

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

102



**FROM:** Riverside County Regional Medical Center

**SUBMITTAL DATE:**  
May 27, 2009

**SUBJECT: APPROVAL OF A MULTI-YEAR AGREEMENT WITH SECTRA NORTH AMERICA TO PROVIDE PICTURE ARCHIVE COMMUNICATION SYSTEM (PACS) FOR THE RIVERSIDE COUNTY REGIONAL MEDICAL CENTER (RCRMC)**

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and execute the professional service agreement with SECTRA North America for \$406,050.00 for the first year which contains an option to renew the agreement for eight additional one-year periods, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459.4, to exercise the renewal option, based on the availability of fiscal funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

**BACKGROUND:** In 1998, RCRMC instituted a Phillips PACS (Picture Archiving Communications System). The change resulted in dramatic increases in efficiency, reduced patient wait times, made patient images instantly available to the clinicians, and eliminated about 75% of the film costs and film loss. With this system, we have had a remarkable 99.993% up time. When the system was purchased

(Continued on Page 2)

*Douglas D. Bagley*  
\_\_\_\_\_  
DOUGLAS D. BAGLEY  
Hospital Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 406,050	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 09/10

<b>SOURCE OF FUNDS:</b> RCRMC Enterprise Fund	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Debra Cournoyer*  
Debra Cournoyer

**County Executive Office Signature**

FORM APPROVED BY RIVERSIDE COUNTY COUNSEL  
BY: *Neal R. Kipnis* DATE \_\_\_\_\_  
Departmental Concurrence

Purchasing: *Mark Seller*  
Mark Seller, Assistant Director

Policy  Policy   
Consent  Consent   
Dep't Recomm.: \_\_\_\_\_  
Per Exec. Ofc.: \_\_\_\_\_

2009 JUN 10 11:12

**Prev. Agn. Ref.:** \_\_\_\_\_ **District:** \_\_\_\_\_ **Agenda Number:** \_\_\_\_\_

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.40

**BOARD OF SUPERVISORS**

**FORM 11: APPROVAL OF A MULTI-YEAR AGREEMENT WITH SECTRA NORTH AMERICA TO PROVIDE PICTURE ARCHIVE COMMUNICATION SYSTEM (PACS) FOR THE RIVERSIDE COUNTY REGIONAL MEDICAL CENTER (RCRMC)**

**PAGE 2**

**BACKGROUND (Continued)**

11 years ago, Phillips was partnered with SECTRA, the software developer, but their partnership is ending December 2009.

The PACS environment has changed greatly over the years, not only in development but also in the way it is used and maintained. RCRMC has gone from 100% studies read in-house and Radiologist coming in after hours to interpret images, to almost 65% of images read from their homes during the day and after hours. We have continued to lower film costs by now offering CD's to patients and physicians requiring the studies, as well as capabilities of viewing images on a secure Web product. FY 98/99 Radiology did 75,757 studies, this FY we will do close to 142,000 studies, almost double the first year's.

With this new model of fee per study, RCRMC's cost for equipment and maintenance will be greatly reduced. The PACS Company will provide servers, archives, and monitoring of the system, all-inclusive. RCRMC's hardware will remain up-to-date by having the ability to grow as demands on the system grow. PACS is also including in the cost an off site disaster recovery service.

**PRICE REASONABLENESS**

September 12, 2008, County of Riverside Purchasing and Fleet Services, on behalf of the Riverside County Regional Medical Center, released Request for Proposal #MCARC076, Picture Archiving Communication System (PACS). The bid closed on October 15, 2008 at 1:30 p.m., with seven companies submitting proposals with pricing ranging from \$2.50 to \$5.85 per study. After a review and evaluation of the quotes, checking references, meeting with the two finalists, based on price and value to the County of Riverside, it is recommended that SECTRA North America, Inc., with a lowest proposed cost of \$2.50 per study for the first 200,000 annual exams and \$2.00 per study on 200,001 plus annual exams be awarded the bid. The vendor also agrees to hold the same price for up to four of the additional one-year periods.

The evaluation committee recommends that the award be given to SECTRA North America, as the lowest responsive/responsible vendor, with the first year annual amount of \$406,050.00.

**REVIEW/APPROVAL:** Purchasing and County Counsel concurs with this request.

# SECTRA North America, Inc.

## Project, Software License and Annual Support and Maintenance Agreement

### Riverside County Regional Medical Center

### End User Contract

These General Terms and Conditions (these "Terms and Conditions") in this End User Contract including all appendices, apply between **SECTRA NORTH AMERICA INC.**, located at 2 Enterprise Drive, Suite 507, Shelton, CT 06484 ("Sectra") and **Riverside County Regional Medical Center** located at 26520 Cactus Avenue, Moreno Valley, CA 92555 (the "End User"), with regard to Project, Software License and Annual Support and Maintenance Agreement (the "Sectra Product"). The Sectra Product consists of certain software that has been developed and is owned by, or licensed to, Sectra (collectively, the "Software"), and may consist of certain hardware provided by Sectra (the "Hardware") as more particularly set forth in the Proposal (as defined below). Notwithstanding the foregoing definition, the term "Sectra Product" specifically does not include Third Party Hardware or Third Party Software (each as defined below). This Agreement (as defined below) shall become effective upon the latest date upon which these Terms and Conditions have been fully executed by all parties.

Signed for and on behalf of the

**End User: Riverside County Regional Medical Center**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signed for and on behalf of

**SECTRA NORTH AMERICA INC.**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

FORM APPROVED BY COUNTY COUNSEL  
BY: *[Signature]*  
DATE: \_\_\_\_\_

[GENERAL TERMS AND CONDITIONS CONTINUED ON NEXT PAGE]

# SECTRA North America, Inc.

## 1 Definitions

- 1.1 "Affiliate" of any person or entity means another person or entity controlling, controlled by, or under common control with that first person or entity. For this purpose, control of an entity means the ability to control the business decisions of that entity through ownership, contract or otherwise, or the right to fifty percent (50%) or more of the earnings or profits of such entity.
- 1.2 "Agreement" means these Terms and Conditions, the Proposal, and any appendices, exhibits, schedules and riders hereto or thereto, the terms and conditions of which are hereby incorporated herein by reference thereto, as the same may be amended from time to time and in effect.
- 1.3 "Computer" is defined in Section 5.1.
- 1.4 "Confidential Information" means the provisions of this Agreement (including the financial terms, License Fee, Support and Maintenance Fee and any other financial terms or conditions related to this Agreement), and any and all information, written or oral, provided or made available by or on behalf of Sectra or any of its Affiliates (each a "Disclosing Party") to the End User or any End User Personnel, or any Affiliate of any of the foregoing (each a "Recipient") in connection with performance of obligations or exercise of rights under this Agreement, in any case that is a trade secret under applicable law, that is marked "confidential" or "proprietary" (or that bears similar markings or is otherwise clearly identified as confidential or proprietary), or that by its nature should reasonably be known by the Recipient to be confidential or proprietary; provided that, for the purposes of the foregoing definitions of Disclosing Party and Recipient, neither Sectra nor End User shall be deemed to be a contractor of the other (or of any of such other party's Affiliates). Confidential Information includes, without limitation, information related to the Disclosing Party, its Affiliates, contractors and/or vendors and/or their respective businesses, products, services, business processes, financial condition, vendors, patients, and contractors. Confidential Information of Sectra also includes, whether or not marked confidential or proprietary, the structures and architecture of the Sectra Product, the service methodologies, pricing, personnel, plans and strategies of Sectra and the Source Code and Object Code. Information of a contractor or vendor of a Disclosing Party, or another third party to whom a Disclosing Party owes a duty of confidentiality, will be treated as Confidential Information of the Disclosing Party if it meets the description above. Notwithstanding anything else, Confidential Information does not include information that: (a) was in the public domain before the date of this Agreement or that subsequently comes into the public domain other than as a result of disclosure by a Recipient in violation of this Agreement; (b) was or is lawfully received by a Recipient free of any obligation of confidentiality, as shown by such Recipient's files and records prior to the time of disclosure; or (c) is independently developed by or on behalf of a Recipient without use of any Disclosing Party's Confidential Information, as shown by such Recipient's files and records prior to the time of disclosure. A Disclosing Party's Confidential Information includes material prepared by a Recipient to the extent it contains or references Confidential Information provided by such Disclosing Party.
- 1.5 "Contract Price" means the total Contract Price set forth in the Proposal, which includes the License Fee plus any and all applicable taxes payable thereon.
- 1.6 "Documentation" means the Sectra Product documentation which is available to End User by Sectra.
- 1.7 "End User Personnel" means any contractor, employee, agent, representative or other personnel of End User.
- 1.8 "Expanded Support" is defined in Section 8.4.
- 1.9 "First Use Date" means that date upon which the first patient image from the End User is received and viewed by, and stored in, the Sectra Product.
- 1.10 "Installation" and "Installed" refer to duties carried out by Sectra to load, test and run Software and Hardware delivered by Sectra. Any hardware provided by the End User, on which Sectra Software will be loaded, must adhere to any minimum hardware specifications provided by Sectra. Sectra will not be responsible for drilling into walls, wiring or re-wiring networking connections, or building or assembling hardware provided by the End User.
- 1.11 "Intellectual Property" means all algorithms, analyses, application programming interfaces (APIs), apparatus, concepts, confidential information (including, as applicable, Confidential Information), configurations, content, deliverables, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos, and slogans), methods, models, procedures, processes, routines, reports, reporting formats, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, templates, techniques, tools, tutorials, uniform resource identifiers, user interfaces, works of authorship, and other forms of technology.

# SECTRA North America, Inc.

- 1.12 **"Intellectual Property Rights"** means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) sui generis database rights; (f) other proprietary rights in Intellectual Property of every kind and nature; and (g) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (f) of this definition.
- 1.13 **"License"** means the non-exclusive right and license to the Sectra Product as granted pursuant to Section 2, and subject to the scope set forth in Section 5.
- 1.14 **"Licensed Materials"** means the Software and the Documentation, and, to the extent necessary to use the Sectra Product under the License pursuant to this Agreement, the Confidential Information.
- 1.15 **"License Fee"** means the license fee as set forth in the Proposal.
- 1.16 **"Object Code"** means the object code (*i.e.*, compiled, machine readable format only) portion or manifestation of the Software.
- 1.17 **"Proposal"** means Proposal No. DOC-JCHS-77Y8AE-9.0 executed by End User on \_\_\_\_\_, 200\_\_\_\_, the terms and conditions of which are hereby incorporated into this Agreement by reference thereto.
- 1.18 **"Regulatory Authority"** means any international, national, state, provincial, municipal, local, territorial or other governmental or quasi-governmental regulatory authority, department, or judicial or administrative body.
- 1.19 **"Regulatory Requirement"** means any law, ordinance, regulation, rule, judgment, order, declaration, decree, directive, legislative enactment, or other binding requirement of or by any Regulatory Authority. References to any Regulatory Requirement refer to such Regulatory Requirement in changed or supplemented form, or to a newly adopted Regulatory Requirement replacing a previous Regulatory Requirement.
- 1.20 **"Source Code"** means the source code (*i.e.*, written by a human in programming language and before compilation into machine executable object code) portion or manifestation of the Software.
- 1.21 **"Support"** is defined in Section 8.1.1.
- 1.22 **"Support Period"** means the support period set forth in the Proposal (the **"Initial Support Period"**) and each Renewal Support Period (as defined below) thereafter. The Support Period shall be automatically renewed for 12-month periods (each a **"Renewal Support Period"**) at the expiration of the Initial Support Period and any Renewal Support Period (as applicable) unless either party gives written notice to the other of its desire not to so renew at least sixty (60) days prior to the expiration date of the Initial Support Period or such Renewal Support Period (as applicable).
- 1.23 **"Support and Maintenance Fee"** means, for the initial 12-month period of the Support Period, the annual support fee set forth in the Proposal, and, upon the expiration of each 12-month period of the Support Period, the Support and Maintenance Fee for the immediately next 12-month period of the Support Period shall be increased by the percent change for such 12-month period in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average for All Items published by the Bureau of Labor Statistics for the United States Department of Labor.
- 1.24 **"Third Party Hardware"** means hardware set forth in the Proposal as **"Third Party Hardware"**.
- 1.25 **"Third Party Service Provider"** means, with respect to any Third Party Hardware or Third Party Software, the third party respectively identified opposite such Third Party Hardware or Third Party Software in the Proposal as being the third party responsible for support of and service to such Third Party Hardware or Third Party Software.
- 1.26 **"Third Party Software"** means software set forth in the Proposal as **"Third Party Software"**.
- 1.27 **"Warranty Period"** means such period of time set forth in the Proposal as the **"Warranty Period"**.

# SECTRA North America, Inc.

## 2 Grant of License

Subject to the scope set forth in Section 5, the End User hereby obtains a non-exclusive right, non-exclusive, non-transferable, limited and perpetual license (subject to the termination provisions of Section 10) to use the Sectra Product solely for its internal purposes for the number of users indicated in the Proposal (as to each permitted user, a "License"), provided that the Contract Price is paid pursuant to Section 4. If, pursuant to the Proposal, End User is purchasing any Hardware or any Third Party Hardware, Sectra shall assign all right and title to such Hardware and Third Party Hardware "as-is" and "where-is" without warranty, express or implied, with respect to any matter whatsoever (except for those warranties of Sectra expressly set forth in this Agreement with regards thereto and any applicable manufacturer's warranties which shall be passed through to End User).

## 3 Contract Price

Use by the End User of the Sectra Product is contingent upon the End User having paid the Contract Price stated in the Proposal pursuant to the payment terms of Section 4 and the Proposal. The License Fee and the Support and Maintenance Fee are exclusive of any V.A.T. or similar taxes or public duties and fees. The End User shall pay, and shall be solely responsible for, all such taxes, duties and fees.

## 4 Payment Terms

- 4.1 The License Fee shall be paid by the End User to Sectra pursuant to the payment installment terms set forth in the Proposal by wire transfer to an account designated by Sectra, or by check payable to Sectra, in immediately available funds. Any payments shall be automatically due and payable "net 30 days".
- 4.2 The Support and Maintenance Fee for any Support Period shall be paid by End User to Sectra by wire transfer to an account designated by Sectra, or by check payable to Sectra, in immediately available funds, within 30 days before the commencement of such Support Period.
- 4.3 To secure prompt and complete payment and performance of the obligations of End User hereunder, End User hereby pledges, assigns, transfers and grants to Sectra a continuing security interest in all components of the Sectra Product and all additions thereto and all substitutions and replacements therefore and products of the foregoing (including without limitation any Hardware and Third Party Software sold to End User hereunder as more fully described in the Proposal). In connection therewith, End User hereby represents and warrants that it is a **corporation** duly organized, validly existing and in good standing under the laws of the State of California, and End User hereby agrees to take any and all actions that Sectra may request from time to time by way of obtaining, executing, delivering and filing financing statements, assignments, landlord's or mortgagee's waivers, and other notices and amendments and renewals thereof, and the End User will take any and all steps and observe such formalities as Sectra may request in order to create and maintain a valid and enforceable lien upon, and security interest in, the Sectra Product. Sectra is authorized to file financing statements without the signature of the End User and to execute and file such financing statements on behalf of the End User as specified by the Uniform Commercial Code of the applicable state to perfect or maintain Sectra's security interest granted herein. End User shall maintain and keep Hardware and Third Party Software free and clear at all times of other security interests, liens and encumbrances. So long as any monetary obligations of End User under this Agreement remain outstanding, End User shall (i) not permit to incur or suffer any loss, theft, substantial damage or destruction of any of the Sectra Product, and (ii) provide written notice to Sectra of any change of location of the Sectra Product or any change in the jurisdiction of organization/incorporation, or any change in the legal name, of End User within five (5) business days of the occurrence thereof. Upon default of the End User of its payment obligations hereunder, Sectra has the requisite authority without notice or demand to declare the obligations immediately due and payable. Sectra shall have the rights and remedies of any secured creditor under the Uniform Commercial Code or other applicable law.

## 5 Scope of the License

- 5.1 If the License is a single user-license (as indicated in the Proposal), the End User may use, access, display, run, or otherwise interact with one copy of the Software, on a single computer, workstation, terminal, or PC, (as to any, a "Computer") including, without limitation, on any Hardware that may be sold or leased to the End User pursuant to the Proposal. If the License is a multi-user license (as indicated in the Proposal), known as a concurrent user license ("C.U.L."), the End User may use, access, display, run, or otherwise interact with copies of the Software, on multiple Computers including, without limitation, on any Hardware that may be sold or leased to the End User pursuant to the Proposal, with the maximum number of copies of Software in use at the same time being limited to the number of purchased C.U.L.'s indicated in the Proposal.
- 5.2 The End User may store or install a copy of the Software on a single storage device used solely to run the Software on the End User's other Computers over an internal network, provided, however, that the scope of the License, as indicated in Section 5.1, will govern the End User's ability to share the Software concurrently on different Computers. If the License is a single user license, as indicated in the Proposal, the Software may

# SECTRA North America, Inc.

not be shared or in any way be used concurrently on different Computers. End User shall not allow any third party, other than End User Personnel, to implement, access, or operate any of the Sectra Product.

- 5.3 Copies of the Software or any other Licensed Materials may be reasonably made for safety or archival purposes only and shall be marked with appropriate proprietary, confidential, and copyright notices, markings, and legends. These Terms and Conditions shall apply also to such copies.
- 5.4 Without Sectra's prior written consent, the End User is not entitled to copy, or in any way transfer or use, the Software or any other Licensed Materials in any manner except as stated in this Agreement. End User shall not, and shall ensure that End User Personnel shall not, reverse engineer, decompile, translate or disassemble any portion of any of the Software (including any Object Code or Source Code) or otherwise discover or duplicate any content, data, technology, routines, computer software, algorithms, methods or underlying ideas or design or user interface techniques included in any of the Software (including any Object Code or Source Code);
- 5.5 Proprietary, confidential, and copyright notices, markings, and legends on or in the Software or any of the other Licensed Materials or computer media through which the Software or any of the Licensed Materials is accessible to the End User, or on or in any Documentation, may not be removed, changed, or modified by End User in any way.
- 5.6 The End User is not entitled to: grant any sublicense, lease, export, lend or otherwise transfer, or permit any third party to use, access, implement, operate, modify or dispose of, the Software or any other Licensed Materials (whether directly or indirectly, and whether with compensation or free of charge).
- 5.7 The End User shall ensure that all Computers (including without limitation any Hardware) on which the Software is installed are free from viruses, worms, trojan horses and other malicious code.
- 5.8 The applicable License shall include the license to use, access, display, run, or otherwise interact with maintenance upgrades and annual software version upgrades as delivered by Sectra to End User during the Warranty Period or the Support Period (subject to the payment of the Support and Maintenance Fee pursuant to Section 8), and the other terms and conditions for warranty and support set forth in Section 8 and Section 9.
- 5.9 End User acknowledges that none of the Sectra Product (including without limitation the Software) is designed or intended for use in applications where the failure or inaccuracy of the Sectra Product carries a risk of death, bodily injury or physical or environmental damage ("**Prohibited Purposes**"). Prohibited Purposes include, but are not limited to, closed-loop systems (or other systems that provide medical care without human intervention), life support machines, the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, and weapons systems.
- 5.10 Export Restrictions. End User acknowledges that the Sectra Product (including without limitation the Software) may be subject to United States and any applicable foreign export control laws, restrictions, and regulations, including, but not limited to, the U.S. Export Administration Regulations. End User represents, warrants and agrees that it will not, directly or indirectly, export, re-export, transmit, or divert, or allow the export, re-export, transmission or diversion, of the Sectra Product or any part or direct product thereof (a) to Cuba, North Korea, Iran, Sudan or Syria or to any other country that is subject to a U.S. government export embargo or that has been designated by the U.S. government as a terrorist supporting country, (b) to any national of any of those countries set forth in clause (a) who is not a permanent U.S. resident, (c) to any person or party on the U.S. Export Administration Table of Denial Orders, the U.S. Bureau of Industry and Security Entity List or the U.S. Department of Treasury List of Specially Designated Nationals (or any successor regulations or supplement), (d) to any person or entity who may be engaged in, or who may use the Sectra Product in, activities related to the proliferation of nuclear, chemical or biological weapons or missiles, or (e) otherwise in contravention of United States and/or foreign export control laws, restrictions, or regulations. End User further agrees to comply with the U.S. Foreign Corrupt Practices Act.
- 5.11 Government Restricted Rights. This Agreement grants license rights in commercial computer software and commercial software documentation which are UNPUBLISHED. ALL RIGHTS RESERVED UNDER THE COPYRIGHT LAWS OF THE UNITED STATES. The Licensed Materials have been developed at private expense, are protected as trade secrets of Sectra, and constitute "commercial computer software", "commercial computer software documentation", or "commercial technical data" as defined in FAR 52.227-19. In accordance with 48 C.F.R. 12.211, 48 C.F.R. 12.212, 48 C.F.R. 27.405(b)(2), 48 C.F.R. 52.227-19 and 48 C.F.R. 227.7202, 48 C.F.R. 227.7102, 48 C.F.R. 52.227-7015, as well as other applicable supplemental agency regulations, any use, modification, reproduction, release, performance, display or disclosure of such technical data, computer software and/or accompanying documentation by any Regulatory Authority (or any end user acting on its behalf) will be governed solely by the provisions of this Agreement and will be prohibited except to the extent expressly permitted by the provisions of this Agreement, and any Regulatory Authority (or end user acting on its behalf) acquires only those rights in the Licensed Materials that are expressly provided by this Agreement.

# SECTRA North America, Inc.

## 6 Sectra's right to the Licensed Materials

- 6.1 End User hereby acknowledges and agrees that Sectra, or its applicable licensor(s), owns the Licensed Materials, including all Intellectual Property Rights inherent therein or appurtenant thereto.
- 6.2 End User hereby acknowledges and agrees that the License granted herein is a non-exclusive, non-transferable, limited license, and does not transfer or sell to the End User any of Sectra's or its licensor's ownership of, or rights (e.g. Intellectual Property Rights) in, the Licensed Materials. The Licensed Materials furnished under this Agreement are licensed, not sold, to End User. End User's rights and obligations with respect to the Licensed Materials are governed by this Agreement. Sectra and its licensors reserve all rights in and to the Licensed Materials not expressly granted to End User under this Agreement.
- 6.3 Sectra or its licensors shall have the right to conduct reasonable, on-site audits of End User's use of the Software, not more than once annually. All audits will be conducted during normal business hours in a manner reasonably calculated to cause the least amount of interference with End User's business. All costs and expenses of the audit will be the sole responsibility of Sectra and its licensors unless the audit reveals material noncompliance with this Agreement, in which case End User must reimburse the costs incurred in the audit (in addition to any other remedies available to Sectra in law or equity).

## 7 Delivery

- 7.1 The Sectra Product shall be delivered to End User and installed by Sectra on the designated Computers of the End User (including without limitation any Hardware provided by Sectra) subject to the scope of License set forth in Section 5.
- 7.2 If applicable, Sectra will work with the End User to arrange for installation of any Third Party Hardware or Third Party Software. Sectra and End User hereby acknowledge and agree that Sectra shall have no obligations, liabilities, costs or expenses relating to such installation, and Sectra makes no representations, warranties or covenants relating to the Third Party Hardware or Third Party Software or the services provided by any Third Party Service Provider.

## 8 Support; Health Information

### 8.1 General

- 8.1.1 Subject to Section 9, during the Warranty Period, Sectra will, at no additional cost to End User, provide the End User with support services on the Sectra Product purchased from and installed by Sectra only, specifically including any Software or Hardware delivered by Sectra as part of the Sectra Product, and specifically excluding any Third Party Hardware or Third Party Software, pursuant to the terms and conditions of this Section 8 ("Support"). During the Support Period, Sectra will provide the End User with Support, provided that the End User shall have paid the Support and Maintenance Fee during such Support Period when the same becomes due. Sectra shall only provide Support for the Sectra Product, but shall not provide any support to any Third Party Hardware. During the Warranty Period and any Support Period, Sectra shall deliver to End User release updates and upgrades to the Software as made commercially available by Sectra. If any portion of the Sectra Product (other than Third Party Hardware or Third Party Software) is serviced by any third party other than Sectra or its subcontractors, Sectra may immediately terminate its Support obligations hereunder.
- 8.1.2 Notwithstanding the foregoing, in connection with any Third Party Hardware or Third Party Software, Sectra and End User hereby acknowledge and agree that Sectra shall have no obligations, liabilities, costs or expenses relating to support of, or maintenance or repair services to, any Third Party Hardware or Third Party Software.
- 8.1.3 If any additional hardware (other than Third Party Hardware) or software components are installed, or any additional systems are interfaced with the Sectra Product, without the prior written approval and assistance of Sectra, any Support obligations of Sectra hereunder may be terminated by Sectra at its sole discretion. If any portion of the Sectra Product (other than Third Party Hardware) is serviced by anyone other than Sectra or its subcontractors, Sectra may terminate its obligation to provide the Support set forth herein.
- 8.1.4 Sectra assumes that all protected health information, disclosed to Sectra, have been anonymized in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (45 C.F.R. parts 142 and 160-164, as may be amended).
- 8.1.5 It is the End User's sole responsibility to keep all passwords, usernames, and systems confidential and secure. Sectra is not liable for any patient information obtained by unauthorized persons due to

# SECTRA North America, Inc.

security breaches or negligence at End User's site(s). Sectra is not liable for any damage or loss of data due to security breaches, virus attacks or negligence at End User's site(s).

## 8.2 Support Services

- 8.2.1** Sectra will help the End User to resolve problems by providing electronic, telephone and remote dial-in assistance to the designated personnel of End User. Sectra will use its best effort to start problem resolution within 8 working hours of such personnel opening a call with Sectra's Customer Service Helpdesk, which has a current telephone number of 1 800 307-4425 ext 300, but which may change at the sole discretion of Sectra. On the effective date of this Agreement, Sectra Customer Service Helpdesk is available 8:00AM – 8:00PM EST, Monday through Friday, observing holidays (provided that such hours and days of service may be changed by Sectra in its sole discretion). For problems of less urgency, End User may email a description of such problem to the Sectra's Customer Service Helpdesk at (which email address may be changed by Sectra in its sole discretion).
- 8.2.2** If at any time during which Sectra is providing Support, End User has questions or concerns regarding such Support, End User may contact its Sales Representative or Customer Service Manager at 1-800-307-4425.
- 8.2.3** If at any time during which Sectra is providing Support, any changes are made to hours or contact information set forth above, Sectra shall notify End User.
- 8.2.4** On-site Support will be provided at Sectra's sole discretion and will be limited to the terms and conditions of this Agreement.
- 8.2.5** The End User Personnel shall have performed reasonable initial problem troubleshooting to qualify the problem before opening a Support session with Sectra. Any such End User Personnel shall have a clear problem description ready prior to opening any such Support session, and shall be prepared to answer additional questions (such as recent system, network or configuration changes) during any such Support session. Sectra shall not be responsible for any delays or losses attributable to any such End User Personnel's failure to do any of the foregoing, and End User shall pay, as Expanded Support, for any and all additional hours attributable to any such End User Personnel's failure to do any of the foregoing.
- 8.2.6** The End User Personnel shall fully cooperate with Sectra, or its subcontractors, during the resolution of any problem in connection with any Support. Such cooperation may include but is not limited to: replacing, unplugging or connecting hardware components; receiving and returning replacement components; resetting and rebooting hardware components; network troubleshooting; loading or unloading media; following instructions; and any other activities requested by Sectra.
- 8.2.7** The End User Personnel shall handle all interaction and communication with all users of the Sectra Product at the End User's site(s). Additionally, the End User Personnel shall handle all interaction and communication with other vendors, including without limitation any Third Party Service Providers, and troubleshoot any software or hardware components not provided by Sectra.
- 8.2.8** Sectra and the End User hereby understand and agree that neither Sectra, nor any of its subsidiaries, is responsible for any loss of data, and that the Sectra Product may be reset to factory default settings as a part of any problem resolution, and that it is the End User's responsibility to regularly create and maintain backups of data and restore such data if needed. If, during the course of providing Support, Sectra must reset the Sectra Product to factory default settings, Sectra will first notify the End User and allow reasonably ample time for the End User to perform additional back-ups to ensure proper data integrity remains.
- 8.2.9** If on-site Support is required, End User Personnel shall meet and assist any service engineer or other employee or agent of Sectra, as needed in Sectra's sole discretion. If any End User Personnel misses any appointment with any such service engineer, employee or agent, such service engineer, representative or agent will leave a card to notify End User of such person's arrival. If this occurs, End User hereby agrees to pay, as Expanded Support, for any additional incurred time and expenses as a result of such missed appointment.
- 8.2.10** When Support is requested, the service engineer, representative or agent of Sectra providing any such Support shall have full and immediate access to the Sectra Product, either remotely or onsite. End User shall be responsible for providing and maintaining a VPN connection to connect from Sectra's support center to the Sectra Product located on the End User's site(s). Sectra will maintain and control Sectra personnel access in compliance with Riverside County Policy A-50. Such User access information will be made available upon request by RCRMC CIO or similar personnel.

# SECTRA North America, Inc.

8.2.11 If Support is requested, and it becomes apparent that the problem is caused by systems, software or hardware not delivered by Sectra, or by any other condition or event which is not covered by the limited warranty set forth in Section 9, the End User agrees to pay, as Expanded Support, for time incurred to remedy any such problem.

## 8.3 Limits of Support Services

Support (and the limited warranty set forth in Section 9.2) does not include the following:

- 8.3.1 Remote or on-site training of the End User or its End User Personnel above and beyond the initial training provided during installation, as set forth in this Agreement.
- 8.3.2 Ongoing system administration tasks, including but not limited to: user maintenance, system backups, network troubleshooting, log file maintenance, and anti virus definition updates.
- 8.3.3 Hardware or software upgrades, including patch installations, not installed by a Sectra Application Specialist or Sectra-appointed contractor.
- 8.3.4 Any repairs or services needed as a result of any alterations, adjustments, or configurations of the Sectra Product that were not approved by Sectra.
- 8.3.5 Any repairs or services needed as a result of any hardware failure from misuse or mishandling of the Sectra Product by End User.
- 8.3.6 Any repairs or services needed as a result of any malfunction or failure of any other system or software component not delivered by Sectra.
- 8.3.7 Any repairs or services needed as a result of virus attacks or security breaches.
- 8.3.8 Any repairs or services needed as a result of changes in the IT environment, such as but not limited to: moving the Sectra Product from one location to another, changing network addresses, moving the Software to other hardware, or updates in other vendor's software or systems.
- 8.3.9 Any defects or problems that are not within the scope of the limited warranty set forth in Section 9.2 or for which Support is not required pursuant to Section 9.7.
- 8.3.10 Any repairs or services needed as a result of deterioration of display performance due to expendable parts, such as LCD panels, backlights or CRTs. This includes changes in brightness, color, brightness uniformity, color uniformity, defective pixels or burnt pixels.
- 8.3.11 Any repairs or services needed for consumable or expendable parts, such as (but not limited to) keyboards, mice, tapes, paper, toner or batteries (including UPSes).

## 8.4 Expanded Support

End User may request that Sectra perform any of the services set forth in Section 8.3 or any other services that do not comprise Support (collectively, or as to any, "Expanded Support"), and Sectra (in its sole discretion) shall provide such Expanded Support, provided that End User shall pay for such Expanded Support at the then-current rates from the latest Sectra price list for Expanded Support. Sectra must have received payment for Expanded Support within 30 days of the date of invoice for any Expanded Support. Regardless of the amount of time expended by Sectra in providing any Expanded Support, End User shall be charged a minimum billable time for Expanded Support of 1.5 hours. End User may request the latest Sectra price list via the contact information set forth herein. The End User shall furnish a purchase order to Sectra for any requested Expanded Support by fax to 1-203-925-0906, Attn: Helpdesk.

## 9 Limited warranty and limitation of liability

- 9.1 As set forth in the Proposal, the End User is purchasing the limited product warranty coverage set forth in this Section 9. The limited product warranty set forth in this Section 9 commences upon the First Use Date, and continues for the Warranty Period. The limited warranty is valid only with respect to the Software, and only if such Sectra Product is delivered, installed, serviced and supported by Sectra.
- 9.2 Except as otherwise set forth in this Agreement, Sectra represents and warrants that the Sectra Product will substantially conform in all material respects to the Documentation in connection with the Sectra Product for the Warranty Period and any Support Period. This limited product warranty shall not apply to the following: applications for which the Sectra Product is not intended; any altered Sectra Product or serial numbers relating thereto; cosmetic or exterior damage; accidents, abuse, misuse, neglect, fire, water, lightning or other acts of nature; use of products, equipment, systems, utilities, services, parts, supplies, or software, which damage the Sectra Product or result in Sectra being unable to remotely service the Sectra

# SECTRA North America, Inc.

Product; incorrect electrical line voltage, fluctuations and surges; use of incorrect fuses; improper or insufficient ventilation, cooling or air quality; adjustments by End User to any portion of the Sectra Product or failure by End User to follow operating instructions; failure by End User to follow the cleaning, maintenance and environmental instructions that are covered and prescribed in the instruction book or other Documentation provided to the End User by Sectra; removal or reinstallation of any portion of the Sectra Product by End User; problems related to noise, echo, interference or other transmission and delivery problems; and any use of the Sectra Product not specifically licensed hereunder.

- 9.3 Notwithstanding Section 9.2 above, in connection with the Hardware component of the Sectra Product, Sectra makes no warranty or representation of any kind, express or implied, and any warranty or representation regarding such Hardware shall be made by the manufacturer of such Hardware. If, as outlined in the Proposal, End User is purchasing any Hardware, Sectra shall assign all right and title to such Hardware "as-is" and "where-is" without warranty, express or implied, (except for any warranty supplied by the manufacturer of the Hardware, which will be assigned to End User), with respect to any matter whatsoever. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SECTRA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, CONCERNING THE THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE.
- 9.4 EXCEPT FOR THE WARRANTY OUTLINED IN THE ABOVE SECTION 9.2, NEITHER SECTRA NOR ANY OF ITS LICENSORS MAKES, AND EACH HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SECTRA PRODUCT, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE, TITLE OR ANY OTHER MATTER, IN CONNECTION WITH THE SECTRA PRODUCT, IN WHOLE OR IN PART, THE DOCUMENTATION PROVIDED TO END USER BY SECTRA, OR ANY ADDITIONAL WORK PROVIDED BY SECTRA. THE SECTRA PRODUCT AND ANY DOCUMENTATION IN CONNECTION THEREWITH ARE PROVIDED "AS IS", WITH ALL FAULTS AND DEFECTS. NO EMPLOYEE, REPRESENTATIVE OR AGENT OF SECTRA HAS ANY AUTHORITY TO BIND SECTRA TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS SECTION 9. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SECTRA OR ANY OTHER ENTITY OR PERSON SHALL CREATE ANY ADDITIONAL REPRESENTATION OR WARRANTY BY SECTRA, AND END USER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.
- 9.5 Sectra's sole obligation in case of a breach of warranty under Section 9.2 hereof shall be to, at the option of Sectra, (i) remedy the defect, (ii) replace the Sectra Product, or (iii) refund the License Fee associated with the defect or Sectra Product. THE FOREGOING STATES SECTRA'S ENTIRE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.
- 9.6 UNDER NO CIRCUMSTANCES SHALL SECTRA OR ANY OF ITS APPLICABLE LICENSORS HAVE ANY LIABILITY TO THE END USER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST GOODWILL, LOSS OF INVESTMENT, LOST PROFITS, BUSINESS INTERRUPTION, LOST DATA, LOST USE OR OTHER LOSSES.
- 9.7 The End User's right to claim any Support or remedy in accordance with Sections 7, 8 and 9 hereof is conditioned on full compliance with each of the following provisions:
- 9.7.1 The End User shall have used the Sectra Product according to and in compliance with this Agreement, the Documentation and all other manuals, instructions and directions of Sectra, and shall have complied with all third party configuration requirements;
- 9.7.2 The End User shall have used the Sectra Product with machine equipment and operative systems (delivered by Sectra or by the End User) as stated in the Proposal, and shall not have installed or used, or caused the installation or use of, any hardware, equipment or software with the Sectra Product that had not been approved by Sectra;
- 9.7.3 The End User shall not have altered the Software and shall have used the most current version of the Software provided by Sectra;
- 9.7.4 The End User, at its own cost, shall have notified Sectra of performance issues related to any of the Sectra Product as soon as reasonably practical, and shall have provided Sectra with all material information or other materials regarding (a) the alleged defect(s), error(s) or malfunction(s), and (b) its use of the Sectra Product, including without limitation, providing to Sectra output listings, data, and other assistance upon Sectra's request to enable Sectra to address the issue; and

# SECTRA North America, Inc.

9.7.5 With respect to the limited warranty provided by this Section 9, the defect shall have occurred within the Warranty Period or Support Period.

9.8 Sectra shall have no liability whatsoever with respect to the functionality or quality of plug-ins or other auxiliary programs designed to work together with the Sectra Product, but not delivered by nor supported by Sectra, or for the interoperability of such programs together with the Sectra Product.

9.9 IF THERE SHALL, NOTWITHSTANDING THE ABOVE PROVISIONS, AT ANY TIME BE ANY LIABILITY ON THE PART OF SECTRA BY VIRTUE OF THIS AGREEMENT, OR THE PERFORMANCE OR NON-PERFORMANCE OF ITS RESPONSIBILITIES UNDER THIS AGREEMENT, OR BY VIRTUE OF A BREACH BY SECTRA OF ANY REPRESENTATION OR WARRANTY CONTAINED HEREIN, WHETHER DUE TO THE NEGLIGENCE OF SECTRA OR OTHERWISE, END USER AGREES THAT IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF SECTRA FOR ANY CLAIMS, LOSSES, OR DAMAGES EXCEED THE LICENSE FEE. THE FOREGOING LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF SECTRA OR END USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIMS, LOSSES, OR DAMAGES, AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OTHER REMEDIES POSSESSED BY END USER OR THIRD PARTIES. THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN SECTRA AND END USER IN VIEW OF THE FEES CHARGED BY SECTRA. The limitations of this Section 9.9 shall apply notwithstanding any failure of essential purpose of any limited remedy.

9.10 End User is solely responsible for all medical care and services delivered to patients and all decisions related to such medical care and services. Sectra, its Affiliates, subcontractors and Sectra personnel, and those third parties whose third party software, equipment, products or services Sectra uses or makes available in connection with this Agreement, in each case have no responsibility for any delivery of medical care or other services to any patient, or any decisions, acts or omissions of persons in connection with the delivery of medical care or other services to any patient, even if made or taken in use of or reliance upon the Sectra Product.

9.11 Notwithstanding anything else, any and all claims or actions involving the parties relating to, directly or indirectly, or arising from this Agreement or the Sectra Product, however caused, regardless of the form of action and on any legal or equitable theory of liability, including, without limitation, contract, strict liability, negligence or other tort, shall be brought under this Agreement and shall be subject to the terms of this Agreement.

9.12 The limitations of liability and damages set forth in this Section 9 have been the subject of active and complete negotiations between the parties, represent the parties' agreement based upon such negotiations regarding allocation of cost and risk in light of other factors including the payments made to Sectra pursuant to this Agreement, and are fundamental elements of the basis of the bargain between the parties. Sectra would not enter into this Agreement without the limitations set forth in this Section 9.

## 10 Termination

10.1 Unless End User and Sectra otherwise agree in writing, and provided that the License Fee and Support and Maintenance Fee have been paid in full pursuant to these Terms and Conditions, the License remains in force unless and until terminated in accordance with Section 10.2 below. Unless End User and Sectra otherwise agree in writing, and provided that the License Fee and Support and Maintenance Fee have been paid in full pursuant to these Terms and Conditions, Sectra shall provide Support during the Warranty Period and any subsequent Support Period unless and until terminated in accordance with Section 10.3 below.

10.2 Sectra retains the right to terminate the License with immediate effect (in addition to all other rights and remedies of Sectra under this Agreement, by law or in equity) if the End User should breach any of its material obligations under this Agreement. Without limiting the generality of the foregoing, non-payment of the License Fee or Support and Maintenance Fee or breach of any provision regarding the intellectual property or proprietary rights, or confidential information, of Sectra shall be deemed a breach of End User's material obligations under this Agreement. The End User shall not be entitled to any refund of any paid License Fee irrespective of the reason for termination of the License. Such rights shall be in addition to, and not in lieu of, any other rights and remedies available to Sectra as result of any breach. Any termination of the License shall also terminate the Support obligations of Sectra under this Agreement, without any further action by or notice from Sectra.

10.3 Sectra retains the right to terminate the Support with immediate effect (in addition to all other rights and remedies of Sectra under this Agreement, by law or in equity) if the End User should breach any of its material obligations under this Agreement. Without limiting the generality of the foregoing, non-payment of the License Fee or Support and Maintenance Fee or breach of any provision regarding the intellectual property or proprietary rights, or confidential information, of Sectra shall be deemed a breach of End User's material obligations under this Agreement. The End User shall not be entitled to any refund of any paid Support and

# SECTRA North America, Inc.

Maintenance Fee irrespective of the reason for termination of the Support. Such rights shall be in addition to, and not in lieu of, any other rights and remedies available to Sectra as result of any breach. Sectra may terminate Support, without terminating the License, at its sole discretion.

## 11 Third Party Hardware, Third Party Software and Services

- 11.1 Notwithstanding the foregoing, in connection with the Third Party Hardware, if applicable, title of which shall be assigned and sold to the End User, and Third Party Software, if applicable, the Third Party Service Provider shall provide all installation services of such Third Party Hardware and Third Party Software. End User and the Third Party Service Provider will agree to installation procedures, including without limitation training and testing procedures, and time periods for installation of such Third Party Hardware and Third Party Software. Sectra and End User hereby acknowledge and agree that Sectra shall have no obligations, liabilities, costs or expenses relating to such installation services, and Sectra makes no representations, warranties or covenants relating to the Third Party Hardware or Third Party Software or the services provided by the Third Party Service Provider.
- 11.2 In connection with the integration of the Sectra Product with third party software applications, Sectra will perform the necessary tasks within the Sectra Product required to enable and support such integration, but Sectra is not responsible for the completion of integration tasks and services outside of its control or outside of the Sectra Product. Sectra and End User hereby acknowledge and agree that Sectra shall have no obligations, liabilities, costs or expenses relating to such third party integration services, and Sectra makes no representations, warranties or covenants relating to the third party integration services provided by any third party.

# SECTRA North America, Inc.

## 12 Ownership

- 12.1 End User hereby acknowledges and agrees that Sectra (or its applicable licensors) owns and shall continue to own the Licensed Materials and all other components of the Sectra Product (except for such Hardware as may be sold or leased to the End User as defined in the Proposal) and any other software developed by or for Sectra or End User under this Agreement or otherwise, and all applicable Intellectual Property Rights inherent therein or appurtenant thereto, including without limitation all material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets conceived, made or discovered by the End User, solely or in collaboration with others, which relate in any manner to any Licensed Materials or the Sectra Product. The End User shall have no right to improve, enhance or otherwise modify any of the Licensed Materials, nor shall the End User have any right to request that Sectra, and Sectra shall not have an obligation to, develop, create or make any improvement, enhancement or other modification to any of the Licensed Materials, except, in all such cases, by written agreement executed by the parties hereto. If the End User is entitled to have any Intellectual Property Rights in any of the Licensed Materials or any other derivative thereof (including without limitation any improvements or modifications thereof), the End User hereby assigns all such Intellectual Property Rights to Sectra or its applicable licensors/designees/nominees (as directed by Sectra), and the End User shall, upon request from Sectra and without further consideration, execute, acknowledge, and deliver to Sectra or its applicable licensors/designees/nominees (as directed by Sectra), and cause its End User Personnel to execute, acknowledge, and deliver to Sectra or its applicable licensors/designees/nominees (as directed by Sectra), all papers and instruments Sectra deems necessary or required to record or perfect Sectra's or its applicable licensors/designees/nominees' ownership of such Intellectual Property Rights. End User further agrees that the End User's obligation to execute or cause to be executed, when it is in the End User's power to do so, any such instruments or papers shall continue after the termination/expiration of the License, the Support or this Agreement and shall extend to End User Personnel. End User agrees that if Sectra is unable because of the End User's unavailability or dissolution, or for any other reason, to secure the End User's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering any of the Licensed Materials or any other inventions assigned to Sectra above, then End User hereby irrevocably designates and appoints Sectra and its duly authorized officers and agents as the End User's agent, and attorney in fact, to act for and in End User's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by End User.
- 12.2 End User acknowledges that Sectra has the right in perpetuity to deal with any of the Licensed Materials in any way Sectra sees fit including using, licensing and or assigning it to third parties.
- 12.3 The License granted to End User pursuant to this Agreement provides only a limited right to use the Licensed Materials in accordance with this Agreement, and except to the limited extent of such license, End User has not and will not acquire hereunder or in connection herewith (and End User will not assert that it has acquired hereunder or in connection herewith) any right, title or interest of any kind in or to any of the Licensed Materials. End User acknowledges that, except as specifically provided in this Agreement, Sectra is not by this Agreement granting any right or license whatsoever to End User to manufacture any Licensed Materials or to utilize any Intellectual Property Rights which Sectra may have or may secure in the future relating to the Licensed Materials.
- 12.4 Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively, "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, End User (with respect to Licensed Materials) hereby waives any rights to contest, releases any and all claims with respect to, ratifies and consents to any action by Sectra that would violate such Moral Rights in the absence of such waiver/release/ratification/consent. End User will confirm any such waiver, release, ratification or consent from time to time as reasonably requested by Sectra.
- 12.5 End User, for itself and its Affiliates, successors and assigns, agrees not to (and agrees to cause its Affiliates not to) prosecute, pursue or assist in the prosecution or pursuit of any claim, action or cause of action against Sectra and/or any of its Affiliates, and/or against any of the successors and/or assigns of Sectra and/or any of its Affiliates, of (or which arises from, is the result of or alleges) infringement or misappropriation of any patents, copyrights or other Intellectual Property Rights that are now or hereinafter actually or allegedly owned or held by or licensed to End User and/or any of its Affiliates with respect to any of the Licensed Materials and/or any derivative work thereof (by whomever created); provided that the foregoing covenant shall not prohibit End User and/or any of its Affiliates from prosecuting or pursuing or assisting in the prosecution or pursuit of any claim, action or cause of action against Sectra and/or any of its Affiliates, successors and/or assigns for breach of this Agreement.

# SECTRA North America, Inc.

12.6 The provisions of this Section 12 shall apply to any End User Personnel, and shall remain in full force and effect and otherwise survive the expiration or termination of the License, the Support or this Agreement.

## 13 Return of the Software Product

In case of termination of the License, the End User shall immediately return to Sectra the Software and all copies, parts, and documents related thereto (with exception of archived copies archived by the End User in accordance with any applicable law). In connection therewith, the End User shall confirm in writing that it has fully complied with this obligation.

## 14 Confidentiality

14.1 Generally. The Sectra Product and Documentation delivered in connection therewith contains Confidential Information belonging to Sectra and other Disclosing Parties that have not been disclosed or made accessible to third parties. Each Recipient is obliged not to make the Confidential Information available to third parties without Sectra's express written permission, and to take all appropriate measures to prevent disclosure to third parties of such Confidential Information. The End User shall ensure that its Affiliates and End User Personnel are informed of and comply with the confidentiality obligations of this Section 14 as well as the obligations regarding the rules for the use of the Sectra Product as set forth in Section 5; and End User shall be liable hereunder for any unauthorized disclosure or use of Confidential Information by any of its Affiliates or End User Personnel. During the term of the License, the End User shall use, store and maintain the Sectra Product in a manner that will prevent any dissemination of Confidential Information. Notwithstanding the foregoing, a Recipient may provide access to Confidential Information to its attorneys and to those of its employees, contractors and advisors with a legitimate need to know such Confidential Information for purposes of performance of obligations or receipt of benefits under this Agreement.

14.2 Permitted Disclosures. Notwithstanding the provisions of Section 14.1, each Recipient may disclose Confidential Information of a Disclosing Party to the extent such disclosure is: (i) authorized in writing in advance by Sectra; (ii) necessary in connection with the enforcement of this Agreement; or (iii) necessary to comply with any Regulatory Requirements; provided that a Recipient seeking to make any such disclosure will give Sectra prompt notice of such disclosure so that Sectra or any other Disclosing Party may comment in a reasonable period of time in advance on the form of disclosure to be made by such Recipient or seek an appropriate protective order. If, in the absence of a protective order, such Recipient is nonetheless legally required to disclose a Disclosing Party's Confidential Information, such Recipient may disclose such information without liability hereunder; provided, however, that such Recipient gives Sectra reasonable advance notice of the Confidential Information to be disclosed and, upon Sectra's request, uses reasonable efforts to obtain assurances that such Confidential Information will be treated as confidential and/or redact portions of the Confidential Information to be disclosed that are specified by Sectra and eligible for redaction under relevant rules.

14.3 Notice and Cooperation. End User will promptly notify Sectra of any information that comes to its attention regarding any actual, potential or attempted disclosure or unauthorized use or other breach of confidentiality, or any weakness in security, regarding or threatening the Confidential Information. Each Recipient shall provide reasonable cooperation with Sectra and each other Disclosing Party in any action deemed by Sectra or any other Disclosing Party to be reasonably necessary to protect the Confidential Information or proprietary rights of each Disclosing Party.

14.4 Return of Confidential Information. Upon any termination/expiration of all or any part of this Agreement, each Recipient shall (a) deliver to Sectra (or as directed by Sectra) any Confidential Information of any Disclosing Party in such Recipient's possession or under its control which is capable of being delivered, and (b) delete, erase, or otherwise destroy any Confidential Information of any Disclosing Party contained in any media in its possession or under its control which is not capable of delivery to Sectra or as Sectra directs and which is not still reasonably required by the End User for its then-effective licensed use of the Sectra Product hereunder. In addition, Sectra may at any time demand return or destruction, as described in this Section 14.4, of any Confidential Information not reasonably required by the End User for its then-effective licensed use of the Sectra Product hereunder.

14.5 The confidentiality obligations of this Section 14 will remain in force after the expiration/termination of the License, the Support or this Agreement.

# SECTRA North America, Inc.

## 15 Indemnity; Injunctive Relief

- 15.1 The End User shall indemnify, defend, and hold harmless Sectra and its Affiliates, and the officers, directors, employees, agents, representatives and contractors of the foregoing, from and against any and all claims, lawsuits and other civil actions or proceedings commenced or threatened by any third party ("**Third Party Claims**") against Sectra or any of its foregoing covered indemnitees, and damages, awards, losses, liabilities, settlements, judgments, costs and expenses (including, without limitation, interest awards, litigation costs, and reasonable attorneys' fees awards) ("**Losses**") incurred by Sectra or any of its foregoing covered indemnitees and resulting from or arising out of such Third Party Claims, to the extent such Third Party Claims are based on (a) any breach, or threatened breach, of any of the End User's representations, warranties, obligations, covenants or agreements hereunder or (b) any allegation of infringement or misappropriation by End User or any End User Personnel of any third party Intellectual Property Rights, other than infringement or misappropriation for which Sectra is required to provide indemnity pursuant to Section 15.3.
- 15.2 The End User acknowledges that any breach of its obligations with respect to Sections 4, 5, 12 or 14 may cause Sectra irreparable harm or injury for which there are inadequate remedies at law and that Sectra shall be entitled to equitable relief in addition to all other remedies available to it. End User agrees that if a court of competent jurisdiction determines that End User has breached, or attempted or threatened to breach, its obligations pursuant to Sections 4, 5, 12 or 14, Sectra will be entitled to obtain appropriate injunctive relief and other measures restraining further, attempted or threatened breaches of such obligations. Such relief or measures shall be in addition to, and not in lieu of, any other rights and remedies available to Sectra.
- 15.3 Sectra shall indemnify, defend End User and hold harmless End User and its Affiliates, and the officers, directors, employees, agents, representatives and contractors of the foregoing, from and against any and all Third Party Claims commenced or threatened against End User or any of its foregoing covered indemnitees, and all Losses incurred by End User or any of its foregoing covered indemnitees and resulting from or arising out of such Third Party Claims, to the extent such Third Party Claims are based on allegations that any Licensed Materials, delivered by Sectra to End User hereunder, infringe any third party's registered United States patent existing on the applicable date of delivery of such Licensed Material by Sectra to End User hereunder ("**Delivery Date**") or any third party's United States copyrightable work existing on that Delivery Date or misappropriate any third party trade secrets existing on that Delivery Date. Sectra's indemnification obligations under this Section 15.3 (the "**IP Indemnity Obligations**") are subject to Sections 9.6, 15.3.2 and 15.5.
- 15.3.1** If End User's use of any of the Licensed Materials actually or in Sectra's sole opinion is likely to be the subject of a claim for infringement, then Sectra, at its option and expense, may either (a) procure for the End User the right to continue using such Licensed Materials, (b) replace or modify such Licensed Materials so that it becomes non-infringing, or (c) refund to End User any pre-paid portion of the Support and Maintenance Fee for the remaining period of the prevailing term therefor. If such refund occurs, then (i) End User shall cease to use such Licensed Materials and (ii) Sectra shall be released from all liability for all existing and future claims related to such Licensed Materials.
- 15.3.2** Notwithstanding anything else, the IP Indemnity Obligations do not apply: (i) if End User admits any related third party allegation without the express prior written consent of Sectra; (ii) to any Third Party Claim or Loss to the extent such Third Party Claim or Loss results from or arises out of (A) any act or omission by End User or any End User Personnel (other than the use of the Sectra Product or other actions, in any case as expressly authorized in this Agreement), (B) the existence or use of any property, equipment, facilities or Intellectual Property of End User, (C) the existence or use of any derivative works of or modification to any Licensed Materials created (solely or jointly with others) by or on behalf of End User or any End User Personnel or by Sectra at the direction or request of End User, (D) any use of any of the Software in combination with any technology, operating platforms, hardware, software, content, processes, systems, tools, products or other property not provided by Sectra, where the allegation of infringement or misappropriation relates to the combination, and/or (E) the continued use by End User of infringing Software after Sectra has provided any remedy described in Section 15.3.1; (iii) any Third Party Claim or Loss that results from or arises out of (in whole or in part) the existence or use of any comments, instructions, suggestions, supporting information, or other feedback provided by End User or any End User Personnel respecting any Licensed Materials, content and/or any other subject matter or services of this Agreement, or any act or omission by any third party (other than any Sectra personnel); (iv) any unauthorized modification, operation or use of the Licensed Materials by End User or any End User Personnel; (v) End User's failure to use or implement corrections or enhancements to the Software made available by Sectra; (vi) the willful misconduct or gross negligence of the End User; and/or (vii) the breach by the End User of this Agreement.

# SECTRA North America, Inc.

- 15.4 If a Third Party Claim is commenced against any party or person entitled to receive indemnity or defense under this Agreement in respect of such Third Party Claim, the indemnified party shall give notice to the indemnifying party as promptly as practicable but in any event, within a period that will not prejudice the rights of the indemnified party under this Agreement or the ability of the indemnifying party to defend the Third Party Claim. After such notice, the indemnifying party shall assume the defense of such Third Party Claim, and may employ and engage attorneys of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnified party shall cooperate in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, defense and settlement of such Third Party Claim and any appeal arising therefrom. The indemnified party may participate in such investigation, trial, defense and settlement of such Third Party Claim and any appeal arising therefrom, through its attorneys or otherwise, at its own cost and expense. No settlement of a Third Party Claim that involves a remedy other than the payment of money by the indemnifying party, or that involves an admission of liability on the part of the indemnifying party, shall be entered into without the consent of the indemnified party.
- 15.5 No indemnifying party shall have an obligation to indemnify any indemnified party for any Third Party Claims or Losses to the extent that such Third Party Claims or Losses are a result of the fraud, intentional misconduct or gross negligence of such covered indemnified party.

## 16 Force Majeure

Sectra shall not be liable to the End User for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to a Force Majeure Event. A "Force Majeure Event" is an event beyond the control of Sectra which occurs after the date that these Terms and Conditions have entered into force and which were not reasonably foreseeable at that time and whose effects are not capable of being overcome without reasonable expense or loss of time, including (without limitation) war, terrorism, civil unrest, blockades, boycotts, strikes, lock-outs and other general labor disputes, acts of government or public authorities, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions and general shortages of energy, failures in external networks, software defects or inefficiencies (other than with respect to the Software), or other defects in computer equipment. Strikes, lockouts, boycotts or blockades are Force Majeure Events even if Sectra has taken the action itself or is the subject of the action.

## 17 Disputes

- 17.1 These Terms and Conditions shall in all respects be governed by and construed in accordance with the laws of the State of California, USA, including without limitation, all matters of construction, validity and performance (without regard to any conflict of law principles that would require the application of laws of any other state). Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any agreements or transactions contemplated hereby may be brought in the courts of the State of California or of the United States of America located in the State of California and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum. Each party hereby irrevocably consents to the service of process in any such suit, action or proceeding brought in the aforementioned courts by the mailing of copies thereof by registered or certified mail, postage prepaid, to the address set forth on the books of the Company, or such other address as such party may specify by written agreement or by written notice to each other, such service to become effective 10 days after such mailing.
- 17.2 Subject to the injunctive remedies available to Sectra pursuant to Section 15.2, any claim, controversy or dispute between the parties, including, without limitation, any dispute involving any party hereto, or their agents, employees, officers, directors and affiliated agents ("Dispute"), whether at law, in equity or otherwise, shall be resolved by arbitration conducted by three (3) arbitrators, who shall be engaged in the practice of law. Each party shall select one (1) such arbitrator, and those two (2) selected arbitrators shall select a third (3<sup>rd</sup>) arbitrator. All arbitration proceedings arising from these Terms and Conditions shall be governed by the then current rules of the American Arbitration Association ("AAA"), subject to the limitation that the arbitrators shall not have the authority to award punitive damages. The arbitrators' award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing party, as determined by the arbitrators, shall be entitled to an award of reasonable attorneys' fees and costs. All arbitration proceedings related to any Dispute shall occur in the City of Riverside in the State of California. It is expressly agreed that either party may seek injunctive relief or specific performance of the obligations hereunder to maintain the status quo during the pendency of any Dispute in an appropriate court of law or equity pending an award in arbitration. All arbitration proceedings shall be conducted in English.

# SECTRA North America, Inc.

## 18 Miscellaneous

- 18.1 End User hereby authorizes Sectra to make public announcements relating to the commencement of End User's use of the Sectra Product, which public announcement may include the trade name(s) of the End User.
- 18.2 End User shall not assign, transfer, or otherwise dispose of this Agreement in whole or in part to any individual, firm, or corporation without the prior written consent of Sectra, which consent shall not be unreasonably withheld. Any assignment with consent does not release the assigning party from any of its obligations under this Agreement unless the consent so states.
- 18.3 This Agreement shall be binding on the parties, their affiliated companies, subsidiaries, successors, and permitted assigns (if any), and each party hereto warrants that the undersigned are authorized to execute this Agreement on behalf of each such respective party.
- 18.4 This Agreement, including all appendices, exhibits, schedules and riders attached hereto, constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior proposals, understandings and all other oral and written agreements between the parties relating to the subject matter hereof.
- 18.5 If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.
- 18.6 No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by the party to be charged. No failure or delay by either party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power or remedy, nor shall any single or partial exercise by any party hereto of any right or remedy hereunder preclude any other or further exercise thereof or of any other right or remedy.
- 18.7 Sectra and its personnel and agents, in performance of this Agreement, are acting as independent contractors and not as employees or agents of End User. Under no circumstance will either party have the right or authority to enter into any contracts or assume any obligations for the other or to give any warranty to or make any representation on behalf of the other.
- 18.8 All notices relating to this Agreement shall be in writing, signed by the party giving or making such notice or communication, and shall be delivered by: (a) personal delivery; (b) facsimile transmission; (c) postage-prepaid certified or registered mail (airmail if available), return receipt requested; or (d) reliable, commercial overnight courier service. Notices shall be sent to the respective addresses of the parties set forth in the Preamble above, or such other address as either party may specify in writing in accordance with this Section 18.9, and shall be deemed given upon receipt.
- 18.9 Waiver of UCITA. The Uniform Computer Information Transactions Act or any version thereof, adopted by any state in any form ("UCITA"), shall not apply to this Agreement and, to the extent that UCITA is applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.
- 18.10 In this Agreement, unless a clear intention appears otherwise: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (c) reference to any gender includes each other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (e) reference to any law means such law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; (f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision hereof; (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (h) "or" is used in the inclusive sense of "and/or"; (i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; (k) references to "person" or "persons" means an individual, corporation, limited liability company, partnership, trust, joint venture or other legal entity; (l) article and section headings herein are for convenience only and shall not affect the construction hereof; (m) section references shall be deemed to refer to all subsections thereof, unless otherwise expressly indicated; and (n) "derivatives" or "derivative works" of any Intellectual Property means any revision, modification, translation, expansion, recasting, transformation, porting adaptation, or other altered version of such Intellectual Property, as well as any derivative work of such Intellectual Property within the meaning of 17 U.S.C. Section 101 of the United States Copyright Act.

# SECTRA North America, Inc.

- 18.11 In addition to all other provisions which expressly survive termination/expiration of the License and Support, or whose context requires such survival, the following provisions shall specifically survive termination/expiration of the License and Support: Sections 5.4, 5.5, 5.6, 5.9, 5.10, 5.11, 6, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 10, 11.1, 12, 13, 14, 15, 16, 17 and 18.

# SECTRA North America, Inc.

## Proposal To

Riverside County Regional Med Ctr  
26520 Cactus Avenue  
Moreno Valley, CA 92555

## Project, Annual Support and Maintenance Quotation

Proposal # - DOC-JCHS-77Y8AE-9.0  
Date - May 20, 2009  
Representative - Jennifer Reeder  
Phone - 203-925-0899

Expiration Date - June 20, 2009

Billing Schedule - Monthly in Advance  
Coverage - 24x7 / (800) 307 4425 ext 300  
Term - 5 Years (To Begin July 1, 2009)

### Sectra Components - Systems (Hardware & Software)

Part #	Mfg.	Description	Qty.	Start Date	End Date
	Sectra	Enterprise Edition PACS - Fee per exam model Multi-RIS HL-7 Interface, includes 2 <sup>nd</sup> RIS Q4 09 MWL Interface Concurrent User Engine IS/fs External File System Archive Interface (2) HP Itanium Servers (1) HP Itanium Test System Server (3) Dell Servers (Web Farm) (1) Dell Test Web Server (1) EMC SAN Solution (64.5TB raw) (2) Brocade FC Switches (1) Dell Server (peerVue) (2) Dell File Servers w/Tape Library for SAN Backup (4) Dell MD1000 RAID5 Arrays (60TB raw) (2) Nortel Alteon 2424 SSL Load-Balancers (2) Dell 42U server racks, w/consoles, PDUs (2) APC 8kVA UPS' (2) Vidar Film Scanner Units	1	7/1/2009	6/30/2014

### Sectra Components - Software only

Part #	Mfg.	Description	Qty.	Start Date	End Date
	Sectra	Basic Document Scanning Package	ULM	7/1/2009	6/30/2014
	Sectra	CD/DVD Production Center Software	1	7/1/2009	6/30/2014
	Sectra	Control Tower (Basic and Workflow)	SITE	7/1/2009	6/30/2014
	Sectra	Demonstration Scheduling Package	SITE	7/1/2009	6/30/2014
	Other	peerVue qiVue Software	SITE	7/1/2009	6/30/2014
	Sectra	HIP Template Wizard	1	7/1/2009	6/30/2014
	Sectra	IDS5/cl.net Clinical Review Workstation Software	ULM	7/1/2009	6/30/2014
	Sectra	IDS5/doc.net Advanced Document Scan Sw	ULM	7/1/2009	6/30/2014
	Sectra	IDS5/dx.net Diagnostic Workstation Software	ULM	7/1/2009	6/30/2014
	Sectra	IDS5/qa.net Quality Assurance Workstation Sw	ULM	7/1/2009	6/30/2014
	Sectra	IDS5/mx.net Mammography Workstation Sw	2	7/1/2009	6/30/2014
	Sectra	IDS5/Web Web-based Clinical Review Software	ULM	7/1/2009	6/30/2014
	Sectra	Image Scanner Support Package	ULM	7/1/2009	6/30/2014
	Sectra	Interim Report Package	ULM	7/1/2009	6/30/2014
	Sectra	MPR Package	ULM	7/1/2009	6/30/2014
	Sectra	Orthopedic Package	1	7/1/2009	6/30/2014
	Sectra	Sectra 3D Package	3	7/1/2009	6/30/2014
	Sectra	Teleradiology Package	ULM	7/1/2009	6/30/2014
	Sectra	WISE/doc Scanning Server Sw	SITE	7/1/2009	6/30/2014

# SECTRA North America, Inc.

## Proposal DOC-JCHS-77Y8AE-9.0 Includes

1. **New Sectra Software Licenses at Current Release**
2. **Service Conversion Project as per Appendix 1**
3. **Annual Software Upgrades and Updates**
4. **Onsite Applications Refresh Training – (24 Hours over 3 consecutive days)**
5. **Software Upgrade and Update Installation and Applications Training**
  - Software Upgrades and Updates are installed after hours to minimize impact to operations.
6. **Sectra North America University System Administrator Training – 2 Seats/Year (Flight, Hotel, Rental Car provided by Sectra North America, Inc.)**
7. **Sectra North America Radiologist User Group – 1 Seat (Includes Flight and Hotel provided by Sectra North America, Inc.)**
8. **Sectra North America System Administrator User Group – 1 Seat (Includes Flight and Hotel provided by Sectra North America, Inc.)**
9. **PACS Technology Refresh**
  - HL-7 Interface Migration from Easylink to Fully Integrated Solution. This removes a point of failure and eliminates a performance bottleneck.
  - DICOM Modality Worklist migration from Easylink to Fully Integrated Solution.
  - Replacement of existing HP PA-RISC UNIX servers with new HP Itanium UNIX servers (Hardware outlined in Appendix 2).
  - Migration of existing short-term online data from existing RAID Storage to new SAN Online Spinning-Disk solution (Hardware outlined in Appendix 3).
  - Migration of all long-term archived data from existing PACS Archives to new SAN Online Spinning-Disk solution (Hardware outlined in Appendix 3).
  - Continuously work with Customer to provide an up to date, current and well working PACS in its current size and extension. Additional charges for hardware, software and services outside of what this agreement covers may apply (ie: Added workstations, server, or other items beyond the scope of the identified solution, as noted in this Agreement).
10. **Annual System Performance Review**
11. **PACS-Guard Disaster Recovery Off-Site Backup Service**
  - Backup media will be delivered to customer within 3 days of a catastrophic failure where all onsite backup data is lost.
  - Wide Area Network (WAN) connection between RCRMC and Sectra North America, Inc. will be provided by Sectra North America, Inc.
12. **24x7x365 Remote Monitoring Service**
13. **UserWeb Accounts for Access to Web Helpdesk, System Documentation, Discussion Groups, Tech Tips**

# SECTRA North America, Inc.

## Fee per Study Pricing:

- \$2.50 per study on first 200,000 annual exams (minimum volume 150,000 annual exams)
- \$2.00 per study on 200,001+ annual exams
- Disaster Recovery Wide Area Network Setup Fee: \$3,000.00
- Disaster Recovery Wide Area Network Monthly Service Fee: \$3,050.00

Payment schedule will be monthly.

## For Riverside County Regional Med Ctr:

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

## For Sectra North America:

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

# SECTRA North America, Inc.

## Appendix 1 – Conversion Project Statement of Work

### 1. Introduction and purpose

#### 1.1 Introduction

Sectra North America, Inc. is a leading provider of Picture Archival and Communication Systems (PACS). Within the medical environment, the Sectra PACS has proven to be valuable to facilities seeking to improve their patient care processes, and overall quality of care.

#### 1.2 Purpose

The purpose of this document is to present a plan to transition the support of the customer's PACS system to Sectra North America Inc. Sectra's Professional Services Organization (PSO) has developed this plan and divided it into 4 sections

- Implementation Program overview
- Day to day operations (pre/post transition)
- Roles & Responsibilities
- Implementation overview (Tasks)

### 2. Implementation Program Overview

To ensure the successful implementation/Service conversion from the prior PACS service provider to PACS support provided by Sectra North America, Inc. Sectra's Professional Services Organization (PSO) has developed a PACS implementation plan, based upon the Project Management Institute (PMI) PMBOK. This methodology is based on 4 primary phases

**Project Inception** - The Phase where a Sectra team is assigned (along with the customer) and is responsible for the overall solution design. This phase will start within 30 days from contract signing.

**Project Planning** - This phase is where the Project Plan is put together, the Scope of Work documentation and a final review with the customer. During this time, Sectra PM will work with RCRM to establish a mutually agreed upon Plan to assure a timely, secure transition of the PACS. A "sample" project checklist can be seen in Section 5 of this document entitled: "Implementation Overview"

**Project Construction/Implementation** - This phase begins the site readiness portion of the project. It starts with a formal Kick-off and continues throughout the Installation/upgrade, Testing, Clinical Training and formal "Go-Live" of the system.

**Project Closure/Transition** - This phase is the closure portion of the project. A formal Transition to Support and Project review is conducted. It is expected that this phase is completed within 6 months from contract signing.

# SECTRA North America, Inc.

## 3. Day to day operations Post Service conversion

This section describes how the "day to day" activities change once a support contract with Sectra begins.

For the most the day to day workflow and operation of the PACS system will not change very much, however there are some distinct changes that needs to be identified and they are.

### 3.1 Support calls

One difference will be the PACS phone number and e-mail address Customer will use to contact technical support.

Sectra North America helpdesk can reached at:

- Phone: 800.307.4425 ext 300
- E-mail: Helpdesk-na@sectra.com

Standard Sectra helpdesk hours are Monday – Friday 8am-8pm Eastern Time (excluding Holidays).

Outside of these hours MISSION CRITICAL coverage is supplied by leaving an urgent voicemail (Pager Support).

Mission Critical issues are defined as:

- Patient safety concern
- Data loss
- No Modalities can send to PACS
- No PACS workstations (IDS5/mx,dx,qa,cl, home) can display images
- No exam retrieval from archive
- No web access for referring Physicians

Sectra will provide 24x7 "monitoring support" via the Sectra PACS Guard Monitoring™ (PGM) service tool. This tool monitors key "services" within the core system and sends e-mail notifications to the Sectra helpdesk. PGM also sends notifications for critical issues outside normal helpdesk hours.

In addition Sectra will use PACS Guard Assist™ (PGA) to provide remote access to the system and/or clinical assistance when needed. Remote system diagnostics and repairs can also be performed using PACS Guard.

### 3.2 On-Site Support

#### 3.2.1 On-site Support by Sectra

Sectra's service model takes full advantage of our remote support capabilities, combined with the assistance from the customer's System Administrator, to shorten repair/response time. However, if or when the situation arises that requires on-site support, Sectra, at their discretion, will deploy the appropriate resource(s) to resolve any issues.

Sectra realizes that additional training may be required to familiarize System Administrator(s) with the expanded responsibility for supporting the PACS system.

# SECTRA North America, Inc.

## 3.3 Sectra Software and branding

Sectra will remove all references of the current PACS service provider, this includes but is not limited to the following

- a) All non Sectra branding will be replaced with Sectra branding
- b) All passwords will be changed
- c) All remote access from previous PACS service providers will be terminated

### **4. Server Refresh/Upgrade Roles and Responsibilities**

The implementation of the PACS project will involve teamwork between the customer and Sectra North America, Inc. proper planning, documenting and deployment will be necessary to achieve a successful implementation for a project of this size and scope. As with any professional team or project, to be successful the "team" must be assigned roles and responsibilities. The following section describes the roles and responsibilities.

## 4.1 Sectra North America, Inc., role definitions

**PACS Project Manager:** Owner of all activities/tasks and is the cross functional manager of the "Project Teams". He/She is the main contact to the customer during the Transition. Responsibilities are to provide consultant services to the Customer for the following PACS related activities:

- A) Overall project management activities
- B) Organization of updating the PACS Software and replacing the EasyLink broker with the Sectra HL7 interface
- C) Organization of any clinical training activities.

**PACS Technical Specialist/Service Engineer:** Technical personnel who, working in conjunction with the Project Manager, is responsible for planning and deploying the PACS upgrade/Sectra branding.

**PACS Integration Engineer:** Technical personnel who, working in conjunction with the Project Manager, the Customer and Customer RIS vendor, is responsible for managing the transition from the EasyLink Broker to Sectra's native HL7 PACS interface.

**Clinical Application Specialist:** (If required) A trained specialist who, working in conjunction with the Project Manager and the Customer, is responsible for the organization, scheduling and performing the clinical user training program.

# SECTRA North America, Inc.

## 4.2 Customer roles definitions

**Customer Project Executive:** The Customer Project Executive will function as the chief day-to-day project decision-maker and is ultimately responsible for the following activities:

- 1) Addressing schedule changes.
- 2) Approving final deliverables.
- 3) Responsible for interim sign off for deliverables.
- 4) Assist the Sectra Project Manager in the organization of all on site transitional activities.

**Customer System Administrator:** The System Administrator is responsible for all aspects of system operation including; startup, shutdown, backup, and troubleshooting. The System Administrator must/should have knowledge of the systems and networks within the facility(ies). It is expected that the system administrator have a working knowledge of technologies including Microsoft Windows NT, Windows 2000, TCP-IP network, DICOM protocols and the typical workflow associated with the orthopedics department. Following the Sectra PACS implementation this individual may contribute one to three hours per day in administrative tasks. The resource will also be responsible for first call troubleshooting and resolving maintenance issues post application Go-live.

**Customer Network Specialist:** The Customer's network Specialist or IT personnel is responsible for assisting the "team" with any access, testing, troubleshooting or questions regarding the hospital network, VLAN, or intranet the PACS will reside on. The "team" consists of the Sectra Technical Specialist/Engineer, Customer System Administrator, and any additional IT personnel Customer may elect as well.

**Customer RIS Specialist:** The Customer's RIS Specialist has the expertise with the RIS information system that is to be interfaced to the SECTRA PACS HL7 interface. The Interface Specialist is responsible for:

- 1) Ensuring the RIS system has ALL the functionality required to send orders, results, and scheduling information in HL7 format to the Sectra PACS HL7 interface port.
- 2) working with the Sectra PACS Integration Engineer to implement the RIS interface to the Sectra PACS HL7 interface and assist with the HL7 mapping/configuration & testing process.

# SECTRA North America, Inc.

## 4.3 Responsibilities of Customer

Customer will ensure:

1. **Network Readiness:** the NETWORK infrastructure continues to support the Sectra PACS. This means the network should be either physically separated or virtually separated (VLAN) from the main facility network.
2. **Modality Readiness - DICOM Store/Print:** ALL imaging systems, being connected to PACS, continue to support DICOM 3.0 Store as a Service Class User (SCU) either by upgraded NON-DICOM STORE systems to DICOM through the Original Equipment Manufacturer -OEM (preferred method). Continued use of any validated 3<sup>rd</sup> party devices, such as a merge box will be required.
3. **Modality Readiness - DICOM Worklist:** ALL imaging systems, being connected to PACS, continue to support DICOM worklist management. This will continue to be accomplished by either the upgraded NON-worklist systems to DICOM Modality worklist through the Original Equipment Manufacturer OEM (preferred method) or through the use of a validated 3<sup>rd</sup> party device, such as a Merge boxes.
4. **RIS Readiness:** The HIS/RIS system must be able to support & send HL7 (ADT/ORM/ORU) messages to the Sectra HL7 interface over TCP/IP. This may require the assistance of a Customer RIS specialist as well as assistance from the customer's RIS vendor in the mapping or RIS information to the Sectra HL7 interface.
5. **Printer Readiness:** If applicable, all printers that will remain in service and are expected to print film from the PACS and/or Modalities must support DICOM Print SCP.
6. **Remote Access:** The customer *must provide* a means of remote connectivity to the PACS system. The preferred method would be to allow *Sectra's PACSGuard™ (Assist and Monitoring)* to be installed and configured. As an interim a VPN connection, allowing Sectra a means to remotely connect to the system and perform configuration or troubleshooting activities on the system.
7. **Customer Supplied Hardware:** If applicable, all customer-provided hardware must meet or exceed the Sectra North America, Inc. recommendations. This includes but is not limited to: CPU type, amount of RAM memory, Hard Drive capacity, Video Card & Drivers, Monitor types/resolution and Operating systems.

## 4.4 Responsibilities of Sectra North America, Inc.

Sectra North America, Inc., will provide Customer with:

- A "Project Scope document" which clearly explains the scope of the proposed PACS service transition (this document).
- A "Project Timeline" indicating all planning milestones and activities.
- Project management support to help with the organization of ALL items outlined in the document.
- **Upgrade of the CORE PACS systems.** The PACS Technical Specialist/Engineer, will install and configure the SW release upgrade and Sectra branding to the PACS and eventually the removal of the EasyLink broker in accordance with the upgrade and transition plan agreed upon by Sectra and Customer.
- **Management of identified issues at contract signing.** Upon contract signing, Customer will provide Sectra with a list of issues that need to be addressed during the conversion. Sectra and Customer will agree on the issue content, importance, and proposed action plan.
- **Provide clinical application training:** The PACS Clinical Application Specialist will provide the clinical end-user training for the Sectra PACS.

# SECTRA North America, Inc.

## 5. Implementation overview (Checklist)

Based on the Sectra project management methodology and our experience we propose the following Implementation overview/tasks. We realize that the exact detail plan can only be made once we work together (as partners) and examine our combined resource availability and material availability.

Below is a list of general tasks that will be performed along with a brief description of the task.

Activity/Task	Task description
Kick-off meeting	Formal introduction meeting (usually virtual) between customer and Sectra Services team
Sectra Helpdesk access/process	The Sectra Helpdesk process and access is explained
Sectra User-web accounts	Sectra User Web accounts allow the customer to be able to view status of errands, obtain PACS documentation and updates
PGM installation	Installation of PACSGuard Monitoring (Outbound ports 5667, 5668, 5669 )
PGA installation	Installation of PACSGuard Assist (Outbound port 23800 )
Upgrade to latest release	This task ensures the Sectra system is updated to the most current release of Sectra SW
New license keys installed	This task ensures that new Sectra license keys are installed on the PACS system
Hardware inventory	This is a step that Sectra takes to ensure all hardware which is covered in the Service contract is inventoried properly.
Contract terms in C&S	This step is to ensure the Sectra Services team understands the scope of coverage.
Hardware in C&S	This step is to ensure all covered hardware is entered into the Sectra Customer & Supplier registry
Site description in C&S	This step is to ensure that a brief site description is entered into the Sectra Customer & Supplier registry
Contacts in C&S	This step is to ensure that all key customer contact information is entered into the Sectra Customer & Supplier registry
24x7 Contacts & process in C&S	This step is to ensure that 24x7 contacts, along with the process of notification is entered into the Sectra Customer & Supplier registry
Conversion Issue list compiled	This task is to document any issues that need to be addressed during the conversion process.
Conversion Issue tracked and completed	This action is to ensure that each conversion issue is tracked to completion
Super-user training	If applicable, this task is to ensure Super-user training is scheduled and completed
End User training	If applicable, this task is to ensure End-user training is scheduled and completed
Hardware refresh completed	If applicable, this task is to ensure any hardware refresh/upgrade is scheduled and completed
Broker migration HL-7	This task is to ensure that the broker/PACS interface is replaced by the Sectra HL7 Interface.
Broker migration MWL	This task is to ensure that the broker/Modality interface is replaced by the Sectra HL7 Interface.
Performance baseline	Once the PACS system has been "converted/branded" as Sectra a baseline performance check will be done.
Test Server Installation	A test system environment will be installed on hardware provided by Sectra North America, Inc.

# SECTRA North America, Inc.

## Appendix 2 – Server Hardware Included in Refresh

- (2) HP rx6600 Itanium Servers (Cluster servers), with 2 x 1.6GHz Dual-Core CPUs, 16GB RAM, 2 x Dual FC HBA, Dual Onboard NIC, Quad NIC, 2 x 146GB Internal system drives, DVD-ROM, external DAT72, HP-UX 11i, MC/ServiceGuard Clustering software, or similar
- (1) HP rx1620 Itanium Server (Test System), with 1x1.6GHz Dual-Core CPU, 2GB RAM, 2x146GB Internal drive RAID1, DVD-ROM, DAT72, HP-UX 11i, or similar
- (3) Dell PE1950 Web Servers, with Windows 2003 Server OS, or similar
- (2) Nortel Alteon 2424 SSL Load-Balancing Switch, or similar
- (1) Dell PE1950 Test Web Server, with Windows 2003 Server OS, or similar
- (2) APC 8KVA 6.4kW rack-mountable UPS, or similar
- (2) Dell 42U Server Rack with 16-port KVM switch, KVM console, dual PDU, or similar
- (1) Professional Services (Installation, Integration)

# SECTRA North America, Inc.

## Appendix 3 – Storage Hardware Included in Refresh

- (1) EMC CX4-240 SAN Disk Processor Enclosure (DPE), or similar
- (1) EMC PowerPath Departmental Software
- (1) EMC DAE including 15 x 300GB 15k Fibre-Channel Drives, or similar
  - Provides 4.5TB raw capacity for RAID5/10 PACS Database File Storage
- (4) EMC DAE including 15 x 1TB SATA2 Drives, or similar
  - Provides 60TB raw capacity for RAID5 Online Image Storage (first copy)
- (2) Brocade Fibre-Channel Switches, or similar
- (2) Dell PE1950 File Servers, with Windows 2003 Server OS, or similar
- (4) Dell MD1000 RAID Array including 15 x 1TB SATA2 Drives
  - Provides 60TB raw capacity for RAID5 Image Storage (second copy)
- (1) Dell TL2000 Tape Library, including software for SAN Backup, or similar
- (1) Professional Services (Installation, Integration)

# SECTRA North America, Inc.

## Appendix 4 – New Sectra Products Included

### (1) CO-NA-RAD-ULM200

#### Unlimited License Module

- Unlimited IDS5/dx.net Diagnostic Workstation Software License
- Unlimited IDS5/qa.net Quality Assurance Workstation Software License
- Unlimited IDS5/cl.net Clinical Review Workstation Software License
- Unlimited IDS5/web Web-based Clinical Review Workstation Software License
- Unlimited IDS5/home Remote Diagnostic Workstation Software License
- Unlimited IDS5/send Digitizing Workstation Software License
- Unlimited IDS7/rx Web-based Remote Diagnostic Workstation Software License
- Upgrades to IDS7 family of products

### (1) CO-NA-RAD-CT-200

#### PACS Control Tower (Basic and Workflow Modules)

- The Sectra PACS Control Tower helps hospital and department managers in optimizing the resource utilization in departmental as well as enterprise workflow.

### (3) CO-NA-RAD-3D

#### Sectra 3D Package (Software-only)

### (2) CO-NA-RAD-MXSOFT

#### IDS5/mx.net Mammography Workstation (Software-only)

- MX Software Only Package. Includes one specialty keypad.
- NOTE: The IDS5/mx.net software needs to be installed and tested according to Sectra installation guides, on hardware according to Sectra's hardware requirements and recommendations. Quality controls need to be performed according to the Sectra QC Manual. This option is supported only on Sectra SW rel. 11.1 and restricted to the following medical displays:
  - Planar DOME C5i LCD
  - Eizo RadiForce G51-S
  - Barco Coronis 5MP Mammo
  - Siemens SMD 21500

### (1) CO-NA-PS-MAM-SUP32

#### Onsite Mammography Software Installation Services

- Onsite Mammography Workstation Software Installation, up to 32 hours (1 resource 1 trip)

### (1) CO-NA-PS-MAM-APP32

#### Onsite Mammography Workstation Applications Training

- Additional Onsite end user application training, up to 32 hours (1 resource 1 trip)

### (6) CO-NA-PS-APP32

#### Onsite PACS Workstation Applications Training

- Additional Onsite end user application training, up to 32 hours (1 resource 1 trip)

### (2) CO-NA-RAD-SCPRO

#### Vidar Diagnostic Pro Film Scanner

- Includes Film Scanner unit and Vidar Driver/Application software

### (1) CO-NA-RAD-PV400

#### peerVue qiVue System

- Includes Dell PE860 server and server software

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**(1) EEPACS-MHL7-UNIX200      HL7 Multi-RIS Interface Engine**

- HL7 interface engine to provide multi-RIS interface capability (Current RIS plus 1x Future RIS around Q4 '09)

**(1) EEPACS-CMHL7-UNIX      HL7 RIS Connection for Multi-RIS Interface Engine**

- Connection of additional RIS Interface to Multi-RIS Interface Engine

# SECTRA North America, Inc.

## Time and Materials Rates Rider

Sectra Time and Materials list price rates for Expanded Support as of the effective date of this Agreement are as set forth below. The time zone used for billing is based on the geographical location where the engineer is located when providing services.

Category 1	\$250.00 per hour	Applies 8:00AM – 5:00PM non-holiday weekdays
Category 2	\$375.00 per hour	Applies 5:00PM – 8:00PM 7:00AM – 8:00AM non-holiday 7:00AM – 8:00PM Weekdays and Saturdays
Category 3	\$500.00 per hour	Applies 8:00PM – 7:00AM non-holiday weekdays, Saturday 8:00PM until Monday 7:00AM and All Holidays
Category 4	Hourly billing at half the clock time	Applies to all travel. Plus normal, customary and reasonable travel expenses.

# SECTRA North America, Inc.

## True Uptime Guarantee Rider

Sectra represents and warrants that so long as End User provides the minimum hardware, network, and connection specifications set forth in Appendix 1 (and further subject to Section 8 (Third Party Hardware and Services)), the Sectra Product will have a true uptime commitment of 99% (97% for non High Availability Components) as set forth in more detail below (the "True Uptime Commitment"). If the Sectra Product fails to meet the True Uptime Commitment for any month, End User shall have the Uptime Remedy described and defined in Section 19.1.3 as its sole and exclusive remedy for such failure for such month. For the 1-month period commencing after start of Warranty Period and each consecutive 1-month period thereafter, the End User shall retain **\$6,264.76** of the Support and Maintenance Fee due for such month ("Withheld Payment"). If the End User believes that Sectra has failed to meet the True Uptime Commitment for any such month, End User shall send written notice to Sectra within ten (10) days after the expiration of such month, and if no such written notification is delivered within such 10-day period it shall be deemed hereunder that Sectra has met or exceeded the True Uptime Commitment for such month, and End User shall not be entitled to any Uptime Remedy for such month. Should Sectra meet or exceed the True Uptime Commitment for any such month, the End User shall pay the Withheld Payment for such month on the payment due date for the next month's invoice from Sectra hereunder (in addition to any other due and payable fees indicated on such invoice), or, if no invoice is delivered, within thirty (30) days after the expiration of such month to which such Withheld Payment relates. Any Withheld Payments that have not been delivered to Sectra, and which do not comprise any Uptime Remedy, upon the expiration or termination date of this Agreement shall be paid to Sectra upon such expiration or termination date.

Uptime for the Sectra Product shall be calculated as follows for the 1-month period commencing after start of Warranty Period and each consecutive 1-month period thereafter: Hours that End User's facilities are covered by Support for such month ("A") minus hours of Downtime, as defined below, occurring during the hours that End User's facilities are covered by Support for such month ("B"), divided by hours that End User's facilities are covered by Support for such month ("A") (A-B/A).

"Downtime" shall mean any time there is a Material Deviation as defined below that has been reported to Sectra by End User pursuant to the requirements of Section 8, which report shall be a written notification to Sectra indicating and describing the hours (by dates and times) of any purported Downtime and the purported Material Deviation that caused each hour of purported Downtime. Downtime shall not include hours expended for maintenance or support to the Sectra Product with regards to a Material Deviation resulting from (i) End User's actions or omissions, or (ii) a force majeure event as set forth in Section 14.

"Uptime Remedy" shall mean, for any 1-month period, the following:

<u>Uptime High Availability Components</u>	<u>Uptime non-High Availability Components</u>	<u>Remedy</u>
Greater than or equal to 97% but less than 99%	Greater than or equal to 95 but less than 97%	Withheld Payment for such month retained by End User and Sectra forfeits all rights thereto
Greater than or equal to 89% but less than 97%	Greater than or equal to 87 but less than 95%	Withheld Payment for such month, and for the next immediately following month, retained by End User and Sectra forfeits all rights thereto
Less than 89%	Less than 87%	Withheld Payment for such month, and for the next two (2) immediately following months, retained by End User and Sectra forfeits all rights thereto. In lieu of the foregoing remedy, the End User shall have the right to terminate this Agreement upon written notification within 30 days following the end

# SECTRA North America, Inc.

of such month. If End User fails to deliver such termination notification within such 30-day period, the End User shall not have the right to terminate this Agreement.

"High Availability Components" shall mean a server system, where components are clustered or in other ways provides redundancy to eliminate single point of failure.

"Material Deviation" shall mean that the Sectra Product fails to do any of the following:

- At least one (1) study can be sent to the Sectra Product from at least one (1) modality or source
- At least one (1) study can be viewed on at least one (1) Sectra Product workstation
- At least one (1) study can be retrieved from Sectra Product archive
- At least one (1) study can be viewed from at least one (1) Sectra Product web viewer

Notwithstanding the foregoing, if the Sectra Product shall fail to do any of the above requirements as a result (direct or indirect) of component(s) other than the Sectra Product covered by this Agreement, such failure or malfunction shall not be deemed to be a Material Deviation hereunder.