

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

104



FROM: Riverside County Regional Medical Center (RCRMC)

SUBMITTAL DATE:
January 26, 2015

SUBJECT: Approval of a multi-year agreement with Sectra North America as a single source provider of maintenance and upgrade services for the Philips Sectra Picture Archive Communications System (PACS) utilized by RCRMC. District 5 [\$1,875,000] Hospital Enterprise Fund.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the professional services agreement for PACS maintenance services with Sectra NA for \$375,000 per year for five years starting July 1, 2015 and ending June 30, 2020, and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459.4 to sign subsequent amendments that do not change the substantive terms of the agreement.

BACKGROUND:

Summary

Philips Sectra Radiology Picture Archive Communications System (PACS) has been in place at RCRMC since 1998. Sectra NA is the only authorized provider of maintenance services for the proprietary software and hardware utilized by the Philips Sectra PACS. There are over 2,000,000 patient images

[Signature]
Zareh H. Sarrafian, Hospital CEO

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 375,000	\$ 375,000	\$ 1,875,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: Hospital Enterprise Fund 100%				Budget Adjustment: No	
				For Fiscal Year: 14/15	

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
Debra Cournoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

PURCHASING & FLEET SERVICES
 Lisa Brandl, Director
 FORM APPROVED COUNTY COUNSEL
 BY: *[Signature]* DATE: 3/25/15
 GREGORY P. PRIAMOS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 06/16/09 3.4 | District: ALL | Agenda Number:

3-30

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Approval of a multi-year agreement with Sectra North America as a single source provider of maintenance and upgrade services for the Philips Sectra Picture Archive Communications System (PACS) utilized by RCRMC. District 5 [\$1,875,000] Hospital Enterprise Fund.

DATE: January 26, 2015

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

(exams) archived in the Philips Sectra PACS System currently in use at RCRMC. To transition all existing data, retrain staff, and incur the costs associated with the conversion renders the change financially infeasible.

Additionally, as incentive to sign the multiyear contract, Sectra NA has offered RCRMC \$192,533 in future upgrades at no charge:

- | | |
|--------------------------------|----------|
| • Active Directory Integration | \$28,619 |
| • LiteView site License 200k | \$52,342 |
| • Image Exchange Portal | \$84,000 |
| • Ortho Station Package | \$27,572 |

Given the time and investment in place, continued use of the Philips Sectra PACS system is prudent and cost-effective. The subject agreement is recommended by the RCRMC Radiology, IT and Fiscal Departments, as well as County TSOC, Purchasing and Counsel.

Impact on Citizens and Businesses

RCRMC serves patients residing in Riverside County. Controlling costs is part of our mission to provide excellent care and customer service, all for a good value.

Contract History and Price Reasonableness

The previous award was approved by the Board of Supervisors, per competitive bid on June 16, 2009 (Agenda# 3.4) with Sectra NA being found the most responsive/responsible vendor. Sectra NA has lowered their pricing to RCRMC by eight percent (8%) from \$406,030 to \$375,000 annually on their maintenance costs and has offered future upgrades estimated at \$192,533 at no charge. Sectra NA has offered to keep the contract price of \$375,000 annually for the full five (5) years in exchange for the multiyear agreement.

Date: January 26, 2015
From: Riverside County Regional Medical Center
Zareh Sarrafian, Chief Executive Officer
To: Board of Supervisors/Purchasing Agent
Via: Purchasing Agent
Subject: Sole Source Procurement: Request for Maintenance Contract for Philips Sectra PACS System.

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Maintenance service for the Philips Sectra PACS System.
2. **Supplier being requested:** Sectra North America.
3. **Alternative suppliers that can or might be able to provide supply/service:** Sectra North America is the only authorized provider of maintenance service on the Philips Sectra PACS Systems proprietary software and hardware. The Philips Sectra PACS has been in place at RCRMC since 1998 and considerable investment has been made in the continued operation of the system. Replacing the Philips Sectra PACS would be cost prohibitive. It follows then, that continued use of the Philips Sectra PACS System is prudent given the time and investment in place.
4. **Extent of market search conducted:** The Philips Sectra PACS System uses proprietary software and hardware and can only be serviced by Sectra North America.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** In August, 2014, Philips Sectra in conjunction with RCIT and the RCRMC Radiology Department upgraded the system to improve encryption and security mitigation risks thus ensuring the integrity of off-site back-up storage and security of onsite workstations. Additionally, Sectra North America has offered RCRMC \$192,533 in future upgrades as incentive to enter into the proposed multiyear agreement. It should also be noted that it would cost over \$400,000 to migrate the 2,000,000 images to a new PACS vendor.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** There are over 2,000,000 patient images (exams) archived in the Philips Sectra PACS System currently in use at RCRMC. To transition all existing data, retrain staff and incur the costs associated with the conversion renders the change financially infeasible.

Additionally, as incentive to sign the multiyear contract, Sectra North America has offered RCRMC \$192,533 in future upgrades at no charge:


• Active Directory Integration	\$28,619
• LiteView site License 200k	\$52,342
• Image Exchange Portal	\$84,000
• Ortho Station Package	\$27,572

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** The original award was made per competitive bid on June 16, 2009 (Agenda# Form # 116-333 rev 8/12/13

3.4) with Sectra NA being found the most responsive/responsible vendor. Sectra has since lowered the operational cost on a month to month basis and has provided numerous upgrades and enhancements. Sectra has also offered to keep the contract price of \$375,000/yr for the full five years contract period in exchange for said multi-year agreement.

8. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain). The terms of the agreement call for a five (5) year period of performance.

9. Period of Performance: July 1, 2015 to June 30, 2020



Department Head Signature 2/11/15
Date

Purchasing Department Comments:

<u>Approve</u>	Approve with Condition/s	Disapprove
Not to exceed: \$ <u>375,000.00</u>	One time	Annual Amount through <u>6/30/2020</u>
<u>Lo. Brundell</u>	<u>2/11/15</u>	<u>15-392</u>
_____ Purchasing Agent	_____ Date	_____ Approval Number (Reference on Purchasing Documents)



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM
To be completed for all departmental purchases of IT systems, services or renewals

2014-01262
Tracking Number for Internal Use Only

REQUESTED PURCHASE:		SOFTWARE MAINTENANCE - PACS (SECTRA NORTH AMERICA)																					
DEPARTMENT/AGENCY:		RADIOLOGY - RCRM																					
CONTACT NAME/PHONE: MARYGRACE HEDGE - EXT. 64747; OFELIA ACOSTA - EXT. 64780.																							
PURCHASE REQUEST:		<input type="checkbox"/> NEW EQUIPMENT/SERVICES <input type="checkbox"/> UPGRADE <input type="checkbox"/> REPLACEMENT																					
PURCHASE TYPE:		<input type="checkbox"/> PROFESSIONAL SERVICES <input checked="" type="checkbox"/> SOFTWARE <input type="checkbox"/> HARDWARE <input checked="" type="checkbox"/> RENEWAL																					
DESCRIBE REQUESTED PURCHASE	Request to renew the annual software maintenance support contract Sectra North America, inc. for the PACS software and archive system. The current contract expired effective 1/1/14 and the Radiology Department would like to renew for Fiscal year 14-15.																						
BUSINESS NEEDS ADDRESSED	Yes - the necessary paperwork was prepared and submitted for contract renewal.																						
ARE THERE ANY OTHER COUNTY SYSTEMS THAT PROVIDE THE SAME FUNCTIONALITY?		<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNKNOWN																					
BUSINESS CRITICALITY:		BUSINESS IMPACT (SELECT ALL THAT APPLY)																					
<input checked="" type="checkbox"/> Run the business <input type="checkbox"/> Grow the business <input type="checkbox"/> Transform the business		<input checked="" type="checkbox"/> Support current operations <input type="checkbox"/> Reduce Expenses <input type="checkbox"/> Improve Customer Service <input type="checkbox"/> Improve Operational Efficiencies																					
BUSINESS RISKS	Financial: Operational: Customer:																						
ALTERNATIVE SOLUTIONS	1. [Solution] 2. [Solution] 3. [Solution]																						
TRANSACTION	<input checked="" type="checkbox"/> Cash Purchase <input type="checkbox"/> Lease Purchase Lease Years: _____																						
PURCHASE COSTS	COST BENEFIT ANALYSIS																						
SW maintenance: \$187,500.00	<table border="1"> <thead> <tr> <th></th> <th>ALTERNATIVE STATUS QUO</th> <th>ALTERNATIVE</th> <th>ALTERNATIVE</th> </tr> </thead> <tbody> <tr> <td>Current Annual Cost</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Ongoing Annual Cost</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Annual Cost Savings</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Net Annual Savings</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>				ALTERNATIVE STATUS QUO	ALTERNATIVE	ALTERNATIVE	Current Annual Cost				Ongoing Annual Cost				Annual Cost Savings				Net Annual Savings			
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Total Cost: \$187,500.00																							



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM
 To be completed for all departmental purchases of IT systems, services or renewals

Tracking Number for Internal Use Only

Project Implementation Cost			
Project Payback Period? yrs			

Department Head Signature: *[Signature]* Date: 3/21/14

RCIT RECOMMENDATION - for purchases and renewals under \$100,000

Recommended: Yes No (Non-recommended requests submit to TSOC)

By: *Wesley P. Colvin* Date: 3/31/2014

Chief Information Officer Signature: *[Signature]* Date: 31 March

RCIT explanation for non-recommended requests:

[Empty box for explanation]

TSOC RECOMMENDATION: for purchases and renewals over \$100,000 and RCIT non-recommended purchases or renewals

Recommended: Yes No (In no, provide explanation below)

TSOC Chair Signature: *[Signature]* Date: 4 Apr 14

TSOC explanation for denied requests:

[Empty box for explanation]

SECTRA NORTH AMERICA, INC.
Riverside County Regional Medical Center
DOC-ENYM-9NJQCM
MASTER CUSTOMER AGREEMENT

THIS CUSTOMER AGREEMENT is made and entered into effective as of _____, 2015 (the "Effective Date") by and between:

The County of Riverside on behalf of Riverside County and Regional Medical Center (the "Customer")

Address: 26520 Cactus Ave
 Moreno Valley, CA, 92555
 Attn: Ines Mark
 Email: imark@co.riverside.ca.us

SECTRA NORTH AMERICA, INC. ("Sectra")

Address: 2 Enterprise Drive, Suite 507
 Shelton, CT 06484
 Attn: Robert Hodson
 Facsimile: 203-925-0906

In consideration of the mutual covenants set forth in this Agreement, Sectra and Customer hereby agree as follows:

1 General Purpose of This Agreement. Subject to the terms and conditions of this Agreement, Sectra will provide to Customer, and Customer will purchase from Sectra, (a) a License to the Sectra Product as more particularly set forth in **Schedule B (License)** to this Agreement, and (b) Installation and Support services, as more particularly set forth in **Schedule C (Installation, Warranties and Support)** to this Agreement.

2 Schedules. The following schedules are hereby incorporated in this Agreement by this reference (each a "Schedule").

Schedule	Description
A	Certain Definitions
B	License
C	Installation, Warranties and Support
D	General Terms and Conditions
E	Proposal(s)

3 Riders. As of the Effective Date, the following riders are hereby incorporated in this Agreement by this reference (provided that the Customer and Sectra may add additional riders, or amend or delete any then-existing riders, upon the mutual written agreement of the Customer and Sectra):

Riders
Service Level
Time and Materials Rates
Transition Services

4 Attachments. As of the Effective Date, the following attachments are hereby incorporated in this Agreement by this reference (provided that the Customer and Sectra may add additional attachments, or amend or delete any then-existing attachments, upon the mutual written agreement of the Customer and Sectra):


Attachment	Description
I	Business Associate Agreement

IN WITNESS WHEREOF, Sectra and Customer, by and through their duly authorized representatives, have entered into this Agreement effective as of the Effective Date.

THE COUNTY OF RIVERSIDE
 ON BEHALF OF RIVERSIDE COUNTY REGIONAL MEDICAL CENTER

Signature: _____
 Print Name: _____
 Title: _____

SECTRA NORTH AMERICA, INC.

Signature: 
 Print Name: ANDERS OSTERHOLM
 Title: VICE PRESIDENT

FORM APPROVED COUNTY COUNSEL
 BY:  DATE: 3/24/15

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Schedule A

Certain Definitions

As used in the Agreement, the following capitalized terms (with capitalized first letter of each word of such terms) shall have the meanings set forth or referenced in this **Schedule A**. Each of the following definitions shall be equally applicable to the singular and plural forms of the terms defined. Other terms are defined on the Cover Page or elsewhere in this Agreement.

"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.

"Agreement" means the Cover Page and each Schedule and rider listed on the Cover Page, and all exhibits, attachments, riders, schedules and appendices to any of the foregoing, as the same may be amended from time to time and in effect.

"Business Hours" means (8:00AM – 8:00PM east coast time, Monday through Friday, observing holidays as set forth in Section 3.2.4 of **Schedule C (Installation, Warranties and Support)**).

"Call Center" means Sectra's Customer Service Help Desk.

"Computer" means a computer, workstation, terminal, or PC.

"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 Customer or any Customer 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 Customer 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.

"Contract Price" means the Total Contract Price (or Total Solution Price) set forth in a Proposal, which includes the License Fee, Support and Maintenance Fee, and any other fees set forth in a Proposal plus any and all applicable taxes payable thereon.

"C.U.L." means, as to a multi-user License, each license for each concurrent user.

"Customer Personnel" means any contractor, employee, agent, representative or other personnel of Customer.

"Disabling Code" means, as to any software, computer code that is designed to delete, interfere with, or disable the normal operations of such software.

"Documentation" means manuals, functional specifications, technical specifications, and user instructions regarding the Sectra Product which is made available to Customer by Sectra.

"Expanded Support" means any of the services which are (a) not expressly included in Support under this Agreement, or (b) expressly excluded from Support under Section 1 of the Service Level Rider, or (c) expressly set forth in this Agreement as being **"Expanded Support"**.

"First Use Date" means that date upon which the Customer receives and views images from the Sectra Product in its clinical diagnosis of any patient.

"Hardware" means, collectively, any hardware upon which any Software is installed.

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SECTRA NORTH AMERICA, INC.

"Installation" and **"Installed"** refer to duties carried out by Sectra to load, test and run Software delivered by Sectra. Any Hardware 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.

"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.

"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.

"License" means the non-exclusive right and license to the Sectra Product as granted pursuant to Section 1 of Schedule B (License), and subject to the scope set forth in Section 2 of Schedule B (License).

"License Fee" means the license fee for the License, as set forth in a Proposal. Customer acknowledges and agrees that an increase in (i) Licensed Volume from the Licensed Volume then in effect (with respect to an exam-based License), or (ii) C.U.L.'s (with respect to a multi-user License) may require additional License Fees to be paid to Sectra, as may be set forth in a Proposal.

"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.

"Licensed Volume" means, with respect to an exam-based License, the volume of exams that Customer is licensed to process via the Sectra Product under the License, as set forth in a Proposal. Customer acknowledges and agrees that an increase in Licensed Volume from the Licensed Volume then in effect may require (i) additional License Fees, (ii) increased Threshold Volumes and (iii) changed Minimum Network Requirements, as each may be set forth in a Proposal, and the costs and expenses for all of which Customer shall be solely responsible.

"Minimum Network Requirements" means the minimum requirements for Customer's network in order for the Sectra Product to perform as warranted pursuant to Section 2 of Schedule C (Installation, Warranties and Support), as such Minimum Network Requirements are set forth in a Proposal. Customer acknowledges and agrees that Minimum Network Requirements may be changed by Sectra as a result of Sectra and End User mutually agreeing in writing to adjust the Threshold Volume and/or Licensed Volume, and Customer shall be solely responsible for the costs and expenses of any such changed Minimum Network Requirements.

"Minor Bug Fixes" means patches, corrections, or fixes to an error or bug in the Software that do not interfere with the material functionality of the Software.

"Object Code" means the object code (*i.e.*, compiled, machine readable format only) portion or manifestation of the Software.

"Platform" means, collectively, the hardware, operating systems, programming languages, databases, architectural tools, and other items of technology that are required or used for the operation of the Sectra Product, but which are independent of the Sectra Product.

"Platform Upgrade" means an Update or Upgrade that operates on a Platform that is different from the Platform required for the Sectra Product immediately prior to the time that such Update or Upgrade is made generally available by Sectra.

"Proposal" means, as to each Sectra Product, the proposal therefor attached as Schedule E hereto. Sectra and Customer acknowledge and agree that after the Effective Date, upon the mutual written agreement of Sectra and Customer, additional proposals may be added to Schedule E hereto.

"Qualified Customer Personnel" means such Customer Personnel who have such technical proficiency and qualifications to be capable of carrying out Sectra's instructions in connection with any Support.

"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.

"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.

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"Sectra Product" means, individually and collectively, each Sectra Product licensed and sold, and/or Supported by, Sectra under a Proposal or a Rider to this Agreement, which is comprised of the applicable Software, but specifically excludes Unsupported Hardware and Unsupported Software.

"Server" means any server component Hardware for the Sectra Product. For avoidance of doubt, Customer acknowledges that **"Server"** does not include any Unsupported Hardware or any other servers that are not explicitly identified as being Supported by Sectra under a Proposal (including, but not limited to, any servers which may contain access to the Software).

"Service" means, individually and collectively, any services provided by, Sectra under a Proposal or a Rider to this Agreement, including without limitation Support.

"Software" means, collectively, the Sectra-owned software (i.e., software that has been developed and is owned by Sectra) and Third Party Software, which is explicitly set forth in a Proposal as being licensed to Customer and/or Supported by Sectra, specifically excluding Unsupported Software.

"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.

"Support" means those support and maintenance services as described in Section 3 of Schedule C (Installation, Warranties and Support) and the Service Level Rider, which shall be provided by Sectra on any Sectra Product, specifically including any Supported Version of the Software and any Supported Hardware delivered by or purchased from Sectra as part of such Sectra Product, but specifically excluding any Unsupported Hardware and Unsupported Software. The term **"Support"**, when used as a verb, shall also mean Sectra's provision of Support (as used as a noun pursuant to the foregoing).

"Support and Maintenance Fee" means, with respect to the Initial Support Period (as defined within the definition of Support Period), the annual support fee set forth in the Proposal therefore; and, with respect to any Renewal Support Period (as defined within the definition of Support Period), the annual support fee shall be the Support and Maintenance Fee for the immediately preceding 12-month period of the Support Period as increased by the greater of (a) 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 and (b) five percent (5%).

"Support Period" means the support period set forth in a Proposal (the **"Initial Support Period"** as referenced in Schedule E) and each Renewal Support Period (as defined below) thereafter. The Support Period can be 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) if the Customer gives written notice to Sectra of its desire to renew at least sixty (60) days prior to the expiration date of the Initial Support Period or such Renewal Support Period (as applicable) and Sectra provides written acceptance of Customer's renewal request at least thirty (30) days prior to the expiration date of the Initial Support Period or such Renewal Support Period (as applicable).

"Supported Hardware" means any Hardware that (i) is explicitly identified as being Supported by Sectra under a Proposal, and (ii) is not Unsupported Hardware pursuant to the definition thereof.

"Supported Version" means, at any time, the most current version and release of the Software that Sectra makes generally available at such time.

"Third Party Service Provider" means, with respect to any Unsupported Hardware or Unsupported Software, the third party, which shall be responsible for support of and service to such Unsupported Hardware or Unsupported Software, such as an OEM of any such Unsupported Hardware or Unsupported Software

"Third Party Software" means software that has been developed or is owned by a third party.

"Threshold Volume" means the volume of exams that may be processed via the Sectra Product provided that the Minimum Network Requirements are met, as such Threshold Volume is set forth in a Proposal. Customer acknowledges and agrees that an increase in Threshold Volume from the Threshold Volume then in effect may require a change in the Minimum Network Requirements, and Customer shall be solely responsible for the costs of any additional or upgraded hardware, software and/or services needed in order to meet such changed Minimum Network Requirements.

"Unsupported Hardware" means any hardware (i) that is not explicitly identified as being Supported by Sectra under a Proposal, (ii) is explicitly identified as being Unsupported Hardware under a Proposal, (iii) that is older than five (5) years (measured from the date of purchased by Sectra (or Customer) from the applicable OEM), (iv) that has been declared by the applicable OEM thereof to be at the end of service life, or (v) for which the applicable warranty provided by the OEM with respect thereto has expired. For avoidance of doubt, upon any Hardware being (x) older than five (5) years measured from the date of purchased by Sectra (or Customer) from the applicable OEM), (y) declared by the applicable OEM thereof to be at the end of service life or (z) having the warranty provided by the OEM with respect thereto expire, such Hardware shall become Unsupported Hardware for purposes of this Agreement. For further avoidance of doubt, Sectra's Support obligations hereunder shall not apply to any Unsupported Hardware, and Unsupported Hardware shall not be deemed part of the Sectra Product hereunder.

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Sectra Initials

SECTRA NORTH AMERICA, INC.

"Unsupported Software" means any software (i) that is not explicitly identified as being Supported by Sectra under a Proposal, (ii) that is explicitly identified as being Unsupported Software under a Proposal, (iii) that is any version of the Software other than the Supported Version, or (iv) any Third Party Software (A) with respect to which the applicable OEM therefor has sunsetted or ceased to provide service, support, or fixes, or (B) for which the applicable service period or warranty provided by the applicable OEM with respect thereto has expired. For avoidance of doubt, Sectra's Support obligations hereunder shall not apply to any Unsupported Software, and Unsupported Software shall not be deemed part of the Sectra Product (or Software thereof) hereunder.

"Updates" means any new version to the Software (as typically identified by the number to the right of the decimal), which is generally provided by Sectra to its customers.

"Upgrades" means any new release of the Sectra Product (as typically identified by the number to the left of the decimal), which is generally provided by Sectra to its customers.

"Virus" means any virus, worm, program, Disabling Code, computer instructions (including executable code or operating system scripts), or rogue code that disables, harms, disrupts, or performs malicious actions against a person's computing systems or network.

"Workstation" means any workstation component Hardware for the Sectra Product.

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Sectra Initials

Customer Initials

SECTRA NORTH AMERICA, INC.

Schedule B

License

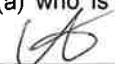
1 Grant of License

Subject to the scope set forth in Section 2 of this Schedule B, the Customer hereby obtains a non-exclusive, non-transferable, limited and perpetual license (subject to the termination provisions of Section 6 of Schedule D (General Terms and Conditions)) to use the Sectra Product solely for its internal purposes (the "License"), provided that the License Fee is paid pursuant to Section 2 of Schedule D (General Terms and Conditions).)

2 Scope of the License

- 2.1 If the License is a multi-user license (as indicated in a Proposal), the Customer may use, access, display, run, or otherwise interact with copies of the Software, on multiple Computers, 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 a Proposal. If the License is an exam-volume license (as indicated in a Proposal), the Customer may, on an enterprise-wide basis, use, access, display, run, or otherwise interact with copies of the Software, on multiple Computers with the maximum volume of exams per each consecutive 12-month period of the License, commencing upon the First Use Date thereof, that Customer is licensed to process via the Sectra Product being the then-effective Licensed Volume.
- 2.2 The Customer may store or install a copy of the Software on a single storage device used solely to run the Software on the Customer's other Computers over an internal network, provided, however, that the scope of the License, as indicated in Section 2.1 of this Schedule B, will govern the Customer's ability to share the Software concurrently on different Computers. Customer shall not allow any third party, other than Customer Personnel (exclusive of contractors/agents who are competitors of Sectra), to implement, access, or operate any of the Sectra Product.
- 2.3 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. This Schedule B shall apply also to such copies.
- 2.4 Without Sectra's prior written consent, the Customer 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. Customer shall not, and shall ensure that Customer 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).
- 2.5 Proprietary, confidential, and copyright notices, markings, and legends on or in any of the Software or other Licensed Materials, or computer media through which any of the Software or other Licensed Materials is accessible to the Customer, or on or in any Documentation, may not be removed, changed, or modified by Customer in any way.
- 2.6 The Customer 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, any of the Software or other Licensed Materials (whether directly or indirectly, and whether with compensation or free of charge).
- 2.7 The Customer shall ensure that all Hardware on which the Software is installed is free from Viruses. Customer shall protect the Sectra Product against alteration by any person(s) other than Sectra.
- 2.8 The applicable License shall include the license to use, access, display, run, or otherwise interact with Upgrades and Updates as purchased by Customer, and delivered by Sectra to Customer under this Agreement.
- 2.9 Customer 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.
- 2.10 Export Restrictions. Customer 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. Customer 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

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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. Customer further agrees to comply with the U.S. Foreign Corrupt Practices Act.

- 2.11 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.

3 Ownership

- 3.1 Customer hereby acknowledges and agrees that the License granted herein is a non-exclusive, non-transferable, limited (including, as applicable, by the Licensed Volume or number of C.U.L.'s) license, and does not transfer or sell to the Customer any ownership of, or rights (e.g. Intellectual Property Rights) in, any of the Software or other Licensed Materials, and except to the limited extent of such license, Customer has not and will not acquire hereunder or in connection herewith (and Customer 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 Software or other Licensed Materials. The Licensed Materials furnished under this Agreement are licensed, not sold, to Customer. Customer'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 Customer under this Agreement.
- 3.2 Customer 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 Customer as defined in a Proposal) and any other software developed by or for Sectra or Customer 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 Customer, solely or in collaboration with others, which relate in any manner to any Licensed Materials or the Sectra Product.
- 3.3 The Customer shall not have any right to improve, enhance or otherwise modify any of the Licensed Materials, nor shall the Customer have any right to request that Sectra, and Sectra shall not have any 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 Customer 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 Customer hereby assigns all such Intellectual Property Rights to Sectra or its applicable licensors/designees/nominees (as directed by Sectra), and the Customer 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 Customer 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. Customer further agrees that the Customer's obligation to execute or cause to be executed, when it is in the Customer'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 Customer Personnel. Customer agrees that if Sectra is unable because of the Customer's unavailability or dissolution, or for any other reason, to secure the Customer'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 Customer hereby irrevocably designates and appoints Sectra and its duly authorized officers and agents as the Customer's agent, and attorney in fact, to act for and in Customer'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 Customer.

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- 3.4 Customer 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. Customer acknowledges that, except as specifically provided in this Agreement, Sectra is not by this Agreement granting any right or license whatsoever to Customer 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.
- 3.5 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, Customer (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. Customer will confirm any such waiver, release, ratification or consent from time to time as reasonably requested by Sectra.
- 3.6 Customer, 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 Customer 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 Customer 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.
- 3.7 On a mutually agreed upon day (approval from Customer to not be unreasonably withheld, conditioned or delayed), Sectra or its licensors shall have the right to conduct reasonable, on-site audits of Customer'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 Customer'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 Customer must reimburse the costs incurred in the audit (in addition to any other remedies available to Sectra in law or equity).
- 3.8 The provisions of this Section 3 of **Schedule B** shall apply to any Customer Personnel, and shall remain in full force and effect and otherwise survive the expiration or termination of the License, the Support or this Agreement.

4 Return of the Licensed Materials

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

5 Hardware

If, pursuant to a Proposal, Customer is purchasing any Hardware, Sectra shall assign all right and title to such Hardware "as-is" and "where-is" without warranty, express or implied, with respect to any matter whatsoever with regards thereto, provided that any applicable manufacturer's warranties which shall be passed through to Customer. Customer may lease Hardware pursuant to a Rider to this Agreement, and any and all other lease documentation executed in connection therewith.

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Schedule C

Installation, Warranties and Support

1 Delivery and Installation

- 1.1 Sectra shall deliver the Sectra Product to Customer, and Install on the designated Computers of the Customer subject to the scope of License set forth Section 2 of Schedule B (License).
- 1.2 Sectra and Customer 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 Unsupported Hardware or Unsupported Software or the services provided by any Third Party Service Provider thereto.

2 Warranty

- 2.1 The Customer is purchasing the limited product warranty coverage set forth in this Section 2 of Schedule C. As to each Sectra Product, the limited product warranty set forth in this Section 2 of Schedule C commences upon the First Use Date thereof, and continues for the Support Period therefor. This limited warranty is valid only with respect to the Sectra Product, and only if such Sectra Product is delivered, Installed, serviced and supported by Sectra.
- 2.2 Except as otherwise set forth in this Agreement, Sectra represents and warrants that each Sectra Product will conform in all material respects to the Documentation in connection with such Sectra Product for the 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 Product; incorrect electrical line voltage, fluctuations and surges; use of incorrect fuses; improper or insufficient ventilation, cooling or air quality; adjustments by Customer to any portion of the Sectra Product or failure by Customer to follow operating instructions; failure by Customer to follow the cleaning, maintenance and environmental instructions that are covered and prescribed in the instruction book or other Documentation provided to the Customer by Sectra; removal or reinstallation of any portion of the Sectra Product by Customer; problems related to noise, echo, interference or other transmission and delivery problems; and any use of the Sectra Product not specifically licensed under, or in violation of the limits of the License contained in, Schedule B.
- 2.3 Notwithstanding Section 2.2 of this Schedule C, SECTRA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, CONCERNING ANY UNSUPPORTED SOFTWARE OR HARDWARE.
- 2.4 EXCEPT FOR THE WARRANTY OUTLINED IN SECTION 2.2 OF THIS SCHEDULE C, NEITHER SECTRA NOR ANY OF ITS LICENSORS MAKES, AND EACH HEREBY DISCLAIM, ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR ANY OTHER MATTER, INCLUDING WITHOUT LIMITATION WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE, WITH RESPECT TO OR IN CONNECTION WITH, IN WHOLE OR IN PART, ANY SECTRA PRODUCT, ANY DOCUMENTATION, OR ANY OTHER LICENSED MATERIALS, OR ANY SUPPORT, EXPANDED SUPPORT OR ADDITIONAL SERVICES PROVIDED BY SECTRA TO CUSTOMER. EXCEPT FOR THE WARRANTY OUTLINED IN SECTION 2.2 OF THIS SCHEDULE C, ALL SECTRA PRODUCTS, DOCUMENTATION AND OTHER LICENSED MATERIALS ARE PROVIDED "AS-IS", WITH ALL FAULTS AND DEFECTS. NONE OF THE EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, AGENTS OR OTHER PERSONNEL OF SECTRA HAS ANY AUTHORITY TO BIND SECTRA TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS EXPRESSLY STATED IN SECTION 2.2 OF THIS SCHEDULE C. NO ORAL OR WRITTEN INFORMATION, GUIDANCE OR ADVICE GIVEN BY SECTRA OR ANY OTHER PERSON OR ENTITY SHALL CREATE ANY ADDITIONAL AFFIRMATION, REPRESENTATION OR WARRANTY BY SECTRA, AND CUSTOMER MAY NOT RELY THEREUPON.
- 2.5 Sectra's sole obligation in case of a breach of warranty under Section 2.2 of this Schedule C shall be to provide Support hereunder, which may include repair or replacing, at the sole discretion of Sectra, any Software component of the applicable Sectra Product. THE FOREGOING STATES SECTRA'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY UNDER SECTION 2.2 OF THIS SCHEDULE C.
- 2.6 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 any Sectra Product, but not delivered by nor supported by Sectra, or for the interoperability of such programs together with any Sectra Product.

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3 Support; Service; Health Information

3.1 General

- 3.1.1 Subject to the Service Level Rider and Section 2 of this **Schedule C**, Sectra shall, throughout any Support Period, provide Customer with Support for each Sectra Product as set forth in this Section 3 of **Schedule C**; provided that Customer shall have paid the Support and Maintenance Fee during such Support Period in accordance with the terms of this Agreement. Sectra shall only provide Support for the applicable Sectra Product, but shall not provide any support or service to any Unsupported Hardware or Unsupported Software. During the Support Period, and as part of Support, Sectra shall make available to Customer all Minor Bug Fixes and Updates to the Software as and when the same are made generally available by Sectra (in accordance with Section 3.3.8 of this **Schedule C**), provided, however, that Sectra reserves the right to charge, and Customer agrees to pay, for professional services as may be required for such installation as Expanded Support. For avoidance of doubt, Customer shall not have the right to install, or allow any person other than Sectra or Sectra's subcontractors to install, any such Minor Bug Fixes and/or Updates. If any portion of the Sectra Product is serviced by any third party other than Sectra or any employees or subcontractors of Sectra without Sectra's consent, Sectra may terminate its Support obligations hereunder. Notwithstanding anything else contained in this Agreement, all Support under this Agreement may be provided by an employee of Sectra or a person subcontracted by Sectra, at Sectra's sole discretion.
- 3.1.2 Notwithstanding the foregoing, in connection with any Unsupported Hardware or Unsupported Software, Sectra and Customer 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 Unsupported Hardware or Unsupported Software.
- 3.1.3 If any additional 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 is serviced by anyone other than Sectra or its subcontractors, Sectra may terminate its obligation to provide the Support set forth herein.
- 3.1.4 Sectra assumes that all protected health information, which has been disclosed to Sectra, has 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).
- 3.1.5 It is the Customer'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 security breaches or negligence at Customer's site(s). Sectra is not liable for any damage or loss of data due to security breaches, Viruses (or attacks thereof) or negligence at Customer's site(s).
- 3.1.6 Sectra shall provide Support for the Supported Version of the Software, which Support shall be included in the Support and Maintenance Fee, subject to Section 3.3.8 of this **Schedule C**. In the event that a Software problem arises, and Customer is then not using a Supported Version of the Software, then Sectra reserves the right to charge Customer for Expanded Support for time incurred to remedy any such problem, if such problem would not have occurred if the Customer had been using the Supported Version; provided, however, that, for avoidance of doubt, Sectra shall not have any obligation to provide any Expanded Support to any version of the Software other than the Supported Version, and may, at its discretion, provide such Expanded Support for any such Unsupported Software pursuant to Section 2 of the Service Level Rider.

3.2 Support Services

- 3.2.1 Subject to the Service Level Rider and Section 2 of this **Schedule C**, Sectra shall, throughout the Support Period, and as part of Support in accordance with this Agreement provide Support as necessary to cause the Sectra Product to perform and operate in conformance with the applicable limited warranties set forth in Section 2 of this **Schedule C**. Qualified Customer Personnel shall initiate a Support session with the Call Center either via telephone, email or other methods provided by Sectra. The Call Center has a current telephone number of 1 800 307-4425 ext 3, but such number may change at the sole discretion of Sectra. For problems of less urgency (e.g. Severity 3 level problems as set forth in the Service Level Rider), Qualified Customer Personnel may email a description of such problem to the Call Center at the email address(es) provided by Sectra from time to time, and the parties hereby acknowledge and agree that email is the preferred method of communicating any such Severity 3 level issues to Sectra. Sectra shall provide Support as set forth in the Service Level Rider.

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- 3.2.2** If at any time during which Sectra is providing Support or other Services, Customer has questions or concerns regarding such Support or other Service, Customer may contact its Sales Representative or Customer Service Manager at 1-800-307-4425, or such other telephone number(s) as Sectra may provide from time to time.
- 3.2.3** If at any time during which Sectra is providing Support or other Services, any changes are made to hours or contact information set forth above, Sectra shall notify Customer.
- 3.2.4** As of the Effective Date, the regular observed holidays of Sectra include without limitation: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day, and also the day after Thanksgiving and the day after Christmas Day.
- 3.2.5** On-site Support will be provided at Sectra's sole discretion and will be limited to the terms and conditions of this Agreement. If on-site Support is to be provided pursuant to this Section 3.2.5 of **Schedule C**, Qualified Customer Personnel shall meet and assist any service engineer or other employee or agent of Sectra. If any Qualified Customer Personnel misses an appointment that had been confirmed in advance, Customer hereby agrees to pay, as Expanded Support, for any additional incurred time and expenses as a result of such missed appointment.
- 3.2.6** Sectra and the Customer 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 Customer's responsibility to regularly create and maintain backups of data and restore such data if needed. Furthermore, Customer hereby understands and agrees that: (i) regardless of whether Sectra is contracted to provide disaster recovery or business continuity Services, Customer shall be solely responsible for implementing and maintaining data back-up policies and procedures which according to customary standards for the healthcare industry, including without limitation implementing and maintaining back-up of data processed via the Sectra Product; and (ii) Sectra shall not be responsible, and Sectra shall not have any liability for, any data that is lost or corrupted (even if lost or corrupted by the Sectra Product or as a result of services rendered by Sectra), to the extent that the Customer has failed to implement and maintain such data back-up policies and procedures, and such data could have been recovered if the Customer had so implemented and maintained such policies and procedures. If, during the course of providing Support, Sectra must reset the Sectra Product to factory default settings, Sectra will first notify the Customer and allow reasonably ample time for the Customer to perform additional back-ups to ensure proper data integrity remains. In connection with the Sectra Product(s) licensed by Sectra to Customer under the Agreement, and for which Sectra provides Support pursuant to the Agreement, Sectra may set forth and describe certain recommendations regarding the procedures, manners and frequencies of backing up of data processed and/or stored on the Sectra Product(s) (collectively, the "**Recommendations**"). Despite such Recommendations, Customer may choose not to implement all of such Recommendations, provided that Customer agrees to be solely responsible for any and all direct and indirect damages, awards, losses, liabilities, settlements, judgments, costs and expenses (collectively "**Damages**") which may result from Customer failing to implement all of such Recommendations. Without limiting the generality of the foregoing:
- a. Customer shall be solely responsible for, and hereby releases Sectra and its Affiliates (and the officers, directors, employees, agents, representatives and contractors of Sectra and its Affiliates) (collectively the "**Sectra Parties**") from, any and all Damages incurred as a result of Customer failing to implement (or having Sectra or a third party implement on its behalf) all of the Recommendations. Such Damages for which Customer is responsible, and from which the Sectra Parties are released, include, without limitation, loss of data, loss of use, loss of revenue, business interruption, loss of business, loss of profits, loss of goodwill and loss of investment;
 - b. Any repairs or services provided by Sectra with respect to any Sectra Product or otherwise as a result of Customer failing to directly (or indirectly through Sectra or third parties) implement all of the Recommendations, including without limitation, any restore or rebuild of the Sectra Product or data located thereon or processed thereby, shall not be part of Support, and, as such, shall be chargeable by Sectra to Customer as Expanded Support under the Agreement;
 - c. Customer shall indemnify, defend and hold harmless Sectra and each other Sectra Party, from and against any and all claims, lawsuits and other civil actions or proceedings commenced by any third party ("**Third Party Claims**") against Sectra or any of other Sectra Party, and any and all Damages (including, without limitation, interest awards, litigation costs, and reasonable attorneys' fees awards) incurred by Sectra or any of other Sectra Party, to the extent that such Third Party Claims

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are based on, or such Damages result from, Customer's failure to directly (or indirectly through Sectra or third parties) implement all of the Recommendations; and

- d. **THIS SECTION 3.2.6 REFLECTS AN ALLOCATION OF RISK BETWEEN SECTRA AND CUSTOMER IN VIEW OF THE FEES CHARGED BY SECTRA TO CUSTOMER.**

3.2.7 If Support is requested, and it becomes apparent that the problem is caused by systems, software or hardware not delivered by Sectra (including without limitation Unsupported Hardware and Unsupported Software), or by any other condition or event which is not covered by the limited warranty set forth in Section 2 of this Schedule C, the Customer agrees to pay, as Expanded Support, for time incurred to remedy any such problem.

3.3 Customer Responsibilities

3.3.1 Customer shall: (a) ensure that the Qualified Customer Personnel receive the Training as and when mutually agreed upon by the parties; and (b) provide Sectra in writing with a list of all Qualified Customer Personnel who shall act as the liaison and point-of-contact between Customer and Sectra for any Support or other Service issues initiated by any Customer Personnel. Customer may, at any time, change the identities of any so disclosed Customer Personnel by giving Sectra written notice thereof.

3.3.2 Customer shall, at its own cost, have Qualified Customer Personnel perform initial problem troubleshooting to qualify the problem before opening a Support session with the Call Center. Notwithstanding the foregoing, Customer shall notify Sectra of performance issues related to any of the Sectra Product as soon as reasonably practical. Requests for assistance shall be initiated by Qualified Customer Personnel. Any such Qualified Customer Personnel shall: (i) have a clear problem description of the alleged defect(s), error(s) or malfunction(s) ready prior to opening any such Support session; (ii) be prepared to answer additional questions (such as recent system, network, or configuration changes) during any such Support session; and (iii) provide Sectra with all material information or other materials possessed by Customer regarding the alleged defect(s), error(s), or malfunction(s), and Customer's use of the Sectra Product, including without limitation, providing to Sectra output listings, data, and other assistance upon Sectra's reasonable request to enable Sectra to address the issue. Sectra shall not be responsible for any delays or losses attributable to any such Qualified Customer Personnel's failure to do any of the foregoing, and Customer shall pay, as Expanded Support, for any and all additional hours attributable to any such Customer Personnel's failure to do any of the foregoing.

3.3.3 All Customer 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.

3.3.4 Qualified Customer Personnel shall handle all interaction and communication with all users of the Sectra Product at the Customer's site(s). Additionally, the Qualified Customer Personnel shall handle all interaction and communication with other vendors, including without limitation any Third Party Service Providers, and troubleshoot any Unsupported Hardware and Unsupported Software, or any other software or hardware components.

3.3.5 When Support or other Service is requested, the Customer shall ensure that the service engineer, representative or agent of Sectra providing any such Support or other Services shall have full and immediate access to the Sectra Product, either remotely or onsite. Customer shall be responsible for providing and maintaining a VPN connection to connect from Sectra's support center to the Sectra Product located on the Customer's site(s), and Customer shall provide and maintain appropriate communication line(s) at its site for use by Sectra in its provision of Support or other Services.


3.3.6 The Customer shall make the Sectra Product available for Support in accordance with mutually acceptable maintenance schedule.

3.3.7 The Customer shall install Sectra-validated Virus protection software on the Servers and Workstations (subject to any excluded uses and applications which are applicable to the same and which are disclosed by Sectra to Customer).

3.3.8 Customer shall have the following obligations with respect to the installation of Minor Bug Fixes, Updates and Upgrades:

- a. Upon Sectra request, minor Bug Fixes are to be installed within ten (10) days after Sectra makes such generally available to its customers (unless a greater period of time for installation is authorized by Sectra in writing), and, thus, Customer shall (i) give Sectra such access to the Sectra

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Product as reasonably necessary in order for Sectra to Install Minor Bug Fixes on or before such deadline, and (ii) provide the additional prerequisites recommended by Sectra to Install such Minor Bug Fixes. In the event that Customer fails to do any of the foregoing, then, to the extent that any further Support issue arises, and such Support issue would not have arisen but for the failure to install the Minor Bug Fix, Sectra shall resolve such issue as Expanded Support hereunder, subject to the terms and conditions (including pricing) for Expanded Support.

- b. Upon Sectra request, Updates (other than those that require Platform Upgrades) are to be installed within three (3) months after Sectra makes such generally available to its customers (unless a greater period of time for installation is authorized by Sectra in writing), and, thus, Customer shall (i) give Sectra such access to the Sectra Product as reasonably necessary in order for Sectra to Install Updates on or before such deadline, and (ii) provide the additional prerequisites recommended by Sectra to Install such Updates. If Customer fails to do any of the foregoing, then, to the extent that any further Support issue arises, and such Support issue would not have arisen but for the failure to install the Update in accordance with the foregoing terms and conditions, Sectra shall resolve such issue as Expanded Support hereunder, subject to the terms and conditions (including pricing) for Expanded Support.
- c. Upon Sectra request, Upgrades (other than those that require Platform Upgrades) are to be installed within twelve (12) months after Sectra makes such generally available to its customers (unless a greater period of time for installation is authorized by Sectra in writing), and, thus, Customer shall (i) at its sole cost and expense, have such Upgrades installed, including purchasing the hardware/software for the Upgrade, as necessary to install such Upgrades, (ii) give Sectra such access to the Sectra Product as reasonably necessary in order for Sectra to Install such Upgrades on or before such deadline, and (iii) provide the additional prerequisites recommended by Sectra to Install such Upgrades. If Customer fails to do any of the foregoing, then, to the extent that any further Support issue arises, and such Support issue would not have arisen but for the failure to install any such Upgrade in accordance with the foregoing terms and conditions, Sectra shall resolve such issue as Expanded Support hereunder, subject to the terms and conditions (including pricing) for Expanded Support. Customer shall be responsible for the cost and expense of any such Upgrades and installation thereof (including all software license fees, hardware costs, and professional services fees). Customer acknowledges that an Upgrade may be necessary as a result of Customer's exam volumes exceeding the then-current Threshold Volume; and Sectra shall not be responsible for the cost of, any needed hardware or equipment, to the extent that the same is required as a result of (x) Customer's exam volumes exceeding the Threshold Volume and/or Licensed Volume or (y) Customer and Sectra entering into a written agreement to increase the Threshold Volume and/or Licensed Volume.
- d. Upon Sectra request, Updates and Upgrades that require Platform Upgrades are to be installed within twenty-four (24) months after Sectra makes such generally available to its customers (unless a greater period of time for installation is authorized by Sectra in writing), and, thus, Customer shall (i) at its sole cost and expense, have such Platform Upgrades installed, including purchasing the hardware/software for the Platform Upgrade, as necessary to install such Updates and/or Upgrades, (ii) give Sectra such access to the Sectra Product as reasonably necessary in order for Sectra to Install such Updates and/or Upgrades on or before such deadline, and (iii) provide the additional prerequisites recommended by Sectra to Install such Updates and/or Upgrades. If Customer fails to do any of the foregoing, then, to the extent that any further Support issue arises, and such Support issue would not have arisen but for the failure to install any such Update and/or Upgrade on the Platform Upgrade in accordance with the foregoing terms and conditions, Sectra shall resolve such issue as Expanded Support hereunder, subject to the terms and conditions (including pricing) for Expanded Support. Customer shall be responsible for the cost and expense of any such Platform Upgrades and installation thereof (including all software license fees, hardware costs, and professional services fees). Customer acknowledges that a Platform Upgrade may be necessary as a result of Customer's exam volumes exceeding the then-current Threshold Volume; and Sectra shall not be responsible for the cost of, any needed hardware or equipment, to the extent that the same is required as a result of (x) Customer's exam volumes exceeding the Threshold Volume and/or Licensed Volume or (y) Customer and Sectra entering into a written agreement to increase the Threshold Volume and/or Licensed Volume.

3.4 Conditions for Support and Other Services

The Customer's right to claim any Support or other Service in accordance with this Agreement is conditioned on each of the following provisions:

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- 3.4.1 The Customer shall have complied with its responsibilities for Support or such other Service under this Agreement, including without limitation Section 3.3 of this **Schedule C** and any Rider or Proposal for any Service.
- 3.4.2 The Customer shall have used the Sectra Product according to and in compliance with this Agreement (including without limitation **Schedule B (License)**), the Documentation and all other manuals, instructions and directions of Sectra, and shall have complied with all third party configuration requirements.
- 3.4.3 The Customer shall have used the Sectra Product with machine equipment, operative systems and Minimum Network Requirements as stated in a 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 has not been approved by Sectra.
- 3.4.4 The Customer shall not have altered the Software and shall have used the Supported Version.
- 3.4.5 With respect to Support, the defect, problem or issue with the Sectra Product shall have occurred within the Support Period.
- 3.4.6 The Customer shall not have installed or used equipment with the Sectra Product that has not been approved by Sectra.
- 3.4.7 The Customer shall have complied with all third party configuration requirements.

4 Unsupported Hardware, Unsupported Software, and Services

- 4.1 Notwithstanding the foregoing, in connection with the Unsupported Hardware, and Unsupported Software, if applicable, the Third Party Service Provider shall provide all installation services of such Unsupported Hardware and Unsupported Software. Customer 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 Unsupported Hardware and Unsupported Software. Sectra and Customer 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 Unsupported Hardware or Unsupported Software or the services provided by the Third Party Service Provider. Sectra shall not be responsible for the cost of, any needed hardware or equipment, to the extent that the same is required as a result of any upgrades or replacements of any Unsupported Hardware or Unsupported Software
- 4.2 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 Customer hereby acknowledge and agree that Sectra shall have no obligations, liabilities, costs, or expenses relating to such third party integration services provided by a third party, and Sectra makes no representations, warranties, or covenants relating to the third party integration services provided by any third party.

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Schedule D

General Terms and Conditions

1 Contract Price

Use by the Customer of, and Sectra's Support of, the Sectra Product, and Customer's right to any other Services, are contingent upon the Customer having paid the Contract Price stated in each Proposal pursuant to the payment terms of Section 2 of this Schedule D and each Proposal. The Contract Price is exclusive of any V.A.T. (Value Added Tax) or similar taxes or public duties and fees. The Customer shall pay, and shall be solely responsible for, all such taxes, duties and fees.

2 Payment Terms

2.1 The Contract Price shall be paid by the Customer to Sectra pursuant to the payment installment terms set forth in each 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 45 days".

2.2 To secure prompt and complete payment and performance of the obligations of Customer hereunder, Customer 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 therefor and products of the foregoing (including without limitation any Hardware, Software, Unsupported Hardware and Unsupported Software sold and/or licensed to Customer). In connection therewith, Customer hereby represents and warrants that it is a public entity duly organized, validly existing and in good standing under the laws of the state of CA, and Customer 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 Customer 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 Customer and to execute and file such financing statements on behalf of the Customer as specified by the Uniform Commercial Code of the applicable state to perfect or maintain Sectra's security interest granted herein. Customer shall maintain and keep any such Hardware, Software, Unsupported Hardware and Unsupported Software free and clear at all times of other security interests, liens and encumbrances. So long as any monetary obligations of Customer under this Agreement remain outstanding, Customer 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 Customer within five (5) business days of the occurrence thereof. Upon default of the Customer 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, and, for purposes hereof, this Agreement shall be deemed a security agreement under applicable law.

2.3 Any amounts due and owing from Customer to Sectra under this Agreement, or any invoice delivered by Sectra to Customer, that is not paid when due (as per this Agreement or any invoice, as applicable) shall accrue interest at 15% per annum until paid in full (along with all accrued and unpaid interest thereon) or maximum allowed by law, and Customer shall remain obligated to repay any such accrued interest on unpaid amounts.

3 Confidentiality; Non-Solicitation

3.1 Confidentiality - Generally. From time to time, a Disclosing Party may disclose or make available to a Recipient, whether orally or in physical form, Confidential Information of such Disclosing Party. The parties acknowledge that the Sectra Product and Documentation delivered in connection therewith contains Confidential Information belonging to Sectra and other Disclosing Parties. Each Recipient is obliged to: (a) not make the Confidential Information of the Disclosing Party available to third parties without the Disclosing Party's express written permission; (b) take all appropriate measures to prevent disclosure to third parties of such Confidential Information; and (c) not use the Confidential Information of the Disclosing Party except for purposes of carrying out its obligations hereunder or exercising its rights to use such Confidential Information granted hereunder. The Recipient shall ensure that its Affiliates and, in the case of Customer, the Customer Personnel, are informed of and comply with the confidentiality obligations of this Section 3 of Schedule D as well as the obligations regarding the rules for the use of the Sectra Product as set forth in Schedule B (License); and the Recipient shall be liable hereunder for any unauthorized disclosure or use of Confidential Information by any of its Affiliates or, in the case of Customer, the Customer Personnel. During the term of the License, Customer shall use commercially reasonable efforts to 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 of the Disclosing Party 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 for or on behalf of the Recipient, provided that

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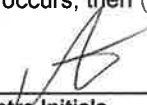
any such employees, contractors, and advisors are bound to keep such Confidential Information confidential by obligations of confidentiality at least as restrictive as those contained herein.

- 3.2 Permitted Disclosures. Notwithstanding the provisions of Section 3.1 of this Schedule D, each Recipient may disclose Confidential Information of a Disclosing Party to the extent such disclosure is: (i) authorized in writing in advance by the Disclosing Party; (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 the Disclosing prompt notice of such disclosure so that the 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 discloses only the minimum amount of Confidential Information required to be disclosed in order to comply.
- 3.3 Notice and Cooperation. The Recipient will promptly notify the Disclosing Party 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 of the Disclosing Party. Each Recipient shall provide reasonable cooperation with the Disclosing Party in any action deemed by the Disclosing Party to be reasonably necessary to protect the Confidential Information or proprietary rights of the Disclosing Party.
- 3.4 Return of Confidential Information. Upon any termination/expiration of all or any part of this Agreement, or otherwise upon request of the Disclosing Party, the Recipient shall (a) deliver to the Disclosing Party 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 the Disclosing Party and, in the case of Customer, which is not still reasonably required by Customer for its then-effective licensed use of the Sectra Product hereunder.
- 3.5 Non-Solicitation. Each of Sectra and Customer agrees that, during the Support Period until the second (2nd) anniversary of the termination/expiration date of the Support Period (the "Non-Solicit Period"), such party shall not solicit, employ, or engage as an employee, independent contractor, or sales representative, or cause to be solicited, employed, or engaged as an employee, independent contractor, or sales representative, for or on behalf of such party or any third party, directly or indirectly, any individual who is an employee, sales representative, or independent contractor of the other party at any time during the Non-Solicit Period, other than through a general solicitation not directed at any such individual, provided that such obligated party shall not hire any such individual who responds to any such general solicitation.
- 3.6 The confidentiality and non-solicitation obligations of this Section 3 of Schedule D will remain in force after the expiration/termination of the License, the Support, or this Agreement.
- 3.7 The confidentiality obligations of Sectra set forth in this Section 3 of Schedule D are in addition to, and not in lieu of, the confidentiality obligations of Sectra under the Business Associate Agreement attached as Attachment I.

4 Indemnity

- 4.1 Sectra shall indemnify, defend and hold harmless Customer 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 by any third party ("Third Party Claims") against Customer or any of its foregoing covered indemnitees, and all damages, awards, losses, liabilities, settlements, judgments, costs and expenses (including, without limitation, interest awards, litigation costs, and reasonable attorneys' fees awards) ("Losses") incurred by Customer or any of its foregoing covered indemnitees and resulting from or arising out of such Third Party Claims, to the extent that such Third Party Claims are based on allegations that any Licensed Materials, delivered by Sectra to Customer hereunder, infringe any third party's registered United States patent existing on the applicable date of delivery of such Licensed Material by Sectra to Customer 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 4.1 of Schedule D (the "IP Indemnity Obligations") are subject to Sections 4.1.1, 4.3 and 5 of this Schedule D.
- 4.1.1 If Customer'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 Customer the right to continue using such Licensed Materials, or (b) replace or modify such Licensed Materials so that it becomes non-infringing, or (c) refund to Customer 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)

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Customer 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.

4.1.2 Notwithstanding anything else, the IP Indemnity Obligations do not apply: (i) if Customer 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 Customer or any Customer 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 Customer, (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 Customer or any Customer Personnel or by Sectra at the direction or request of Customer, (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 Customer of infringing Software after Sectra has provided any remedy described in Section 4.1.1 of this **Schedule D**; (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 Customer or any Customer 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 Customer or any Customer Personnel; (v) Customer'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 Customer; and/or (vii) the breach by the Customer of this Agreement.

4.2 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.


4.3 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.

5 Limitations of Liability

5.1 TO THE MAXIMUM EXTENT ALLOWED BY LAW, NEITHER SECTRA NOR ANY OF ITS APPLICABLE LICENSORS SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR: (A) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES OF ANY CHARACTER RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RESULTING FROM ANY LOSS OF GOODWILL, LOSS OF INVESTMENT, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF USE, LOSS OF REVENUE, LOSS OF BUSINESS, OR LOSS OF PROFITS; EVEN IF ANY PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND REGARDLESS OF THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION (INCLUDING, BUT NOT LIMITED TO, ANY ACTION IN TORT OR CONTRACT) MAY BE BROUGHT; OR (B) THE COST OF PROCURING SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OF ANY KIND. THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN SECTRA AND CUSTOMER IN VIEW OF THE FEES CHARGED BY SECTRA TO CUSTOMER. THE LIMITATIONS OF THIS SECTION 5.1 OF **SCHEDULE D** SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 IF THERE SHALL, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, 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, CUSTOMER AGREES THAT, IN NO EVENT, WILL THE TOTAL AGGREGATE LIABILITY OF SECTRA FOR ANY CLAIMS, CAUSES OF ACTION, LOSSES OR DAMAGES EXCEED THE FEES PAID BY CUSTOMER TO SECTRA UNDER THIS AGREEMENT FOR THE LICENSED MATERIALS AND/OR SERVICES THAT IS/ARE UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY IS COMPLETE AND EXCLUSIVE, SHALL APPLY EVEN IF SECTRA OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIMS, CAUSES OF ACTION, LOSSES OR DAMAGES, AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OTHER REMEDIES POSSESSED BY CUSTOMER OR THIRD PARTIES. THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN SECTRA AND CUSTOMER IN VIEW OF THE FEES

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CHARGED BY SECTRA TO CUSTOMER. THE LIMITATIONS OF THIS SECTION 5.2 OF SCHEDULE D SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- 5.3 Customer 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.
- 5.4 Sectra and its representatives shall not have any negligence or tort liability to the Customer arising from this Agreement.
- 5.5 Notwithstanding anything else, any and all claims or actions involving the parties relating to, directly or indirectly, or arising from this Agreement, the Sectra Product or any Services, 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.
- 5.6 The limitations of liability and damages set forth in this Section 5 of Schedule D 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 5 of Schedule D.

6 Termination

- 6.1 Sectra shall have the right to terminate this Agreement (in whole or in part) with immediate effect upon written notice to Customer (in addition to all other rights and remedies of Sectra under this Agreement, by law or in equity) if the Customer should breach any of its material obligations under this Agreement and fails to cure such breach (if capable of being cured or unless otherwise expressly provided) within sixty (60) days following written notice of such breach has been delivered by Sectra to Customer. Notwithstanding the foregoing, non-payment of the License Fee or Support and Maintenance Fee, or any other amounts payable hereunder (including late payment interest), or breach of (i) any of Section 3 (**Confidentiality**) of this Schedule D, (ii) Schedule B (License) or (iii) any other provision regarding the Intellectual Property Rights or other proprietary/confidentiality rights of Sectra shall be deemed a breach of Customer's material obligations under this Agreement for which no cure period shall be available to Customer, and, as such, Sectra may immediately terminate upon written notice to the Customer. The Customer shall not be entitled to any refund of any paid Contract Price irrespective of the reason for termination of this Agreement. 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 and/or any other Service, without terminating the License, at its sole discretion, however, any termination of the License shall also terminate the Support and other Service obligations of Sectra under this Agreement, without any further action by or notice from Sectra.
- 6.2 Customer shall have the right to terminate this Agreement in its entirety with immediate effect upon written notice to Sectra (in addition to all other rights and remedies of Customer under this Agreement, by law or in equity) if Sectra should breach any of its material obligations under this Agreement and fails to cure such breach (if capable of being cured) within sixty (60) days following written notice of such breach has been delivered by Customer to Sectra. Such rights shall be in addition to, and not in lieu of, any other rights and remedies available to Customer as result of any breach. Customer may not terminate Support or any other Service, without terminating the License, and any termination of the Support or other Service shall also be deemed to terminate the License under this Agreement, without any further action by or notice from Sectra.
- 6.3 In the event that Customer shall become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of, or shall become subject to, any proceedings under any bankruptcy (or similar laws relating to insolvency or the protection of rights of creditors) of any jurisdiction, then Sectra shall be entitled to terminate this Agreement with immediate effect upon written notice to Customer.
- 6.4 It is acknowledged and agreed that the Customer is a public facility whose operating funds and budget are governed by the County of Riverside, CA (the "County"). In the event that the County fails, in good faith, to designate funds to Customer for the payment of product and services to be provided by Sectra under this Agreement, for any fiscal period, and in the event that such funds are not otherwise available, then, upon 90 days' prior written notice to Sectra, the Customer shall have the right to terminate this Agreement on the last day for which funds were appropriated or available, whichever is later. Notwithstanding the foregoing, the Customer represents that it intends to maintain this Agreement for the full term, as set forth herein, and that it has no reason to believe it will not have sufficient funds to enable it to make all payments due under this Agreement. This Section 6.4 shall be void, and of no further force or effect, if the Customer hereafter becomes a non-public institution.

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6.5 Upon expiration or termination of this Agreement for any reason including without limitation a breach by Customer, and provided that Customer provides Sectra with written request therefor within ten (10) days prior to the effective expiration/termination date, Sectra shall provide the termination assistance and transition services described, and upon the terms and conditions set forth, in the Transition Services Rider as well as Support upon the terms and conditions set forth in this Agreement (collectively, the "Transition Services") for the period set forth in the Transition Services Rider (the "Transition Period") in exchange for the fees set forth in the Transition Services Rider (the "Transition Fees"). All applicable provisions of this Agreement will be extended for the Transition Period. Notwithstanding any contrary provision, in providing the Transition Services, Sectra shall at no time be obligated to give access to or otherwise disclose its Confidential Information to any third party, and Sectra shall have no obligation to provide any Transition Services unless and until the Transition Fees are paid in accordance with this Section 6.4 and the Transition Services Rider. For avoidance of doubt, Transition Fees shall be in addition to, and not in lieu of, any portions of the Contract Price payable by Customer under this Agreement.

7 Force Majeure

Sectra shall not be liable to the Customer 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 Effective Date and which was not reasonably foreseeable as of the Effective Date, and whose effects are not capable of being overcome without unreasonable 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/fluctuations/failures of energy, power surges, structural deficiencies of the building in which the Sectra Product is located, air conditioning failure, 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.

8 Disputes; Injunctive Relief

8.1 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 in this Agreement, or such other address as such party may specify by written agreement or by written notice to each other, such service to become effective ten (10) days after such mailing.

8.2 Subject to the injunctive remedies available to Sectra pursuant to Section 8.3 of this **Schedule D**, 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 (3rd) 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 Orange or San Bernardino Counties 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.

8.3 The Customer acknowledges that any breach of its obligations with respect to any of **Schedule B (License)**, and/or Section 3 (**Confidentiality**) of this **Schedule D** 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. Customer agrees that if a court of competent jurisdiction determines that Customer has breached, or attempted or threatened to breach, its obligations pursuant to **Schedule B (License)**, and/or Section 3 (**Confidentiality**) of this **Schedule D**, 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.

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9 Miscellaneous

- 9.1 Customer hereby authorizes Sectra to make public announcements relating to the commencement of Customer's use of the Sectra Product, which public announcement may include the trade name(s) of the Customer.
- 9.2 Customer 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. Any assignment in violation of this Section 9.2 of **Schedule D** shall be deemed null and void and of no force or effect.
- 9.3 This Agreement shall be binding upon, and inure to the benefit of, the parties, their affiliated companies, subsidiaries, successors, and permitted assigns (if any), except as otherwise herein expressly provided. No person other than the parties, except governmental entities to the extent required by law or as otherwise herein expressly provided, shall be entitled to bring any action to enforce this Agreement, and the terms of this Agreement are intended solely for the benefit of, and to be enforceable only by, the parties or their respective successors in interest or assigns as permitted under this Agreement. Each party hereto warrants that each individual signing and initialing this Agreement on behalf of such party is authorized to execute this Agreement on behalf of each such respective party.
- 9.4 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.
- 9.5 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.
- 9.6 No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by the party to be charged. Modifications may be made via written Riders signed by the parties. 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.
- 9.7 Sectra and its personnel and agents, in performance of this Agreement, are acting as independent contractors and not as employees or agents of Customer. 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.
- 9.8 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall constitute a complete and original instrument but all of which together shall constitute one and the same agreement (notwithstanding that all of the parties are not signatories to the original or the same counterpart, or that signature pages from different counterparts are combined), and it shall not be necessary when making proof of this Agreement or any counterpart thereof to account for any other counterpart, and the signature of any party to any counterpart shall be deemed to be a signature to and may be appended to any other counterpart. For purposes of this Agreement, this Agreement or any other document (or signature page hereto or thereto) signed and transmitted by facsimile machine or other electronic means is to be treated as an original document. The signature of any party on any such document, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party, any facsimile or other electronic signature is to be re-executed in original form by the party which executed the facsimile or other electronic signature. No party may raise the use of a facsimile machine or other electronic means, or the fact that any signature was transmitted through the use of a facsimile machine or other electronic means, as a defense to the enforcement of this Agreement.
- 9.9 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 Cover Page, or such other address as either party may specify in writing in accordance with this Section 9.9 of **Schedule D**, and shall be deemed given upon receipt. (e) Sectra is required to submit a total expenditures report to the Procurement Contract Specialist by mail when the percentage of the Specific Service is seventy five percent (75%) of total allotted funds is committed or estimated to be committed.
- 9.10 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.

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- 9.11 Except as specifically provided for in this Agreement, all remedies provided for in this Agreement are cumulative and are in addition to any right or remedies available to either party at law or in equity.
- 9.12 In addition to all other provisions which expressly survive termination/expiration of the License, Support or this Agreement, or whose context requires such survival, the following provisions shall specifically survive termination/expiration of the License, Support or this Agreement: **Schedule A (Certain Definitions)** (for the purposes of interpreting other surviving provisions only); Sections 2.4-2.6 (inclusive), 2.9-2.11 (inclusive), 3 (**Ownership**) and 5 (**Return of Software**) of **Schedule B**; Sections 2.3, 2.4, 2.6, 3.1.4, 3.1.5, 3.2.6 and 4.1 of **Schedule C (Installation, Warranties and Support)**; and Sections 2.2, 3 (**Confidentiality**), 5 (**Limitations of Liability**), 6 (**Termination**), 7 (**Force Majeure**), 8 (**Disputes**) and 9 (**Miscellaneous**) of this **Schedule D**.
- 9.13 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.

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Schedule E

Proposal

PROPOSAL DATE: March 19, 2015

PROPOSAL EXPIRATION DATE: April 15, 2015

Sectra Software:

Multi-User License:

Description	Quantity of C.U.L.'s
IDS7/mx Diagnostic Workstation Software	2
OrthoStation Package	1
Sectra 3D Advanced Package	3

Single-User License:

Description	Quantity of S.U.L.'s
CD/DVD Production center	1
Image Exchange Portal Connection	20

Exam-Based:

Description	Licensed Volume (per rolling 12 month period)
Sectra PACS Enterprise Edition with Concurrent User Engine HL-7 Interface DMWL Interface File System Archive Interface (no media) External App Launch Active Directory Integration	200k
IDS7/dx Diagnostic Workstation Software	200k
IDS7/qa Quality Assurance Workstation Software	200k
IDS7/cx Clinical Review Workstation Software	200k
LiteView web distribution software	200k
Advanced Image Toolkit Package	200k
Basic Document Scanning Package	200k
Image Exchange Portal	20k

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Supported Third Party Software:

Description	OEM	License Type	Quantity
Microsoft Datacenter Licensing	Microsoft		N/A
VMware licensing	VMware		N/A
Microsoft SQL Licensing	Microsoft		N/A

Supported Third Party Hardware:

Description	OEM	License Type	Quantity
PACS core servers - Dell R720 servers	Dell		5
PACS Storage – Dell Compellent Storage	Dell		1
PACS rack/UPS/switches	Dell		N/A

Initial Support Period:

Start date: 7/1/2015 - End date: 6/30/2020

Threshold Volume:

200,000 exams per year

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Proposal Includes:

1. **Software Upgrades and Updates**
 - Includes access to software maintenance updates (patches and hotfixes) as well as any new revision upgrades of listed software
 - Includes software subscription
2. **Software Upgrade and Update Installation and Applications Training**
 - Up to once per 12 months, Sectra would coordinate a version upgrade of the system with the Customer. Such upgrade includes labor at the time periods specified in the Service Level Agreement, and consists of project management, engineering and in applicable cases application training. The services are predominantly delivered from remote, but could at Sectra's sole discretion be provided onsite. If services are provided on-site, Sectra would pay for its expenses.
 - Prior to an upgrade, Sectra would provide a general system review to determine if the current hardware can support the new version
 - Updates (patches) are installed as needed, based on identified issues
3. **Sectra Product Break/Fix helpdesk support**
 - See attached Service Level Agreement for further details
4. **24X7 Sectra Monitoring Service**
5. **UserWeb Accounts for Access to Web Helpdesk, System Documentation, Discussion Groups, Tech Tips**
6. **Sectra Disaster Recovery Off-Site Backup Service**
 - Backup media of database and archived images will be delivered to the customer within 3 days of a catastrophic failure
 - Customer is to maintain normal daily backups onsite
 - Wide Area Network (WAN) connection between Customer and Sectra will be provided by the Customer. If Sectra provides the WAN connection, there is an additional monthly fee of \$3,050.00
7. **Sectra North America User Group Meeting – 2 seats/year**
 - Flight, car, hotel provided by Sectra
8. **Price Guarantee**
 - Exam Volume Increase from 200k annual exams to 250k (PACS, IDS7, LiteView, AITP, Basic Document Scanning): -- \$142,540.00
9. **Image Exchange Portal Subscription**
 - See Appendix B
10. **Technology Refresh Project**
 - See Appendix A

Minimum Network Requirements:

IDS7/MX - 1Gbps,
IDS7/DX, /QA and /CX - 100Mbps,
1Gbps for server backbone.

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Contract Price and Payment Terms:

Support and Maintenance Fee: \$1, 875,000.00*
Payment Terms, 60 monthly payments Month 1-60: \$31,250.00* per month

**Subject to annual increases as set forth in the definition of Support and Maintenance Fee. For clarity, the Support and Maintenance Fee does not increase for the duration of the Initial Support Period. An annual increase would only apply to any Renewal Support Period.*

Total Contract Price: \$1,875,000.00**

****Excludes applicable taxes, if any.**

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Appendix A (to Proposal)

Sectra Software Licenses included in Contract:

Description	Quantity
Active Directory Integration 200k annual exams license	1
LiteView Web Based Viewer (Desktop and Tablet) 200k annual exams license	1
OrthoStation Upgrade	1

Server Hardware included in Contract:

Description	Quantity
PowerEdge R720, Intel Xeon E-26XX Processors	2
PowerEdge R720, Intel Xeon E-26XX Processors	3
Dell Netshelter SX 42U	1
Dell Smart-UPS 8000VA 208v	1
Dell Compellent SAN 75TB	1

Professional Services included in Service Contract:

Unix to Windows conversion project as detailed in Scope of Work "SOW Riverside County Regional Medical Center Unix to Windows Migration" (320 hours total)

LiteView Implementation services (8 hours total)

Active Directory Implementation services (34 hours total)

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Appendix B (to Proposal)

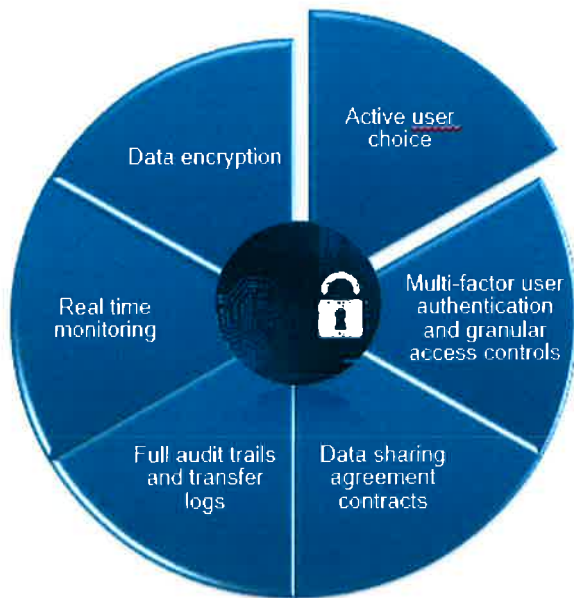
Sectra Image Exchange Portal™

Sectra Image Exchange Portal is a centrally hosted web-based platform for patient information exchange through active choice, replacing CDs and other means of sending or receiving information from other hospitals, clinics or institutions. The service communicates using encryption and requires authentication, and can thus safely transmit information from one place to another and offer auditing of the operations performed.


By being connected to Sectra Image Exchange Portal, the hospital connects to one single image sharing network, without the need of multiple integration or point-to-point connections.

Key features

- Security through encryption of transmitted data
- Authorization of each user, including audit capabilities
- Approval of each request before any data is transmitted
- Ability to request studies and documents
- Transfer studies and documents directly to other institutions
- Transfer studies to the central IEP service for viewing



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Sectra Image Exchange Portal™ Installation & Subscription Fees

Sectra Image Exchange Portal™, delivered as Software as a service (SaaS), allows for a lower initial fee in comparison to traditional software licensing. There is an on-going monthly subscription fee covering the maintenance and support of the service, as well as server side hardware and software refreshes.

Sectra order #	Product name	Qty	Price	Extended Price
	Initial Setup Fee Connection	20	\$2,000.00	\$40,000.00
CO-NA-IEP-SU	Setup fee (One-Time)			\$40,000.00
	Monthly Base Fee with Viewer (20,000 annual exams)	60	\$1,400.00	\$84,000.00
	Overage on Base exams (per study) **billed separately		\$1.20	
				\$84,000.00

As a subscribed service, Sectra Image Exchange Portal™ does not require any significant up-front investment, making the solution easy to connect or disconnect as needed. The service is included in the service contract, and only overages on the number of annual studies transmitted or connections (other hospitals, imaging centers, referring physicians) beyond the included amount are invoiced separately.

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Service Level Rider

Gold Service Level Description Rider

Sectra Monitoring	24/7	Outbound Email Alerts to Customer and Sectra Helpdesk
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Helpdesk Availability	Phone: 8:00AM-5:00PM (Local Time)	Monday-Friday (except holidays)
	Email: Submit 24/7	Processed Next Business Day
Helpdesk Ticket Tracking	24/7	Sectra UserWeb
Product Documentation	24/7	Sectra UserWeb

Helpdesk Priority/Response		
Severity 1 (Critical)	Severe impact on Site Operations (including): <ul style="list-style-type: none"> Patient Safety Data Loss No Modality can send to PACS No PACS workstation can display images No exam retrieval from archive No web access 	Helpdesk Response: <ul style="list-style-type: none"> 24/7 Helpdesk (After Hours Pager) Within 2 Hours Time may cross over to the next business day 8:00AM-5:00PM M-F (No Holidays)
Severity 2 (Important)	Major loss of functionality; access degraded; major functions unavailable (including): <ul style="list-style-type: none"> Performance problems Repeated failures Some modalities unable to send to PACS Some PACS workstations cannot display images HL7 Interface not functioning properly 	Helpdesk Response: <ul style="list-style-type: none"> 24/7 Helpdesk (After Hours Pager) Within 4 Hours Time may cross over to the next business day(s) 8:00AM-5:00PM M-F (No Holidays)
Severity 3 (Non-Critical)	Problems affecting productivity (including): <ul style="list-style-type: none"> General application or administration questions Configuration changes Problems that have a hotfix or workaround solution that needs to be in a future patch or release 	Helpdesk Response: <ul style="list-style-type: none"> Within 2 Business Days Time may cross over to the next business day(s) 8:00AM-5:00PM M-F (No Holidays)

Upgrades					
Remote	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">Safety</td></tr> <tr><td style="text-align: center;">Fixes/Patches</td></tr> <tr><td style="text-align: center;">Upgrades</td></tr> </table>	Safety	Fixes/Patches	Upgrades	Scheduled: 8:00AM-11:00PM (Local Time) Monday-Friday (except holidays) Scheduled: 8:00AM-5:00PM (Local Time) Saturday-Sunday (except holidays)
Safety					
Fixes/Patches					
Upgrades					
Remote	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">Safety</td></tr> <tr><td style="text-align: center;">Fixes/Patches</td></tr> <tr><td style="text-align: center;">Upgrades</td></tr> </table>	Safety	Fixes/Patches	Upgrades	Scheduled: All Other Hours - Charged Time & Materials
Safety					
Fixes/Patches					
Upgrades					
Onsite	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">Safety Concerns</td></tr> <tr><td style="text-align: center;">Fixes/Patches</td></tr> <tr><td style="text-align: center;">Upgrades</td></tr> </table>	Safety Concerns	Fixes/Patches	Upgrades	Scheduled: Charged Time, Materials, Travel & Expenses
Safety Concerns					
Fixes/Patches					
Upgrades					

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1 Limits of Support Services

Notwithstanding any contrary provision of the Agreement, Support does not include any of the following:

- 1.1 Remote or on-site training of the Customer or its Customer Personnel above and beyond the initial training provided during Installation, as set forth in this Agreement.
- 1.2 Ongoing system administration tasks, including but not limited to: user maintenance, system backups, network troubleshooting, log file maintenance, and anti virus definition updates.
- 1.3 Any additional interfacing to or with image-producing devices or other systems beyond what was initially purchased from Sectra and Installed.
- 1.4 Hardware or software upgrades, including patch installations, not installed by a Sectra Application Specialist or Sectra-appointed contractor, or servicing, monitoring or any other support of any such hardware or software.
- 1.5 Any servicing, monitoring or other support of networks.
- 1.6 Any defects or problems that are not within the scope of the limited warranty set forth in Section 2.2 of Schedule C (Installation, Warranties and Support).
- 1.7 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).
- 1.8 Services needed in response to requests that do not originate from the failure of the Software to perform as warranted, or, if, in Sectra's reasonable opinion, such problems originate with Customer's equipment or hardware including without limitation services related to networks, communications, hardware, end user training/use of the Software, or issues related to third party software.
- 1.9 Assistance provided to Customer in the creation of custom reports, functions or formats.
- 1.10 Modification of patient demographics or other related information to synchronize such with a new HIS or RIS not provided under this Agreement.
- 1.11 Problems with the Sectra Product occurring during any period that Customer is in breach or default of any provision of this Agreement.
- 1.12 Worklist or DDP configuration, mismatch resolution, archive or online image store maintenance.
- 1.13 Any repairs or services needed as a result of: (a) any alterations, adjustments, or configurations of the Sectra Product that were not approved by Sectra; (b) any hardware failure from misuse or mishandling of the Sectra Product by Customer, including improper handling, storage or maintenance; (c) any defect, malfunction or failure of any Unsupported Hardware or Unsupported Software; (d) Virus attacks or security breaches; (e) 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; (f) 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; (g) backups or table updating; (h) file reorganizations and restores; (i) testing by Customer in a production environment; (j) downtime during loading of any software in a production environment; (k) Customer's failure to address single-points-of-failure or high-risk implementations after being advised to do so by Sectra, including, without limitation, failure to use uninterruptible power supplies for every server; use of a single server solution; and/or lack of an archive or backup; (l) any design, specification or instruction provided by Customer; (m) Customer's failure to fulfill any of its obligations or responsibilities under this Agreement; (n) the failure of any person other than Sectra to comply with Sectra's written instructions or recommendations; (o) the Customer's combination of the Sectra Product (or any component thereof) with (i) a product, part or other item of any person other than Sectra or (ii) an incompatible product, part or other item of Sectra; and/or (p) a Force Majeure Event.
- 1.14 Any repairs, problems or services needed as a result of Customer exceeding the then-applicable Threshold Volume and/or Licensed Volume.

2 Expanded Support

- 2.1 Customer may request that Sectra perform any of the services set forth in Section 1 of this rider or any other services that do not comprise Support as Expanded Support, and Sectra (in its sole discretion) shall provide such Expanded Support. The Customer shall furnish a purchase order to Sectra for any requested Expanded Support by fax to 1-203-925-0906, Attn: Helpdesk, or such other number as provided by Sectra from time to time.

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- 2.2 Any Expanded Support provided by Sectra under this Agreement, or deemed provided by Sectra under this Agreement, shall be charged at the then-current rates from the latest Sectra price list for Expanded Support, and Customer shall be obligated to pay for such Expanded Support at such rates. The current rates are set forth in the Time and Materials Rates Rider. 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, Customer shall be charged a minimum billable time for Expanded Support of 1.5 hours. Customer may request the latest Sectra price list via the contact information set forth herein.

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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.

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Transition Services Rider

Transition Period: Ninety (90) days commencing upon the later of (a) the effective expiration/termination date of the Agreement or (b) the date upon which the Transition Support Fee is paid and delivered by Customer to Sectra.

Transition Fees:

Transition Support Fee: An amount equal to the then-effective annual Support and Maintenance Fee as of the effective expiration/termination date of the Agreement as prorated for the number of days in the Transition Period.

Transition Expanded Support Fees: During the Transition Period, in addition to the Transition Support Fee, the Customer will pre-pay a reasonable estimated amount for any Transition Services which are not part of regular Support under the Agreement (the "Transition Expanded Support Services") at Sectra's then-current rates from the then most recent Sectra price list for Expanded Support. To the extent that the actually incurred time for any Transition Expanded Support Services exceed the estimate (and pre-payment) therefor, Sectra shall invoice, and Customer shall be obligated to pay, pursuant to the payment terms set forth in the Agreement, for any such excess of Transition Expanded Support Fees.

Transition Services:

1. Generally the transition services shall include any services that are reasonably requested by Customer, and reasonably performable by Sectra, to support the transition of Customer from the Sectra Product to a replacement product of another vendor.
2. Sectra shall provide to Customer at Customer's reasonable request any information specific to the Sectra Product installed with the Customer, including by way of example, information regarding Customer's hardware versions and updates, logs describing support issues, identity and contact information for hardware and third party software vendors, copies of annual plans or other assessments of the Sectra Product, and other similar information reasonably useful to Customer in supporting the transition.
3. Sectra shall assign to Customer any remaining period under manufacturer-provided warranties covering Hardware provided by Sectra to Customer. In connection with such assignment, Customer shall pay to Sectra the pro rata portion of any prepayments made by Sectra to the manufacturer for support, with the proration based upon the percentage of remaining support existing as of the effective date of the Agreement's termination/expiration.
4. For avoidance of doubt, the foregoing Transition Services are subject to the payment of Transition Fees as well as Section 6.4 of **Schedule D (General Terms and Conditions)** of the Agreement.

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Attachment I

HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the Master Customer Agreement (the "Underlying Agreement") between the County of Riverside ("County") and Sectra North America, Inc ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, to the extent County discloses PHI and/or ePHI to Contractor or Contractor creates, receives, maintains, transmits, or has access to PHI and/or ePHI of County, Contractor is a business associate, as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing functions, services and activities on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

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NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.

A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E of the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402.

(1) Except as provided below in Paragraph (2) of this definition, acquisition, access, use, or disclosure of PHI in a manner not permitted by subpart E of the Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following four factors:

(a) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

(b) The unauthorized person who used the PHI or to whom the disclosure was made;

(c) Whether the PHI was actually acquired or viewed; and

(d) The extent to which the risk to the PHI has been mitigated.

(2) Breach excludes:

(a) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of the Privacy Rule.

(b) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.


(c) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

B. "Business associate" has the meaning given such term in 45 CFR §164.501, including but not limited to a subcontractor that creates, receives, maintains, transmits or accesses PHI on behalf of the business associate.

C. "Data aggregation" has the meaning given such term in 45 CFR §164.501.

D. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.

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- E. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- F. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- G. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- H. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- I. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- J. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- K. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- L. "Required by law" has the meaning given such term in 45 CFR §164.103.
- M. "Secretary" means the Secretary of the U.S. Department of Health and Human Services ("HHS").
- N. "Security incident" as defined in 45 CFR §164.304 means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- P. "Subcontractor" as defined in 45 CFR §160.103 means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- Q. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2).

2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:
 - 1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
 - 2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
 - a) The disclosure is required by law; or,
 - b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:

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- i. Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
 - ii. Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
 - 3) Use PHI to provide data aggregation services relating to the health care operations of County pursuant to the Underlying Agreement or as requested by County; and,
 - 4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Prohibited Uses and Disclosures.

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.
- D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §17935 and §17936. Contractor agrees:
 - 1) Not to use or disclose PHI for fundraising , unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.514(f) or 45 CFR §164.508;
 - 2) Not to use or disclose PHI for marketing, as defined in 45 CFR §164.501, unless pursuant to the Underlying Agreement and only if permitted by and in compliance with the requirements of 45 CFR §164.508(a)(3);
 - 3) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
 - 4) Not to receive, directly or indirectly, remuneration in exchange for PHI, or engage in any act that would constitute a sale of PHI, as defined in 45 CFR §164.502(a)(5)(ii), unless permitted by the Underlying Agreement and in compliance with the requirements of a valid authorization under 45 CFR §164.508(a)(4). This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. Obligations of County.

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

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- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.
- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410.
- F. In accordance with 45 CFR §164.502(e)(1)(ii), require that any subcontractors that create, receive, maintain, transmit or access PHI on behalf of the Contractor agree through contract to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to County or the Secretary, in the time and manner designated by County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by County.

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- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.
- M. Comply with the requirements of the Privacy Rule that apply to the County to the extent Contractor is to carry out County's obligations under the Privacy Rule.
- N. Take reasonable steps to cure or end any pattern of activity or practice of its subcontractor of which Contractor becomes aware that constitute a material breach or violation of the subcontractor's obligations under the business associate contract with Contractor, and if such steps are unsuccessful, Contractor agrees to terminate its contract with the subcontractor if feasible.

6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

- A. **Access to PHI, including ePHI.** Provide access to PHI, including ePHI if maintained electronically, in a designated record set to County or an individual as directed by County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524.
- B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set County directs or agrees to at the request of an individual, within fifteen (15) days of receiving a written request from County, in accordance with 45 CFR §164.526.
- C. **Accounting of disclosures of PHI and electronic health record.** Assist County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:
 - 1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.
 - 2) Within fifteen (15) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.
 - 3) Make available for County information required by this Section 6.C for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

7. **Security of ePHI.** In the event County discloses ePHI to Contractor or Contractor needs to create, receive, maintain, transmit or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §164.314(a)(2)(i), and §164.306, Contractor shall:

- 1. Comply with the applicable requirements of the Security Rule, and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County in accordance with 45 CFR §164.308, §164.310, and §164.312;
- 2. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;
- 3. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;
- 4. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;

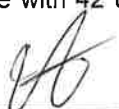
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5. Ensure compliance with the Security Rule by Contractor's workforce;
 6. In accordance with 45 CFR §164.308(b)(2), require that any subcontractors that create, receive, maintain, transmit, or access ePHI on behalf of Contractor agree through contract to the same restrictions and requirements contained in this Addendum and comply with the applicable requirements of the Security Rule;
 7. Report to County any security incident of which Contractor becomes aware, including breaches of unsecured PHI as required by 45 CFR §164.410; and,
 8. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
 8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
- 1) **Breaches treated as discovered.** A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
 - 2) **Content of notification.** The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
 - a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
 - b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
 - d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,
 - f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, prominent media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §164.404, §164.406 and §164.408.

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- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless County under Section 9 of this Addendum.
- F. **Documentation.** Pursuant to 45 CFR §164.414(b), in the event Contractor's use or disclosure of PHI and/or ePHI violates the Privacy Rule, Contractor shall maintain documentation sufficient to demonstrate that all notifications were made by Contractor as required by 45 CFR Part 164, Subpart D, or that such use or disclosure did not constitute a breach, including Contractor's completed risk assessment and investigation documentation.
- G. **Additional State Reporting Requirements.** The parties agree that this Section 8.G applies only if and/or when County, in its capacity as a licensed clinic, health facility, home health agency, or hospice, is required to report unlawful or unauthorized access, use, or disclosure of medical information under the more stringent requirements of California Health & Safety Code §1280.15. For purposes of this Section 8.G, "unauthorized" has the meaning given such term in California Health & Safety Code §1280.15(j)(2).
- 1) Contractor agrees to assist County to fulfill its reporting obligations to affected patients and to the California Department of Public Health ("CDPH") in a timely manner under the California Health & Safety Code §1280.15.
 - 2) Contractor agrees to report to County any unlawful or unauthorized access, use, or disclosure of patient's medical information without unreasonable delay and no later than two (2) business days after Contractor detects such incident. Contractor further agrees such report shall be made in writing, and shall include substantially the same types of information listed above in Section 8.A.2 (Content of Notification) as applicable to the unlawful or unauthorized access, use, or disclosure as defined above in this section, understanding and acknowledging that the term "breach" as used in Section 8.A.2 does not apply to California Health & Safety Code §1280.15.

9. Hold Harmless/Indemnification.

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any breach of this Addendum by Contractor, its officers, employees, subcontractors, agents or representatives. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be

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unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless County herein from third party claims arising from issues of this Addendum.
- D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

- 1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
- 2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
- 3) If termination of the Underlying Agreement is not feasible, the breaching party, upon the request of the non-breaching party, shall implement, at its own expense, a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

B. **Effect of Termination.**

- 1) Upon termination of this Addendum, for any reason, Contractor shall return or, if agreed to in writing by County, destroy all PHI and/or ePHI received from County, or created or received by the Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- 2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and

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limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

12. General Provisions.

- A. **Retention Period.** Whenever Contractor is required to document or maintain documentation pursuant to the terms of this Addendum, Contractor shall retain such documentation for 6 years from the date of its creation or as otherwise prescribed by law, whichever is later.
- B. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- C. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9, 11.B and 12.A of this Addendum shall survive the termination or expiration of this Addendum.
- D. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- E. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- F. **Interpretation of Addendum.**
 - 1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
 - 2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.
- G. **Notices to County.** All notifications required to be given by Contractor to County pursuant to the terms of this Addendum shall be made in writing and delivered to the County both by fax and to both of the addresses listed below by either registered or certified mail return receipt requested or guaranteed overnight mail with tracing capability, or at such other address as County may hereafter designate. All notices to County provided by Contractor pursuant to this Section shall be deemed given or made when received by County.

County HIPAA Privacy Officer: HIPAA Privacy Manager
County HIPAA Privacy Officer Address: P.O. Box 1569
Riverside, CA 92502
County HIPAA Privacy Officer Fax Number: (951) 955-HIPAA or (951) 955-4472

----- **TO BE COMPLETED BY COUNTY PERSONNEL ONLY** -----

County Departmental Officer: _____
County Departmental Officer Title: _____
County Department Address: _____
County Department Fax Number: _____

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