

BC 1-083

A-31

SYSTEM AGREEMENT

between

SANTA BARBARA COUNTY

and

GENERAL ELECTRIC HEALTHCARE

DATED MARCH 15, 2011

BC-11-083

TABLE OF CONTENTS

1. DEFINITIONS	1
2. TERM	7
3. FINANCIAL MATTERS	7
3.1 Purchase Prices	7
3.2 Charges	7
3.3 Maximum Amount	8
3.4 Transportation and Insurance Charges	8
3.5 Taxes	8
3.6 Contractor Expenses	9
3.7 Invoices	9
3.8 Funding	9
3.9 Overpayments to Contractor	9
3.10 Advance Payments Prohibited	9
3.11 Credits	9
3.12 No Increases	10
4. PROJECT MANAGEMENT	10
4.1 Reports and Meetings	10
4.2 Contractor Project Manager	10
4.3 Contractor Project Staff	11
4.4 County Project Manager	12
4.5 Records Retention and Access Requirements	12
4.6 Accounting Requirements	12
4.7 Supplemental Contracts	13
5. SERVICES AND RESOURCES	13
5.1 Performance	13
5.2 Necessary Resources	13
5.3 Ownership	13
5.4 Use of Property	13
5.5 Damage to Property	13
5.6 Notice of Damage	14
5.7 Surrender of Property	14
5.8 County Property and Facility	14
6. EQUIPMENT	14
7. DELIVERABLES	14
7.1 General	14
7.2 Project Work Plan	14
7.3 General Acceptance Process for Deliverables	15
7.4 System Acceptance Tests	15
7.5 Protection From Damage	16
7.6 Delivery	17
7.7 Interpretation of Deliverables	17
7.8 Representation	17
7.9 Knowledge Transfer	17
8. LICENSES	17
8.1 Grants	17
8.2 Term	18
8.3 Title	18

8.4	Documentation	18
8.5	Copies	18
8.6	Restrictions	18
8.7	Replacements	19
8.8	Third-Party Software Licenses	19
8.9	Versions	19
9.	OWNERSHIP	19
10.	IMPLEMENTATION	19
10.1	Implementation Phases	19
10.2	Conversion	20
10.3	Pre-Loading	20
10.4	Training	20
11.	WARRANTIES	20
11.1	Deliverables	20
11.2	Services	20
11.3	HITECH Act Certification	20
11.4	Date/Time Compliance Warranty	20
11.5	No Surreptitious Code	21
11.6	Physical Media Warranty	21
11.7	Safety and Health	21
11.8	Authorization	21
11.9	Ability To Perform	22
11.11	Disclaimers	23
12.	SUPPORT AND MAINTENANCE SERVICES DURING THE WARRANTY PERIOD	23
12.1	General Responsibilities	23
12.2	Inquiry Assistance	24
12.3	Incident Priorities	24
12.4	Additional Assistance	24
12.5	Database	25
13.	STANDARD SUPPORT AND MAINTENANCE	25
13.1	Support and Maintenance	25
13.2	Performance Standard Measurement	25
13.3	Continuous Improvement	26
14.	DISPUTE RESOLUTION	26
14.1	Good Faith Efforts	26
14.2	Continued Performance	26
15.	CHANGES	26
15.1	Changing Government Programs	26
15.2	Identifying Changes	26
15.3	Notice from County	26
15.4	Issuance of Change Requests	26
15.5	Contractor Response to Change Request	27
15.6	Agreement on Change Order	27
15.7	Disagreement	27
15.8	Termination	27
15.9	Contractor Submission of Change Request	27
16.	ADDITIONAL RIGHTS AND REMEDIES	28
16.1	Withholding Payments	28

16.2	Reductions in Payments Due	28
16.3	Cover	28
16.4	Performance Standards	28
16.5	Temporary Suspension for Convenience	28
17.	INSURANCE.....	29
17.1	Liability and Auto Insurance	29
17.2	Extended Coverage.....	30
17.3	Workers' Compensation Coverage.....	30
17.4	Subcontractors	30
17.5	Premiums and Notice to County.....	30
17.6	Cancellation.....	30
17.7	Insurance Documents	30
17.8	Increased Coverage	31
17.9	Subrogation.....	31
17.10	Cross-Liability.....	31
18.	CONFIDENTIAL INFORMATION.....	31
18.1	Protection Obligations	31
18.2	Audit	32
18.3	Return.....	32
18.4	Injunctive Relief and Indemnity	32
18.5	Nondisclosure of Other County Information	33
18.6	Exceptions.....	33
18.7	Survival.....	33
19.	BUSINESS ASSOCIATE.....	33
20.	ADDITIONAL INDEMNIFICATIONS.....	33
20.1	Intellectual Property.....	33
20.2	General.....	34
21.	DAMAGES DISCLAIMERS AND LIMITATIONS.....	34
21.1	County's Disclaimer of Damages	34
21.2	County's Limitation of Liability	34
21.3	Contractor's Limitation of Liability.....	34
22.	TERMINATION.....	35
22.1	Termination for Contractor's Material Breach.....	35
22.2	Termination for Rejection of Deliverables.....	35
22.3	Termination for Conflict of Interest	35
22.4	Termination for County's Nonpayment.....	35
22.5	Termination Remedies	35
22.6	Termination for Withdrawal of Authority	36
22.7	Termination for Non-allocation of Funds	36
22.8	Termination Procedure	36
23.	GENERAL CONDITIONS.....	37
23.1	Anti-Trust Violations	37
23.2	Assignment.....	37
23.3	Authority	38
23.4	Binding Effect.....	38
23.5	Claims	38
23.6	Compliance With Civil Rights Laws.....	38
23.7	Conflicts Between Documents; Order of Precedence	39
23.8	Counterparts.....	39

23.9	Covenant Against Contingent Fees.....	39
23.10	Cooperation of Parties.....	39
23.11	Debarment and Suspension.....	40
23.12	Entire Agreement; Acknowledgement of Understanding.....	40
23.13	Force Majeure.....	40
23.14	Governing Law.....	40
23.15	Headings.....	40
23.16	Independent Status of Contractor.....	40
23.17	Legal and Regulatory Compliance.....	41
23.18	Licensing Standards.....	41
23.19	Lobbying Activities.....	41
23.20	Modifications and Amendments.....	41
23.21	Non-waiver.....	41
23.22	Notice of Delay.....	41
23.23	Notices.....	41
23.24	Publicity.....	42
23.25	Remedies.....	42
23.26	Severability.....	42
23.27	Sovereign Immunity.....	43
23.28	Subcontractors.....	43
23.29	Subpoena.....	43
23.30	Survival.....	44
23.31	UCC Applicability.....	44
23.32	Waiver.....	44
EXHIBIT A PURCHASE PRICE GE HEALTHCARE QUOTATIONS.....		48
EXHIBIT B PAYMENT SCHEDULE.....		54
EXHIBIT C PROJECT STAFF.....		55
EXHIBIT D EQUIPMENT AND SOFTWARE CONFIGURATION.....		57
EXHIBIT E FUNCTIONAL SPECIFICATIONS.....		61
EXHIBIT F STATEMENT OF WORK.....		73
EXHIBIT G PERFORMANCE STANDARDS.....		95
EXHIBIT H SUPPORT AND MAINTENANCE AGREEMENT.....		100
EXHIBIT I INITIAL PROJECT PLAN.....		109
EXHIBIT J HIPAA BUSINESS ASSOCIATE AGREEMENT.....		110
EXHIBIT K HARDWARE PURCHASE AGREEMENT.....		114

SYSTEM AGREEMENT

This System Agreement and Exhibits hereto (together referred to herein as the "Agreement") is entered into as of March 15, 2011 (the "Effective Date"), by and between the County of Santa Barbara, California (hereinafter COUNTY), and, General Electric Company, by and through its GE Healthcare division, a New Jersey corporation, (hereinafter CONTRACTOR), as described further below.

RECITALS

WHEREAS, the COUNTY evaluated CONTRACTOR's proposal and COUNTY identified CONTRACTOR as the selected contractor for its SYSTEM; and

WHEREAS, CONTRACTOR desires to enter into an Agreement with COUNTY to meet the needs of COUNTY for the SYSTEM; and

WHEREAS, COUNTY and CONTRACTOR have agreed that the terms and conditions of this Agreement shall govern CONTRACTOR's furnishing to COUNTY the SYSTEM.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants as set forth below, the parties agree as follows:

1. DEFINITIONS.

The following terms as used throughout this Agreement and Exhibits shall have the meanings as set forth below.

1.1 "Acceptance": A Notice from COUNTY to CONTRACTOR that a Deliverable, Service, SYSTEM Module, or the entire SYSTEM has conformed to its applicable Acceptance Test Plan in accordance with the process described in Section 7.3 of the Agreement.

1.2 "Acceptance Criteria": The documentation provided by CONTRACTOR with respect to the SYSTEM together with the Specifications set forth in Exhibit E and the Performance Standards set forth in Exhibit G, with which the SYSTEM must materially conform.

1.3 "Acceptance Test Plan": The Specifications against which each Deliverable and the SYSTEM shall be evaluated in accordance with Section 7.3 and Section 7.4 of the Agreement and COUNTY's satisfaction for Services that are not subsumed in a Deliverable. Acceptance Test Plans will be developed by COUNTY and CONTRACTOR during the Kickoff Meeting.

1.4 "Acceptance Tests": The tests that are performed by CONTRACTOR in accordance with the Acceptance Test Plan to demonstrate to COUNTY that there are no Deficiencies in the SYSTEM Module being tested and that must be satisfied before Acceptance can occur as set forth in Section 7.3 and Section 7.4 of the Agreement.

1.5 "Application Software": The Proprietary Software and Third-Party Software licensed or sublicensed to COUNTY from CONTRACTOR in association with the SYSTEM.

1.6 "Base SYSTEM": The CONTRACTOR's current version of the SYSTEM as demonstrated to the COUNTY during CONTRACTOR's proposal evaluation.

1.7 "Certification": COUNTY's receipt of notice and full supporting and written documentation (including, without limitation, test results) from CONTRACTOR that CONTRACTOR has, as applicable: completed a Deliverable in accordance with its applicable Acceptance Test-Plan; or pre-tested the SYSTEM or a SYSTEM Module for compliance with the Specifications in Exhibit E, and confirmed the Deliverable, including, without limitation, the SYSTEM or a SYSTEM Module, is ready for applicable Acceptance Tests.

1.8 "Change Order": A written form, in response to a Change Request, that is mutually agreed to in writing by COUNTY and CONTRACTOR, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 15 of the Agreement.

1.9 "Change Request": A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 15 of the Agreement.

1.10 "Charges": The amount(s) to be paid for Services, a SYSTEM Component, a Deliverable, and the SYSTEM as authorized under this Agreement, in whole or in part, as described in Exhibit A.

1.11 "Confidential Information": Various trade secrets and information of each party that either CONTRACTOR or COUNTY desires to protect against unrestricted disclosure, including, without limitation, with respect to CONTRACTOR: the CONTRACTOR Technology; with respect to COUNTY: the Configuration and COUNTY non-publicly available Data; the Software; any nonpublic information or documentation concerning either party's business or future products or plans that are learned by the other party during the performance of this Agreement; and information that is designated as confidential by the disclosing party and, subject to Section 18.1.2 of the Agreement, that may be exempt from disclosure to the public or other unauthorized persons under either State or federal statutes. The following are also hereby designated COUNTY Confidential Information: all data relating to COUNTY clients and employees, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, and law enforcement records; all data accessed through the process of performing the requirements of this Agreement; and such other Confidential Information as is described in this definition.

1.12 "Configuration(s)": Set up and customization of the SYSTEM in accordance with the Specifications in Exhibit E, including, but not limited to: tables, schema (i.e., the program language with processes and business logic), Functions, features, operations, data entry screens and reports for the Application Software produced by CONTRACTOR; provided, however, nothing herein is intended to limit or prevent CONTRACTOR from providing similar services to other third parties so long as CONTRACTOR treats the Configuration as County Confidential Information (as provided in Sections 1.11 and 18 herein).

1.13 "CONTRACTOR": CONTRACTOR, its employees and agents.

1.14 "Contractor Project Manager": The individual chosen by CONTRACTOR and approved by COUNTY with management responsibilities for CONTRACTOR, as described in Section 4.2 of the Agreement.

1.15 "Contractor Technology": Intellectual property owned by CONTRACTOR prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property developed hereunder), including CONTRACTOR's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general

purpose consulting and software tools, utilities, and routines; the Proprietary Software; and CONTRACTOR's Confidential Information.

1.16 "Conversion": The Services performed by CONTRACTOR for converting historical and other Data for Processing by the SYSTEM as described in Exhibit F.

1.17 "Converted Data": The Data that has been successfully converted by CONTRACTOR for Processing by the SYSTEM.

1.18 "COUNTY Project Director": The COUNTY Public Health Department's Director or designee, who will be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom COUNTY signature authority has been delegated in writing. The term includes, except as otherwise provided herein, an authorized representative of the Project Director acting within the limits of his or her authority.

1.19 "COUNTY Project Manager": The person designated by COUNTY to be responsible for day-to-day management of COUNTY resources for the Project and monitoring the status of CONTRACTOR's performance under the Agreement.

1.20 "Critical Event(s)": The events and Deliverables listed in Exhibit B which, once provided to COUNTY, trigger payments.

1.21 "Data": COUNTY's records, files, forms, data and other documents, including but not limited to, Converted Data.

1.22 "Date/Time Compliance Warranty": The warranty provided in Section 11.4 of this Agreement.

1.23 "Days": Calendar days, unless otherwise indicated.

1.24 "Deficiency": A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to materially conform to its Specifications.

1.25 "Deliverables": CONTRACTOR's products that result from the Services and that are prepared for COUNTY (either independently or in concert with COUNTY or third parties) during the course of CONTRACTOR's performance under this Agreement, including, without limitation, deliverables which are described in the Project Work Plan, Exhibit B, Exhibit F, in Change Orders and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

1.26 "Delivery Date(s)": The dates described in the Project Work Plan and Exhibit F for the delivery of the Deliverables and Services to COUNTY.

1.27 "Dispute Resolution": The process for resolving disputes as described in Section 14 of the Agreement.

1.28 "Documentation": All operations, technical and User manuals used in conjunction with the SYSTEM, in whole and in part, including without limitation manuals provided by licensors of the Application Software.

1.29 “Effective Date”: The date of execution of the Agreement by COUNTY as evidenced by the Board of Supervisor’s approval of the Agreement.

1.30 “Emergency”: A major system malfunction, as defined as a Critical or High Priority matter in Section 12.3 of the Agreement, that results in the inability of COUNTY to conduct business as usual.

1.31 “Enhancements”: All releases that are made in common to the SYSTEM that include error corrections; major releases of the SYSTEM that contain enhancements and improvements, such as new databases, improvements to existing SYSTEM capabilities, database modifications, and efficiency improvements to existing SYSTEM processes, functions, and capabilities; but does not include new product releases that offer entirely new capabilities that are not available in the current release of the SYSTEM.

1.32 “Equipment”: The computer hardware on which the SYSTEM shall operate following its delivery, all operating system software for use with the SYSTEM, and Services as listed in Exhibit D.

1.33 “Final Acceptance”: Acceptance of the SYSTEM following successful completion of the SYSTEM Acceptance Tests.

1.34 “Function(s)”: A discrete capability of the SYSTEM as described in the Specifications in Exhibit E and Exhibit F.

1.35 “Holdback”: The payment amount held back by COUNTY from the cost of the Software Purchase Price, as described in Exhibit B.

1.36 “Implementation”: The process for making the SYSTEM fully Operational at the COUNTY Site for Processing the Data in COUNTY’s normal business operations. Implementation shall be completed when all SYSTEM Modules are Operational and the SYSTEM is deployed in COUNTY’s ten clinics (or the number of clinics actually deployed in the event County’s deployment plans are revised pursuant to Section 3.8).

1.37 “Interfaces”: SYSTEM Components that are developed by CONTRACTOR or third party vendors for transmitting Data between the SYSTEM and other systems, and for completing certain reports and other Functions as described in the Specifications in Exhibit E.

1.38 “Live Operations”: The event that occurs when the SYSTEM is placed into operational use.

1.39 “Maintenance”: Services that will be performed by CONTRACTOR as SYSTEM Users are brought online for Live Operations, and which are described in Exhibit H of the Agreement, as may be amended from time to time.

1.40 “Maximum Amount”: The maximum amount payable by COUNTY to CONTRACTOR under this Agreement, which shall be an amount not to exceed \$936,195 as set forth in Exhibit A.

1.41 “Notice”: A written document given by a party to the other in accordance with Section 22.23.1.

1.42 “Object Code”: The binary code version of a SYSTEM Module loaded into a computer’s memory to enable it to perform a SYSTEM function.

1.43 “Operational”: The condition when the SYSTEM is totally functional in accordance with the Specifications in Exhibit E and usable for its purposes in the daily operations of COUNTY, and Data is being input into the SYSTEM and is available for use by COUNTY.

1.44 “Operations”: Services that will be performed by CONTRACTOR following Final SYSTEM Acceptance.

1.45 Performance Standards”: The standards to which the SYSTEM and CONTRACTOR shall perform during SYSTEM cutover to Operational Use, and thereafter, as described in the Specifications in Exhibit E, Exhibit F, Exhibit G, and the Project Work Plan.

1.46 “Pre-Load”: Data that has been successfully loaded by CONTRACTOR into the SYSTEM prior to Acceptance Testing.

1.47 “Processing”: The performance by the SYSTEM residing on the Equipment of logical operations and calculations on the Data.

1.48 “Project”: The planned undertakings regarding the activities during the Agreement.

1.49 “Project Staff”: CONTRACTOR's key personnel, employees, Subcontractors, agents, and anyone else under CONTRACTOR's control that will have access to COUNTY data or access to COUNTY facilities. Project Staff shall be identified in Exhibit C.

1.50 “Project Work Plan”: The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as updated in accordance with Section 7.2 of the Agreement. The initial Project Work Plan shall be incorporated herein as part of this Agreement as Exhibit I, and upon Acceptance by COUNTY, each revised Project Work Plan shall be incorporated as part of the Agreement.

1.51 “Property”: All COUNTY Equipment and other COUNTY real and personal property.

1.52 “Proprietary Software”: All computer programs which were developed and owned by CONTRACTOR or Subcontractors prior to the Effective Date or which are developed during the term of this Agreement by CONTRACTOR Project Staff in performing work that is for the COUNTY, and any modifications thereof and derivative works based therein, and the documentation used to describe, maintain and use such Proprietary Software.

1.53 “Purchase Price(s)”: The price(s) for the purchase of each Deliverable, in whole or in part, as described in Exhibit A.

1.54 “Report(s)”: Documents provided by CONTRACTOR to COUNTY regarding Project activities, events and Services provided.

1.55 “Schedule”: The dates described in Exhibit I and subsequent Project Work Plans for deadlines for performance of Services and other Project events and activities.

1.56 “Self-Help Code”: Any back door, time bomb, drop dead device, or other computer software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program

(or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance or technical support.

1.57 "Services": The tasks and services to be performed by CONTRACTOR on the Project, as described in the Agreement, including without limitation Project management, testing, production and delivery of the Deliverables, Conversion, Implementation, Training, Warranty Services, Operations, Support, and Maintenance.

1.58 "Site(s)": The location(s) of health care centers under COUNTY control where health care services are delivered.

1.59 "Software": The SYSTEM, the Configuration, and all Enhancements thereto all in Object Code formats. Enhancements provided by CONTRACTOR prior to completion of the Project and during Operations, Support, and Maintenance shall be included as part of the Software.

1.60 "Source Code": The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is easily comprehensible to appropriately trained persons who translate such instructions into Object Code which then directs the computer to perform its Functions.

1.61 "Specifications": The technical and other written specifications that define the requirements for the SYSTEM and which are set forth in Exhibit E. Such Specifications shall include and be in compliance with all applicable COUNTY, State and federal policies, laws, regulations, and codes.

1.62 "State": The State of California.

1.63 "Statement of Work": The lists of tasks and responsibilities that must be completed by COUNTY and CONTRACTOR in order to implement the SYSTEM as described in Exhibit F.

1.64 "Subcontractor": A person, partnership, or company, not in the employment of or owned by CONTRACTOR, which is performing Services under this Agreement under a separate Agreement with or on behalf of CONTRACTOR.

1.65 "Support": The technical and customer support Services which are performed following Final SYSTEM Acceptance and are described in Section 12 and Section 13 of the Agreement.

1.66 "SYSTEM": The complete collection of all Software and Interfaces integrated and functioning together with the Data on the hardware in accordance with the applicable Specifications in Exhibit E. The SYSTEM, in whole and in part, is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of California, for purposes of this Agreement.

1.67 "SYSTEM Component": A self-contained function or capability of the SYSTEM that is defined as such in the Specifications in Exhibit E.

1.68 "SYSTEM Testing": Functional, integration, and other testing performed on the SYSTEM by CONTRACTOR after CONTRACTOR has completed design and development of the Configuration, and integrated the Software, Configuration, Data and Equipment as the SYSTEM, so that CONTRACTOR can provide Certification of the SYSTEM's readiness for applicable Acceptance Tests.

1.69 "SYSTEM Module": A separate, yet complete, sub-function or capability of the SYSTEM that is self-contained and described as such in the Specifications in Exhibit E.

1.70 "SYSTEM Failure": The time during which the System is not performing its business operations or Functions in accordance with the Specifications, as a result of reasons other than SYSTEM misuse by COUNTY. SYSTEM Failure begins when COUNTY notifies CONTRACTOR that the SYSTEM fails to be Operational. SYSTEM Failure continues until COUNTY determines the System has been returned to Operational status in accordance with the Specifications in Exhibit E. In the event of SYSTEM Failure following the Warranty Period, the provisions in Exhibit H shall control.

1.71 "Third-Party Software": Software that is developed by third parties (not including Subcontractors) and generally distributed for commercial use, and not specifically designed or developed for COUNTY, including without limitation operating system software, tools, utilities, database management systems, and commercial-off-the-shelf software.

1.72 "Training": The training Services to be provided by CONTRACTOR to COUNTY, as described in the Training Plan included in Exhibit F, and any Training Deliverable.

1.73 "Unauthorized Code": Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

1.74 "Uptime": The time that the SYSTEM is Operational, on a quarterly basis, except for mutually agreed upon scheduled maintenance activities. Uptime shall be as described in Exhibit G.

1.75 "User(s)": Parties who will have use of and access to the SYSTEM.

1.76 "Warranty Period": The 90 Day period beginning after the SYSTEM is fully Operational, during which CONTRACTOR shall provide Warranty Services, including making corrections to errors that were not discovered prior to Final Acceptance.

1.77 "Warranty Services": The Services to be provided to COUNTY by CONTRACTOR during the Warranty Period as described in Section 12 of this Agreement.

2. TERM.

The term shall begin on the Effective Date and shall continue for a period of five (5) years, unless earlier terminated as provided herein. COUNTY shall have the right to renew the term for up to three, three-year periods.

3. FINANCIAL MATTERS.

3.1 Purchase Prices

Except as otherwise provided herein and subject to COUNTY's receipt of a correct invoice, COUNTY shall pay CONTRACTOR the fixed Purchase Price for each Deliverable as described in Exhibit A and in accordance with the Payment Schedule set forth in Exhibit B.

3.2 Charges

Except as otherwise provided herein and upon COUNTY's receipt of a correct invoice, COUNTY shall pay the undisputed Charges for the Services in accordance with the payment schedule set forth in Exhibit B within 60 Days of receipt of such an invoice for Services provided.

3.3 Maximum Amount

The Maximum Amount payable under the terms of this Agreement shall be \$936,195 as set forth in Exhibit A.

3.4 Transportation and Insurance Charges

COUNTY shall pay the costs associated with transportation, delivery and insurance for each Deliverable, if any.

3.5 Taxes

Prices listed on Exhibit A do not include sales, use, gross receipts, excise, valued-added, services or any similar transaction or consumption taxes. COUNTY acknowledges and agrees it shall be responsible for the payment of any such taxes to CONTRACTOR unless it otherwise timely provides CONTRACTOR with a valid exemption certificate or direct pay permit. In the event CONTRACTOR is assessed taxes, interest and penalty by any taxing authority, COUNTY agrees to reimburse CONTRACTOR for any such taxes, including any interest or penalty assessed thereon. Each party is responsible for any personal property or real estate taxes on property that the party owns or leases, for franchise and privilege taxes on its business, for taxes based on its net income or gross receipts, or for taxes that include, but are not limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

3.6 Contractor Expenses

COUNTY shall pay CONTRACTOR's reasonable out-of-pocket expenses, currently estimated to be \$48,000 as specified in Exhibit A, footnote 5 of Professional Services, and subject to the Maximum Amount which are pre-approved in writing and which are incurred in connection with providing the Services, such as travel, transportation, food and lodging incurred by CONTRACTOR in its performance of this Agreement. Travel related expenses are chargeable from the CONTRACTOR's facility from which the servicing employee originates. However, CONTRACTOR shall be responsible for payment of all expenses related to salaries, benefits, and employment taxes, and insurance for its Project Staff.

3.7 Invoices

CONTRACTOR shall submit correct invoices to the COUNTY Project Manager during the Project and during Maintenance for all Charges, Purchase Prices and other amounts to be paid by COUNTY hereunder. All invoices submitted must meet with the approval of the COUNTY Project Manager during the Project and the COUNTY Project Director during Operations, Support and Maintenance or their designees prior to payment. CONTRACTOR shall only submit invoices for Services or Deliverables as permitted by this Section 3.7 of the Agreement. COUNTY will return incorrect or incomplete invoices to CONTRACTOR for correction and reissue. The Agreement and purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must reference this Agreement and provide detailed information and in a format as requested by COUNTY, including without limitation:

- 3.7.1 CONTRACTOR name, address, telephone number and federal tax identification number;
- 3.7.2 An itemization of each Deliverable;
- 3.7.3 The Deliverable for which payment is sought and the Acceptance date triggering payment;

- 3.7.4 Applicable Purchase Prices and Charges;
- 3.7.5 Date of delivery and/or date of installation, as applicable;
- 3.7.6 Any other Project costs with a detailed, itemization of such costs, if applicable;
- 3.7.7 Sales or use taxes, if applicable;
- 3.7.8 Credits and offsets, if any; and
- 3.7.9 Total amount due.

3.8 Funding

3.8.1 The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to COUNTY by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of COUNTY to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

3.8.2 If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to COUNTY by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of COUNTY to make payments will be delayed or be reduced accordingly or COUNTY shall have the right to terminate the Agreement as provided in Section 22.7. If such funding is reduced, COUNTY in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, COUNTY will pay CONTRACTOR for Services and Deliverables and certain of its costs. Any obligation to pay by COUNTY will not extend beyond the end of COUNTY's then-current funding period.

3.8.3 CONTRACTOR expressly agrees that no penalty or damages shall be applied to, or shall accrue to, COUNTY in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

3.9 Overpayments to Contractor

CONTRACTOR shall promptly, but in all cases within 60 Days, pay to COUNTY the full amount of any erroneous payment or overpayment upon Notice by COUNTY of an erroneous payment or overpayment to which CONTRACTOR is not entitled. If CONTRACTOR fails to make such a timely refund after receipt of such Notice, COUNTY may charge CONTRACTOR one percent (1%) per month on the amount due until paid in full.

3.10 Advance Payments Prohibited

No advance payment shall be made for goods or Services furnished by CONTRACTOR pursuant to this Agreement.

3.11 Credits

Any credits due COUNTY under this Agreement may be applied against CONTRACTOR's invoices with appropriate information attached, upon giving of Notice required herein, if any, by COUNTY to CONTRACTOR.

3.12 No Increases

CONTRACTOR shall not increase the Maximum Amount due from COUNTY under Exhibit A for all Services and Deliverables, Purchase Prices, or other Charges during the term of this Agreement.

4. PROJECT MANAGEMENT

4.1 Reports and Meetings

4.1.1 CONTRACTOR shall produce the Reports and the parties shall participate in the meetings, as described in Exhibit F, in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference in COUNTY's sole discretion. All Reports shall be produced in formats approved by COUNTY and delivered in accordance with the Schedule and the terms of this Agreement.

4.1.2 Regularly, as scheduled, the CONTRACTOR Project Manager and other identified Project Staff shall attend status meetings with the COUNTY Project Manager and other members of COUNTY's Project team during the Project. These meetings may be conducted by telephone conference at COUNTY's request. These status meetings shall follow a preset agenda jointly prepared by the CONTRACTOR Project Manager and COUNTY Project Manager, but will also allow both CONTRACTOR and COUNTY to discuss other issues that may concern either party. CONTRACTOR shall provide written status Reports as requested by COUNTY. CONTRACTOR's proposed format and level of detail for the status Reports shall be subject to COUNTY's approval. In addition, the CONTRACTOR Project Manager will update the Project Work Plan in Microsoft Project format as requested by COUNTY.

4.1.3 As reasonably requested by COUNTY, the CONTRACTOR Project Manager shall assist the COUNTY Project Manager in preparing and shall prepare special Reports and presentations related to the Project management. The CONTRACTOR Project Manager shall also provide or produce such Reports or information as are reasonably requested by the COUNTY Project Manager regarding the Project.

4.2 Contractor Project Manager

4.2.1 CONTRACTOR shall assign to the Project a CONTRACTOR Project Manager of a management level sufficient to assure timely responses from all CONTRACTOR personnel and whose resume and qualifications will be reviewed and approved by COUNTY prior to his or her appointment as CONTRACTOR Project Manager. The approval process may include, at COUNTY's discretion, an interview with the proposed CONTRACTOR Project Manager and a criminal background check. COUNTY will not unreasonably delay or deny approval of the CONTRACTOR Project Manager. The CONTRACTOR Project Manager shall be responsible for acting as a liaison with the COUNTY Project Manager.

4.2.2 CONTRACTOR agrees and represents that the CONTRACTOR Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The CONTRACTOR Project Manager shall function as CONTRACTOR's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The CONTRACTOR Project Manager shall be able to make binding decisions consistent with the terms of this Agreement for CONTRACTOR. The CONTRACTOR Project Manager or other substitute Project management personnel for CONTRACTOR shall be reasonably available to travel to the Site as requested by the COUNTY Project Manager, and as specified in Exhibit F, until completion of the Warranty Services.

4.2.3 The CONTRACTOR Project Manager shall not be changed from the person identified in Exhibit C except as provided in Section 4.3.2. If the CONTRACTOR Project Manager is removed or replaced, CONTRACTOR will promptly provide Notice to COUNTY, submit a resume, and obtain approval of the replacement CONTRACTOR Project Manager from COUNTY, prior to his or her beginning work on the Project.

4.2.4 Any written commitment by the CONTRACTOR Project Manager and persons designated by him or her in writing for this purpose, within the scope of his or her authority as set forth in this Agreement, shall be binding upon CONTRACTOR.

4.3 Contractor Project Staff

4.3.1 CONTRACTOR shall provide to COUNTY an organization chart of CONTRACTOR's Project Staff, and shall set forth the names of Project Staff for the Project and positions during Operations, Support, and Maintenance as Exhibit C; provided, however, CONTRACTOR may not have a complete list of its Project Staff prior to the Effective Date and CONTRACTOR will provide its complete list to COUNTY as soon as possible thereafter.

4.3.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, CONTRACTOR will use reasonable commercial efforts not to change the Project Staff during the Project from the individuals identified in Exhibit C and until Acceptance of the SYSTEM and will provide the COUNTY with prompt written notice regarding any such changes. During the term of the Agreement, COUNTY reserves the right in its reasonable commercial judgment to approve or disapprove CONTRACTOR's and any Subcontractor's Project Staff assigned to this Project, to approve or disapprove any proposed changes in Project Staff, or to require the removal or reassignment of any CONTRACTOR or Subcontractor Project Staff found unacceptable by COUNTY. CONTRACTOR shall provide COUNTY with a resume of any member of its Project Staff identified in Exhibit C or a Subcontractor's Project Staff assigned to, or who may be assigned to, any aspect of the performance of this Agreement prior to commencing any Services.

4.3.3 All Project Staff proposed by CONTRACTOR as replacements for other Project Staff shall have comparable or greater skills for performing the activities as performed by the Project Staff being replaced.

4.3.4 CONTRACTOR assumes sole and full responsibility for its acts and the acts of its personnel. CONTRACTOR understands and agrees that COUNTY does not assume liability for the actions of CONTRACTOR's Subcontractors or agents. CONTRACTOR agrees that it has no right to indemnification or contribution from COUNTY for any judgments finally rendered by a court of competent jurisdiction against CONTRACTOR, its Subcontractors or agents for violations of labor laws or workers' compensation claims, as examples.

4.3.5 CONTRACTOR agrees that any claim on behalf of any person arising out of employment or alleged employment by CONTRACTOR (including, but not limited to, claims of discrimination against CONTRACTOR, its officers, or its agents) are the sole responsibility of CONTRACTOR and are not the responsibility of COUNTY. CONTRACTOR will indemnify and hold COUNTY harmless from any and all such claims asserted against COUNTY. Any person who alleges a claim arising out of employment or alleged employment by CONTRACTOR will not be entitled to any compensation, rights, or benefits from COUNTY (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.4 County Project Manager

The CONTRACTOR Project Manager's primary point of contact in matters of Project management shall be the COUNTY Project Manager. The COUNTY Project Manager or his or her designee or successor will manage this Agreement on behalf of COUNTY and will be the principal point of contact for the CONTRACTOR concerning CONTRACTOR's performance under this Agreement.

4.5 Records Retention and Access Requirements

4.5.1 CONTRACTOR shall agree to the conditions of all applicable County, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, CONTRACTOR shall agree to the terms set forth below regarding retention of records and access for County, State and federal government officials.

4.5.2 CONTRACTOR and its Subcontractors shall maintain original books, records, documents and other evidence that sufficiently and properly reflects the accuracy of amounts billed to COUNTY during the performance of this Agreement and shall retain all such records for four (4) years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within six (6) years from the date of expiration or termination of this Agreement.

4.5.3 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the COUNTY Project Director and/or County, State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items will be provided within Santa Barbara County. During the four-year period after this Agreement term or one-year term following litigation, delivery of and access to these items will be at no cost to COUNTY. CONTRACTOR shall be responsible for any audit exceptions or disallowed costs incurred by CONTRACTOR or any of its Subcontractors.

4.5.4 CONTRACTOR, in any of its subcontracts with Subcontractors, shall include the records retention and review requirements of this Section. CONTRACTOR's personnel shall accompany COUNTY's personnel at all times during any examination, inspection, review or audit of Subcontractor's records. CONTRACTOR shall make no charges for services rendered in connection with an audit requested by COUNTY.

4.5.5 CONTRACTOR shall provide a reasonable right of access during normal business hours to its facilities to COUNTY, or any of COUNTY's officers or to any other authorized agent or official of the State of California or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement. COUNTY shall use its best efforts to ensure that such monitoring and evaluation is done in a manner that will not disrupt CONTRACTOR's workflow.

4.5.6 As part of the Services, CONTRACTOR shall provide, upon COUNTY's request, a copy of those portions of CONTRACTOR's and its Subcontractors' internal audit reports relating to the Services provided to COUNTY under this Agreement.

4.6 Accounting Requirements

CONTRACTOR shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain

records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

4.7 Supplemental Contracts

COUNTY may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. CONTRACTOR shall cooperate with such other contractors and COUNTY in all such cases to the extent agreed to by COUNTY and CONTRACTOR pursuant to this Agreement or by Change Order. CONTRACTOR shall ensure that all Subcontractors that it hires to provide the services contemplated by this Agreement shall abide by this provision. It is understood and agreed by the parties hereto that CONTRACTOR shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that CONTRACTOR shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of CONTRACTOR.

5. SERVICES AND RESOURCES

5.1 Performance

CONTRACTOR shall begin to perform the Services on the Effective Date. CONTRACTOR shall perform the Services as described in this Agreement and in accordance with the Project Work Plan and Exhibit F.

5.2 Necessary Resources

CONTRACTOR shall provide the personnel and all other materials and resources necessary for the performance of the Services as set forth in this Agreement and the Exhibits hereto.

5.3 Ownership

Title to all Property furnished by COUNTY shall remain in COUNTY. Title to all Property purchased by CONTRACTOR, for which CONTRACTOR has been reimbursed by COUNTY under this Agreement, shall pass to and vest in COUNTY upon the earlier of Acceptance of the applicable Deliverable in which the Property is included, or Acceptance of the SYSTEM, unless otherwise provided in the Agreement. Nothing in this Section is intended to grant any ownership, right or license not specifically granted to COUNTY in this Agreement regarding CONTRACTOR's Application Software or any other intangible assets of CONTRACTOR.

5.4 Use of Property

Any Property furnished to CONTRACTOR shall, unless otherwise provided herein, or approved in writing by the COUNTY Project Manager, be used only for the performance of its obligations under and subject to the terms of this Agreement.

5.5 Damage to Property

CONTRACTOR shall protect and be responsible for any loss, destruction, or damage to Property that results from or is caused by CONTRACTOR's willful misconduct or negligent acts or omissions or from the failure on the part of CONTRACTOR to maintain and administer that Property in accordance with sound management practices. Notwithstanding anything to the contrary herein, CONTRACTOR shall be liable to COUNTY for any damages resulting from damage to Property, which damages result from or are caused by CONTRACTOR's willful misconduct or negligence. CONTRACTOR shall ensure that the Property is returned to COUNTY in like condition to that in which it was furnished to CONTRACTOR, reasonable wear and tear excepted. CONTRACTOR shall repair or make good any

such damage, destruction or loss at any COUNTY Site, and shall do so without requesting contribution from COUNTY or assistance from COUNTY officers or employees.

5.6 Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, CONTRACTOR shall notify the COUNTY Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

5.7 Surrender of Property

CONTRACTOR shall surrender to COUNTY all Property upon the earliest of completion, termination, or cancellation of this Agreement.

5.8 County Property and Facility

COUNTY will provide CONTRACTOR access to and use of the COUNTY Equipment for development, testing and implementation of the SYSTEM and other Property as described in Exhibit F and the Project Work Plan. CONTRACTOR's use of the COUNTY Equipment shall be subject to COUNTY's security, administrative and other requirements.

6. EQUIPMENT

COUNTY has purchased Equipment for operating the SYSTEM from CONTRACTOR pursuant to the terms and conditions of COUNTY Purchase Order #CN11925. COUNTY Purchase Order #CN11925 is attached to this Agreement as Exhibit K for reference.

7. DELIVERABLES

7.1 General

7.1.1 CONTRACTOR shall provide COUNTY with the Deliverables according to the Project Work Plan and Exhibit F, and as described in other parts of this Agreement. CONTRACTOR shall utilize the Specifications in Exhibit E, the Project Work Plan, Exhibit F, the Deliverables for which COUNTY has previously granted Acceptance, CONTRACTOR's professional knowledge, and this Agreement as the basis of subsequent Deliverables. CONTRACTOR shall retain backup copies in writing and on electronic media of all Deliverables until 180 Days after termination or expiration of this Agreement and shall provide COUNTY on its request with a copy thereof until that time.

7.1.2 All Deliverables shall be subject to COUNTY's Acceptance, including without limitation, Deliverables provided pursuant to Change Orders. COUNTY's review of Deliverables shall be in accordance with the time frames therefore set forth in the Project Work Plan and Exhibit F. CONTRACTOR shall provide Deliverables in a manner that meets the Specifications in Exhibit E, and this Agreement.

7.2 Project Work Plan

7.2.1 The initial Project Work Plan is attached to this Agreement as Exhibit I. The parties acknowledge that the Project Work Plan is an evolving document that will be changed throughout the term of the Agreement. Changes to the Project Work Plan shall not require a Change Order.

7.2.2 CONTRACTOR shall provide updates to the Project Work Plan as reasonably requested by COUNTY, and as otherwise necessary throughout the Project to accurately reflect the

status of activities, tasks, events, Services, and projected Schedules for such activities, tasks, events and Services. The Project Work Plan shall provide detailed information, in a Microsoft Project (Version 2003) document, including but not limited to, tasks, Deliverables, Schedules, task dependencies, and identification of resource requirements, in relation to the Payment Schedule (Exhibit B). The Project Work Plan shall be inclusive of the mutual expectations and work to be performed by COUNTY and CONTRACTOR in order to complete the Project successfully. Each party must agree upon any such update changes prior to their final incorporation into the Project Work Plan. However, COUNTY's agreement on a change to the Project Work Plan shall not relieve CONTRACTOR of liability for damages arising from such failures to perform its obligations as required herein unless COUNTY otherwise specifically agrees in writing to waive such damages. CONTRACTOR shall maintain and transmit updated copies of its detailed Project Work Plans to COUNTY.

7.2.3 The Schedule shall not change as a result of time required by CONTRACTOR to correct Deficiencies, unless otherwise agreed beforehand in writing by COUNTY. However, the Schedule shall be extended on a day-to-day basis to the extent that COUNTY's review of a Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process and Acceptance Test Plan is longer than described in the Schedule.

7.3 General Acceptance Process for Deliverables

7.3.1 Upon delivery of a Deliverable and receipt of Certification from CONTRACTOR that the Deliverable meets its Specifications, CONTRACTOR shall demonstrate to the COUNTY's reasonable satisfaction that the Deliverable actually does meet its Specifications and materially conforms to its applicable Acceptance Criteria. COUNTY will provide Acceptance for a Deliverable if it has no Deficiencies. However, if a Deficiency is found, COUNTY will notify CONTRACTOR in an e-mail or other document of Deficiencies used as the grounds for COUNTY's decision not to give Acceptance. CONTRACTOR shall correct Deficiencies and resubmit a corrected Deliverable to COUNTY and again demonstrate to the COUNTY's satisfaction that the Deliverable meets its Specifications and materially conforms to its applicable Acceptance Criteria. This process will continue until the COUNTY provides acceptance to the Deliverable. CONTRACTOR's times for correcting Deficiencies and COUNTY's review of Deliverables shall be in accordance with the timeframes therefore set in the Project Work Plan and Exhibit F. If time periods for correcting Deficiencies by CONTRACTOR and reviewing and retesting corrected Deliverables are not in the Project Work Plan and Exhibit F, each such time period shall be ten (10) business days.

7.3.2 If CONTRACTOR is unable to materially correct all Deficiencies within the number of days indicated in the Project Work Plan and Exhibit F following the Deliverable's scheduled Acceptance, or if no such date is in the Project Work Plan and Exhibit F within 60 Days from such scheduled Acceptance, COUNTY may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require CONTRACTOR to continue until Deficiencies are materially corrected or eliminated; (b) request CONTRACTOR to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; or (c) after completion of the process set forth in this Section 7.3 and providing Notice of default to CONTRACTOR, terminate this Agreement as described in Section 22.2.

7.4 System Acceptance Tests

7.4.1 Performance. Following receipt of notice from CONTRACTOR that Certification has occurred for the SYSTEM or one of the SYSTEM Modules, CONTRACTOR shall begin in a time frame and location agreeable to the COUNTY, to perform SYSTEM Acceptance Tests on the SYSTEM or one of the SYSTEM Modules to demonstrate to COUNTY that the SYSTEM or one of the SYSTEM Modules performs without Deficiency. The COUNTY Project Manager or designee will witness all

SYSTEM Acceptance Tests performed by the CONTRACTOR. If COUNTY performs any SYSTEM Acceptance Tests, CONTRACTOR shall assist COUNTY as reasonably requested in performing such SYSTEM Acceptance Tests at no additional cost to COUNTY. CONTRACTOR will also perform SYSTEM Acceptance Tests with or without COUNTY's assistance, at no additional cost to COUNTY, on any replacement or substitute Software component added after completion of a successful SYSTEM Acceptance Test for the SYSTEM or a SYSTEM Module. Performance under this Section shall materially conform to the requirements of Exhibit F and Exhibit G.

7.4.2 Acceptance. COUNTY will provide SYSTEM Acceptance for the SYSTEM if it has no Deficiencies during these SYSTEM Acceptance Tests. However, if a Deficiency occurs during these SYSTEM Acceptance Tests, COUNTY shall give CONTRACTOR Notice of its non-acceptance of the SYSTEM, with such Notice delineating Deficiencies used as the grounds for COUNTY's decision. CONTRACTOR shall promptly correct Deficiencies provided to CONTRACTOR in any Notice(s) of non-acceptance from COUNTY. CONTRACTOR may consider a Deliverable accepted by COUNTY if, after ninety (90) Days following a Delivery Date, COUNTY has not provided CONTRACTOR with Notice of non-acceptance.

7.4.3 Retesting and Correction. After CONTRACTOR has corrected such Deficiencies, COUNTY shall verify whether the SYSTEM or SYSTEM Module materially satisfies the SYSTEM Acceptance Tests and in writing shall either accept or not accept the SYSTEM following such re-tests. If CONTRACTOR corrects all Deficiencies in the SYSTEM or SYSTEM Module, which then successfully perform the SYSTEM Acceptance Tests without Deficiencies, COUNTY shall give CONTRACTOR SYSTEM or SYSTEM Module Acceptance therefor.

7.4.4 Inability to Correct Deficiencies. If CONTRACTOR is unable to correct all Deficiencies in the SYSTEM or a SYSTEM Module within the number of days of the SYSTEM's Certification as required in the Project Work Plan and/or Exhibit F, or if no such date is in the Project Work Plan or Exhibit F, within 60 Days from such Certification, COUNTY may, at its option: immediately terminate the Agreement as described in Section 22.2, which termination shall be deemed to be due to CONTRACTOR's default, without penalty to COUNTY and, at COUNTY's option, require CONTRACTOR to remove the SYSTEM, in whole or in part, from the Equipment; request CONTRACTOR to replace the SYSTEM for further SYSTEM Acceptance Tests; or continue performing SYSTEM Acceptance Tests on the SYSTEM or SYSTEM Module and require CONTRACTOR to continue until Deficiencies are corrected. In the event COUNTY terminates the Agreement as provided above in this Section, CONTRACTOR shall return to COUNTY all amounts paid by COUNTY for the SYSTEM or SYSTEM Module to the extent it is returned by COUNTY. COUNTY's option to terminate this Agreement shall remain in effect until the expiration of the Warranty Period.

7.5 Protection From Damage

CONTRACTOR shall use reasonable commercial efforts to continuously protect all Deliverables and backups therefore prior to their Acceptance and while in CONTRACTOR's possession or control from damage, destruction or loss resulting from or caused by the acts, omissions or negligence of CONTRACTOR in connection with the Services. CONTRACTOR shall ship all Deliverables purchased pursuant to this Agreement, FOB COUNTY's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. During the period Deliverables are in transit and in possession of CONTRACTOR, its carriers or COUNTY prior to their Acceptance, CONTRACTOR and its insurers, if any, shall relieve COUNTY of responsibility for all risks of loss or damage thereto, unless such loss or damage are caused by the negligence or misconduct of COUNTY. After COUNTY provides Acceptance for a Deliverable, the risk of loss or damage shall be borne by COUNTY, except loss or damage attributable to CONTRACTOR's acts or omissions.

7.6 Delivery

CONTRACTOR shall deliver the Deliverables pursuant to this Agreement on or before the applicable Delivery Dates in the Project Work Plan and/or Exhibit F. All such deliveries made pursuant to this Agreement must be complete. CONTRACTOR shall deliver hard copy and electronic versions of the Deliverables in formats agreed to by the parties. All packages must be accompanied by a packing slip that identifies all items included with the shipment and COUNTY's purchase order number. An authorized representative of COUNTY must sign CONTRACTOR's delivery receipt for all deliveries made hereunder.

7.7 Interpretation of Deliverables

In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents comprising this Agreement, including without limitation, a Deliverable that has already received Acceptance, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest COUNTY-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications without the written consent of the COUNTY Project Manager.

7.8 Representation

By submitting a Deliverable, CONTRACTOR represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, materially meet the Specifications and objectives stated or referred to in this Agreement. By unconditionally giving Acceptance for a Deliverable, COUNTY represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

7.9 Knowledge Transfer

While constructing and developing the Deliverables, CONTRACTOR shall demonstrate and provide information to staff designated by COUNTY about the Functions and operations of all such delivered SYSTEM Components in accordance with the Specifications, the Project Work Plan and Exhibit F.

8. LICENSES.

8.1 Grants

CONTRACTOR hereby grants to COUNTY a nonexclusive, non-transferable, perpetual license to use, for COUNTY's internal business purposes only, the Software provided hereunder to COUNTY, subject to the license scope and other restrictions set forth in this Agreement. COUNTY may permit its employees, agents, independent contractors and healthcare providers with privileges at COUNTY's facilities to use the Software consistent with this Agreement; provided, however, that COUNTY shall be responsible for any acts of its employees, agents, and/or independent contractors which are inconsistent with this Agreement. Entities over which COUNTY has control may use the Software only by agreeing to be bound by this Agreement and by paying any applicable license fees. Independent contractors that supply products comparable to the Software shall be provided access to the Software only if CONTRACTOR has provided its prior written consent and subject to any applicable conditions required by CONTRACTOR, including any conditions that CONTRACTOR deems appropriate to protect confidential and proprietary information relating to CONTRACTOR's products.

8.2 Term

The licenses hereunder are granted as of the date of delivery to or availability for COUNTY and continue until COUNTY returns the Software and Third-Party Software and copies thereof to CONTRACTOR, erases such Software and Third-Party Software from its Equipment's storage media, or decides to cease accessing the SYSTEM on the Equipment, as applicable.

8.3 Title

CONTRACTOR and/or its licensors, as applicable, retain all ownership and intellectual property rights to the Software. If COUNTY acquires any rights to the Software, COUNTY hereby assigns all of those rights to CONTRACTOR or its licensors, as applicable. No rights are granted (whether by implied license or otherwise) to COUNTY except as expressly provided in this Agreement.

8.4 Documentation

CONTRACTOR shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and written format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while CONTRACTOR is providing Services therefore. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. CONTRACTOR's Documentation shall be comprehensive, well structured, and indexed for easy reference. If CONTRACTOR maintains its obligations set forth in this Section by providing COUNTY access to its web-based Documentation information, CONTRACTOR may also provide such information on CD-ROM. CONTRACTOR grants COUNTY a nonexclusive, perpetual, non-transferrable right to use, modify and reproduce the Documentation furnished pursuant to this Section at no additional charge.

8.5 Copies

COUNTY may make a reasonable number of copies of the Software in machine readable form solely for backup, training, testing or archival purposes, so long as applicable license fees are paid. COUNTY shall reproduce on any such copy the copyright notice and any other proprietary legends that were on the original copy.

8.6 Restrictions

COUNTY agrees not to:

8.6.1 display, sublicense, transmit, distribute, rent, lease, loan, resell, provide service bureau or subscription services, sell, time share or otherwise transfer or make available the Software to any other person or entity, unless expressly provided otherwise under this Agreement;

8.6.2 electronically transfer the Software outside COUNTY's intranet or network dedicated for the Software, unless otherwise authorized in writing by CONTRACTOR;

8.6.3 directly or indirectly decompile, disassemble, reverse engineer or otherwise attempt to learn the source code, structure, algorithms or ideas underlying the Software or reduce the Software to human-perceivable form;

8.6.4 modify or translate the Software or create derivative works based thereon, except that to the extent applicable, the Software may be configured as specifically permitted in the documentation;

8.6.5 remove, obscure or modify any markings, labels or any notice of the proprietary rights, including copyright, patent and trademark notices of CONTRACTOR or its vendors from any media or documentation;

8.6.6 publicly release the results of any testing or benchmarking of the Software without the prior written consent of CONTRACTOR.

8.7 Replacements

COUNTY shall be entitled to exercise its rights to the SYSTEM on the Equipment or any replacement equipment used by COUNTY, and with any replacement Third-Party Software chosen by COUNTY without payment of additional Charges, Purchase Prices or other amounts.

8.8 Third-Party Software Licenses

Prior to utilizing any Third-Party Software product that may be included as part of a Software Deliverable to COUNTY and that could be licensed directly to COUNTY by the licensor if the Third-Party Software would be installed on COUNTY Equipment, CONTRACTOR shall provide to COUNTY copies of any applicable license agreement from the licensor of the Third-Party Software to allow COUNTY to pre-approve such license agreement. CONTRACTOR shall pass through to COUNTY such applicable licenses for the Third-Party Software upon Acceptance of the SYSTEM. Once approved, COUNTY agrees to use any Third-Party Software provided by CONTRACTOR only together with CONTRACTOR's Software and to comply with all restrictions on the use of that Third-Party Software included in any click or shrink wrap license or of which CONTRACTOR makes COUNTY aware.

8.9 Versions

Unless otherwise mutually agreed to in writing, CONTRACTOR shall, during the Project, maintain any and all Third-Party Software products at their most current version or no more than one version back from the most current version with no additional charge, provided that such Third-Party Software version upgrades can be installed and maintained with the Staff proposed in Exhibit C. However, CONTRACTOR shall not maintain any Third-Party Software versions including one version back, if any such version would prevent COUNTY from using any functions, in whole or in part, or would cause Deficiencies in the SYSTEM. If implementation of an upgrade to a Third-party Software product requires personnel in addition to the Staff proposed in Exhibit C, COUNTY and CONTRACTOR shall discuss whether to implement such an upgrade, and if mutually agreed upon in writing, the additional Charges, if any, to be paid by COUNTY for such upgrade. Any additional costs that are charged by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by CONTRACTOR. CONTRACTOR shall ensure that the upgrade to any new versions shall not impact the SYSTEM's ability to materially conform to the Specifications in Exhibit E.

9. OWNERSHIP.

COUNTY shall own all right, title and interest in and to its Confidential Information; COUNTY's intellectual property; the COUNTY Equipment; the Data; and any interfaces independently developed by COUNTY to query the SYSTEM.

10. IMPLEMENTATION.

10.1 Implementation Phases

COUNTY shall implement the SYSTEM in phases, deploying CONTRACTOR's Software, Centricity, in the ten clinics according to the Project Work Plan and Section 3 of Exhibit F. COUNTY and

CONTRACTOR agree that full Implementation of the SYSTEM shall occur no later than December 31, 2012, regardless of the number of clinics then implemented.

10.2 Conversion

CONTRACTOR shall participate in and perform Services for Conversion as described in Exhibit F and the Project Work Plan.

10.3 Pre-Loading

CONTRACTOR shall participate in and perform Pre-Loading services as described in Exhibit F and the Project Work Plan.

10.4 Training

CONTRACTOR shall provide Training Services as described in Exhibit F and the Project Work Plan.

11. WARRANTIES.

11.1 Deliverables

CONTRACTOR represents and warrants that each Deliverable, including without limitation, the SYSTEM, shall materially conform to its Specifications as provided herein during the Warranty Period and thereafter. During the Warranty Period, CONTRACTOR shall immediately repair or replace each of the Deliverables that does not materially conform to its Specifications as provided herein, subject to CONTRACTOR's warranty obligations as set forth herein and in Exhibit H.

11.2 Services

11.2.1 CONTRACTOR represents and warrants that during the Warranty Period:

11.2.1.1 It shall perform all Services required pursuant to this Agreement in a professional manner, with high quality; and

11.2.1.2 It shall give high priority to the performance of the Services; and

11.2.1.3 Contractor shall use its best efforts to provide timely performance with respect to the Critical Events.

11.2.2 CONTRACTOR shall immediately re-perform Services that are not in material compliance with such representations and warranties and the Specifications and other Exhibits set forth herein at no cost to COUNTY.

11.3 HITECH Act Certification

CONTRACTOR will use diligent efforts to obtain certification for the software as Certified EHR Technology under the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as those certification requirements may evolve over time. If CONTRACTOR fails to obtain certification within ninety (90) Days after the beginning of the applicable reporting period in a payment year that COUNTY is actively seeking to demonstrate "Meaningful Use," CONTRACTOR will credit the standard Support services fees for such Software for each month during which the Software is not certified (up to a maximum of 6 months) against future Support fees. The foregoing is COUNTY's sole and exclusive remedy in the event CONTRACTOR fails to obtain certification.

CONTRACTOR will keep COUNTY informed of CONTRACTOR's certification status by posting such status at www.gehealthcare.com/hitech (or some other location that of which CONTRACTOR may inform COUNTY). It is COUNTY's responsibility to ensure COUNTY meets all the requirements to qualify for the incentive payments, including "Meaningful Use", and to confirm that the CONTRACTOR Software COUNTY is using is certified according to HITECH criteria.

CONTRACTOR's obligations under this section apply only to the then-most current version of CONTRACTOR's Software, Centricity EMR. CONTRACTOR's obligations are contingent upon COUNTY then-receiving and paying for Support and Maintenance Services and complying with the requirements of Exhibit H and, if CONTRACTOR so requires, upon COUNTY installing software fixes, patches or updates or migrating to a new or different CONTRACTOR software offering.

11.4 Date/Time Compliance Warranty

11.4.1 CONTRACTOR warrants that the SYSTEM and all data-related output or results produced by the SYSTEM: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by COUNTY that may deliver date records from the SYSTEM, or interact with date records of the SYSTEM.

11.4.2 In the event of a breach of these warranties, CONTRACTOR shall immediately assign at least one knowledgeable and qualified Project Staff representative, who will begin work after telephonic notice by COUNTY on curing such breaches. This representative will be dedicated to remedy the Deficiency, failure, malfunction, defect, or problem.

11.5 No Surreptitious Code

11.5.1 CONTRACTOR warrants to COUNTY that the SYSTEM and CONTRACTOR Technology provided to COUNTY under this Agreement shall at the time of delivery contain no Self-Help Code or Unauthorized Code. CONTRACTOR further warrants that CONTRACTOR shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies CONTRACTOR of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict COUNTY's authorized use of or access to the SYSTEM, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation, frequency or duration of use for any copy of the SYSTEM provided to COUNTY under this Agreement.

11.5.2 CONTRACTOR will defend COUNTY against any claim, and indemnify and hold harmless COUNTY against any loss, liability, claim, damages or expense arising out of any breach of this warranty.

11.6 Physical Media Warranty

CONTRACTOR warrants that each copy of the SYSTEM provided by CONTRACTOR is and will be free from physical defects in the media that tangibly embodies the copy. CONTRACTOR shall replace, at CONTRACTOR's expense, any SYSTEM provided by CONTRACTOR that does not comply with this warranty.

11.7 Safety and Health

CONTRACTOR represents and warrants that the Deliverables, when delivered to COUNTY, are designed and manufactured to comply with then current federal and State safety and health regulations. CONTRACTOR agrees to indemnify, defend, and hold COUNTY harmless from all damages assessed

against COUNTY as a result of the failure of the Deliverables furnished under this Agreement to so comply.

11.8 Authorization

CONTRACTOR represents and warrants that:

11.8.1 CONTRACTOR is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

11.8.2 It has the full power and authority to grant to COUNTY the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by CONTRACTOR;

11.8.3 The execution, delivery and performance of this Agreement has been duly authorized by CONTRACTOR and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for CONTRACTOR to enter into this Agreement and perform its obligations under this Agreement;

11.8.4 The person executing this Agreement for CONTRACTOR has actual authority to bind CONTRACTOR to each and every term, condition and obligation to this Agreement, and that all requirements of CONTRACTOR have been fulfilled to provide such actual authority;

11.8.5 CONTRACTOR is duly authorized to conduct business in and is in good standing in each jurisdiction in which CONTRACTOR will conduct business in connection with this Agreement;

11.8.6 CONTRACTOR has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of CONTRACTOR's performance of the Services; and

11.8.7 CONTRACTOR shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services; and CONTRACTOR will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

11.9 Ability To Perform

CONTRACTOR represents and warrants that:

11.9.1 CONTRACTOR has the financial stability to carry out at least six (6) months of Services, including Operations, Support and Maintenance during any period of this Agreement without reimbursement for the Services or expenses;

11.9.2 CONTRACTOR has the financial resources to fund the capital expenditures, if any, required under the Agreement without advances by COUNTY or assignment of any payments by COUNTY to a financing source;

11.9.3 Each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement; and

11.9.4 CONTRACTOR's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by stage, segment, or cost objective in order to support Change Order accounting.

11.10 Breach of Warranty

If there is any breach of a warranty contained in this Section 11 during the Warranty Period and CONTRACTOR cannot substantially correct such breach in a commercially reasonable manner within ninety (90) Days after receiving written Notice from COUNTY, COUNTY may terminate this Agreement and obtain a refund of the applicable license fee.

11.11 Disclaimers

WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

12. SUPPORT AND MAINTENANCE SERVICES DURING THE WARRANTY PERIOD.

12.1 General Responsibilities

CONTRACTOR shall perform the Services described in this Section 12 through the Warranty Period. CONTRACTOR's Service responsibilities shall include but not be limited to the following while assisting COUNTY during the Warranty Period:

12.1.1 Promptly repair or replace the System, or any portion thereof, that has Deficiencies;

12.1.2 Maintain the System in accordance with the Specifications and terms of this Agreement;

12.1.3 Re-perform any Service that fails to meet the requirements of this Agreement at no additional cost;

12.1.4 Propose revisions to the Software as necessary to meet COUNTY's Processing needs;

12.1.5 Coordinate with COUNTY all tasks related to correcting problems and Deficiencies connected with the Software or the Equipment; and

12.1.6 Execute on-line diagnostics from a remote CONTRACTOR location solely to assist in the identification and isolation of suspected Deficiencies.

12.1.7 CONTRACTOR will provide Support and Maintenance for the current release (major and/or minor releases) of each of its maintained Software Applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". CONTRACTOR will respond to Maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by CONTRACTOR will not be provided pursuant to this Agreement, but may be separately available at rates and on terms which may vary from those described herein.

12.2 Inquiry Assistance.

As provided in Exhibit H, CONTRACTOR will provide COUNTY with a telephone number to contact the Customer Resource Center (CRC), CONTRACTOR's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific Time, Monday through Friday, excluding CONTRACTOR's observed holidays. CONTRACTOR shall, within 30 minutes for a critical inquiry or within 60 minutes of a high priority (in COUNTY's reasonable judgment), respond to the inquiry, as applicable:

12.2.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

12.2.2 The development, on a best efforts basis, of a temporary solution to or an Emergency bypass of a Deficiency;

12.2.3 Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent technically feasible; and

12.2.4 Clarification of Documentation.

CONTRACTOR will provide COUNTY with one or more electronic mail addresses to which COUNTY may submit routine or non-critical support requests during periods when live technical support is unavailable. CONTRACTOR will provide COUNTY with access to archived software updates and other technical information in CONTRACTOR's online support databases, which are continuously available.

12.3 Incident Priorities

CONTRACTOR will assign incident priorities and address inquiries in accordance with the following guidelines:

Critical	System/product is entirely unusable, down, or unavailable.
High	System/product is available, but on a limited or intermittent basis.
Medium	System/product is available; the issue reported is a question about intended functionality or technical specification.
Low	System/product is available; the issue reported is a request for documentation, training, upgrade, application support, etc.

12.4 Additional Assistance

12.4.1 When required to properly resolve a Maintenance request, CONTRACTOR shall first provide the option of remote assistance to COUNTY via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.

12.4.2 CONTRACTOR shall dispatch trained and qualified Services Staff to COUNTY's applicable Site in the event that: (i) such assistance as described above in Section 12.2 does not resolve Deficiencies or problems related to COUNTY's inquiries regarding Equipment or Software at such Site within 12 hours after CONTRACTOR's response to COUNTY; (ii) the System is non-Operational; and (iii) COUNTY requests additional assistance. If the System is non-Operational, such CONTRACTOR staff shall remain at the Site on a 12-hour, five-days-a-week basis repairing the applicable parts of the System until it operates in accordance with its Specifications.

12.4.3 CONTRACTOR shall provide a plan to resolve Deficiencies no later than eight hours after notice by COUNTY to CONTRACTOR of such Deficiency or problems.

12.5 Database

CONTRACTOR shall maintain and make available online to COUNTY a database of all Change Requests and Deficiencies reported by COUNTY under Section 12.2 or known to CONTRACTOR in the SYSTEM, and each visit by such Services Project Staff as described in Section 12.4. The database shall include, at a minimum, the following:

- 12.5.1 Date and time CONTRACTOR was notified;
- 12.5.2 Date and time of arrival or inquiry response;
- 12.5.3 Time spent for resolution of Deficiencies;
- 12.5.4 Description of Deficiency;
- 12.5.5 Description of severity level of Deficiency, e.g., Emergency;
- 12.5.6 Description of Deficiency resolution; and
- 12.5.7 Date of resolution.

13. STANDARD SUPPORT AND MAINTENANCE.

CONTRACTOR shall provide standard Support Services and Maintenance Services to COUNTY in accordance with CONTRACTOR's Annual Support and Maintenance Agreement as set out in Exhibit H at the charges described in Exhibit A.

13.1 Support and Maintenance

CONTRACTOR shall provide Maintenance Services and Support Services to correct Deficiencies in the SYSTEM and support, repair and maintain the SYSTEM in accordance with the Project Work Plan, Exhibit F and other parts of this Agreement. CONTRACTOR's Maintenance Services and Support Services responsibilities shall include but not be limited to maintaining the SYSTEM in accordance with the Specifications and the terms of this Agreement, and developing, on a best efforts basis, of a temporary solution to or an Emergency bypass of a Deficiency. CONTRACTOR shall report Deficiencies, problems, errors and bugs causing crashes or corruption of the Data to COUNTY within eight (8) hours of their becoming known to CONTRACTOR.

13.2 Performance Standard Measurement

CONTRACTOR shall maintain the SYSTEM, in whole and in part, to meet the Performance Standards set forth in Exhibit G, Exhibit F and the Project Work Plan. CONTRACTOR will conduct tests for measuring and certifying the achievement of the Performance Standards. CONTRACTOR must implement all testing, measurement and monitoring tools and procedures required to measure and report CONTRACTOR's performance of the Services and SYSTEM against the applicable Performance Standards. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Performance Standards, and will be subject to audit by COUNTY. CONTRACTOR will provide COUNTY with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

13.3 Continuous Improvement

CONTRACTOR shall, on an ongoing basis, as part of its total quality management process, identify, report to COUNTY, and implement ways to improve performance of the Services and identify and apply techniques and tools from other CONTRACTOR installations that would benefit COUNTY either operationally or financially.

14. DISPUTE RESOLUTION.

14.1 Good Faith Efforts

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 Days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies.

14.2 Continued Performance

CONTRACTOR and COUNTY agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement.

15. CHANGES.

15.1 Changing Government Programs

The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Except as provided in this Section 15, CONTRACTOR has provided for or will provide for adequate resources, at no additional cost to COUNTY, to reasonably accommodate such changes during the term of this Agreement, subject to the Change Order process of this Section 15.

15.2 Identifying Changes

In consideration of CONTRACTOR's knowledge, experience and expertise related to the implementation of electronic health record systems such as the SYSTEM that is the subject of this Agreement, CONTRACTOR agrees to advise COUNTY of any changes in applicable federal or State legislative enactments and regulations of which it becomes aware and the potential impact of such changes on the performance of the Services or Deliverables or COUNTY's use of the Services or Deliverables. CONTRACTOR agrees to timely notify COUNTY of such changes and must work with COUNTY to identify the impact of such changes on how COUNTY uses the Services or Deliverables.

15.3 Notice from County

In the ordinary course of business, if COUNTY becomes aware of any material changes in applicable law, regulation, codes, policy, or guidelines affecting the Agreement, COUNTY will promptly notify CONTRACTOR of the changes.

15.4 Issuance of Change Requests

COUNTY may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables or Services.

15.5 Contractor Response to Change Request

CONTRACTOR shall respond in writing to a Change Request within 15 Days following its receipt, advising COUNTY of any cost and Schedule impacts. When there is a cost impact, i.e., increase or decrease in Charges or Purchase Prices, CONTRACTOR shall advise COUNTY in writing of the increase or decrease involved, including a breakdown of the number of Project Staff hours by level of CONTRACTOR and COUNTY personnel needed to effect this change.

15.6 Agreement on Change Order

The CONTRACTOR Project Manager and the COUNTY Project Manager shall negotiate in good faith and in a timely manner as to the price for amounts over the limitations specified in Exhibit A and/or the effect on the milestone payments in Exhibit B and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and authorized representatives of the parties execute the Change Order, the terms of this Agreement shall be modified accordingly. The COUNTY Project Manager may approve non-financial Change Orders. However, at the time that a Change Order exceeds the original Maximum Amount set forth in Exhibit A, such Change Order shall be processed as a contract amendment. CONTRACTOR shall incorporate all Change Orders affecting the Services and Deliverables into applicable SYSTEM Documentation. In no event shall the Charges or Purchase Prices be increased nor shall the Schedule be extended in a Change Order to correct errors or omissions in the SYSTEM.

15.7 Disagreement

If federal, State or County laws, rules, regulations, codes, policies or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Agreement, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any appropriate Change Orders for amounts over the limitations specified in Exhibit A. If COUNTY submits to CONTRACTOR a Change Request to comply with such laws, rules, regulations, codes, policies or guidelines and if the parties are unable to reach an agreement in writing within 15 Days of CONTRACTOR's written response to such a Change Request, the COUNTY Project Manager may make a determination of the revised price and Schedule, and CONTRACTOR shall proceed with the work according to such price and Schedule which shall be included in the resulting Change Order, subject to CONTRACTOR's right to appeal the COUNTY Project Manager's determination of the price and/or Schedule to the dispute resolution process under Section 14. Nothing in this Section 15.7 shall in any manner excuse CONTRACTOR from proceeding diligently with the Agreement as changed by the Change Order.

15.8 Termination

If CONTRACTOR fails or refuses to perform its Services in any material respect pursuant to a Change Order executed by the parties, CONTRACTOR shall be in material breach of this Agreement, and CONTRACTOR shall have thirty (30) Days to cure such breach or provide a written plan reasonably acceptable to COUNTY regarding its plans to correct such breach. In the event the parties cannot reach an agreement regarding such Change Order, COUNTY shall have the right to terminate the Agreement for such a breach pursuant to Section 22.1 (Termination for CONTRACTOR's Material Breach).

15.9 Contractor Submission of Change Request

CONTRACTOR may also submit a Change Request to COUNTY to propose changes that should be made within the scope of the Agreement. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Project Staff hours by level of CONTRACTOR and COUNTY personnel needed to effect this change. COUNTY will attempt to respond

to such Change Requests from CONTRACTOR within 20 Days of receipt. If the parties reach an agreement on a Change Order in writing, and authorized representatives of the Parties execute the Change Order, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by CONTRACTOR, the COUNTY Project Manager will be deemed to have rejected the requested Change Request.

16. ADDITIONAL RIGHTS AND REMEDIES.

16.1 Withholding Payments

If CONTRACTOR fails to deliver Deliverables or to provide Services which reasonably satisfy CONTRACTOR's obligations hereunder, COUNTY shall have the right to withhold any and all payments due hereunder, but only to the extent of the amount in dispute. COUNTY may withhold any and all such payments due hereunder to CONTRACTOR, without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

16.2 Reductions in Payments Due

Amounts due COUNTY by CONTRACTOR, including but not limited to damages, or claims for damages, may be deducted or set-off by COUNTY from any money payable to CONTRACTOR pursuant to this Agreement.

16.3 Cover

If, in the reasonable judgment of COUNTY a default by CONTRACTOR is not so substantial as to require termination, reasonable efforts to induce CONTRACTOR to cure the default are unavailing, CONTRACTOR fails to cure such default within thirty (30) Days of receipt of Notice from COUNTY, and the default is capable of being cured by COUNTY or by another resource without unduly interfering with continued performance by CONTRACTOR, COUNTY may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event CONTRACTOR shall reimburse COUNTY for the reasonable cost of the Services in default. In addition, CONTRACTOR must cooperate with these resources in allowing access to the Software.

16.4 Performance Standards

If the SYSTEM fails to meet Performance Standards set forth in Exhibit G during the Warranty Period and while CONTRACTOR is providing Support and/or Maintenance Services, CONTRACTOR shall modify, reconfigure, upgrade or replace the Software at no additional cost to COUNTY in order to provide a SYSTEM solution that complies with such Performance Standards.

16.5 Temporary Suspension for Convenience

COUNTY shall have the right at any time to order the Services of CONTRACTOR fully or partially stopped temporarily for its own convenience for up to 15 consecutive days. CONTRACTOR will receive Notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis or longer to the extent COUNTY has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing Services in accordance with the Schedule. CONTRACTOR shall have the right to submit claims in accordance with the terms of Section 23.5 as a result of stop work orders issued under this Section.

17. INSURANCE.

17.1 Liability and Auto Insurance

CONTRACTOR shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. CONTRACTOR shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and that have a Best's rating of no less than A: VII, or that are approved by the COUNTY. CONTRACTOR shall include COUNTY, its boards, agencies, contractors, offices, employees, agents and volunteers as a named insured party in CONTRACTOR's insurance policy obtained hereunder.

If CONTRACTOR fails to buy and maintain the insurance coverage described in this Section 17, COUNTY may terminate this Agreement under Section 22.1 (Termination for CONTRACTOR's Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below. In the event the CONTRACTOR is unable to comply with the COUNTY's insurance requirements, COUNTY may, at its sole discretion and at the CONTRACTOR's expense, provide compliant coverage.

The insurance requirements set forth below are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against COUNTY or inflation. This option may be exercised during any amendment to this Agreement that results in an increase in the nature of COUNTY's risk and such changes of provision will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) Days of acceptance of the amendment or modification.

17.1.1 Commercial General Liability Insurance: shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed in Section 18 (Confidential Information) and Section 20 (Additional Indemnifications) of this Agreement with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

17.1.2 Automobile Liability Insurance: The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. The limit of liability of said policy or policies shall not be less than \$1 million per occurrence/\$2 million general aggregate. Any deductible or Self-Insured Retention (SIR) over \$10,000 requires approval by the COUNTY;

17.1.3 Employers Liability Insurance: covering the risks of CONTRACTOR's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

17.1.4 Crime Coverage: with a deductible not to exceed \$1 million, subject to Section 17.2 and coverage of not less than \$3 million single limit per occurrence and \$5 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

17.2 Extended Coverage

If the policy providing liability coverage is on a "claims made" form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following expiration or termination of this Agreement, naming COUNTY as an additional insured and providing COUNTY with certificates of insurance on an annual basis. Said policy or policies shall provide that the COUNTY shall be given thirty (30) Days written Notice prior to cancellation or expiration of the policy or reduction in coverage.

17.3 Workers' Compensation Coverage

Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. In the event CONTRACTOR is self-insured, it shall furnish a copy of a Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 *et. seq.* during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.

17.4 Subcontractors

CONTRACTOR shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit CONTRACTOR's liability or responsibility.

17.5 Premiums and Notice to County

CONTRACTOR or its Subcontractors shall pay premiums on all insurance policies. Such insurance policies provided for COUNTY pursuant to this Section 17 shall expressly provide therein that COUNTY be named as additional insured, and that it shall not be revoked by the insurer until thirty (30) Days Notice of intended revocation thereof shall have first been given to COUNTY by such insurer. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance provided to COUNTY.

17.6 Cancellation

CONTRACTOR's insurance policies shall not be canceled or non-renewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or non-renewal shall not take place or be reduced in scope of coverage until five business days' written Notice has been given to COUNTY, attention Project Director, and CONTRACTOR has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 17. CONTRACTOR's insurance policies shall not be reduced in scope without COUNTY's prior written consent.

17.7 Insurance Documents

CONTRACTOR shall submit to the office of the COUNTY Project Manager certificate(s) of insurance documenting the required insurance as specified in this Section 17 prior to this Agreement becoming effective, and copies of renewal certificates of all required insurance within 30 Days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section 17. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the COUNTY Project Manager as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held

responsible for payment of damages resulting from CONTRACTOR's Services pursuant to the Agreement, nor shall it be deemed a waiver of COUNTY's right to insurance coverage hereunder. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by COUNTY for material breach.

17.8 Increased Coverage

COUNTY is to be notified by CONTRACTOR immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

17.9 Subrogation

CONTRACTOR agrees to waive all rights of subrogation against COUNTY, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by CONTRACTOR under this Agreement.

17.10 Cross-Liability

All insurance provided by CONTRACTOR shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the COUNTY and shall include a severability of interests or cross-liability provision in the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

18. CONFIDENTIAL INFORMATION.

18.1 Protection Obligations

18.1.1 Access and Protection. During the term of the Agreement, CONTRACTOR and COUNTY will have access to and become acquainted with each party's Confidential Information. Except for disclosure pursuant to Section 18.1.2, COUNTY and CONTRACTOR, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this Section 18.1.1, maintain all Confidential Information of the other party in confidence and at least to the extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 18.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal, State and County law, regulation, codes, and this Section 18.1.1, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Except for disclosures pursuant to Section 18.1.2 below, each party agrees that prior to disclosing any Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 18.1.1 with respect to the Confidential Information. In addition to the requirements expressly stated in this Section 18.1.1, CONTRACTOR and its Subcontractors will comply with any policy, rule, or reasonable requirement of COUNTY, the State and the federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of COUNTY's services, CONTRACTOR's operations, or the Services performed by CONTRACTOR under this Agreement.

18.1.2 Public Records. Notwithstanding the above, CONTRACTOR acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by CONTRACTOR to be Confidential Information must be clearly identified as such by CONTRACTOR. To the extent consistent with State law, COUNTY will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view CONTRACTOR's Confidential Information, COUNTY will notify CONTRACTOR of the request and of the date that any such records will be released to the requester unless CONTRACTOR obtains a court order enjoining that disclosure. If CONTRACTOR fails to obtain the court order enjoining disclosure, COUNTY will release the identified requested information on the date specified.

18.1.3 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of COUNTY and which the other party may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Confidential Information.

18.2 Audit

COUNTY reserves the right to monitor, audit or investigate CONTRACTOR's use of COUNTY Confidential Information collected, used, or acquired by CONTRACTOR under this Agreement.

18.3 Return

Subject to record retention laws, each party shall promptly return to the disclosing party, on termination or expiration of this Agreement, all of the disclosing party's Confidential Information, including copies thereof.

18.4 Injunctive Relief and Indemnity

18.4.1 CONTRACTOR shall immediately report to COUNTY any and all unauthorized disclosures or uses of COUNTY's Confidential Information of which it or its Project Staff is aware or has knowledge. CONTRACTOR acknowledges that any publication or disclosure of COUNTY's Confidential Information to others may cause immediate and irreparable harm to COUNTY. If CONTRACTOR should publish or disclose such Confidential Information to others without authorization, COUNTY shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless COUNTY from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's failure to protect COUNTY's Confidential Information. As a condition to the foregoing indemnity obligations, COUNTY will provide CONTRACTOR with prompt notice of any claim of which COUNTY is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

18.4.2 COUNTY will immediately report to CONTRACTOR any and all unauthorized disclosures or uses of CONTRACTOR's Confidential Information of which COUNTY is aware or has knowledge. COUNTY acknowledges that any publication or disclosure of CONTRACTOR's Confidential Information to others may cause immediate and irreparable harm to CONTRACTOR. If COUNTY should publish or disclose such Confidential Information to others without authorization, CONTRACTOR shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. COUNTY shall indemnify, defend, and hold harmless CONTRACTOR from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from COUNTY's failure to protect CONTRACTOR's Confidential Information. As a condition to the foregoing indemnity obligations, CONTRACTOR will provide COUNTY with prompt

notice of any claim of which CONTRACTOR is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with COUNTY in connection with any such claim.

18.5 Nondisclosure of Other County Information

The use or disclosure by CONTRACTOR of any COUNTY information not necessary for, nor directly connected with, the performance of CONTRACTOR's responsibility with respect to Services is prohibited, except upon the express written consent of COUNTY.

18.6 Exceptions

The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

18.7 Survival

The provisions of this Section shall remain in effect following the termination or expiration of this Agreement.

19. BUSINESS ASSOCIATE.

The COUNTY is considered to be a "Hybrid Entity" under the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d et seq. and its implementing regulations including but not limited to 45 Code of Federal Regulations parts 142, 160, 162, and 164, ("Privacy and Security Rule"). The CONTRACTOR is considered to be a "Business Associate" under the Privacy Rule. CONTRACTOR must also comply with the Security Rule as a Business Associate if under this Agreement it receives, maintains or transmits any health information in electronic form in connection with a transaction covered by part 162 of title 45 of the Code of Federal Regulations.

The COUNTY and CONTRACTOR acknowledge that HIPAA mandates them to enter into a business associate agreement in order to safeguard protected health information that may be accessed during the performance of this Agreement. The parties agree to the terms and conditions set forth in Exhibit J - HIPAA Business Associate Agreement.

20. ADDITIONAL INDEMNIFICATIONS.

20.1 Intellectual Property

20.1.1 CONTRACTOR shall, at its expense, defend, indemnify, and hold harmless COUNTY and its employees, officers, directors, contractors and agents from and against any third-party claim or action against COUNTY which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and CONTRACTOR shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. COUNTY shall promptly give CONTRACTOR notice of any such claim.

20.1.2 In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of COUNTY's rights thereto is enjoined or

restricted, CONTRACTOR shall, at its own expense and in the following order of priorities: (i) procure for COUNTY the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of Notice from COUNTY and refund the Purchase Price of each Deliverable, as applicable.

20.1.3 However, CONTRACTOR shall not be liable to the extent claims of misappropriation or infringement arise from CONTRACTOR's compliance with any designs, Specifications or written instructions of COUNTY and CONTRACTOR could not have avoided such claims through alternative products.

20.2 General

CONTRACTOR shall, at its expense, indemnify, defend, and hold harmless COUNTY, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation, reasonable attorneys' fees, and expenses from any third party claim or action, including without limitation for property damage, bodily injury or death, if and to the extent such damage or injury is proximately caused by the negligent acts or willful misconduct of CONTRACTOR, its officers, employees, agents, or Subcontractors, in the course of providing services at the COUNTY's Sites and is determined by a court of competent jurisdiction to be CONTRACTOR's legal liability, and provided that COUNTY shall promptly give CONTRACTOR notice of such claim and give CONTRACTOR the requisite authority, information and assistance to defend, and take commercially reasonable steps to mitigate any third party damages.

21. DAMAGES DISCLAIMERS AND LIMITATIONS.

21.1 County's Disclaimer of Damages

COUNTY shall not be liable, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT for consequential, incidental, indirect, or special damages, including WITHOUT limitation lost profits and lost business opportunities.

21.2 County's Limitation of Liability

IN NO EVENT SHALL COUNTY'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

21.3 Contractor's Limitation of Liability

CONTRACTOR will not be liable to COUNTY to the extent of any loss, damage, or liabilities:

21.3.1 Caused by the failure of COUNTY, another COUNTY agency, or a COUNTY contractor to perform in connection with this Agreement and such nonperformance prevented CONTRACTOR from performing in accordance with this Agreement; or

21.3.2 Resulting from CONTRACTOR acting prudently in accordance with instructions given by authorized representatives of COUNTY or other authorized COUNTY agencies.

21.3.3 Contractor shall not be liable, regardless of the form of action, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT for consequential, incidental, indirect, or special damages, including WITHOUT limitation lost profits and lost business opportunities.

EXCEPT AS PROVIDED IN SECTIONS 18 AND 20.1, OR OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO COUNTY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED 1.5 TIMES THE MAXIMUM AMOUNT.

22. TERMINATION.

22.1 Termination for Contractor's Material Breach

If CONTRACTOR fails to cure (or to provide an acceptable plan to cure) any material breaches of this Agreement which are described in a written Notice from the COUNTY within thirty (30) Days of receipt of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from COUNTY to CONTRACTOR. The option to terminate shall be at the sole discretion of COUNTY.

22.2 Termination for Rejection of Deliverables

If CONTRACTOR is unable to correct Deficiencies in a Deliverable, as described in Section 7.3 or Section 7.4 of this Agreement, COUNTY shall have the right to immediately terminate this Agreement during the Warranty Period, in whole or in part, without penalty or liability to COUNTY, with such a termination being deemed a termination due to the default of CONTRACTOR hereunder, and return the Deliverable to CONTRACTOR. If COUNTY terminates this Agreement under this Section, CONTRACTOR shall, within twenty (20) Days thereafter, refund to COUNTY all unearned payments made to CONTRACTOR for the returned Deliverables and Services rendered therefore and all previous Deliverables which have received Acceptance and Services rendered therefore and which are returned with the rejected Deliverable.

22.3 Termination for Conflict of Interest

COUNTY may terminate this Agreement under Section 22.1 (Termination for CONTRACTOR's Material Breach) by Notice to CONTRACTOR if COUNTY determines, after due notice and examination, that any party has violated the Political Reform Act, California Government Code §§87100-87500 and/or any other laws regarding ethics in public acquisitions and procurement and performance of contracts, including, but not limited to California Government Code §§1090-1098.

22.4 Termination for County's Nonpayment

If COUNTY fails to pay CONTRACTOR undisputed, material Purchase Prices and Charges when due under the Agreement and fails to make such payments within ninety (90) Days of receipt of Notice from CONTRACTOR of the failure to make such payments, CONTRACTOR may, by giving Notice to COUNTY, terminate this Agreement as of a date specified in the Notice of termination. CONTRACTOR shall not have the right to terminate the Agreement for COUNTY's breach of the Agreement except as provided in this Section.

22.5 Termination Remedies

22.5.1 In the event of termination of this Agreement by COUNTY under Sections 22.1-22.3, COUNTY shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Agreement on the open market and, subject to the provisions of Section 21.3 (Contractor's Limitation of Liability), CONTRACTOR shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Agreement Purchase Price for the Deliverables and/or Charges for the Services and the replacement costs of such Deliverables and/or

Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time.

22.6 Termination for Withdrawal of Authority

In the event that the authority of COUNTY to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, COUNTY may terminate this Agreement in whole or in part. This Section shall not be construed so as to permit COUNTY to terminate this Agreement in order to acquire similar Services from a third party.

22.7 Termination for Non-allocation of Funds

If funds are not allocated to continue this Agreement in any future period, COUNTY may terminate this Agreement. COUNTY will not be obligated to pay any further Charges for Services or Purchase Prices for such future period, but COUNTY shall make payments for Services, Deliverables and CONTRACTOR's costs, subject to COUNTY's availability of funding therefore. COUNTY agrees to notify CONTRACTOR of such non-allocation at the earliest reasonable time. No penalty shall accrue to COUNTY in the event this Section shall be exercised.

22.8 Termination Procedure

22.8.1 Upon termination of this Agreement, COUNTY, in addition to any other rights provided in this Agreement, may require CONTRACTOR to destroy or deliver to COUNTY any Property, including but not limited to Deliverables and Data, for such part of this Agreement as has been terminated.

22.8.2 After receipt of a Notice of termination, and except as otherwise directed by COUNTY, CONTRACTOR shall:

22.8.2.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

22.8.2.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

22.8.2.3 As soon as practicable, but in no event longer than fifteen (15) Days after termination, give COUNTY Notice of its intent to terminate its orders and subcontracts related to the work which has been terminated, and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. Within five (5) Days of receiving such Notice, COUNTY shall give CONTRACTOR approval of which orders and subcontracts to terminate and which COUNTY shall assume, and such Notice under this subsection shall constitute COUNTY's ratification of CONTRACTOR's actions to terminate or maintain orders and subcontracts. After receiving Notice from COUNTY to terminate specified orders and contracts, CONTRACTOR shall proceed with termination within ten (10) Days;

22.8.2.4 Complete performance of such part of this Agreement as shall not have been terminated by COUNTY;

22.8.2.5 Take such reasonable action as may be necessary, or as the COUNTY Project Director may direct, for the protection and preservation of the Property related to this Agreement that is in the possession of CONTRACTOR and in which COUNTY has an interest;

22.8.2.6 Transfer title to COUNTY and deliver in the manner, at the times, and to the extent directed by the COUNTY Project Director, any Property which is required to be furnished to COUNTY and which has been accepted or requested by COUNTY; and

22.8.2.7 Provide written certification to COUNTY that CONTRACTOR has destroyed or surrendered to COUNTY all such Property.

22.8.3 Upon CONTRACTOR's receipt of Notice of termination of the Agreement by COUNTY, CONTRACTOR will provide any turnover assistance Services necessary to enable COUNTY or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself. Within ten (10) Days of receipt of the Notice of termination, CONTRACTOR shall provide, in machine readable form, an up-to-date usable copy of the Data in a format consistent with the data transfer formats mutually agreed to by the COUNTY and CONTRACTOR in the Data Conversion Plan, and a copy of all documentation needed by COUNTY to utilize the Data. CONTRACTOR will ensure that all consents or approvals to allow CONTRACTOR and Subcontractors to provide the assistance required following termination have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to COUNTY.

22.8.4 Upon the expiration of this Agreement or the termination of this Agreement for any reason, COUNTY's rights to the CONTRACTOR Technology will be as follows:

22.8.4.1 Unless otherwise agreed to between the parties as part of a turnover plan, CONTRACTOR will provide COUNTY or its designee a license to use and reproduce for the COUNTY's internal purposes CONTRACTOR Technology at no additional cost to COUNTY and provide technical and professional Support and Maintenance at rates negotiated between the parties;

22.8.4.2 CONTRACTOR's rates for the technical and professional Support and Maintenance services addressed above will not exceed the lesser of:

- (i) CONTRACTOR's reasonable and customary rates for such Services;
- or
- (ii) CONTRACTOR's rates for comparable services for other customers.

23. GENERAL CONDITIONS.

23.1 Anti-Trust Violations

CONTRACTOR and COUNTY recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by COUNTY. Therefore, CONTRACTOR hereby assigns to COUNTY any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to COUNTY resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Purchase Prices and Charges under this Agreement.

23.2 Assignment

CONTRACTOR may not assign or transfer this Agreement or any of its rights hereunder except to a GE affiliated company, or delegate any of its duties hereunder, without the prior written consent of the COUNTY Project Director, provided that any permitted assignment shall not operate to relieve CONTRACTOR of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to COUNTY that may arise from any breach of the provisions of this Agreement or warranties made herein including but not limited to, rights of setoff. COUNTY may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the COUNTY and may delegate its duties in whole or in part without the consent of CONTRACTOR. Any attempted

assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

23.3 Authority

Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

23.4 Binding Effect

Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.

23.5 Claims

CONTRACTOR must submit claims against COUNTY within the earlier of one year from the date upon which CONTRACTOR knew of the existence of the claim or one year from expiration or termination of the Agreement. No claims shall be allowed unless Notice of such claim has been given within the above-described time period. CONTRACTOR must submit such claims to the COUNTY Project Manager or his or her designee in the form and with the certification prescribed by the COUNTY Project Manager or his or her designee. Upon failure of CONTRACTOR to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against COUNTY shall be, except as provided in Sections 18.4.2 and 22.4, CONTRACTOR's sole and exclusive remedy in the event that COUNTY breaches this Agreement.

23.6 Compliance With Civil Rights Laws

23.6.1 No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

23.6.2 During the performance of this Contract, CONTRACTOR shall comply with all federal, State and County nondiscrimination laws, including but not limited to:

Title VII of the Civil Rights Act, 42 U.S.C. § 12101, et seq.; the Americans with Disabilities Act (ADA); and the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, Section 7285.0, et seq.); and Article XIII, Chapter 2 of the Santa Barbara COUNTY Code. In the event of CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under Section 22.1 (Termination for Material Breach), and CONTRACTOR may be declared ineligible for further contracts with COUNTY. CONTRACTOR shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, CONTRACTOR may be subject to penalties under federal and state law.

23.6.3 CONTRACTOR shall promptly notify the County's Equal Opportunity Office of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The Equal Opportunity Office will notify the Director, Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

23.7 Conflicts Between Documents; Order of Precedence

In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

- 23.7.1 Applicable federal and State laws, regulations and policies;
- 23.7.2 The terms and conditions in the body of this Agreement;
- 23.7.3 Change Orders;
- 23.7.4 Exhibit A (Purchase Price);
- 23.7.5 Exhibit B (Payment Schedule);
- 23.7.6 Exhibit C (Project Staff);
- 23.7.7 Exhibit D (Equipment and Software Configuration);
- 23.7.8 Exhibit E (Functional Specifications);
- 23.7.9 Exhibit F (Statement of Work);
- 23.7.10 Exhibit G (Performance Standards);
- 23.7.11 Exhibit H (Support & Maintenance Agreement);
- 23.7.12 Exhibit I (Initial Project Plan);
- 23.7.13 Exhibit J (HIPAA Business Associate Agreement);
- 23.7.14 Exhibit K (Purchase Order #CN11925 for Equipment);
- 23.7.15 Other Deliverables.

23.8 Counterparts

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party for all purposes.

23.9 Covenant Against Contingent Fees

23.9.1 CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide brokerage, established commercial or selling agency of CONTRACTOR.

23.9.2 In the event of breach of this Section by CONTRACTOR, COUNTY shall have the right to either annul this Agreement without liability to COUNTY, or, in COUNTY's discretion, deduct from payments due to CONTRACTOR, or otherwise recover from CONTRACTOR, the full amount of such commission, percentage, brokerage, or contingent fee.

23.10 Cooperation of Parties

The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

23.11 Debarment and Suspension

CONTRACTOR certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. CONTRACTOR certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

23.12 Entire Agreement; Acknowledgement of Understanding

COUNTY and CONTRACTOR acknowledge that they have read the Agreement and the attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, COUNTY and CONTRACTOR agree that the Agreement, Exhibits, Specifications, Project Work Plan, and any approved Change Orders are the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Agreement.

23.13 Force Majeure

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

23.14 Governing Law

This Agreement shall be governed in all respects by the law and statutes of the State of California, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of California, said statute will not govern any aspect of this Agreement or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts of Santa Barbara County, California. CONTRACTOR accepts the personal jurisdiction of such courts.

23.15 Headings

The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23.16 Independent Status of Contractor

The parties hereto, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. CONTRACTOR shall not make any claim of right, privilege or benefit that would accrue to an employee under applicable California law.

23.17 Legal and Regulatory Compliance

The Services and SYSTEM shall comply with all applicable federal, State, and County laws, regulations, codes, standards and ordinances during the term of this Agreement. In the event that any Services performed or the SYSTEM provided by CONTRACTOR are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of CONTRACTOR to bring the Services and SYSTEM into compliance at no additional cost to COUNTY.

23.18 Licensing Standards

CONTRACTOR shall comply with all applicable County, State, and federal licensing requirements and standards necessary in the performance of this Agreement (e.g. Business License, operating permits).

23.19 Lobbying Activities

CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

23.20 Modifications and Amendments

23.20.1 No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of CONTRACTOR and COUNTY.

23.20.2 Only the COUNTY Board of Supervisors shall have the express, implied, or apparent authority to alter, amend, modify, or waive any substantive clause or condition of this Agreement on behalf of COUNTY. Furthermore, any alteration, amendment, modification, or waiver of any substantive clause or condition of this Agreement is not effective or binding until made in writing and signed by the Chair of the Board of Supervisors, and CONTRACTOR unless otherwise provided herein.

23.20.3 CONTRACTOR shall notify COUNTY of the names of individuals who have authority to bind CONTRACTOR to modifications to the Agreement and of the limits of such authority at the time CONTRACTOR executes this Agreement and at such other times as required.

23.21 Non-waiver

Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by COUNTY for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. CONTRACTOR agrees that COUNTY's pursuit nor non-pursuit of a remedy under this Agreement for CONTRACTOR's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that COUNTY may have at law or equity for any other occurrence of the same or similar breach, nor estop COUNTY from pursuing such remedy.

23.22 Notice of Delay

When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five (5) working days, give Notice thereof, including all relevant information with respect thereto, to the other party.

23.23 Notices

23.23.1 Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and email addresses set forth below:

COUNTY:

County of Santa Barbara
Public Health Department
300 N. San Antonio Rd. Bldg 8
Santa Barbara, CA 93110
Facsimile: (805) 681-5191
E-mail: Rose.Davis@sbcphd.org

CONTRACTOR:

GE Healthcare IT
540 West Northwest Highway
Barrington, IL 60010
Attention: Legal Department

23.23.2 Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

23.24 Publicity

The award of this Agreement to CONTRACTOR is not in any way an endorsement of CONTRACTOR or CONTRACTOR's Services by COUNTY and shall not be so construed by CONTRACTOR in any advertising or publicity materials. CONTRACTOR agrees to submit to the COUNTY Project Director all advertising, sales promotion, and other publicity matters relating to this Agreement wherein COUNTY's name is mentioned or language used from which the connection of COUNTY's name therewith may, in COUNTY's judgment, be inferred or implied. CONTRACTOR further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of COUNTY. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. Nor shall CONTRACTOR release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of COUNTY. Nothing in this paragraph shall preclude CONTRACTOR from publicly announcing the award or execution of this Agreement.

23.25 Remedies

Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

23.26 Severability

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

23.27 Sovereign Immunity

The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by COUNTY of any immunities from suit or from liability that COUNTY may have by operation of law.

23.28 Subcontractors

23.28.1 CONTRACTOR may, with prior written permission from the COUNTY Project Manager, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of CONTRACTOR's duties and obligations.

23.28.2 CONTRACTOR is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of CONTRACTOR to COUNTY for any breach in the performance of CONTRACTOR's duties. In addition, CONTRACTOR's use of any Subcontractor shall not cause the loss of any warranty from CONTRACTOR. All subcontracts will be made in writing and copies provided to COUNTY upon request. COUNTY has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement.

23.28.3 For purposes of this Agreement, CONTRACTOR agrees to indemnify, defend, and hold COUNTY harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of CONTRACTOR's Subcontractors, their agents, or employees. At COUNTY's request, CONTRACTOR shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

23.28.4 For any Subcontractor, CONTRACTOR shall:

23.28.4.1 Be responsible for Subcontractor compliance with the Agreement and the subcontract terms and conditions; and

23.28.4.2 Ensure that the Subcontractor follows COUNTY's reporting formats and procedures as specified by COUNTY.

23.28.4.3 Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 4.5, 17, 18, 20 and 23.6 of this Agreement.

23.28.5 Upon expiration or termination of this Agreement for any reason, COUNTY will have the right to enter into direct agreements with any of the Subcontractors. CONTRACTOR agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with COUNTY.

23.29 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon CONTRACTOR or COUNTY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and COUNTY further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CONTRACTOR for COUNTY.

23.30 Survival

All Services performed and Deliverables provided pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive. In addition, the terms of Sections 4.5 (Records Retention and Access Requirements), Section 4.6 (Accounting Requirements), Section 8 (Licenses), Section 9 (Ownership), Section 11.4 (Date/Time Compliance Warranty), Section 13 (Standard Support and Maintenance), Section 18 (Confidential Information) and Section 20 (Additional Indemnifications) shall survive the termination of this Agreement.

23.31 UCC Applicability

Except to the extent the sections of this Agreement are clearly inconsistent, the Uniform Commercial Code shall govern this Agreement. To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Agreement and the Uniform Commercial Code, the terms and conditions of this Agreement shall take precedence and shall prevail unless otherwise provided by law.

23.32 Waiver

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

23.33 Signature

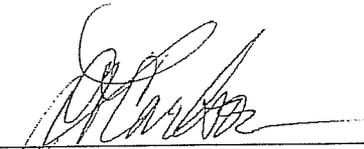
In the event that the County Board of Supervisors does not execute this Agreement on or before April 8, 2011, CONTRACTOR's signature on the Agreement shall be rendered null and void.

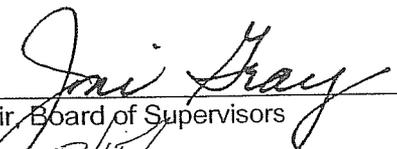
The parties hereto, having read this Agreement in its entirety, including all attachments hereto do agree thereto in each and every particular.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on March 15, 2011.

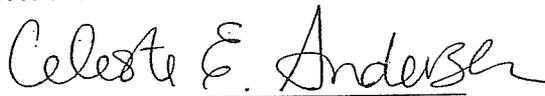
COUNTY OF SANTA BARBARA

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

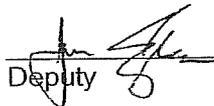
By: 
Deputy Clerk


Chair, Board of Supervisors
Date: 3/15/11

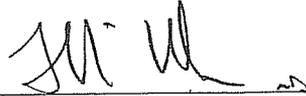
APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By: 
Deputy County Counsel

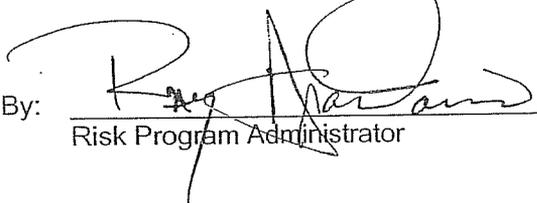
APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR/HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

By: 
Director

APPROVED AS TO FORM:
RAY AROMATORIO
RISK PROGRAM ADMINISTRATOR

By: 
Risk Program Administrator

The parties hereto, having read this Agreement in its entirety, including all attachments hereto do agree thereto in each and every particular.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on March 15, 2011.

Mark Vesosky
GM IP Customer Support
GE Healthcare

CONTRACTOR



GE Healthcare

3/15/11
Date