

**AMENDMENT NO. 23 TO THE AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
ECLINICAL WORKS, LLC**

THIS TWENTYTHIRD AMENDMENT TO THE AGREEMENT, entered into this 9<sup>th</sup> day of November 2020 (the “Amendment Effective Date”) by and between the COUNTY OF SAN MATEO, hereinafter called “County” and ECLINICAL WORK, LLC, hereinafter called “Contractor”;

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, the parties entered into an Agreement, by County Board of Supervisors Resolution 069209, to install and maintain an Ambulatory Electronic Medical Record at San Mateo Medical Center on January 8, 2008; and

WHEREAS, County and Contractor have entered into amendments to extend the Term of the Agreement, most recently by Amendment No. 21 on March 24, 2020, to January 7, 2022 and now to extend the Term two years to January 7, 2024; and

WHEREAS, Amendment 16 provided the Contractor the option to increase all fees in the Agreement once each year ending January 7, 2022 by no more than three percent (3%) by giving County at least 60 days written notice of such increase and Contractor is exercising such option to increase all fees in the Agreement by three percent (3%) for the periods of January 8, 2022 to January 7, 2023 and January 8, 2023 to January 7, 2024, excluding the pricing contemplated in this Amendment.

WHEREAS, County’s total fiscal obligation of \$2,373,000 under the Agreement for the period of January 8, 2017 through January 7, 2022 is increase by \$2,127,000 for the period of January 8, 2017 through January 7, 2024 for new total fiscal obligation of \$4,500,000; and

WHEREAS, County now wishes to have Contractor Host the Software Products included in Exhibit A of the Agreement including all current interfaces and County data files, and implement Contractor’s most recent Version, V11.

**NOW, THEREFORE, IT IS HEREBY AGEED BY THE PARTIES HERETO AS FOLLOWS:**

Attachments. This amendment includes the following Attachments which are attached hereto and incorporated herein by this reference:

Attachment 1 Hosting Agreement

Attachment 2 EPCS Terms and Conditions

1. Definitions. The definition of a Provider in Section 1 of the Agreement was amended by Section 1 of Amendment 2 of the Agreement and a definition for Dentists was added. Those definitions, Provider and Dentist, are hereby deleted in their entirety and reinstated to read as follows:

“Provider(s)” shall mean Physicians, Nurse Practitioners, Physicians’ Assistants, Optometrists, Physical Therapists, Psychologists, Hygienists, Midwives, Nutritionists, Podiatrists, Licensed Social Workers, Counselors, and Audiologists employed by or under contract with the County to provide services within the medical field and for whom the County is paying a License Fee as set forth in this Agreement. The term Provider shall not include County personnel employed by or under contract with the County such as office managers, secretaries, other administrative staff, Dentists, Nurses (other than Nurse Practitioners), or Residents. For a category not identified above, Contractor and County shall agree in writing as to who is a Provider.

“Dentist(s)” shall mean a healthcare professional (DDS or DMD) employed by or under contract with the County qualified to practice dentistry after graduating with a degree from an accredited School of Dentistry and having a State license to practice dentistry. An FTE Provider License is granted at no charge for a Dentist to use the

Software Products as described in Section 4 of Exhibit A to the Agreement. If County acquires Contractor's Dental EMR Software Product, as described in Exhibit A. Section G of this amendment, a paid FTE Provider License shall be required for each Dentists and they shall then be considered a Provider.

The following definition is added to Section 1, Definitions, of the Agreement:

"Named EPCS Provider(s)" shall mean Providers and Dentists who are licensed by the State of California to electronically prescribe controlled substances (EPCS) and who have successfully enrolled in Contractor's EPCS services as described in Attachment 2, EPCS Terms and Conditions, of this amendment.

2. Section 4 Payments. Section 4 of the Agreement, Payments, which has subsequently been amended is deleted in its entirety and reinstated to read as follows: In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in the Agreement, as amended, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B". For the period commencing January 8, 2017 through January 7, 2024, County's fiscal obligation under this Agreement shall not exceed \$4,500,000.

3. Section 5 Term and Termination. Section 5 of the Agreement, Term and Termination, which has subsequently been amended is deleted in its entirety and reinstated to read as follows: Subject to compliance with all terms and conditions, the Term of this Agreement shall be from January 8, 2008 through January 7, 2024 unless terminated earlier according to the terms of this Agreement. This Agreement may be terminated by Contractor or by the County Health Chief or his/her designee, at any time without a requirement of good cause upon sixty (60) days written notice.

The Parties shall cooperate in ensuring County's smooth transition away from Contractor Services at the time of termination of this Agreement, in order to minimize disruption to County's operations, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that thirty (30) days prior to termination County shall choose an available data transfer option and pay for the option, if applicable, and County shall pay Contractor on a time and materials basis, at the then- applicable rates for data transfer services. The data transfer shall contain applicable documentation and data related to County inputted in the EMR, including, but not limited to, patient files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession. The destruction of County's data shall be at no charge to County.

4. Exhibit A. Exhibit A of the Agreement is hereby amended to add the following Hosted Contractor services and Software Products:

A. Hosting Implementation and Services. Contractor shall transfer from County servers the Software Products in Exhibit A of the Agreement, all existing interfaces (Prod and Test) and all County data files to Contractor's servers and upgrade the Software Products to Contractor's most current Version, V11. All Contractor services will be performed remotely, if on-site services are required County and Contractor shall mutually agree on a Work Order for said services. Ongoing Hosting services shall be performed in accordance with the Hosting Agreement, Attachment 1, of this amendment.

B. Project Plan. Contractor, within 30 day from the Amendment Effective Date, shall provide to County in writing a comprehensive Project Plan which includes but is not limited to a detailed schedule, tasks for each party and estimated downtime. It shall also include the mutually agreed to testing process to ensure that Contractor has successfully completed their tasks required for said transfer prior to First Productive Use. Contractor shall certify in writing to County that Contractor has successfully completed all Contractor's implementation tasks and the Hosted environment is ready for First Productive Use by County.

C. Test Environment. Contractor shall establish one test environment for ongoing testing by the County including keeping the version and patches on the Test environment in sync with the Production environment. Test shall be limited to 1,000 test patients.

D. Data Dump – Contractor shall provide data dump services which includes County access to one-time full backup of all County data and daily transactions logs thereafter.

E. Cloud Fax. Contractor shall provide Contractor’s HIPAA compliant, integrated, eFaxing services for 40 fax lines. Contractor shall port all existing fax numbers. County may add additional lines through a Work Order.

F. Electronic Prescribing Controlled Substances (EPCS). Contractor shall provide EPCS authentication services including identity proofing. One OTP hardware token per Named EPCS Provider/Dentist will be provided. County hereby agrees to the EPCS Terms and Conditions in Attachment 2 of this amendment. Contractor will provide a self-service portal where County can find the activated Named EPCS Providers / Dentists enrolled in Contractor’s EPCS service including date of enrollment.

G. Dental EMR. The County has the option to purchase Contractor’s Dental EMR Software Product for the fees described in Section 6 of this amendment, by entering into a corresponding amendment.

5. Exhibit B. Exhibit B of the Agreement is hereby amended to add the following fees and payment terms:

Fee	Amount	Frequency	Payment Terms
A. Hosting Implementation Fixed Fee Interface Transfer Fixed Fee Project Management  Hosting Fee  Patient Portal Fee (approved in amendment 11)	\$10,000 (see section 5a below) \$1,000 \$1,000 per 8 hour day up to 10 days \$150 per month per FTE Provider* \$27.32 per FTE Provider	One Time One Time  Monthly  Monthly	Upon Project Plan Completion Upon Project Plan Completion As incurred  Upon Certification**
B. Data Dump	\$600***	Monthly	Upon First Productive Use
C. Cloud Fax	\$2,000 for 40 lines (\$50 per line)****	Monthly	Upon First Productive Use
D. Test Environment Implementation Support	\$1,000 \$600	One Time Monthly	Upon Project Plan completion Upon Certification**
E. EPCS	\$250 per Named EPCS Provider and Named EPCS Dentist *****	Annual	Upon enrollment in Contractor’s EPCS services ***

\* FTE Provider as defined in Section 1 of the Agreement as amended by Section 5 of Amendment 13.

\*\* Certification means written certification from Contractor to County that Contractor has successfully completed all Contractor’s implementation tasks and the Hosted environment is ready for First Productive Use by County.

\*\*\*eClinicalWorks will provide County a one-time full backup of data and daily transaction logs thereafter for one database. The full backup file is provided through Contractor hosted azure storage account.

- If the backup file is more than 100GB then County may choose for receiving the full backup file on an encrypted hard drive. County is responsible for hard drive and shipping costs.
- Contractor will provide daily transaction logs after the initial full backup is delivered.
- Contractor will host the azure storage account and provide access to County for data sharing.

- County will notify Contractor within three (3) days about any issues while restoring the log files. Contractor will purge the log backup files with in three (3) days. If County fails to notify Contractor and requires additional full backups, applicable charges at the rate of \$100 per hour will apply.
- Contractor will upgrade the MSSQL major version with latest security features. Contractor will notify County at least three (3) weeks in advance of the scheduled upgrade. County is required to maintain an identical MSSQL version to the Contractor hosting MSSQL version to perform daily restore and keep the County copy in read-only mode and to continue log restore process.

\*\*\*\*Cloud Fax fee includes up to 1,000 pages per line. Pages over 1,000 will be payable at \$.04 per page invoiced monthly. Additional lines can be installed at \$50 per line with the same rate of 1,000 pages per line, with pages over 1,000 lines payable at \$.04 per page.

\*\*\*\*\* The annual fee for each Named EPCS Provider/Dentist, as defined in Section 1 of this amendment, shall commence upon the date of enrollment for each Named EPCS Provider to use Contractor’s EPCS service. The annual fee for each Named EPCS Provider must be renewed for each subsequent year.

(a) Implementation

Service	Cost per day	Quantity	Total
Installation	\$1000 per day	10	\$10,000
Move existing Interfaces	\$200 per interface	5	\$ 1,000
Project Management	\$1000 per day	10	\$10,000
Total			\$21,000
Special Promotion Discount			(\$11,000)
Total after discount			\$10,000

6. Dental EMR. The County has the option to implement Contractors Dental EMR Software Product by agreeing to a corresponding amendment. The costs for the Dental EMR are as follows: \$3,750 for up to 5 days of Project Management, \$9,000 for 9 days of training, \$1,200 for 12 hours of remote training, \$550 for 5 hours of remote billing setup and configuration and \$750 for 1 day of remote HBI training. To access the Dental EMR Dentist are required to have a paid FTE Provider License. Should additional paid FTE Provider Licenses be required the cost for each additional FTE Provider Licenses is \$4,500. Annual costs for each FTE Provider License are \$796.60 for Maintenance, \$590.06 for Support, \$327.81 for electronic prescribing and \$250 for each Named EPCS Provider who is a Dentist. In addition, \$150 per month per FTE Provider License for Hosting, \$27.32 per FTE Provider per month for Patient Portal plus any other per FTE Provider pricing for any optional item selected for that FTE Provider.

7. Change Management. County is aware that Contractor may run and deploy any and all upgrades and/or patches relating to patient safety and security that are available on Contractor’s Cloud during Contractor’s scheduled maintenance time without notice to County, pursuant to Attachment 1 herein. Contractor must provide documentation of changes to County of such upgrades and patches mentioned above no longer than 24 hours after deployment. Except for upgrades and patches relating to patient safety and security, Contractor shall provide County with five (5) days’ notice of any material modifications that may impact the usability of the Software.

8. SAML Authentication. Contractor will implement SAML authentication protocol for front-end authentication. If applicable, Contractor will also implement SAML for end-user provisioning.

**IN WITNESS WHEREOF**, and in agreement with the terms set forth herein, the parties hereto, by their duly authorized representatives, have affixed their respective signatures.

**COUNTY OF SAN MATEO**

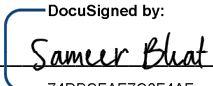
**ECLINICALWORKS, LLC**

By: \_\_\_\_\_

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By:  \_\_\_\_\_  
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(signature)

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Title: President, Board of Supervisors, San Mateo County

Title: VP sales

Attest By: \_\_\_\_\_

(signature)

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(type or print)

Title: Clerk of said Board

## Attachment 1 Hosting Agreement

### 1. Hosting Agreement.

The following Hosting Agreement replaces the Hosting Agreement in amendment 11 of the Agreement effective on the date of FPU of the Software Products in Exhibit A of the Agreement, as amended, residing on Contractor's servers.

### 2. Hosting Service Contractor Responsibilities.

Subject to the terms of this amendment, Contractor will: (a) make the Hosted Applications available to County via the Internet based on a Software As A Service (SaaS) basis; (b) make the Documentation for the Hosted Applications available to County in a mutually agreed upon format; (c) provide to County a user name, password, and other information required to use the Hosted Applications and (d) apply new Version to the Software Products.

### 3. County Responsibilities.

County is responsible for: (i) procuring, at its expense, the necessary environment at the County's location(s) to use the Hosted Applications via the Internet, including, without limitation, all computer hardware, software and equipment, Internet access and telecommunications services (collectively, the "County Systems"); (ii) complying with all laws, rules and regulations related to the County Systems; (iii) keeping its account and authentication information private and confidential, and, for any communications or transactions that are made, using the same; (iv) changing its user name and password if it believes that the same has been compromised; (v) obligations under any third party agreements to which County is a party, including, without limitation, any agreement pursuant to which County procures the County Systems or any portion thereof, regardless of whether Contractor provides County with any assistance in such procurement; (vi) maintain security of its environment that it controls and (vii) verify identity of users to whom it provides access to the information within the hosted application.

County shall bear all costs of obtaining, installing, and maintaining County Systems.

### 4. Definitions.

"Confidential Information" shall mean all technical, business, and other information of one party (the "Disclosing Party") disclosed to or obtained by the other party (the "Receiving Party") in connection with this Agreement, unless otherwise required by law) whether prior to, on or after the date of this Agreement, that derives economic value, actual or potential, from not being generally known to others, including, without limitation, any technical or non-technical data, designs, methods, techniques, drawings, processes, products, inventions, improvements, methods or plans of operation, research and development, business plans and financial information of the Disclosing Party. However, Contractor acknowledges that the County has general obligations under California law to disclose public records, including this Agreement.

"County Error" shall mean any misuse, improper use, alteration or damage to the Hosted Applications, any use or combination of the Hosted Applications with any software, operating system or computer equipment not approved by Contractor, or any other error not directly caused by the Hosted Applications or Contractor.

"Documentation" shall mean that the user and technical manuals and other documentation provided to County describing the Applications' features, functionalities, requirements, and specifications.

"Hosted Applications" shall mean the Software Products listed in Section 9 (a) of this amendment.

"SaaS" or "Software as a Service" shall mean application services provided by Contractor via the Internet.

"Services" shall mean the Hosting services set forth in Section 5 below which are subject to the payment of Hosting fees as described in Section 9 of this amendment.

"System" shall mean the server(s) on which the Software Products are hosted and all other equipment utilized by Contractor to provide the Services hereunder.

5. Services to be provided.

(a) Contractor shall provide all industry standard hosting-related maintenance including, without limitation, backups, server maintenance, contingency and disaster recovery plan testing, and troubleshooting.

(b) Network Connectivity.

Contractor shall provide the Software Products with connection to the Internet for 99.9% of the time twenty-four (24) hours a day, seven (7) days a week, excluding periods of agreed upon scheduled maintenance. Upon request, Contractor shall provide County, within five (5) days of the request, a written root cause analysis or reason for outage summary for each period of unscheduled downtime or for any scheduled downtime that exceeded the planned maintenance window by more than thirty (30) minutes.

(c) System Administration. Contractor shall provide routine and other system administration and support services necessary to maintain the Software Products. Contractor shall provide County with five (5) business days of notice prior to service interruptions due to planned maintenance and best effort when emergency maintenance is required. Users will be directed to an outage notification web page whenever the Software Products is unavailable. This notification page will be updated no less than every hour and include updated status on when the outage will be resolved. Scheduled downtime shall not exceed 240 minutes per month.

(d) Security and Data Protection. Contractor shall take reasonable measures to prevent unauthorized access to the Software Products. All data in transit over a public medium is required to be transacted using a minimum standard of adherence to NIST specifications regarding encryption. Since the preponderance of data in the System is sensitive, County data shall be separated from non-County data and encrypted using NIST guidelines. Contractor shall abide by all state and federal laws and regulations in regard to any known security breaches or compromises. For security and administrative reasons only, the Software Products administrators will have access to all files on the server. Contractor is not responsible if County makes changes to default security settings which allow access to County data.

6. Acceptable use policy.

(a) Acceptable Use Policy. County shall use the Hosted Applications only for lawful purposes, in compliance with all applicable laws. County shall be responsible for all use of the Software Products by its Registered Users, regardless of whether such use is known to or authorized by County. The Hosted Applications are provided for use in conformance with the terms and conditions of this Agreement. Contractor reserves the right to investigate suspected violations of this Agreement. If Contractor becomes aware of possible violations, Contractor may initiate an investigation including gathering information from County and examination of material on Contractor's servers. During the investigation, Contractor, in its sole discretion, may suspend access to the Software Products, and/or remove the Software Products content and other material from Contractor's servers. If Contractor determines, in its sole discretion, that a violation of this Agreement has occurred, it may take responsive action, including, without limitation, permanent removal of the Software Products content, or any portion thereof, from Contractor's servers, issuance of warnings to County or the suspension or termination of this Agreement to County. No such removal of software, or suspension or termination shall occur without first giving the County a reasonable opportunity to cure such violations of this Agreement unless such violations are shown to be both known to and authorized by the County.

(b) Passwords. Contractor will enforce password strength standards that meet or exceed current County standards. County agrees to notify Contractor immediately of any unauthorized use of its password(s). County shall be solely responsible for the security of its passwords. Continued failure by County to maintain password security may result in the suspension or termination of Services.

(c) System Integrity. County shall be prohibited from using the Services to compromise the security of the Services, the System, the Software Products, or any other Software Products on the Internet. County use or distribution of

tools designed for compromising security is strictly prohibited, including, without limitation, password guessing programs, cracking tools or network probing tools. Contractor shall also fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

#### 7. System Monitoring.

Contractor reserves the right to monitor the System electronically from time to time and to access and disclose any information as permitted or required by any law or regulation, to operate its System properly, or to protect itself or other customers, provided that Contractor shall provide County prior notice of any such disclosure. Contractor shall fully cooperate with law enforcement authorities in investigating suspected violators. Contractor shall maintain audit logs for no less than one year in duration (rolling) for common trigger events, including successful/failed access attempts, locked accounts, accounts never accessed, sensitive records viewed by Contractor, and adds/deletes of users with elevated privileges (e.g. administrator). Infrastructure audit logs shall be bound by state and federal laws and made available only if required by a governmental agency. Application audit logs are available to County within the application itself, at any time, provided appropriate access is granted by the practice administrators. It is not Contractor's intention that the Services, System or Contractor's facilities be used in contravention of the Communications Decency Act of 1996, 47 U.S.C. Section 223, or any other applicable law. County shall indemnify and defend Contractor for any claims, suits, losses or actions against Contractor arising from, related to or in connection with any violation by County of the Communications Decency Act.

#### 8. Warranty of Content.

In addition to the warranties set forth in the Agreement, the parties to this Agreement warrant that they shall not use on the Software Products any content or other intellectual property that: (i) infringes on the intellectual property rights or any rights of publicity or privacy of any third party; (ii) violates any law, statute, ordinance or regulation (including, without limitation, laws and regulations governing export control, unfair competition, antidiscrimination or false advertising); (iii) is defamatory, libelous, unlawfully threatening or unlawfully harassing; (iv) is obscene, child pornographic or harmful to minors; or (v) contains any viruses, trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information. Violations of this Section not only constitute a material breach of the Agreement and trigger immediate termination at the option of the party not in breach, but may also subject such party to criminal and/or civil liability.

Notwithstanding the foregoing, County hereby grants Contractor a perpetual, unlimited license to use the County Data, in any form or format, for data benchmarking, sharing, warehousing, resource utilization and similar data analysis services; provided, however, that Contractor shall protect and maintain the confidentiality of all individual identifiable patient and hospital data and Contractor shall comply with HIPAA, as applicable, with respect to such data.

#### 9. Hosted Applications.

Hosted Applications: All Software Products included in Exhibit A of the Agreement as amended.

#### 10. Support and Maintenance Services (SMS).

The terms and conditions in Exhibit B, Section 8, of the Agreement regarding resolution of Service Requests by severity and associated penalties described in that section apply to the Hosted Applications.

#### 11. Availability.

(a) Uptime. Within two (2) weeks of the commencement of the first on-site training session Contractor agrees that the Applications will be available 99.9% of the time during the hours of 5:00 AM to 12:00 AM local time of the data center, seven (7) days per week (the "Up-Time Commitment"). The Up-Time Commitment will be measured monthly. If Contractor does not meet the Up-Time Commitment, County will be entitled to Service Credits, as outlined below.



(b) Exclusions. Calculation of the Up-Time Commitment shall exclude unavailability of the Applications caused by any of the following:

- (a) Scheduled, announced downtime for maintenance; provided, however, that such downtime shall not exceed two (2) hours, per event, unless the parties mutually agree otherwise; Scheduled downtime windows are daily 1 AM – 3 AM local time of the data center and Sunday 1AM – 6AM local time of the data center.
- (b) Failures in the Internet that are outside Contractor’s control;
- (c) Hardware, communication lines or application problems (e.g., Internet, ISDN, DSL, etc.) of County that prevent/disrupt access; or
- (d) Failures by County to comply with the Contractors specifications outlined in the Documentation for the Applications.

(c) SERVICE CREDITS. Contractors sole obligation and liability, and Client’s sole remedy for Contractor failure to meet the Up-Time Commitment set forth above, shall be limited to County’s right to receive the credits set forth in the table below (the “Service Credits”).

The Service Credits will be applied to the Hosting Fees due under the Agreement for the calendar month following the month for which the Service Credits were earned by County, and such Hosting Fees will be reduced by the amount of such Service Credits; provided, however, that in no event shall the amount of the Service Credits for any calendar month exceed the Hosting Fees due under the Agreement for such calendar month.

County shall be entitled to receive the following Service Credits for hosted applications for Contractors failure to meet the Up-Time Commitment, subject to the exclusions outlined above.

<u>Availability Range</u>	<u>Percentage (%) of Fees</u>
99.9+	0%
99.5 – 99.8	1%
99.0 – 99.4	2%
98.5 –98.9	3%
98.0 – 98.4	4%
< 98.0	5%

County shall notify Contractor, in writing, within 30 days after the end of each month in which County has determined that a violation of the Up-Time Commitment occurred in order to receive the Service Credits documenting the date and time of outage event.

County has the right to terminate the Hosting Services provided for in this amendment by providing Contractor with 30 days advance written notice if the Up-Time Commitment is less than 98.0% for three (3) consecutive months.

12. Performance.

Screen Response Time:

Contractor represents and warrants that the Software shall have the following response times (“Response Time Commitments”):

- i. Sub one (1) second for field to field.
- ii. Ninety percent (90%) of screen to screen response times for user sessions shall be three (3) seconds or less, and the remaining ten percent (10%) of screen to screen response times for user sessions shall be no more than five (5) seconds as long as the measurement does not include network latency.
- iii. Compilation or generation of reports within industry standard response times based on the nature of the report request.

- iv. Response time for viewing scanned documents or any attached images will vary depending on the document size.

(b) All time measurements will be done on a direct connect device to the server. A measurement period will be a 2-hour period.

(c) If the Software fails to achieve the required Response Times or if any function exceeds the above response times, Contractor shall begin system diagnostics after receiving notice from Customer and will treat and address the issue in accordance with the service levels.

(d). Response Time Exclusions. Contractor's liability for failure to meet the required Software Response Time Commitments will be eliminated to the extent that such failure is caused by:

- i. A breach of this Agreement by County;
- ii. A failure by County or its Registered Users to perform its obligations under this Agreement to satisfy the Broadband Requirements;
- iii. Failure of any connectivity not provided by or on behalf of eClinicalWorks including external connectivity used by tele-workers to the extent such external connectivity is not provided by Contractor;
- iv. Failure of electric utility power at a County or a Registered User facility, provided that such failure is not directly or indirectly caused by any act or omission of Contractor;
- v. Domain Name Service (DNS) failure, when such services are not under eClinicalWorks' control;
- vi. Hardware, communication lines or application problems (e.g., Internet, ISDN, DSL, etc.) of Customer that prevent/disrupt access;
- vii. Any delay in an upgrade or patch for the Software that is elected by County;
- viii. Scheduled Maintenance Windows; or maintenance windows;
- ix. Failures by Customer to comply with the eClinicalWorks specifications outlined in the Documentation for the Software so long as Customer had sufficient notice of any changes to the Documentation.

## Attachment 2 EPCS Terms and Conditions

This is a legal agreement (the "Agreement") between eClinicalWorks, LLC ("Contractor") and your medical practice (the "Practice") regarding the electronic prescribing of controlled substances ("EPCS") self-activation service. This EPCS enrollment process requires certain information from authorizing physicians and other providers. By beginning this process, each physician will be redirected to a third-party website to begin the authentication process required for EPCS. The identity proofing and second factor credential authentication services required for EPCS are provided by Exostar, LLC ("Exostar"), an independent, third party vendor of Contractor.

The EPCS capabilities of Contractor's software are provided as an additional service to Contractor's customers for additional consideration. By accepting these terms, the Practice agrees to pay Contractor at standard annual published rates, currently \$250 per provider per year, or as otherwise agreed to in writing (the "Fees"). The term of enrollment is coextensive with the eCW Agreement for services of which this attachment is part. Fees are applicable whether or not the Practice or any of its providers actually use EPCS capabilities, and the Practice agrees and acknowledges that Fees are not subject to issuance of any credits or discounts due to any decrease in use of or decision to discontinue use of the EPCS capabilities during a Term. By completing this form and entering into this Agreement, the Practice consents to the release of information necessary to complete the EPCS enrollment process. This includes the transfer of any information needed by Exostar for the identity proofing, second factor credential authentication, and token binding services (the "Exostar Services"), whether specifically related to the Practice or otherwise. The Practice further agrees that Contractor may from time to time continue to release information to Exostar as necessary or convenient to allow the Practice or its providers to use EPCS or other features of Contractor's software. The Practice represents and warrants that any information it has previously provided or that it will provide as part of the EPCS enrollment process is completely true and accurate. The Practice further represents and warrants that it will make all reasonable efforts to ensure any information provided by or related to any person or provider is also completely true and accurate, including providing training and enrollment assistance as necessary to individual providers who enroll. The Practice further represents and warrants that it will make all reasonable efforts to ensure any verifications required by any person or provider to complete the EPCS enrollment process will be complete and accurate and such verifications will be made by the actual person who is required to make the verification.

The Exostar Services are provided by Exostar and not Contractor. The Practice agrees that Contractor is not responsible for the quality or performance of the Exostar Services, that Exostar may provide these services "AS-IS" and with "NO WARRANTY," and that Contractor makes no promises or warranties of any kind regarding those services. FURTHERMORE, THE PRACTICE AGREES TO INDEMNIFY AND HOLD CONTRACTOR HARMLESS FOR, AND TO WAIVE THE RIGHT TO BRING AGAINST CONTRACTOR, ANY CLAIM ARISING OUT OF OR RELATED TO THE EXOSTAR SERVICES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR UNINTENTIONAL ACTIONS. THE PRACTICE IRREVOCABLY AGREES THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO THE EXOSTAR SERVICES. The EPCS capabilities of Contractor software are provided to the Practice "AS-IS" and with "NO WARRANTY." The Practice agrees and understands that it is solely responsible for the proper use of any login and authentication credentials. The Practice also agrees and understands that it is solely responsible for compliance with all laws and regulations regarding prescriptions for controlled substances, including but not limited to compliance with Drug Enforcement Administration, Food and Drug Administration, and state regulatory requirements. The Practice further agrees and understands that it is solely responsible for ensuring that its information technology and/or computer systems are up to date and capable of complying with any applicable laws and regulations and capable of accurately implementing EPCS. By entering this Agreement, the Practice represents and warrants that it or its authorized providers are currently eligible to prescribe controlled substances, including through EPCS, and that the Practice is in compliance with all applicable laws and regulations. Both the Practice and Contractor represent that the person accepting this Agreement has full legal and actual authority to enter into this Agreement.

Nothing in this Agreement shall be construed or interpreted to waive, modify, or to release the Practice or Contractor from any obligation or provision of any other agreement between the Practice and Contractor s, except to the minimum extent necessary to give effect to the terms of this Agreement. Contractor will honor other written agreements between Contractor and the Practice concerning Fees.

If any court of law holds any provision of this Agreement to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected.