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REFERENCED CONTRACT PROVISIONS

Term: June 24, 2015 through September 30, 2016

Period One means the period from June 24, 2015 through June 30, 2015

Period Two means the period from July 1, 2015 through June 30, 2016

Period Three means the period from July 1, 2016 through September 30, 2016

Maximum Obligation: \$805,542

Period One Maximum Obligation: \$195,788

Period Two Maximum Obligation: 407,384

Period Three Maximum Obligation: 202,370

TOTAL MAXIMUM OBLIGATION: \$805,542

Basis for Reimbursement: Negotiated Amount

Payment Method: Monthly in Arrears

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: Cerner Corporation
2800 Rockcreek Parkway
Kansas City, Missouri 64117
Attn: President

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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:

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3		
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	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	DG. 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

A. This Agreement, together with Exhibits A, B, C, D, E, F, and G, attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement. This Agreement shall constitute the sole and entire

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3 relative to this Agreement, oral or written, shall be considered superseded, and any such terms,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

10 11 **III. ATTORNEYS' FEES**

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

16 17 **IV. CHOICE OF LAW AND FORUM**

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

25 B. In the event of a dispute between the Parties, CONTRACTOR and COUNTY agree to make a
26 good faith effort to dispose of the disputed matter within a reasonable period of time through the
27 CONTRACTOR's Project Manager and County's Project Director. However, if the CONTRACTOR's
28 Project Manager and County's Project Director do not reach a resolution to the disputed matter, such
29 matter shall be brought to the attention of the Health Care Agency's Agency Director or his or her
30 designee and the CONTRACTOR's management team to work cooperatively to resolve the dispute
31 amicably. In the event that a resolution at such management levels does not occur, either Party may
32 submit the dispute to binding arbitration in Orange County, California under the then-prevailing rules of
33 the American Arbitration Association, Inc., a New York corporation. Unless either Party objects to
34 arbitration as a means to resolve the disputed matter, the CONTRACTOR and COUNTY agree that the
35 arbitration shall be through a single arbitrator, who shall be experienced in information technology
36 matters. Judgment upon any award in such arbitration may be entered and enforced in any court of
37 competent jurisdiction. Notwithstanding any provision of this Agreement to the contrary, each Party

1 acknowledges that any breach of any of its obligations with respect to the other party's proprietary rights
2 will result in an irreparable injury for which money damages will not be an adequate remedy and that, in
3 such event, the non-breaching party shall be entitled to injunctive relief in addition to any other relief a
4 court may deem proper.

5 C. In the event the CONTRACTOR or COUNTY objects to arbitration, either Party reserves the
6 right to initiate any legal proceeding it deems appropriate in accordance with Paragraph A of this
7 Article.

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

11 V. COMPLIANCE

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

14 1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA
15 policies and procedures relating to HCA's Compliance Program, HCA's Code of Conduct and General
16 Compliance Trainings.

17 2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of
18 Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct
19 have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as
20 described in subparagraphs below.

21 3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct;
22 the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award
23 of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's
24 Compliance Program and Code of Conduct.

25 4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it
26 shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures
27 to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.
28 ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program
29 and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to
30 meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and
31 Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain
32 all required elements.

33 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
34 CONTRACTOR's Compliance Program and Code of Conduct contains all required elements,
35 CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of
36 CONTRACTOR's Compliance Program, Code of Conduct and related policies and procedures.
37

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

5 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
6 retained to provide services directly related to this Agreement to ensure that they are not designated as
7 Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General
8 Services Administration's Excluded Parties List System or System for Award Management, the Health
9 and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and the
10 California Medi-Cal Suspended and Ineligible Provider List.

11 1. "Covered Individuals" mean all of CONTRACTOR's employees, contractors,
12 subcontractors, agents, and other persons who perform services directly relative to this Agreement.
13 Notwithstanding the above, this term does not include part-time or per-diem employees, contractors,
14 subcontractors, agents, and other persons who are not reasonably expected to work more than one
15 hundred sixty (160) hours per year performing services directly relative to this Agreement; except that
16 any such individuals shall become Covered Individuals at the point when they work more than one
17 hundred sixty (160) hours performing services directly relative to this Agreement during the calendar
18 year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made
19 aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and
20 procedures or CONTRACTOR's Compliance Program, Code of Conduct and related policies and
21 procedures, if CONTRACTOR receives written confirmation from ADMINISTRATOR's Compliance
22 Officer that the CONTRACTOR's Compliance Program and Code of Conduct contains all required
23 elements.

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

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

33 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors annually
34 to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its
35 subcontractors use their best efforts to verify that they are eligible to participate in all federal and State
36 of California health programs and have not been excluded or debarred from participation in any federal
37 //

1 or state health care programs, and to further represent to CONTRACTOR that they do not have any
2 Ineligible Person in their employ or under contract.

3 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
4 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
5 CONTRACTOR shall notify ADMINISTRATOR immediately upon CONTRACTOR's becoming
6 aware if a Covered Individual providing services directly relative to this Agreement becomes debarred,
7 excluded or otherwise becomes an Ineligible Person.

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

14 7. CONTRACTOR shall notify ADMINISTRATOR immediately upon CONTRACTOR's
15 becoming aware if a Covered Individual or entity is currently excluded, suspended or debarred, or is
16 identified as such after being sanction screened. Such individual or entity shall be removed from
17 participating in any activity associated with this Agreement immediately upon CONTRACTOR's
18 becoming aware of such individual's or entity's being excluded, suspended or debarred.
19 ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for
20 services provided by ineligible person or individual, in an amount not to exceed the corresponding
21 repayment obligation or sanction that is imposed on COUNTY or ADMINISTRATOR as a result of an
22 excluded, suspended or debarred Covered Individual or entity participating in any activity associated
23 with this Agreement. CONTRACTOR shall promptly return any overpayments within forty-five (45)
24 business days after the overpayment is verified by ADMINISTRATOR.

25 C. COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance Training
26 and Provider Compliance Training, where appropriate, available to Covered Individuals.

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

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

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

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

37 D. Subject to provisions of Paragraph XVI.B, the parties hereby agree that CONTRACTOR shall

1 attempt to meet State regulations when they exceed Federal requirements, and when COUNTY notifies
2 CONTRACTOR in writing of such requirements. CONTRACTOR shall notify COUNTY in writing
3 within thirty (30) days of notice from COUNTY of CONTRACTOR's determination if they are able to
4 meet identified State regulations. Should CONTRACTOR be unable to meet said State regulations,
5 either party may terminate this Agreement as outlined in Paragraph XXXI. of this Agreement.
6

7 VI. CONFIDENTIALITY

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

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

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

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

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

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

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

37 //

VII. CONFLICT OF INTEREST

1
2 A. The Orange County Board of Supervisors' policy prohibits its public employees from engaging
3 in activities involving conflict of interest. CONTRACTOR shall exercise reasonable care and diligence
4 to prevent any actions or conditions that could result in a conflict with the best interest of COUNTY.
5 This obligation shall apply to CONTRACTOR, CONTRACTOR's officers, employees and agents,
6 relatives, sub-tier contractors, and third parties associated with accomplishing work and services
7 hereunder as outlined in the California Political Reform Act of 1974 and Government Code 87103.

8 B. CONTRACTOR's efforts shall include, but not be limited to, establishing precautions to
9 prevent its officers, employees and agents from making, receiving, providing, or offering gifts,
10 entertainment, payments, loans, or other considerations, which could be deemed to appear to influence
11 individuals to act contrary to the best interest of COUNTY
12

VIII. CONTRACTOR LIMITATION OF LIABILITY

13
14 A. Except as provided in Subparagraph XIV.V. (in cases where COUNTY is liable to a third party
15 for such third party's consequential damages), in no case shall CONTRACTOR be liable for any
16 special, incidental or consequential damages based upon breach of warranty, breach of contract,
17 negligence, strict tort, or any other legal theory. Such excluded damages include, but are not limited to,
18 loss of profits, loss of savings or revenue, loss of use of the Equipment, Sublicensed Software, Licensed
19 Software, or the System of which they are part, or any associated equipment, cost of capital, cost of any
20 substitute equipment, facilities or services, downtime, the claims of third parties, and injury to property.

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

26 C. Notwithstanding Subparagraph B above and any other provisions herein, CONTRACTOR's
27 maximum liability for all claims whatsoever arising under this Agreement shall be limited to the amount
28 paid by COUNTY to CONTRACTOR under this Agreement during the previous twelve (12) month
29 period. The limitation stated in the immediately preceding sentence herein however shall not apply to
30 such claims as stated in Subparagraph XIV.A regarding third party intellectual property infringement
31 claims and Subparagraph XIV.V.
32

IX. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

33
34 A. CONTRACTOR may not delegate or assign the obligations hereunder, either in whole or in
35 part, without prior written consent of COUNTY; provided, however, obligations undertaken by
36 CONTRACTOR pursuant to this Agreement may be carried out by means of subcontracts, upon
37 approval by ADMINISTRATOR, which approval shall not be unreasonably withheld.

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

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

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

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

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

21 22 **X. EMPLOYEE ELIGIBILITY VERIFICATION**

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

32 33 **XI. FACILITIES, PAYMENTS AND SERVICES**

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

36 B. Compensation shall be in the amount and paid pursuant to the terms of Paragraph V. of
 37 Exhibit A attached hereto.

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

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

10 11 **XII. FREIGHT ON BOARD PRICES**

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

21 22 **XIII. HEADINGS NOT CONTROLLING**

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

25 26 **XIV. INDEMNIFICATION AND INSURANCE**

27 A. CONTRACTOR agrees to indemnify, defend and hold COUNTY and its officers, directors,
28 employees, and agents ("COUNTY INDEMNITEES") harmless from any claims, liabilities obligations,
29 judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) which are
30 asserted against the County arising out of the use of the System by County or arising out of or resulting
31 from Contractor's performance under this Agreement, where such injury or claim is caused by the
32 negligence of Contractor, its officers, employees or agents; provided however that the foregoing
33 indemnity shall not apply if County has not used the System in accordance with the Documentation and
34 applicable standards of good clinical practice. CONTRACTOR'S obligation under the intellectual
35 property indemnification set forth in Subparagraph XIV(V) herein shall apply to all third party
36 intellectual property infringement claims, liabilities obligations, judgments, causes of actions, costs and
37 expenses (include reasonable attorneys' fees) described in that Subparagraph XIV(V) which are asserted

1 against the County arising out of the use of the System by County regardless of CONTRACTOR'S, or
2 its officers', employees' or agents', negligence or misconduct. If judgment is entered against
3 CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active
4 negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that
5 liability will be apportioned as determined by the court. Neither party shall request a jury
6 apportionment.

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

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

22 D. Prior to the provision of services under this contract, the Contractor agrees to purchase all
23 required insurance at Contractor's expense, including all endorsements required herein, necessary to
24 satisfy the County that the insurance provisions of this contract have been complied with. Contractor
25 agrees to keep such insurance coverage in effect during the entire term of this Agreement and provide
26 Certificates of Insurance and endorsements to the County.

27 E. Contractor shall ensure that all subcontractors performing work on behalf of Contractor
28 pursuant to this agreement shall be covered under Contractor's insurance as an Additional Insured or
29 maintain insurance subject to the same terms and conditions as set forth herein for Contractor.
30 Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage
31 required by County from Contractor under this agreement. It is the obligation of Contractor to provide
32 notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to
33 allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor
34 through the entirety of this agreement for inspection by County representative(s) at any reasonable time.

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

1 G. If the Contractor fails to maintain insurance acceptable to the County for the full term of this
2 contract, the County may terminate this contract.

3 H. QUALIFIED INSURER

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

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

12 3. The policy or policies of insurance maintained by the Contractor shall provide the
13 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
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made per occurrence

27 I. REQUIRED COVERAGE FORMS

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

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

32 J. REQUIRED ENDORSEMENTS – The Commercial General Liability policy shall contain the
33 following endorsements, which shall accompany the Certificate of Insurance, except that the
34 endorsements shall apply to but not specifically name, the County of Orange or other COUNTY-specific
35 people or entities:

36 //

37 //

1 1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least
2 as broad applying to the County of Orange, its elected and appointed officials, officers, agents and
3 employees as Additional Insureds.

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

7 K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving
8 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
9 agents and employees.

10 L. All insurance policies required by this contract shall waive all rights of subrogation against the
11 County of Orange, its elected and appointed officials, officers, agents and employees when acting within
12 the scope of their appointment or employment.

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

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

19 O. Insurance certificates should be forwarded to the agency/department address listed on the
20 solicitation.

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

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

28 R. County shall notify CONTRACTOR in writing of changes in the insurance requirements. If
29 Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with
30 County incorporating such changes within thirty (30) days of receipt of such notice, this contract may be
31 in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal
32 remedies.

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

36 **T. SUBMISSION OF INSURANCE DOCUMENTS**

37 1. The COI and endorsements shall be provided to COUNTY as follows:

1 a. Prior to the start date of this Agreement.
 2 b. No later than the expiration date for each policy.
 3 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
 4 changes to any of the insurance types as set forth in Subparagraph G. of this Paragraph.

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

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

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

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

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

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

37 3. CONTRACTOR shall not have any obligation to COUNTY under any provision of this

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

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

8 9 **XV. INFORMATION MANAGEMENT TOOLS**

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

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

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

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

24 25 **XVI. INSPECTIONS AND AUDITS**

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

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

35 C. AUDIT RESPONSE:

36 If the audit reveals that money is payable from one party to the other, that is, reimbursement by
 37 CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds

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

7 **XVII. LICENSES AND LAWS**

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

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

30 C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:

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

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

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

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

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

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

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

14 **XVIII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

25 C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly
26 available social media sites) in support of the services described within this Agreement,
27 CONTRACTOR shall develop social media policies and procedures and have them available to
28 ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all
29 forms of social media used to either directly or indirectly support the services described within this
30 Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as
31 they pertain to any social media developed in support of the services described within this Agreement.
32 CONTRACTOR shall also include any required funding statement information on such social media
33 when required by ADMINISTRATOR.

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

37 //

XIX. MAXIMUM OBLIGATION

1
2 The Total Maximum Obligation of COUNTY for services provided in accordance with this
3 Agreement, and the separate Maximum Obligations for each period under this Agreement, are as
4 specified in the Referenced Contract Provisions of this Agreement.
5

XX. NO HIRE

6
7 CONTRACTOR and COUNTY agree that, without the prior consent of the other party, neither will
8 offer employment to or discuss employment with any of the other parties' associates or employees until
9 one year after this Agreement is terminated, provided the foregoing provision will not prohibit a general
10 non-targeted solicitation of employment in the ordinary course of business or prevent either party from
11 employing any employee who contacts such party at his or her own initiative without any direct or
12 indirect solicitation by or encouragement from such party.
13

XXI. NONDISCRIMINATION**A. EMPLOYMENT**

14
15
16 1. During the term of this Agreement, CONTRACTOR shall not unlawfully discriminate
17 against any employee or applicant for employment because of his/her race, religious creed, color,
18 national origin, ancestry, physical disability, mental disability, medical condition, genetic information,
19 marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and
20 veteran status. Additionally, during the term of this Agreement, CONTRACTOR shall require in its
21 subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for
22 employment because of his/her race, religious creed, color, national origin, ancestry, physical disability,
23 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
24 gender expression, age, sexual orientation, or military and veteran status.
25

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

30 3. CONTRACTOR shall not discriminate between employees with spouses and employees
31 with domestic partners, or discriminate between same gender domestic partners and spouses of those
32 employees, in the provision of benefits.

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

36 5. All solicitations or advertisements for employees placed by or on behalf of
37 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
for employment without regard to race, religious creed, color, national origin, ancestry, physical

1 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
 2 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
 3 shall be deemed fulfilled by use of the term EOE/Disability/Vet or the phrase “an equal opportunity
 4 employer/Disability/Vet”.

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

8 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
 9 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
 10 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
 11 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
 12 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
 13 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
 14 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
 15 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
 16 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
 17 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
 18 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
 19 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
 20 or more of the factors identified above:

21 1. Denying a client or potential client any service, benefit, or accommodation.

22 2. Providing any service or benefit to a client which is different or is provided in a different
 23 manner or at a different time from that provided to other clients.

24 3. Restricting a client in any way in the enjoyment of any advantage or privilege enjoyed by
 25 others receiving any service or benefit.

26 4. Treating a client differently from others in satisfying any admission requirement or
 27 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
 28 any service or benefit.

29 5. Assignment of times or places for the provision of services.

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

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

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

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

6
7 **XXIII. PROTECTIVE EQUIPMENT**

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

11
12 **XXIV. PURCHASE ORDERS**

13 If COUNTY submits its own form of purchase order to request Licensed Software, Sublicensed
14 Software, Equipment and/or professional services, any and all terms and conditions which may appear
15 on such purchase order are of no force or effect and shall be superseded by the terms and conditions of
16 this Agreement.

17
18 **XXV. RECORDS MANAGEMENT AND MAINTENANCE**

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

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

24 C. CONTRACTOR shall ensure compliance with requirements applicable to CONTRACTOR
25 pertaining to the privacy and security of personally identifiable information (hereinafter "PII").
26 CONTRACTOR shall, immediately upon discovery of a Breach of privacy and/or security of PII by
27 CONTRACTOR, notify ADMINISTRATOR of such breach by telephone, email, or facsimile.

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

30 E. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the
31 commencement of the contract, unless a longer period is required due to legal proceedings such as
32 litigations and/or settlement of claims.

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

36 //

37 //

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

4 H. CONTRACTOR may be required to retain all records involving litigation proceedings and
5 settlement of claims respecting this Agreement for a longer term which will be agreed to by the parties.
6

7 **XXVI. MINIMUM WAGE LAWS**

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

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

18 C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR,
19 where applicable, shall comply with the prevailing wage and related requirements, as provided for in
20 accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the
21 State of California (§§1770, et seq.), as it now exists or may hereafter be amended.
22

23 **XXVII. SEVERABILITY**

24 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
25 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
26 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
27 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain
28 in full force and effect, and to that extent the provisions of this Agreement are severable.
29

30 **XXVIII. SITE VISITS AND COUNTY CREDITS**

31 COUNTY agrees that CONTRACTOR may bring its prospective clients to COUNTY's site in order
32 to observe the System in operation. CONTRACTOR will provide to COUNTY details on the site visit
33 process and responsibilities thirty (30) days prior to conducting a site visit. COUNTY agrees to
34 cooperate fully with CONTRACTOR in these site visits and to brief CONTRACTOR personnel in
35 advance as to the substance of opinions and comments COUNTY intends to give with respect to
36 CONTRACTOR and the System. CONTRACTOR and COUNTY will work cooperatively to minimize
37 disruptions at COUNTY's site and to showcase both COUNTY's institution as well as CONTRACTOR

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

13 14 **XXIX. STATUS OF CONTRACTOR**

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

26 27 **XXX. TERM**

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

34 35 **XXXI. TERMINATION**

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

1 1. Contingent Funding;

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

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

5 2) Inclusion of sufficient funding for the services hereunder in the applicable budget
6 approved by the Board of Supervisors.

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

13 2. Breach of Agreement;

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

17 1) Shall afford CONTRACTOR written notice of the breach and ten (10) calendar
18 days' time period within which to cure the breach thereafter, unless such breach is related to an error in
19 the Licensed Software, in which case, CONTRACTOR shall have a period of sixty (60) days to cure the
20 breach; and

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

25 3) Offset against any monies billed by CONTRACTOR but yet unpaid by COUNTY
26 those monies disallowed pursuant to the above.

27 b. In the event of a material breach by CONTRACTOR, in addition to the above and other
28 remedies, COUNTY reserves the right to terminate this Agreement in accordance with this
29 Paragraph XXXI., all of the foregoing subject to Subparagraph IV.B. hereof. COUNTY may continue
30 to discontinue payments pending a decision of the Arbitrator as provided in Subparagraph IV.D. hereof.

31 3. Insolvency;

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

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

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

1 1. Breach of Agreement;

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

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

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

10 2. Insolvency;

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

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

23 C. RIGHTS UPON TERMINATION BY COUNTY FOR CAUSE;

24 If this Agreement terminates pursuant to Subparagraph A.(2) of this Paragraph the following shall
25 apply:

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

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

34 D. ORDERLY TERMINATION;

35 1. After receipt of a written Notice of Termination by COUNTY for lack of appropriation or a
36 Notice of Termination by CONTRACTOR, CONTRACTOR shall submit to COUNTY a termination
37 invoice. Such invoice shall be submitted no later than thirty (30) days from the effective date of

1 termination, unless one or more extensions in writing are granted by COUNTY upon request of
2 CONTRACTOR made in writing within such thirty (30) day period or authorized extension thereof.
3 Upon any such termination, COUNTY agrees to pay CONTRACTOR for all products and services
4 delivered or performed prior to termination, which meet the requirements of this Agreement provided,
5 however, that such compensation shall not exceed the total compensation set forth in this Agreement as
6 the total compensation may be reduced by payments already otherwise made and as further reduced by
7 work not terminated.

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

13 E. LIQUIDATED DAMAGES:

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

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

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

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

31 F. TERMINATION OF SUPPORT: COUNTY may not terminate Support before the end of
32 twelve (12) months after First Productive Use of the applicable Licensed Software, provided however,
33 after such period, COUNTY may terminate Support for any module of Licensed Software currently in
34 place through this Agreement upon ninety (90) days prior written notice to CONTRACTOR.
35 CONTRACTOR may terminate Support for any module of Licensed Software currently in place
36 through this Agreement upon ninety (90) days prior written notice if COUNTY:

37 1. Fails to install the most current New Release of an item of Licensed Software within

1 twenty-four (24) months of the date CONTRACTOR makes such release generally available to its
2 clients, or

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

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

11 G. TERMINATION OF MAINTENANCE: Unless otherwise provided by the supplier, either
12 party may terminate Maintenance upon sixty (60) days prior written notice. CONTRACTOR shall,
13 however, only terminate Maintenance services in the event that;

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

16 2. CONTRACTOR's Third Party Maintenance Suppliers refuse to provide Maintenance to
17 COUNTY due to COUNTY's failure to maintain a specified environment. Such termination of
18 Maintenance shall be effective upon the renewal date. All unpaid charges under this Paragraph shall
19 become immediately due and payable upon such termination.

20 H. Upon termination CONTRACTOR's and COUNTY's obligations pursuant to the Payments
21 Paragraph of Exhibit A to this Agreement shall be adjusted to reflect the early termination. The
22 termination of this Agreement under this paragraph or under the Term Paragraph of this Agreement
23 shall not affect in any way the duties that either party owes the other party, pertaining to services
24 provided during the term of this Agreement which would or could extend beyond the date this
25 Agreement terminates.

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

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

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XXXII. WAIVER OF DEFAULT OR BREACH

1
2 Waiver of any default shall not be considered a waiver of any subsequent default. Waiver of any
3 breach of any provision of this Agreement shall not be considered a waiver of any subsequent breach.
4 Waiver of any default or any breach shall not be considered a modification of the terms of this
5 Agreement.

XXXIII. WARRANTIES**A. EQUIPMENT, SOFTWARE AND SYSTEM**

6
7
8
9 1. Pass-Through Provisions: CONTRACTOR shall assign and pass through to COUNTY any
10 Equipment and / or Sublicensed Software end-user warranties set forth by the supplier of such
11 Equipment and / or Sublicensed Software. CONTRACTOR shall interface directly with said supplier of
12 any Equipment and / or Sublicensed Software in the event of any breach of any such warranty as
13 COUNTY may notify CONTRACTOR.

14 2. CONTRACTOR's Warranty: CONTRACTOR warrants that, beginning upon the date of
15 First Productive Use and extending during such period as COUNTY is on Support, the Licensed
16 Software will, perform in all material respects, the functions to which both parties have mutually agreed
17 to when operated in accordance with the Documentation and in the environment for which
18 CONTRACTOR designed the Licensed Software to operate.

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

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

31 3. CONTRACTOR Disclaimer of All Other Warranties; The CONTRACTOR warranties
32 contained in this Agreement and the Exhibits hereto extend to and are for the benefit of COUNTY and
33 its permitted successors and assigns only. CONTRACTOR makes no representations or warranties
34 concerning either the Equipment, the Sublicensed Software (or other programs supplied to COUNTY by
35 CONTRACTOR and which are directly licensed to COUNTY by a third party, or which are supplied by
36 a third party to COUNTY), the Licensed Software, the System, subscription services, Maintenance or
37 Support, nor does CONTRACTOR undertake any further obligations whatsoever. The foregoing

1 warranties are in lieu of, and CONTRACTOR hereby expressly disclaims, all other warranties, both
2 express and implied, including but not limited to the implied warranties of merchantability and of fitness
3 for a particular purpose and non-infringement with respect to any and all products or services (or
4 portions thereof provided hereunder.

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

9
10 **XXXIV. WORK PRODUCT**

11 Title to all Work Product is and will remain the sole and exclusive property of CONTRACTOR.
12 CONTRACTOR may use such Work Product for internal purposes as well as for other clients, so long
13 as CONTRACTOR does not use any Confidential Information belonging to COUNTY.
14 CONTRACTOR hereby grants to COUNTY a non-exclusive, non-transferable license to use the Work
15 Product supplied to COUNTY by CONTRACTOR for COUNTY's own internal purposes and for no
16 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

5
6 BY:  _____ DATED: 6-5-15
7 Randy Sims

8 TITLE: SR. V. Pres. & Chief Legal Officer
9

10
11
12 BY: _____ DATED: _____

13
14 TITLE: _____
15

16
17
18 COUNTY OF ORANGE

19
20
21 BY: _____ DATED: _____

22 HEALTH CARE AGENCY
23

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

29
30
31 BY:  _____ DATED: 6/8/15
32 DEPUTY
33
34

35
36 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or
37 any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the board of directors
has empowered said authorized individual to act on its behalf by his or her signature alone is required by ADMINISTRATOR.

1 EXHIBIT A
 2 TO AGREEMENT FOR PROVISION OF
 3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CERNER CORPORATION
 8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
 9

10 **I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

35 G. Data means all (a) data that is collected, stored, or generated through the use of the Licensed
 36 Software and (b) CONTRACTOR-requested data that is not collected, stored, nor generated through the
 37 //

1 use of any Licensed Software, in each case requested by CONTRACTOR and subsequently transmitted
2 to, or retrieved by CONTRACTOR for storage.

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

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

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

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

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

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

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

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

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

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

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

35 S. New Release shall mean the distinctly identified (e.g. Release HNAM.2000.XX for
36 CONTRACTOR products), comprehensive collection and packaging of an upgrade or modification to
37 //

1 the Licensed Software and supporting Documentation components at a distinct point in time within a
2 product's life cycle that CONTRACTOR makes generally commercially available.

3 T. Permitted Facility shall mean an entity identified as such in Exhibit F.

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

7 V. Product Descriptions shall mean the Software Product Descriptions (SPD's) for the System.

8 W. Scope of Use shall mean the limitations on COUNTY's use of the System.

9 X. Sublicensed Software shall mean all Equipment Operating System Sublicensed Software and
10 Third Party Application Sublicensed Software and/or third party content.

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

14 Z. Third Party Application Sublicensed Software shall mean any application software and
15 databases not proprietary to CONTRACTOR.

16 AA. Work Product shall mean any customized or custom computer software programs,
17 Documentation, techniques, methodologies, inventions, analysis, frameworks, software, or procedures
18 developed, conceived or introduced by CONTRACTOR in the course of or as the result of
19 CONTRACTOR performing professional services, installation services, Implementation services, issue
20 resolution or other Support services, whether acting alone or in conjunction with COUNTY or its
21 employees, affiliates or others.

22 **II. PATENT / COPYRIGHT MATERIALS**

23 Unless otherwise expressly provided in this Agreement, CONTRACTOR shall be solely responsible
24 for clearing or securing the right to use any patented or copyrighted materials included in the Licensed
25 Software supplied by or through CONTRACTOR in the performance of this Agreement.
26

27 **III. TITLE OF DATA**

28 All materials, documents, Data, source code for data structures, or information obtained from
29 COUNTY data files or any COUNTY medium furnished to CONTRACTOR in the performance of this
30 Agreement will at all times remain the property of COUNTY. Such Data or information may not be
31 used or copied for direct or indirect use by CONTRACTOR after completion or termination of this
32 Agreement. All materials, documents, Data, or information, including copies, must be returned to
33 COUNTY at the end of this Agreement.
34

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IV. CALIFORNIA PUBLIC RECORDS ACT

1
2 A. Agreements and their derivative materials may be subject to public disclosure pursuant to the
3 California Public Records Act. Specifically, since agreements and their contents become the exclusive
4 property of COUNTY, they may be considered a matter of public record and may be regarded as public
5 records. Certain exceptions may be those elements of each agreement, which are denoted trade secrets
6 as that term is defined in California Government Code Section 6254.7 and which are so marked as
7 "Trade Secret," "Confidential" or "Proprietary." If it is necessary to include proprietary/trade secret
8 information in any of CONTRACTOR's documents, COUNTY recommends that CONTRACTOR
9 clearly and prominently mark the information it believes falls into this category. COUNTY is not the
10 owner of the trade secret, nor the agent or employee of CONTRACTOR, and therefore cannot refuse to
11 disclose the information requested under a Public Record Act request. In the event of a request for such
12 records, COUNTY shall notify CONTRACTOR within forty eight (48) hours if disclosure is requested
13 of the designated property/trade secret information, in order to permit CONTRACTOR to seek a court
14 order, or other relief it deems necessary to prevent disclosure.

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

V. PAYMENTS

18
19
20 A. BASIS FOR REIMBURSEMENT - As compensation to CONTRACTOR for the services
21 described in this Exhibit A to the Agreement, which amount shall be inclusive of sales tax, COUNTY
22 shall pay CONTRACTOR the amounts and at the times set forth in Exhibit C less identified holdback
23 provided, unless mutually agreed by both parties otherwise, however, that the total of such payments
24 shall not exceed the COUNTY'S Maximum Obligation.

25 B. Both parties agree that should COUNTY receive any computer software purchased from
26 CONTRACTOR and/or CONTRACTOR's Subsidiaries electronically, these transactions are sales tax
27 exempt under California Code Regulation 1502 (f) (1) (D) as referenced in attachment A.2 of the
28 Agreement.

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

33 D. CONTRACTOR shall not bill COUNTY for milestone payments until such milestone has been
34 accepted by the COUNTY in accordance with Exhibit B of the Agreement.

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

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

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

7 H. Beginning July 1 of each year in which the Agreement shall be in effect, COUNTY shall review
 8 the spending guidelines for allowable expenses as specified in the Agreement and shall review and
 9 modify, if appropriate, the guideline amounts in consideration of cost of living adjustments or other
 10 market driven events. ADMINISTRATOR shall provide CONTRACTOR with the updated spending
 11 guidelines. Upon mutual agreement of ADMINISTRATOR and CONTRACTOR, the spending
 12 guidelines may be updated more frequently.

13 I. CONTRACTOR shall separately bill COUNTY, on a monthly basis, the costs incurred for
 14 travel expenses directly related to service activities under this Agreement. CONTRACTOR agrees to
 15 the following spending guidelines for allowable expenses. Items exceeding the agreed upon guidelines
 16 or not specified as an allowable expense shall require prior ADMINISTRATOR approval.
 17 CONTRACTOR will use its best efforts to manage expenses according to these guidelines; however,
 18 expenses are based on market driven events that are outside CONTRACTOR's control.
 19 CONTRACTOR shall provide adequate notice to ADMINISTRATOR, in writing, if CONTRACTOR
 20 anticipates that it will exceed the allowable expenses and, in this notice, specify the market driven
 21 events causing the increased estimates in expense costs. ADMINISTRATOR shall evaluate said notice
 22 and present a request for an amendment to this Agreement to the Orange County Board of Supervisors
 23 for approval if appropriate and necessary to reimburse CONTRACTOR's costs.

24 1. Airfare: The parties agree that the average cost, per trip, for airfare shall be six hundred
 25 dollars (\$600). Airfare anticipated to be greater than eight hundred dollars (\$800) shall require prior
 26 approval of ADMINISTRATOR.

27 2. Hotel: The parties agree that the average cost, per night, for a hotel room shall be one
 28 hundred fifty dollars (\$150). Upon execution of this Agreement, CONTRACTOR agrees to contact
 29 hotels in proximity of COUNTY'S offices and negotiate the rates based on expected frequency of travel,
 30 securing reasonable discounts or inclusion of additional complimentary benefits such as parking or
 31 meals, whenever possible. Hotel rates anticipated to be greater than two hundred dollars (\$200) per
 32 night shall require prior approval of ADMINISTRATOR.

33 The following hotel charges are not allowable:

- 34 a. In room movies,
- 35 b. Room Service, (unless prior approved by ADMINISTRATOR)
- 36 c. In room telephone calls,
- 37 d. Liquor,

1 e. Excessive tipping.

2 3. Rental Car: The parties agree that the average daily rental car fee shall be fifty six dollars
3 (\$56) per day, not including gasoline, and that, whenever possible, two or more of CONTRACTOR's
4 personnel shall share use of the rental car. The parties anticipate that gasoline for the rental car shall not
5 be greater than twenty dollars (\$20), at self-serve prices, per week for travel related to COUNTY
6 business. Gasoline usage anticipated to exceed forty five dollars (\$45), at self-serve prices, per week
7 shall require prior approval of ADMINISTRATOR.

8 4. Parking:

9 a. COUNTY shall provide, at no cost to CONTRACTOR one parking space, or if no
10 space is available, reimburse CONTRACTOR for the cost of parking in any "pay for parking" lot near
11 COUNTY's work site.

12 b. CONTRACTOR staff shall utilize economy airport parking lots in lieu of terminal
13 parking unless prior approval from ADMINSTRATOR.

14 5. Meals/Per Diem: The parties agree that each of CONTRACTOR's personnel, when on site
15 at COUNTY'S offices, shall be compensated at a flat per diem rate of fifty dollars (\$50) per day for
16 meals and incidentals.

17 CONTRACTOR shall use its best efforts to manage expenses according to these spending guidelines;
18 however, expenses may occur which may be outside CONTRACTOR's control.

19 J. CONTRACTOR shall be responsible for providing acceptable invoices to ADMINISTRATOR
20 for payment and obtaining prior approvals as required herein. Incomplete or incorrect invoices shall be
21 returned to CONTRACTOR for correction. Documentation, including but not limited to copies of
22 receipts, shall be required by ADMINISTRATOR along with the supporting invoices. CONTRACTOR
23 shall bill COUNTY for the fees set forth in Exhibit C of the Agreement upon delivery of the Licensed
24 Software.

25 K. County shall pay the first year portion of all Licensed Software and Sublicensed Software
26 monthly Maintenance and Support fees as well as Subscription fees, Managed Services Monthly fees,
27 and Application Service Provider fees through this Agreement as identified in Exhibit C of the
28 Agreement, after which the parties agree, the Licensed Software and Sublicensed Software monthly
29 Maintenance and Support fees as well as ongoing Subscription fees, Managed Services Monthly fees
30 and Application Service Provider fees shall be paid for through the separate agreement for
31 "Maintenance and Support Services" between the parties.

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

VI. REPORTS AND MEETINGS

1
2 A. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR,
3 financial and/or programmatic reports as requested by ADMINISTRATOR concerning
4 CONTRACTOR's activities as they relate to this Agreement. ADMINISTRATOR will be specific as to
5 the nature of the information requested and allow thirty (30) calendar days for CONTRACTOR to
6 respond.

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

VII. RESPONSIBILITY OF CONTRACTOR

13
14
15 A. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely
16 completion, coordination of all services furnished by CONTRACTOR under this Agreement.
17 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work
18 required to be performed under this Agreement and in accordance with this Agreement.

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

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

VIII. SERVICES

24
25
26 A. CONTRACTOR shall provide services as described in Exhibit B to the Agreement and
27 COUNTY shall reimburse CONTRACTOR for said Services as outlined in Paragraph V. of Exhibit A to
28 the Agreement.

29 B. ADDITIONAL SERVICES; CONTRACTOR shall charge COUNTY for any such additional
30 services or assistance as specified in Paragraph V.F. of this Exhibit A. to the Agreement. If COUNTY
31 requests such additional services, CONTRACTOR shall inform COUNTY that the services requested
32 constitute additional services. Upon approval by COUNTY, CONTRACTOR shall provide the
33 requested service as mutually agreed upon.

C. SOFTWARE LICENSE:

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

1 Releases to the Licensed Software provided pursuant to the terms of this Paragraph VIII.D.3 of this
2 Exhibit A to the Agreement and as described in Subparagraph I.P of this Exhibit A to the Agreement
3 hereby and shall apply to the Permitted Facilities, and all Permitted Users of the Permitted Facilities.

4 2. Scope of Use:

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

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

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

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

1 Software, CONTRACTOR shall interface with the manufacturer of the Equipment or licensor of such
2 Sublicensed Software to obtain all necessary support or remedies available pursuant to applicable
3 warranties from the manufacturer or licensor or CONTRACTOR's support obligations hereunder.

4 D. SOFTWARE OWNERSHIP

5 1. Intellectual Property Rights:

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

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

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

31 b. In connection therewith, COUNTY agrees that:

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

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

37 //

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

37 //

1 4. Source Code Escrow:

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

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

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

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

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

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

31
32 **IX. STANDARDS OF SYSTEM PERFORMANCE**

33 A. The System must perform at COUNTY acceptable performance levels. During the period
34 between First Productive Use and until the time COUNTY is on Support under the separate agreement
35 for "Maintenance and Software Support Services", the System shall perform in a manner that will not
36 impede or significantly impact the performance of routine and normal System-related operational tasks,
37 perform critical processes that are executed at the server level; and will function in a consistent and

1 dependable manner, recognizing that the COUNTY operates in a demanding twenty four (24) hours a
2 day, seven (7) days a week production environment and that high-availability is critical. The parties
3 agree that System performance is a joint responsibility of COUNTY and CONTRACTOR to the extent
4 under control by each party. CONTRACTOR agrees to provide Support and Maintenance services in
5 accordance with the applicable terms set forth under the agreement for "Maintenance and Support
6 Services" executed between the parties.

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

10 C. PROJECT SCHEDULE;

11 1. Site Preparation. COUNTY will have its Designated Facility(s) prepared for the EHR
12 project by the date of execution of this Agreement. In the event the site(s) is/are not prepared by such
13 date, COUNTY acknowledges that the project schedule may be delayed and that, if applicable,
14 CONTRACTOR may make a change order application to COUNTY.

15 2. Installation Responsibilities. CONTRACTOR and COUNTY will each perform the
16 specific tasks identified in Exhibit B. to the Agreement for the EHR project.

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

21 D. The Services performed under this Agreement shall be done in accordance with Exhibit B. to
22 the Agreement, which may be revised at the option of COUNTY with CONTRACTOR's concurrence.
23 Each party shall be responsible for schedule adherence as outlined in the Exhibit B. to the Agreement.

24 E. PRE-PRODUCTION ACCEPTANCE PERIOD

25 COUNTY agrees to use its commercially reasonable best efforts to identify for
26 CONTRACTOR in writing those issues arising out of the required work performed as stated in the
27 SOW, during the Pre-Production Acceptance Period in a non-production environment which, if not
28 resolved to COUNTY's satisfaction, could cause COUNTY to delay Acceptance in the Production
29 Acceptance Period. COUNTY and CONTRACTOR agree that First Productive Use with respect to the
30 required work performed as stated in the SOW, shall not occur until such pre-production issues are
31 either resolved to COUNTY's satisfaction or until COUNTY agrees in writing that such issues will not
32 be used as a basis for COUNTY to withhold Acceptance in the Production Acceptance Period.

33 F. PRODUCTION ACCEPTANCE PERIOD

34 1. The Production Acceptance Period allows COUNTY to verify the functionality in a
35 production environment, and to identify issues occurring during or after First Productive Use of the
36 solutions delivered in the SOW, which could cause COUNTY to delay Acceptance. Should COUNTY
37 become aware of any Material Errors with the delivery of the solutions set forth in the SOW, COUNTY

1 shall promptly send CONTRACTOR a Notice of Noncompliance which shall include a written,
2 reasonably detailed description of each known discrepancy or failure. CONTRACTOR shall then have
3 the remainder of the Production Acceptance Period to resolve the discrepancies so identified and
4 reported. COUNTY shall, upon CONTRACTOR's request, test any modifications during this period.

5 2. The Production Acceptance Period for the required work performed as stated in the SOW
6 shall begin upon First Productive Use and shall continue for a period of ninety (90) days, at which time
7 the parties shall deem the Licensed Software accepted unless CONTRACTOR receives a written Notice
8 of Noncompliance from COUNTY within five (5) business days following the last day of the Production
9 Acceptance Period. If CONTRACTOR receives a Notice of Noncompliance from COUNTY, the test
10 process shall be extended on a day-to-day basis, until the earlier of the following:

11 a. The applicable module of Licensed Software delivered under the SOW performs in
12 accordance with the Product Descriptions and in compliance with the SOW, without Material Error and
13 for a period of sixty (60) continuous days, the functions with respect to the defects listed in the Notice of
14 Noncompliance, or

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

23 c. In the event the System has failed to perform without Material Error for a period of at
24 least sixty (60) days following the initial Notice of Noncompliance from COUNTY, COUNTY may
25 terminate this Agreement upon notice to CONTRACTOR as set forth in the Termination Paragraph of
26 the Agreement.

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1 EXHIBIT B
 2 TO AGREEMENT FOR PROVISION OF
 3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CERNER CORPORATION
 8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
 9 SCOPE OF WORK
 10

11 A. CONTRACTOR and COUNTY agree that COUNTY shall pay for the implementation of an
 12 EHR and this Scope of Work (SOW) covers only the items identified. A new agreement or amendment
 13 to this Agreement will be required if additional tasks beyond those outlined in this SOW are requested.
 14 The commitment for the completion and go-live of the EHR shall be no later than July 1, 2015, and the
 15 target date for the completion of the overall EHR project shall be September 30, 2016. The target date
 16 set forth herein has been determined by the parties assuming a project start date of September 16, 2015;
 17 CONTRACTOR shall not be liable for any project delay(s) unless such delay(s) is (are) due to
 18 CONTRACTOR's sole fault.

19 B. Development work shall be performed on a test non-production domain, and at successful
 20 completion, CONTRACTOR will move the completed work from the non-production (Prod) domain to
 21 the Production domain in June 2016, and support the successful go-live by July 2016

22 C. The SOW includes professional services from CONTRACTOR for the implementation of the
 23 clinical documentation management system with rules-based decision support capabilities, new software
 24 modules to support the EHR functionality, enhanced compliance auditing and reporting, and disaster
 25 recovery as set forth in the Agreement.

26 D. IMPLEMENTATION SERVICES

- 27 1. The overall duration of this project is expected to be ten (ten) months.
- 28 2. Application Modules for Project Scope include:
 - 29 a. Core;
 - 30 b. Clinical Reporting; and
 - 31 c. Charge Services.
- 32 3. Project SOW assumes the Design, Build, and Conversion of three (3) clinics utilizing a
 33 centralized database environment, and includes one (1) go-live event with CONTRACTOR solution
 34 teams supporting a five (5) day period on-site in a command center. Go-live will occur at the following
 35 clinics:

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37 //

- 1 a. Pulmonary;
- 2 b. HIV; and
- 3 c. STD.

4 4. CONTRACTOR will provide application/technical support and troubleshooting for issues
5 logged to the help desk or command center during the go-live event. CONTRACTOR's standard
6 coverage provides five (5) days of twelve (12) hour support. CONTRACTOR's team will support the
7 command center along with COUNTY's application team and help troubleshoot issues as they are
8 reported. COUNTY's super user team will support end users. After go-live, CONTRACTOR shall
9 provide remote application support until turnover to CONTRACTOR's SolutionWorks division, which
10 occurs thirty (30) days after go-live. After turnover, all issues will be reported to SolutionWorks.

11 5. COUNTY agrees to provide access to each CONTRACTOR project team member while on
12 COUNTY site. COUNTY will provide a high-speed line or network port through COUNTY firewall for
13 each CONTRACTOR associate on site to access the internet and/or CONTRACTOR network using
14 Aventail software, as well as a phone line for each CONTRACTOR project team member that is
15 assigned to be on site for more than sixteen (16) hours per week for at least ten (10) consecutive weeks.
16 As needed and at COUNTY's expense, COUNTY will provide to CONTRACTOR's project team:

- 17 a. A secure CONTRACTOR-assigned office with door locks;
- 18 b. Work areas with network connectivity to COUNTY network; and
- 19 c. Access to a network laser printer via a desktop computer with fat COUNTY
20 (configured to CONTRACTOR's minimum recommended configuration) access to appropriate
21 COUNTY domains and clients using Citrix access.

22 6. COUNTY will identify and make available its project team members within ninety (90) days
23 following the Effective Date of this Agreement. If not identified and available within that timeframe, such
24 delay may be considered a change in scope, and may require setting forth additional work effort and
25 additional professional services fees.

26 7. SPECIAL PROJECT ASSUMPTIONS

27 a. Modifications to the design and build of the proposed solutions to meet specifications for
28 individual facilities may result in additional professional services fees.

29 b. This project assumes any upgrade requirements will be performed prior to the estimated
30 project start date set forth in this SOW. Current revision levels in production should be assessed by the
31 CONTRACTOR's upgrade center.

32 c. This project does not include End User Conversion Support (ACE). COUNTY is
33 responsible for training the end users. If CONTRACTOR support is needed, the execution of a new
34 Agreement, or an amendment to this Agreement, may be required during the implementation to set forth
35 the additional professional services and fees.

36 //

37 //

1 d. Data migration services have not been included and are considered out of scope.

2 e. COUNTY is responsible for testing and validation of issue resolution performed by
3 CONTRACTOR.

4 8. The solution implementation scope of services documents the services provided by
5 CONTRACTOR during the project. This SOW is based on the latest generally available Cerner
6 Millennium software release, project timeline, and use of Consulting Framework, Bedrock, STANDARD
7 content and recommendations. It is also assumed that COUNTY will provide data required to configure
8 the system in a CONTRACTOR defined format.

9 9. SCOPE CONTROL

10 a. There are controls on scope for the total number of a particular item within certain
11 solution sections. Controls are present for the following reasons:

12 1) In order to achieve the project timeline with estimated CONTRACTOR project
13 resources;

14 2) Recommended use of the system and ease of maintenance long term; and

15 3) Maintain standard consulting fees.

16 b. Controls on items are not functional limits of the Cerner Millennium System.

17 c. All requested modifications to this SOW must be evaluated for potential impact to the
18 project plan and may result in a longer project timeline, additional COUNTY/CONTRACTOR resources,
19 and/or additional fees. CONTRACTOR has a scope management process that will be utilized throughout
20 the implementation to help keep the project on track.

21 E. FOUNDATIONS

22 1. CORE SERVICES

23 a. Core Services are an integrated component to Cerner Millennium that has to be in place
24 so other solutions can use it. Key items include physical layout, security, results viewing, and interface
25 translations.

26 b. Security Role Profiles from within STANDARD will be utilized as a starting point.
27 These profiles are built with pre-defined workflows and security access. Examples include Physician and
28 RN.

29 c. All personnel will be added as user for the areas being automated.

30 d. Interface Translations/Aliasing includes inbound and outbound alias translations per data
31 element (HL7 segment) per interface.

32 e. All results storing and viewing solutions include results from a contract Cerner
33 Millennium solution or via an interface.

34 2. CHARGE SERVICES

35 a. CONTRACTOR's goal is to provide a clinically driven revenue cycle where the charge
36 capture process is a result of clinical or operational activity. Specific workflow process would include
37 charging on documentation, orders, room and bed, results, etc, depending on solutions in scope.

1 b. If CONTRACTOR Patient Accounting is not being implement, CONTRACTOR will
2 generate charging file(s) for COUNTY to send to billing system.

3 c. Professional charging can be accommodated in CONTRACTOR system for anatomic
4 pathology, radiology, and/or emergency department if required. A consideration for doing this within
5 CONTRACTOR system is the delivery method of charges to the foreign system.

6 3. Clinical Reporting is CONTRACTOR's solution for initiating and processing clinical reports.
7 A clinical report (chart) is a document containing patient demographic and clinical result information.
8 Clinical Reporting draws information entered throughout Cerner Millennium to print on reports generated
9 by manual and automated processes. CONTRACTOR shall work with COUNTY to design the formatting
10 of the reports and help determine if they should be produced automatically or on demand.

11 4. CONTRACTOR shall assist COUNTY as needed in setting up alpha billing for the public
12 health clinics. This shall include setting up an additional payer, and assisting with PBM rules if needed.

13 F. POWERCHART AMBULATORY

14 1. This SOW represents CONTRACTOR work effort to implement up to fifteen (15)
15 physicians/providers with up to three (3) locations, and up to three (3) specialties. This SOW includes one
16 (1) go-live event with CONTRACTOR solution teams supporting a five (5) day period on-site in a
17 command center.

18 2. The implementation of PowerChart Ambulatory will follow an event-based methodology. In
19 this approach, structured events will take place to drive the design, build, and test of the solutions. These
20 events include kickoff, future state review, future state validation, maintenance training, integration
21 testing, trainer and conversion prep and go-live.

22 3. The Ambulatory MPage summary is a view available from the table of contents that
23 aggregates data from across the medical record for streamlined information reviewing. CONTRACTOR
24 will assist COUNTY in the implementation of the latest version of the ambulatory summary. That
25 assistance will include:

- 26 a. The setting of behavior preferences within the Bedrock Wizard;
- 27 b. Mapping of clinical data to the appropriate sections of the summary page; and
- 28 c. Knowledge transfer for ongoing maintenance and advancement of the summary page.

29 4. The Quick Orders MPage enables the quick selection of orders in an outpatient setting.

30 5. CONTRACTOR will configure the Dynamic Worklist which allows clinicians to identify
31 subsets of patients in PowerChart, gather relevant information about them, and act upon those findings.
32 Clinicians can use the Dynamic Worklist to identify subsets of patients in PowerChart, gather relevant
33 information about them, and act upon those findings.

34 6. These views can be localized by specialty, location, or at a system level.

35 7. Standard scope does not include the creation of custom scripting.

36 8. CONTRACTOR shall provide the following functionality as it relates to Worklfow Tools:

37 //

1 a. Schedule Viewer – Use the Schedule Viewer to see personal schedule, and those of
2 others, in daily, weekly, and monthly views;

3 b. Patient Lists – Use Patient Lists to build and view patient lists. Patient Lists help organize
4 and easily access a large amount of patient data; and

5 c. Multi-Patient Task List – Use Task List to identify the tasks clinicians need to perform,
6 to facilitate access to information needed to performs those tasks, and to help caregivers document those
7 tasks.

8 9. MESSAGE CENTER

9 a. CONTRACTOR will work with COUNTY to automate communication processes using
10 Message Center. Message Center is a component of Cerner Millennium used for managing work flow in
11 the inpatient or outpatient setting. It allows the routing of information electronically, rather than having an
12 unwieldy flow of hard-copy documentation moving around COUNTY facility. The Message Center
13 enables one to review or sign results, documents, and prescription requests, as well as work with phone
14 and other messages. The Message Center shall offer the following benefits:

15 1) All messages and notifications that require COUNTY attention, review, or signature
16 are routed to COUNTY Inbox and are organized in folders;

17 2) The operation of taking and distributing phone messages and saving that information
18 to the patient's chart is completed electronically;

19 3) Results can be reviewed, signed, or forwarded to other health care providers
20 electronically;

21 4) COUNTY Inbox can be accessed from any computer on COUNTY's network that
22 has Cerner Millennium installed; and

23 5) COUNTY can customize the items wanted to display in the Message Center by
24 filtering by dates, types of results, and so forth. That information can be shared with a group of other users
25 in a Pool. Pools allow multiple users to see the same result, document, or message and take action.

26 b. Two (2) pools per clinic location will be created as part of the implementation.

27 10. DOCUMENTATION FORMS

28 a. CONTRACTOR will work with COUNTY to automate the intake process through use of
29 STANDARD Ambulatory Forms.

30 b. CONTRACT will work with COUNTY to localize Standard Ambulatory Content into
31 COUNTY's domain.

32 11. PROBLEM LIST AND CLIENT DIAGNOSIS

33 a. The Problems and Diagnosis window is a view into both the chronic and acute issues
34 related to a patient. This view allows for the ability to add and update problems and diagnoses, creation of
35 advanced filters to display certain types of problems (i.e. filter by status, classification, or management
36 discipline) and quick conversion of chronic issues to those which are being addressed in the current visit.

37 //

1 b. CONTRACT will assist in the automation of the clinical processes supporting the
2 documentation and management of chronic and acute conditions.

3 c. The Problems and Diagnosis window is a foundation upon which the Consolidated
4 Problems view on the Ambulatory Summary is based. Updates or additions done from the Consolidated
5 Problem component syncs with the Problems and Diagnosis window and vice versa.

6 d. Problem List and Clinical Diagnosis enables the use of quick search when IMO is
7 leveraged.

8 12. PATIENT HISTORIES

9 a. The Patient Histories tab within the patient's chart is comprised of four (4) component
10 parts. They include the Social History, Family History, Past Medical History, and Procedure History. All
11 of the patient history components have a corresponding view component on the Ambulatory Summary
12 MPage, the ability to be pulled directly into a provider's documentation as well as the ability to be
13 embedded within a PowerForm for inclusion into an existing intake process.

14 b. Social History is a component intended to capture the patient's current and past social
15 habits. The content provided for Social History has been certified to meet meaningful use and does not
16 require modification by COUNTY. If COUNTY chooses to modify the content, that modification is
17 limited to the creation of one (1) new category, five (5) new questions, and three (3) custom data entry
18 views.

19 c. Family History is a component intended to capture the conditions (both current and
20 historical) of the patient's relatives. This tool facilitates the documentation of the conditions in a codified
21 format and allows for the rapid association of those conditions to multiple predefined patient relationships.

22 d. Past Medical History is used to capture and display medical conditions that have either
23 been resolved or no longer afflict the patient. This tool functions similarly to the problem list in that it is
24 search based with additional metadata available to document. Problems on the Problem List can
25 automatically flow to the Past Medical History upon documentation of that problem being resolved or
26 manually filed to Past Medical History.

27 e. Procedure History is used to document what procedures have been performed on the
28 patient, whether they were performed at the Clinic site or at any point in that patient's life. Again, this tool
29 is search based and allows for the additional documentation of metadata.

30 f. The above tools store this data a person level, meaning that the data captured will persist
31 into the next episode of care. This negates the need for repeated documentation at the next venue of care.
32 Not included in this Scope is the transition to these components from the existing history documentation in
33 any of those other venues of care.

34 13. TASK LISTS

35 a. The single-patient task list is accessible form the patient's chart. Use Task List to identify
36 the tasks clinicians need to perform, to facilitate access to information needed to perform those tasks, and
37 to help caregivers document those tasks.

1 b. The following Task list Views include:

- 2 1) Point of Care Testing tasks;
- 3 2) Medication Administration and Immunization tasks;
- 4 3) Specimen Collection tasks (with the appropriate lab order requirements); and
- 5 4) Schedule/appointment requests, follow up appoints, and referrals are included if

6 these orders are designed to create tasks (when CONTRACTOR Scheduling is not being implemented).

7 14. DISCHARGE PROCESS

8 a. CONTRACTOR will work with COUNTY to automate the capture of requisite data prior
9 to patient departure. This also includes the assembly of data within the system into a patient friendly
10 handout. The Discharge Process consists of a two (2) pane view. The left pane is an interactive list of
11 Client defined actions required to complete a patient visit. This list of actions can be set to vary between
12 locations. CONTRACTOR will assist COUNTY in creating two (2) action lists. The right pane is a live
13 view of the patient friendly handout defined by COUNTY. This handout uses CCL scripts to pull data
14 from the system and format it in a way that makes sense to a patient. CONTRACTOR has provided a
15 number of tokens within the base code as well as an additional content package of ambulatory specific
16 scripts.

17 b. The patient friendly handout can also include patient education materials. These materials
18 can be suggested to the user based on clinical data already in the system. Access to these discharge
19 instructions are made available within the Discharge Process when ExitCare or Krames is licensed.

20 15. PROVIDER DOCUMENTATION

21 a. CONTRACTOR will work with COUNTY to automate the physician documentation
22 process based on content available. The content included is defined by the subscriptions that have been
23 purchased and are included in COUNTY's contract. A Physician Documentation basic starter package that
24 includes a small subset of Physician Documentation is available without a subscription. CONTRACTOR
25 does not recommend bringing lince physician documentation on only the basic starter package.

26 b. The individual providers can personalize content for personal use (pre-completed
27 macros), personalization versus customization.

28 c. Messaging Process – designing messaging in relation to the documentation and
29 communication processes.

30 d. CONTRACTOR recommends COUNTY develop a comprehensive documentation
31 strategy. CONTRACTOR recommends this strategy include multiple documentation entry mechanisms
32 which included, but should not be limited to, Physician Documentation, Clinical Notes, Dragon Medical
33 Voice Recognition, and, at a minimum, a transition strategy for Dictation.

34 16. UNIFIED ORDERS

35 a. General Ordering – designing processes related to ordering.

36 b. Order Catalog – guidance for reviewing orders and the structure of each orderable.

37 //

1 c. CONTRACTOR will automate charge capture through orders if a charge interface has
2 been licensed. Refer to the Open Port section of the scope.

3 d. CONTRACTOR will work to automate clinic process with the use of PowerPlans. The
4 scope of the PowerPlan design will include five (5) diagnosis/symptom/Super-bill based single phase
5 PowerPlans per specialty.

6 17. PRESCRIPTION WRITER

7 a. CONTRACTOR will work with COUNTY to automate the prescription process. This
8 effort includes the setting of appropriate preferences, privileges, and views, as well as enabling of certain
9 functions to support eh clinical workflow.

10 b. Any maintenance or additional configuration related to the drug order catalog or
11 prescription order sentences is not included.

12 c. Prescription Requisition – includes prescription requisition format from STANDARD.

13 d. Printing – prescriptions can be printed to a network printer on watermarked paper.

14 e. CONTRACTOR will assist with the medication reconciliation process when that
15 functionality is in use within COUNTY system.

16 18. Order Requisition formats from STANDARD and routing if needed.

17 19. ORDER FOLDERS

18 a. Charge Capture and Order Folders will be set up by Specialty.

19 b. CONTRACTOR will assist with the build of one (1) Charge/Order specialty folder. Each
20 specialty folder will be limited to a maximum of five (5) subfolders, with a maximum of twenty (20) Bill
21 Items or Orderables in each folder.

22 G. CUSTOM CCL DEVELOPMENT

23 1. Custom solutions will be developed for use with the current Cerner Millennium revision
24 installed on COUNTY's system. Issues arising from database or revision changes may require a new
25 scope of work to be developed.

26 2. Final delivery will be made through a custom database package. This Scope does not include
27 FTP, operations setup, database build, memory, or disk/file management.

28 3. COUNTY is responsible for testing and validating solutions provided by CONTRACTOR.

29 4. CONTRACTOR will test all programs prior to final delivery to COUNTY. For this custom
30 programming effort, CONTRACTOR's custom programming team will assist in correcting any issues
31 with the delivered programs and documentation until SolutionWorks post conversion turnover or thirty (3)
32 days after initial package availability, whichever is later. After this, any software fixes, enhancements, or
33 modifications requested by COUNTY may require a separate agreement or amendment to this Agreement.
34 COUNTY will test and evaluate all program functionality immediately upon delivery.

35 5. COUNTY accepts responsibility for any custom CCL modifications made by COUNTY
36 outside the scope of this Agreement. Upon COUNTY's request, CONTRACTOR will deliver CCL Script
37 Source Code for customizations.

1 6. REFERENCE LAB NETWORK

2 a. Initial setup licensing fee includes:

- 3 1) Connections to RLN from reference lab organization's system;
- 4 2) Creation of inbound connection on the RLN;
- 5 3) COUNTY/Account number based transaction routing to the performing system and
6 back to COUNTY system; and
- 7 4) Coordination of positive networks (PN) virtual private network (VPN) for secure
8 connection to the CernerWorks Data Center if necessary.

9 b. Foreign system interfaces include:

- 10 1) Configuration of ESO route script;
- 11 2) Configuration of ESI/ESO;
- 12 3) Aliasing of all RLI related code sets (excludes 54, 72, 200, and 14003);
- 13 4) Develop and test required modify objects and modify original scripts;
- 14 5) Completion of functionality testing;
- 15 6) Completion of bulk testing;
- 16 7) Production readiness; and
- 17 8) Thirty (30) day post go live support

18 c. Connectivity

- 19 1) All Data sent inbound or outbound to RLN from an external network will pass
20 through the CernerWorks secure Data Center. A VPN connection from the external network to the
21 CernerWorks Data Center must be setup utilizing the PNs managed VPN solution.
- 22 2) Other VPN solutions or network connections to the Data Center will be evaluated on
23 a case by case basis.
- 24 3) COUNTY will provide technical resources whenever possible to assist with the
25 establishment of the VPN.

26 d. GL Services includes:

- 27 1) CONTRACTOR will work with COUNTY to automate the general laboratory order
28 management process using STANDARD;
- 29 2) CONTRACTOR's recommended practices, workflows, and content that will be
30 leveraged when possible when designing a new solution;
- 31 3) Aliasing of code sets 200, 14003, or 72, when applicable, and any other required
32 PathNet code sets;
- 33 4) Build of orders, collection requirements, and classes;
- 34 5) Addition of orders;
- 35 6) Creation of services resources; and
- 36 7) Assistance with testing and validation.

37 //

1 e. If any of the assumptions below cannot be completed by COUNTY, additional
2 professional services and fees may be necessary to complete the work. Assumptions are as follows:

3 1) COUNTY will install and configure the outbound connection to RLN within the
4 reference lab domain;

5 2) Receiving systems will be responsible for installing and configuring the inbound
6 connection from the RLN;

7 3) Sending and receiving systems must coordinate specific values for person, encounter,
8 order, and result level data and identifiers;

9 4) RLN connections consist of six (6) outbound transaction types from an acute care
10 domain to the receiving system:

11 a) Discrete general laboratory;

12 b) Display microbiology;

13 c) Discrete microbiology;

14 d) Display atomic pathology; and

15 e) Discrete blood bank.

16 5) COUNTY will be responsible for the creation of outbound contributor system,
17 contributor source, modifications to eso_get_ce_selection script, outbound route script, creation of ASCII
18 chart format for display results, and outbound aliasing.

19 H. OPEN PORT FOREIGN SYSTEMS INTERFACE

20 1. All Clinical interfaces meet Universal Interface (UI) specifications using HL-7 and TCP/IP
21 Protocol or FTP Protocol.

22 2. Foreign systems must be able to trigger and accept interface messages. COUNTY is
23 responsible for engaging the foreign system supplier.

24 3. All financial interfaces meet UI specifications using X.12 or HL-7 and FTP or TCP/IP
25 Protocol.

26 4. Foreign systems must be able to trigger and accept interface messages. COUNTY is
27 responsible for engaging the foreign system supplier.

28 5. COUNTY is responsible for inbound/outbound design/coding/testing of non-Cerner systems.

29 6. Interfaces not conforming to the Cerner Millennium UI Specifications will be considered
30 custom. Custom interfaces are not included in standard Scope.

31 7. Each interface transaction type will be in a single and consistent format sent or received
32 to/from an interface engine or router e.g. all orders will be consistently formatted and contain the same
33 common content, regardless of the ultimate destination of the transaction.

34 8. CONTRACTOR will provide professional service resources to assist COUNTY with the
35 implementation of ADT/Demographics outbound, ORM (orders) outbound, and MDM (transcribed
36 results) inbound interface to/from RIS/PACS system. The orders outbound interface includes order status
37 updates.

1 9. The interfaces will also conform to the Cerner UI specifications requirements, which are
 2 based upon the Health Level Seven International (h7) standards as they relate to Cerner Millennium
 3 architecture.

4 10. CONTRACTOR work effort includes, but is not limited to:

- 5 a. Interface design with the creation of site specific interface specification document(s);
- 6 b. The building, coding, and configuring of the interface to the processing requirements;
- 7 c. Functional testing of the interfaces;
- 8 d. Support of COUNTY validation testing of the interfaces;
- 9 e. Regular attendance of project status meetings;
- 10 f. Migration of interfaces to production domain and support of interface activation.

11 11. COUNTY responsibilities include, but are not limited to:

- 12 a. Engaging the foreign supplier resource(s);
- 13 b. Synchronizing data values between CONTRACTOR and the foreign supplier. This may
 14 include building of code value aliasing within CONTRACTOR's system that will be required for interface
 15 processing;
- 16 c. Modifying Cerner Millennium application, if required;
- 17 d. Creating and executing interface test plans; and
- 18 e. Validating interface testing.

19 12. ASSUMPTIONS

- 20 a. These interfaces will utilize TCP/IP for data transfer and will be Cerner Millennium HL-
 21 7 UI compliant;
- 22 b. Any custom scripting required outside of the standard Cerner UI is expected to be
 23 performed within COUNTY's interface engine. If this is not possible or desirable, custom scripting can be
 24 performed within the Cerner Millennium interface but may require additional hours at CONTRACTOR's
 25 current fees for a CONTRACTOR resource to complete the work;
- 26 c. This Scope covers the initial configuration and testing of the interfaces in a designated
 27 build environment and one (1) copy to the production environment. Any additional domain support,
 28 including copies to additional domains and rebuild due to domain refreshes or updates may require
 29 additional hours;
- 30 d. COUNTY and CONTRACTOR will work on this project concurrently on an agreed
 31 upon project timeline; and
- 32 e. COUNTY may incur additional fees if services are requested beyond this scope.

33 I. CPDI – Single Document Capture Extension

34 1. Content360 Single Document Capture solution allows the end user to scan items directly into
 35 a patient's record, storing them and making them available to authorized users across the organization.
 36 Indexing and quality checks are performed on the spot, resulting in concurrent, real-time access to the

37 //

1 patient chart. Content360 Single Document Capture method is commonly used in low-volume areas to
2 capture loose sheets or pertinent documents.

3 2. Design Review includes consulting services for reviewing the design of the as-built
4 Content360 Single Document Capture system.

5 3. Install/Build:

6 a. CONTRACTOR shall work with COUNTY to expand the as-built and implemented
7 Content360 Single Document Capture system to one (1) department at one (1) facility;

8 b. CONTRACTOR will work with COUNTY to implement up to ten (10) document types;

9 c. COUNTY is entitled to build beyond ten (10) document types; and

10 d. COUNTY is responsible for user setup and security.

11 4. Data Capture includes services, setup, and configuration for up to two (2) Content360 Single
12 Document Capture Systems. CONTRACTOR will train COUNTY on desktop installation and setup for
13 Citrix implementations.

14 5. CONTRACTOR will assist in testing the net new build.

15 6. Reporting includes the Document history standard CONTRACTOR imaging reports.

16 7. Training includes services for super user training and training for adding document types.
17 COUNTY is responsible for end user training and documentation creation.

18 8. Deliverables include:

19 a. Content360 Single Document Capture extension installed and configured as outline in
20 this Scope;

21 b. Knowledge transfer of installation, configuration, and operational procedures for
22 maintenance purposes; and

23 c. Super user training for as-built system.

24 9. This Scope assumes the Content360 Single Document Capture is licensed and COUNTY is
25 current on Maintenance payments. This Scope further assumes the Content360 Single Document Capture
26 system is currently installed and working on COUNTY's production environment.

27 10. The application and project management duration will be the length of the project, estimated
28 to be approximately two (2) months. Project management support will not exceed ten (10) weeks in total
29 duration.

30 J. CONTENT360 Patient eSignature Capture Extension

31 1. The Patient eSignature Capture solution can be initiated from any Cerner Millennium
32 application that uses Cerner Provision Document Imaging (CPDI) to view documents. Electronic forms
33 are presented to the patient for review via a tablet, personal computer, or a touchscreen monitor attached to
34 the registration workstation. The documents can be easily navigated to cover the document content with
35 the patient. After consenting to the document, the patient signs directly on the tablet, PC, or on a tethered
36 signature pad.

37 //

1 2. Design includes consulting services to enable the capturing of electronic patient signature on
2 an additional set of forms. Design topics include:

- 3 a. Project planning;
- 4 b. Forms design; and
- 5 c. Event hierarchy/document types.

6 3. Build:

7 a. CONTRACTOR will assist in adding up to thirty (30) electronic forms to an existing
8 Patient eSignature environment and will educate COUNTY resources on the process. Forms in
9 additional languages are counted as separate forms. COUNTY is responsible for adding/testing beyond
10 thirty (30) electronic forms.

11 b. Assistance with Cerner Millennium changes required/desired for Patient eSignature.

12 c. Includes services for updating one (1) non-production domain and one (1) production
13 domain.

14 d. This Scope does not include build for Cerner Health Information Management (HIM),
15 Clinical Reporting, or Message Center.

16 4. This Scope assumes one (1) facility for the Content360 Patient eSignature Extension.

17 5. This Scope includes data capture services for up to five (5) capture stations and knowledge
18 transfer to COUNTY resources on setting up additional stations.

19 6. Standard CPDI document history report is included.

20 7. Super user training is included, and COUNTY is responsible for end user training and
21 documentation creation. CONTRACTOR shall include administrative training for adding electronic
22 forms, logging files, and for as-built documentation, including service overview.

23 8. Deliverables include:

24 a. Patient eSignature system is updated as outlined in this Scope;

25 b. Knowledge transfer of installation, configuration, and operational procedures for
26 maintenance purposes;

27 c. Up to thirty (30) additional electronic forms; and

28 d. Super user training for the as-built System.

29 9. This scope assumes:

30 a. Appropriate hardware and licensing is in place and COUNTY is current on
31 Maintenance payments;

32 b. Content360 Patient eSignature solution is currently installed and working in
33 COUNTY's non-production and production domains;

34 c. COUNTY will provide production-ready forms in PDF format; and

35 d. CONTRACTOR is not responsible for Content changes to forms, including, but not
36 limited to, logos, verbiage, headers, or footers.

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1 10. Estimated project duration is three (3) months. Project management support will not exceed
2 fourteen (14) weeks in total duration.
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1 EXHIBIT C
 2 TO AGREEMENT FOR PROVISION OF
 3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CERNER CORPORATION
 8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
 9 SCHEDULE OF PUBLIC HEALTH SOFTWARE

10
11 A. Designated Facility where the Licensed Software shall reside:

12 County of Orange Data Center
13 1400 South Grand Avenue
14 Santa Ana, California 92701

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

16 Public Health HIV, STD and Pulmonay clinics.

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

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

25 E. COUNTY agrees to stay within scope of use limits as set forth in tables below. COUNTY and
26 CONTRACTOR agree to include Scope of Use expansion terms, conditions, and fees in the Support and
27 Maintenance agreement via an amendment.

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

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System Application Software Licenses

Item	System Application Software Licenses		Contractor Solution Code	Scope of Use Limit	License Software Costs	Monthly Support Fees
1	Foreign System Interface	Clinical Documents Medical Document Management Incoming	IF-29083	300 FTE's	\$452	\$7
2	Foreign System Interface	Orders Outgoing(with statuses)	IF-29230	300 FTE's	\$452	\$7
3	MPages	MPages Runtime License	PS-22760	1 Prod Domain	\$0	\$0

Third Party Software

Item	Phase 1 Third Party Software		Contractor Solution Code	Scope of Use Limit	Qty	Per Unit License Cost	Total License Costs
1	Content360-Document Imaging	ApplicationXtender Package 5 Concurrent User Pack	CFG_CPDI_SW 457-100-245	concurrent users	3	\$13,000	\$39,000
2	Content360-Document Imaging	ApplicationXtender Package 25 Concurrent User Pack	CFG_CPDI_SW 457-100-246	concurrent users	1	\$65,000	\$65,000
3	eSignature	Patient eSignature Per Clinic License	CTG-ESIG-CLIN	Per clinic	3	\$6,000	\$18,000

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Third Party Software Maintenance

Item	Phase 1 Third Party Software Maintenance	Contractor Solution Part #	Term in Months	Qty	Annual Support Fees
5	Content360 Document Imaging	ApplicationXtender Package 5 Concurrent User Pack- 24x7 M-Su Phone Support 457-100-245	12	3	\$7,020
		ApplicationXtender Package 25 Concurrent User Pack- 24x7 M-Su Phone Support 457-100-246	12	1	\$11,700
6	eSignature	Patient eSignature Per Clinic License CT-ESIG-CLIN	12	3	\$3,240

Subscription-Based Application Software Modules

Item	Subscription-Based Application Software Modules	Contractor Solution Code	Scope of Use Limit	Term in Months	Monthly Support Fees	
1	EHR	MediSource Patient Specific for Ambulatory	KS-26966	15 Providers	12	\$223

Application Services Software Modules

Item	Application Services Software Modules	Contractor Solution Code	Scope of Use Limit	Term in Months	One-Time Fee	Monthly Support Fees
1	Reference Lab	Reference Lab Network-Non Partner Connection-Setup	PA-21006	1 Production domain	\$20,000	
2		Reference Lab- Non Partner Connection	PA-21007-PKG	1 Production domain	12	\$200

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Shared Computing Services Software Modules

Item	Shared Computing Services Software Modules		Contractor Solution Code	Term in Months	Monthly Support Fees
1	ePrescribe	Cerner ePrescribe Package	PS-20080C-1	12	\$375
2	Portal	HealthLife	PY-27800C	12	\$1,125

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1 EXHIBIT D
 2 TO AGREEMENT FOR PROVISION OF
 3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
 4 BETWEEN
 5 COUNTY OF ORANGE
 6 AND
 7 CERNER CORPORATION
 8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
 9 HIGH TECHNOLOGY ESCROW AGREEMENT

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

15 **RECITALS:**

16
 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 **AGREEMENT:**

28
 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
 35 1.1 Obligation to Make Deposit(s). Within 10 days of execution of this Escrow Agreement,
 36 Cerner shall deliver to Escrow Agent the source code for the Software in its current (and, at Cerner's
 37 option, certain prior) versions, including relevant documentation (the "Escrow Material"). Cerner shall
 update the Escrow Material within 60 days of each release of a new version of the Software in

1 accordance with the terms of this Escrow Agreement. All references in this Escrow Agreement to the
2 Escrow Material 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
4 Agent, Cerner shall conspicuously label for identification each document, magnetic tape, CD, disk, or
5 other tangible media upon which the Escrow Material are written or stored. Additionally, Cerner shall
6 deliver to Escrow Agent with the Escrow Material a list identifying each such tangible media by the item
7 label description, the type of media and the quantity, which shall be substantially in the format set forth
8 in Exhibit B (the "Escrow List"). The Escrow List must be signed by Cerner and delivered to Escrow
Agent with the Escrow Material.

9 1.3 Deposit Inspection. When Escrow Agent receives the Escrow Material and the Escrow List,
10 Escrow Agent will conduct a deposit inspection by visually matching the labeling of the tangible media
11 containing the Escrow Material to the item descriptions and quantity Listed on the Escrow List. Escrow
12 Agent shall have no duty or obligation to inspect or inquire into the contents or substance of the Escrow
13 Material, and Escrow Agent's obligation shall be strictly limited to matching the aforementioned labeling
to the Escrow List.

14 1.4 Acceptance of Deposit. At the completion of the deposit inspection, if Escrow Agent
15 determines that the labeling of the tangible media matches the item descriptions and quantity on the
16 Escrow List, then Escrow Agent will date and sign the Escrow List and deliver a copy thereof to Cerner,
17 which shall occur no later than ten (10) business days after Escrow Agent's receipt of the Escrow
18 Material. If Escrow Agent determines that the labeling does not match the item descriptions or quantity
19 on the Escrow List, Escrow Agent will: (a) note the discrepancies in writing on the Escrow List; (b) date
20 and sign the Escrow List with the exceptions noted; and (c) provide a copy of the Escrow List to Cerner.
21 Escrow Agent's acceptance of the deposit occurs upon the signing of the Escrow List by Escrow Agent.
22 Cerner may, at its discretion, provide a copy of the signed Escrow List to a Licensee as an indication that
23 the Escrow Material have been received and accepted by Escrow Agent. Upon Escrow Agent's
24 acceptance of any updated Escrow Material, the Escrow Agent shall return to Cerner, within ten (10)
business days after the issuance of the written notice of acceptance to Cerner, all previous versions of the
Escrow Material.

25 1.5 Cerner's Representations. Cerner represents to Escrow Agent that:

- 26 a. Cerner lawfully possesses all of the Escrow Material deposited with Escrow Agent;
- 27 b. With respect to all of the Escrow Material, Cerner has the right and authority to grant to
28 Escrow Agent the rights as provided in this Escrow Agreement;
- 29 c. The Escrow Material are not subject to any lien or other encumbrance;
- 30 d. The Escrow Material consists of Software identified in the License Agreements; and
- 31 e. The Escrow Material are readable and useable in their current form or, if the Escrow
32 Material are encrypted, the decryption *tools* and decryption keys have also been
deposited, which deposit may be separate from the Escrow Material deposit;

33 provided, however, that Escrow Agent shall have no duty to enforce such representations for the benefit
34 of any third party, including without limitation a Licensee.

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ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

4
5 2.1 Confidentiality. Escrow Agent shall maintain the Escrow Material in a secure, locked facility
6 which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the
7 obligation to reasonably protect the confidentiality of the Escrow Material. Except as provided in this
8 Escrow Agreement, Escrow Agent shall not disclose, transfer, make available, or use the Escrow
9 Material. If Escrow Agent receives a subpoena or other order of a court or other judicial tribunal
10 pertaining to the disclosure or release of the Escrow Material, Escrow Agent will promptly notify Cerner.
11 It shall be the responsibility of Cerner to challenge any such order; provided, however, that Escrow
12 Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will
13 not be required to disobey any court or other judicial tribunal order.

14 2.2 Audit Rights. During the term of this Escrow Agreement, Cerner shall have the right to
15 inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall
16 be held during normal business hours and following reasonable prior notice, and shall be conducted at the
17 Cerner's sole expense.

ARTICLE 3 •• RELEASE OF DEPOSIT

18 3.1 Right to Make Copies. Escrow Agent shall have the right to make copies of the Escrow
19 Material as reasonably necessary to perform with respect to rights and duties under this Escrow
20 Agreement. Escrow Agent will copy all copyright, nondisclosure, and other proprietary notices and titles
21 contained on the Escrow Material onto any copies made by Escrow Agent.

22 3.2 Right to Transfer Upon Release. Cerner hereby grants to Escrow Agent the right to transfer a
23 copy of the Escrow Material to a Licensee upon the occurrence of a Release Condition as defined in
24 Section 3.3 below. Except upon such a release or as otherwise provided in this Escrow Agreement,
25 Escrow Agent shall not otherwise transfer the Escrow Material.

26 3.3 Release Conditions. As used in this Escrow Agreement, "Release Conditions" shall mean the
27 following:

- 28 a. Cessation of business by Cerner without a successor; or
- 29 b. Cerner's cessation of the Support supplied for the Software pursuant to the License
30 Agreement without making a provision for continued support by a qualified third party on substantially
31 the same terms, conditions and pricing; or
- 32 c. in the case of Cerner and Licensee having entered into a Licensee Agreement
33 specifically providing other circumstances under which such Licensee may be entitled to a copy of the
34 Escrow Material.

35 3.4 Filing For Release. If a Release Condition has occurred, then Cerner shall provide written
36 notice of the occurrence of the Release Condition and a request for the release of a copy of the Escrow
37 Material to Licensee(s).

38 3.5 Licensee Request. In the event a Licensee requests release of the Escrow Material, Licensee
39 shall notify Escrow Agent and Cerner of a Release Condition in accordance with the notice provisions of

1 this Escrow Agreement. Cerner will promptly work with Escrow Agent to approve the release in
2 accordance with the Release Conditions or to address the request directly with the Licensee.

3 **ARTICLE 4 -- OWNERSHIP AND USE OF ESCROW MATERIAL**

4
5 4.1 Ownership/Confidentiality of Escrow Material. In all events, Cerner or its successors or
6 assigns, shall remain the owner of the Escrow Material. Licensee's right to and interest in the Escrow
7 Material shall be as a licensee only.

8 4.2 Right to Use Following Release. Upon release of the Escrow Material in accordance with
9 Article 3, Licensee shall have the right to use the Escrow Material for the sole purpose of continuing the
10 benefits afforded to Licensee by the License Agreement. Licensee shall be obligated to maintain the
11 confidentiality of the released Escrow Material as provided in the License Agreement. Without limiting
12 any other terms of this Escrow Agreement, Escrow Agent shall have no duties or obligations with respect
13 to enforcing this Section 4.2 or any terms of a License Agreement.

14 **ARTICLE 5 -- COMPENSATION OF ESCROW AGENT**

15 5.1 Escrow Agent Fee. Cerner shall make payment to Escrow Agent for escrow service in
16 accordance with Escrow Agent's fee schedule as outlined on Exhibit A attached hereto, and shall be
17 invoiced upon execution of this Escrow Agreement.

18 5.2 Non-payment. In the event of non-payment of Escrow fee, Escrow Agent shall give Cerner
19 sixty (60) days notice thereof. If the sixty (60) day notice period elapses without Escrow Agent having
20 received payment from Cerner, Escrow Agent shall then have the option, upon delivery of written notice
21 to Cerner, to terminate this Escrow Agreement and to return to Cerner all Escrow Material.

22 **ARTICLE 6 – TERM**

23
24 6.1 Term and Termination. The initial term of this Escrow Agreement shall commence as of the
25 effective date set forth on the first page hereof and continue for a period of ten years (the "Initial Term").
26 Thereafter, this Escrow Agreement shall automatically renew from year-to-year (each a "Renewal
27 Term") unless either party provides not less than 180 days notice to the other of its intention to terminate
28 the Escrow Agreement at the end of the then current term. This Escrow Agreement may be terminated
29 prior to the expiration of the Initial Term or any Renewal Term in any of the following ways: (a) Cerner
30 instructs Escrow Agent in writing that the Escrow Agreement is terminated; (b) the Escrow Agreement is
31 terminated by Escrow Agent for nonpayment in accordance with Section 5 .2.

32 6.2 Disposition of Escrow Materials on Termination. Escrow Agent shall return the Escrow
33 Materials to Cerner upon the termination of this Escrow Agreement.

34 6.3 Survival of Terms Following Termination. Upon termination of this Escrow Agreement, the
35 following provisions of this Escrow Agreement shall survive: Section 1.5 - Cerner's Representations,
36 Section 2.1 - Confidentiality Obligations of Escrow Agent, Article 4 - Ownership and Use of the Escrow
37 Material, any payment obligations to Escrow Agent, this Section 6.3, Section 7.2 - Indemnification of
38 Escrow Agent, Section 7.4- Liability of Cerner, and Article 8 - General Provisions.

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ARTICLE 7 --LIABILITY AND INDEMNIFICATION OF ESCROW AGENT

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

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

7.3 Liability of Escrow Agent. Escrow Agent shall not, by reason of its execution of this Escrow Agreement, assume any responsibility or liability for any transactions between Cerner and Licensee. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement, including without limitation any other agreement between the Cerner and a Licensee or any other persons even though reference thereto may be made herein. The Escrow Agent shall not be liable directly to any third party, including without limitation any Licensee. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent of the Escrow Agent's negligence or willful misconduct. Escrow Agent's sole responsibility shall be for the safekeeping of the Escrow Material in accordance with the terms of this Escrow Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Materials, this Escrow Agreement or any License Agreement, or to appear in, prosecute or defend any such legal action or proceeding.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Material, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Material is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any

1 such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other
2 person or entity by reason of such compliance even though such order, writ, judgment or decree may be
3 subsequently reversed, modified, annulled, set aside or vacated.

4 **7.4 Liability of Cerner.** IN NO CASE SHALL CERNER BE LIABLE FOR ANY SPECIAL,
5 INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY,
6 BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY.

7 **ARTICLE 8 -- GENERAL PROVISIONS**

8 **8.1 Notices.** All notices, approvals, consents, requests, and other communications hereunder shall
9 be in writing and shall be delivered by hand, overnight delivery service, electronic mail or facsimile
10 transmitter (with confirmed receipt) to the following physical address, electronic address or facsimile
11 number set forth in this section, or to such other address as each party may designate for itself by like
12 notice, and shall be deemed to have been given on the date received:

13 Cerner Corporation:

14 Cerner Corporation
15 2800 Rockcreek Parkway
16 North Kansas City, MO 64117
17 Attn: General Counsel
18 Phone: 816-221-1024
19 Fax: 816-474-1742

20 Escrow Agent:

21 U.S. Bank National Association
22 EP-MN-WS3C
23 60 Livingston Avenue
24 St. Paul, MN 55107
25 Attn: Georgette Kleinbaum
26 Phone: 651 495-3922
27 Fax: 651 495-8096
28 E-mail: georgette.kleinbaum @usbank.com

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

32 **8.2 Assignment/Binding Nature.** Except as set forth below, neither party shall have the right to
33 assign its rights and obligations under this Escrow Agreement. Cerner may, however, assign and delegate
34 in conjunction with a reorganization or merger, or in conjunction with the sale of substantially all its
35 assets to which this Agreement pertains. This Escrow Agreement shall be binding upon the parties'
36 successors and assigns. Any assignment of this Agreement, by Escrow Agent or Cerner, must be made in
37 its entirety, including all rights and obligations.

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

1 EXHIBIT E
2 TO AGREEMENT FOR PROVISION OF
3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
9 BUSINESS ASSOCIATE CONTRACT
10

11 A. GENERAL PROVISIONS AND RECITALS

12 1. The parties agree that the terms used, but not otherwise defined below in Paragraph B, shall
13 have the same meaning given to such terms under the Health Insurance Portability and Accountability
14 Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and
15 Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and their implementing regulations at 45
16 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

17 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and
18 the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
19 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
20 COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of
21 “Business Associate” in 45 CFR § 160.103.

22 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
23 terms of the Agreement, some of which may constitute Protected Health Information (“PHI”), as defined
24 below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities
25 pursuant to, and as set forth, in the Agreement.

26 4. The parties intend to protect the privacy and provide for the security of PHI that may be
27 created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance
28 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
29 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

30 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
31 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
32 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

33 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
34 Subparagraphs B.9. and B.14., apply to the CONTRACTOR in the same manner as they apply to a
35 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
36 terms of this Business Associate Contract and the applicable standards, implementation specifications,
37 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,

1 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
2 pursuant to the Agreement.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and policies and procedures, to
5 manage the selection, development, implementation, and maintenance of security measures to protect
6 electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection
7 of that information.

8 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
9 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

10 a. Breach excludes:

11 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
12 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
13 was made in good faith and within the scope of authority and does not result in further use or disclosure
14 in a manner not permitted under the Privacy Rule.

15 2) Any inadvertent disclosure by a person who is authorized to access PHI at
16 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
17 care arrangement in which COUNTY participates, and the information received as a result of such
18 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

19 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
20 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
21 retain such information.

22 b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
23 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
24 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
25 based on a risk assessment of at least the following factors:

26 1) The nature and extent of the PHI involved, including the types of identifiers and the
27 likelihood of re-identification;

28 2) The unauthorized person who used the PHI or to whom the disclosure was made;

29 3) Whether the PHI was actually acquired or viewed; and

30 4) The extent to which the risk to the PHI has been mitigated.

31 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
32 Rule in 45 CFR § 164.501.

33 4. "Designated Record Set" shall have the meaning given to such term under the HIPAA
34 Privacy Rule in 45 CFR § 164.501.

35 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45
36 CFR § 160.103.

37 //

1 6. “Health Care Operations” shall have the meaning given to such term under the HIPAA
2 Privacy Rule in 45 CFR § 164.501.

3 7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in
4 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
5 with 45 CFR § 164.502(g).

6 8. “Physical Safeguards” are physical measures, policies, and procedures to protect
7 CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and
8 environmental hazards, and unauthorized intrusion.

9 9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually
10 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

11 10. “Protected Health Information” or “PHI” shall have the meaning given to such term under
12 the HIPAA regulations in 45 CFR § 160.103.

13 11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy
14 Rule in 45 CFR § 164.103.

15 12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or
16 his or her designee.

17 13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
18 modification, or destruction of information or interference with system operations in an information
19 system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans,
20 “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by
21 CONTRACTOR.

22 14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of
23 electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

24 15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in
25 45 CFR § 160.103.

26 16. “Technical safeguards” means the technology and the policy and procedures for its use that
27 protect electronic PHI and control access to it.

28 17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable,
29 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
30 methodology specified by the Secretary of Health and Human Services in the guidance issued on the
31 HHS Web site.

32 18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
33 160.103.

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

35 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
36 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
37 by law.

1 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
2 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
3 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
4 other than as provided for by this Business Associate Contract.

5 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
6 Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
7 creates, receives, maintains, or transmits on behalf of COUNTY.

8 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
9 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
10 requirements of this Business Associate Contract.

11 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
12 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
13 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Paragraph E below and as
14 required by 45 CFR § 164.410.

15 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
16 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply
17 through this Business Associate Contract to CONTRACTOR with respect to such information.

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

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

26 9. CONTRACTOR agrees to make internal practices, books, and records, including policies
27 and procedures, relating to the use and disclosure of PHI received from, or created or received by
28 CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner
29 designated by the Secretary or in a time and manner that is acceptable to both County and Contractor as
30 requested by County for purposes of the Secretary determining COUNTY's compliance with the HIPAA
31 Privacy Rule.

32 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
33 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
34 and to make information related to such Disclosures available as would be required for COUNTY to
35 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45
36 CFR § 164.528.

37 11. CONTRACTOR agrees to provide COUNTY, in a time and manner to be determined by

1 COUNTY, that information collected in accordance with the Agreement, in order to permit COUNTY to
2 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45
3 CFR § 164.528.

4 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
5 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
6 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

7 13. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
8 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
9 B.2.a. above.

10 D. SECURITY RULE

11 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and
12 maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §
13 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI COUNTY discloses to
14 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
15 CONTRACTOR shall follow generally accepted system security principles and the requirements of the
16 HIPAA Security Rule pertaining to the security of electronic PHI.

17 2. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
18 transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to
19 the same restrictions and requirements contained in this Paragraph D of this Business Associate
20 Contract.

21 3. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
22 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
23 Subparagraph E. below and as required by 45 CFR § 164.410.

24 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

34 2. CONTRACTOR shall provide the notification of the Breach immediately to the County
35 Privacy Officer. CONTRACTOR's notification may be written or oral, but if oral, shall be followed by
36 written notification within 24 hours of the oral notification. Thereafter, CONTRACTOR shall provide
37 written notification containing the contents stated below within five (5) business days. CONTRACTOR

1 shall be required to provide any other information relevant to the Breach in writing as soon as the
2 information is available.

3
4 3. CONTRACTOR's notification shall include, to the extent possible:

5 //

6 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
7 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

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

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

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

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

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

21 5) a contact for COUNTY to obtain further information.

22 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45
23 CFR § 164.404, if it is reasonable to do so under the circumstances.

24 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
25 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
26 CONTRACTOR made all notifications to COUNTY consistent with this Paragraph E and as required by
27 the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure
28 of PHI did not constitute a Breach.

29 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
30 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

31 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
32 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
33 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
34 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
35 the Breach to COUNTY pursuant to Subparagraph E.2 above.

36 8. CONTRACTOR shall continue to provide all additional pertinent information about the
37 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after

1 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests
2 for further information, or follow-up information after report to COUNTY, when such request is made
3 by COUNTY.

4 9. If the Breach is due to the negligence or willful misconduct of CONTRACTOR,
5 CONTRACTOR shall bear all reasonable expense or other costs associated with the Breach that
6 COUNTY incurs in addressing the Breach and consequences thereof, including costs of investigation,
7 notification, remediation, documentation or other costs associated with addressing the Breach. However,
8 nothing stated herein shall relieve the CONTRACTOR from its obligation to address and be responsible
9 for all costs related to any Breach which obligation the CONTRACTOR independently bears under
10 HIPAA, the HITECH Act, and/or the HIPAA regulations.

11 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

12 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
13 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
14 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
15 by COUNTY except for the specific Uses and Disclosures set forth below.

16 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
17 for the proper management and administration of CONTRACTOR.

18 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
19 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
20 CONTRACTOR, if:

21 1) The Disclosure is required by law; or

22 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is
23 disclosed that it will be held confidentially and used or further disclosed only as required by law or for
24 the purposes for which it was disclosed to the person and the person immediately notifies
25 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
26 been breached.

27 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
28 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
29 CONTRACTOR.

30 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
31 carry out legal responsibilities of CONTRACTOR.

32 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
33 consistent with the minimum necessary policies and procedures of COUNTY.

34 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
35 required by law.

36 G. OBLIGATIONS OF COUNTY

37 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of

1 | privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
2 | CONTRACTOR's Use or Disclosure of PHI.

3 | 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
4 | by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
5 | CONTRACTOR's Use or Disclosure of PHI.

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7 | 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
8 | that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
9 | may affect CONTRACTOR's Use or Disclosure of PHI.

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

12 | H. BUSINESS ASSOCIATE TERMINATION

13 | 1. Upon COUNTY's knowledge of a material breach or violation by CONTRACTOR of the
14 | requirements of this Business Associate Contract, COUNTY shall:

15 | a. Provide an opportunity for CONTRACTOR to cure the material breach or end the
16 | violation within thirty (30) business days; or

17 | b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure
18 | the material breach or end the violation within (30) days, provided termination of the Agreement is
19 | feasible.

20 | 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
21 | COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or
22 | received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

23 | a. This provision shall apply to all PHI that is in the possession of Subcontractors or
24 | agents of CONTRACTOR.

25 | b. CONTRACTOR shall retain no copies of the PHI.

26 | c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
27 | feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
28 | destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
29 | CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
30 | further Uses and Disclosures of such PHI to those purposes that make the return or destruction
31 | infeasible, for as long as CONTRACTOR maintains such PHI.

32 | 3. The obligations of this Business Associate Contract shall survive the termination of the
33 | Agreement.

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EXHIBIT F
 TO AGREEMENT FOR PROVISION OF
 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
 BETWEEN
 COUNTY OF ORANGE
 AND
 CERNER CORPORATION
 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
 MILESTONES, DELIVERABLES, AND PAYMENT SCHEDULE

I. MILESTONES AND DELIVERABLES

No.	Milestones	Delivery Date: Weeks after contract execution	Planned Start Date	Planned Delivery Date
	EHR Contract Execution/ Asset Delivery	0	June 2015	June 2015
	EHR Maintenance/Support/Subscriptions/ASP 12 months prepaid at Contract Execution	0	June 2015	June 2015
1	Design Review	24	September 2015	December 2015
2	Build Validation	36	December 2015	February 2016
3	Integration and Testing	48	February 2016	April 2016
4	Conversion and Go Live	60	April 2016	July 2016
5	System Acceptance - Total Holdback Payment	68	September 2016	September 2016

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II. PAYMENT SCHEDULE

Payment Fiscal Year	Milestone / Target	Payment %	Gross Payment \$ Due	Holdback %	Net Milestone Payment \$ after Holdback	Holdback \$
2014-15	Asset Delivery	17%	\$130,584	0%	\$130,584	
2014-15	Support / ASP	8%	\$65,204	0%	\$65,204	
Total 14-15		25%	\$195,788	0%	\$195,788	
2015-16	1	19%	\$146,439	10%	\$131,795	\$14,644
2015-16	2	19%	\$146,439	10%	\$131,795	\$14,644
2015-16	3	19%	\$146,439	10%	\$131,795	\$14,644
Total 15-16		56%	\$439,316	10%	\$395,384	\$43,932
2016-17	4	19%	\$146,439	10%	\$131,795	\$14,644
2016-17	5				\$58,575	\$ -
Total 16-17		19%	\$146,439	10%	\$190,370	\$14,644
TOTAL COST		100%	\$781,542	10%	\$781,542	

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1 EXHIBIT G
2 TO AGREEMENT FOR PROVISION OF
3 PUBLIC HEALTH ELECTRONIC HEALTH RECORD SYSTEM SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 CERNER CORPORATION
8 JUNE 24, 2015 THROUGH SEPTEMBER 30, 2016
9 PASSTHROUGH PROVISIONS
10

11 **SURESCRIPTS**

12 A. Aggregator Customer Terms and Conditions of Use of the Surescripts network

13 1. Terms and Conditions. By accessing the Surescripts network through software licensed
14 from Cerner Corporation (“Cerner”), the entity accessing or providing access to the Surescripts network
15 (“Cerner Customer”) agrees to the following terms and conditions of use of the Surescripts network and
16 Surescripts Services (these “Terms”). At the direction of Surescripts, or as may be necessitated by
17 Cerner’s agreement with Surescripts, Cerner may modify or supplement these Terms from time to time
18 and such modified or supplemented Terms shall become effective at the time set forth in such
19 modification or supplement.

20 2. Definitions:

21 a. “Applicable Law” means any and all applicable federal, state, local, common law,
22 rules, regulations, directives, and guidelines, including but not limited to the applicable provisions of the
23 following: the Health Insurance Portability and Accountability Act (“HIPAA”) and related regulations;
24 the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and related
25 regulations; the Anti-Kickback provisions of the Social Security Act and related regulations; and; state
26 and federal pharmacy laws and regulations.

27 b. “Confidential Information” means all confidential and/or proprietary information
28 disclosed to Cerner Customer by Surescripts, including products, software, materials, processes, ideas,
29 and techniques (whether or not reduced to writing): (i) which are not generally known in the relevant
30 industry or trade; (ii) which afford possessors of the information a commercial advantage over others
31 who do not have such information; (iii) which are considered trade secrets under Applicable Law;
32 and/or (iv) which, if utilized or disclosed by Cerner Customer, would place Surescripts at a competitive
33 or business disadvantage; these Terms; employee, customer and patient information and PHI;
34 accounting data; statistical data; development and marketing plans; strategies; forecasts; any and all
35 information and documentation deemed confidential or a trade secret under any federal, state, or local
36 statute or regulation; and the like, whether or not tangibly embodied in a document, model, specimen,
37 computer storage device, or other physical object; and any information obtained or accessed by Cerner

1 Customer, if not otherwise described above, is of a nature that a reasonable person would believe it to be
2 confidential.

3 c. "Data Source" means a (1) pharmacy, pharmacy chain, or entity that aggregates
4 information on behalf of pharmacies, or other similar entity which has entered into a written agreement
5 with Surescripts to allow access through the Surescripts network to information in its possession, or (2)
6 a pharmacy benefit manager, health benefit payor or administrator, or other similar entity which has
7 entered into a written agreement with Surescripts to allow access through the Surescripts network to
8 information in its possession.

9 d. "Participants" means all aggregators, value-added resellers, Data Sources, prescribers,
10 health care providers, and facilities, technology vendors, and other entities and individuals that have
11 entered into written agreements with Surescripts, either directly or indirectly, in order to access, provide,
12 or communicate through the Surescripts network.

13 e. "Prescriber End User" means an individual, located in the United States or a United
14 States territory, that: (1) is employed by, is an active member of the medical staff of, or is otherwise
15 performing healthcare services as a legally authorized representative of an Cerner Customer.; and (2) if
16 required by Applicable Law to be licensed, registered, or otherwise authorized by a Governmental
17 authority, is properly and duly licensed, registered, or otherwise authorized with the appropriate
18 Governmental authority to perform the applicable healthcare services.

19 f. "Prescribing Decision" means a prescriber's decision to prescribe a certain
20 pharmaceutical or direct a patient to a certain pharmacy.

21 g. "Point of Care" means the place and time that a prescriber or his/her agent is in the act
22 of prescribing a pharmaceutical for a patient.

23 h. "Surescripts network" means the Surescripts proprietary technology for a secure,
24 nationwide, interoperable health information infrastructure, interfaces, functionality, and transaction
25 maps made available by Surescripts to Cerner Customer, through Cerner's software, pursuant to this
26 Agreement, as they may be further modified or developed by Surescripts from time to time.

27 3. Access to and Use of the Surescripts network. Cerner Customer shall designate each
28 Prescriber End User as such only after confirming that such individual or entity meets the definition of a
29 Prescriber End User set forth in Section 2.D above. Customer shall, at a minimum, employ NIST Level
30 of Assurance 2 identity-proofing and authentication processes before allowing any individual access to
31 the Surescripts network for electronic prescription of non-controlled substances (understanding that for
32 controlled substances a more rigorous level for identity proofing and authentication is established and
33 must be met pursuant to Applicable Law). Cerner Customer shall, and shall ensure that its Prescriber
34 End Users shall, access and utilize the Surescripts network only in accordance with these Terms. Cerner
35 Customer shall be responsible for ensuring that all messages transmitted via the Surescripts network
36 originate from Prescriber End Users who are licensed to use the application for the service(s) for which
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1 Surescripts has certified Cerner Customer's licensed application, and who are registered with Cerner
2 Customer.

3 4. Confidentiality. Cerner Customer shall, and shall ensure that its Prescriber End Users shall,
4 keep confidential all Confidential Information.

5 5. Adherence to Applicable Law. Cerner Customer shall, and shall ensure that Prescriber End
6 Users shall, comply with Applicable Law, including ensuring that all necessary patient consents and
7 authorizations have been obtained.

8 6. Commercial Messaging Rules. Cerner Customer shall comply with the Surescripts
9 Commercial Messaging Rules, as follows:

10 a. General Limitation. Cerner Customer shall not, and shall ensure that Prescriber End
11 Users do not, use any means, program, or device, and shall not permit any person or entity to use any
12 means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads,
13 to influence or attempt to influence, through economic incentives or otherwise, the Prescribing Decision
14 of a prescriber at the Point of Care if: (i) such means, program, or device (as described above) is
15 triggered by, initiated by, or is in specific response to, the input, selection, and/or act of a prescriber or
16 his/her agent prescribing a pharmaceutical or selecting a pharmacy for a patient; and (ii) that
17 prescription shall be delivered via the Surescripts network.

18 b. Exceptions to General Limitation. Notwithstanding the above Section III(d)(1)(A),
19 Cerner Customer and Prescriber End Users may: (A) show information regarding a payer's formulary
20 and benefit plan design, including patient lowest cost options, on/off tier, prior authorization, step
21 therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to Prescriber End
22 Users clinical alerts that are sourced from payers and/or are attributed to generally recognized and
23 reputable sources providing clinical information to the prescriber, even if, in the event of either (A) or
24 (B), such information influences the patient or prescriber's choice of pharmacy or other prescribing
25 decisions. In addition, in the event of either (A) or (B) above, Cerner Customer shall: (i) allow its
26 Prescriber End Users to access all pharmaceuticals known through generally available sources used in
27 the industry, and all pharmacies, including all retail and mail service pharmacy options available; and
28 (ii) not be designed to preclude a physician or patient from selecting any particular pharmacy or
29 pharmaceutical. Any custom lists created and maintained by Prescriber End Users within Cerner
30 Customer's licensed software, including but not limited to: (i) an individual Prescriber End User's most
31 often prescribed medication list; (ii) an individual Prescriber End User's most often used pharmacy list;
32 and/or (iii) an individual Prescriber End User's most often used SIGs (i.e., instructions for the use of
33 medications), would not be considered a violation of the Commercial Messaging Rules.

34 7. Surescripts Disclaimers.

35 a. Cerner Customer acknowledges and agrees, and shall ensure that Prescriber End Users
36 acknowledge and agree, that the prescription benefit and medication history information provided by
37 Surescripts may not be complete or accurate;

1 b. Cerner Customer releases and holds harmless, on its own behalf and on behalf of its
2 Prescriber End Users, Surescripts and its Data Sources against any claims relating to the accuracy or
3 completeness of prescription benefit and medication history information provided by Surescripts.

4 c. Cerner Customer acknowledges, on its own behalf and on behalf of its Prescriber End
5 Users, that it is the Prescriber End User's sole responsibility to confirm the accuracy of the prescription
6 benefit and medication history information with his/her/its patient prior to providing any medical
7 services based thereon; and

8 d. Cerner Customer acknowledges and agrees, on its own behalf and on behalf of its
9 Prescriber End Users, that: (i) the Surescripts network is not intended to serve as a replacement for: (a) a
10 written prescription where not approved as such by the appropriate governmental authorities or where
11 such written prescription is required for record keeping purposes; or (b) applicable prescription
12 documentation; (ii) use of the Surescripts network is not a substitute for a health care provider's
13 standard practice or professional judgment; and (iii) any decision with regard to the appropriateness of
14 treatment, or the validity or reliability of information, is the sole responsibility of a patient's health care
15 provider.

16 8. Surescripts Data Sources. Cerner Customer acknowledges and agrees that any Data Source,
17 in its sole discretion, may elect not to receive prescriptions and other messages from Cerner Customer
18 and/or any Prescriber End User and that Data Sources or other Participants in the Surescripts network
19 may be added to or deleted from the Surescripts network or may limit access to their data without prior
20 notice.

21 9. Compliance. No more than once per year without cause (or more often only upon a showing
22 of reasonable cause), upon reasonable prior written notice and request from Surescripts, Cerner
23 Customer shall provide Surescripts with data and records relating to the use of the Surescripts network
24 and/or Surescripts Services by Cerner Customer for purposes of determining Cerner Customer's
25 compliance with these Terms.

26 10. No Modification or Reconfiguration. Cerner Customer shall not, and shall ensure that
27 Prescriber End Users do not, modify or reconfigure Cerner Customer's licensed software in a way that
28 will bring it out of compliance with these Terms or the Surescripts documentation.

29 11. Prescriber Directory Information. Cerner Customer agrees that Surescripts has unlimited
30 non-exclusive rights in perpetuity to use all directory and directory-related information on Prescriber
31 End Users that shall come to reside within the Surescripts network database through Prescriber End
32 Users' use of the Surescripts network, including all root, identity, and location-related information. Such
33 uses may include creating and disclosing aggregated, de-identified statistics relating to the adoption and
34 use of e-prescribing by Prescriber End Users and use of directory information to operate and expand the
35 Surescripts network, subject at all times to compliance with applicable law. Notwithstanding the
36 foregoing, Surescripts will not: (i) make available for public consumption information that identifies
37 Prescriber End Users except pursuant to Applicable Law or judicial or administrative order or to provide

1 information regarding Prescriber End Users' use of the Surescripts network to healthcare payers; (ii)
2 sell, disclose, or transfer to any third party information that identifies Prescriber End Users for the
3 purpose of allowing such third party to send to such Prescriber End Users commercial solicitations for
4 the purchase of goods or services; or (iv) engage in sending commercial solicitations to Prescriber End
5 Users. The rights granted to Surescripts in this Section 11 shall specifically exclude any rights in PHI,
6 Cerner Customer confidential information and intellectual property.

7 12. Termination for Breach. Cerner Customer's access to the Surescripts network may be
8 suspended or terminated in the event of a breach of these Terms that is not cured within the time period
9 set forth in the breach notice delivered to Cerner Customer by Cerner or Surescripts.

10 13. Emergency Suspension. Notwithstanding anything to the contrary herein, Surescripts
11 retains the right to immediately suspend access (with no notice or cure period) to the Surescripts
12 network by Cerner Customer or any Prescriber End User in the event that Surescripts perceives (in its
13 reasonable discretion) there to be a patient safety concern, violation of Applicable Law, or unauthorized
14 use of the Surescripts network.

15 14. Cerner Customer Indemnity. Cerner Customer shall defend, indemnify, and save harmless
16 Surescripts from and against any and all loss, damage, or expense arising out of claims asserted against
17 Surescripts by third parties to the extent arising out of any breach of these Terms, any use (or misuse) by
18 Cerner Customers or Prescriber End Users of data or information received through the Surescripts
19 network, or any transmission of data or information through the Surescripts network by Aggregator
20 Customers or Prescriber End Users. The foregoing indemnity shall not apply to the extent of
21 Surescripts' indemnification obligations under Section 15.

22 15. Surescripts Indemnity.

23 a. Subject to the exclusions set forth below, Surescripts will indemnify, defend, and hold
24 harmless Cerner Customer, its officers, employees and agents from and against all loss damage or
25 expense arising out of any claim brought by a third party that the Surescripts network or Surescripts
26 services (collectively referred to as the "Surescripts Products") as lawfully used in full compliance with
27 these Terms infringe(s) any patent, trademark, copyright or other intellectual property right or
28 misappropriates any trade secret. If Cerner Customer's right to use any of the Products is enjoined,
29 Surescripts will (a) procure for Cerner Customer, as applicable, the right to use the Product, (b) replace
30 the Product with a functionally equivalent, non-infringing product, or (c) modify the Product so it
31 becomes non-infringing and functionally equivalent. If (a), (b) or (c) is not commercially reasonable,
32 Surescripts will refund a pro rata portion of all fees paid for the particular Surescripts Product(s) at issue
33 in exchange for return of the Product(s).

34 b. Exclusions. Surescripts has no indemnification or defense obligation regarding any
35 claim arising directly from any of the following to the extent such claim would not have arisen but for
36 the described:

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1) Surescripts' inclusion in Surescripts Products any custom designs, specifications, software, or interfaces, instructions as provided or requested by Cerner, Cerner Customer, or by a third party on Cerner Customer's behalf;

2) Modification of the Surescripts Products by Cerner or Cerner Customer, excluding modifications performed, required or approved by Surescripts; or

3) Use of any non-Surescripts product, apparatus, business method or service not provided by Surescripts in combination with Surescripts Product(s) (the "Combination"), provided that this exclusion shall not apply if:

a) the Combination is expressly required by Surescripts;

b) Cerner Customer notifies Surescripts of the Combination in writing and such Combination is authorized by Surescripts in writing; or

c) the Combination is expressly specified in the Surescripts documentation.

4) Notwithstanding the foregoing, the exclusion set forth in this subsection (3) will not limit Surescripts' intellectual property indemnification obligations under this Section 15 if, upon final judgment, a Surescripts Product is specifically found to be an infringement of the rights identified in this Section and the Combination is specifically found not to have contributed to the infringement.

16. Indemnification Procedures. Upon becoming aware of any matter which is subject to the provisions of Sections 14 and 15, the party seeking indemnification (the "Indemnified Party") must give prompt written notice of such claim to the other party (the "Indemnifying Party"), accompanied by copies of any written documentation regarding the claim received by the Indemnified Party. The Indemnifying Party shall have the sole right to defend, at its own expense and with its own counsel, any such claim, and control any negotiation for its settlement or compromise. The Indemnified Party shall cooperate with the Indemnifying Party in defending the claim, and will have the right, at its option, to participate in the settlement or defense of any such claim with its own counsel and at its own expense; provided, however, that the Indemnifying Party will have the right to control such settlement or defense. Notwithstanding the foregoing, the Indemnifying Party will not enter into any settlement that specifically apportions fault to, or imposes any monetary liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The parties will use commercially reasonable efforts to cooperate in any such settlement or defense and give each other full access to all relevant information, at the Indemnifying Party's expense.

17. Third Party Beneficiary. Surescripts shall be a third party beneficiary of these Terms, and the Data Sources shall be third party beneficiaries of Section 7.B above.

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EMC

A. The Following Terms Are Applicable To Sublicensing Of EMC Documentum Software. The EMC Software licensed hereunder is subject to the Cerner business agreement between End User and Cerner, subject to the specific different terms set forth below:

1. The EMC Software license is a nonexclusive, perpetual and non-transferable license (with no right to sublicense) to use the EMC Software solely in conjunction with Cerner Licensed Software.

2. The (i) EMC Software is licensed only, and no title to, or ownership of, the EMC Software is transferred to End User; (ii) End User may not remove EMC’s or its Cerner copyright and other proprietary notices on and in any copies of the EMC Software; and (iii) End User shall not cause or permit any other to create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the EMC Software to human readable form.

3. Product Warranty. The EMC Software will, for a period of ninety (90) days from the date of shipment or the date of electronic availability, as applicable, substantially conform to the applicable documentation for such EMC Software. Cerner does not warrant that the operation of the EMC Software shall be uninterrupted or error free, or that all defects can be corrected. Cerner’s entire liability and Customer’s exclusive remedies under the warranties described in this Section shall be for Cerner, at its option, to use reasonable efforts to remedy such defects, or have the manufacturer remedy such defects or performance failure or to replace the affected EMC Software. If Cerner is unable to make the affected EMC Software operate as warranted within a reasonable time, then Cerner shall refund the amount received by Cerner for the affected EMC Software upon return of the specific EMC Software to Cerner.

4. Warranty Exclusions. Except as expressly otherwise stated in this Agreement, and to the maximum extent permitted by law, Cerner (including its suppliers) provide EMC Software “AS IS” and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

5. End User shall upon Cerner’s request, promptly provide Cerner with a written statement certifying the extent of End User’s usage of EMC Software identified by Cerner and/or allow Cerner or its designee to conduct a reasonable audit of the applicable End User facilities and records to determine whether or not End User’s usage of such EMC Software is in conformance with its paid for license usage;

6. The EMC Software is confidential and contains EMC trade secrets and must be held in confidence with at least the same degree of care with which the End User protects its own similar confidential information.

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Mpages Limited Use Runtime License

A. Client acknowledges and agrees that Cerner grants Client a limited runtime only license to MPages for the sole purpose of executing MPage Applications that have been Cerner Developed and/or Cerner Certified. MPage Applications are not included with this runtime license and must be purchased separately. Client is not licensed or authorized to create or execute MPage Applications beyond those that have been Cerner Developed and/or Cerner Certified. Furthermore, Client is not authorized to modify the source code of any MPage Applications without upgrading to the MPages Full Use license. Cerner has the right to periodically conduct audits of Client’s System to ensure Client has not used MPages in a manner that violates the terms set forth herein. If Client is found in breach, Client shall pay to Cerner fees for the MPages Full Use license at Cerner’s then-current list price.

B. Definition of Terms

- 1. “MPage Application” means a CCL/web technology based program that leverages the MPages code set for execution.
- 2. “Cerner Developed” means an MPage Application that was purchased from Cerner or developed by Cerner professional services.
- 3. “Cerner Certified means” an MPage Application that has been certified by Cerner.

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