

1 AGREEMENT FOR PROVISION OF
2 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 CERNER CORPORATION
7 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019
8

9 THIS AGREEMENT entered into this 26th day of October 2016, which date is enumerated for
10 purposes of reference only, is by and between the COUNTY- OF ORANGE (COUNTY) and CERNER
11 CORPORATION, a Delaware For-Profit Corporation (CONTRACTOR), collectively referred herein as
12 the "Parties". This Agreement shall be administered by the County of Orange Health Care Agency
13 (ADMINISTRATOR).
14

15 **W I T N E S S E T H:**
16

17 WHEREAS, COUNTY wishes to upgrade the current Integrated Health Management Information
18 System (the "System") through a fixed price Agreement which provides for all licensing and installation
19 of software; system documentation; conversion of data; all phases of testing; on-site training per
20 specifications; and warranties; and

21 WHEREAS, both Parties acknowledge that a separate agreement for "Maintenance and Software
22 Support Services" exists between the Parties and certain sections of the Maintenance and Software
23 Support Services separate agreement shall be referenced and incorporated into this Agreement; and

24 WHEREAS, this Agreement specifies the contractual terms and conditions by which COUNTY will
25 obtain all software, installation of software, system documentation, conversion of data, all phases of
26 testing as specified in the Scope of Work (SOW), warranty and on-site training per specifications for
27 providing the enhancement and upgrade to the System; and

28 WHEREAS, the detailed scope of work and technical specifications for the system are fully set forth
29 and incorporated herein as an exhibit to this Agreement; and

30 WHEREAS, CONTRACTOR shall commence the work of the SOW after receipt of the Notice to
31 Proceed Letter, which is issued by ADMINISTRATOR, and CONTRACTOR shall continue work from
32 this point until the SOW, inclusive of any mutually agreed upon Amendments, has been completed to the
33 satisfaction of ADMINISTRATOR and accepted by COUNTY; and

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

36 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:
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REFERENCED CONTRACT PROVISIONS

Term: October 26, 2016 through October 25, 2019
 Period One means the period from October 26, 2016 through June 30, 2017
 Period Two means the period from July 1, 2017 through June 30, 2018
 Period Three means the period from July 1, 2018 through June 30, 2019
 Period Four means the period from July 1, 2019 through October 25, 2019

Maximum Obligation:

Period One Maximum Obligation:	\$ 602,898
Period Two Maximum Obligation:	553,288
Period Three Maximum Obligation:	238,964
<u>Period Four Maximum Obligation:</u>	<u>278,964</u>
TOTAL MAXIMUM OBLIGATION:	\$ 1,674,114

Basis for Reimbursement: Negotiated Amount

Payment Method: In Arrears

CONTRACTOR DUNS Number: 04-241-0688

CONTRACTOR TAX ID Number: 43-1196944

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: Cerner Corporation
 2800 Rockcreek Parkway
 Kansas City, Missouri 64117
 Attn: Jodi Drury, Sr. Director
 E-Mail: jdrury@cerner.com

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I. ACRONYMS

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

1		
2		
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 Act	The Health Information Technology for Economic and Clinical Health
11		Act, Public Law 111-005
12	BZ. HIV	Human Immunodeficiency Virus
13	CA. HRSA	Federal Health Resources and Services Administration
14	CB. HSC	California Health and Safety Code
15	CC. IBNR	Incurred But Not Reported
16	CD. ID	Identification
17	CE. IEA	Information Exchange Agreement
18	CF. IMD	Institute for Mental Disease
19	CG. IOM	Institute of Medicine
20	CH. IRIS	Integrated Records and Information System
21	CI. ISO	Insurance Services Office
22	CJ. ITC	Indigent Trauma Care
23	CK. LCSW	Licensed Clinical Social Worker
24	CL. LGBTQI	Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex
25	CM. LPS	Lanterman/Petris/Short (Act)
26	CO. LPT	Licensed Psychiatric Technician
27	CP. MAT	Medication Assisted Treatment
28	CQ. MEDS	Medi-Cal Eligibility Determination System
29	CR. MFT	Marriage and Family Therapist
30	CS. MH	Mental Health
31	CT. MHIS	Mental Health Inpatient Services
32	CU. MIHS	Medical and Institutional Health Services
33	CV. MHP	Mental Health Plan
34	CW. MHRC	Mental Health Rehabilitation Centers
35	CX. MHS	Mental Health Specialist
36	CY. MHSA	Mental Health Services Act
37	CZ. MORS	Milestones of Recovery Scale

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

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

II. ALTERATION OF TERMS

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. CHOICE OF LAW AND FORUM**

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

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

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

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

7 8 **IV. COMPLIANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 D. Subject to provisions of Paragraph XVI.B, the parties hereby agree that CONTRACTOR shall
36 attempt to meet State regulations when they exceed Federal requirements, and when COUNTY notifies
37 CONTRACTOR in writing of such requirements. CONTRACTOR shall notify COUNTY in writing

1 within thirty (30) calendar days of notice from COUNTY of CONTRACTOR’s determination if they are
2 able to meet identified State regulations. Should CONTRACTOR be unable to meet said State
3 regulations, either party may terminate this Agreement as outlined in Paragraph XXVIII. of this
4 Agreement.

5
6 **V. CONFIDENTIALITY**

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

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

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

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

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

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

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

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VI. CONFLICT OF INTEREST

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

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

VII. CONTRACTOR LIMITATION OF LIABILITY

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

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

C. Notwithstanding Subparagraph B. above and any other provisions herein besides the next sentence, CONTRACTOR’s maximum liability for all claims whatsoever arising under this Agreement shall be limited to one million, one hundred and four thousand, one hundred and fourteen dollars (\$1,104,114), increasable up to a total sum of at most one million, six hundred seventy four thousand, one hundred and fourteen dollars (\$1,674,114) to the extent that the parties exercise Optional services and subsequent Optional funding specified in Exhibit F to this Agreement, with that increase happening automatically dollar-for-dollar by the amount of each such exercise. The limitation stated in the immediately preceding sentence herein however shall not apply to claims subject to CONTRACTOR’s indemnification obligations under Subparagraphs A, B, C or X of Paragraph XIII.

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VIII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

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

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

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

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

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

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

IX. EMPLOYEE ELIGIBILITY VERIFICATION

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

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X. FACILITIES, PAYMENTS AND SERVICES

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

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

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

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

XI. FREIGHT ON BOARD PRICES

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

XII. HEADINGS NOT CONTROLLING

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

XIII. INDEMNIFICATION AND INSURANCE

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, which approval shall not be unreasonably withheld, and hold COUNTY, its elected and appointed officials, officers, directors, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, liabilities obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) which are asserted against COUNTY arising out of the use of the System by

1 COUNTY or arising out of or resulting from CONTRACTOR’s performance under this Agreement,
2 where such injury or claim is caused by the negligence, recklessness, or willful misconduct of
3 CONTRACTOR, its officers, employees or agents, except that CONTRACTOR shall not be obligated to
4 indemnify COUNTY INDEMNITEES under this sentence to the extent that the claim arose solely from
5 COUNTY’s failure to use the System in accordance with the Documentation and applicable standards of
6 good clinical practice. CONTRACTOR’S obligation under the intellectual property indemnification set
7 forth in Subparagraph XIII.X. herein shall apply to all third party intellectual property infringement
8 claims, liabilities obligations, judgments, causes of actions, costs and expenses (include reasonable
9 attorneys’ fees) described in that Subparagraph XIII.X. which are asserted against COUNTY arising out
10 of the use of the System by COUNTY regardless of CONTRACTOR’S, or its officers’, employees’ or
11 agents’, negligence or misconduct. If judgment is entered against CONTRACTOR and COUNTY by a
12 court of competent jurisdiction because of the concurrent active negligence, recklessness, or willful
13 misconduct of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that
14 liability will be apportioned as determined by the court. Neither party shall request a jury
15 apportionment.

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

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

34 D. Prior to the provision of services under this Agreement, the CONTRACTOR agrees to purchase
35 all required insurance at CONTRACTOR’s expense, including all endorsements required herein,

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1 necessary to satisfy the COUNTY that the insurance provisions of this Agreement have been complied
 2 with. CONTRACTOR agrees to keep such insurance coverage in effect during the entire term of this
 3 Agreement and provide Certificates of Insurance and endorsements to COUNTY.

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

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

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

18 H. QUALIFIED INSURER

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory

1	Employers' Liability Insurance	\$1,000,000 per occurrence
2		
3	Network Security & Privacy Liability	\$1,000,000 per claims made
4		
5	Technology Errors & Omissions	\$1,000,000 per claims made
6		\$1,000,000 aggregate
7		

8 I. REQUIRED COVERAGE FORMS

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

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

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

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

20 2. A primary non-contributing endorsement evidencing that CONTRACTOR’s insurance is
21 primary and any insurance or self-insurance maintained by the County of Orange shall be excess and
22 non-contributing.

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

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

27 2. A primary and non-contributing endorsement evidencing that the CONTRACTOR’s insurance
28 is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and
29 non-contributing.

30 L. If CONTRACTOR’s Technology Errors & Omissions and/or Network Security & Privacy
31 Liability are “Claims Made” policy(ies), CONTRACTOR shall agree to maintain coverage for two (2)
32 years following the term of this Agreement.

33 M. The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving
34 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
35 agents and employees.

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

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

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

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

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

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

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

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

27 V. SUBMISSION OF INSURANCE DOCUMENTS

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

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

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

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

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

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

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

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

29 3. CONTRACTOR shall not have any obligation to COUNTY under any provision of this
30 Paragraph if the infringement claim is based upon the use of any item of Licensed Software in
31 combination with any software program or equipment, or any part thereof, not furnished or
32 recommended in writing by CONTRACTOR.

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

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XIV. INFORMATION MANAGEMENT TOOLS

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

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

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

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

XV. INSPECTIONS AND AUDITS

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

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

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

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XVI. LICENSES AND LAWS

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

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

24 C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS:

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

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

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

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

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

36 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
37 Subparagraphs XVIC.1.a., 1.b., 1.c., or 1.d., or to comply with all federal and state employee reporting

1 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
 2 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement;
 3 and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
 4 grounds for termination of this Agreement.

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

8 9 **XVII. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA**

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

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

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

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

31 32 **XVIII. MAXIMUM OBLIGATION**

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

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1 B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR,
2 ADMINISTRATOR may increase or decrease the Period One, Period Two, Period Three, and Period
3 Four Maximum Obligations, provided the total of these Maximum Obligations does not exceed or
4 reduce the Total Maximum Obligation of COUNTY, as specified in the Referenced Contract Provisions
5 of this Agreement.

6
7 **XIX. 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 **XX. NO HIRE**

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

30
31 **XXI. NONDISCRIMINATION**

32 **A. EMPLOYMENT**

33 1. During the term of this Agreement, CONTRACTOR shall not unlawfully discriminate
34 against any employee or applicant for employment because of his/her race, religious creed, color,
35 national origin, ancestry, physical disability, mental disability, medical condition, genetic information,
36 marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and
37 veteran status. Additionally, during the term of this Agreement, CONTRACTOR shall require in its

1 subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for
2 employment because of his/her race, religious creed, color, national origin, ancestry, physical disability,
3 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
4 gender expression, age, sexual orientation, or military and veteran status.

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

9 3. CONTRACTOR shall not discriminate between employees with spouses and employees
10 with domestic partners, or discriminate between same gender domestic partners and spouses of those
11 employees, in the provision of benefits.

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

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

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

25 **B. SERVICES, BENEFITS AND FACILITIES –** CONTRACTOR and/or subcontractor shall not
26 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
27 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
28 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
29 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
30 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
31 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
32 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
33 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
34 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
35 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
36 Nondiscrimination Paragraph, Discrimination includes, but is not limited to the following based on one
37 or more of the factors identified above:

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

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

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

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

20 D. PERSONS WITH DISABILITIES - CONTRACTOR and/or subcontractor agree to comply
 21 with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq.,
 22 as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended
 23 (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
 24 discrimination against qualified persons with disabilities in all programs or activities; and if applicable,
 25 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
 26 with succeeding legislation.

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

32 F. CONTRACTOR shall include the nondiscrimination and compliance provisions of this
 33 Nondiscrimination Paragraph in all subcontracts for the direct performance of services under this
 34 Agreement.

35 //
 36 //
 37 //

XXII. NOTICES

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

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

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

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

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

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

XXIII. PROTECTIVE EQUIPMENT

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

XXIV. RECORDS MANAGEMENT AND MAINTENANCE

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

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

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

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

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

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

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

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

18 **XXV. SEVERABILITY**

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

25 **XXVI. STATUS OF CONTRACTOR**

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

1 **XXVII. TERM**

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

8
9 **XXVIII. TERMINATION**

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

12 1. **Contingent Funding**

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

- 14 1) The continued availability of federal, state and county funds for reimbursement of
15 COUNTY's expenditures, and
16 2) Inclusion of sufficient funding for the services hereunder in the applicable budget
17 approved by the Board of Supervisors.

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

24 2. **Breach of Agreement**

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

28 1) Shall notify CONTRACTOR in writing of the breach, after which COUNTY may,
29 in its sole discretion, afford CONTRACTOR:

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

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

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

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

3 b. In the event of a material breach by CONTRACTOR, in addition to the above and other
4 remedies, COUNTY reserves the right to terminate this Agreement in accordance with this
5 Paragraph XXVIII COUNTY may discontinue payments pending a decision of the Arbitrator as
6 provided in Subparagraph IV.D. hereof.

7 3. Insolvency

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

11 b. CONTRACTOR liquidates, dissolves, or ceases doing business.

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

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

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

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

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

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

34 C. RIGHTS UPON TERMINATION BY COUNTY FOR CAUSE: If this Agreement terminates
35 pursuant to Subparagraph XXVIII.A.2., the following shall apply:

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

37 //

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

9 D. ORDERLY TERMINATION:

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

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

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

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

36 2. This Paragraph may be invoked at the sole option of COUNTY by notification to
37 CONTRACTOR by certified return receipt mail.

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

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

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

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

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

22 **XXX. WARRANTIES**

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

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

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

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

37 //

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

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

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

27
28 **XXXI. WORK PRODUCT**

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

35 //
36 //
37 //

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 DocuSigned by:
7 BY: Marc Naughton _____ DATED: 10/5/2016
8 857DFE2CF038488...

9 TITLE: Executive Vice President and CFO
10

11
12
13
14
15
16 COUNTY OF ORANGE

17
18
19 BY: _____ DATED: _____
20 HEALTH CARE AGENCY

21
22
23
24
25
26 APPROVED AS TO FORM
27 OFFICE OF THE COUNTY COUNSEL
28 ORANGE COUNTY, CALIFORNIA

29
30 DocuSigned by:
31 BY: [Signature] _____ DATED: _____
32 3026E89386254F6...
33

34
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or
36 any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
37 If the Agreement 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 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES
4

5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019
10

11 **I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

37 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 21. Permitted Facility shall mean an entity identified as such in Exhibit F.

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

12 23. Product Descriptions shall mean the Software Product Descriptions (SPD's) for the System.

13 24. Scope of Use shall mean the limitations on COUNTY's use of the System.

14 25. Sublicensed Software shall mean all Equipment Operating System Sublicensed Software
15 and Third Party Application Sublicensed Software and/or third party content.

16 26. System shall mean the Equipment, Sublicensed Software and Licensed Software which
17 collectively constitute the discrete Integrated Health Management Information System that has the
18 functionality and conforms to the needs of the COUNTY.

19 27. Third Party Application Sublicensed Software shall mean any application software and
20 databases not proprietary to CONTRACTOR.

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

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

30 **II. PATENT / COPYRIGHT MATERIALS**

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

35 **III. TITLE OF DATA**

36 All materials, documents, Data, source code for data structures, or information obtained from
37 COUNTY data files or any COUNTY medium furnished to CONTRACTOR in the performance of this

1 Agreement will at all times remain the property of COUNTY. Such Data or information may not be
 2 used or copied for direct or indirect use by CONTRACTOR after completion or termination of this
 3 Agreement. All materials, documents, Data, or information, including copies, must be returned to
 4 COUNTY at the end of this Agreement.

6 **IV. CALIFORNIA PUBLIC RECORDS ACT**

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

21 **V. PAYMENTS**

22 A. BASIS FOR REIMBURSEMENT - As compensation to CONTRACTOR for the services
 23 described in this Exhibit A, in Exhibit B to the Agreement, and in accordance with the Milestone
 24 Deliverables and Payment schedule referenced in Exhibit F to the Agreement, which amount shall be
 25 inclusive of applicable sales tax, COUNTY shall pay CONTRACTOR the amounts and at the times set
 26 forth in Exhibit F, unless mutually agreed by both parties otherwise, however, that the total of such
 27 payments shall not exceed the COUNTY'S Total Maximum Obligation.

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

32 C. PAYMENT METHOD – COUNTY shall pay CONTRACTOR upon receipt of a properly
 33 completed invoice, in arrears, within thirty (30) calendar days following the end of the month referenced
 34 in the "Planned Delivery Date" column of the Milestone Deliverables and Payment schedule referenced
 35 in Exhibit F to the Agreement. CONTRACTOR'S billings shall be on a form approved or supplied by
 36 ADMINISTRATOR and provide such information as is required by ADMINISTRATOR.

37 //

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

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

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

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

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

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

26 2. Hotel: The parties agree that the average cost, per night, for a hotel room shall be one
27 hundred fifty dollars (\$150). Upon execution of this Agreement, CONTRACTOR agrees to contact
28 hotels in proximity of COUNTY'S offices and negotiate the rates based on expected frequency of travel,
29 securing reasonable discounts or inclusion of additional complimentary benefits such as parking or
30 meals, whenever possible. Hotel rates anticipated to be greater than two hundred dollars (\$200) per
31 night shall require prior written approval of ADMINISTRATOR. The following hotel charges are not
32 allowable:

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

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

7 4. Parking:

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

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

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

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

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

28
29 **VI. REPORTS AND MEETINGS**

30 A. CONTRACTOR shall develop and deliver to ADMINISTRATOR, a detailed project plan
31 within thirty (30) calendar days following the execution of this Agreement, which shall be reviewed and
32 approved, in writing, by mutual agreement of the Parties. Any modifications to the approved project
33 plan thereafter may be proposed by either party, but shall be subject to review and approval, in writing,
34 by mutual agreement of the Parties.

35 B. CONTRACTOR shall submit, on forms provided or approved by ADMINISTRATOR,
36 financial and/or programmatic reports as requested by ADMINISTRATOR concerning

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1 CONTRACTOR's activities as they relate to the Agreement. ADMINISTRATOR will be specific as to
2 the nature of the information requested and allow thirty (30) calendar days for CONTRACTOR to
3 respond.

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

10
11 **VII. RESPONSIBILITY OF CONTRACTOR**

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

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

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

21
22 **VIII. SERVICES**

23 A. CONTRACTOR shall provide services as described in Exhibits A and B to the Agreement and
24 COUNTY shall reimburse CONTRACTOR for said upgrade services as outlined in Paragraph V. of this
25 Exhibit A to the Agreement and in accordance with the Milestone Deliverables and Payment schedule
26 referenced in Exhibit F to the Agreement.

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

32 C. SOFTWARE LICENSE:

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

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1 Exhibit A to the Agreement and as described in Subparagraph I.A.16 of this Exhibit A to the
2 Agreement hereby and shall apply to the Permitted Facilities, and all Permitted Users of the Permitted
3 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 D. SOFTWARE OWNERSHIP

23 1. Intellectual Property Rights:

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

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

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

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

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

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

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

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

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

29 2. Possession and Use of Source Code: If Source Code is obtained by COUNTY under the
30 provisions of Subparagraph VIII.D.4., below, such Source Code shall remain subject to every license
31 restriction, proprietary rights protection, and other COUNTY obligations specified in this Agreement.
32 COUNTY may use Source Code for the sole purpose of supporting its use of the Licensed Software as
33 expressly permitted under this Agreement, and for no other purpose whatsoever. When Source Code
34 resides in a central processing unit, COUNTY shall limit access to its authorized employees who have a
35 need to know in order to support the Licensed Software. COUNTY shall at all times implement strict
36 access security measures in order to prevent unauthorized disclosure, use, or removal of Source Code.

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1 COUNTY also agrees that all persons with access to the Source Code shall execute confidentiality
2 agreements consistent with the obligations of COUNTY hereunder.

3 3. Software Ownership:

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

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

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

21 4. Source Code Escrow:

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

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

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

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

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

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

15
16 **IX. STANDARDS OF SYSTEM PERFORMANCE**

17 A. The System must perform at COUNTY acceptable and reasonable performance levels of the
18 core application, consistent with that of other CONTRACTOR clients using similar functionality as
19 measured and benchmarked through CONTRACTOR provided tools. . The parties agree that System
20 performance is a joint responsibility of COUNTY and CONTRACTOR to the extent under control by
21 each party. CONTRACTOR agrees to provide Support and Maintenance services in accordance with
22 the applicable terms set forth under the agreement for "Maintenance and Support Services" executed
23 between the parties.

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

27 **C. PROJECT SCHEDULE**

28 1. Site Preparation. COUNTY will have its Designated Facility(s) prepared for this upgrade
29 project by the date of execution of this Agreement. In the event the site(s) is/are not prepared by such
30 date, COUNTY acknowledges that the project schedule may be delayed and that, if applicable,
31 CONTRACTOR may request COUNTY to amend to this Agreement via an amendment or a letter of
32 agreement and/or concurrence to accommodate such delays.

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

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

5 D. The Services performed under this Agreement shall be done in accordance with Exhibit B. to
6 the Agreement, which may be revised at the option of COUNTY, with written mutual concurrence of
7 each Party. Each party shall be responsible for schedule adherence as outlined in the Exhibit B. to the
8 Agreement.

9 E. PRE-PRODUCTION ACCEPTANCE PERIOD: COUNTY agrees to use its commercially
10 reasonable best efforts to identify for CONTRACTOR in writing those issues arising out of the required
11 work performed as stated in the SOW, during the Pre-Production Acceptance Period in a non-production
12 environment which, if not resolved to COUNTY’s satisfaction, could cause COUNTY to delay
13 Acceptance in the Production Acceptance Period. COUNTY and CONTRACTOR agree that First
14 Productive Use with respect to the required work performed as stated in the SOW, shall not occur until
15 such pre-production issues are either resolved to COUNTY’s satisfaction or until COUNTY agrees in
16 writing that such issues will not be used as a basis for COUNTY to withhold Acceptance in the
17 Production Acceptance Period.

18 F. PRODUCTION ACCEPTANCE PERIOD

19 1. The Production Acceptance Period allows COUNTY to verify the functionality in a
20 production environment, and to identify issues occurring during or after First Productive Use of the
21 solutions delivered in the SOW, which could cause COUNTY to delay Acceptance. Should COUNTY
22 become aware of any Material Errors with the delivery of the solutions set forth in the SOW, COUNTY
23 shall promptly send CONTRACTOR a Notice of Noncompliance which shall include a written,
24 reasonably detailed description of each known discrepancy or failure. CONTRACTOR shall then have
25 the remainder of the Production Acceptance Period to resolve the discrepancies so identified and
26 reported. COUNTY shall, upon CONTRACTOR’s request, test any modifications during this period.

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

33 a. The applicable module of Licensed Software delivered under the SOW performs in
34 accordance with the Product Descriptions and in compliance with the SOW, without Material Error and
35 for a period of ninety (90) continuous days, the functions with respect to the defects listed in the Notice
36 of Noncompliance, or

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1 b. CONTRACTOR notifies COUNTY in writing that the maximum level of functionality
2 (as defined in the Product Descriptions) has been achieved; and that said level of functionality does not
3 result in any material revision or limitation to CONTRACTOR’s commitments as specified in this
4 Agreement, at which time COUNTY shall be deemed to have automatically accepted the Licensed
5 Software as it exists at that time, unless COUNTY, as COUNTY’s remedy, terminates this Agreement
6 upon written notice to CONTRACTOR, as set forth in the Termination Paragraph of the Agreement, in
7 writing within fifteen (15) business days after receipt of CONTRACTOR’s notice of maximum
8 functionality, or c. In the event the System has failed to perform without Material Error for a
9 period of at least ninety (90) calendar days following the initial Notice of Noncompliance from
10 COUNTY, COUNTY may terminate this Agreement upon notice to CONTRACTOR as set forth in the
11 Termination Paragraph of the Agreement.

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1 EXHIBIT B
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES
4

5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019
10

11 **I. SCOPE OF WORK**

12 A. CONTRACTOR and COUNTY agree that COUNTY shall pay for the upgrade and
13 implementation of this Scope of Work (SOW), which covers only the items identified. A new
14 agreement or amendment to the Agreement will be required if additional tasks beyond those outlined in
15 this SOW are requested. The commitment for the completion and go-live of the SOW shall be no later
16 than October 25, 2019. The target date set forth herein has been determined by the parties assuming a
17 project start date of October 26, 2016; CONTRACTOR shall not be liable for any project delay(s)
18 unless such delay(s) is (are) due to 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 for Upgrade 1 in April 2017, and support the successful go-live by April 30,
22 2017. CONTRACTOR will move the completed work from the non-production (Prod) domain to the
23 Production domain for Upgrade 2 in January 2018, and support the successful go-live by January 31,
24 2018. CONTRACTOR will move the completed work from the non-production (Prod) for Upgrade 3 in
25 October 2019, and support the successful go-live by October 25, 2019.

26 C. The SOW includes professional services from CONTRACTOR for the upgrade and
27 implementation of the SOW as set forth in the Agreement.

28 **D. APPLICATION RELEASE UPGRADE SERVICES**

29 **1. SERVICE OVERVIEW**

30 a. The Cerner Millennium Upgrade Projects (Release Upgrade) are intended to update
31 COUNTY's current application functionality, from COUNTY's code level then current to the most
32 recent generally available code level at the time each of the three (3) upgrades while remote hosted
33 begins. It is not within the scope of this project to modify or build new application functionality, with
34 the exception of the selected Upgrade Center Proactive Services.

35 b. Each of the two (2) Upgrade projects while remote hosted will focus on testing the
36 majority of functionality however it will not test every user and every build tool. Testing will consist of
37 six (6) major end user positions identified by COUNTY for each solution. Testing will be based on a

1 detailed test script developed by CONTRACTOR based upon recommended approach and COUNTY
 2 input gathered from solution assessments and COUNTY provided test scripts.

3 2. SCOPE OF USE EXPANSION: In the event additional applications are not already
 4 covered under the scope of the second and third release upgrades, additional fees may apply and may be
 5 determined on a case-by-case basis. Any agreed upon additional services or fees shall be addressed via
 6 an amendment to the Agreement, , or a new and separate agreement.

7 3. WORK EFFORT

8 a. Each Release Upgrade project is primarily composed of technical and testing events.
 9 CONTRACTOR will complete the majority of the activities as defined in the detailed work effort
 10 below. CONTRACTOR shall develop and deliver to ADMINISTRATOR, a detailed project plan
 11 within thirty (30) calendar days following the execution of this Agreement, which shall be reviewed and
 12 approved, in writing, by mutual agreement of the Parties. COUNTY will be required to engage in
 13 certain events or tasks that are specific to COUNTY’s domain or environment. The grids below assign
 14 responsibility for the performance of identified tasks. The tasks are defined as P for Primary, indicating
 15 primary responsibility for the performance of the task, R for Review to ensure that the task has been
 16 performed at acceptable levels, and A for Assist where assistance may be provided to enable the task to
 17 be completed. The estimated duration of this SOW is based on ninety (90) calendar days, which begins
 18 with code installation in the first domain and ends with the Release Upgrade installation in COUNTY’s
 19 production domain, in accordance with the provisions of Subparagraph IX.F of Exhibit A.

20 b. CONTRACTOR shall perform all necessary testing of the new release of the
 21 application and resolve all identified Material Errors prior to go-live. COUNTY has several custom
 22 CCL-based rules that require additional testing to be performed by the COUNTY with assistance from
 23 CONTRACTOR, and Material Errors that are identified during this testing will be resolved prior to go-
 24 live.

25
 26 c. PROJECT MANAGEMENT WORK EFFORT

(P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Manage the Release Upgrade project.	P	
Create and maintain the application and technical assessments	P	
Develop, review and update communications plan. Coordinate Release Upgrade calls with COUNTY and CONTRACTOR teams. Produce weekly project status reports.	P	
Create and maintain detailed Release Upgrade Project Plan.	P	R

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(P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Work with COUNTY to ensure that CONTRACTOR written custom CCL scripts are identified, modified, and repackaged as necessary. Modifications are limited to available additional hours as referenced in the Milestone Deliverables and Payments tables in Exhibit F, of which COUNTY may purchase additional professional service hours, at \$195 hourly or less, based upon type of CONTRACTOR resource utilized to complete the work. A letter of agreement and/or concurrence can be used to exercise the optional hours specified in Exhibit F. If additional hours are required, amendment to the Agreement, or a new and separate agreement must be executed by the parties.	P	A
Establish scope and domain strategy based on current recommended practice.	P	R
Identify, secure and engage appropriate CONTRACTOR Project Team resources after the Agreement is approved.	P	A
Determine and document initial package requirements, identify and resolve potential stray code that COUNTY has currently installed.	P	
Collaboratively work with COUNTY to define database build and testing requirements.	P	R
Review COUNTY training resources and strategies. Verify COUNTY has standard operating procedures that address application upgrades and other related supplied to support the training effort..		P
Identify and mitigate risks including functionality, testing, quality of the application, availability and engagement of CONTRACTOR resources, and compliance.	P	
Coordinate testing per project plan and domain strategy. Gain appropriate sign offs from COUNTY	P	R
Ensure end user training has been communicated or conducted prior to cut over to new release.		P
Prepare cut-over plan. Ensure appropriate COUNTY and CONTRACTOR resources are scheduled for Release Upgrade and post Release Upgrade support.	P	A
Upgrade to new service packages and manage post Release Upgrade issues	P	A

d. APPLICATION WORK EFFORT MODULES - The purpose of this table is to identify all affected modules through this upgrade, and to indicate which modules are being upgraded and tested by CONTRACTOR (indicated in column “Upgrade and Test”) and which are not being upgraded but only being tested for continued usability (indicated in the column “Testing Only”) by CONTRACTOR.

Module Name	Upgrade and Test	Testing Only
Advanced Care Documentation (Documentation Management)	X	
Cerner Direct	X	
Cerner Patient Accounting (ProFit)	X	
Clinical Reporting/RRD	X	
Enterprise Master Person Index	X	
HealtheLife (IQHealth)(Member Portal)(Patient Portal)		X
PathNet General Laboratory	X	
PathNet Microbiology	X	
PathNet Outreach Services	X	
PowerChart Ambulatory	X	
Registration Management	X	
Scheduling Management	X	
PowerInsight Explorer		X
Cerner HIM	X	
Content 360/CPDI		X
PowerOrders	X	
ePrescribe		X

e. APPLICATION WORK EFFORT – RESOURCE RESPONSIBILITIES

(P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Evaluate solution changes and impact to production environment.	P	
Identify and execute database changes that are required to maintain current solution functionality.	P	R
Complete non-production domain configuration(s) – to ensure printing occurs on non-production printer(s), i.e. charts, requisitions, labels, reports, and operations jobs.		P
Incorporate COUNTY specific testing requirements from COUNTY test scripts into baseline recommended test scripts.	P	R
Validate non-production upgrade domain. This will ensure that the domain is a true copy of the production domain prior to performing Release Upgrade activities.	P	A

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(P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
COUNTY resources will configure and test interfaces, medical devices, PACS, document imaging, and local devices.	A	P
Perform regression testing per project plan and domain strategy.	P	
Perform integration testing per project plan and domain strategy.		P
Perform testing on systems interfaced to CONTRACTOR.	A	P
COUNTY must perform User Acceptance testing to validate the new version of software functions in the COUNTY workflow with no Material Error.		P
Provide education updates to COUNTY trainers.		P
Manage solutions issue list. Work with CONTRACTOR and COUNTY to achieve issue resolution before code moved to production.	P	
Support production Release Upgrade to new service packages.	P	A
Identify all applicable Proactive Services. Proactive Services include performance improvements, physician foundation standards, meds process standards, recommended database settings, as well as upgrade innovations. COUNTY may pick up to ten (10) upgrade innovations for each solution from a customized list of available enhancements provided by CONTRACTOR. CONTRACTOR will identify the appropriate build steps needed to implement each Proactive Service, create and execute appropriate test scripts for each Proactive Service, and will resolve issues identified with the functionality.	P	R

f. TECHNICAL WORK EFFORT

CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Review Technical Readiness Scorecard, essentially a high level technical audit or assessment of the system to insure that COUNTY has the technical items needed to be able to implement a signifant code upgrade, with COUNTY and discuss hardware and software requirements. This includes all of the technical minimums and requirements for all third party software and hardware. Review system capacity for both production and non-production environments.	P	R
CONTRACTOR technical engagement leader and COUNTY create the technical project plan and determine domain strategy in conjunction with CONTRACTOR and COUNTY project manager and architect.	P	R

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Manage all other necessary technical activities and escalation activities.	P	
Prepare environment for release. Run <i>Cerner Millennium</i> Support Assistant and submit updates, review Client custom warehouse, scripts, and indexes.	P	
Ensure all third party layered products are upgraded (including software and hardware), to meet the technical minimums and/or requirements prior to the Release Upgrade commencing in the non-production domain. COUNTY is responsible for creating a plan for the upgrade path of all third party layered products in the production domain (per Technical Readiness Scorecard review) for the <i>Cerner Millennium</i> Release Upgrade project.		P
COUNTY will add any additional hardware required to support the Release Upgrade (CPU, disk, devices, etc) prior to the Release Upgrade commencing (per Technical Readiness Scorecard review).		P
CONTRACTOR will install additional memory.	P	
Create non-production domain per domain strategy and project plan. CONTRACTOR system engineer will be responsible for all back-end steps to creating the non-production domain.	P	A
COUNTY will assist with database steps as well as setting up interfaces, and all front-end devices and printers. This would include Citrix servers, Chart server, RRD server, Multum server, CPDI servers, PACS (if applicable) and any other ancillary device that is in the production domain that will need to be tested in the non-production domain.	A	P
Install and configure "Lights On" in production and non-production domains per domain strategy and project plan (if applicable).	P	A
Update the non-production domain per domain strategy and project plan. This includes the back-end steps as well as loading front end code warehouse. CONTRACTOR system engineer will run the uptime steps and downtime steps and capturing the timings for each of these processes.	P	A
COUNTY is responsible for all front-end code dissemination in the non-production domain. This includes the setup of any front-end devices, including, but is not limited to: Citrix servers, Charting server, RRD server, Multum server, CPDI and PACS (if applicable) and any other fat client or network installed device that needs to be tested.	A	P
Assist with all necessary technical issue troubleshooting and issue resolution.	P	A

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Configure interfaces for non-production domains per domain strategy and project plan.		P
CONTRACTOR will update the TRAIN domain and refresh the CERT domain. COUNTY will refresh any other non-production domain.	A	P
Install the Release Upgrade in the production domain. The CONTRACTOR system engineer will be responsible for installing the Release Upgrade in the production domain. This includes the back-end steps as well as loading front-end code warehouse. The CONTRACTOR System Engineer will run the uptime steps and downtime steps and capturing the timings for each of these processes.	P	A
COUNTY is responsible for all front-end code dissemination for production domain and any individual set up to front-end devices this includes, but is not limited to: setting up Citrix servers, creating a Citrix rollout plan, Charting server, RRD server, Multum server, CPDI and PACS (if applicable) any other fat client or network installed device that needs to be tested. COUNTY will be responsible for creating Citrix rollout plan for their production Citrix servers.	A	P
Support production Release Upgrade to new service packages	P	A
Provide 48 hours of on-site post Release Upgrade support	P	
Refresh COUNTY's certification domain - The CONTRACTOR System Engineer will be responsible for refreshing the certification domain from the production domain within 2 weeks after the Release Upgrade has been finalized.	P	A
COUNTY is responsible for the front-end code dissemination in the certification domain. This needs to be completed within 4 weeks of the Release Upgrade and should not extend beyond 6 weeks post Release Upgrade go-live.	A	P

3. This SOW covers only the items set forth herein. An amendment to the Agreement or a new and separate agreement must be executed by the parties if COUNTY requests additional tasks beyond those set forth herein.

4. PROJECT COMPLETION - This SOW will be considered complete on the date the Release Upgrade is moved into the production domain.

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5. KNOWLEDGE TRANSFER

a. CONTRACTOR will provide knowledge transfer throughout this project. This knowledge is supplemented by documentation found at cerner.com or uCern Wiki:

- 1) Reference Pages
- 2) Upgrade Guides
- 3) Package Reports
- 4) Release Details
- 5) Illuminations sessions

b. Additional education and training information is available at cerner.com and may have additional cost.

6. COUNTY OBLIGATIONS

a. CONTRACTOR shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services; however, COUNTY must determine, based on its standard operating procedures, accrediting body standards, governing regulatory bodies, patient population, employees, and tools, how best to validate all aspects of the system.

b. COUNTY acknowledges and agrees that it will:

- 1) provide the test plans;
- 2) perform or supervise the testing activities;
- 3) provide additional training and information to end users regarding the changes made, and;
- 4) approve the content and completion of the testing activities.

c. COUNTY agrees to:

- 1) Comply with Cerner Production Environment Change Authorization (“PECA”) process.
- 2) Provide documentation and support phone numbers for all relevant hardware and software providers.
- 3) Provide a security officer to define and monitor user access.
- 4) Remain actively engaged in the Release Upgrade until completion.
- 5) Ensure change control is followed, and no updates are made to the production environment during the Release Upgrade.
- 6) Provide access to all domains that will be affected during the Release Upgrade via a Citrix connection. The preferred method is a Citrix or similar connection allowing multiple users access to the same environment at the same time via one connection.

7. COUNTY PROJECT MANAGEMENT OBLIGATIONS

a. Provide liaison to work with Cerner Release Upgrade project manager. Typically this would be COUNTY’s application manager or equivalent.

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- 1 b. Collaboratively work with CONTRACTOR while reviewing, editing and approving
- 2 appropriate test scripts.
- 3 c. Approve the content and completion of the testing.
- 4 d. Authorize CONTRACTOR to move the code to production.
- 5 e. Provide Release Upgrade support coverage for all departmental areas affected.
- 6 f. Schedule downtime with the users.
- 7 g. Perform the responsibilities as designated in the mutually agreed upon project plan.
- 8 Such responsibilities will be consistent with the high level task assignment identified in this Agreement
- 9 and will not be contrary to any safeguards and terms and conditions set forth in this Agreement.

10 8. COUNTY APPLICATION OBLIGATIONS

- 11 a. Provide specified contacts to work with CONTRACTOR on application specific testing
- 12 and issue resolution. He/she will be the focal point for the CONTRACTOR associates relative to the
- 13 fulfillment of the request and will have the authority to act on COUNTY's behalf in matters regarding
- 14 the requests.
- 15 b. Review, edit, and approve appropriate test scripts.
- 16 c. Provide Release Upgrade support coverage for all departmental areas affected.
- 17 d. Test all site-specific custom programs e.g. CCLs In-lab indicator on Flow Sheet,
- 18 Requisition Forms.
- 19 e. Define printer routings
- 20 f. Test local devices such as, interfaces, printers, MDIs, scanners, etc.
- 21 g. Perform the responsibilities as designated in the project plan.

22 9. COUNTY TECHNICAL OBLIGATIONS

- 23 a. Provide Release Upgrade support coverage for all departmental areas affected.
- 24 b. Perform the responsibilities as designated in the mutually agreed upon project plan.
- 25 Such responsibilities will be consistent with the high level task assignment identified in this Agreement
- 26 and will not be contrary to any safeguards and terms and conditions set forth in this Agreement.
- 27 c. Ensure hardware and software required for the Release Upgrade or installation is
- 28 available and operational - this includes: updating layered products (i.e., back-end and front-end
- 29 operating systems, Oracle, MQSeries, JRE (Java Runtime Environment), Multum, CPDI, PACS and any
- 30 other third party solutions and IP stack, etc.) to meet the minimum requirements for the new release.
- 31 These tasks (if needed) should be documented in the Release Upgrade Project Plan for reference. An
- 32 amendment to the Agreement, or a new and separate agreement must be executed by the Parties if there
- 33 is a requirement to upgrade layered products and COUNTY would like CONTRACTOR's assistance.
- 34 This work is outside the scope of this Agreement. COUNTY can execute a letter of agreement and/or
- 35 concurrence to use the Optional dollars specified in Exhibit F.

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1 d. Ensuring sufficient disk space to make a copy of the entire production database
 2 including front-end and back-end servers for the "MOCK" domain (which for this upgrade will be the
 3 CERT domain) and the additional space required to load the new software as well as new schema to the
 4 database.

5 e. Ensuring hardware is available to test Client servers (Multum, RRD, Charting, CPDI,
 6 PACS, BMDI, etc.).

7 f. Ensuring hardware (memory, CPU and storage space) will be sufficient to handle any
 8 increases associated with utilization of the new release or usage of functionality.

9 g. Acknowledge that the MOCK Release Upgrade, if performed on the same machine as
 10 the live production environment will affect performance.

11 h. Ensure all testing is completed that is not specifically indicated in the Work Effort as a
 12 CONTRACTOR responsibility.

13 i. Provide all necessary documentation of requested configurations.

14 j. Provide documentation and support phone numbers for all relevant contact people
 15 including COUNTY contacts for hardware and software suppliers.

16 k. Provide the performing Cerner associate appropriate access to applicable systems. This
 17 includes physical access to spaces (typically during business hours) and user ids and passwords to
 18 include root or system like access accounts for the execution of the Release Upgrade steps and
 19 troubleshooting as well as network administrative accounts for front-end.

20 l. Provide suitable workspace for the Cerner associate with phone access.

21 m. Ensure the service keys to any systems are made available.

22 n. Provide documentation of requested configurations on an as needed basis.

23 o. Ensure host definitions have been generated and are available for connection.

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

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

28 r. Verify/Define/Set up of printers for non-production domains.

29 s. Verify desktop rollout/Citrix rollout. Client is responsible for all front-end code
 30 dissemination and any individual set up to front-end devices.

31 t. Conduct high availability (HA) script changes (if applicable).

32 u. Setup and/or install of Oracle RAC if required in the non-production domains.

33 v. Make all necessary table space changes and adjustment of maximum extents.

34 w. Set up and configure interfaces into non-production domains used for testing.

35 10. POINTS OF PRESENCE - CONTRACTOR will perform all work remotely unless
 36 previously agreed upon prior to the execution of this Agreement. When needed, as defined by the
 37 project plan, CONTRACTOR associates will work from COUNTY facility.

1 11. SPECIAL NOTES - Several pieces of functionality are being deprecated with the Cerner
 2 Millennium 2015.01 release update and are identified in the latest version of Priority Review Flash
 3 PR13-0156. Some of the deprecations are minor and will require minimal database changes or training.
 4 COUNTY will need to have replacement solutions/functionality live in production at the time of
 5 CONTRACTOR's domain-copy (at the start of the Release Upgrade project), or project delays or
 6 additional fees may apply.

7 **E. TECHNICAL RELEASE UPGRADE SERVICES – UPGRADE ONE**

8 **1. RELEASE UPGRADE TECHNICAL ONLY SERVICES**

9 a. The Cerner Millennium Release Upgrade project (Release Upgrade) provides for the
 10 technical services that COUNTY will need to upgrade from COUNTY's then-current application code
 11 level to the latest monthly service packages available for a code level upgrade at the time the project
 12 begins. It is not within the scope of this project to modify or build new solution functionality.

13 **2. ESTIMATED WORK EFFORT AND PROJECT DURATION** - The Release Upgrade is
 14 composed of technical events. CONTRACTOR will complete the majority of the technical activities as
 15 defined in the detailed work effort below. However, COUNTY will be required to engage in certain
 16 events or tasks that are specific to COUNTY's domain or environment. CONTRACTOR is responsible
 17 for application project management, application testing and application issue resolution. The grids
 18 below reflect tasks that will be included in the upgrade and the responsible party for each. The
 19 estimated duration of this project is based on ninety (90) calendar days beginning with code installation
 20 in the first domain and ending with the upgrade of COUNTY's production domain, in accordance with
 21 the provisions of Subparagraph IX.F of Exhibit A. CONTRACTOR will perform all work remotely,
 22 except for the upgrade to the production domain, which will take place on-site, unless previously agreed
 23 upon prior to executing this SOW. When needed, as defined by the project plan, CONTRACTOR will
 24 work at COUNTY's facility.

25 **3. TECHNICAL WORK EFFORT**

CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Review technical readiness scorecard with COUNTY and discuss hardware and software requirements. Review system capacity for both production and non-production environments.	P	R
Create the technical project plan and determine domain strategy in conjunction with CONTRACTOR and COUNTY project manager and architect.	P	R
Supply a project manager to manage the application side of the project.		P

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Ensure hardware and software required for the <i>Release Upgrade</i> is available and operational - this includes: updating layered products (i.e., back-end and front-end operating systems, Oracle, message queuing (MQ)Series, Java runtime environment (JRE), Multum, <i>Cerner Provision Document Imaging</i> (CPDI), any other 3rd party solutions and intellectual property (IP) stack. etc.) to meet the minimum requirements for the new release. All necessary tasks should be documented in the upgrade project plan for reference. If there is a requirement to upgrade layered products, and COUNTY would like CONTRACTOR assistance, COUNTY may purchase additional professional services hours at CONTRACTOR's then-current fees for a CONTRACTOR resource to complete the work. Any additional hours may result in additional fees.	P	
Ensure sufficient disk space to make a copy of the entire production database including front-end and back-end servers. It is recommended to have enough disk space for two full copies of production database and code warehouse.		P
Ensure that hardware is available to test COUNTY servers in non-production domain (Multum, remote reporting distribution (RRD), charting, CPDI, picture archiving and communication system (PACS), bedside medical device interface (BMDI), etc.)		P
Manage all other necessary technical activities and escalation activities.	P	
Prepare environment for release. Run Cerner Millennium Support Assistant and submit updates, review COUNTY custom warehouse, scripts, and indexes.	P	
Create non-production domain (CERT) per domain strategy and project plan. CONTRACTOR is responsible for all back-end steps to creating the non-production domain. COUNTY will need to assist with database steps as well as setting up interfaces, and all front-end devices. This would include Citrix servers, chart server, RRD server, Multum server and any other ancillary device that is in the production domain that will need to be tested in the non-production domain.	P	A
Set up and test all non-production printers.		P
Configure interfaces for non-production domains per domain strategy and project plan.		P

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Install and configure Lights On Network in production and non-production domains per domain strategy and project plan (if applicable).	P	A
Upgrade the non-production domain per domain strategy and project plan. This includes the back-end steps as well as loading front-end code warehouse. CONTRACTOR will run the uptime steps and downtime steps and capture the timings for each of these processes.	P	A
Disseminate all front-end code in the non-production domain. This includes the setup of any front-end devices, including, but not limited to: Citrix servers, charting server, RRD server, Multum server, and any other fat client or network installed device that needs to be tested.	A	P
Determine all of the required build steps (RBS), and build all these steps in the CERT domain.	P	
Perform all of the regression testing and integration testing. CONTRACTOR will provide technical support.	A	P
Assist with all necessary technical issue troubleshooting and issue resolution.	P	A
Upgrade the training domain or any additional non-production domain.	P	
Upgrade the production domain. This includes the back-end steps, as well as loading front-end code warehouse. CONTRACTOR will run the uptime steps and downtime steps and capture the timings for each of these processes.	P	A
Disseminate all front-end code in the production domain and any individual setup to front-end devices, including, but not limited to: setting up Citrix servers, creating a Citrix rollout plan, charting server, RRD server, Multum server, and any other fat client or network installed device that needs to be tested. COUNTY is responsible for creating Citrix rollout plan for their production Citrix servers.	A	P
Determine all of the required build steps (RBS), and build all these steps in the production domain.	P	
Support and resolve any/all application issues.	P	A
Support production upgrade to new release.	P	A
Provide 48 hours of on-site post upgrade support.	P	

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Refresh COUNTY's certification domain. CONTRACTOR is responsible for refreshing the certification domain from the production domain within 2 weeks after the upgrade has been finalized. COUNTY is responsible for the front-end code dissemination in the certification domain. This needs to be completed within 4 weeks post upgrade.	P	A
Provide upgrade support coverage for all departmental areas affected.		P
Perform the responsibilities as designated in the mutually agreed upon project plan. Such responsibilities will be consistent with the high level task assignment identified in this Agreement and will not be contrary to any safeguards and terms and conditions set forth in this Agreement.		P
Ensure hardware (memory, CPU and storage space) will be sufficient to handle any increases associated with utilization of the new release or usage of functionality. CONTRACTOR performed a Technical Assessment during the pre-Agreement planning period and had not identified any additional hardware required beyond the memory that is included in Exhibit F. CONTRACTOR did not do assessment of all middleware items (network)	P	A
Acknowledge that the CERT upgrade, if performed on the same machine as the live production environment, will not affect performance.		P
Provide all necessary documentation information that is applicable to the project for requested configurations.		P
Provide all necessary information that is applicable to the project and support phone numbers for COUNTY and all relevant hardware and software providers.		P
Provide CONTRACTOR appropriate access to applicable systems. This includes physical access to spaces (typically during business hours), User identifications (ID) and passwords, root or system like access accounts for the execution of the upgrade steps and troubleshooting, and network administrative accounts for front-end.		P
Provide suitable workspace for CONTRACTOR with phone access.		P
Ensure host definitions have been generated and are available for connection.		P

CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Provide host interface information, including, but not limited to, destination address, local adapter address, exchange ID, and remote and local logical unit (LU) names, etc.		P
Provide operator guides for any requested equipment that will be used in the configuration and connection process.		P
Conduct high availability (HA) script changes and testing of HA. This is performed via the HA Health Check that will be performed concurrently with the upgrade project.	P	A
Make all necessary table space changes and adjustment of maximum extents.		P

3. KNOWLEDGE TRANSFER

a. CONTRACTOR will provide knowledge transfer to COUNTY resources via written documentation and discussions as we progress throughout this project. This knowledge is further supplemented by documentation found at cerner.com or the uCern Wiki:

- 1) Reference pages
- 2) Upgrade guides
- 3) Package reports
- 4) Release details

b. Additional education and training information is available at cerner.com or the uCern Wiki.

4. COUNTY OBLIGATIONS

a. CONTRACTOR shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services; however, CONTRACTOR must determine, based on site-specific standard operating procedures, accrediting body standards, governing regulatory bodies, patient population, employees, and tools, how best to validate all aspects of COUNTY's system.

b. COUNTY acknowledges and agrees that it will:

- 1) provide the test plans;
- 2) perform or supervise the testing activities;
- 3) provide additional training and information to end users regarding the changes made, and;
- 4) approve the content and completion of the testing activities.

c. COUNTY agrees to:

1) Comply with CONTRACTOR's production environment change authorization (PECA) process.

- 1 2) Provide a security officer to define and monitor user access.
- 2 3) Remain actively engaged in the Release Upgrade until completion.
- 3 4) Ensure change control is followed, and no updates are made to the production
- 4 environment during the Release Upgrade.
- 5 5) Provide access to all domains that will be affected during the Release Upgrade via
- 6 a Citrix connection. The preferred method is a Citrix or similar connection allowing multiple users
- 7 access to the same environment at the same time via one connection (this could include PCAnywhere or
- 8 Terminal Services connections to fat client devices).

9 **F. MPAGE STATIC CONTENT WEB SERVICE INSTALLATION**

10 1. The MPages Static Content Web service on an Enterprise Appliance (EA) is a Web

11 application that caches and serves static content files (images, cascading style sheets (CSS), JavaScript)

12 for use with Cerner's MPages. The Web application can also dynamically assemble static content based

13 on the components defined in the MPages views.

14 2. PRE-REQUISITES

- 15 a. WebSphere EA production cell and non-production cell exists
- 16 b. Every MPages Java Virtual Machine (JVM) must have at least 512MB of RAM
- 17 available on the WebSphere application node
- 18 c. Credentials and access to WebSphere environment provided
- 19 d. Access to the WebSphere Integrated Solutions Console and WebSphere Application
- 20 Servers (WAS)
- 21 e. Cerner Millennium super user account for EAR installation in EA Portlet
- 22 f. Environment manager access to configure the content service URL
- 23 g. Operating system (OS) back-end account for File Transfer Protocol (FTP) login
- 24 h. Cerner Millennium user account for domain login
- 25 i. Cerner Millennium front-end code warehouse access from the WAS

26 3. COUNTY RESPONSIBILITIES

- 27 a. Verifying all pre-requisites have been met
- 28 b. Filling out "Pre-Implementation Checklist and Data Collection Worksheet" with
- 29 required information and credentials
- 30 c. Identifying necessary packages for MPages 6.X install
- 31 d. Performing installation of MPages 6.X packages into applicable domains
- 32 e. Updating position and user level preferences to utilize MPages Static Content with the
- 33 EA
- 34 f. Addressing MPages issues related to content build or preference settings

35 4. CONTRACTOR RESPONSIBILITIES

- 36 a. Providing direct support for WebSphere and MPages Static Content EA failures during
- 37 validation period (two (2) weeks, ten (10) business days);

- 1 b. Creating WAS dynamic cluster for MPages implementation;
- 2 c. Installing and configuring MPages Static Content EAR; and
- 3 d. Configuring the content service URL in environment manager.
- 4 5. CONTRACTOR shall provide the following deliverables:
- 5 a. Installing MPages Enterprise Archive (EAR)
- 6 1) One (1) domain in non-production WebSphere EA cell; and
- 7 2) One (1) domain in production WebSphere EA cell.
- 8 b. Providing knowledge transfer for future COUNTY implementation on:
- 9 1) Updating configuration of MPages EAR;
- 10 2) Configuring the content service Uniform Resource Locator (URL) in environment
- 11 manager; and
- 12 3) Viewing the “MPages Static Content Management” page.
- 13 c. Providing CONTRACTOR Wiki page documentation on MPages EAR file installation
- 14 and configuration.

15 6. ASSUMPTIONS

- 16 a. WebSphere EA has been installed and configured according to CONTRACTOR
- 17 standards.
- 18 b. Node agent service account has read/write access to the static content folder in the
- 19 Cerner Millennium domain file share.
- 20 c. CONTRACTOR’s WebSphere EA portlet has been successfully installed.
- 21 d. COUNTY has sufficient knowledge to maintain and support WAS.
- 22 e. This SOW will be performed remotely unless otherwise noted or agreed upon.
- 23 f. Knowledge transfer will take place after implementation has been completed.

24 7. ESTIMATED DURATION

- 25 a. One (1) week implementation for production and non-production.
- 26 b. One (1) week support for each WAS cell for a total of two (2) weeks.

27 **G. DEPLOYMENT MANAGER IMPLEMENTATION**

28 1. Deployment Manager (DM) is a set of services that collaborates with the CONTRACTOR's
29 Environment Manager (EM) solution to improve the Cerner Millennium package installation process by
30 reducing technical downtime and significantly reducing user interaction to perform front-end updates to
31 user devices. DM creates device or system-specific installation instructions and coordinates their
32 execution, helping to reduce installation time by allowing more installation activities to execute in
33 parallel and with minimal user interaction. DM accomplishes the necessary work to update front-end
34 devices in a more automated fashion without utilizing the previous CONTRACTOR setup technology.

35 2. This service will perform the installation and configuration of DM in up to 2 domains of
36 CONTRACTOR’s choice. CONTRACTOR will assist COUNTY in creating the profiles in the non-
37 production domain and then assist when COUNTY moves DM into production.

- 1 3. CONTRACTOR shall provide the following overviews:
- 2 a. Provide project planning, leadership, and settings knowledge transfer.
- 3 b. Provide recommendation and documentation of the operating system (OS) installation
- 4 pre-requisites including:
- 5 1) Discuss DM services design and COUNTY service package implementation
- 6 strategy;
- 7 2) Configure DM roles and DM update profiles;
- 8 3) Validate planned OS version and licensing and license server requirements;
- 9 4) Identify disk storage space, new file system layout and sizing requirements; and
- 10 5) Review of CONTRACTOR application compatibility requirements.
- 11 c. Validate software media and licensing availability.
- 12 d. Create a device inventory containing all manageable user devices (Citrix, fat clients,
- 13 etc.), charting servers, remote report distribution (RRD) server, and WebSphere Application Server
- 14 (WAS) servers that are associated with the environment
- 15 e. Review and install the latest version of Cerner Millennium install tools and EM client
- 16 as required
- 17 f. Implement the DM agent on a sample of DM managed devices
- 18 g. Create the primary service configuration for the environment
- 19 h. Ensure that administrative database communication credentials are set correctly for DM
- 20 install
- 21 i. Validate that the service port ranges are set appropriately for each managed domain, as
- 22 a single DM server can manage multiple domains assigned to different service ports
- 23 j. Create the services configuration file
- 24 k. Create up to five (5) DM profiles
- 25 l. Set up EM in the desired environment and complete the environment-level
- 26 configuration parameters
- 27 m. Create the deployment service profile. Set up the parameter configuration options
- 28 n. Associate the deployment server profile with a device
- 29 o. Validate the network credentials and perform a network credentials test
- 30 p. Synchronize all devices managed by DM
- 31 q. Test DM sync with up to five (5) configured devices and part of a package installation
- 32 r. Assist COUNTY with up to two (2) service package installations and understanding of
- 33 DM process if applicable packages are available to be implemented in test environment
- 34 s. Use commercially reasonable efforts to deliver, as applicable, the documentation,
- 35 drawings, and environmental specifications in a format or containing content reasonably conforming to
- 36 COUNTY's documentation standards for like documents. When there are multiple occurrences of the
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1 same service, CONTRACTOR's work effort and deliverables shall be adjusted to take into account the
2 then-current technical environment including updated maintenance and management checklists.

3 4. CONTRACTOR shall provide the following deliverables:

4 a. Project documentation, including but not limited to:

- 5 1) Pre-installation documents
- 6 2) DM installation and configuration guide
- 7 3) DM managed device implementation documentation
- 8 4) Device inventory containing all user devices to be used with DM

9 b. Production environment change authorization (PECA) forms requiring COUNTY
10 signature. These forms will be presented to COUNTY describing access requirements and items being
11 reviewed on COUNTY's production environment prior to work being performed.

12 c. Event Activity Report (EAR) forms requiring COUNTY signature upon completion of
13 designated solution implementation.

14 d. Pre-travel checklist as required.

15 e. Installation and testing of DM and related agent components.

16 f. Operational knowledge transfer.

17 5. CONTRACTOR shall provide the following pre-requisites:

18 a. List of all front-end devices within the environment and the function they each serve
19 provided Cerner Millennium domain and environment manager configuration is operational.

20 b. Required licenses and software, such as Oracle, MQ, Citrix, VMW, and any other
21 related third party applications necessary are present.

22 c. Network access (remote access server (RAS), Internet, local area network (LAN), wide
23 area network (WAN), wireless) available.

24 d. Cerner Millennium domain account capable of administrating EM.

25 e. All devices and the front-end file share containing the Win-Intel directory associated
26 with the Cerner Millennium environment that will be managed by DM are located on the same network
27 domain Disk space requirements for up to two (2) copies of domain front end warehouses are met.

28 f. Windows service account a member of Windows Active Directory domain in which
29 users are also a member. This account must be an administrator of all DM managed devices.

30 g. CONTRACTOR associate(s) high-privilege access to the systems being serviced
31 provided as needed.

32 h. Network access to Cerner Millennium administrative database from all DM managed
33 devices using the Oracle listener port provided.

34 i. CONTRACTOR backend server and the EM console remote connectivity via Cerner
35 Intellinet available.

36 j. Cerner Millennium domain(s) to be managed identified.

37 //

1 6. CONTRACTOR shall provide project planning and leadership, overseeing planning,
2 execution, and communication relative to database assessment services, including:

- 3 a. Communicating with COUNTY about the team of consultants involved with the project
- 4 Scheduling and conducting follow up review discussion with COUNTY technical teams;
- 5 b. Ensuring COUNTY has access to all required service packages as needed;
- 6 c. Ensuring technology services are delivered consistently and according to COUNTY
- 7 recommendations; and
- 8 d. Creating and driving deliverables through CONTRACTOR’s MethodM.

9 7. CONTRACTOR shall provide knowledge transfer as follows:

10 a. Solution specific knowledge transfer or training will include:

- 11 1) CONTRACTOR host and OS technology roadmap, recommended OS and Citrix
- 12 patching strategy;
- 13 2) Navigating CONTRACTOR support and technology pages;
- 14 3) Cerner Millennium code dependencies;
- 15 4) Technology upgrades, planning, execution, and support;
- 16 5) DM architecture and configuration;
- 17 6) EM console access and navigation;
- 18 7) Adding new devices to DM;
- 19 8) Service package installation with DM; and
- 20 9) Storage and growth management.

21 b. In addition to the structured knowledge transfer planned, CONTRACTOR anticipates
22 numerous knowledge transfer opportunities during the implementation phase. On-site visits may be
23 planned in advance and COUNTY will be encouraged to shadow CONTRACTOR consultants to
24 maximize knowledge transfer opportunities. Additional training beyond this knowledge transfer may be
25 required and is the responsibility of COUNTY to obtain.

26 8. CONTRACTOR shall provide post implementation support as follows:

27 a. CONTRACTOR will provide remote project support on an as-needed basis up to two
28 (2) weeks post implementation.

29 b. After the post implementation support, all future support will be available to COUNTY
30 through CONTRACTOR’s Immediate Response Center (IRC) for critical production related issues or
31 the Immediate Answer Center (IAC) for general, non-urgent support.

32 c. During the post implementation period, CONTRACTOR will assist COUNTY with
33 system support and tuning as needed.

34 9. COUNTY OBLIGATIONS

35 a. COUNTY is responsible for the following tasks as related to this Statement of Work for
36 the Deployment Manager implementation services:

37 //

- 1) Ensuring host definitions have been generated and are available for connection
- 2) Providing CONTRACTOR administrative access to the systems being serviced as needed
- 3) Designating a representative to serve as COUNTY project manager to act as the focal point for CONTRACTOR relative to this project and will have the authority to act on COUNTY's behalf in matters regarding this project
- 4) Providing documentation of requested configurations on an as needed basis
- 5) Performing any necessary COUNTY operational testing
- 6) Providing COUNTY resources for any knowledge transfer made available as part of this implementation
- 7) Downloading and staging of installation media
- 8) Removing CONTRACTOR desktop manger from startup programs
- 9) Performing ongoing manual installation or package upgrade steps not performed by DM. These may include, but not limited to, CONTRACTOR's WTSLocation, App Sight, ApplicationXtender Client or Oracle Client.

b. If COUNTY cannot complete any of the requirements or responsibilities set forth in this SOW, COUNTY may purchase additional professional service hours, at \$195 hourly or less, based upon type of CONTRACTOR resource utilized to complete the work.

c. The following activities are not included in this SOW and will not be implemented:

- 1) Hardware installation including physical installation of hardware, cabling, hardware partitioning, software virtualization, power, and I/O card placement;
- 2) System firmware review and upgrade;
- 3) Storage implementation, logical unit number (LUN) creation, zoning, connectivity, and cabling;
- 4) Creation of required disk space and file systems beyond requirements of the OS installation;
- 5) Creation of Windows file server shares as used with deployment of this solution;
- 6) Reconfiguration of the domain name server (DNS); and
- 7) All network, network switch, Internet Protocol (IP) addresses, and all wiring to connect new hosts to COUNTY network.

10. ASSUMPTIONS

- a. COUNTY is familiar with the core technologies used in this solution;
- b. CONTRACTOR has remote access to COUNTY nodes;
- c. All prerequisite work related to the delivery of this solution is complete;
- d. All work will be delivered remotely outside the planned and agreed upon site visits;
- e. CONTRACTOR will have required access to the systems where work is to be performed;

1 f. This may include privileged accounts and possible physical access as needed; and

2 g. This engagement includes only the items set forth in this Statement of Work. Upon
3 mutual agreement of the Parties in writing, in an amendment County can procure hardware, or software
4 that may be required to complete the system upgrades. CONTRACTOR may request an amendment to
5 the Agreement, a letter of agreement and/or concurrence, or a new and separate agreement be executed
6 by the parties if COUNTY requests additional services to complete the tasks beyond those set forth
7 herein.

8 11. CONTRACTOR shall meet the following project duration and work effort:

9 a. Estimated duration for this DM implementation shall be six (6) weeks, depending on
10 COUNTY availability and system connectivity.

11 b. All work shall be performed remotely.

12 **H. OLYMPUS UPGRADE**

13 1. Olympus provides a single console to manage and monitor to the Cerner Millennium
14 environment. Olympus allows COUNTY to manage systems across all architectural platforms from one
15 location. Cerner provides the expertise required for installing and configuring Olympus on supported
16 application server technologies.

17 2. CONTRACTOR shall provide the following overviews:

18 a. CONTRACTOR will provide technical consultation services to upgrade the Olympus
19 solution in one of the county domains. Installation and configuration of Olympus will be conducted by
20 CONTRACTOR. Training regarding configuration and upgrades will be provided after initial setup.
21 Additional domain configurations will be performed by the client with CONTRACTOR's assistance as
22 part of the training.

23 b. Certain tasks are dependent on the availability of COUNTY technical personnel for
24 verification, testing, and knowledge transfer. CONTRACTOR shall identify those COUNTY tasks, such
25 as the provision of information, verification, testing, knowledge transfer from COUNTY to
26 CONTRACTOR, and review of COUNTY-specific system or policies that govern COUNTY staff in the
27 performance of certain tasks, at the beginning of the engagement and in the mutually agreed upon
28 project plan to facilitate scheduling and coordination. The following work activities will be performed
29 by CONTRACTOR:

30 1) Pre-travel Checklist Discussion (Remote):

31 a) Provide pre-travel checklist document to CONTRACTOR; and

32 b) Schedule and conduct pre-travel review discussion with COUNTY.

33 2) Hardware and Application Server Verification

34 a) Verification of server hardware; and

35 b) Assistance in making the hardware available on Intellinet for remote support
36 from CONTRACTOR.

37 3) Installation

- 1 a) Upgrade active directory application mode (ADAM) instance (if applicable);
2 b) Upgrade Olympus schema;
3 c) Upgrade Olympus console;
4 d) Upgrade Sentinel on backend and frontend system(s). Sentinel is installed on
5 each system that is manage by Olympus. It is often referred to as a managed system or managed server;
6 e) Upgrade My Structured Query Language (MySQL) for Guardian. Guardian is a
7 service responsible for collecting data from managed systems;
8 f) Verify Olympus environment;
9 g) Upgrade Olympus Smart Module schema file(s) (if applicable);
10 h) Upgrade Alerting and Thresholding schema. The Alerting and Thresholding
11 engine enables users to proactively monitor the Cerner Millennium application by generating emails and
12 pages when parameters cross an established threshold; and
13 i) Import updated baseline parameters.
- 14 4) Configuration
15 a) Configure enterprises and profiles;
16 b) Configure Guardian, if applicable;
17 c) Configure Olympus users;
18 d) Configure Olympus security and roles;
19 e) Create Guardian profile to start monitoring service;
20 f) Set baseline guardian collection intervals;
21 g) Define email addresses and distribution lists for notifications;
22 h) Configure rule Instances;
23 i) Configure auditing for monitoring service, if desired;
24 j) Enable dashboards;
25 k) Configure Olympus security for each Smart Module;
26 l) Configure Olympus user and role security for each Smart Module;
27 m) Configure Guardian to collect each Smart Module category; and
28 n) Configure Alerting for each Smart Module, if applicable.
- 29 5) Deliverables
30 a) Olympus solution installed and configure as outlined in this SOW; and
31 b) Knowledge transfer and documentation for installation, configuration, and
32 operational procedures.
- 33 6) Assumptions
34 a) COUNTY is familiar with the core technologies used in this solution; and
35 b) All work will be performed at COUNTY's location unless other noted or
36 agreed upon.
37 //

1 I. **ORACLE DATABASE CBO ASSESSMENT / RECOMMENDATION**

2 1. Oracle's cost-based SQL optimizer (CBO) is an extremely sophisticated component of
3 Oracle that governs the execution for every Oracle query. The CBO determines the execution speed for
4 every Oracle query so it is important to make sure the CBO optimization is configured correctly and is
5 properly collecting and maintaining the database internal statistics based on data distribution.

6 2. To optimize these settings CONTRACTOR has developed an Oracle Database CBO
7 Assessment service to review and provide recommendations to the COUNTY. Managing and tuning
8 CBO is an ongoing effort and CONTRACTOR recommends particular attention to CBO in conjunction
9 with major database and Cerner Millennium upgrade events. This assessment provides feedback on
10 CONTRACTOR's best practices as well as makes recommendations in a comprehensive written report
11 on specific COUNTY hosted high availability (HA) nodes.

12 3. CONTRACTOR shall provide overviews – project planning, leadership, and settings
13 knowledge transfer as follows:

14 a. Analysis of the current CBO environment, including:

15 1) Up to sixteen (16) hours of knowledge transfer;

16 2) Reviewing applicable service packs and packages;

17 3) Reviewing initialization parameters as compared to CONTRACTOR standards;

18 4) Reviewing CBO statistics collection parameters compared to CONTRACTOR
19 standards and CONTRACTOR assistance with CBO based script tuning or performance mitigation; and

20 5) Settings and recommendations in a written format and reviewed in detail with
21 COUNTY.

22 b. CONTRACTOR will use commercially reasonable efforts to deliver, as applicable, the
23 documentation, drawings, and environmental specifications in a format or containing content reasonably
24 conforming to COUNTY's documentation standards for like documents. When there are multiple
25 occurrences of the same service, CONTRACTOR's work effort and deliverables shall be adjusted to
26 take into account the then-current technical environment, including updated maintenance and
27 management checklists.

28 4. CONTRACTOR shall provide deliverables – project documentation, including, but not
29 limited to the following:

30 a. Pre-requisites;

31 b. Implementation;

32 c. Results of assessment;

33 d. Production environment change authorization (PECA) forms requiring COUNTY
34 signature. These forms will be presented to COUNTY describing access requirements and items being
35 reviewed on COUNTY's production environment prior to work being performed;

36 e. Event Activity Report (EAR) forms requiring COUNTY signature upon completion of
37 designated solution implementation; and

1 f. One (1) COUNTY call to review the assessment and provide knowledge transfer on the
2 findings, recommendations, and best practices, as well as recommendations related to possible future
3 upgrades or migrations.

4 5. CONTRACTOR shall provide pre-requisites as follows:

- 5 a. Identification of all servers to be reviewed;
- 6 b. Administrative access to servers to be reviewed;
- 7 c. Remote access via CONTRACTOR's Intellinet or other remote access solution granted;

8 and

9 d. These items are highly recommended to help ensure an efficient process for
10 troubleshooting scripts during audit of CBO to ensure quick resolution of issues encountered:

- 11 1) Licensing for diagnostics and tuning pack from Oracle;
- 12 2) Skybox database central in lieu of diagnostics and tuning pack;
- 13 3) Sixty days of automatic workload repository (AWR) data retention; and
- 14 4) Lights On/Knowledge and Reporting Tool (KaRT) configured for production and

15 cert domains.

16 6. PROJECT PLANNING AND LEADERSHIP – CONTRACTOR will oversee planning,
17 execution, and communication relative to database assessment services, including:

- 18 a. Communicating with COUNTY about the team of consultants involved with the
19 project;
- 20 b. Scheduling and conducting follow up review discussion with COUNTY technical
21 teams;
- 22 c. Ensuring COUNTY has access to all required service packages as needed;
- 23 d. Ensuring technology services are delivered consistently and according to
24 CONTRACTOR recommendations; and
- 25 e. Creating and driving deliverables through CONTRACTOR's MethodM.

26 7. COUNTY OBLIGATIONS

- 27 a. COUNTY is responsible for the following tasks as related to this SOW:
28 1) Ensuring host definitions have been generated and are available for connection;
- 29 2) Providing CONTRACTOR administrative access to the systems being serviced as
30 needed;
- 31 3) Designating a representative to serve as COUNTY project manager to act as the
32 focal point for CONTRACTOR relative to this project and will have the authority to act on COUNTY's
33 behalf in matters regarding this project;
- 34 4) Providing documentation of requested configurations on an as needed basis;
- 35 5) Providing documentation and support phone numbers for all hardware and software
36 providers;
- 37 6) Performing any necessary COUNTY operational testing; and

1 7) Providing COUNTY resources for any knowledge transfer made available as part
2 of this implementation.

3 b. If COUNTY cannot complete any of the requirements or responsibilities set forth in
4 this SOW, COUNTY may purchase additional professional service hours, at \$195 hourly or less, based
5 upon type of CONTRACTOR resource for CONTRACTOR to complete the work.

6 c. The following activities are not included in this Statement of Work and will not be
7 implemented:

8 1) Installation or upgrade of Oracle kernels;

9 2) System, parameter, or configuration changes;

10 3) Changes to existing or new script CBO mitigation without COUNTY knowledge or
11 involvement;

12 4) Rule-based optimizer (RBO) to CBO conversion; and

13 5) New statistics will not be collected.

14 8. ASSUMPTIONS

15 a. COUNTY is familiar with the core technologies used in this solution ;

16 b. CONTRACTOR has remote access to COUNTY nodes;

17 c. All prerequisite work related to the delivery of this solution is complete;

18 d. All work will be delivered remotely outside the planned and agreed upon site visits;

19 e. CONTRACTOR will have required access to the systems where work is to be
20 performed;

21 f. This may include privileged accounts and possible physical access as needed;

22 g. This engagement includes only the items set forth in this Statement of Work;

23 h. An amendment to the Agreement or a new and separate agreement must be executed by
24 the parties if COUNTY requests additional tasks beyond those set forth herein; and

25 i. No changes will be made to production systems or environments.

26 9. DURATION AND WORK EFFORT

27 a. Estimated duration for the Oracle assessment / recommendation is two (2) weeks,
28 depending on COUNTY availability and system connectivity.

29 b. All work is performed remotely.

30 J. **UNIX HOST OPERATING SYSTEM UPGRADE**

31 1. This service will perform the initial operating system (OS) upgrade for Hewlett Packard
32 UNIX (HP-UX to CONTRACTOR validated software levels. System upgrade will include all basic OS
33 software, printer, and storage drivers.

34 2. CONTRACTOR shall provide the following overviews:

35 a. Provide project planning, leadership, and settings knowledge transfer.

36 b. Provide recommendation and documentation of the OS installation pre-requisites,
37 including:

- 1) Validating disk space and file systems exist to install the new OS;
- 2) Identifying disk storage space, new file system layout, and sizing requirements;
- 3) Validating planned OS version and licensing requirements;
- 4) Reviewing of Cerner Millennium, IBM WebSphere MQ, Oracle kernel, Cerner supported high availability (HA) solutions, Citrix or other Cerner application compatibility requirements;
- 5) Validate software media and licensing availability;
- 6) Install OS software;
- 7) Configure basic system network;
- 8) Load and confirm storage drivers and storage accessibility for storage array or storage area network (SAN) attached storage; and
- 9) Apply initial system tuning.

c. CONTRACTOR will use commercially reasonable efforts to deliver, as applicable, the documentation, drawings, and environmental specifications in a format or containing content reasonably conforming to COUNTY's documentation standards for like documents. When there are multiple occurrences of the same service, CONTRACTOR's work effort and deliverables shall be adjusted to take into account the then-current technical environment, including updated maintenance and management checklists.

3. CONTRACTOR shall provide deliverables as follows:
 - a. Project documentation, including but not limited to:
 - 1) Pre-requisites;
 - 2) Implementation;
 - 3) Production environment change authorization (PECA) forms requiring COUNTY signature. These forms will be presented to COUNTY describing access requirements and items being reviewed on COUNTY's production environment prior to work being performed;
 - 4) Event Activity Report (EAR) forms requiring COUNTY signature upon completion of designated solution implementation; and
 - 5) Pre-travel checklist.
 - b. OS software installation;
 - c. Storage network driver installation;
 - d. Basic network configuration;
 - e. Initial CONTRACTOR recommended system tuning;
 - f. System firmware review and upgrade as required; and
 - g. Operational knowledge transfer.
4. CONTRACTOR shall provide pre-requisites as follows:
 - a. Target node identified;
 - b. Administrative access to target node granted;

- 1 c. Remote access via CONTRACTOR's Intellinet or other remote access solution
- 2 available;
- 3 d. Required licenses and software necessary are present;
- 4 e. Appropriate network connectivity available;
- 5 f. All required disk space available; and
- 6 g. Pre-travel checklist reviewed with COUNTY.

7 5. PROJECT PLANNING AND LEADERSHIP - CONTRACTOR will oversee planning,
8 execution, and communication relative to database assessment services, including:

- 9 a. Communicating with COUNTY about the team of consultants involved with the
- 10 project;
- 11 b. Scheduling and conducting follow up review discussion with COUNTY technical
- 12 teams;
- 13 c. Ensuring COUNTY has access to all required service packages as needed;
- 14 d. Ensuring technology services are delivered consistently and according to
- 15 CONTRACTOR recommendations; and
- 16 e. Creating and driving deliverables through CONTRACTOR's MethodM.

17 6. CONTRACTOR shall provide knowledge transfer as follows:

- 18 a. Solution specific knowledge transfer or training will include:
- 19 1) OS and OS patches download requirements;
- 20 2) CONTRACTOR host and OS technology roadmap;
- 21 3) Navigating CONTRACTOR support and technology pages;
- 22 4) CONTRACTOR support basics and tools;
- 23 5) Oracle release and Cerner Millennium code dependencies;
- 24 6) Technology upgrades, planning, execution, and support; and
- 25 7) Storage and growth management.

26 b. In addition to the structure knowledge transfer planned, CONTRACTOR anticipates
27 numerous knowledge transfer opportunities during the implementation phase. On-site visits may be
28 planned in advance and CONTRACTOR will be encourage to shadow CONTRACTOR consultants to
29 maximize knowledge transfer opportunities. Additional training beyond this knowledge transfer may be
30 required and is the responsibility of COUNTY to obtain.

31 7. POST IMPLEMENTATION SUPPORT

32 a. CONTRACTOR will provide remote project support on an as needed basis up to two
33 (2) weeks post implementation.

34 b. After the post implementation support, all future support will be available to COUNTY
35 through CONTRACTOR's Immediate Response Center (IRC) for critical production related issues or
36 the Immediate Answer Center (IAC) for general non urgent support.

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1 c. During the post go-live period CONTRACTOR will assist COUNTY with system
2 support and tuning as needed.

3 8. COUNTY OBLIGATIONS

4 a. COUNTY is responsible for the following tasks as related to this Statement of Work:

5 1) Ensuring host definitions have been generated and are available for connection;
6 2) Providing CONTRACTOR administrative access to the systems being serviced as
7 needed;

8 3) Designating a representative to serve as COUNTY project manager to act as the
9 focal point for CONTRACTOR relative to this project and will have the authority to act on COUNTY's
10 behalf in matters regarding this project;

11 4) Providing documentation of requested configurations on an as needed basis;

12 5) Providing COUNTY resources for any knowledge transfer made available as part
13 of this implementation;

14 6) Conducting COUNTY operational testing;

15 7) Installing all system networking, storage, file system, Oracle kernel and any
16 additional layered product; and

17 8) Implementing host virtualization such as VMWare or logical partition (LPAR) or
18 Virtual I/O (VIO).

19 b. If COUNTY cannot complete any of the requirements or responsibilities set forth in
20 this SOW, COUNTY may purchase additional professional services hours at CONTRACTOR's then-
21 current fees for CONTRACTOR to complete the work.

22 c. The following activities are not included in this Statement of Work and will not be
23 implemented:

24 1) Hardware installation including physical installation of hardware, including
25 cabling, hardware partitioning, software virtualization, power, and I/O card placement;

26 2) Hardware Management Console (HMC) installation and implementation;

27 3) Centralized software distribution services installation or upgrade such as IBM
28 Network Installation Manager (NIM) or HP-UX Software Depot servers;

29 4) Additional layered products installation such as, Cerner Millennium, IBM
30 WebSphere MQ, IBM PowerHA, Oracle kernels, or other Cerner supported solutions;

31 5) Hardware or OS system virtualization or logical partitioning such as IBM AIX
32 LPAR, IBM VIO, VMWare etc.;

33 6) Network Time Protocol (NTP) server creation or configuration;

34 7) High availability testing;

35 8) OS level user account creation;

36 9) Required disk space and file systems creation beyond requirements of operating
37 system installation;

1 10) Storage implementation, logical unit number (LUN) creation, zoning, connectivity
2 and cabling;

3 11) Domain name server (DNS) services configuration;

4 12) All network, network switch, Internet Protocol (IP) addresses, and all wiring to
5 connect new hosts to client network ;

6 13) Firmware levels for attached storage area network (SAN) or network related
7 hardware components validated or upgraded, including but not limited to, SAN array microcode, fibre
8 channel switch microcode and software, and network switch microcode and software; and

9 14) System printers or migrated or print system creation or configuration beyond the
10 initial installation.

11 9. ASSUMPTIONS

12 a. COUNTY is familiar with the core technologies used in this solution.

13 b. CONTRACTOR has remote access to COUNTY nodes.

14 c. All prerequisite work related to the delivery of this solution is complete.

15 d. All work will be delivered remotely outside the planned and agreed upon site visits.

16 e. CONTRACTOR will have required access to the systems where work is to be
17 performed. This may include privileged accounts and possible physical access as needed.

18 f. This engagement includes only the items set forth in this Statement of Work. An
19 amendment to the Agreement or a new and separate agreement must be executed by the parties if
20 COUNTY requests additional tasks beyond those set forth herein.

21 10. DURATION AND WORK EFFORT

22 a. Estimate duration for the Unix upgrade is one (1) week, depending on COUNTY
23 availability and system connectivity.

24 b. Typical on-site work requires one (1) site visit. The specific requirements of this project
25 may determine additional site visits. These site visits will be coordinated and agreed upon by COUNTY.

26 **K. OPTIONAL TECHNICAL RELEASE UPGRADE SERVICES FOR UPGRADE TWO** 27 **AND/OR THREE**

28 1. RELEASE UPGRADE – TECHNICAL ONLY SERVICES

29 a. COUNTY will have the option to perform additional upgrades while on their client
30 hosted domain. If COUNTY elects to do that these Technical Services will be required for the upgrade.
31 These services do not include any fees that may be required for hardware or software for the client
32 hosted domain in order to upgrade. A technical assessment would be performed before the upgrade to
33 determine if any additional hardware or software is needed.

34 b. The Cerner Millennium Release Upgrade project (Release Upgrade) provides for the
35 technical services that COUNTY will need to upgrade from COUNTY's then-current application code
36 level to the latest monthly service packages available for a code level upgrade at the time the project
37 begins. It is not within the scope of this project to modify or build new solution functionality.

2. ESTIMATED WORK EFFORT AND PROJECT DURATION - The Release Upgrade is composed of technical events. CONTRACTOR will complete the majority of the technical activities as defined in the detailed work effort below. However, COUNTY will be required to engage in certain events or tasks that are specific to COUNTY’s domain or environment. CONTRACTOR is responsible for application project management, application testing and application issue resolution. The grids below reflect tasks that will be included in the upgrade and the responsible party for each. The estimated duration of the Optional Technical Release Upgrade is based on ninety (90) business days beginning with code installation in the first domain and ending with the upgrade of COUNTY’s production domain. CONTRACTOR will perform all work remotely, except for the upgrade to the production domain, which will take place on-site, unless previously agreed upon prior to executing this SOW. When needed, as defined by the project plan, CONTRACTOR will work at COUNTY’s facility.

a. TECHNICAL WORK EFFORT

CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Review technical readiness scorecard with COUNTY and discuss hardware and software requirements. Review system capacity for both production and non-production environments.	P	R
Create the technical project plan and determine domain strategy in conjunction with CONTRACTOR and COUNTY project manager and architect.	P	R
Supply a project manager to manage the application side of the project.		P

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Ensure hardware and software required for the <i>Release Upgrade</i> is available and operational - this includes: updating layered products (i.e., back-end and front-end operating systems, Oracle, message queuing (MQ)Series, Java runtime environment (JRE), Multum, <i>Cerner Provision Document Imaging</i> (CPDI), any other 3rd party solutions and intellectual property (IP) stack. etc.) to meet the minimum requirements for the new release. All necessary tasks should be documented in the upgrade project plan for reference. If there is a requirement to upgrade layered products, and COUNTY would like CONTRACTOR assistance, COUNTY may purchase additional professional services hours at CONTRACTOR's then-current fees for a CONTRACTOR resource to complete the work. Any additional hours may result in additional fees.	P	
Ensure sufficient disk space to make a copy of the entire production database including front-end and back-end servers. It is recommended to have enough disk space for two full copies of production database and code warehouse.		P
Ensure that hardware is available to test COUNTY servers in non-production domain (Multum, remote reporting distribution (RRD), charting, CPDI, picture archiving and communication system (PACS), bedside medical device interface (BMDI), etc.)		P
Manage all other necessary technical activities and escalation activities.	P	
Prepare environment for release. Run Cerner Millennium Support Assistant and submit updates, review COUNTY custom warehouse, scripts, and indexes.	P	
Create non-production domain (CERT) per domain strategy and project plan. CONTRACTOR is responsible for all back-end steps to creating the non-production domain.	P	A

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
COUNTY will assist with database steps as well as setting up interfaces, and all front-end devices. This would include Citrix servers, chart server, RRD server, Multum server and any other ancillary device that is in the production domain that will need to be tested in the non-production domain.	A	P
Set up and test all non-production printers.		P
Configure interfaces for non-production domains per domain strategy and project plan.		P
Install and configure Lights On Network in production and non-production domains per domain strategy and project plan (if applicable).	P	A
Upgrade the non-production domain per domain strategy and project plan. This includes the back-end steps as well as loading front-end code warehouse. CONTRACTOR will run the uptime steps and downtime steps and capture the timings for each of these processes.	P	A
Disseminate all front-end code in the non-production domain. This includes the setup of any front-end devices, including, but not limited to: Citrix servers, charting server, RRD server, Multum server, and any other fat client or network installed device that needs to be tested.	A	P
Determine all of the required build steps (RBS), and build all these steps in the CERT domain.	P	
Perform all of the regression testing and integration testing.	A	P
Assist with all necessary technical issue troubleshooting and issue resolution.	P	A
Upgrade the training domain or any additional non-production domain.	P	
Upgrade the production domain. This includes the back-end steps, as well as loading front-end code warehouse. CONTRACTOR will run the uptime steps and downtime steps and capture the timings for each of these processes.	P	A

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CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Disseminate all front-end code in the production domain and any individual setup to front-end devices, including, but not limited to: setting up Citrix servers, creating a Citrix rollout plan, charting server, RRD server, Multum server, and any other fat client or network installed device that needs to be tested. COUNTY is responsible for creating Citrix rollout plan for their production Citrix servers.	A	P
Determine all of the required build steps (RBS), and build all these steps in the production domain.	P	
Support and resolve any/all application issues.	P	A
Support production upgrade to new release.	P	A
Provide 48 hours of on-site post upgrade support.	P	
Refresh COUNTY's certification domain. CONTRACTOR is responsible for refreshing the certification domain from the production domain within 2 weeks after the upgrade has been finalized. COUNTY is responsible for the front-end code dissemination in the certification domain. This needs to be completed within 4 weeks post upgrade.	P	A
Provide upgrade support coverage for all departmental areas affected.		P
Perform the responsibilities as designated in the project plan.		P
Ensure hardware (memory, CPU and storage space) will be sufficient to handle any increases associated with utilization of the new release or usage of functionality.		P
Acknowledge that the CERT upgrade, if performed on the same machine as the live production environment, will affect performance.		P
Provide all necessary documentation of requested configurations.		P
Provide all necessary documentation and support phone numbers for COUNTY and all relevant hardware and software providers.		P

CONTRACTOR TECHNICAL SERVICES (P = Primary, R = Review, A = Assist)	Contractor Resource	County Resource
Provide CONTRACTOR appropriate access to applicable systems. This includes physical access to spaces (typically during business hours), User identifications (ID) and passwords, root or system like access accounts for the execution of the upgrade steps and troubleshooting, and network administrative accounts for front-end.		P
Provide suitable workspace for CONTRACTOR with phone access.		P
Ensure the service keys to any systems are made available.		P
Ensure host definitions have been generated and are available for connection.		P
Provide host interface information, including, but not limited to, destination address, local adapter address, exchange ID, and remote and local logical unit (LU) names, etc.		P
Provide operator guides for any requested equipment that will be used in the configuration and connection process.		P
Conduct high availability (HA) script changes and testing of HA.	P	A
Make all necessary table space changes and adjustment of maximum extents.		P

b. KNOWLEDGE TRANSFER

1) CONTRACTOR will provide knowledge transfer to COUNTY resources through written documentation and/or discussions as we progress throughout this project.

2) This knowledge is supplemented by documentation found at cerner.com or the uCern wiki:

- a) Reference pages;
- b) Upgrade guides;
- c) Package reports;
- d) Release details; and
- e) Illumination sessions.

3) Additional education and training information is available at cerner.com and may have an additional cost.

c. COUNTY OBLIGATIONS

1) CONTRACTOR shall perform the services provided hereunder in accordance with industry practices and standards generally applicable to such services; however, CONTRACTOR must determine, based on site-specific standard operating procedures, accrediting body standards, governing regulatory bodies, patient population, employees, and tools, how best to validate all aspects of COUNTY's system.

- 1 2) COUNTY acknowledges and agrees that it will:
- 2 a) provide the test plans;
- 3 b) perform or supervise the testing activities;
- 4 c) provide additional training and information to end users regarding the changes
- 5 made; and
- 6 d) approve the content and completion of the testing activities.
- 7 3) COUNTY agrees to:
- 8 a) Comply with CONTRACTOR’s production environment change authorization
- 9 (PECA) process;
- 10 b) Provide a security officer to define and monitor user access;
- 11 c) Remain actively engaged in the Release Upgrade until completion;
- 12 d) Ensure change control is followed, and no updates are made to the production
- 13 environment during the Release Upgrade; and
- 14 e) Provide access to all domains that will be affected during the Release Upgrade
- 15 via a Citrix connection. The preferred method is a Citrix or similar connection allowing multiple users
- 16 access to the same environment at the same time via one connection (this could include PCAnywhere or
- 17 Terminal Services connections to fat client devices).
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1 EXHIBIT C
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES
4

5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019
10

11 **I. SCHEDULE OF SOFTWARE**

12 A. Designated Facility where the Licensed Software shall reside:

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

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

17 Correctional Health, Behavioral Health, and Public Health facilities only of COUNTY.

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

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

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

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

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1 EXHIBIT D
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES

4
5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019

10
11 **I. HIGH TECHNOLOGY ESCROW AGREEMENT**

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

16
17 **RECITALS:**

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

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

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

29
30 **AGREEMENT:**

31
32 Based upon the recitals set forth above and in consideration of the mutual obligations contained
33 herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby
34 acknowledged, the parties agree as follows:
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ARTICLE 1 – DEPOSITS

1.1 Obligation to Make Deposit(s). Within 10 days of execution of this Escrow Agreement, Cerner shall deliver to Escrow Agent the source code for the Software in its current (and, at Cerner's 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 accordance with the terms of this Escrow Agreement. All references in this Escrow Agreement to the Escrow Material shall include the initial Escrow Material and any updates.

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

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

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

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1 of any updated Escrow Material, the Escrow Agent shall return to Cerner, within ten (10) business days
2 after the issuance of the written notice of acceptance to Cerner, all previous versions of the Escrow
3 Material.

4
5 1.5 Cerner's Representations. Cerner represents to Escrow Agent that:
6 a. Cerner lawfully possesses all of the Escrow Material deposited with Escrow Agent;
7 b. With respect to all of the Escrow Material, Cerner has the right and authority to grant to
8 Escrow Agent the rights as provided in this Escrow Agreement;
9 c. The Escrow Material are not subject to any lien or other encumbrance;
10 d. The Escrow Material consists of Software identified in the License Agreements; and
11 e. The Escrow Material are readable and useable in their current form or, if the Escrow
12 Material are encrypted, the decryption *tools* and decryption keys have also been deposited, which
13 deposit may be separate from the Escrow Material deposit; provided, however, that Escrow Agent shall
14 have no duty to enforce such representations for the benefit of any third party, including without
15 limitation a Licensee.

16
17 **ARTICLE 2 – CONFIDENTIALITY AND RECORD KEEPING**

18
19 2.1 Confidentiality. Escrow Agent shall maintain the Escrow Material in a secure, locked facility
20 which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the
21 obligation to reasonably protect the confidentiality of the Escrow Material. Except as provided in this
22 Escrow Agreement, Escrow Agent shall not disclose, transfer, make available, or use the Escrow
23 Material. If Escrow Agent receives a subpoena or other order of a court or other judicial tribunal
24 pertaining to the disclosure or release of the Escrow Material, Escrow Agent will promptly notify
25 Cerner.

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

29
30 2.2 Audit Rights. During the term of this Escrow Agreement, Cerner shall have the right to inspect
31 the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held
32 during normal business hours and following reasonable prior notice, and shall be conducted at the
33 Cerner's sole expense.

ARTICLE 3 – RELEASE OF DEPOSIT

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

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

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

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

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

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

ARTICLE 4 -- OWNERSHIP AND USE OF ESCROW MATERIAL

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

1 4.2 Right to Use Following Release. Upon release of the Escrow Material in accordance with
2 Article 3, Licensee shall have the right to use the Escrow Material for the sole purpose of continuing the
3 benefits afforded to Licensee by the License Agreement. Licensee shall be obligated to maintain the
4 confidentiality of the released Escrow Material as provided in the License Agreement. Without limiting
5 any other terms of this Escrow Agreement, Escrow Agent shall have no duties or obligations with
6 respect to enforcing this Section 4.2 or any terms of a License Agreement.

7
8 **ARTICLE 5 – COMPENSATION OF ESCROW AGENT**
9

10 5.1 Escrow Agent Fee. Cerner shall make payment to Escrow Agent for escrow service in
11 accordance with Escrow Agent's fee schedule as outlined on Exhibit A attached hereto, and shall be
12 invoiced upon execution of this Escrow Agreement.

13
14 5.2 Non-payment. In the event of non-payment of Escrow fee, Escrow Agent shall give Cerner
15 sixty (60) days notice thereof. If the sixty (60) day notice period elapses without Escrow Agent having
16 received payment from Cerner, Escrow Agent shall then have the option, upon delivery of written notice
17 to Cerner, to terminate this Escrow Agreement and to return to Cerner all Escrow Material.

18
19 **ARTICLE 6 – TERM**
20

21 6.1 Term and Termination. The initial term of this Escrow Agreement shall commence as of the
22 effective date set forth on the first page hereof and continue for a period of ten years (the "Initial
23 Term").
24 Thereafter, this Escrow Agreement shall automatically renew from year-to-year (each a "Renewal
25 Term") unless either party provides not less than 180 days notice to the other of its intention to terminate
26 the Escrow Agreement at the end of the then current term. This Escrow Agreement may be terminated
27 prior to the expiration of the Initial Term or any Renewal Term in any of the following ways: (a) Cerner
28 instructs Escrow Agent in writing that the Escrow Agreement is terminated; (b) the Escrow Agreement
29 is terminated by Escrow Agent for nonpayment in accordance with Section 5 .2.

30
31 6.2 Disposition of Escrow Materials on Termination. Escrow Agent shall return the Escrow
32 Materials to Cerner upon the termination of this Escrow Agreement.
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1 (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood
2 of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take
3 any legal action or commence any proceeding in connection with the Escrow Materials, this Escrow
4 Agreement or any License Agreement, or to appear in, prosecute or defend any such legal action or
5 proceeding.

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

18
19 7.4 Liability of Cerner. IN NO CASE SHALL CERNER BE LIABLE FOR ANY SPECIAL,
20 INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY,
21 BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY.

22
23 **ARTICLE 8 – GENERAL PROVISIONS**

24
25 8.1 Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in
26 writing and shall be delivered by hand, overnight delivery service, electronic mail or facsimile
27 transmitter (with confirmed receipt) to the following physical address, electronic address or facsimile
28 number set forth in this section, or to such other address as each party may designate for itself by like
29 notice, and shall be deemed to have been given on the date received:

30
31 Cerner Corporation:
32 Cerner Corporation
33 2800 Rockcreek Parkway
34 North Kansas City, MO 64117
35 Attn: General Counsel
36 Phone: 816-221-1024
37 Fax: 816-474-1742

1 Escrow Agent:
 2 U.S. Bank National Association
 3 EP-MN-WS3C
 4 60 Livingston Avenue
 5 St. Paul, MN 55107
 6 Attn: Georgette Kleinbaum
 7 Phone: 651 495-3922
 8 Fax: 651 495-8096
 9 E-mail: georgette.kleinbaum @usbank.com

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

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

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1 EXHIBIT E
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES
4

5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019
10

11 **I. BUSINESS ASSOCIATE CONTRACT**

12 A. GENERAL PROVISIONS AND RECITALS

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

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

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

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

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

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

1 specifications, and requirements of the Privacy and the Security rules, as they may exist now or be
2 hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted,
3 used, or disclosed pursuant to the Agreement.

4 B. DEFINITIONS

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

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

11 a. Breach excludes:

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

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

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

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

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

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

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

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

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

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

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

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
8 and 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
30 CONTRACTOR as requested by COUNTY for purposes of the Secretary determining COUNTY's
31 compliance with the HIPAA 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.

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1 11. CONTRACTOR agrees to provide COUNTY, in a time and manner to be determined by
2 COUNTY, that information collected in accordance with the Agreement, in order to permit COUNTY to
3 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45
4 CFR § 164.528.

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

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

11 D. SECURITY RULE

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

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

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

25 E. BREACH DISCOVERY AND NOTIFICATION

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

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

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

35 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
36 Privacy Officer. CONTRACTOR's notification may be written or oral, but if oral, shall be followed by
37 written notification within 24 hours of the oral notification. Thereafter, CONTRACTOR shall provide

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 8. CONTRACTOR shall continue to provide all additional pertinent information about the
2 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
3 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
4 requests for further information, or follow-up information after report to COUNTY, when such request
5 is made by COUNTY.

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

13 F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

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

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

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

23 1) The Disclosure is required by law; or

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

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

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

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

36 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
37 required by law.

1 G. OBLIGATIONS OF COUNTY

2 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
3 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
4 CONTRACTOR's Use or Disclosure of PHI.

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

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

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

13 H. BUSINESS ASSOCIATE TERMINATION

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

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

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

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

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

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

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

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

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1 EXHIBIT F
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES

4
5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019

10
11 **I. MILESTONE DELIVERABLES AND PAYMENTS**

12
13 A. SCHEDULE OF MILESTONE DELIVERABLES

14 1. The Contract Execution Milestone is completed when the Agreement is fully executed with
15 all required signatures.

16 2. The Project Kickoff Milestone is completed after the initial project commencement call
17 between CONTRACTOR and COUNTY. In preparation for the Project Kickoff call, CONTRACTOR
18 upgrade center project management team has already been engaged and has been performing the project
19 planning activities. Activities covered during the Kick-Off call are as follows:

20 a. CONTRACTOR will review the draft project plan with all actions, resources and
21 details.

22 b. CONTRACTOR will review timeline with COUNTY and discuss current COUNTY
23 projects to ensure that those projects are taken into account in setting the dates for Integration Testing
24 and go-live.

25 c. CONTRACTOR and COUNTY will review resources assigned to the project.

26 d. CONTRACTOR and COUNTY will review the communication plan.

27 e. CONTRACTOR shall present the project portal site, where the project plan, timeline
28 and all project documentation is stored.

29 3. Back End Upgrade Milestone is completed after all technical backend code updates and
30 configurations have been completed and the code and updates are moved into the Production domain.

31 Backend Upgrade consists of the following components:

32 a. Technical Release Upgrade (inclusive of Additional Memory Installation)

33 b. MPage Static Content Web Service Installation

34 c. Deployment Manager Implementation

35 d. Olympus Upgrade

36 e. Oracle Database CBO Assessment/Recommendation

37 f. Unix Host Operating System Upgrade

4. Go-Live Milestone is completed on the date the upgraded 2015 code is moved into the production domain and end users achieve first productive use on the system using the 2015 code and the Application Release Upgrade tasks are completed.

No.	Milestones	Delivery Date: Weeks after Agreement execution	Planned Start Date	Planned Delivery Date	Payment Fiscal Year	Payment Amount Due
UPGRADE ONE						
1	Execution (hardware and hardware install – reference Equipment table below)	0	OCT 2016	OCT 2016	2016/2017	\$2,320*
2	Upgrade 1 Project Kickoff	2	NOV 2016	NOV 2016	2016/2017	\$148,964
3	Upgrade 1 Backend upgrade	14	FEB 2017	FEB 2017	2016/2017	\$158,650
4	Upgrade 1 Go-Live	29	APR 2017	APR 2017	2016/2017	\$148,964
	Travel				2016-2017	\$14,000
	Additional Hours (OPTIONAL)	As Needed			2016/2017	\$130,000
TOTAL COST – UPGRADE ONE						\$602,898

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UPGRADE ONE EQUIPMENT DETAIL

Item	Equipment Description	Contractor Solution Code	SOW	Qty	Unit One-time Fees	Extended One-Time Fees	Pass-Through Code
1a	HP BL8x0c i2 8GB(2x4GB) PC3-10600R-9 Kit	AM327A	Each	8	*Costs included in 1 above (\$60 per unit)	*Costs included in 1 above (\$480+ approx. \$40 in taxes)	4001_HPP

No.	Milestones	Delivery Date: Weeks after Agreement execution	Planned Start Date	Planned Delivery Date	Payment Fiscal Year	Payment Amount Due
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UPGRADE TWO

5	Upgrade 2 Project Kickoff	39	JUL 2017	JUL 2017	2017/2018	\$166,644
5.1	Optional Technical Release Upgrade Services	XX	XX	XX	2017/2018	\$90,000
6	Upgrade 2 Go-Live	67	DEC 2017	DEC 2017	2017/2018	\$166,644
	Additional Hours (OPTIONAL)	As Needed			2017/2018	\$130,000

TOTAL COST – UPGRADE TWO						\$553,288
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No.	Milestones	Delivery Date: Weeks after Agreement execution	Planned Start Date	Planned Delivery Date	Payment Fiscal Year	Payment Amount Due
UPGRADE THREE						
7	Upgrade 3 Project Kickoff	125	MAR 2019	MAR 2019	2018/2019	\$148,964
7.1	Optional Technical Release Upgrade Services	XX	XX	XX	2018/2019	\$90,000
8	Upgrade 3 Go-Live	149	OCT 2019	OCT 2019	2019/2020	\$148,964
	Additional Hours (OPTIONAL)	As Needed			2019/2020	\$130,000
TOTAL COST – UPGRADE THREE						\$517,928

II. OPTIONAL MILESTONE DELIVERABLES AND PAYMENTS

A. As indicated in the three (3) Milestone Deliverables and Payments schedules above, one table per upgrade, all “Additional Hours” line items and items 5.1 and 7.1 are deemed as optional services by COUNTY. If COUNTY elects to obtain such optional services, COUNTY and CONTRACTOR shall mutually agree in writing, for instance in a letter of agreement and/or concurrence, the services to be performed and the applicable hourly rate for those services, which rate shall be \$195 hourly or less, up to the applicable aggregate dollar amount shown in the applicable table above, and COUNTY shall not utilize any CONTRACTOR personnel in physician executive roles in the performance of the optional service(s).

B. If COUNTY elects to perform additional upgrades on their client hosted domain, these technical services will move from optional to required. These fees are strictly for the technical services that would be required and do not include any fees for hardware or software that might be required for the client hosted domain in order to upgrade. A technical assessment would be performed before the upgrade to determine if any additional hardware or software is needed. If all three (3) upgrades are performed on the client hosted domain, a credit will be due to COUNTY for \$35,360, and upon mutual agreement of

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1 the Parties in writing, for instance in an amendment or letter of agreement and/or concurrence, said
2 credit may be applied to procuring other services that may be required to complete the system upgrades.

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1 EXHIBIT G
2 TO AGREEMENT FOR PROVISION OF
3 SYSTEM APPLICATION AND TECHNICAL UPGRADE SERVICES

4
5 BETWEEN
6 COUNTY OF ORANGE
7 AND
8 CERNER CORPORATION

9 OCTOBER 26, 2016 THROUGH OCTOBER 25, 2019

10
11 **I. PASS-THROUGH PROVISIONS**

12 **HP PASS THROUGH TERMS**

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

19 A. HP BASE TERMS

20 1. DEFINITIONS

21 a. Affiliate of a party means an entity controlling by, or under common control with, that
22 party.

23 b. Deliverable means the tangible work product resulting from the performance of
24 Support excluding Products and Custom Products.

25 c. Hardware means computer and related devices and equipment, related documentation,
26 accessories, parts, and upgrades.

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

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

33 f. Product means the HP Branded version of Hardware and Software available and listed
34 in HP's standard price list at the time of HP
35 Business Partner's acceptance of the Customer order and including products that are modified, altered,
36 or customized, by HP, to meet Customer requirements ("Custom Products").

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

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

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

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

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

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

21 2. WARRANTY PROVISIONS

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

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

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

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

36 1) improper site preparation, or site or environmental conditions that do not conform
37 to HP's site specifications;

- 1 2) Customer’s non-compliance with Specifications or Transaction Documents;
- 2 3) improper or inadequate maintenance or calibration;
- 3 4) Customer or third-party media, software, interfacing, supplies, or other products;
- 4 5) modifications not performed or authorized by HP;
- 5 6) virus, infection, worm or similar malicious code not introduced by HP; or
- 6 7) abuse, negligence, accident, loss or damage in transit, fire or water damage,
- 7 electrical disturbances, transportation by Customer, or other causes beyond HP’s control.

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

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

19 3. INTELLECTUAL PROPERTY INFRINGEMENT

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

- 23 1) promptly notifies HP of the claim in writing;
- 24 2) cooperates with HP in the defense of the claim; and
- 25 3) grants HP sole control of the defense or settlement of the claim.
- 26 4) HP will pay infringement claim defense costs, HP–negotiated settlement amounts,
- 27 and court-awarded damages.

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

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

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

37 //

- 1) HP’s compliance with Customer or third party designs, specifications, instructions, or technical information;
 - 2) modifications made by Customer or a third party;
 - 3) Customer’s non-compliance with the Specifications or the Transaction Documents;
- or
- 4) Customer’s use of the Product with products, software, or services that are not HP Branded.

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

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

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

6. LIMITATION OF LIABILITY AND REMEDIES

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

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

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

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

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1 7. GENERAL

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

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

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

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

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

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

25 g. Entire Agreement. These Terms represent the entire agreement between HP and
26 Customer regarding Customer's purchase of Products and Support, and supersedes and replaces any
27 previous communications, representations, or agreements, or Customer's additional or inconsistent
28 terms, whether oral or written. In the event any provision of these Terms is held invalid or
29 unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.

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

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

34 1) Transaction Documents consisting of license terms or limited warranty statements
35 delivered or otherwise made available to Customer with Products;

36 2) the sections of these Terms;

37 3) all other Transaction Documents.

1 j. Independent Contractor. HP is an independent contractor in the performance under
2 these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in
3 these Terms will be construed as creating a joint venture, partnership or employment relationship
4 between the parties, nor will either party have the right, power or authority to create any obligation or
5 duty, express or implied, on behalf of the other.

6 B. HP HARDWARE TERMS

7 1. RISK OF LOSS - When HP delivers to Customer directly, risk of loss or damage, and title
8 to Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or,
9 if special shipping arrangements are agreed to by HP, upon delivery to Customer's carrier or designee.

10 2. INSTALLATION - If HP provides installation services, Customer will make available
11 facilities that meet HP published site guidelines that will be provided to Customer upon request. Upon
12 delivery, Customer will place each item of Hardware in its designated location. Installation is billed at
13 HP's published installation charges unless quoted as part of the Hardware purchase price. Installation by
14 HP is complete when the Hardware passes HP's standard installation and test procedures.

15 3. HARDWARE LIMITED WARRANTY - HP warrants HP Branded Hardware against
16 defects in materials and workmanship under normal use during the warranty period and that it will
17 materially conform to its Specifications for the time specified in the applicable Transaction Documents.
18 HP Branded Hardware may contain used parts that are equivalent to new in performance and reliability
19 and are warranted as new.

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

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

34 C. HP SOFTWARE LICENSE TERMS

35 1. LICENSE GRANT - HP grants Customer a non-exclusive, non-transferable license to
36 "Use", in object code form, the Version or Release of the HP Branded Software delivered from an HP
37 accepted order. For purposes of these Terms, unless otherwise specified in the Transaction Documents,

1 “Use” means to install, store, load, execute, and display one copy of the Software on one device at a
2 time for Customer's internal business purposes. Customer's Use of such Software is subject to these
3 license terms and the Use restrictions and authorizations for the Software specified by HP in Transaction
4 Documents that accompany or are otherwise made available to Customer with the Software (the
5 “Software License”). In the event of any conflict among such terms, the order of precedence will be the
6 accompanying Transaction Documents then the terms of this section.

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

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

14 4. ACCEPTANCE - Customer accepts Software upon delivery.

15 5. UPGRADES - Software Versions or maintenance updates, if available, may be ordered
16 separately or may be available through Software Support. HP reserves the right to require additional
17 licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the
18 Software in conjunction with upgraded Hardware or Software. When Customer obtains a license for a
19 new Software Version, Customer's Software License for the earlier Version shall terminate. Software
20 Versions are subject to the license terms in effect on the date that HP delivers or makes the Version
21 available to Customer.

22 6. LICENSE RESTRICTIONS

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

31 b. Copy and Adaptation. Unless otherwise permitted by HP, Customer may only make
32 copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential
33 step in the authorized Use of the Software. If Customer makes a copy for backup purposes and installs
34 such copy on a backup device, unless otherwise provided in the Transaction Documents, Customer may
35 not operate such backup installation of the Software without paying an additional license fee, except in
36 cases where the original device becomes inoperable. If a copy is activated on a backup device in
37 response to failure of the original device, the Use on the backup device must be discontinued when the

1 original or replacement device becomes operable. Customer may not copy the Software onto or
2 otherwise Use or make it available on, to, or through any public or external distributed network.
3 Licenses that allow Use over Customer's intranet require restricted access by authorized users only.

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

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

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

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

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

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

34 8. LICENSE TRANSFER - Customer may not sublicense, assign, transfer, rent, or lease the
35 Software or the Software License to any other party except as permitted in this section. Except as
36 provided in sub-section C.6.d above, HP Branded Software licenses are transferable subject to HP's
37 prior written authorization and payment to HP of any applicable fees or compliance with applicable

1 third party terms. Upon transfer of the Software License, Customer's rights under the License will
2 terminate and Customer will immediately deliver the Software and all copies to the transferee. The
3 transferee must agree in writing to the terms of the Software License, and, upon such agreement, the
4 transferee will be considered the "Customer" for purposes of the license terms. Customer may transfer
5 firmware only upon transfer of the associated Hardware.

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

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

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

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

20 13. WARRANTY LIMITATION - HP does not warrant that the operation of Software will be
21 uninterrupted or error free, or that Software will operate in Hardware and Software combinations other
22 than as expressly required by HP in the Product Specifications or that Software will meet requirements
23 specified by Customer.

24 14. EXCLUSIVE REMEDIES - If notified of a valid warranty claim during the warranty
25 period, HP will, at its option, correct the warranty defect for HP Branded Software, or replace such
26 Software. If HP is unable, within a reasonable time, to complete the correction, or replace such
27 Software, Customer will be entitled to a refund of the purchase price paid upon prompt return of such
28 Software to HP. Customer will pay expenses for return of such Software to HP. HP will pay expenses
29 for shipment of repaired or replacement Software to Customer. This sub-section C.14 states HP's entire
30 liability for warranty claims.

31 15. IMPLIED LICENSE - There are no implied licenses.

32 16. FREeware AND OPEN SOURCE - Notwithstanding other statements in these Terms,
33 Software licensed without fee or charge also referred to as Freeware and/or Open Source is provided
34 "AS IS" without any warranties or indemnities of any kind. Software provided under any open source
35 licensing model is governed solely by such open source licensing terms which will prevail over these
36 Terms.

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1 **D. HP SUPPORT TERMS**

2 1. SUPPORT SERVICES

3 a. Description of Support. HP will deliver Support according to the description of the
4 offering, eligibility requirements, service limitations, and Customer responsibilities described in the
5 relevant Transaction Documents.

6 b. Ordering Support. Customer may order Support:

7 1) at the time of Product purchase, or prior to installation of Products for which
8 Support is being purchased, for a fixed term (may be referred to as “HP Care Pack”);

9 2) after the time of Product purchase, for either a fixed term or an initial term that may
10 be renewed (may be referred to as “HP Contractual Services”);

11 3) on a per-event basis; or

12 4) at any time, when agreed non-standard Support has been offered by HP for the
13 Customer according to a Statement of Work (also known as “Custom Support”) or as otherwise offered
14 by HP.

15 c. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for
16 the unused prepaid Support, less any early termination fees or subject to any restrictions set forth in a
17 Transaction Document.

18 d. Return to Support. If Customer allows Support to lapse, additional fees may be required
19 to resume Support or Customer may be required to perform certain hardware or software upgrades. HP
20 will review and assess whether such fees are required, and explain these to HP Business Partner and
21 Customer at the time of the request to return to Support.

22 e. Local Availability. Customer may order Support from HP's current Support offerings.
23 Some offerings, features, and coverage (and related Products) may not be available in all countries or
24 areas.

25 f. Support Warranty. HP warrants that it will perform Support using generally recognized
26 commercial practices and standards.

27 g. Exclusive Remedies. HP will re-perform Support not performed in accordance with the
28 warranty herein. This sub-section D.1.g states HP's entire liability for Support warranty claims.

29 2. PRICING, SERVICES, AVAILABILITY, AND INVOICING

30 a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document,
31 HP may change Support prices upon sixty (60) days written notice.

32 b. Additional Services. Additional services performed by HP at Customer's request that
33 are not included in Customer's purchased Support will be chargeable at the applicable published service
34 rates for the country where the service is performed. Such additional services include but are not limited
35 to:

36 1) Customer requests for Support after HP's local standard business hours (unless
37 Customer has specifically purchased after-hours coverage for the requested Support);

1 2) Customer requests for repair for damage or failure attributable to the causes
2 specified in sub-section A.2.d of the HP Base Terms (“Warranty Exclusions”); and

3 3) Customer requests for Support where Customer does not, in HP’s reasonable
4 determination, meet the applicable prerequisites and eligibility requirements for Support.

5 c. Local Availability. Support outside of the applicable HP coverage areas may be subject
6 to travel charges, longer response times, reduced restoration or repair commitments, and reduced
7 coverage hours.

8 d. Invoicing. Invoices for Support will be issued in advance of the Support period. HP
9 Support invoices and related documentation will be produced in accordance with HP system standards.
10 Additional levels of detail requested by Customer may be chargeable.

11 3. SITE AND PRODUCT ACCESS - Customer shall provide HP access to the Products
12 covered under Support; adequate working space and facilities within a reasonable distance of the
13 Products; access to and use of information, customer resources, and facilities as reasonably determined
14 necessary by HP to service the Products; and other access requirements described in the relevant
15 Transaction Document. If Customer fails to provide such access, resulting in HP’s inability to provide
16 Support, HP shall be entitled to charge Customer for the Support call at HP’s published service rates.
17 Customer is responsible for removing any Products ineligible for Support to allow HP to perform
18 Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge
19 Customer for the extra work at HP’s published service rates.

20 4. STANDARD SUPPORT PRODUCT ELIGIBILITY

21 a. Minimum Configuration for Support. Customer must purchase the same level of
22 Support and for the same coverage period for: all Products within a minimum supportable system unit
23 (i.e. all components within a server, storage, or network device) to allow for proper execution of
24 standalone and operating system diagnostics for the configuration

25 b. Eligibility. For initial and on-going Support eligibility Customer must maintain all
26 Products and associated hardware and software at the latest HP-specified configuration and revision
27 levels and in HP’s reasonable opinion, in good operating condition.

28 c. Modifications. Customer will allow HP, at HP’s request and at no additional charge, to
29 modify Products to improve operation, supportability, and reliability, or to meet legal requirements.

30 d. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for
31 loaner units if provided at HP’s discretion as part of Support or warranty services and such units will be
32 returned to HP without lien or encumbrance at the end of the loaner period.

33 e. Relocation. Customer is responsible for moving Products. If Customer moves the
34 Products to a new location, HP may charge additional Support fees and modify the response times, and
35 Customer may be required to execute amended or new Transaction Documents. If Customer moves
36 Products to another country, Support shall be subject to availability in the destination country.
37 Reasonable advanced notice to HP may be required to begin Support for some Products after relocation.

1 f. Maximum Use Limitations. Certain Products have a maximum usage limit, which is set
2 forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such
3 Products within the maximum usage limit.

4 g. Multi-Vendor Support. HP provides Support for certain non-HP Branded Products. The
5 relevant Transaction Document will specify availability and coverage levels, and govern delivery of
6 multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may
7 discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide
8 support for such Products.

9 5. PROPRIETARY SERVICE TOOLS - HP will require Customer's use of certain system and
10 network diagnostic and maintenance programs ("Proprietary Service Tools") for delivery of Support
11 under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property
12 of HP, are provided "as is," and include, but are not limited to: remote fault management software,
13 network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known
14 as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may
15 only use the Proprietary Service Tools during the applicable Support coverage period and only as
16 allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the
17 Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service
18 Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

19 a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites,
20 and assist HP in running them;

21 b. install Proprietary Service Tools, including installation of any required updates and
22 patches;

23 c. use the electronic data transfer capability to inform HP of events identified by the
24 software;

25 d. if required, purchase HP-specified remote connection hardware for systems with
26 remote diagnosis service; and

27 e. provide remote connectivity through an HP approved communications line.

28 6. CUSTOMER RESPONSIBILITIES

29 a. Data Backup. To reconstruct lost or altered Customer files, data, or programs,
30 Customer must maintain a separate backup system or procedure that is not dependent on the Products
31 under Support.

32 b. Temporary Workarounds. Customer will implement temporary procedures or
33 workarounds provided by HP while HP works on
34 permanent solutions.

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1 c. Hazardous Environment. Customer will notify HP if Customer uses Products in an
2 environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may
3 require Customer to maintain such Products under HP supervision and may postpone service until
4 Customer remedies such hazards.

5 d. Authorized Representative. Customer will have a representative present when HP
6 provides Support at Customer's site.

7 e. Product List. Customer will create and maintain a list of all Products under Support
8 including: the location of the Products, serial numbers, the HP-designated system identifiers, and
9 coverage levels. Customer shall keep the list updated during the applicable Support period.

10 f. Documentation. If Customer purchases a Support offering that includes documentation
11 updates, Customer may copy such updates only for systems under such coverage. Copies must include
12 appropriate HP Trademark and copyright notices.

13 7. SUPPORTED SOFTWARE - Customer may purchase available Support for HP Branded
14 Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for
15 such Software. HP will be under no obligation to provide Support due to any alterations or
16 modifications to the Software not authorized by HP or for Software for which Customer cannot provide
17 a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the
18 current Version and the immediately preceding Version of HP Branded Software, and then only when
19 HP Branded Software is used with Hardware or Software included in HP-specified configurations at the
20 specified Version level.

21 8. ACCESSORIES AND PARTS AND MISCELLANEOUS

22 a. Compatible Cables and Connectors. Customer will connect Products covered under
23 Support with cables or connectors (including fiber optics if applicable) that are compatible with the
24 system, according to the manufacturer's operating manual.

25 b. Support for Accessories. HP may provide Support for cables, connectors, interfaces,
26 and other accessories if Customer purchases Support for such accessories at the same Hardware service
27 level purchased for the Products with which they are used.

28 c. Consumables. Support does not include the delivery, return, replacement, or installation
29 of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media,
30 print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.

31 d. Replacement Parts. Parts provided under Support may be whole unit replacements or be
32 new or functionally equivalent to new in performance and reliability and warranted as new. Replaced
33 parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable
34 charges.

35 e. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-
36 authorized service providers to assist in the provision of Support.

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9. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER

a. Designated Callers. Customer will identify a reasonable number of callers, as determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers ("Solution Centers").

b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HP may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, the Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.

c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section D.9.b above.

d. Telecommunication Charges. Customer will pay for all telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service Tools.

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