

**AMENDMENT NO. 2 TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
ECLINICAL WORKS, LLC**

THIS AMENDMENT TO THE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and ECLINICAL WORKS, LLC, 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, the parties entered into an Agreement to install and maintain an Ambulatory Electronic Medical Record (AEMR) at the San Mateo Medical Center (SMMC) on January 8, 2008, as amended on March 17, 2009; and

WHEREAS, the parties wish to amend the Agreement to add \$490,000 to the Agreement, for a new total maximum fiscal obligation of no more than \$2,990,000.

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

1. Section 4 of the Agreement, as amended by Amendment No. 1, is further amended to read as follows:

In consideration of the 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". The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. The County's total fiscal obligation under this Agreement shall not exceed \$2,990,000 over the entire Term.

2. Exhibit A to the Agreement is amended by adding the following section as Section 9 of Exhibit A:

eClinicalMessenger Services – Contractor shall provide to the County the "eClinicalMessenger Services" means the following: eClinicalMessenger Services (eCM) is an automated call system that generates appointments and other notices to patients. These services will meet the functional requirements listed below. All future enhancement made to eClinicalMessenger by Contractor shall be provided to County at no additional charge.

County may terminate eClinicalMessenger Services at any time, without cause, by giving

Contractor 30 day advance written notice, notwithstanding any other notice provisions of this Agreement.

Hosting – Hosting for eClinicalMessenger will be provided by eClinicalWeb. A separate hosting agreement between the County and eClinicalWeb is required for eClinicalMessenger Services. There will be no host fee charged by eClinicalWeb for eClinicalMessenger Services.

**Functional Requirements**

#	Description	eCW Response (agree, available now, not available, future date, etc)
1	Calls are defined as an automated phone call, voice message, text message or email generated by the system, received or not received. Option available to have e-mails include voice file with pre-recorded message.	Phone call and voice message yes Text message is being worked on and will be available in the future. E-mail is not covered by eClinicalMessenger. E-mail alerts can be sent out with the patient portal.
2	Same calls may be sent to patient and patient’s caregivers	Yes eCW will develop
3	ASP delivery, no on-site equipment required, eCW security in place to safeguard SMMC data, backup and recover in place	Agree, agreement between County and eClinicalWeb is required
4	System automatically selects patients to receive calls based on SMMC profile driven criteria to include appointments and notices of lab or radiology results	Agree
5	Call templates available, such as no shows, medication reminders, pre/post op instructions, Birthdays, Get Well etc	Agree
6	Calls can be automatically blocked based on SMMC profile driven criteria, such patient request, physician request, patient demographics	Agree
7	Calls can be modified by provider, appointment type, location and patient demographic based on SMMC profile driven criteria	Yes eCW will develop
8	“Registry” capability to filter patient population by specific search criteria, including status of messages, and generate additional calls based on such	Agree
9	Calls in English and Spanish initially, calls in Tagalog, Tongan, Chinese, Vietnamese, Japanese and Korean to be developed within first year of Amendment	eCW will give it our best efforts
10	Call detail to include patient name,	Agree

	provider, date/time, location and other SMMC defined information	
11	Application support provided in accordance with provisions of master contract	Agree
12	HIPAA compliant call capability with password protection	eCW will provide in the next version of the product
13	Calls and reminders integrated with Patient Portal - It is San Mateo's our understanding that just as the AEMR users can track phone calls, the patient would also be notified in the portal that they have received a reminder from eCW Messenger regarding X, Y, or Z.	Agree
14	Patients responses to calls updates AEMR status and scheduling status	Agree
15	Volume of call can be adjusted based on patient age and demographics	Practice can control the pitch but at this time the volume is controlled by the peripheral.
16	Voice recognition functionality available	Agree
17	eCW to automatically populate patient's call message using AEMR demographics, and select appropriate language module	Interface will be developed by eCW
18	eCW to enhance/upgrade the computer generated voice (male and female versions) to give it more realistic pattern and tones	Agree
19	eCW to provide tools for messages recordings of human voice in place of computer generated voice; to include library of pre-recorded demographics (eg. First name, last name, locations, etc.)	Agree
20	Patient call status recorded directly into each patient record (eg. Data/time stamp, specific message, outcome of message, etc.)	Agree
21	eCW to provide alert tools/notifications so that specific patient populations responses to calls can be easily tracked	Agree
22	eClinicalMessenger to automatically detect presence of answering machine, and respond according to setup eg. Call back, change message, drop confirmation options, etc.	Agree
23	eClinicalMessenger to allow each clinic site to modify the appearing caller id info ie. phone number and any text	Agree

3. Exhibit B to the Agreement is amended by adding the following section as Section 10 of Exhibit B:

Voice Message Fees – County shall pay Contractor \$.10 (ten cents) per call generated by County. A call is defined as an automated phone call or voice message request by the County. There is no guarantee by the County of any number of calls. There shall be no increase in the per call fee during the term of the Agreement. In the event Contractor offers to similar customer(s) eClinicalMessenger Services at a rate less than \$.10 (ten cents) per call, Contractor shall offer the same rate to County. Contractor shall invoice County for the actual number of calls on a monthly basis. The invoice will itemize calls by San Mateo Medical Center site and will include the number of calls by type and status of call (received or not) and the capability to download the invoice for statistical analysis. Payment shall be made in accordance with the terms of the Agreement.

4. **All other terms and conditions of the agreement dated January 8, 2008, as amended March 17, 2009, between the County and Contractor shall remain in full force and effect.**

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

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Mark Church, President  
Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

eClinical Works, LLC

\_\_\_\_\_  
Contractor's Signature

Date: \_\_\_\_\_

**THIS SOFTWARE AS A SERVICE AGREEMENT** (this “**Agreement**”) is made as of the \_\_\_\_\_ day of September, 2009 (the “**Effective Date**”), between eClinicalWeb, Inc., a Massachusetts corporation (“**eClinicalWeb**”), and County of San Mateo (“**County**”). Capitalized terms shall have the meaning defined in this Agreement.

### **Background**

**A.** eClinicalWeb is in the business of providing certain hosting and delivery services related to integrated business software and clinical systems;

**B.** County desires to engage eClinicalWeb to provide such services using the web-based software applications described on **Exhibit A** (the “**Hosted Applications**”), subject to the following terms and conditions.

### **Agreement**

In consideration of the rights and benefits that they will each receive in connection with this Agreement, the parties, intending to be legally bound, agree as follows:

### **Article 1 Hosting Services**

**1.1 Term.** The term of this Agreement shall be one year from the Effective Date and shall automatically renew for successive one (1) year periods unless terminated by either party without cause by providing the other party with 30 days advanced written notice of termination. However, if not already terminated or expired, the term of this Agreement shall automatically terminate three years from the Effective Date. If the parties wish for the Agreement to extend beyond that time, they must amend this agreement pursuant to Paragraph 3.15, below.

**1.2 eClinicalWeb Responsibilities.** Subject to the terms of this Agreement, eClinicalWeb will: (a) make the Hosted Applications available to County via the Internet based on a Software As A Service basis; (b) make the Documentation for the Hosted Applications available to County in a mutually agreed upon format; and (c) provide to County a user name, password and other information required to use the Hosted Applications.

### **1.3 County Responsibilities.**

(a) County is responsible for: (i) procuring, at its expense, the necessary environment at the County’s location(s) to use the Hosted Applications via the Internet, including, without limitation, all computer hardware, software and equipment, Internet access and telecommunications services (collectively, the “**County Systems**”); (ii) complying with all laws, rules and regulations related to the County Systems; (iii) keeping its user name and password secret and confidential, and, for any communications or transactions that are made, using the same; (iv) changing its user name and password if it believes that the same has been stolen or might otherwise be misused; (v) obligations under any third party agreements to which County is a party, including, without limitation, any agreement pursuant to which County procures the County Systems or any portion thereof, regardless of whether eClinicalWeb provides County with any assistance in such procurement.

- (b) County shall bear all costs of obtaining, installing and maintaining the County Systems.

#### **1.4 Definitions.**

- (a) **“Services”** shall mean the Hosting services set forth in Section 1.5 below. As outlined by Exhibit A, there are no fees for the services provided under this Agreement.
- (b) **“System”** shall mean the server(s) on which the Website is hosted and all other equipment utilized by eClinicalWeb to provide the Services hereunder.
- (c) **“Website”** shall mean the website accessible from the URL <http://www.eClinicalWeb.com> or other eClinicalWeb domains.
- (d) **“SAAS”** or **“Software As A Service”** mean application services provided by eClinicalWeb via the Internet.
- (e) **“County Error”** includes any misuse, improper use, alteration or damage to the Hosted Applications, any use or combination of the Hosted Applications with any software, operating system or computer equipment not approved by eClinicalWeb, or any other error not directly caused by the Hosted Applications or eClinicalWeb.
- (f) **“Confidential Information”** means all technical, business, and other information of one party (the **“Disclosing Party”**) disclosed to or obtained by the other party (the **“Receiving Party”**) in connection with this Agreement (including the pricing, terms and conditions of this Agreement) whether prior to, on or after the date of this Agreement, that derives economic value, actual or potential, from not being generally known to others, including, without limitation, any technical or non-technical data, designs, methods, techniques, drawings, processes, products, inventions, improvements, methods or plans of operation, research and development, business plans and financial information of the Disclosing Party. However, eClinicalWeb acknowledges that the County has general obligations under California law to disclose public records. To the extent that any records described by this definition are requested from County, County will advise eClinicalWeb, and eClinicalWeb will have the opportunity to seek protection from a court of proper jurisdiction regarding any materials it contends are protected from disclosure.
- (g) **“Documentation”** means the user and technical manuals and other documentation provided to County describing the Applications’ features, functionalities, requirements and specifications.

#### **1.5 Services to be provided.**

(a) eClinicalWeb shall provide all industry standard hosting-related maintenance including, without limitation, back-ups, server maintenance and trouble-shooting.

(b) Network Connectivity. eClinicalWeb shall provide the Website with connection to the Internet for 99.9% of the time twenty-four (24) hours, seven days a week, excluding periods of time necessary for Website maintenance and Internet performance issues. eClinicalWeb reserves the right to have planned outages for hardware and software maintenance.

(c) Administration. eClinicalWeb shall provide regular routine and other systems administration and support services necessary to maintain the Website. eClinicalWeb shall provide County with five (5) business days of notice prior to service interruptions due to planned maintenance and best effort when emergency maintenance is required. Any service interruption for planned maintenance shall not exceed the time reasonably necessary to complete such maintenance. Scheduled downtime shall not exceed 240 minutes per month. eClinicalWeb shall provide County a monthly report of actual downtime by date and type (scheduled vs. unscheduled).

(d) Security. eClinicalWeb shall take reasonable measures to prevent unauthorized access to the Website. In this regard, eClinicalWeb shall use at least the same security measures it uses to protect its own proprietary information. eClinicalWeb shall notify County immediately of any known security breaches or holes. For security and administrative reasons only, the website administrators will have access to all files on the server. eClinicalWeb is not responsible if County makes changes to default security settings which allow access to County data. eClinicalWeb shall provide County a monthly report of all security events including escalation and resolution outcomes.

## **1.6 Acceptable use policy.**

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

(b) **Passwords.** County is responsible for maintaining the confidentiality of any password(s) and access codes given to access the Website, and is fully responsible for all activities that occur under those password(s) and access codes. County agrees to notify eClinicalWeb immediately of any unauthorized use of its password(s). County shall be solely responsible for the security of its passwords. Continued failure by County to maintain password security may result in the suspension or termination of Services. (c) **System Security.** County shall be prohibited from using the Services to compromise the security of the Services, the System, the Website, or any other website on the Internet. County use or distribution of tools designed for compromising security is strictly prohibited, including, without limitation, password guessing programs, cracking tools or network probing tools. eClinicalWeb reserves the right to release identification information of County, if County is involved in violations of security, to systems administrators at other websites in order to assist them in resolving security incidents. eClinicalWeb shall also fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

**1.7 System Monitoring.** eClinicalWeb reserves the right to monitor the System electronically from time to time and to access and disclose any information as permitted or required by any law or regulation, to operate its System properly, or to protect itself or other Customers, provided that eClinicalWeb shall provide County prior notice of any such disclosure. eClinicalWeb shall fully cooperate with law enforcement authorities in investigating suspected violators. It is not eClinicalWeb's intention that the Services, System or eClinicalWeb's facilities be used in contravention of the Communications Decency Act of 1996, 47 U.S.C. Section 223, or any other applicable law. County shall indemnify and defend eClinicalWeb for any claims, suits, losses or actions against eClinicalWeb arising from, related to or in connection with any known, authorized violation by County of the Communications Decency Act.

**1.8 Warranty of Content.** In addition to the warranties set forth in the Agreement, the parties to this Agreement warrant that they shall not use on the Website any content or other



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

## **Article 2**

### **Compliance with Laws.**

#### **2.1 Compliance with Laws**

(a) The parties shall comply with all applicable laws and regulations concerning security and privacy with respect to their obligations under this Agreement, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended, and all regulations promulgated thereunder (“**HIPAA**”).

(b) eClinicalWeb acknowledges and agrees that the data and information that is compiled or passes through the databases that are a part of the Hosted Applications and that specifically relates to patients, patient care or physician procedures or diagnosis (collectively, the “**County Data**”), and all right, title and interest therein, is and shall remain the exclusive property of County. Notwithstanding the foregoing, County hereby grants eClinicalWeb a perpetual, unlimited license to use the County Data, in any form or format, for data benchmarking, sharing, warehousing, resource utilization and similar data analysis services; provided, however, that eClinicalWeb shall protect and maintain the confidentiality of all individual identifiable patient and hospital data and eClinicalWeb shall comply with HIPAA, as applicable, and all other applicable laws with respect to such data.

## **Article 3**

### **Miscellaneous**

**3.1 References.** During the term of this Agreement, County authorizes eClinicalWeb to identify County as a client of eClinicalWeb in promotional and advertising materials. Further, County shall use commercially reasonable efforts to respond to requests from potential clients, analysts, media or investors of eClinicalWeb. County reserves the right to withdraw its consent for use of the County’s identity in any such materials, and eClinicalWeb shall cease using County’s identity upon receipt of such notice of withdrawal by County. Further, nothing in this paragraph guarantees any specific review or responses by County to such requests from potential clients, analysts, media or investors of eClinicalWeb.

### **3.2 Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to eClinicalWeb as soon as is reasonably possible after the County learns of said unavailability of funding.

### **3.3 Relationship of Parties**

eClinicalWeb agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the County and that eClinicalWeb acquires none of the rights, privileges, powers, or advantages of County employees.

### **3.4 Hold Harmless**

eClinicalWeb shall indemnify and hold harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including eClinicalWeb and/or its employees, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from eClinicalWeb's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to, that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of eClinicalWeb or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of eClinicalWeb 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.

### **3.5 Assignability and Subcontracting**

eClinicalWeb shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by eClinicalWeb under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

### **3.6 Insurance**

eClinicalWeb 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 County's Risk Manager, and eClinicalWeb shall use diligence to obtain such insurance and to obtain such approval. eClinicalWeb shall furnish the Information Services Department with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the eClinicalWeb's coverage to include the contractual liability assumed by eClinicalWeb 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 Chief Information Officer of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (A) **Worker's Compensation and Employer's Liability Insurance** eClinicalWeb shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, eClinicalWeb 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.
  
- (B) **Liability Insurance** eClinicalWeb shall take out and maintain, during the life of this Agreement, such Bodily Injury Liability and Property Damage Liability Insurance as shall protect eClinicalWeb 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 eClinicalWeb's operations under this Agreement, whether such operations be by eClinicalWeb 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:

(1) Comprehensive General Liability . . . . .	\$1,000,000
(2) Motor Vehicle Liability Insurance . . . . .	\$1,000,000
(3) 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 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 pursuant to this Agreement.

### **3.7 Compliance with Laws; Payment of Permits/Licenses**

All services to be performed by eClinicalWeb pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, 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 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. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

### **3.8 Non-Discrimination**

A. *Section 504 applies only to contractors who are providing services to members of the public.* eClinicalWeb 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 be subjected to discrimination under this Agreement.

C. *Equal employment opportunity.* eClinicalWeb shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. eClinicalWeb's equal employment policies shall be made available to County 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 eClinicalWeb to penalties, to be determined by the County Manager, including but not limited to

- 1) termination of this Agreement;
- 2) disqualification of eClinicalWeb or eClinicalWorks from bidding on or being awarded a County contract for a period of up to 3 years;
- 3) liquidated damages of \$2,500 per violation;
- 4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine eClinicalWeb's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to eClinicalWeb under this Agreement or any other Contract between eClinicalWeb and County or eClinicalWorks and the County.

eClinicalWeb 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 such filing, provided that within such 30 days such entity has not notified eClinicalWeb that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. eClinicalWeb 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, eClinicalWeb 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. eClinicalWeb shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated as if fully set forth herein.

G. *Compliance with Contractor Employee Jury Service Ordinance.* eClinicalWeb shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from eClinicalWeb, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with eClinicalWeb or that eClinicalWeb deduct from the employee's regular pay the fees received for jury service.

### **3.9 Retention of Records, Right to Monitor and Audit**

(a) eClinicalWeb 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: eClinicalWeb shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) eClinicalWeb 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 necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

### **3.10 Merger Clause**

This Agreement, including the Exhibits and Attachments 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 Agreement's 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 the terms, conditions, or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions, or specifications set forth herein shall prevail.

### **3.12 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.

### **3.13 Warranties**

eClinicalWeb will maintain the confidentiality of information regarding any physician or patient record.

eClinicalWeb warrants that it either owns or has the right to license the services hereunder. eClinicalWeb warrants that the services provided hereunder will be performed in a competent and workmanlike manner, which meets or exceeds industry standards. eClinicalWeb guaranties the integrity of data at County's location as long as any 3rd party has not modified the installed application.

Other than as expressly set forth in this Agreement, eClinicalWeb does not make any express or implied warranties, condition, or representations to County, any of its affiliates or any other party with respect to the applications, services or any products, documentation, or any other services or works of authorship provided hereunder, or otherwise regarding this Agreement, any implied warranty or condition of merchantability, non-infringement, or fitness for a particular purpose, are expressly excluded and disclaimed.

Limitation of Liability. eClinicalWeb's liability to County for any losses or indirect damages, in contract, tort or otherwise, arising out of the subject matter of this Agreement shall be limited to those actual and direct damages which are reasonably incurred by County and shall not exceed the total fees paid to eClinicalWeb by the County less any beneficial use. The beneficial use will be depreciated over five (5) years. eClinicalWeb will not be liable for: (I) Special, punitive, indirect, incidental, exemplary or consequential damages or loss of date, lost profits, loss of goodwill in any way arising from or relating to this, the applications or services, even if eClinicalWeb has been notified of the possibility of such damages occurring.

**3.14 Waiver.** No failure or delay on the part of either party to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall a single or partial exercise by either party of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by either party to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any other breach of or default in the same or any other term or condition hereof.

**3.15 Entire Agreement.** This Agreement supersedes all prior discussions, understandings and agreements between the parties with respect to the matters contained herein and contain the sole and entire agreement between the parties with respect to the transactions contemplated herein. This Agreement may not be amended or modified except by another agreement in writing executed by the parties.

**3.16 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties and their permitted successors and assigns.

**3.17 Severability.** If any provision of this Agreement or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect any other provision which can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

**IN WITNESS WHEREOF,** the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

**eClinicalWeb**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 1805 Old Alabama Road, Suite 350  
Roswell, Georgia 30076

Phone:

Facsimile:

Attention:

**[County]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SOFTWARE AS A SERVICE AGREEMENT between eClinicalWeb and County  
Exhibit A**

Hosted Applications – eClinicalMessenger

Hosting Fee – There are no hosting fees for eClinicalMessenger.