

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
MEDIWARE INFORMATION SYSTEMS, INC.**

THIS AGREEMENT, entered into this _____ day of _____, 2005 (the "Effective Date"), by and between the COUNTY OF SAN MATEO, hereinafter called "County," and MEDIWARE INFORMATION SYSTEMS, INC. (FEIN#: 11-2209324), hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of granting the County a license to certain of Contractor's proprietary software identified in Exhibit "A" hereto and supplying certain hardware and services related thereto, also as specified in Exhibit "A"; and

WHEREAS, Contractor is willing to license its proprietary software and provide the related hardware and services, subject to all of the terms and conditions of this Agreement and that certain Master License and Services Agreement which is attached hereto as Exhibit "A", the terms and conditions of which are fully incorporated herein.

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

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Master License and Services Agreement

Statement of Work Number 1

Statement of Work Number 2

Exhibit A Exhibit 1 MEDIWARE SOFTWARE SUPPORT ADDENDUM

Exhibit A Exhibit 2 Pricing for Optional Products and Services

Exhibit B—Payments and rates

Attachment H—HIPAA Business Associate requirements

Attachment I—§ 504 Compliance

2. Goods and Services to be supplied by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall supply the goods specified in Exhibit "A" in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" ("Goods") and shall perform services for County, also in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A" (the "Services").

3. Payments

In consideration of the Goods and Services provided by Contractor in accordance with all terms, conditions, and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." In no event shall the County's total fiscal obligation for the Goods and Services as defined under this Agreement exceed \$231,429.00. To the extent County requires any changes to the Goods or the Services specified on Exhibit A, such as changes affecting the number of licenses to the Licensed Software, changes to the scope or schedule of Services as defined in the Implementation Workplan set forth in such Exhibit, including a change to the parties' respective roles and responsibilities, changes to configuration of or the amount of Hardware, or any other changes from the assumptions and agreements set forth in this Agreement, the amount of Fees will increase in accordance therewith.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from September 1, 2005 through August 31, 2008.

This Agreement may be terminated by Contractor, the Chief Information Officer, Information Services Department, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party, provided that, if terminated by County, County shall be obligated to pay all License Fees for Licensed Software delivered, all Hardware Fees for Hardware or other Goods delivered, annual Support Fees at the applicable rate, which shall be subject to annual increases as provided in Exhibit A, and all other Fees for Services performed prior to termination (with capitalized terms having the meanings given in Exhibit A).

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement that are not Contractor's Confidential Information (as defined in Exhibit "A") shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for all Licensed Software and Sublicensed Software that was delivered, and for Services provided prior to termination of the Agreement. With respect to Services, such payment shall be that portion of the full payment which is determined by comparing the Services completed to the Services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the Goods or Services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding, and provided that, in the event of such termination, the County shall be obligated to pay all License Fees for Licensed Software delivered, all Hardware Fees for Hardware or other Goods delivered, annual Support Fees at the applicable rate, which shall be subject to annual increases as provided in Exhibit A, and all other Fees for Services performed prior to termination (with capitalized terms having the meanings given in Exhibit A).

6. Relationship of Parties

Contractor agrees and understands that the Services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

The Parties shall provide the indemnities set forth in Exhibit "A." In addition, Contractor shall defend, indemnify, and hold County harmless from and against any claim, suit, or action by any third party against Customer for bodily injury or damage to tangible personal property arising out of or resulting from Mediware's gross negligence or willful misconduct while on County's premises, provided that Contractor's indemnity shall not be construed to cover any claims based on the design or use of the Licensed Software as defined in Exhibit "A."

The duty of either Party to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor may assign this Agreement to an affiliate or in connection with any merger, reorganization, or sale of substantially all of Contractor's assets used to provide the Services or other change of control transaction without any consent from Customer, but Customer shall not otherwise assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Except as allowed hereunder, any assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage to the extent applicable to the Services to be provided by Contractor. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$1,000,000

County 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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a 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, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and, if such breach is not remedied within thirty (30) days, suspend all further work pursuant to this Agreement.

10. Compliance with laws; Payment of Permits/Licenses

All Services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all laws and regulations applicable to Contractor in carrying on its business, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment “H,” and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment “I,” which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. In the event of a conflict between the terms of this Agreement and applicable law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees performing services under this Agreement. Contractor’s equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to the following:
 - i) termination of this Agreement if Contractor fails to remedy such breach within 30 days of receipt of notice of same from County;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;

- iii) other remedies available to County by law.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of Contractor's becoming aware of such filing, provided that (i) within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded and (ii) the matter arose out of Contractor's provision of the Goods or Services. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits to any of its employees providing Services hereunder, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. Where applicable, the Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all applicable program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents reasonably necessary to determine compliance with applicable laws and regulations, and this Agreement.

13. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's Effective Date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties. In the event of a conflict between any provision of an Exhibit and this Agreement, the applicable provision of this Agreement shall control.

14. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

15. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given five days after being deposited in the United State certified mail, return receipt requested, postage prepaid, or when delivered by a recognized express courier service, addressed to:

In the case of County, to:

Chief Information Officer
Information Services Department
PONY ISD120
455 County Center, Third Floor
Redwood City, CA 94063

In the case of Contractor, to:

Mediware Information Systems, Inc.
Blood Bank Division
11711 West 79th Street
Lenexa, Kansas 66214

Attn: Vice President and General Manager

[Remainder of page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

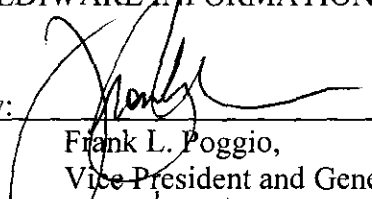
By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

MEDIWARE INFORMATION SYSTEMS, INC.

By:  _____
Frank L. Poggio,
Vice President and General Manager

Date: 7/28/05

Exhibit “A”

See Attached Master License and Services Agreement

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

FEES*

Licensed Software & Test Scripts

1	HCLL™ Transfusion System Software	4 Concurrent User Licenses	\$	
1	HCLL Automated Patient Backup Card (APBC)		\$	
1	HL-7 Interface Engine		\$	
	1	ADT Billing		
	1	Orders		
	1	Results		
1	Initial HCLL Transfusion Software Test Scripts		\$	
1	Initial HL-7 Interface Test Scripts		\$	
Subtotal				\$
 Allowances				
	Allowance on HCLL Transfusion System Software		\$	(
	Allowance on Scripts		\$	
Total Allowance				\$
 Total Licensed Software and Test Scripts				\$ 73,500

Installation

HCLL Installation (See Implementation Workplan)	\$	64,032
Validation Services (384 hours - See Implementation Workplan)	\$	42,600
Sublicensed Software (See Exhibit 2)	\$	9,771
Shipping/Handling/Tax **	\$	17,837**
Hardware (See Exhibit 2)	\$	19,189
System Staging	\$	3,500
 Total		 231,429

* Prices assume Agreement is executed on or before September 1, 2005.

** Shipping/Handling is invoiced as incurred but the estimated amount for this Agreement using Federal Express Ground Service delivery is \$275. The San Mateo County Sales Tax Rate is listed at 8.25% currently which would indicate a maximum amount of tax for this total Agreement would be \$17,562. Should this rate change as of the date of execution, this estimated dollar amount of tax would need to be adjusted to the present rate of the date of execution.

Licensed Software Initial Annual Support (4 Concurrent Users) \$ 21,490
for the initial twelve (12) months, commencing upon the Support Effective Date.

Support Fees for any additional Licensed Software licenses shall be equal to the then current rates of the License fee, unless otherwise specified in the License Agreement. Support Fees for any additional Sublicensed Software licenses shall be payable at the then current rate.

PAYMENT TERMS

Due upon execution of the Agreement and payable within 30 days

100%	Sublicensed Software and System Staging	\$	13,271
30%	Licensed Software & Scripts**	\$	22,050

Due upon Delivery of Hardware*

100%	Hardware***	\$	19,189
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Due 90 days from execution of the Agreement

50%	Licensed Software & Scripts**	\$	36,750
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Due 180 days from execution of the Agreement

20%	Licensed Software & Scripts**	\$	14,700
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Service Fees invoiced monthly as incurred

Support Fees

Due 12 months following the Effective Date of the Agreement,
or upon First Productive Use, whichever occurs first.

*Note: Customer shall have the right to inspect all Hardware prior to accepting a delivery to establish that such Hardware was received free of damage. In the event that Hardware is rejected due to damage incurred prior to receipt by Customer, Customer shall not be obligated to pay amounts invoiced in connection with such Hardware until 30 days following receipt of undamaged Hardware, provided that Customer notifies Mediware in writing of such rejection within 3 days. If Customer does not notify Mediware of such a rejection within the 3 day period, Hardware will be deemed to have been accepted on the initial delivery date for the purposes of the payment of fees hereunder.

** Plus applicable sales tax at the current percentage rate as of the date of execution of the Agreement.

***Plus applicable sales tax, insurance and shipping (for Hardware) at the current percentage rate as of the date of execution of the Agreement.