

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

329A



FROM: Human Resources Department

SUBMITTAL DATE:
October 1, 2012

SUBJECT: Exclusive Care – Renewal EPO Vendor Contract Agreement – Monument Systems/HealthTrio Maintenance Agreement

RECOMMENDED MOTION: That the Board of Supervisors 1) ratify and approve the attached Agreement from July 1, 2012 through June 30, 2017 with Monument Systems, LLC; 2) authorize the Chairperson to sign three copies of the attached Agreement; and 3) retain one copy of the signed Agreement and return two copies to Human Resources for distribution.

BACKGROUND: In 1999, the Board of Supervisors established the County's self-funded Exclusive Provider Option (EPO) health plan, Exclusive Care, to provide a value health plan option to the employees of Riverside County and their families.

Barbara A. Olivier

Barbara A. Olivier
Asst. County Executive Officer/Human Resources Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 111,000.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

SOURCE OF FUNDS: Premiums paid by Exclusive Care members	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE
Ivan M. Chand
BY: _____
Ivan M. Chand 10/4/2012

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 11/26/02, 3.55; 10/19/04, 3.25; 11/4/08, 3.36; 4/6/10, 3.47; 8/16/11, 3.58; 5/1/2012, 3.20. **District:** All **Agenda Number:**

**ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD**

3.30

FORM APPROVED COUNTY COUNSEL
BY: *Neal R. Kipnis*
DATE: _____
Departmental Concurrence

BACKGROUND continued:

On November 26, 2002, the Board of Supervisors first approved an agreement with HealthTrio (now Monument Systems, LLC) to purchase and install the current claims payment, eligibility and health information system for Exclusive Care. On May 1, 2012, the Board of Supervisors also approved the software system support upgrade of the Monument Systems claims payment and eligibility system, version 3.10 including Electronic Claims Submission module and Microsoft "Biz Talk" to improve efficiency in the adjudication and payment of claims and to ensure conformity with the requirements for the electronic submission of health care claims information.

The software used in these systems was designed by Monument/HealthTrio and is proprietary in nature. The current three year Service Agreement with Monument Systems, LLC expired June 30, 2012, which covers the annual maintenance fee and software support. For FY 2012-13 Exclusive Care is budgeted to pay over \$36 million in medical and hospital claims using the health information systems from Monument Systems, LLC. This maintenance agreement is required to validate that the systems are up to date with changing regulations, updated reference tables and the latest system software upgrades. This will assure timely and accurate claims and payments.

The rates for the maintenance agreement are \$89,000 per year for the main Monument Systems/HealthTrio system, and \$22,000 per year for the Electronic Claims Submission Module for a total of \$111,000 per year. This rate will be maintained for the duration of the contract.

There is no direct cost to the County for the recommended action as these costs are funded by Exclusive Care premiums.



Software System Support and Maintenance Agreement

County of Riverside on Behalf of the Exclusive Care Division of its Human Resources

Department "Customer"

Monument Systems, LLC

A Colorado Limited Liability Company "Monument Systems"

P.O. Box 1508 Address or Chief Place of Business

400 S. Colorado Boulevard, Suite 540 Address or Chief Place of Business

Riverside, California 92502 Address (Continued)

Denver, Colorado 80246 Address (Continued)

California State or Province of Incorporation

Colorado State or Province of Incorporation

Eric Quon Customer Contact

Asma Hasan Monument Systems Contact

equon@rc-hr.com Customer Contact E-mail Address

asma.hasan@healthtrio.com Monument Systems E-mail Address

951-955-9909 951-955-0910 Facsimile Customer Contact Phone Number(s)

303-397-3000 Phone 303-397-3001 Facsimile Monument Systems Phone Number(s)

Customer Contact Mailing Address (if different)

System Location if different from Address (hereinafter referred to as Installation Site)

Signature of Authorized Official Executing Agreement

Signature of Authorized Official Executing Agreement

John Tavaglione Print or Type Name of Person Executing this Agreement

Asma Hasan Print or Type Name of Person Executing this Agreement

Chairman, Board of Supervisors Print or Type Title of Person Executing this Agreement

EVP, Chief Legal Officer Print or Type Title of Person Executing this Agreement

Date: _____, 2012

Date: _____, 2012

FORM APPROVED COUNTY COUNSEL BY: NEAL R. KIPNIS DATE



SOFTWARE SYSTEM SUPPORT AND MAINTENANCE AGREEMENT

Monument Systems *xpress*™ V.3.9

This Software System Support and Maintenance Agreement ("Agreement") is made by and between County of Riverside on behalf of the ExclusiveCare Division of its Human Resources Department ("Customer"), a California County, with headquarters at 4080 Lemon Street, Riverside, California 92501-4647, and Monument Systems, LLC, a Colorado Limited Liability Company with principal offices at 400 S. Colorado Boulevard, Suite 540, Denver, Colorado 80246 ("Monument Systems").

Recitals

Monument Systems has proposed and offered to Customer Professional Services and maintenance services to assist with Customer's operation of the System, as well as services to provide upgrades and enhancements to the System from time to time necessary or desired for the operation and use of the System by Customer.

Customer desires, in order to use the System, to purchase such Professional Services, support, maintenance and enhancement services to be provided by Monument Systems.

Both parties desire to replace the previous agreement on the same subject matter, which has an effective date of December 31, 2002 (the "Prior SSSMA"), which expired on its own terms, with this new, updated agreement.

In consideration of the foregoing and the agreements herein contained, Monument Systems and Customer agree as follows:



1. Definitions

- A. Capitalized Terms not otherwise defined herein shall have the same meaning as those set forth in the License Agreement between the parties ("License Agreement").
- B. "Maintenance Services" (aka "Maintenance") means the provisions of services related to the System. Maintenance Services includes Releases, error and defect correction and telephone support (both as described below) in order to effect use of the System in accordance with the System Documentation, the License Agreement and this Agreement. Maintenance Services does not include Level 4, Optional Modules, custom modifications and the like.
- C. "System" means: (1) the current Monument Systems *xpress*™ Version 3.9 application software, component portions of which, when implemented, include the modules, features, and functions listed in Exhibit A hereto and Exhibit A to the SSSMA, and (2) any non-custom Product Offerings provided to Licensee under this Agreement. The System is composed of Application Software Modules (collectively "Application Software" and individually "Application Module(s)"). Any custom modifications are not included in the System.
- D. "Seats" or "Seat Licenses" means the number of permitted users of the System specified in Exhibit C hereto. Seats are generally concurrent unless otherwise stated. Licensee may purchase additional seats as necessary or desired.
- E. "System Documentation" means the collection of information that describes the features and functions and purpose of operation for entering information into the System, including Exhibit A hereto. System Documentation is a guide in support of providing the Licensee's users of the System with information and instruction on how to enter data into the System. System Documentation includes but is not limited to manuals provided to Licensee with Product Offerings. Features and functions described within the System Documentation are subject to change in support of changes necessary or desired in the life cycle of the *xpress* product.
- F. "Product Offerings" are identified by a 4-level logical framework where each level is identified by numerical value. These levels are: (1) Release; (2) Service Pack; (3) Patch, and (4) Level 4.
- G. "Release/Level 1" means the distribution of Product Offerings that is comprised of updates, new features and/or new functions and includes Service Packs/Level 2 and Patches/Level 3. System Documentation is provided with all new Releases. A Release is preceded by the distribution of beta versions.
- H. "Service Pack/Level 2" means the distribution of Product Offerings that is comprised of a tested, cumulative set of patches. Service Packs may also contain additional fixes for problems that are found internally after the Release of the product and a limited number of customer-requested enhancements, which are provided at the discretion of Monument Systems. Service Pack Release Notes are provided with a Service Pack.
- I. "Patch/Level 3" means the distribution of Product Offerings that is comprised of cumulative sets of defect corrections to address specific issues.
- J. "Level 4" means optional Product Offerings and Major System Rewrites. Monument Systems charges for Level 4. Optional Modules include but are not limited to: Accounts Receivable and Premium Billing; Capitation; Case Management (Case Tracking); Dental; Electronic Commerce (Electronic Data Interchange); Combined Check Write; Medicare Advantage Module; and Paperless Document Management. These Optional Modules may also be called "Optional Product Offerings."
- K. "Major System Rewrite" is a type of Release and means a re-development or re-creation of the System, a Product



Offering or Optional Product Offering as a result of any of the following: new technology, change in underlying technology (such as Microsoft.NET), new architecture, new technical capabilities, significant changes to the internet, or substantial changes in functionality of the System that impact the installation and use of the product, such as any of the following: new vendor database technology, new platform technology, new network implementation, etc. Monument Systems charges for a Major System Rewrite. For Licensees on a five (5) year Term, Major System Rewrites are not anticipated to take place more than once per Term and shall not exceed two times per Term.

L. **“Member”** means all members, covered lives, and/or enrollees of Licensee’s Health Plan(s) and its affiliates Health Plan’s, including Members of any Health Plans operated or administered by Licensee.

M. **“Health Plan”** means an entity or organization, including governmental, that pays health related services of its Members, including Third Party Administrators (“TPAs”).

N. **“Prior SSSMA”** means the agreement between the parties, or assignees thereof, on the same subject matter, with an effective date of December 31, 2002. The parties acknowledge that the Prior SSSMA has expired based on its own terms and is hereby replaced and superseded by this Agreement. However, the License Agreement, all addendums or amendments thereto or to the Prior SSSMA, or any other agreements between the parties or their assignees thereto, remain in full force and effect unless explicitly stated otherwise or by the pertinent document’s own terms. In the event of a conflict between any of the aforementioned agreements and this Agreement, this Agreement shall take precedence.

2. Scope of Maintenance Services

A. Customer will receive at no additional charge Standard Product Offerings (Releases, Service Packs, and Patches) for

those portions of the current version of the System licensed by Customer as such Product Offerings are provided to all of Monument Systems’ other customers receiving Maintenance Services, together with related supporting materials and User Guides, provided Customer is then currently receiving and paying for services as set forth in Section 4 of this Agreement, and a license is then currently in effect.

B. Monument Systems will provide Customer with Maintenance Services for the current version of *xpress* via a Web-based incident reporting system and telephone contact with Monument Systems personnel for the purpose of resolving System problems originating at the Installation Site. Customer agrees to provide online computer access in conformance with Exhibit B to the License Agreement.

C. Standard Bronze Level support coverage, included in the Maintenance and Enhancement Fee (the “Fee”), is provided Monday through Friday, excluding holidays, between the hours of 9:00 AM and 5:00 PM local time. Silver Level support coverage is provided Monday through Friday, excluding holidays, between the hours of 8:00 AM and 8:00 PM local time and is available for a 15% increase in the Fee. Gold Level support coverage is provided twenty-four (24) hours per day, three hundred sixty-five (365) days per year and is available for a 25% increase in the Fee.

D. Issues and problems will be categorized as Severity Level 1 (Mission Critical), Severity Level 2 (Urgent), and Severity Level 3 (Routine).

E. Level 1 issues are those identified as being: 1) a defect in the operations of the System as it is defined by the System Documentation; 2) the System is unavailable to the extent that over half of the users (based on the number of seat licenses) are unable to use the System for any purpose; and 3) no immediate work around is available.

F. Level 2 issues are those identified as a being 1) a defect in the operations of the System as it is defined by the System Documentation; 2) negatively impacting the user’s ability to work in a material way; and



- 3) where an immediate work around is available.
- G. Level 3 issues are identified as enhancement requests (including Optional Modules and/or new products) or product defects that do not negatively impact the Mission Critical operations of the organization or that do have a work around available on an immediate or non-immediate basis. Level 3 issues that are not product defects are scheduled for resolution by Monument Systems under a Statement of Work ("SOW").
- H. Customer will notify Monument Systems of issues via a Web-based incident reporting system used by Monument Systems as well as by telephone for Level 1 (Mission Critical) issues. Issues that do not reach immediate resolution will be triaged by Monument Systems Customer Care staff. Non-enhancement, unresolved issues will be forwarded to Monument Systems Engineering for resolution.
- I. If any problems recited in this section of this Agreement are deemed by Monument Systems to result from errors or defects in the System, then Monument Systems shall correct such errors or defects and shall exercise its reasonable efforts to assure that such correction is accomplished in as expeditious a manner as possible.
- J. For problems reported by Customer originating in Hardware, failure to use the Product Offerings, incorrect use thereof, in a prior version of the System, in custom modifications, in unauthorized use of software, interfaces, firmware, peripheral or communications, from modifications not made by Monument Systems, negligence of Customer or any third party, or a Force Majeure Event, then Monument Systems' responsibility shall be limited to providing assistance and advice to Customer pursuant to an SOW, to help determine appropriate remedial action to be taken by Customer or other appropriate third parties to resolve such problems.
- K. Professional Services including, but not limited to the following, shall be undertaken pursuant to a SOW: (1) Deployment to single client test and single client production environments for Standard Product Offerings; (2) deployment of Product Offerings to supported test and production environments in excess of one deployment for each environment (test/production); (3) data migration, data conversion or custom processes resulting from the deployment of Releases or Major System Rewrites to supported test and production environments including but not limited to scripts, triggers, processes and interfaces; (4) Major System Rewrites; (5) Configuration/misunderstanding of configuration; (6) Training needs/educational issues described in User Guides; and (7) assistance on site if necessary in the event remote support cannot solve the problem.
- L. From time to time, Monument Systems may offer Level 4 for a fee, including Major System Rewrites.
- M. If Customer is required to purchase new or additional Hardware to ensure continued operation of the System in the event of an increase in Customer's operations, a Major System Rewrite, custom modifications, new technologies, Customer's own new hardware or software, or due to other functional changes, Monument Systems will notify Customer in advance. Services necessary or desired to effect migration related to new Hardware shall be done pursuant to a SOW.
- N. Customer agrees to accept all Product Offerings as they are released by Monument Systems no later than six (6) months from the initial release date and will not be behind more than one software Patch when released by Monument Systems.
- O. Customer may request, or Monument Systems, at its sole discretion, may offer custom modifications of the System or training to Customer, including receiving Product Offerings as described above and in the License Agreement but on an expedited basis and pursuant to a SOW. Such custom modifications are not part of the System and, except where specifically identified, are not subject to the terms and conditions of this Agreement. Customer agrees to hold Monument Systems harmless from and against any loss, damage and liability (including court costs and attorney's fees)



arising from any claim made against Monument Systems as a result of or in any way arising from, relating to, or connected with such custom modifications.

3. Term of Agreement

- A. This Agreement will become effective upon July 1, 2012, and the term of this Agreement will run for a period of five (5) years from that date until June 30, 2017 (the "Initial Term").

4. Payment

- A. The Fee and the payment schedule for the services described above are detailed in Exhibit B, which is attached hereto and incorporated herein by reference. Customer acknowledges and agrees that an Annual Cost of Living Adjustment will be made to all Fees at the sole discretion of Monument Systems. Any such adjustment will not exceed the increase in the Consumer Price Index compiled by the Bureau of Labor Statistics.
- B. In addition, Customer will pay or reimburse Monument Systems within fifteen (15) days of Monument Systems or Customer receiving an invoice under this Agreement, such as for expenses, any bill (which bill will promptly be copied to the other party) or being otherwise assessed for any and all sales taxes, use taxes, property taxes, and any other governmental charges upon or measured by articles sold or services rendered pursuant to this Agreement, or otherwise exacted in connection with the performance hereof, except Monument Systems net corporate income taxes or corporate franchise taxes. Any personal property taxes assessable on the System or custom modifications on or after the date upon which Customer receives the same will be borne by Customer.
- C. Customer will also reimburse Monument Systems for all travel and subsistence and other out-of-pocket expenses for Monument Systems' employees provision of Professional Services, including but not limited to travel; providing non-Monument Systems-originated supplies, among other items. These expenses will conform to

Monument Systems' then-current corporate travel policies (if for travel), will be invoiced to Customer no more frequently than monthly.

- D. Failure of Customer to pay when due, any invoices or monies due to Monument Systems, shall constitute sufficient cause for Monument Systems to suspend or terminate service under this Agreement. In addition, Customer agrees to pay all costs involved in collecting overdue accounts, including attorney's fees.
- E. In the event that Customer fails to pay invoices when due, Customer shall pay finance at eighteen percent (18%) per annum. Customer hereby agrees to pay Monument Systems simple interest on such unpaid balance at the rate of eighteen percent (18%) per annum until paid in full, and Monument Systems may, by written notice to Customer, require that Customer make future payments by wire transfer.
- F. If an invoiced amount is disputed in good faith by Customer then, until resolution of the dispute occurs, Customer may suspend only that portion of payments that is disputed and toll the running of time for default by: (a) paying the undisputed amount, if any; and (b) sending a written statement of exceptions to Monument Systems. In the event that, as a result of the resolution of the disputed invoice, Customer is found to have inappropriately and unreasonably withheld payment two (2) times in any six (6) month period, then Customer shall pay simple interest to Monument Systems on all such withheld payments and any subsequent withheld payments at the rate of eighteen percent (18%) per annum until paid in full.
- G. In the event Customer claims any amount is due from Monument Systems, as a credit or otherwise, and whether or not related to the services performed by Monument Systems hereunder, Customer shall in all events pay all invoices under this Agreement properly when due and may not set off against such invoices any amounts claimed due.

5. No Warranties



EXCEPT AS SPECIFIED IN THE WARRANTIES SECTION OF THE LICENSE AGREEMENT, MONUMENT SYSTEMS HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. MONUMENT SYSTEMS DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY TO ANY THIRD PARTY. No representation or other affirmation of fact, including but not limited to, statements regarding capacity, suitability for use or performance of products, whether made by Monument Systems employees or otherwise, which is not contained in this section, will be deemed to be a warranty by Monument Systems for any purpose, or give rise to any liability of Monument Systems.

6. Termination

- A. Except as stated in this Agreement, this Agreement may be terminated only by the mutual consent of both Customer and Monument Systems.
- B. Either party may terminate this Agreement if the other party: (1) assigns this Agreement in violation of this Agreement; (2) makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of its property; (3) is adjudged bankrupt; (4) fails to perform any of its obligations under this Agreement or otherwise, and such failure is not remedied within thirty (30) days after written notice thereof has been given to the failing party, including dishonesty of either party, a wilful or material breach by either party, failure of either party to perform, Customer's failure to timely pay any undisputed amount owed to Monument Systems, in which case the most recent invoice shall constitute such notice; (5) is nationalized or expropriated by governmental or military action, whether or not with valid authority.
- C. Upon expiration or termination of this

Agreement, all payments due to Monument Systems will be paid to Monument Systems, including services provided prior to such termination that may not yet have been invoiced but have occurred or taken place prior to the date of termination, and all payments not yet due to Monument Systems will be cancelled.

- D. The Definitions, No Warranties, Termination, Limitation of Liability, Dispute Resolution Procedures, Force Majeure and Miscellaneous Sections of this Agreement will survive termination or expiration of this Agreement, and will remain in full force and effect as if this Agreement had not been terminated or expired.

Licensee obligation for payment under this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY of Riverside ("COUNTY") funding from which payment can be made. No legal liability on the part of Licensee shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment unless Licensee failed to make diligent effort to obtain or receive such funds. In the event that such funds are not forthcoming because funds are not made available to Licensee by the COUNTY, Licensee shall immediately notify Monument Systems in writing that it shall not be able to make payment along with sufficient written documentation of such inability based solely on lack of funding being provided by the County, along with a statement by the Licensee's pertinent executive level officer stating that Licensee diligently tried but failed to obtain funding and that Licensee's actions were taken in good faith, along with documentation of Licensee's attempts to obtain funding. If, upon thirty (30) days of such notice, funds are still not made available by the COUNTY to Licensee, this Agreement shall terminate, in accordance with its terms. Licensee shall not terminate under this section or any other in bad faith but only if the circumstances are as described in this section, or as otherwise permitted under this Agreement. If funding is made available by COUNTY to Licensee at any time after termination pursuant to this section during the same period as would have been under this Agreement's term, the parties shall resume this



Agreement as if it had never been terminated. If it is found or discovered that Licensee engaged in bad faith in any manner, Licensee shall immediately owe, in addition to any other damages available under this agreement and/or by law, amounts that would have been due under this Agreement had it not been for Licensee's invalid termination under this section. The termination right provided herein is not equivalent to a termination for convenience or similar nature, and Licensee acknowledges that it has no additional termination rights other than as described herein and/or in the Agreement. Further, Licensee agrees, however, that during the term of this Agreement, it shall timely submit funding requirements as needed for this Agreement for approval to COUNTY and work diligently to achieve such approval. Licensee shall have no right of termination based on its own failure to seek funding.s

- E. In the event of termination by Licensee for any reason, Monument Systems shall: (1) Stop all work under this Agreement on the date specified in the notice of termination or, if such date is incorrect under the terms of this Agreement, then upon the correct date.

7. Limitation of Liability

IN NO EVENT SHALL MONUMENT SYSTEMS BE LIABLE FOR ANY DAMAGES RESULTING FROM CUSTOMER'S OR TRADING PARTNERS' FAILURE TO PERFORM THEIR OBLIGATIONS; OR, EXCEPT FOR DIRECT DAMAGES OF LICENSEE ONLY, ANY OTHER DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, ANY EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF MONUMENT SYSTEMS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE DELIVERY, USE, POSSESSION, PERFORMANCE, OR OPERATION OF THE SYSTEM OR CUSTOM MODIFICATIONS OR RESULTING FROM LOSS OF DATA OR INFORMATION OF ANY KIND, HOWEVER CAUSED, AND INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR

OTHER LEGAL THEORY, EVEN IF MONUMENT SYSTEMS HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF.

8. Dispute Resolution Procedures

- A. In the event of a dispute related to this Agreement, the following procedures will be implemented:
- (i) The applicable Key Personnel will meet at a mutually acceptable time and place, and thereafter as often as necessary, to exchange relevant information and resolve the dispute. If these representatives are unable to resolve a dispute within sixty (60) calendar days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review as described below.
 - (ii) Upon the failure of the process described above, Monument Systems' President or CEO and Customer's President or CEO will meet at a mutually acceptable time and place, and thereafter as often as necessary, to exchange relevant information and to resolve the dispute.
 - (iii) If the dispute has not been resolved pursuant to Section 8A (i-ii) within ninety (90) days of implementing these dispute resolution procedures, either party may initiate as set forth below.
- B. The maximum amount of recovery by Customer under these dispute resolution procedures or otherwise will not exceed the lesser of: (i) the average monthly payment, or equivalent thereof, made by Customer for the services performed under this Agreement for the actual number of months during which the problem existed; (ii) the actual amount of money damages incurred by Customer; or (iii) the amount Monument Systems has received for support, maintenance and enhancement services from Customer under this Agreement. Should Monument Systems return to Customer the amount Monument Systems has received for support, maintenance and



enhancement services under this Agreement, then this Agreement will be terminated. Customer acknowledges that the remedy specified in this section will be its sole and exclusive remedy resulting from Monument Systems' failure to perform its obligations under this Agreement. Customer acknowledges that this remedy does not fail of its essential purpose and that it is not unconscionable for Monument Systems to seek this limitation of its financial exposure to Customer.

- C. The minimum amount of recovery by Monument Systems under these dispute resolution procedures or otherwise, including in the event of a breach by Customer, will be the amount Customer owes under this Agreement, including all lost revenues under this Agreement and remaining amounts due.
- D. Any action against either party to this Agreement by the other party must be commenced within two (2) years after the cause of action accrues.
- E. The validity, construction, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws provisions. Except as is necessary for Monument Systems to enforce its intellectual property rights, any legal action related to the interpretation or performance of this Agreement shall be filed only in either a Superior Court for the State of California located in Los Angeles or a United States District Court located in Los Angeles. However, prior to the filing of any legal action, the parties shall diligently and mutually work together to avoid any litigation, including pursuant to Section 8 of this Agreement. Prior to the filing of any legal action, the parties shall participate in one or more non-binding mediation sessions to try to resolve the dispute. The parties may also agree to submit the dispute to arbitration prior to the filing of any legal action. Nothing in this Agreement will limit the right of either party to seek injunctive relief or specific performance. Both parties hereby waive a trial by jury.
- F. The rights and remedies of both parties shall not be exclusive and are in addition to any other rights and remedies provided by

law or this Agreement, both in accordance with this Agreement, however.

9. Force Majeure

Neither party will be liable for any delay or failure to perform its obligations under this Agreement (other than Customer's obligations to pay Monument Systems which shall not be deferrable or extendable) arising out of causes beyond the control and without the fault or negligence of that party, including, but not limited to, strikes; lockouts; riots; epidemics; war; governmental regulations; weather; acts of terror; fire; communication line failure; power failure; internet connectivity and infrastructure issues or failures not attributable to facilities or equipment owned, leased, or purchased or otherwise operated by Monument Systems; network or service availability issues related to denial of service attacks, mail bombing and other flooding techniques; acts of God or causes beyond its control (each a "Force Majeure Event"). Both parties will perform their obligations which were suspended or delayed because of a Force Majeure Event as soon as possible after the occurrence of such Force Majeure Event has ceased.

10. Miscellaneous

- A. This Agreement relates to the provision of a System with accompanying and ongoing services and Releases, and, as such, will survive past the System Activation Date and the payment of the sums required by this Agreement. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- B. Neither party may assign this Agreement by operation of law nor otherwise to any person or entity without the prior written consent of the other party hereto, which consent will not be unreasonably withheld. Transfer of this Agreement from either party to a successor organization by merger, consolidation, sale of all or substantially all of such party's assets, or sale of such party's capital stock will not be considered an assignment of this Agreement.
- C. The Parties are independent contractors. Except as may be expressly and



unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship.

- D. This Agreement may be executed in two or more identical counterparts, each of which will be deemed an identical original and which together will constitute one and the same Agreement. The parties agree that transmission to the other party of this Agreement with its facsimile or electronically scanned signature shall suffice to bind the transmitting party to this Agreement in the same manner as if an original signature had been delivered. Without limitation of the foregoing, each party who transmits this Agreement with its facsimile or electronically scanned signature covenants to deliver the original thereof to the other party as soon as possible thereafter.
- E. This Agreement and its exhibits, which are incorporated herein by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and all prior negotiations, representations, and understandings, whether written or oral, are superseded. This Agreement may not be modified or amended except by written agreement signed by authorized agents for the respective parties. Except as otherwise expressly provided for herein, the terms and conditions of this Agreement will prevail notwithstanding any variations or additions contained in any order or other document submitted by Customer. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby, and Customer hereby represents and acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in the License Agreement. Both parties hereto represent that they have read this Agreement, understand it, agree to be bound by all terms and conditions stated herein, and acknowledge receipt of a signed, true, and exact copy of this Agreement.
- F. All notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by registered or

certified mail or by messenger during normal business hours to the party to whom such notice relates at each party's address specified above or as currently known.

- G. The section headings contained in this Agreement are for convenience only and will in no manner be construed as part of this Agreement.
- H. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof will continue to be fully effective.
- I. The officers signing on behalf of the parties to this Agreement acknowledge that they have read and understand this Agreement and hereby warrant that each has full power and authority to execute this Agreement and bind the respective parties hereto and, additionally, that the parties each represents has the requisite power, financial capacity and authority to execute, deliver and perform its obligations under this Agreement. Further, the parties agree that this Agreement, when executed and delivered, shall be a valid and binding obligation of such party, enforceable in accordance with its terms. Each party further represents that it is not bound by any other contract or agreement that would prevent full performance of this Agreement. Both parties shall, at all times, act with good faith and diligence with respect to their respective obligations.
- J. This Agreement is entered into solely for the benefit of Monument Systems and Customer. No third party shall have the right to make any claim or assert any right under it, and no third party shall be deemed a beneficiary of this Agreement.
- K. The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.
- L. Each Party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to



have been negotiated and prepared at the joint request, direction, and construction of the parties, at arm's length, with the advice and participation of counsel, and will be

interpreted in accordance with its terms without favor to any Party.



EXHIBIT A

Monument Systems xpress™ System Software *As listed in Exhibit A to the License Agreement*

Base System

- System Security
- Activity Log (Show Log)
- Global Tables
- Rules Based Logic Forms
- Workflow
- Benefits
- Employer Groups
- Physicians
- Hospitals / Facilities
- Contracts
- Enrollment
- Member History
- Customer Services
- Referrals
- Authorizations
- Medical Fee Schedules
- Hospital Fee Schedules
- Medical Claims
- Hospital Claims
- Finders
- Correspondence
- Reports

Optional Modules

- Accounts Receivable and Premium Billing
- Electronic Commerce (Electronic Data Interchange)

10 Concurrent Seat Licenses



EXHIBIT B

Maintenance Fee Schedule

The Maintenance and Enhancement Fee (the "Fee") during the Initial Term of this Agreement is 20% of the current list price of the System. The current list price of the System: is \$555,000.00. The Fee, at 20%, is: \$111,000.00 per year. It is due upon execution of this Agreement and each anniversary of execution date thereafter for the duration of the Initial Term of the Agreement.

This Agreement has an Initial Term of five (5) years from July 1, 2012 and will run until June 30, 2017. Under a previous Addendum to the 2002 SSSMA, under which Customer licensed an Electronic Data Interchange Module (the "EDI Module"), Customer agreed to pay that portion of the Fee applicable to annual maintenance for the EDI Module, which is \$22,000.00, on or about the time of its Addendum Execution. Upon receipt of that amount, Monument Systems shall credit Customer this amount. As such, the initial Fee amount due under this Agreement shall be only \$89,000.00 (or \$110,000.00 minus \$22,000.00), which shall be due from Customer to Monument Systems upon Customer's execution of this Agreement. All subsequent years will be paid as set forth in the above paragraph at \$111,000.00, which amount includes the \$22,000.00 EDI module maintenance.



MONUMENT SYSTEMS

EXPERIENCE ♦ PERFORMANCE ♦ INNOVATION

This SSSMA is hereby executed as of the latest date below written.

ATTEST:
Clerk to the Board
Kecia Harper-Ihem

COUNTY OF RIVERSIDE on behalf
of the Exclusive Care Division of its
Human Resources Department

By _____
Deputy

By _____
John Tavaglione
Chairman, Board of Supervisors

Date _____

Date _____

Approved as to form and content:

Neal Kipnis
Deputy County Counsel

By: _____
Deputy County Counsel

Monument Systems, LLC:

By: _____

Printed Name: Asma Hasan

Title: Chief Legal Officer

Date: _____

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis
DATE: 6/29/12