

SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS LICENSE AND SERVICES AGREEMENT is by and between County of San Mateo (“**Client**”), located at 222 W. 39th Ave, San Mateo, CA 94403 and **Organizational Intelligence, LLC** (“**OI**”), with offices located at 6140 n Paseo Valdear, Tucson, AZ 85750.

WHEREAS, OI licenses information systems to healthcare providers and provides installation, training, consulting, maintenance, and support services in connection with such information systems, and

WHEREAS, Client desires to acquire from OI the right to use OI’s information systems, and to obtain from OI the installation, training, consulting, maintenance and support services specified hereinafter.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 Capitalized terms used herein and not otherwise defined will have the following meanings:

Acceptance Period means the period of time beginning on the date of **Live Operation** thereof and ending fifteen (15) days thereafter.

Agreement means this License Agreement, including all Exhibits and Schedules attached hereto or incorporated herein by reference, as it may be amended in writing from time to time.

Business Associate Agreement means that document referenced in paragraph 10.4, and attached hereto and marked as Schedule 1.

Documentation means the End-User documentation provided in electronic form within the OI **Software**, which describes its use and operation.

Effective Date means the date this **Agreement** is signed by the party last executing it as set forth below.

Extended Acceptance Period means the fifteen (15) day period beginning at the end of the **Acceptance Period** or any **Extended Acceptance Period**, as the case may be.

Final Acceptance means the expiration of either the **Acceptance Period** or any **Extended Acceptance Period**, as the case may be.

Hardware means the computer hardware listed in Exhibit B that is required to operate the **Software**.

Implementation or **Implement** means the process by which the **Software** is installed, implemented and adapted for use by Client as set forth in this Agreement.

Implementation and Training Fee means the amount specified in Exhibit A that is charged for the **Implementation** and **Training** services specified therein.

Implementation Schedule means the schedule of tasks for the implementation of the **System** and the assignment of responsibility for the completion of those tasks. A preliminary Implementation Schedule is attached as Exhibit C and will be finalized in cooperation with Client during the initial phase of the Implementation.

Interface means a program, including protocols, connections, and/or mapping necessary for data processing communications between those of Client’s automated systems chosen to be interfaced and OI’s software application.

Interface Specifications means the set of specifications necessary to create an **Interface**.

License means the right to use the **Software** within the parameters specified in this **Agreement** and any and all addenda hereto.

License Fee means the amount charged for the **Software**, as specified in Exhibit A.

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Live Operation means the time at which the **Software** is used in a production, rather than a test, mode.

Nonconformity means a material and reproducible failure of the **Software** to conform to a warranty specified in Paragraph 3.1 of this **Agreement**.

Production Mode means the use of the Software in Live Operation where patient information, orders, and test results are added to the Software's database through normal use of the Software.

Proprietary Information means the **Software** and the **Documentation**.

Release means a new or updated version of the **Software**.

Software or **Software Module(s)** means the module(s) being licensed hereunder as identified in Exhibit A.

Software Maintenance means all of the following elements which are then applicable: (i) providing corrective maintenance in the form of modifications, enhancements, or functional changes to the **Software** in order to correct any failure of the **Software** to operate as warranted; (ii) resolving **Software** errors causing or caused by **Software** malfunctions; and (iii) providing upgrades to the **Software**, as and when determined by OI, to improve its capabilities and/or functionality.

Software Maintenance Agreement means that document executed by Client and OI, which provides the rights and obligations of the parties with respect to the provision of **Software Maintenance** by OI to Client.

Source Material means, with respect to the Software provided hereunder, the following items which then exist: the source code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface, graphical user interface, object libraries, all relevant instructions on building the object code of such application, and all Documentation relating to the foregoing, such that collectively all of the foregoing that do exist will be sufficient to enable a person possessing

reasonable skill and expertise in computer software and information technology to build, load and operate the machine-executable object code of such application, and to maintain and support such application.

System means the integrated unit consisting of the **Software**, the **Hardware**, the **Interface(s)**, and the **Documentation**.

Test Period means the period of time beginning the day after the **Software** is installed on the **System** and available for use, and ending on the day preceding the date of **Live Operation**.

Third Party Products means those programs so identified in Exhibit A.

Training means those services provided by OI as set forth in Exhibit C that are designed to educate Client in the use, functionality and operation of the **Software**.

Warranty Period means the period of time beginning on the date of **Final Acceptance** and ending thirty (30) days thereafter.

ARTICLE II SCOPE OF AGREEMENT

- 2.1 Subject to the fulfillment of Client's obligations hereunder, OI grants to Client a perpetual, nontransferable, nonexclusive license to use the Software under the conditions specified herein.
- 2.2 OI will license the Software and provide the services described in Exhibit A at the prices set forth therein.
- 2.3 Client is licensed to use the Software for which Client has been provided, for Client's own internal purposes, subject to all of the terms and conditions contained herein. For each Client may operate only one copy of the Software Module in a Production Mode at any one time.
- 2.4 This paragraph intentionally left blank.
- 2.5 Client will not attempt to decompile, disassemble, or reverse engineer the Software. Client will not, directly or indirectly,

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allow access to or the use of the Software or any portion thereof, on any computer, server, or network, by any person, corporation, or business entity other than as specifically licensed herein.

- 2.6** Client may make one copy of the Software for archival and backup purposes for use by its authorized employees provided that all such copies of the Software and of the Documentation contain all proprietary notices originally appearing on the copies provided to Client by OI.
- 2.7** Other than for normal use of the Software, Client may only access the Software database(s) for the purpose of extracting data. Consequently, Client is NOT authorized, in any way, to use the database(s) for the purpose of adding, modifying, deleting data or installing any mechanism which could disturb the proper functioning of the product or the evolution of the database(s). Should the Client not comply with the terms of use stated above, OI will NOT be responsible for any damages resulting from any alteration of data.

Client shall not use all or any portion of the said database(s) for the purpose of interfacing or creating new software programs to be made available to any non-party to this Agreement, either for free or consideration.

ARTICLE III WARRANTIES & DISCLAIMER

- 3.1** OI warrants that the Software furnished hereunder: (i) will be compatible with and operate on the Hardware specified in Exhibit B; (ii) will contain the Software specified in Exhibit A, which OI has the legal right to distribute; and (iii) will operate substantially according to the Documentation during the Warranty Period. The warranties provided herein shall not apply if Client: (a) is unable to use the Software in a substantive way as a result of the effect of any hardware, or other software or interface to the Software, or as a result of any inaccurate or incomplete data provided to the Software; or (b) does not have a current Software Maintenance Agreement with OI. For the System, including the Software configuration noted in Exhibit A, it shall be deemed that Final Acceptance occurred thirty-one (31) days before the Effective Date of this Agreement.

- 3.2** During the Warranty Period OI will correct any Nonconformity by performing Software Maintenance at no charge to Client.
- 3.3** THE WARRANTIES SET FORTH IN THIS ARTICLE III ARE IN LIEU OF, AND OI HEREBY DISCLAIMS, ALL OTHER WARRANTIES AS TO THE SOFTWARE AND THE SYSTEM, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXCLUDED.
- 3.4** CLIENT UNDERSTANDS AND AGREES THAT OI PROVIDES NO WARRANTIES OF ANY KIND FOR HARDWARE OR ANY THIRD PARTY PRODUCT; THE SOLE ITEM(S) FOR WHICH THERE IS A WARRANTY IS THE OI SOFTWARE BEING LICENSED HEREUNDER, AND SUCH WARRANTY IS LIMITED TO THAT PROVIDED IN PARAGRAPH 3.1, AND THEN ONLY DURING THE WARRANTY PERIOD.

ARTICLE IV HARDWARE; THIRD PARTY PRODUCTS

- 4.1** Client is responsible for providing the Hardware which must be equivalent to or greater than that specified in Exhibit B. Client also agrees to purchase a hardware maintenance agreement for the hardware utilized for the System. The general recommended hardware and communications environment is specified in Exhibit B, but will be finalized following the provision by Client to OI of additional information required to appropriately configure the hardware environment.
- 4.2** This Paragraph intentionally left blank.
- 4.3** Client will prepare its installation site prior to Hardware delivery, and will install and connect all cabling and hardware, including computer terminals and workstations. Client will be responsible for the cost and all other aspects of the maintenance and repair of the Hardware.
- 4.4** Client will purchase the Third Party Products required for the System, as specified in Exhibit B. Each such program and the license to use

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it is subject to the terms and conditions specified by the owner thereof. All licenses and maintenance fees for such programs are the Client's responsibility.

6.5 In no event shall total payment for services under this Agreement exceed ONE MILLION SEVEN HUNDRED SIXTY-TWO THOUSAND DOLLARS (\$1,762,000).

ARTICLE V TRAINING AND IMPLEMENTATION

- 5.1** Either before or promptly following the execution of this Agreement, Client will appoint a System Manager who shall act as the primary contact person for Client in connection with the implementation and use of the System.
- 5.2** This Paragraph intentionally left blank.
- 5.3** This Paragraph intentionally left blank.

ARTICLE VI LICENSE FEE, PAYMENT, AND TAXES

- 6.1** All fees for the Software and related services to be provided by OI under this Agreement will be itemized in Exhibit A and will be paid according to the Payment Schedule contained in Exhibit D.
- 6.2** This Paragraph intentionally left blank.
- 6.3** Client will reimburse OI for all reasonable out-of-pocket expenses incurred by OI while performing its duties hereunder. These include, but are not limited to, all travel and per diem expenses incurred by OI in connection with training and installation of the System at Client's site. Payment of these amounts is due within thirty (30) days following the date of the invoice.
- 6.4** The License Fee does not include any taxes. Client agrees to pay any tax in the nature of a sales or use tax, and any duties based upon amounts payable hereunder, (exclusive of taxes based upon the income or gross receipts of OI), and upon Client's use or possession of the System. If Client is exempt from the payment of any of these taxes, Client will provide OI with a certificate evidencing such exemption issued by the applicable taxing authority. If any such tax is paid by OI, Client will promptly reimburse OI upon receipt by Client of proof of payment of same by OI.

ARTICLE VII TEST PERIOD; ACCEPTANCE PROCESS

- 7.1** Client agrees that during the Test Period it will: (i) vigorously exercise and use the Software in order to become familiar with its features, functions and operation; and (ii) run such tests, scripts and validation as it deems appropriate in order to validate the correctness and appropriateness of the output and results of the Software and the System. At the end of the Test Period, Live Operation will occur.
- 7.2** At the conclusion of the Test Period, Client will execute OI's form verifying that Client has performed as specified in paragraph 7.1, is satisfied with the results thereof, and is prepared to enter the Live Operation phase.
- 7.3** Client agrees that during the Acceptance Period it will actively and vigorously utilize and evaluate the System in order to approve it for Final Acceptance.
- 7.4** If Client discovers a Nonconformity during the Acceptance Period, Client will notify OI, who will promptly correct such Nonconformity and notify the Client when the correction has been made.
- 7.5** In the event that a Nonconformity exists at the end of the Acceptance Period, Client will notify OI and an Extended Acceptance Period will begin. OI will promptly correct the Nonconformity and notify Client when the correction has been made.
- 7.6** In the event that OI has not corrected any Nonconformity at the end of the Extended Acceptance Period, Client may either: (i) request again that OI correct the Nonconformity, whereupon OI will promptly attempt to do so; or (ii) terminate this Agreement in the manner specified in Paragraph 8.4, whereupon Client will comply with the provisions of Paragraph 8.3, and OI will refund to Client all of the License Fee previously paid to OI.

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- 7.7** If Client elects 7.6(i), then after OI gives notice of its correction of the Nonconformity, the Extended Acceptance Period will begin anew, and Client will once again have the rights specified in Paragraph 7.6.
- 7.8** Final Acceptance will occur: (i) if during the Acceptance Period or any Extended Acceptance Period Client notifies OI of its acceptance of the Software, or (ii) if Client does not notify OI of any Nonconformity at the end of the Acceptance Period or at the end of any Extended Acceptance Period in the event a Nonconformity has been previously reported and corrected. As specified hereinabove, Final Acceptance for the implementation of the System specified in Exhibit A has been deemed to have occurred.
- 7.9** OI agrees to deposit the Source Material with a software escrow agent ("escrow agent"). During the term of this Agreement, OI shall update the Source Material by depositing in the escrow each new Software version release. The Source Material will be held in escrow with Client paying the fees charged by the escrow agent for the escrow. The events upon which Client shall have access to the Source Material ("Release Conditions") are as follows, except that none of the following shall be deemed Release Conditions unless no other qualified entity has assumed the obligation to maintain and support the Software: (1) the insolvency of OI; (2) the making of a general assignment by OI for the benefit of its creditors or a filing of a voluntary or involuntary petition in bankruptcy by or against OI that is not dismissed within ninety (90) days of the filing thereof; (3) in the event OI ceases to maintain and support the Software for reasons other than Client's failure to pay for, or election not to receive, OI's maintenance and support services.

ARTICLE VIII TERMINATION

- 8.1** In the event of OI's breach of Paragraph 3.1 prior to Final Acceptance, after complying with Paragraph 8.4 below, Client has the right to terminate this Agreement and the license granted hereunder and receive a refund of all of the License Fees previously paid by Client to OI. In the event of any other breach of this Agreement by OI, or in the event of a breach of Paragraph 3.1 by OI after Final Acceptance,

the rights and remedies of Client are only those specified in paragraph 9 of the Software Maintenance Agreement between OI and Client.

- 8.2** In the event of Client's breach of any material term of this Agreement, after complying with Paragraph 8.4, OI has the right to terminate this Agreement and the license granted hereunder. A termination by OI will not relieve Client of any payments due hereunder.
- 8.3** Upon any termination of this Agreement, Client will immediately cause the Software to be erased from all computer storage medium or device(s) in which it has been placed or stored, and will certify to OI in writing that it has so erased the Software. Client will also promptly return to OI all Documentation and copies thereof.
- 8.4** A party alleging that the other party has breached this Agreement must provide such other party written notice setting forth the specific instance(s) of breach. The party receiving the notice will have 45 days after receipt of that notice to cure the breach. If the breach either remains uncured, or substantial steps have not been taken to cure the breach within the 45-day period, the other party may terminate this Agreement.
- 8.5** The expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth herein which: (i) the parties have expressly agreed will survive any such expiration or termination; or (ii) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. In addition to the foregoing, upon termination or expiration of this Agreement, the parties' respective obligations under paragraphs 8.3, 9.1, 9.2, 9.3, 10.1 - 10.3, 10.5, 12.1, 13.1 – 13.4, 14.3 – 14.7, and 14.10 – 14.12 shall survive such expiration or termination.

- 8.6** Disentanglement. OI shall cooperate with Client and Client's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. OI shall cooperate with Client's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the

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Agreement and any adverse impact on the provision of services or the Client's activities; provided, however, that Client shall pay OI on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. OI shall deliver to Client or its designee, at Client's request, all documentation and data related to Client, including, but not limited to, patient files, held by OI, and after return of same, OI shall destroy all copies thereof still in OI's possession, at no charge to Client. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. Client and OI shall mutually agree to the specific electronic format.

**ARTICLE IX
LIMITATION OF LIABILITY**

- 9.1** EXCEPT FOR OI'S RESPONSIBILITIES UNDER ARTICLE XI, OI'S MAXIMUM LIABILITY FOR DAMAGES TO CLIENT FOR ANY CAUSE WHATSOEVER ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE MANNER IN WHICH CLAIMED OR THE FORM OF ACTION ALLEGED, IS LIMITED TO THE AMOUNT(S) PAID TO OI BY CLIENT UNDER THE TERMS OF THIS AGREEMENT.
- 9.2** IN NO EVENT WILL OI BE LIABLE TO CLIENT FOR, AND CLIENT HEREBY AGREES TO HOLD OI HARMLESS OF AND FROM ANY CLAIMS FOR: (I) LOST PROFITS AND INCIDENTAL, INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER THE POSSIBILITY OF THE EXISTENCE OF SUCH DAMAGES HAS BEEN COMMUNICATED TO OI AND REGARDLESS OF WHETHER OI HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES; AND (II) EXCEPT FOR OI'S RESPONSIBILITIES UNDER ARTICLE XI, FOR ANY THIRD PARTY CLAIM ARISING OUT OF OR RELATED TO THE USE BY CLIENT OF THE SYSTEM, THE THIRD PARTY PRODUCTS, OR THE SOFTWARE.
- 9.3** IN NO EVENT WILL OI BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR, AND CLIENT AGREES TO HOLD OI HARMLESS FROM, ANY DAMAGES THAT RESULT

FROM CLIENT'S USE OF ANY THIRD PARTY PRODUCT.

**ARTICLE X
PROPRIETARY INFORMATION**

- 10.1** Client acknowledges that the Software contains valuable and confidential Proprietary Information that belongs to OI and to others from whom OI has the right to distribute products contained in the System. Client agrees that the Software and all other material furnished hereunder are provided for Client's exclusive use for the purpose of this Agreement only and will be held in confidence. Client agrees to protect the Proprietary Information with the same degree of care a reasonably prudent person would take to protect its own most valuable proprietary information. Client agrees not to disclose the Proprietary Information to others or to duplicate it in whole or in part except as explicitly permitted herein.
- 10.2** Neither party will be liable to the other in the event it discloses any proprietary information of the other which: (i) is within the public domain at the time of disclosure; (ii) is or becomes publicly available without breach of this Agreement by the disclosing party; (iii) is received by the disclosing party from a third party holding such information legally and having the legal right to disseminate same without breach of this Agreement; (iv) is disclosed by the party owning such proprietary information to others on a non-restricted basis; or (v) is required by law to be disclosed.
- 10.3** OI agrees that any of Client's confidential information acquired or received by it under this Agreement or learned in the course of providing services hereunder is provided for OI's use only. OI agrees to protect Client's confidential information with the same degree of care a reasonably prudent person would take to protect its own most valuable proprietary information.
- 10.4** The parties understand and agree that Client may be a Covered Entity under HIPAA. Accordingly, the parties acknowledge and agree that this transaction may be impacted by HIPAA and other state and federal laws, rules, and/or regulations relating to the privacy, confidentiality, and security of patient

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information as well as other subjects. As required under the HIPAA Privacy Rule (45 C.F.R. Part 164), a Business Associate Agreement is incorporated herein by reference and is attached hereto and marked as Schedule 1.

- 10.5** In the event of any breach or threatened breach of these provisions, a party will be entitled to a temporary or permanent decree or order restraining and enjoining such breach, it being hereby expressly acknowledged and understood that damages at law may be inadequate.

ARTICLE XI INTELLECTUAL PROPERTY INDEMNITY

- 11.1** OI warrants that it has the right to grant the License and that Client's use of the Software as specified in this Agreement will not infringe upon the patent, copyright or trade secret rights in the United States of any third party.
- 11.2** At OI's expense, OI will defend Client against any claim that the Software infringes a patent, copyright, or trade secret right in the United States and will pay all costs, damages, and reasonable attorneys' fees that a court awards as a result of such claim. To qualify for such defense and payment, Client must: (i) give OI prompt written notice of such claim; and (ii) give complete authority and control to OI to compromise or settle the action; and (iii) fully cooperate with OI in the defense and all related negotiations.
- 11.3** Client agrees that if the operation of the Software becomes, or in the opinion of OI is likely to become the subject of a patent, copyright or trade secret infringement claim, Client will permit OI, at OI's option and expense, to: (i) promptly procure for Client the right to continue to use the Software; or (ii) replace the Software with an alternative that functions substantially the same; or (iii) modify the Software so that it becomes non-infringing, but in a manner which causes it to function substantially the same as it had prior to modification.
- 11.4** If Client fails to permit OI to act as specified in Paragraph 11.3, OI's obligation(s) under this Article XI will immediately terminate and Client

will have no recourse against OI for breach of any of the warranties contained in this Article XI.

- 11.5** This Article states OI's entire obligation to Client regarding patent, copyright, and trade secret infringement. Nothing in this Article will be deemed to grant Client any rights in regard to modification or use of the Software other than or in addition to those otherwise granted in this Agreement.

ARTICLE XII SOCIAL SECURITY ACT

- 12.1** For the purpose of implementing Section 1861(v)(1)(i) of the Social Security Act, as amended, and any written regulations thereto, OI agrees to comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this contract:
- i. Until the expiration of four (4) years after the furnishing of such services pursuant to such contract, OI will make available upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the contract and books, documents, and records of OI that are necessary to certify the nature and extent of such costs; and
 - ii. If OI carries out any of the duties of this contract through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period with a related organization (as that term is defined in C.F.R. Section 405.427[b]), such subcontract will contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization will make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs.

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ARTICLE XIII INFORMAL DISPUTE RESOLUTION; ARBITRATION

13.1 The parties agree that any dispute between them arising out of or from this Agreement shall be handled in the following manner: (a) Client's System Manager and Ol's Implementation Manager shall in good faith attempt to resolve any dispute arising hereunder within ten (10) business days after a written request for such dispute resolution by either party; (b) If Client's System Manager and Ol's Implementation Manager do not resolve the dispute within such time, then the dispute shall be referred for resolution to Client's CEO or President or its or their designee, and to Ol's Chairman or CEO or its or their designee, and these persons shall in good faith attempt to resolve the dispute within ten (10) business days from the date it is referred to them.

13.2 Any dispute which has not been resolved as set forth above shall be submitted to arbitration under the Rules of the American Arbitration Association, Commercial Division. Each of the parties shall select an arbitrator, each of whom shall be chosen from a panel of arbitrators knowledgeable in health care related business information and data processing systems. The two (2) arbitrators selected shall, within fourteen (14) days of their selection, select a third arbitrator with the same knowledge base. The three (3) arbitrators so chosen shall apply principles of statutory and common law in their arbitration efforts. The arbitrators shall be persons who have never been employed (either as an employee or as an independent consultant) by either of the parties, or any parent, subsidiary or affiliate thereof.

13.3 The arbitration hearing shall commence within thirty (30) days following the selection of the third arbitrator. All documents, materials and information in the possession of each party and in any way relevant to the claims or dispute shall be made available to the other party for review and copying not later than twenty-one (21) days after the Notice of Arbitration is served. The arbitrators shall not be bound by any Rules of Civil Procedure or Evidence, but rather shall consider such written and oral presentations as reasonable business persons would in the conduct of their day to day affairs. The arbitrators may require

the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrators deem appropriate. The arbitrators may require remedial measures as part of any award.

13.4 Venue of any arbitration shall be in County of San Mateo. The arbitrators shall award reasonable costs to the party who prevails on the majority of issues. The arbitration award shall be final and binding, and judgment thereon may be entered and enforced in any court having jurisdiction.

ARTICLE XIV GENERAL PROVISIONS

14.1 Each and every Exhibit and Schedule to this Agreement is incorporated herein by reference in its entirety, the same as though fully set forth at length herein.

14.2 This Agreement supersedes all prior agreements, understandings, and negotiations, and it constitutes the entire agreement between the parties relating to the subject matter hereof.

14.3 This Agreement cannot be modified, terminated, nor any provision waived, other than by the express written agreement of the parties.

14.4 Any action or claim for breach of any obligation hereunder shall be commenced before the first to occur of the following: (i) the expiration of the applicable statute of limitations period established by Nebraska law; or (ii) one (1) year after the cause of action accrues. Any action or claims brought after such period shall be barred.

14.5 Any notices required or permitted to be given hereunder by either party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery company; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the parties as follows (or to such

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other addresses as the parties may request in writing by notice given pursuant to this paragraph):

If To Client:

San Mateo Medical Center
Attn: Chief Operations Officer
222 W 39th Ave
San Mateo, CA 94403

If To OI:

6140 N Paseo Valdear
Tucson, AZ 85750
Attn: Jeff Lambert, COO _____

- 14.6** Notices shall be deemed received on the earliest of personal delivery, upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed, twenty-four (24) hours following deposit with a bonded courier or overnight delivery company; or seventy-two (72) hours following deposit in the U.S. Mail as required herein.
- 14.7** In the event arbitration, suit, action or other legal proceeding is brought to interpret or enforce this Agreement, the prevailing party shall be entitled to recover such sum as the arbitrator or court may adjudge reasonable as the prevailing party's costs, disbursements and attorney fees at hearing, trial and on any appeal.
- 14.8** Neither party will be in breach of this Agreement and will be excused from liability for any failure to perform or delay in performance if the failure or delay is due to a cause of a force majeure nature, including, without limitation, strike, fire, explosion, terrorist act, act of God, riot, war, government regulation, major accident, or failure of suppliers of subcontractors.
- 14.9** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date.

14.10 Client may assign this Agreement to any corporation that owns Client in whole or in part or to any partnership or joint venture in which Client or any such corporation is a partner or joint venturer, provided that such assignee agrees in writing to be bound by all of the terms hereof inuring to the benefit of OI, that only the Software licensed hereunder is operated for the facility licensed herein at any given time and, further, that the Agreement is not assigned to any competitor of OI. Any other assignment is invalid without OI's prior express written consent.

14.11 This Agreement will be governed by and construed under the laws of the State of California.

14.12 In the event of any conflict or inconsistency in the interpretation of this Agreement (including its Exhibits and Schedules), such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Exhibits and Schedules. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities herein shall not be construed against either party. All personal pronouns used herein, whether used in the feminine, masculine, or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement. If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof.

14.13 Term. The term of this Agreement shall be from November 1, 2024 through October 31, 2027. After this initial term, this Agreement shall renew automatically for an additional 1 year period, up to 2 times, unless this Agreement has been terminated.

14.14 Access and Retention of Books and Records. Upon written request of the Secretary of Health and Human Services, the Comptroller General, or Client, or any of their

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duly authorized representatives, OI shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If OI carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, OI agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Client, OI, or any OI's representative by virtue of this Agreement.

14.15 Insurance.

- a. General Requirements. OI shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by Client's Risk Management, and OI shall use diligence to obtain such insurance and to obtain such approval. OI shall furnish Client with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending OI's coverage to include the contractual liability assumed by OI pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to Client of any pending change in the limits of liability or of any cancellation or modification of the policy.
- b. Workers' Compensation and Employer's Liability Insurance. OI shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, OI certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require

every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

- c. Liability Insurance. OI shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability, professional errors and omissions, and cyber liability insurance as shall protect OI and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage, damages caused by OI's professional work and services, and damages for data loss and/or data theft which may arise from OI's operations under this Agreement, whether such operations be by OI, any subcontractor of OI, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence, shall not be limited, reduced, or otherwise affected by any limitations of liability in this Agreement and shall not be less than the amounts specified below:

(a) Comprehensive Liability.....	General \$1,000,000
(b) Cyber Liability.....	\$5,000,000
(c) Professional Error & Omissions.....	\$1,000,000

Client and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to Client and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the Client or its officers, agents, employees, and servants have other insurance against the loss covered by such a

SOFTWARE LICENSE AND SERVICES AGREEMENT

policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, Client, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

14.16 Hospital and Clinics Credentialing

Program. OI and OI's representatives visiting or entering the San Mateo Medical Center (SMMC) main campus or any of its satellite clinics are required to register with SMMC's OI Credentialing Program prior to conducting business onsite. It is important that each OI representative registers individually in order to maintain the confidentiality of their personal credentials and to ensure ongoing access to our facilities. More information regarding SMMC's updated credentialing and on-site visit requirements can be found on SMMC's profile page through <https://login.ghx.com>.

SOFTWARE LICENSE AND SERVICES AGREEMENT

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto, having been duly authorized, execute this Agreement on the dates indicated:

For OI:



Contractor Signature

10/08/2024
Date

William Blair, CEO
Contractor Name (please print)

COUNTY OF SAN MATEO

By:  Resolution No. 080738
Vice President, Board of Supervisors, San Mateo County

Date: November 12, 2024

ATTEST:


By:
Clerk of Said Board

**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE 1 – BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (“BAA”) is by and between **County of San Mateo** (“Client”), located at 222 W 39th Ave, San Mateo, CA 94403, and **Organizational Intelligence, LLC** (“OI”), with offices located at 6140 N Paseo Valdear, Tucson, AZ 85750.

This BAA is Schedule 1 to the Software License and Services Agreement (“**Agreement**”) between the parties.

WHEREAS, the Privacy and Security Rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) require that a covered entity and its business associate agree to certain specified terms and conditions regarding the treatment and protection of Protected Health Information (“**PHI**”) and Electronic Protected Health Care Information (“**EPHI**”); and

WHEREAS, Client has contracted with OI for OI to provide products and/or services under the Agreement and during the course of OI’s provision of such products and/or services, Client may provide OI with PHI or EPHI in order for OI to perform its duties and responsibilities.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby covenant and agree to modify the Agreement as follows:

1. Definitions

Terms used, but not otherwise defined, in this BAA will have the same meaning as those terms in the Privacy and Security Rules. Capitalized terms used herein and not otherwise defined will have the following meanings:

Business Associate means OI.

Covered Entity means Client or the client of Client who is a health plan, health care clearinghouse, or a health care provider.

2. Obligations and Activities of Business Associate

Business Associate will:

- a. Not use or disclose PHI other than as permitted or required by the Agreement or this BAA.

- b. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA which include but are not limited to administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity.
- c. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.
- d. Report to Covered Entity any use or disclosure of the PHI not provided for by this BAA of which it becomes aware.
- e. Ensure that any agent, including a subcontractor, to whom it provides PHI received from or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information. Business Associate will ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect it.
- f. Provide reasonable access to PHI to Covered Entity, at the request of Covered Entity, in a Designated Record Set in order for Covered Entity to meet its requirements in 45 CFR § 164.524. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- g. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity. This provision is applicable only if the Business Associate maintains PHI in a Designated Record Set.
- h. Make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by

**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE 1 – BUSINESS ASSOCIATE AGREEMENT**

Business Associate on behalf of Covered Entity, reasonably available to the Secretary with prior notice and during normal business hours, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

"attempted, unsuccessful Security Incident" is defined as an event in which no loss or damage to Covered Entity's EPHI occurs.

- i. Document disclosures of PHI and information related to such disclosures and provide Covered Entity with such information, at Covered Entity's request, as is required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate is entitled to assume that any disclosure that is directed by Covered Entity is a disclosure for treatment, payment, or health care operations purposes or otherwise a disclosure that does not require an accounting as set forth in 45 CFR 164.528. If Covered Entity directs Business Associate to make a disclosure that requires an accounting by Business Associate, Covered Entity will notify Business Associate that such disclosure requires an accounting. Failure of Covered Entity to notify Business Associate will relieve Business Associate of the requirement to account for such disclosure.
- j. Business Associate may charge a reasonable fee for its services in connection with the access, amendment or accounting of PHI as contemplated under this BAA.
- k. Report to Covered Entity any Security Incident related to Covered Entity's EPHI of which Business Associate becomes aware, in the following time and manner:
 - (i) any actual, successful Security Incident will be reported to Covered Entity in writing, within five (5) business days of the date on which Business Associate becomes aware of such actual successful Security Incident, and
 - (ii) any attempted, unsuccessful Security Incident, of which Business Associate becomes aware, will be reported to Covered Entity in writing, on a reasonable basis at the written request of Covered Entity, but in no event more often than on a quarterly basis. For purposes of this section (ii), an

3. Permitted Uses and Disclosures by Business Associate

Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Business Associate may use PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may disclose PHI if: (i) the disclosure is required by law; or (ii) the Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and the person notifies the Business Associate of any instance of which it is aware in which the confidentiality of the PHI has been breached.

4. Obligations of Covered Entity

- a. Covered Entity will notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**SOFTWARE LICENSE AND SERVICES AGREEMENT
SCHEDULE 1 – BUSINESS ASSOCIATE AGREEMENT**

5. Permissible Requests by Covered Entity

Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination

- a. This BAA will be effective on the Effective Date of the Agreement.
- b. This BAA will terminate on the earlier of the termination of the Agreement or when all PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
- c. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity will either:
 - (i) Provide a reasonable opportunity for Business Associate to cure the breach or end the violation and terminate this BAA if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (ii) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible; or
 - (iii) If neither termination nor cure is feasible, Covered Entity may report the violation to the Secretary.
- d. Effect of Termination.
 - (i) Except as provided in paragraph (ii) of this section, upon termination of this BAA, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision will apply to PHI that is in the possession of subcontractors or agents of Business

Associate. Business Associate will retain no copies of the PHI.

- (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate will extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Miscellaneous

- a. Regulatory References. A reference in this BAA to a section in the Privacy or Security Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to negotiate in good faith any amendments to this BAA made necessary by new legislation or amendments to current regulations relating to HIPAA.
- c. Survival. The respective rights and obligations of Business Associate under Section 6(d) of this BAA will survive the termination of this BAA.
- d. Interpretation and Integration. Any ambiguity in this BAA will be resolved to permit Covered Entity to comply with the Privacy and Security Rules. Any ambiguity in this BAA and the Agreement will be resolved in favor of this BAA. All other terms of the Agreement apply to this BAA.
- e. No Third Party Rights. This BAA is entered into solely between and may be enforced only by Covered Entity and Business Associate. This BAA will not be deemed to create any rights in third parties or to create any obligations of Covered Entity or Business Associate to any third party.

**SOFTWARE LICENSE AND SERVICES AGREEMENT
EXHIBIT A
SOFTWARE LICENSES, THIRD PARTY PRODUCTS, IMPLEMENTATION AND TRAINING FEES
EXHIBIT A**

Oi Health Platform and Modules:	Annual Fee:
CURRENT Oi HEALTH MODULES AND FUNCTIONALITY INSTALLED AT SAN MATEO COUNTY HEALTH AND SAN MATEO MEDICAL CENTER ON-PREMISE IN THE SMMC DATA CENTER	
Oi Health Platform Foundation (CURRENT FEES INCLUDING \$88,061 for Medical Center and \$37,865 for County Health – detail Invoice included): ✓ Oi Foundation and ETL Data Mapping ✓ Oi Heads Up Displays (HUDs) Design ✓ Oi Advanced Visualizations (Oi-AV) Build and Mapping ✓ Enterprise License (no user limit restrictions) ✓ Oi Health Data Integration Services ✓ Oi Health Proactive Monitoring Services ✓ Oi Health Financial Planning ✓ Operational Budget ✓ Capital Planning	\$125,926
Oi Health Costing and Encounter Management: ✓ Oi Cost Accounting ✓ Oi Encounter Management ✓ Oi Labor & Productivity Reporting ✓ Oi Financial Analytics and Custom HUDs/KPIs ✓ Strategic Planning and Forecasting	\$0 (already installed at San Mateo County and Medical Center)

Annual Fee will incur 4% Annual Adjustment beginning year 2.

Optional services:

Optional: NEW MODULES PROPOSED AS REQUESTED IN RFP INCLUDING MIGRATION FROM SMMC DATA CENTER ON PREMISE IMPLEMENTATION TO HOSTED AWS SAAS BASED MODEL	Fees:
Oi Health Platform Includes: ü Cloud Hosting Services powered by AWS	\$58,740 per year
Oi Health on Premise to SaaS Services Fees – Optional Services	\$250 per hour

Optional: Oi Professional and Technical Fees:	One Time Fees:
✓ Migration from On-Premise to AWS Hosted SaaS Model - Technical Services: Client Environment Build, Security Hardening, Setup and test sFTP: Data Integration Services/Automation: Historical Data Migration Services (as scoped): Build IPMX packages: Single Sign On (SAML) and MFA Set up:	\$11,400

Optional: Costing as a Service (CaaS)	Fees
Option 1 – CaaS Bronze <ul style="list-style-type: none"> • Configure financials • sub accounts • new cost centers • cost types • update new products • activity load and verify • run RCCs • Includes Monthly/Quarterly/YTD Cost Reports, Service Line Analytics. 	\$3,250 per month
Option 2 – CaaS Silver <ul style="list-style-type: none"> • Includes all Option 1 Services 	\$4,750 per month

**SOFTWARE LICENSE AND SERVICES AGREEMENT
EXHIBIT A**

SOFTWARE LICENSES, THIRD PARTY PRODUCTS, IMPLEMENTATION AND TRAINING FEES

<ul style="list-style-type: none"> • Work with Pharmacy on price list load (e.g. NDC) • Work with Central Supply on vendor supply/implant price list • Update indirect cost allocation methodology • Update allocation statistics and mappings • run RCCs • Includes Monthly/Quarterly/YTD Cost Reports, Service Line Analytics. 	
<p>Option 3 – CaaS Gold</p> <ul style="list-style-type: none"> • Includes all Option 1 and Option 2 Services • Configure financials (work with Pharmacy and Central Supply on price list, update indirect cost allocation methodology, allocation statistics and mappings) • Meet with Department Heads for RVU development in appropriate departments (e.g. Cath Lab, Surgery, Radiology, Lab, etc). • Includes Monthly/Quarterly/YTD Cost Reports, Service Line Analytics. 	<p>\$8,000 per month</p>

**SOFTWARE LICENSE AND SERVICES AGREEMENT
EXHIBIT B
HARDWARE**

The Software described in Exhibit A is licensed for use on the hardware currently installed at Client as of [REDACTED]. Should Client wish to change hardware then Client shall submit its proposed configuration to OI for approval prior to installation.