on which system.
 - ◆ Successful/unsuccessful log-in and log-out of users.
 - ◆ Add, modify and delete actions on data/files/objects.
 - ◆ Read/view actions on data classified as restricted/confidential.
 - ◆ Changes to user accounts or privileges (creation, modification, deletion).
 - ◆ Switching to another users access or privileges after logging in (if applicable).

Protection from Malicious Code

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- For cloud hosted solutions, vendors must utilize antivirus/antispysware software on servers and monitor to prevent malicious code which may lead to a compromise of OCHCA’s data.
- For local hosted solutions, vendors must ensure that the application appropriately supports the use of antivirus/antispysware software.

Remote Support Functionality

- Provider has a Vendor Remote Access Policy. This policy may be reviewed against OCHCA Vendor Remote Access Policy for material differences.

HCA Data Usage

- During the course of any implementation and subsequent support and life cycle management, any OCHCA data that the vendors have access to in any manner shall be considered confidential unless otherwise designated in writing.
- Vendors must not use or disclose OCHCA’s data other than as permitted or as required by contract or law.
- The vendors must agree to use appropriate safeguards to prevent the unauthorized use or disclosure of OCHCA’s data during any time that the data is stored or transported in any manner by vendors.
- After the end of any appropriate use of OCHCA’s data within the vendors’ possession, such data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

Cloud Solutions

Application Service Providers hosting OCHCA data must meet the following additional requirements and are required to comply with and provide deliverables noted below:

- **SSAE 16.** SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance Attestation..
- **Network Intrusion Detection and Prevention.** All systems that are accessible via the internet must actively use a network based intrusion detection and prevention solution.
- **Workstation/Laptop Encryption.** All workstations, laptops and mobile devices that process and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.

- 1 • **Jurisdiction and Location of OCHCA Data.** To protect against seizure and improper use by non-
2 United States (US) persons and government entities, all data / information hosted for OCHCA must
3 reside in a facility under the legal jurisdiction of the US.
- 4 • **Patch Management.** All workstations, laptops, and other systems that access, process and/or store
5 OCHCA data must have appropriate security patches installed. Application Service Providers must
6 utilize a documented patch management process which determines installation timeframe based on risk
7 assessment and vendor recommendations. At a minimum, all critical patches must be installed within 30
8 days of vendor release.
- 9 • **Application Access.** All systems accessible via the internet must employ security controls to prevent
10 access to the application via an asset not approved or owned by the county.
- 11 • **Risk Assessment.** Application Service Providers hosting data for HIPAA covered services must
12 conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security
13 Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on
14 the latest version of NIST SP 800-30 ([http://csrc.nist.gov/publications/nistpubs/800-30-
15 rev1/sp800_30_r1.pdf](http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf)). Upon request, any applicable Risk Assessment findings and remediation
16 strategy must be shared with OCHCA.
- 17 • **NIST.** To ensure compliance with HIPAA, Application Service Providers shall implement appropriate
18 security safeguards by following National Institute of Standards and Technology (NIST) guidelines.
19

20
21 **Policies**

22
23 Vendors must have formal, published IT security policies that address how they manage and maintain the
24 internal security posture of their own or sub-contracted infrastructure. The vendor shall also clearly demonstrate
25 that additional security features are in place to protect systems and data in the unique environment of the service
26 provider model.
27

28
29 Vendors must provide, to the extent permissible, all relevant security policies and procedures to the County for
30 review Vendor’s policy is to tightly control and not distribute written or electronic copies of its security policies,
31 due to their sensitivity, but they can be viewed on a limited basis in one of Vendor’s offices or alternatively with
32 an onsite Vendor associate who can present this information in a properly secured WebEx / teleconference
33 meeting. These controls serve to maintain the appropriate security posture for protecting all clients’ data.
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35 These policies must include, but not be limited to, the following:
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- **IT Staff Usage Agreement.** All vendor employees performing services for the County must agree to policies within their own organization as part of an overall security training and awareness program.
 - **IT Security Policies and Procedures.**
 - **IT Operations Security Policy.** Written standards for operational security for any facilities where the County data, staff or systems shall exist. These documents must include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
 - **Data Management Security Policy.** Policy for the safeguarding and management of all data provided by the County or accessed by vendor as part of implementation and ongoing maintenance. This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of duties.
 - **Security Incident Notification and Management Process.** A detailed document that outlines the contact names and order and escalation of events that will occur in the case of a security breach concerning the County staff, data, or systems. This document must be updated immediately upon any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the vendor must:

- Bear the cost of compliance for any required changes to security infrastructure, policies and procedures to comply with existing regulations, unless such change is unique to the County.
- If Vendor’s SOC1, SOC2 Type II report or the industry equivalent report covers the provisions of services under the Agreement, County will leverage these reports to the extent possible for the purpose of assessing Vendor’s compliance with these terms. Upon request, Vendor will collaborate with County in answering any specific security assessment questions that are not through standard third party audit reports.
- Provide the County with any annual audit summaries and certifications, including but not limited to HIPAA, ISO or SOX audits, as applicable.
- Designate a single point of contact, which is the CernerWorks Production Owner, to facilitate all IT security activities related to Disaster Recovery hosted services provided to the County,

1 with the allowance of appropriate backups. Such contact(s) must be available on a 7/24/365
2 basis.

3
4 **Business Continuity / Disaster Recovery Plans**

5 Application Service Providers must have a viable risk management strategy that is formally documented
6 in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP plan(s)
7 must identify recovery strategies within the application service areas, outline specific recovery methods
8 and goals, and provide the mutually agreed upon recovery time and point objectives.
9

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12 **Backup and Restore**

13 The vendor must allow viewing in a controlled environment their routine Backup and Restore policy
14 and procedure which includes their backup data security strategy. These procedures shall allow for
15 protection of encryption keys (if applicable) as well as a document media destruction strategy including
16 media management tasks (i.e., offsite vaulting and librarian duties).
17

18 **Staff Verification**

19 For any employee a vendor contemplates using to provide Disaster Recovery hosted services for the
20 County, the vendor shall use its standard employment criteria as used for similar services provided to
21 other customers in evaluating the suitability of that employee for such roles.
22

23 At a minimum, subject to the requirements of applicable law, such criteria must include the information
24 as outlined below for each employee:
25

- 26 ▪ **Relevant Skills, Licenses, Certifications, Registrations.** Each service employee must possess
27 the educational background, work experience, skills, applicable professional licenses, and
28 related professional certifications commensurate with their position. The County may, at any
29 time and at its sole discretion, request that the vendor demonstrate compliance with this
30 requirement as applicable to the nature of the services to be offered by the vendor’s employee.
31 The County may, at its sole discretion, also request the vendor’s certification that the vendor
32 employee has undergone a chemical/drug screening, with negative results, prior to granting
33 access to the County facilities.
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36 ▪ **Background Checks.** In accordance with applicable law, the vendor must, at the County’s
37 request, obtain as a condition of employment, a background investigation on any vendor

1 employee selected to work for the County. The security and background investigation shall
2 include criminal record checks, including records of any conviction in the U.S. or other relevant
3 jurisdiction where the employee resides. Costs for background investigations must be borne by
4 the vendor.

5
6 At a minimum, subject to the requirements of applicable law, the vendor must:

- 7
8 1. Ensure that all vendor service employees performing applicable services or supporting the
9 vendor’s duties and obligations under a County agreement: (i) have not been convicted of
10 any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and
11 (ii) have not been on any list published and maintained by the Government of the United
12 States of America of persons or entities with whom any United States person or entity is
13 prohibited from conducting business.
- 14
15 2. Follow such verification procedures as may be reasonably specified by the County from
16 time to time. If either the vendor or the County becomes aware that any vendor employee
17 has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust,
18 or has been included on any such list of persons or entities convicted of such crimes, then
19 the vendor shall promptly remove the employee from providing services to the County and
20 prohibit that employee from entering any facilities at which services are provided.
- 21
22 3. Annually certify to the County that, the CernerWorks Production Owner and Architect, to
23 the best of its knowledge, or any of the service employees that work 160 hours annually
24 with the Disaster Recovery remote hosted system, have not been convicted of any felony
25 involving fraud, theft, dishonesty or a breach of trust under any laws.

26 27 28 **IT Physical Security and Access Control**

29 The vendor must establish processes and procedures for physical access to and control of their own
30 facilities that are, at a minimum, consistent with relevant industry-specific best practices.

31 Vendor employees are expected to:

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- Scan ID badges, where applicable, at any secure door and/or entrance and exit gates, including any door or gate that may already be open.
- Refrain from using recordable media in conjunction with County-owned equipment.
- Comply with check-in/check-out requirements for materials and/or equipment.
- Adhere to the facility’s established emergency, safety and evacuation procedures.
- Report any unsafe conditions to the facility’s safety representative.
- Report any access violations or security threats to the facility’s local security administrator.

IT Security Compliance and Training

The vendor must ensure that all vendor employees comply with security policies and procedures and take all reasonable measures to reduce the opportunity for unauthorized access, transmission, modification or misuse of the County’s data by vendor employees.

The vendor must ensure that all vendor employees are trained on security measures and practices. The vendor will be responsible for any costs related to such training.

At a minimum, the vendor is expected to:

- Ensure that a formal disciplinary process is defined and followed for vendor employees who violate established security policies and procedures.
- Proactively manage and administer access rights to any equipment, software and systems used to provide services to the County.
- Define, maintain and monitor access controls, ranging from physical access to logical security access, including a monthly review of vendor employees’ access to systems used to provide services to the County.

The vendor shall monitor facilities, systems and equipment to protect against unauthorized access.

At a minimum, the vendor is expected to:

- Monitor access to systems; investigate apparent security violations; and notify the County of violations, including routine reporting on hacking incidents, penetrations and responses.

- 1 ▪ Maintain data access control and auditing software and provide adequate logging, monitoring,
- 2 and investigation of unusual or suspicious activity.
- 3 ▪ Initiate immediate corrective actions to minimize and prevent the reoccurrence of any security
- 4 violations.
- 5 ▪ Document details related to security violations and provide documentation to the County.
- 6 ▪ Provide necessary documentation and evidence to the County in connection with any legal
- 7 action or investigation related to the provision of services by Vendor to County.
- 8
- 9

10 Security Testing Recommendations

11 The vendor should perform a series of steps to verify the security of applications, some of which are
12 noted below. This section will not be validated by the County, but reflects best practices that the vendor
13 should consider and follow.

- 14
- 15 1. Look for vulnerabilities at various layers of the target environment. In the lowest layer, the
- 16 vendor’s testing team should look for flaws in the target network environment, including any
- 17 routers and firewalls designed to control access to the web server and related target components.
- 18 The team should attempt to determine whether such filters provide adequate protection at the
- 19 network layer of the target hosts that the team can reach across the Internet.
- 20
- 21 2. Look for flaws in the Internet-accessible hosts associated with the target infrastructure,
- 22 including the web server. This host-based component of the test will analyze which network-
- 23 accessible services are available on the target hosts across the Internet, including the web server
- 24 process. The testing team should look for incorrect configuration, unpatched or enabled
- 25 services, and other related problems on the target hosts.
- 26

27 This review performed by the vendor should include but not be limited to:

- 28
- 29 ▪ The web application (i.e., the software that interacts with users at their web browsers; typically,
- 30 custom-crafted code created by the web development team)
- 31 ▪ The web server application (the underlying software that sends and receives information via
- 32 HTTP and HTTPS, typically off-the-shelf software such as Microsoft’s IIS or the open-source
- 33 Apache software)
- 34 ▪ Any separate backend application servers that process information from the web application
- 35 ▪ The backend database systems that house information associated with the web application.
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- Infrastructure diagrams.
- Configuration host review of settings and patch versions, etc.
- Full code review.
- Identification and remediation of well-known web server, code engine, and database vulnerabilities.
- Identification and remediation of any server and application administration flaws and an exploitation attempt of same.
- Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities.
- Analysis of data communications between the application and databases or other backend systems.
- Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access.
- Analyses of user and group account authentication and authorization controls to determine if they can be bypassed.
- Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic.
- Identification of areas where error handling is insufficient or reveals too much sensitive information.
- Identification of opportunities to write to the host file system or execute uploaded files.
- Identification of product sample files, application debugging information, developer accounts or other legacy functionality that allows inappropriate access.
- Determination as to whether or not fraudulent transactions or access can be performed.
- Attempts to view unauthorized data, especially data that should be confidential.
- Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted.
- Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

1 **Vendor Deliverables**

2 The following items are to be provided by the vendor:

- 3
- 4 ▪ OCHCA Security Requirements and Guidelines for Application Vendors and Application Service
- 5 Providers - Questionnaire
- 6 ▪ Business Continuity Plan Summary (as related to service provided)
- 7
- 8 ▪ SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance Attestation
- 9
- 10 • Network Diagram that demonstrates vendor network and application segmentation including the
- 11 security controls in place to protect HCA data (to the degree applicable to the Disaster Recovery
- 12 hosting services included in this Agreement
- 13 • Vendor will allow OCHCA to view Vendor policies in one of the Vendor’s offices or alternatively
- 14 with an onsite Vendor associate who can present this information in a properly secured
- 15 WebEx/teleconference meeting.
- 16 • Security Incident Notification and Management Process
- 17 • Security Contact Identification (24x7x365)
- 18
- 19 ▪ Staff Related Items
- 20 ○ Pre-Employment Screening Policy/Procedure
- 21 ○ Background Checking Procedure
- 22
- 23 ○ Ongoing Employment Status Validation Process for the qualifying Disaster Recovery hosting
- 24 services associates.

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