CERNER

CERNER HEALTHCARE SOLUTIONS BUSINESS AGREEMENT

This Cerner Healthcare Solutions Business Agreement (the "Agreement") is made on _____, 2011 ("Effective Date"), between

Bernalillo County ("Client")	and	Cerner Healthcare Solutions, Inc. ("PowerWorks")

a New Mexico corporation with its principal place of business at:

a Delaware corporation with its principal place of business at:

One Civic Plaza NW
Albuquerque, NM 87102
Telephone:

2800 Rockcreek Parkway
Kansas City, MO 64117, U.S.A.
Telephone: (816) 221-1024

Client wishes to implement a System pursuant to the terms and conditions of this Agreement. PowerWorks agrees to provide and assist in implementing certain Software and Equipment. This Agreement will cover all of the licenses, solutions, hardware and services provided by PowerWorks to Client, and consists of the following documents:

- Basic Terms and Conditions
- Exhibit A – Business Associate Provisions
- Cerner System Schedule No. 1

PowerWorks and Client may execute additional Cerner System Schedules for any additional licenses, solutions, hardware, and services in the future, which will be subject to the terms and conditions of this Agreement. Each capitalized term used in the Agreement shall have the meaning set forth in Article 2 of the Basic Terms and Conditions.

BERNALILLO COUNTY

CERNER HEALTHCARE SOLUTIONS, INC.

By:

By:

Shellee Spring

(type or print)

Title:

Title: Senior Vice President, PowerWorks

Motion to approve.

Approved this _____ day, _____ 2011.

BOARD OF COUNTY COMMISSIONERS

_____
Maggie Hart Stebbins, Chair

_____
Art De La Cruz, Vice Chair

_____
Michelle Lujan Grisham, Member

_____
Michael C. Wiener, Member

_____
Wayne Johnson, Member

APPROVED AS TO FORM:

_____
Jeffrey S. Landers, County Attorney

DATE: _____

ATTEST:

_____
Maggie Toulouse Oliver, County Clerk

DATE: _____

SIGNATURE PAGE

CERNER HEALTHCARE SOLUTIONS BUSINESS AGREEMENT
BASIC TERMS AND CONDITIONS

1. GENERAL PROVISIONS

1.1   **Agreement.** The purpose of this Agreement is to provide a framework by which Client may, from time to time, purchase Hardware, Software licenses, Support, services and other items from PowerWorks. Each purchase of Hardware, Software licenses, Support, services and other items shall be documented in an Order. Each Order will be a part of and be governed by the terms and conditions of this Agreement. This Agreement and any exhibits and attachments attached hereto constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations and proposals, written or oral, except for Client's obligations to pay support or other fees under existing contract(s), if any, between the parties.

1.2   **Assignment.** This Agreement and any rights and obligations hereunder may not be assigned or otherwise transferred in whole or in part by Client without the prior written consent of PowerWorks, which consent shall not be unreasonably withheld. PowerWorks may assign this Agreement and contract with third parties to perform any or all of the services set forth herein.

1.3   **No Waiver.** No delay or failure in exercising any right under this Agreement and no partial or single exercise of such right will be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement will constitute consent to any prior or subsequent breach.

1.4   **Force Majeure.** Neither party will be liable for failure to perform any of its respective obligations under this Agreement, other than the payment of fees, if such failure is caused by an event outside its reasonable control, including but not limited to, an act of God, war, an act of terrorism, fire, or natural disaster.

1.5   **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of New Mexico.

1.6   **Miscellaneous.** Modifications or amendments to this Agreement, will not be effective unless made in writing and signed by an authorized representative of each party. If any provision hereof is held to be invalid or unenforceable, the remaining provisions will remain in full force.

1.7   **Notice.** Any notice required or permitted to be given hereunder shall, except where specifically provided otherwise, be given in writing by personal delivery, certified mail, or overnight delivery to the address set forth herein for such party, and the date upon which such notice is received shall be deemed to be the date of such notice, irrespective of the date appearing thereon. Notices to PowerWorks shall be sent to the attention of Chief Legal Officer.

1.8   **Verification.** PowerWorks reserves the right to audit Client's use of the Software and services no more than once per year, after reasonable notice and during normal business hours, to verify Client's compliance with this Agreement.

2. DEFINITIONS

As used in this Agreement, the following terms will have the meanings described below.

Application Services means the access to PowerWorks Software and associated Software Support Service provided on a term basis as set forth in the applicable Order and for the scope set forth therein.

Confidential Information means all information disclosed by one party to the other, whether or not marked as confidential, including proprietary information, Documentation, PowerWorks Software and Sublicensed Software, Subscription Services, computer and software systems and programs, services, ideas, concepts, the terms of this Agreement, patient data and any other non-public information. Notwithstanding the foregoing, Confidential Information does not include information that (a) is publicly available through no breach of this Agreement by either party, (b) is independently developed or was previously known by the non-disclosing party, or (c) is rightfully acquired from a third party not under an obligation of confidentiality.

Documentation means the product manuals accompanying the Software and/or Hardware. However, Documentation (a) may describe (i) some functionality for configurations that Client does not have and (ii) modules or products not included, and therefore are not applicable, and (b) may contain certain sections that, from time to time, may be out of date in a manner that will not have a material effect on Client or the value of the Software to Client.

Error means a verifiable and reproducible failure of the Supported Software to conform to the Documentation that accompanied it.

First Productive Use means Client's first use of an item of PowerWorks Software to send or process patient, health plan or materials information for clinical, financial or operational use.

Hardware means the hardware purchased by Client from PowerWorks and identified in an Order.

Hardware Error is a reproducible and substantial failure of the Maintained Hardware to conform to the applicable Documentation or manufacturer's specifications.

Hardware Maintenance Fee means the amount due from Client to PowerWorks for Hardware Maintenance Service as listed in an Order or in any notice sent by PowerWorks.

Hardware Maintenance Service means the services described in Paragraphs 13.2 through 13.5 for Maintained Hardware.

Manufacturer's Warranty means the warranty, if any, provided by the manufacturer of any Hardware.

Order means a document signed by the parties which identifies the Hardware purchased, Software licensed and/or services or other items. An Order may include, without limitation, an order form, statement of work, quotation and/or change order supplied by PowerWorks. The term "Order" includes Cerner System Schedules and all Sales Orders executed after the Effective Date of this Agreement.

PowerWorks Software means the specific object code version or release of the PowerWorks software program(s) that are licensed to Client and set forth in an applicable Order, together with all Updates provided to Client by PowerWorks in accordance with this Agreement and customization work, if any.

Software means the PowerWorks Software and the Sublicensed Software. Software does not include source code.

Software Support Fee means the amount due from Client to PowerWorks for Software Support Service as listed in an Order or in any notice sent by PowerWorks.

Software Support Service means telephone support to Client's designated contact person (or backup), to report Errors in the Supported Software and to seek assistance with regard to such Errors, use reasonable efforts to correct any Error, and provide Updates. Software Support Service does not include training of Client's personnel.

Sublicensed Software means software licensed, owned, or provided, by a third party, and/or licensed or delivered by or through PowerWorks to Client under an applicable Order.

Subscription Fee means the amount due from Client to PowerWorks for Subscription Services as listed in an Order or in any notice sent by PowerWorks.

Subscription Services means solutions provided on a subscription basis for the term set forth in an Order.

Support means Software Support Service and Hardware Support Service.

Maintained Hardware means Hardware for which Client is paying a Hardware Maintenance Fee to PowerWorks.

Supported Software means any Software that Client obtains a license from or through PowerWorks to use that is listed in the applicable Order, and for which Client has agreed to pay a support fee to PowerWorks.

Update means a modification or enhancement to the Supported Software only that is generally provided by PowerWorks or the Sublicensed Software provider to all clients of the PowerWorks Software as part of the PowerWorks standard Software Support Service.

3. SOFTWARE

3.1 **PowerWorks Software License.** Subject to the terms and conditions in this Agreement, PowerWorks grants to Client, and Client accepts, a non-exclusive, non-transferable perpetual license, subject to termination as described in Paragraphs 3.2 and 4.1, to use the number of copies of the PowerWorks Software described in an Order and the applicable Documentation.

3.2 **Application Services.** Subject to the terms and conditions in this Agreement, PowerWorks grants Client, and Client accepts, a non-exclusive, non-transferable license, subject to termination as described in Paragraphs 8.2 and 9.1, to use the Application Services described in an Order for the Term set forth therein. Application Services include hosting and application management services for the scope set forth in the applicable Order.

3.3 **Subscription Services.** Subject to the terms and conditions in this Agreement, PowerWorks grants Client on a subscription basis, and Client accepts, a non-exclusive, non-transferable license, subject to termination as described in Paragraph 8.2 and 9.1, to use the Subscription Services described in an Order for the term set forth therein.

3.4   **Use, Retention of Right, Title and Interest.** Users authorized by Client may use the Software solely in accordance with the scope of use limits set forth in the applicable Order. Except as expressly set forth in this Agreement, PowerWorks retains all right, title and interest in and to the PowerWorks Software and any and all work produced by PowerWorks including, without limitation, the Documentation, all inventions, creations, expressions, improvements, computer programs, source codes, specifications, operating instructions and all other documentation, whether patentable or un-patentable.

3.5   **Limitations.** Client may not (i) use the Software except as permitted in this Agreement, (ii) make copies of it (except backup, testing, or archival copies), export, or relocate it; (iii) translate, modify, reverse engineer, decompile or disassemble the Software; (iv) remove, obliterate, alter or obscure the copyright and trademark notices and serial number that appear on the Software or during its use, or exceed the number of copies or users as set forth in the applicable Order. If Client provides third party billing services for medical providers, use of the PowerWorks Software shall include the storage and processing of data for such providers and access to the data by Billing Clients, all in the ordinary conduct of Client's billing services. Client agrees that the use of any software or hardware that reduces the number of users directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. Client is prohibited from using any software other than the PowerWorks' modules to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization.

3.6   **Sublicensed Software.** PowerWorks hereby grants to Client a non-exclusive, non-transferable license to use the Sublicensed Software set forth in an applicable Order. PowerWorks will transfer to Client only the rights PowerWorks has in the Sublicensed Software. Client's right to use the Sublicensed Software, all warranties and updates regarding the Sublicensed Software, and all other terms and conditions of said license will be governed by this Agreement, and the separate agreements, if any, included with the Sublicensed Software, and as may be accepted by PowerWorks, on Client's behalf, at the time of installation. Client agrees to implement any necessary updates, modifications or additions to Sublicensed Software.

4.   SOFTWARE SUPPORT

4.1   **Point of Contact and Support.** Client will appoint one of Client's adequately trained employees to clear all support requests and serve as the primary point of contact with PowerWorks. Client will appoint a second adequately trained employee as a backup. Either employee may contact PowerWorks for Software Support Service.

4.2   **Software Support Service.** Software Support Service will be available pursuant to schedules published periodically by PowerWorks. Unless otherwise set forth in the applicable Order, Client may not terminate Software Support Service before the end of sixty (60) months after the Effective Date of this Agreement. Software Support Service shall automatically renew at the end of the initial term or any subsequent renewal term for additional one (1) year periods, unless either party provides the other with written notification of its intent to terminate Software Support Service no less than sixty (60) days prior to the expiration of the then-current term. In the event Software Support Service is not renewed, Client acknowledges that Client will not be entitled to any Updates; there are risks in using the PowerWorks Software without Software Support Service; and PowerWorks makes no representations or guarantees about the ability of Client to subsequently receive Software Support Service or as to the cost of such Software Support Service.

4.3   **Updates.** Updates do not include new modules added to the existing PowerWorks Software. PowerWorks will, as a part of the Software Support Service, provide all Updates to currently licensed PowerWorks Software if and when made available to other clients, provided Client is current on Client's Software Support Fee payments. Updates may require additional hardware and/or software to be purchased or licensed at Client's expense. Unless PowerWorks is hosting the Software, if PowerWorks notifies Client that the Update is mandatory for the continued provision of Software Support Service, Client agrees to install such Updates in a timely manner. Failure to install the Update will relieve PowerWorks of its obligation to provide Software Support Service.   PowerWorks makes no warranties or representations regarding the frequency of Updates or the extent to which Updates are made available at all. Software customizations, if any will not be updated and PowerWorks does not warrant compatibility of Software customizations with any updated Software.

4.4   **Limitations & Exclusions.** PowerWorks is not responsible for the following: (a) problems that result from Client's improper use of any Software or hardware; (b) problems caused by changes, alterations or revisions made by Client or on Client's behalf (other than by PowerWorks); (c) problems caused by Client's data, network, operational or other environmental factors not within the direct control of PowerWorks; (d) third party databases; (e) Software customizations; (f) any use of the Software in violation of this Agreement; and (g) any problems or errors caused directly or indirectly by any hardware not supported by PowerWorks and any hardware which is not in accordance with PowerWorks specifications. Client will reimburse PowerWorks for all reasonable expenses incurred and time spent in responding to any maintenance or support claims arising from the foregoing, repairing any of Client's alterations or revisions to the Software and correcting problems or other defects resulting from the occurrence of one of the limitations or exclusions set forth above. Such services will be invoiced to Client at PowerWorks' then-current rates on

a time and materials basis. In addition, unless PowerWorks is providing application services, Client is obligated to continuously back up, and verify the accuracy of all backups, its data, programs and files.

5.   HARDWARE

5.1   **Hardware Purchase.** Client agrees to purchase from PowerWorks the Hardware identified in an Order. Hardware may be revised or discontinued by the manufacturer and replacement hardware may be delivered in its place, provided however, such replacement hardware meets or exceeds the material specifications of the Hardware listed.   All Hardware will be delivered to Client's address set forth in this Agreement. Client will pay as the Hardware purchase price the applicable amount set forth in the applicable Order.

5.2   **Hardware Warranty.** In the event Client acquires Hardware from PowerWorks, PowerWorks will transfer to Client any Manufacturer's Warranty for the Hardware that PowerWorks is permitted to transfer to Client. If the Manufacturer's Warranty is transferred to Client and Client provides PowerWorks written notice of the nature of a warranted defect during the Manufacturer's Warranty period, then PowerWorks will repair or replace, or cause to be repaired or replaced the defective Hardware under the Manufacturer's Warranty. This Hardware warranty will not apply and PowerWorks is not obligated or responsible to repair or replace any Hardware where the repair or replacement is necessitated by (i) one or more of the events indicated in Paragraph 6.4 (Limitations & Exclusions) or (ii) failure to comply with the Manufacturer's Warranty. If PowerWorks determines that the Hardware returned for warranty correction is not defective according to the terms herein, Client will be responsible for all costs of handling and transportation, if any, and PowerWorks may, at PowerWorks' discretion, charge Client the PowerWorks then-current applicable service rate for review and assessment of the alleged defect.

5.3   **Title and Risk of Loss.** Title and risk of loss will pass to Client when the Hardware is tendered to carrier for shipment.

5.4   **Security Interest.**   PowerWorks retains a security interest in each item of Hardware Order until Client pays PowerWorks in full for all Hardware in an Order. Client agrees to execute all documents (such as a UCC-1 or its equivalent) necessary for PowerWorks to perfect a security interest in such Hardware within ten (10) days of PowerWorks' request. Upon payment in full of the total amount owed to PowerWorks, PowerWorks agrees to release such security interest.

6.   HARDWARE MAINTENANCE

6.1   **General.** Unless otherwise set forth in the applicable Order, Hardware Maintenance Services will continue for an initial term of sixty (60) months from shipment of the Maintained Hardware.   Hardware Maintenance Services shall automatically renew at the end of the initial term or any subsequent renewal term for additional one (1) year periods, unless Client provides PowerWorks with written notification of its intent to terminate Hardware Maintenance Services no less than sixty (60) days prior to the expiration of the then-current term.

6.2   **Repair and On-site Assistance.**   Provided Client pays the applicable Hardware Maintenance Fee PowerWorks agrees to use commercially reasonable efforts to repair a Hardware Error as reported to PowerWorks by Client In the event a Hardware Error cannot be resolved using telephone support and remote access capabilities, then PowerWorks agrees to send a repair technician (either a PowerWorks employee or a third party agent) to the address where the Maintained Hardware is located to attempt to resolve the Hardware Error. PowerWorks will have full and free access to the Maintained Hardware to provide Hardware Maintenance Service. PowerWorks agrees that its repair technicians will install repaired or replaced hardware in substantially the same manner as the Maintained Hardware was installed when such repair technician arrived on-site.

6.3   **Replacement Parts.** Replacement parts will be furnished on an exchange basis. Such parts may be new, equivalent to new or refurbished and at least functionally equivalent to the part or item being replaced. Any malfunctioning part of the Maintained Hardware that has been replaced will be the property of PowerWorks and Client agrees to return such malfunctioning part to PowerWorks. If Client fails to return any replaced malfunctioning part within five (5) days after delivery of the new maintenance part, then PowerWorks may invoice and Client will pay for the maintenance part that was delivered to replace such malfunctioning part at the PowerWorks then-current sales price.

6.4   **Limitations and Exclusions.**   PowerWorks will not be obligated to provide Hardware Maintenance Service for Maintained Hardware in the event such repair is necessitated by the following: (a) faulty electrical systems external to the machines or accessories, attachments, or other devices not furnished by PowerWorks; (b) accident, transportation, neglect or misuse; (c) failure to provide a suitable installation environment (including but not limited to failure of or failure to provide adequate or proper electrical power, air conditioning, humidity control, or protection from dust or dirt from the outside or within the building), or from use of supplies or materials not meeting machine specifications for such installation; (d) the improper use of the Maintained Hardware; (e) Client relocating the Maintained Hardware or adding or removing accessories, attachments, or other devices; (f) fire, lightning, aircraft, explosion, riot, civil commotion, vehicles, windstorm or hail, vandalism or malicious mischief, leakage or accidental discharge from sprinkler systems, damage to the room housing the Maintained Hardware and or peripheral devices, smog, smoke, vapor or gas, rain or

other weather elements, or water damage; (g) expendable items such as printer ribbons, print heads/bands, and tape cartridges; (h) Client's failure to perform regular maintenance in an adequate manner; or (i) such service which is necessitated by or the result of malfunctions or other problems of software or hardware other than Software or Hardware provided by PowerWorks. Client will reimburse PowerWorks for all reasonable expenses incurred and time spent in responding to false maintenance or support claims, repairing any Client alterations or revisions to the Hardware and correcting defects resulting from the occurrence of the events described above. Such services will not be treated as Hardware Maintenance Service, and will be invoiced to Client at the PowerWorks then current time and material rates. After the Term, PowerWorks in its discretion, may, upon thirty (30) days prior notice to Client, remove Hardware from Maintained Hardware and adjust the Hardware Maintenance Fee accordingly.

6.5 **Non-Solicit.** PowerWorks and Client agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other parties' associates or employees until one year after this Agreement is terminated; provided, the foregoing provision will not prohibit a general non-targeted solicitation of employment in the ordinary course of business or prevent either party from employing any employee who contacts such party at his or her own initiative.

6.6 **Arbitration.** In the event of a dispute between the parties, PowerWorks and Client agree to work cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur and a party wishes to escalate to a formal dispute resolution forum, such party will submit the dispute to binding arbitration at a site in the state of the principal place of business of the non-petitioning party under the then-prevailing rules of the American Arbitration Association, Inc., a New York corporation. Judgment upon any award in such arbitration may be entered and enforced in any court of competent jurisdiction. Notwithstanding any provision of this Agreement to the contrary, Client acknowledges that any breach of Client's obligations with respect to PowerWorks' proprietary rights will result in an irreparable injury for which money damages will not be an adequate remedy and that, in such event, PowerWorks will be entitled to injunctive relief in addition to any other relief a court may deem proper. The existence of any dispute under this Agreement shall in no way affect the duty of the parties to continue to perform their obligations, pursuant to this Agreement, pending resolution of their dispute.

7. PROFESSIONAL SERVICES AND TRAINING

7.1 **Professional Services.** If included in an Order and provided Client has complied with any specifications that PowerWorks may provide to Client PowerWorks will install the Software. Client shall pay the amount that has been invoiced for products and services delivered or provided to date regardless of the stage of Client's implementation.

7.2 **Other Software and Hardware.** Client agrees that (i) any custom programming or customization work on Client's existing hardware or software cannot and will not be brought forward or integrated with the Software or Hardware, and ii) any of Client's software or hardware (new or existing), including printers, terminals and personal computers which do not meet the specifications set by PowerWorks may not function with the Software or Hardware. PowerWorks will not be responsible for any damages or costs incurred by Client as a result of the foregoing or any problems caused by Client's third party hardware consultants, salespersons or installers even if PowerWorks assists these third parties.

7.3 **Training.** PowerWorks will conduct training session or sessions in order to train Client's employees in the operation of the PowerWorks Software, only if training is included in an Order. Client agrees to pay for scheduled training services at the rate set forth in the applicable Order if not cancelled at least 30 days in advance of the training date. Additionally, in the case of on-site training cancellations, Client will reimburse PowerWorks for any non-refundable airline tickets purchased in advance for the purpose of training Client, regardless of the cancellation date.

7.4 **Installation and/or Data Conversion Fees.** Installation and/or data conversion services are not included in the total amount owed unless specifically listed in an Order. Client will obtain information and assistance from third parties doing business with Client, including, but not limited to, delivering live sample data on the transfer medium, format and file structure as, and when, designated by PowerWorks in order for PowerWorks to perform the work herein (e.g. data conversion and hospital interfaces). Client understands and agrees there are limits on what data PowerWorks can convert and what minimum actions Client must take before PowerWorks can complete the conversion process. As every conversion is unique, what data can actually be converted as well as the cost and time required to complete this may vary widely. Conversion will usually require that Client's existing system be "down" for a period of time. Installation and conversion services not listed in an Order will be invoiced to Client at then current time and materials rates.

7.5 **Delay.** Client shall not unreasonably delay achievement of First Productive Use of the Software.

8. FEES AND PAYMENTS

8.1 **Fees and Payments.** Client will pay to PowerWorks the fees and expenses due PowerWorks pursuant to this Agreement and as specified on the applicable Order. All payments are non-refundable, due in U.S. dollars and must

be paid within thirty (30) days of receipt of the invoice. Client will pay a finance charge on all undisputed amounts that are more than fifteen (15) days past due at a rate of interest equal to the lesser of one and one-half percent (1.5%) per month or the maximum permissible legal rate. Client will also reimburse PowerWorks for reasonable collection costs, including attorney's fees, relating to the collection of any such past due amounts.

8.2 **Failure to Pay.** Failure to make any payment due to PowerWorks in accordance with this Agreement will result in forfeiture of Client's right to receive any or all services. Failure to (i) comply with the limitations set forth in Paragraph 3.5, or ii) pay all the license fees and subscription fees for the Software in accordance with this Agreement will result in termination of Client's Software license, termination of this Agreement and will obligate Client to immediately return all Software and Documentation to PowerWorks.

8.3 **Taxes.** The amount set forth in this Agreement do not include all sales, use, withholding, excise, value added, and ad valorem taxes or imposed in conjunction with this Agreement. Client will pay any and all such taxes and charges. If tax exempt, Client will provide to PowerWorks a copy of its sales tax exemption certificate.

8.4 **Expenses.** Client will reimburse PowerWorks for all out-of-pocket expenses reasonably incurred in rendering services to Client. Expenses will include reasonable travel and transportation expenses, actual cost of lodging, shipping costs, communications charges, telephone calls (except Client support calls), and PowerWorks' standard per diem rate for meals, which rate is the same as the per diem rates published by the U.S. Internal Revenue Service ("IRS"). The per diem rate may be modified by PowerWorks consistent with IRS rate modifications.

8.5 **Assignment of Payments.** Client acknowledges and agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Agreement in whole or in part to an assignee. Client shall acknowledge every such assignment or granting of a security interest as shall be designated by written notice given by Cerner to Client. Cerner will continue to perform its obligations under this Agreement to Client following such assignment or granting of a security interest.

9. TERMINATION

9.1 **Termination for Cause.** In the event that either party materially defaults in the performance of any of its obligations under this Agreement and does not substantially cure such default, or commence a cure, within twenty (20) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. The specified date shall be at least forty (40) days after the notice of termination, except for termination for non-payment, which may be immediately after the 20-day cure period.

9.2 **Effect of Termination.** Upon termination for any reason, other than for material breach by PowerWorks pursuant to Paragraph 9.1, Client will pay PowerWorks for all services performed by PowerWorks up to the date of such termination and all other amounts Client owes to PowerWorks under this Agreement including, but not limited to, the unpaid portion of the Subscription Fee, Software Support Fee, Hardware Support Fee, and fees for transaction services commitments for the balance of the Term or Renewal Term.

9.3 **Survival.** Termination of this Agreement or Support will not terminate each party's obligations under the provisions of Section 1 (General Provisions), Paragraph 3.4 (Use, Retention of Right, Title and Interest), Paragraph 3.5 (Limitations) Section 8 (Fees and Payments), Paragraph 9.2 (Effect of Termination), Paragraph 9.3 (Survival), Paragraph 9.4 (Confidentiality), Paragraph 10.2 (Warranty Limitations), Paragraph 10.4 (Limitation of Remedy), and Paragraph 10.5 (Maximum Liability), all of which survive termination and/or non-renewal.

9.4 **Confidentiality.** Each party may have access to Confidential Information of the other party. The recipient of such Confidential Information agrees to hold such information in strictest confidence and not to disclose, or cause to be disclosed, the information to any third party, other than an authorized agent or contractor of PowerWorks, or utilize the Confidential Information for any purpose other than as expressly contemplated by this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. Each party agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for breach of this paragraph and that such breach would cause irreparable harm to the other; therefore the non breaching party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it may have at law or under this Agreement.

9.5 **Access to Data**. Client grants to PowerWorks an irrevocable, nonexclusive, perpetual, world-wide, royalty-free right and license to use all data (de-identified in accordance with HIPAA) for any purpose permitted by law, including, without limitation, (i) analysis and incorporation of such data in databases, reports, comparative data sets, scores or scoring systems generated there from; and (ii) creation and distribution of works and derivative works based on the data. Any data that contains an element that by itself, or in combination with any other data elements allows re-identification of a person, is considered Confidential Information under this Agreement. PowerWorks shall provide, install, and support the tools to perform the data extraction of data that is collected, stored or generated through the

use of the PowerWorks Software without charge. Client agrees to provide the technical and communications infrastructure required to temporarily store and send the extracted data by mutually acceptable electronic means.

10. <u>WARRANTY AND LIABILITY LIMITATION</u>

10.1 <u>Warranty</u>. PowerWorks warrants that, for ninety (90) day period following First Productive Use, the PowerWorks Software will substantially conform to the Documentation when used by Client in accordance with the Documentation Client's sole and exclusive remedy for a breach of the foregoing software warranty will be, at PowerWorks' option, to repair or replace the non-conforming PowerWorks Software or return any payments Client paid for the non-conforming PowerWorks Software upon return of such Software to PowerWorks and terminate this Agreement. This software warranty and remedy will not apply to any PowerWorks Software that does not conform to its Documentation as a result, in whole or in part, of one or more of the events described in Paragraph 10.4 (Limitations & Exclusions).

10.2 <u>Warranty Limitations</u>. THE FOREGOING WARRANTY IS IN LIEU OF, AND POWERWORKS HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL PRODUCTS OR SERVICES (OR PORTIONS THEREOF) PROVIDED HEREUNDER.

10.3 <u>Infringement Indemnification</u>. Provided Client is paying Software Support Fees, PowerWorks will defend any action brought against Client to the extent that it is based on a third party claim that the PowerWorks Software, when used as authorized by this Agreement, infringes any U.S. patents, copyrights, or trademarks; provided that Client notifies PowerWorks immediately in writing of any such claim; and provided that PowerWorks will have the exclusive right to control the defense. If, as a result of such a claim, litigation or threat of litigation, Client is enjoined from using the PowerWorks Software, PowerWorks may, at its sole option and expense, procure for Client the right to continue to use the PowerWorks Software, or replace or modify the PowerWorks Software so as to settle such claim, litigation or litigation threat. If such settlement or modification of the PowerWorks Software is not reasonably practical, PowerWorks may terminate the license and this Agreement upon written notice to Client. This describes Client's sole and exclusive remedy and PowerWorks' entire liability with respect to infringement of any proprietary rights by the PowerWorks Software.

10.4 <u>Limitation of Remedy</u>. In no event will PowerWorks or any Sublicensed Software provider be liable for any , indirect, incidental, punitive or consequential damages or loss of goodwill in any way relating to this Agreement or resulting from the use of or inability to use the products or the performance or non-performance of any services, including, without limitation damages for loss of profits, loss of data or loss of use incurred by Client or any third party, even if PowerWorks has been notified of the possibility of such damages.

10.5 <u>Maximum Liability</u>. IN NO EVENT WILL POWERWORKS' LIABILITY AND ANY SUBLICENSED SOFTWARE PROVIDER'S LIABILITY FOR ANY COSTS, EXPENSES, OR DAMAGES TO CLIENT OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE AMOUNT RECEIVED BY POWERWORKS FROM CLIENT FOR THE APPLICABLE PRODUCT(S) AND SERVICE(S) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE ACTION.

EXHIBIT A
BUSINESS ASSOCIATE PROVISIONS

  WHEREAS, Client may make available to PowerWorks certain Information, in conjunction with services that are being provided by PowerWorks to Client, that is confidential and must be afforded special treatment and protection.

  WHEREAS, PowerWorks will have access to and/or receive from Client certain Information that can be used or disclosed only in accordance with this Exhibit.

  NOW, THEREFORE, Client and PowerWorks agree as follows:

1. **Definitions.**

  "**HHS Privacy Regulations**" means the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and published in the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164.

  "**HHS Security Regulations**" means the security regulations promulgated under HIPAA and published in the C.F.R. at Title 45, Sections 160, 162 and 164.

  "**Information**" means any "protected health information" provided and/or made available by Client to PowerWorks after the Effective Date, and has the same meaning as the term "protected health information" as defined by 45 C.F.R. 164.501.

2. **Term.** This Exhibit shall commence as of compliance date for the HHS Privacy Regulations (the "Effective Date"), and shall expire when all of the Information (as defined in the next sentence) provided by Client to PowerWorks is destroyed or returned to Client pursuant to Clause 14 below.

3. **Limits On Use And Disclosure.** PowerWorks hereby agrees that it may not use or disclose the Information provided or made available by Client for any purpose other than as expressly permitted or required by this Exhibit, the software agreement with PowerWorks, or by the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(i)).

4. **Stated Purposes For Which PowerWorks May Use or Disclose Information.** The parties hereby agree that PowerWorks shall be permitted to use and/or disclose Information provided or made available from Client relating to and as necessary to maintain and support Client's health information systems, to provide other services on behalf of the Client as may be entered into under contract and to aggregate data as set forth below.

5. **Use of Information For Management, Administration and Legal Responsibilities.** PowerWorks is permitted to use Information as necessary for the proper management and administration of PowerWorks or to carry out legal responsibilities of PowerWorks. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

6. **Disclosure of Information For Management, Administration and Legal Responsibilities.** PowerWorks is permitted to disclose Information received from Client for the proper management and administration of PowerWorks or to carry out legal responsibilities of PowerWorks, provided: (i) the disclosure is required by law; or (ii) PowerWorks obtains reasonable assurances from the person to whom the Information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the Information, and the person immediately notifies PowerWorks of any instance of which it is aware in which the confidentiality of the Information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).

7. **Data Aggregation Services.** PowerWorks is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of Client. The parties agree that any Information provided to PowerWorks hereunder which is later de-identified and therefore no longer identifies a patient (i.e. is no longer "protected health information" as defined by 45 C.F.R. 164.501) will no longer be subject to the provisions set forth in this Exhibit. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

8. **Appropriate Safeguards.** PowerWorks will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Exhibit. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)). PowerWorks will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic Information that it creates, receives, maintains or transmits on behalf of Client by the compliance date for the HHS Security Regulations. (ref. 45 C.F.R. 164.314(a)(2)(i)(A)).

9. **Reports Of Improper Use Or Disclosure.** PowerWorks hereby agrees that it shall report to Client any use or

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disclosure of Information not provided for or allowed by this Exhibit and, after the compliance date for the HHS Security Regulations, any Security Incident (as that term is defined in the HHS Security Regulations) of which PowerWorks becomes aware. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C); 45 C.F.R. 164.314(a)(2)(i)(C)).

10. **Subcontractors and Agents.** PowerWorks agrees that if PowerWorks provides Information to any subcontractors or agents, PowerWorks will ensure that such agent or subcontractor agrees to the same restrictions on the use and disclosure of such Information that apply to PowerWorks. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).

11. **Designated Record Set.** To the extent PowerWorks maintains Information in a designated record set, as that term is defined by 45 C.F.R. 164.501, PowerWorks will:

    A. to the extent applicable, make available Information in accordance with 45 C.F.R. § 164.524. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).

    B. to the extent applicable, make available Information for amendment and incorporate any amendments to Information in accordance with 45 C.F.R. 164.526. (ref. 45 C.F.R. 164.504(e)(2)(ii)(F)).

12. **Provide Accounting.** PowerWorks agrees to make information available as required to provide an accounting of disclosure of Information received from, or created or received by PowerWorks on behalf of Client in accordance with 45 C.F.R. 164.528. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).

13. **Access to Books and Records.** PowerWorks hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by PowerWorks on behalf of the Client, available to the Secretary of the Department of Health and Human Services or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).

14. **Return or Destruction of Information.** At termination of this Exhibit, PowerWorks hereby agrees to return or destroy all Information received from, or created or received by PowerWorks on behalf of Client. PowerWorks agrees not to retain any copies of the Information after termination of this Exhibit. If return or destruction of the Information is not feasible, PowerWorks agrees to extend the protections of this Exhibit for as long as necessary to protect the Information and to limit any further use or disclosure. If PowerWorks elects to destroy the Information, it shall certify to Client that the Information has been destroyed. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).

15. **Termination of Exhibit.** If PowerWorks materially breaches this Exhibit, Client may terminate this Exhibit and the software agreement under which PowerWorks received or had access to the Information that is the subject of the breach after sending written notice to PowerWorks describing PowerWorks failure in detail and affording PowerWorks a sixty (60) day period in which to cure such failure. (ref. 45 C.F.R. 164.506(e)(2)(iii)).

16. **No Third Party Beneficiaries.** This Exhibit shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns and successors and nothing herein, express or implied, is intended to or shall confer upon any other person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

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Client:	Bernalillo County One Civic Plaza NW Albuquerque, NM 87102	**Invoice No:** EXEC Schedule No. 1 **Invoice Date:** _____, 2011 **Due Date:** Execution

Remit: **Via FedEx:** **(or)** **Via Wire Transfer:**

Cerner Healthcare Solutions, Inc.   ABA Routing Number: 101000187
PO Box 412732   Bank: US Bank
Kansas City, MO 64141-2732   For Further Deposit to Bank Account: 5290000743

TOTAL AMOUNT DUE: **$17,514**

Sales tax, if applicable, will be invoiced separately.

If there are questions regarding this invoice, please call Cerner Finance at (816) 201-5220.

Schedule No.	Attachment No.	Description	Total Product Amt.	Percent Billed	Net Amount
1	III	POWERWORKS SOFTWARE	$3,500	25%	$875
1	IX	PROFESSIONAL SERVICES	$66,555	25%	$16,639
				Grand Total:	**$17,514**

CERNER SYSTEM SCHEDULE NO. 1

This Cerner System Schedule is made on _____, 2011 ("Effective Date"), between

Bernalillo County ("Client")   and   Cerner Healthcare Solutions, Inc. ("PowerWorks")

a New Mexico corporation with its principal place of business at:

One Civic Plaza NW
Albuquerque, NM 87102 USA
Telephone:

a Delaware corporation with its principal place of business at:

2800 Rockcreek Parkway
Kansas City, MO 64117 U.S.A.
Telephone: (816) 221-1024

As of the Effective Date, this Cerner System Schedule consists of the attachments described below. Client hereby agrees to accept the products and services set forth in the attachments, and PowerWorks agrees to furnish such products and services, upon the terms and conditions of this Cerner System Schedule and the PowerWorks Agreement dated _____, 2011, between Client and PowerWorks (the "Agreement").

This Cerner System Schedule includes the following attachments:

Attachment I	-	Scope of Use Specifications, Payment Terms and Summary of Purchase Price
Attachment II	-	Equipment (not applicable)
Attachment III	-	Licensed Software
Attachment III	-	Learning Software (not applicable)
Attachment IV	-	Sublicensed Software (not applicable)
Attachment IV	-	Subscriptions (not applicable)
Attachment V	-	Managed Services (not applicable)
Attachment V	-	Application Services
Attachment VI	-	Advanced Technology Solutions (not applicable)
Attachment VII	-	Packaged Solutions (not applicable)
Attachment VIII	-	Transaction Services (not applicable)
Attachment IX	-	Professional Services
Attachment X	-	Transaction Services Terms (not applicable)
Exhibit A	-	Professional Services Scope (not applicable)
Exhibit B	-	Maintenance (not applicable)
Exhibit C	-	Remote Hosting Scope (not applicable)
Exhibit D	-	Application Services Scope
Exhibit E	-	Transaction Services Scope (not applicable)

BERNALILLO COUNTY   CERNER HEALTHCARE SOLUTIONS, INC.

By: _____   By: _____

_____   Shellee Spring
        (type or print)   _____
                                                      Senior Vice President
Title: _____   Title: _____PowerWorks_____

Motion to approve.

Approved this _____ day, _____ 2011.

BOARD OF COUNTY COMMISSIONERS

_____
Maggie Hart Stebbins, Chair

_____
Art De La Cruz, Vice Chair

_____
Michelle Lujan Grisham, Member

_____
Michael C. Wiener, Member

_____
Wayne Johnson, Member

APPROVED AS TO FORM:

_____
Jeffrey S. Landers, County Attorney

DATE: _____

ATTEST:

_____
Maggie Toulouse Oliver, County Clerk

DATE: _____

SIGNATURE PAGE

CERNER SYSTEM SCHEDULE
NO. 1
ATTACHMENT I
SCOPE OF USE SPECIFICATIONS, PAYMENT TERMS, AND SUMMARY OF PURCHASE PRICE

1. DESIGNATED AND PERMITTED FACILITIES

1.1 **Designated Facility.** Facility where the Software shall reside:

Bernalillo County
One Civic Plaza NW
Albuquerque, NM 87102 USA

1.2 **Permitted Facilities.** For use and access by the following Permitted Facilities:

Organization	Address	City	State/ Province	Zip/Postal Code	Country
Bernalillo County	One Civic Plaza NW	Albuquerque	NM	87102	USA

2. SCOPE OF USE SPECIFICATIONS

2.1 **Scope of Use Limits.** The fees set forth in this Cerner System Schedule are based on the following scope of use limits:

Solution Description	Scope of Use Metric	Scope of Use Limit	Scope of Use Metric Definition
PowerWorks Electronic Medical Record (Cat 1 Prov)	Providers	15	Total number of health professionals who are legally able to write prescriptions.
PowerWorks Practice Management (Cat 1 Prov)	Providers	15	Total number of health professionals who are legally able to write prescriptions.
Premium Reporting Package	Each	15	Every one considered separately.

The Software and/or Subscription Services shall be used by Client solely (i) for the purpose of processing data resulting from or related to clinical procedures performed at Permitted Facilities and (ii) in accordance with the Solution Descriptions set forth in this Cerner System Schedule.

2.2 **Scope of Use Expansion.** In the event any scope of use limit set forth herein is exceeded, Client agrees to expand scope of use at PowerWorks' then-current fees. Client's scope of use will be measured periodically by PowerWorks' system tools, or, for metrics that cannot be measured within the System or obtained through the American Hospital Association (e.g. FTEs or locations), Client will provide the relevant information to PowerWorks at least one (1) time(s) per year. In cases where Client-provided information is being used to measure scope of use, PowerWorks reserves the right to inspect the applicable Client records if such information is not publicly available. Client agrees that if an event occurs that will affect Client's scope of use (such as acquisition of a new hospital or other new facility), Client will promptly notify PowerWorks in writing of such event no later than thirty (30) days following the effective date of such event so that Client's scope of use can be reviewed. Any additional license fees due under this paragraph shall be payable within thirty (30) days following Client's receipt of an invoice for such fees. Additional monthly fees shall begin on the date the scope of use was exceeded, and shall be paid annually (fees will be pro-rated for any partial quarter).

3. FEES / PAYMENT TERMS

3.1 **PowerWorks Software Fees.**

A. <u>One-Time Fees</u>.

   i. <u>Initial Payment.</u> Twenty-five percent (25%) of the total PowerWorks Software one-time fees shall be payable upon kickoff of the project.

   ii. <u>Second Payment</u>. Fifty percent (50%) of the total PowerWorks Software one-time fees shall be payable upon testing completion.

   iii. <u>Third Payment</u>. The remaining twenty-five percent (25%) of the total PowerWorks Software one-time fees shall be payable upon project completion.

B. <u>Monthly Support Fees</u>**.** Client shall pay the monthly Software Support Fees beginning July 11, 2011 and continuing for the term of the Software Support Service. PowerWorks may increase the monthly Software Support Fee (not more than once per year) by giving Client sixty (60) days prior written notice of any increase.

3.2 **Professional Services Fees (Fixed Fee).**

A. <u>Initial Payment.</u> Twenty-five percent (25%) of the total professional services one-time fees shall be payable upon kickoff of the project.

B. <u>Second Payment</u>. Fifty percent (50%) of the total professional services one-time fees shall be payable upon testing completion.

C. <u>Third Payment</u>. The remaining twenty-five percent (25%) of the total professional services one-time fees shall be payable upon project completion.

3.3 **Application Services Fees.**

A. <u>Monthly Fees</u>. Client agrees to pay Application Services fees on a monthly basis, beginning upon July 11, 2011.

4. TERM AND TERMINATION

4.1 **Application Services.** The Application Services shall begin July 11, 2011, and shall continue thereafter in full force and effect for the term set forth on Attachment V of this Cerner System Schedule ("Initial Term"), unless terminated earlier in accordance with the Agreement. At the end of this term, the Application Services will automatically renew for additional twelve (12) month periods ("Renewal Terms"), unless either party provides the other party with written notification of its intent to terminate no less than sixty (60) days prior to the expiration of the then-current period (the Initial Term and any Renewal Terms, collectively, shall be called the "Term"). PowerWorks may increase the annual Application Services Fees any time after the Initial Term, but no more than once per year, by giving Client sixty (60) days prior written notice of any price increase.

5. SOLUTION DESCRIPTIONS

The solutions set forth in this Cerner System Schedule may be defined by a Solution Description. Where applicable, such descriptions are referenced by solution to a Solution Description code on the applicable attachment and can be viewed at http://www.cerner.com/clientresources/solutiondescriptionlookup. Such Solution Descriptions are incorporated into this Cerner System Schedule by reference. In the event a Solution Description is not published on Cerner's website, it may be included as an Attachment to this Cerner System Schedule.

6. PASS-THROUGH PROVISIONS

The solutions set forth in this Cerner System Schedule that are third party products, contain third party products, or are Content may be subject to terms of pass-through provisions from the relevant supplier. Where pass-through provisions are applicable, such provisions are referenced by solution to a pass-through code on the applicable attachment and can be viewed at http://www.cerner.com/members/PassThroughProvisions/default.aspx?id=30061. The terms of the applicable pass-through provisions are incorporated into this Cerner System Schedule by reference.

7. ASSIGNMENT OF PAYMENTS

Client acknowledges and agrees that PowerWorks may assign its interest in or otherwise grant a security interest in payments due pursuant to this Cerner System Schedule in whole or in part to an assignee (the "Assignee"). Client shall acknowledge every such assignment or granting of a security interest as shall be designated by written notice given by PowerWorks to Client. PowerWorks will continue to perform its obligations under the Agreement to Client following such assignment or granting of a security interest.

8. DEFINITIONS

As used in this Cerner System Schedule, the following term(s) shall have the meaning(s) set forth below:

Execution means the Effective Date of this Cerner System Schedule.

8. FINANCIAL OVERVIEW

Attachment	Description	System Purchase Price	Installation Fees	One-Time Fees	Monthly Fees	Monthly Support Fees	Prepaid Maintenance	Monthly Maintenance
III	Licensed Software	3,500	-	-	-	61	-	-
V	Application Service Provider	-	-	0	7,509	-	-	-
IX	Professional Services	66,555	-	-	-	-	-	-
	TOTALS:	**70,055**	**0**	**0**	**7,509**	**61**	**0**	**0**

All Prices are in US Dollar (USD).

System Purchase Price + Prepaid Maintenance Fees:	**70,055**	**(USD)**
System Purchase Price Grand Total:	**70,055**	**(USD)**

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Solution Code	Description		Purchase Price	Solution Descr Code Pass-Through Code
		Scope		
Quote: EMR (1-4271540239-R-3)				
PW-71013	PW EMR SIU Inbound Interface			PW-71013_01
		Each	*3,500*	

Total PowerWorks Software Licensed Software Purchase Price: 3,500   (USD)

PowerWorks Software Monthly Support Fees: 61   (USD)

Solution Code	Description					Solution Descr
Scope		*Monthly Range*	*Term in Months*	*Monthly Fees*	*One-Time Fees*	Code
Quote: EMR (1-4271540239-R-4)						
PW-30101-PKG	PowerWorks Electronic Medical Record (Cat 1 Prov)					
Providers			*48*	*4,500*		*PW-30101-PKG_01*
PW-10101-PKG	PowerWorks Practice Management (Cat 1 Prov)					
Providers			*48*	*2,700*		*PW-10101-PKG_01*
PW-PREPORT-PKG	Premium Reporting Package					
Each			*48*	*309*		

Total Monthly ASP Fees - List Price:	**9,224**	**(USD)**
Less Allowance:	**1,715**	**(USD)**
Total Monthly ASP Fees:	**7,509**	**(USD)**
Total One-Time ASP Fees:	**0**	**(USD)**

1. PRICING

1.1 Cerner Professional Services Price Summary.

Fixed Fee Total:	66,555	**(USD)**
Fee For Service Total:	0	**(USD)**
Total Professional Services Fees:	66,555	**(USD)**

1.2 Cerner Professional Services Price Detail. The pricing set forth in this Attachment is valid until **April 02, 2011**. If this Cerner System Schedule is not executed on or before such date, this professional services pricing is considered null and void and will be subject to revision.

Phase	Project	* Bill Type	Solution	Rate	Metric	Qty	Purchase Price
Quote: EMR (1-4271540239-R-4)							
1	PS-SVC-IMPF-PW	FF	PW EMR - Initiation Fee				31,325
1	PS-SVC-IMPF-PW	FF	PW PM - Initiation Fee				31,325
1	PS-SVC-IMPF-PW	FF	Premium Reporting Initiation				2,905
1	PS-SVC-IMP-PW	FF	PowerWorks Interface Standard Implementation				1,000

* FF = Fixed Fee
FFS = Fee For Service

All Prices are in US Dollar (USD).

1.3 Fees. Any changes to items listed herein will constitute a change in scope and professional services fees.

    A. <u>Fixed Fee/Fixed Scope</u>. The professional services fees set forth above are a fixed fee for the fixed scope set forth in this Attachment, and shall be paid as set forth in Attachment I of this Cerner System Schedule.

1.4 Travel, Lodging, Out-of-Pocket Expenses, and Per Diem Rates. The professional services fees set forth in this Attachment includes expenses incurred for a total of fifteen (15) days onsite. Such expenses exceeding this fifteen (15) day limit (travel, lodging, per diem, or other out-of-pocket expenses incurred by PowerWorks personnel) will be billed to Client on a monthly basis. Any estimate of expenses can change based on variables such as airfare and location of Client's site(s). PowerWorks uses the per diem rates established by the U.S. General Services Administration ("GSA") Domestic Per Diem Table for Client's location, and are subject to change by the GSA.

1. **Application Services.** PowerWorks agrees to provide the Application Services as set forth in this Exhibit D ("Application Services"), pursuant to the terms and conditions set forth in the Cerner System Schedule. Application Services shall mean the access to PowerWorks Software and associated Software Support Service provided on an Application Services basis for the Term set forth in the applicable Order and provided in the Application Services model. The Application Services will be provided from PowerWorks Data Center. PowerWorks will provide the data center hardware and software necessary to provide the Application Services to Client. PowerWorks will retain all right, title and interest in and to such hardware and software.

2. **Applications Management.** As part of the Application Services, PowerWorks will provide applications management. For purposes of this Exhibit, applications management is defined as the support required to manage the software application level of the Application Services. In the applications management model, PowerWorks' primary function with applications management is in the areas of service package management, application server management, maintenance, and build of the Application Services database, release upgrade testing and planning, monitor, and report on application processes. PowerWorks will upgrade the system as required to keep the client on a supportable release; but not more frequently than scope limit contracted for in this Cerner System Schedule. Specific service packages will be loaded as required to address a medical, financial, or regulatory need.

3. **Remote Hosting Infrastructure Management.** As part of the Application Services, PowerWorks provides secure hosting, hardware, connectivity, and IT expertise from the PowerWorks Data Center. The Remote Hosting Infrastructure Management includes the following:

Description and Responsible Party	PowerWorks	Client
Provide data center space required to house computing system. (e.g. Data Center raised floor, UPS, cooling, physical security monitoring, backup systems, etc.)	X	
Installation, management, and monitoring of any PowerWorks provided circuits or network hardware.	X	
Provide computing hardware and maintenance of back end services	X	
Provide operating systems, database, and 3rd party layered software and maintenance	X	
Provide secure environment for on-site and off-site storage for backups	X	
Monitor computing systems (24 x 7) to report on compromised system status, security, availability, and capacity.	X	
Perform system backups nightly, weekly, and monthly as specified in standard backup procedure	X	

4. **Client Site Infrastructure and Support.**

Description and Responsible Party	PowerWorks	Client
Procurement, installation, maintenance, and management of Client Site peripheral devices and software in accordance with PowerWorks certified configurations. (e.g. pc's, servers, routers, printers, web browser, reboots, paper, toner, device offline, etc.) Including peripheral devices and software adds, moves, changes, upgrades, etc.		X
ISP (Internet Service Provider) Connection from Client Site to ISP.		X
Provide adequate licenses for 3rd party products used to augment solution functionality. (3rd party products will be implemented in accordance with obligations set forth in the Agreement and certified by PowerWorks Engineering.) (e.g. MS Word, MS Excel, MS Access, etc.)		X
Backup of Client site pc's, servers, etc. and verification accuracy of the backups		X
Provide and manage all local area or wide area network equipment or connectivity required to connect Client		X

5. **Client Data upon Termination.** Upon expiration or termination of this Cerner System Schedule and Client's payment in full of all outstanding invoices, Client will receive reports on compact disk (CD) that, if the necessary data elements are available, includes the following:

A. PowerWorks EMR report

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   i.   Patient name

   ii.   Treatment and diagnostic data

   iii.   Notes

   iv.   Front sheet patient information

B.   PowerWorks PM report

   i.   Patient name

   ii.   Patient demographic and insurance data

   iii.   Account transaction history

If additional data elements or different output format is requested by Client, PowerWorks may provide Client with an estimate of the cost to fulfill such request.